
HOUSE BILL 1340

State of Washington

63rd Legislature

2013 Regular Session

By Representative Kirby; by request of Uniform Laws Commission

Read first time 01/23/13. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to debt management services; amending RCW
2 18.100.140, 18.118.020, 19.230.350, 19.230.360, and 42.56.270;
3 reenacting and amending RCW 42.56.230; adding a new chapter to Title 18
4 RCW; repealing RCW 18.28.010, 18.28.080, 18.28.090, 18.28.100,
5 18.28.110, 18.28.120, 18.28.130, 18.28.140, 18.28.150, 18.28.165,
6 18.28.180, 18.28.185, 18.28.190, 18.28.200, 18.28.210, 18.28.220,
7 18.28.900, and 18.28.910; prescribing penalties; and providing an
8 effective date.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 NEW SECTION. **Sec. 1.** This chapter may be known and cited as the
11 uniform debt management services act.

12 NEW SECTION. **Sec. 2.** The definitions in this section apply
13 throughout this chapter unless the context clearly requires otherwise.

14 (1) "Administrator" means the director of the department of
15 financial institutions.

16 (2) "Affiliate":

17 (a) With respect to an individual, means:

18 (i) The spouse of the individual;

1 (ii) A sibling of the individual or the spouse of a sibling;
2 (iii) An individual or the spouse of an individual who is a lineal
3 ancestor or lineal descendant of the individual or the individual's
4 spouse;
5 (iv) An aunt, uncle, great aunt, great uncle, first cousin, niece,
6 nephew, grandniece, or grandnephew, whether related by the whole or the
7 half blood or adoption, or the spouse of any of them; or
8 (v) Any other individual occupying the residence of the individual;
9 and
10 (b) With respect to an entity, means:
11 (i) A person that directly or indirectly controls, is controlled
12 by, or is under common control with the entity;
13 (ii) An officer of, or an individual performing similar functions
14 with respect to, the entity;
15 (iii) A director of, or an individual performing similar functions
16 with respect to, the entity;
17 (iv) Subject to adjustment of the dollar amount pursuant to section
18 32(6) of this act, a person that receives or received more than twenty-
19 five thousand dollars from the entity in either the current year or the
20 preceding year or a person that owns more than ten percent of, or an
21 individual who is employed by or is a director of, a person that
22 receives or received more than twenty-five thousand dollars from the
23 entity in either the current year or the preceding year;
24 (v) An officer or director of, or an individual performing similar
25 functions with respect to, a person described in (b)(i) of this
26 subsection;
27 (vi) The spouse of, or an individual occupying the residence of, an
28 individual described in (b)(i) through (v) of this subsection; or
29 (vii) An individual who has the relationship specified in (a)(iv)
30 of this subsection to an individual or the spouse of an individual
31 described in (b)(i) through (v) of this subsection.
32 (3) "Agreement" means an agreement between a provider and an
33 individual for the performance of debt management services.
34 (4) "Bank" means a financial institution, including a commercial
35 bank, savings bank, savings and loan association, credit union, and
36 trust company, engaged in the business of banking, chartered under
37 federal or state law, and regulated by a federal or state banking
38 regulatory authority.

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

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

10 (7) "Certified debt specialist" means an individual certified by a
11 training program or certifying organization, approved by the
12 administrator, that authenticates the competence of individuals
13 providing education and assistance to other individuals in connection
14 with debt management services in which an agreement contemplates that
15 creditors will settle debts for less than the full principal amount of
16 debt owed.

17 (8) "Concessions" means assent to repayment of a debt on terms more
18 favorable to an individual than the terms of the contract between the
19 individual and a creditor.

20 (9) "Day" means calendar day.

21 (10) "Debt management services" means services as an intermediary
22 between an individual and one or more creditors of the individual for
23 the purpose of obtaining concessions, but does not include:

24 (a) Legal services provided in an attorney-client relationship if:

25 (i) The services are provided by an attorney who:

26 (A) Is licensed or otherwise authorized to practice law in this
27 state; and

28 (B) Provides legal services in representing the individual in the
29 individual's relationship with a creditor; and

30 (ii) There is no intermediary between the individual and the
31 creditor other than the attorney or an individual under the direct
32 supervision of the attorney;

33 (b) Accounting services provided in an accountant-client
34 relationship if:

35 (i) The services are provided by a certified public accountant who:

36 (A) Is licensed to provide accounting services in this state; and

37 (B) Provides accounting services in representing the individual in
38 the individual's relationship with a creditor; and

1 (ii) There is no intermediary between the individual and the
2 creditor other than the accountant or an individual under the direct
3 supervision of the accountant;

4 (c) Financial planning services provided in a financial planner-
5 client relationship by a member of a financial planning profession if:

6 (i) The administrator, by rule, determines that members are:

7 (A) Licensed by this state;

8 (B) Subject to a disciplinary mechanism;

9 (C) Subject to a code of professional responsibility; and

10 (D) Subject to a continuing education requirement; and

11 (ii) There is no intermediary between the individual and the
12 creditor other than the financial planner or an individual under the
13 direct supervision of the financial planner.

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

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

17 (13) "Lead generator" means a person that, in the regular course of
18 business, supplies a provider with the name of a potential customer,
19 directs a communication of an individual to a provider, or otherwise
20 refers a customer to a provider.

21 (14) "Person" means an individual, corporation, estate, trust,
22 statutory trust, business trust, partnership, limited liability
23 company, association, joint venture, or any other legal or commercial
24 entity. The term does not include a public corporation, government, or
25 governmental subdivision, agency, or instrumentality.

26 (15) "Plan" means a program or strategy in which a provider
27 furnishes debt management services to an individual and which includes
28 a schedule of payments to be made by or on behalf of the individual and
29 used to pay debts owed by the individual.

30 (16) "Principal amount of the debt" means the amount of a debt at
31 the time of an agreement.

32 (17) "Provider" means a person that provides, offers to provide, or
33 agrees to provide debt management services directly or through others.

34 (18) "Record" means information that is inscribed on a tangible
35 medium or that is stored in an electronic or other medium and is
36 retrievable in perceivable form.

37 (19) "Settlement fee" means a charge imposed on or paid by an

1 individual in connection with a creditor's assent to accept in full
2 satisfaction of a debt an amount less than the principal amount of the
3 debt.

4 (20) "Sign" means, with present intent to authenticate or adopt a
5 record:

6 (a) To execute or adopt a tangible symbol; or

7 (b) To attach to or logically associate with the record an
8 electronic sound, symbol, or process.

9 (21) "State" means a state of the United States, the District of
10 Columbia, Puerto Rico, the United States Virgin Islands, or any
11 territory or insular possession subject to the jurisdiction of the
12 United States.

13 (22) "Third-party account administrator" means an independent
14 entity that holds or administers a dedicated bank account for fees and
15 payments to creditors, debt collectors, or providers in connection with
16 the renegotiation, settlement, reduction, or other alteration of the
17 terms of payment or other terms of a debt.

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

19 (a) Established in an insured bank;

20 (b) Separate from other accounts of the provider or its designee;

21 (c) Designated as a trust account or other account designated to
22 indicate that the money in the account is not the money of the provider
23 or its designee; and

24 (d) Used to hold money of one or more individuals for disbursement
25 to creditors of the individuals.

26 NEW SECTION. **Sec. 3.** (1) This chapter does not apply to an
27 agreement with an individual who the provider has no reason to know
28 resides in this state at the time of the agreement.

29 (2) This chapter does not apply to a provider to the extent that
30 the provider:

31 (a) Provides or agrees to provide debt management, educational, or
32 counseling services to an individual who the provider has no reason to
33 know resides in this state at the time the provider agrees to provide
34 the services; or

35 (b) Receives no compensation for debt management services from or
36 on behalf of the individuals to whom it provides the services or from
37 their creditors.

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

4 (a) A judicial officer, a person acting under an order of a court
5 or an administrative agency, or an assignee for the benefit of
6 creditors;

7 (b) A bank;

8 (c) A third-party account administrator;

9 (d) An affiliate, as defined in section 2(2)(b)(i) of this act, of
10 a bank if the affiliate is regulated by a federal or state banking
11 regulatory authority; or

12 (e) A title insurer, escrow company, or other person that provides
13 bill paying services if the provision of debt management services is
14 incidental to the bill paying services.

15 NEW SECTION. **Sec. 4.** (1) Except as otherwise provided in
16 subsection (2) of this section, a provider may not provide debt
17 management services to an individual who it reasonably should know
18 resides in this state at the time it agrees to provide the services,
19 unless the provider is registered under this chapter.

20 (2) If a provider is registered under this chapter, subsection (1)
21 of this section does not apply to an employee or agent of the provider.

22 (3) The administrator shall maintain and publicize a list of the
23 names of all registered providers.

24 NEW SECTION. **Sec. 5.** (1) An application for registration as a
25 provider must be in a form prescribed by the administrator.

26 (2) Subject to adjustment of dollar amounts pursuant to section
27 32(6) of this act, an application for registration as a provider must
28 be accompanied by:

29 (a) The fee established by the administrator;

30 (b) The bond required by section 13 of this act;

31 (c) Identification of all trust accounts subject to section 22 of
32 this act and an irrevocable consent authorizing the administrator to
33 review and examine the trust accounts;

34 (d) Evidence of insurance in the amount of two hundred fifty
35 thousand dollars:

1 (i) Against the risks of dishonesty, fraud, theft, and other
2 misconduct on the part of the applicant or a director, employee, or
3 agent of the applicant;

4 (ii) Issued by an insurance company authorized to do business in
5 this state and rated at least an "A" or equivalent by a nationally
6 recognized rating organization approved by the administrator;

7 (iii) With a deductible, not exceeding five thousand dollars;

8 (iv) Payable to the applicant and Washington state for the benefit
9 of the residents of Washington state, as their interests may appear;
10 and

11 (v) Not subject to cancellation by the applicant or the insurer
12 until sixty days after written notice has been given to the
13 administrator;

14 (e) Proof of:

15 (i) Registration for a master business license with the department
16 of revenue; and

17 (ii) Filing with the secretary of state any documents to be filed
18 for that type of business entity; and

19 (f) If the applicant is organized as a not-for-profit entity or has
20 obtained tax-exempt status under the internal revenue code (26 U.S.C.
21 Sec. 501), evidence of not-for-profit status, or tax-exempt status, or
22 both.

23 NEW SECTION. **Sec. 6.** An application for registration as a
24 provider must be signed under oath and include:

25 (1) The applicant's name, principal business address and telephone
26 number, and all other business addresses in this state, e-mail
27 addresses, and internet web site addresses;

28 (2) All names under which the applicant conducts business;

29 (3) The address of each location in this state at which the
30 applicant will provide debt management services or a statement that the
31 applicant will have no such location;

32 (4) The name and home address of each officer and director of the
33 applicant and each person that owns at least ten percent of the
34 applicant;

35 (5) Identification of every jurisdiction in which, during the five
36 years immediately preceding the application:

1 (a) The applicant or any of its officers or directors has been
2 licensed or registered to provide debt management services; or

3 (b) Individuals have resided when they received debt management
4 services from the applicant;

5 (6) A statement describing, to the extent it is known or should be
6 known by the applicant, any material civil or criminal judgment or
7 litigation and any material administrative or enforcement action by a
8 governmental agency in any jurisdiction against the applicant, any of
9 its officers, directors, owners, or agents, or any person that is
10 authorized to have access to the trust account required by section 22
11 of this act;

12 (7) The applicant's financial statements, audited by an accountant
13 licensed under chapter 18.04 RCW, for each of the two years immediately
14 preceding the application or, if it has not been in operation for the
15 two years preceding the application, for the period of its existence;

16 (8) Evidence of accreditation by an independent accrediting
17 organization approved by the administrator;

18 (9) Evidence that, no later than twelve months after initial
19 employment, each of the applicant's counselors becomes certified as a
20 certified counselor or certified debt specialist;

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

25 (11) A description of the applicant's financial analysis and
26 initial budget plan, including any form or electronic model, used to
27 evaluate the financial condition of individuals;

28 (12) A copy of each form of agreement that the applicant will use
29 with individuals who reside in this state;

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

32 (14) At the applicant's expense, the results of a criminal records
33 check, including fingerprints, conducted within the immediately
34 preceding twelve months, covering every officer of the applicant and
35 every employee or agent of the applicant who is authorized to have
36 access to the trust account required by section 22 of this act;

37 (15) The names and addresses of all employers of each director
38 during the ten years immediately preceding the application;

1 (16) A description of any ownership interest of at least ten
2 percent by a director, owner, or employee of the applicant in:

3 (a) Any affiliate of the applicant; or

4 (b) Any entity that provides a product or service to the applicant
5 or any individual relating to the applicant's debt management services;

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

11 (18) The identity of each director who is an affiliate, as defined
12 in section 2(2) (a) or (b)(i), (ii), (iv), (v), (vi), or (vii) of this
13 act, of the applicant; and

14 (19) Any other information that the administrator reasonably
15 requires to perform the administrator's duties under section 9 of this
16 act.

17 NEW SECTION. **Sec. 7.** An applicant or registered provider shall
18 notify the administrator no later than ten days after a change in the
19 information specified in section 5(2) (d) or (f) or 6 (1), (3), (6),
20 (12), or (13) of this act.

21 NEW SECTION. **Sec. 8.** Except for the information required by
22 section 6 (7), (14), and (17) of this act and the addresses required by
23 section 6(4) of this act, the administrator shall make the information
24 in an application for registration as a provider available to the
25 public.

26 NEW SECTION. **Sec. 9.** (1) Except as otherwise provided in
27 subsections (2) and (4) of this section, the administrator shall issue
28 a certificate of registration as a provider to a person that complies
29 with sections 5 and 6 of this act.

30 (2) If an applicant has otherwise complied with sections 5 and 6 of
31 this act, including a timely effort to obtain the information required
32 by section 6(14) of this act, but the information has not been
33 received, the administrator may issue a temporary certificate of
34 registration. The temporary certificate shall expire no later than one
35 hundred eighty days after issuance.

1 (3) The administrator may deny registration if:

2 (a) The application contains information that is materially
3 erroneous or incomplete;

4 (b) An officer, director, or owner of the applicant has been
5 convicted of a crime, or suffered a civil judgment, involving
6 dishonesty or the violation of state or federal securities laws;

7 (c) The applicant or any of its officers, directors, or owners has
8 defaulted in the payment of money collected for others; or

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

13 (4) The administrator shall deny registration if with respect to an
14 applicant that is organized as a not-for-profit entity or has obtained
15 tax-exempt status under the internal revenue code (26 U.S.C. Sec. 501),
16 the applicant's board of directors is not independent of the
17 applicant's employees and agents.

18 (5) Subject to adjustment of the dollar amount pursuant to section
19 32(6) of this act, a board of directors is not independent for purposes
20 of subsection (4) of this section if more than one-fourth of its
21 members:

22 (a) Are affiliates of the applicant, as defined in section 2(2) (a)
23 or (b)(i), (ii), (iv), (v), (vi), or (vii); or

24 (b) After the date ten years before first becoming a director of
25 the applicant, were employed by or directors of a person that received
26 from the applicant more than twenty-five thousand dollars in either the
27 current year or the preceding year.

28 NEW SECTION. **Sec. 10.** (1) The administrator shall approve or deny
29 an initial registration as a provider no later than one hundred twenty
30 days after an application is filed. In connection with a request
31 pursuant to section 6(19) of this act for additional information, the
32 administrator may extend the one hundred twenty-day period for not more
33 than sixty days. Within seven days after denying an application, the
34 administrator, in a record, shall inform the applicant of the reasons
35 for the denial.

36 (2) If the administrator denies an application for registration as

1 a provider or does not act on an application within the time prescribed
2 in subsection (1) of this section, the applicant may appeal and request
3 a hearing.

4 (3) Subject to sections 11(4) and 34 of this act, a registration as
5 a provider is valid for one year.

6 NEW SECTION. **Sec. 11.** (1) A provider must obtain a renewal of its
7 registration annually.

8 (2) An application for renewal of registration as a provider must
9 be in a form prescribed by the administrator, signed under oath, and:

10 (a) Be filed no fewer than thirty and no more than sixty days
11 before the registration expires;

12 (b) Be accompanied by the fee established by the administrator and
13 the bond required by section 13 of this act;

14 (c) Contain the matter required for initial registration as a
15 provider by section 6 (8) and (9) of this act, and a financial
16 statement, audited by an accountant licensed to conduct audits, for the
17 applicant's fiscal year immediately preceding the application;

18 (d) Disclose any changes in the information contained in the
19 applicant's application for registration or its immediately previous
20 application for renewal, as applicable. If an application is otherwise
21 complete and the applicant has made a timely effort to obtain the
22 information required by section 6(14) of this act, but the information
23 has not been received, the administrator may issue a temporary renewal
24 of registration. The temporary renewal shall expire no later than one
25 hundred eighty days after issuance;

26 (e) Supply evidence of insurance in an amount equal to the larger
27 of two hundred fifty thousand dollars or the highest daily balance in
28 the trust account required by section 22 of this act during the six-
29 month period immediately preceding the application:

30 (i) Against risks of dishonesty, fraud, theft, and other misconduct
31 on the part of the applicant or a director, employee, or agent of the
32 applicant;

33 (ii) Issued by an insurance company authorized to do business in
34 this state and rated not less than "A" or equivalent by a nationally
35 recognized rating organization approved by the administrator;

36 (iii) With a deductible, not exceeding five thousand dollars;

1 (iv) Payable to the applicant and Washington state for the benefit
2 of residents of Washington state, as their interests may appear; and

3 (v) Not subject to cancellation by the applicant or the insurer
4 until sixty days after written notice has been given to the
5 administrator;

6 (f) Disclose the total amount of money received by the applicant
7 pursuant to plans during the preceding twelve months from or on behalf
8 of individuals who reside in this state and the total amount of money
9 distributed to creditors of those individuals during that period;

10 (g) Disclose, to the best of the applicant's knowledge, the gross
11 amount of money accumulated during the preceding twelve months pursuant
12 to plans by or on behalf of individuals who reside in this state and
13 with whom the applicant has agreements; and

14 (h) Provide any other information that the administrator reasonably
15 requires to perform the administrator's duties under this section.

16 (3) Except for the information required by section 6 (7), (14), and
17 (17) of this act and the addresses required by section 6(4) of this
18 act, which are exempt from disclosure under chapter 42.56 RCW, the
19 administrator shall make the information in an application for renewal
20 of registration as a provider available to the public.

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

25 (5) If the administrator denies an application for renewal of
26 registration as a provider, the applicant, no later than thirty days
27 after receiving notice of the denial, may appeal and request a hearing
28 under chapter 34.05 RCW. Subject to section 34 of this act, while the
29 appeal is pending the applicant shall continue to provide debt
30 management services to individuals with whom it has agreements. If the
31 denial is affirmed, subject to the administrator's order and section 34
32 of this act, the applicant shall continue to provide debt management
33 services to individuals with whom it has agreements until, with the
34 approval of the administrator, it transfers the agreements to another
35 registered provider or returns to the individuals all unexpended money
36 that is under the applicant's control.

1 NEW SECTION. **Sec. 12.** If a provider holds a license or
2 certificate of registration in another state authorizing it to provide
3 debt management services, the provider may submit a copy of that
4 license or certificate and the application for it instead of an
5 application in the form prescribed by section 5(1), 6, or 11(2) of this
6 act. The administrator shall accept the application and the license or
7 certificate from the other state as an application for registration as
8 a provider or for renewal of registration as a provider, as
9 appropriate, in this state if:

10 (1) The application in the other state contains information
11 substantially similar to or more comprehensive than that required in an
12 application submitted in this state;

13 (2) The applicant provides the information required by section 6
14 (1), (3), (10), (12), and (13) of this act; and

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

18 NEW SECTION. **Sec. 13.** (1) Except as otherwise provided in section
19 14 of this act, a provider that is required to be registered under this
20 chapter shall file a surety bond with the administrator, which must:

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

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

27 (2) Subject to adjustment of the dollar amount pursuant to section
28 32(6) of this act, a surety bond filed under subsection (1) of this
29 section must:

30 (a) Be in the amount of fifty thousand dollars or other larger or
31 smaller amount that the administrator determines is warranted by the
32 financial condition and business experience of the provider, the
33 history of the provider in performing debt management services, the
34 risk to individuals, and any other factor the administrator considers
35 appropriate;

36 (b) Be issued by a bonding, surety, or insurance company authorized

1 to do business in this state and rated not less than "A" by a
2 nationally recognized rating organization; and

3 (c) Have payment conditioned on noncompliance of the provider or
4 its agent with this chapter.

5 (3) If the principal amount of a surety bond is reduced by payment
6 of a claim or a judgment, the provider shall immediately notify the
7 administrator and, no later than thirty days after notice by the
8 administrator, file a new or additional surety bond in an amount set by
9 the administrator. The amount of the new or additional bond must be at
10 least the amount of the bond immediately before payment of the claim or
11 judgment. If for any reason a surety terminates a bond, the provider
12 shall immediately file a new surety bond in the amount of fifty
13 thousand dollars or other amount determined pursuant to subsection (2)
14 of this section.

15 (4) The administrator or an individual may obtain satisfaction out
16 of the surety bond procured pursuant to this section if:

17 (a) The administrator assesses expenses under section 33(1)(b) of
18 this act, issues a final order under section 33(1)(b) of this act, or
19 recovers a final judgment under section 33 (1)(d) or (e) or (4) of this
20 act; or

21 (b) An individual recovers a final judgment pursuant to section 35
22 (1), (2) or (3)(a), (b), or (d) of this act.

23 (5) If claims against a surety bond exceed or are reasonably
24 expected to exceed the amount of the bond, the administrator, on the
25 initiative of the administrator or on petition of the surety, shall,
26 unless the proceeds are adequate to pay all costs, judgments, and
27 claims, distribute the proceeds in the following order:

28 (a) To satisfaction of a final order or judgment under section 33
29 (1)(b), (d), (e), or (4) of this act;

30 (b) To final judgments recovered by individuals pursuant to section
31 35 (1), (2), or (3)(a), (b), or (d) of this act, pro rata;

32 (c) To claims of individuals established to the satisfaction of the
33 administrator, pro rata; and

34 (d) If a final order or judgment is issued under section 33(1) of
35 this act, to the expenses charged pursuant to section 32(2)(a) of this
36 act.

1 NEW SECTION. **Sec. 14.** (1) Instead of the surety bond required by
2 section 13 of this act, a provider, with the approval of the
3 administrator, and in the amount required by section 13(2) of this act,
4 may deliver to the administrator:

5 (a) An irrevocable letter of credit, issued or confirmed by a bank
6 approved by the administrator, payable upon presentation of a
7 certificate by the administrator stating that the provider or its agent
8 has not complied with this chapter; or

9 (b) Bonds or other obligations of the United States or guaranteed
10 by the United States or bonds or other obligations of this state or a
11 political subdivision of this state, to be:

12 (i) Deposited and maintained with a bank approved by the
13 administrator for this purpose; and

14 (ii) Delivered by the bank to the administrator on presentation of
15 a certificate by the administrator stating that the provider or its
16 agent has not complied with this chapter.

17 (2) If a provider furnishes a substitute pursuant to subsection (1)
18 of this section, section 13 (1), (3), (4), and (5) of this act applies
19 to the substitute.

20 NEW SECTION. **Sec. 15.** A provider shall act in good faith in all
21 matters under this chapter.

22 NEW SECTION. **Sec. 16.** A provider that is required to be
23 registered under this chapter shall maintain a toll-free communication
24 system, staffed at a level that reasonably permits an individual to
25 speak to a certified counselor, certified debt specialist, or customer
26 service representative, as appropriate, during ordinary business hours.

27 NEW SECTION. **Sec. 17.** (1) Before providing debt management
28 services, a provider shall give the individual an itemized list of
29 goods and services and the charges for each. The list must be clear
30 and conspicuous, be in a record the individual may keep whether or not
31 the individual assents to an agreement, and describe the goods and
32 services the provider offers:

33 (a) Free of additional charge if the individual enters into an
34 agreement;

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

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

5 Set up fee

6 *Dollar amount of fee*

7 Monthly service fee

8 *Dollar amount of fee or method of determining amount*

9 Settlement fee

10 *Dollar amount of fee or method of determining amount*

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

13 *(Item) Dollar amount or method of determining amount*

14

15 *(Item) Dollar amount or method of determining amount.*

16 (2) A provider may not furnish debt management services unless the
17 provider, through the services of a certified counselor or certified
18 debt specialist:

19 (a) Provides the individual with reasonable education about the
20 management of personal finance;

21 (b) Has prepared a financial analysis, including at least the
22 following matters affecting the individual's financial condition:

23 (i) Assets;

24 (ii) Income;

25 (iii) Debt, including secured debt; and

26 (iv) Other liabilities; and

27 (c) If the individual is to make regular, periodic payments:

28 (i) Has prepared a plan for the individual;

29 (ii) Has made a determination, based on the provider's analysis of
30 the information provided by the individual and otherwise available to
31 it, that the plan is suitable for the individual and the individual
32 will be able to meet the payment obligations under the plan; and

33 (iii) Believes that each creditor of the individual listed as a
34 participating creditor in the plan will accept payment of the
35 individual's debts as provided in the plan.

36 (3) Before an individual assents to an agreement to engage in a
37 plan, a provider shall:

1 (a) Provide the individual with a copy of the analysis and plan
2 required by subsection (2) of this section in a record that identifies
3 the provider and that the individual may keep whether or not the
4 individual assents to the agreement;

5 (b) Inform the individual of the availability, at the individual's
6 option, of assistance by a toll-free communication system or in person
7 to discuss the financial analysis and plan required by subsection (2)
8 of this section; and

9 (c) With respect to all creditors identified by the individual or
10 otherwise known by the provider to be creditors of the individual,
11 provide the individual with a list of:

12 (i) Creditors that the provider expects to participate in the plan
13 and grant concessions;

14 (ii) Creditors that the provider expects to participate in the plan
15 but not grant concessions;

16 (iii) Creditors that the provider expects not to participate in the
17 plan; and

18 (iv) All other creditors.

19 (4) Before an individual assents to an agreement, the provider
20 shall inform the individual, in a separate record that the individual
21 may keep whether or not the individual assents to the agreement:

22 (a) Of the name and business address of the provider;

23 (b) That plans are not suitable for all individuals and the
24 individual may ask the provider about other ways, including bankruptcy,
25 to deal with indebtedness;

26 (c) That establishment of a plan may adversely affect the
27 individual's credit rating or credit scores;

28 (d) That nonpayment of debt may lead creditors to increase finance
29 and other charges or undertake collection activity, including
30 litigation;

31 (e) Unless it is not true, that the provider may receive
32 compensation from the creditors of the individual; and

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

37 (5) If a provider may receive payments from an individual's
38 creditors and the plan contemplates that the individual's creditors

- 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 charges; and
4 (c) Lead your creditors to undertake activity, including lawsuits,
5 to collect the debts.

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

8
9 *Name and business address of provider*

10 NEW SECTION. **Sec. 18.** (1) A provider may satisfy the requirements
11 of sections 17, 19, and 27 of this act by means of the internet or
12 other electronic means if the provider obtains a consumer's consent in
13 the manner provided by section 101(c)(1) of the federal act.

14 (2) The disclosures and materials required by sections 17, 19, and
15 27 of this act shall be presented in a form that is capable of being
16 accurately reproduced for later reference.

17 (3) With respect to disclosure by means of an internet web site,
18 the disclosure of the information required by section 17(4) of this act
19 must appear on one or more screens that:

- 20 (a) Contain no other information; and
21 (b) The individual must see before proceeding to assent to
22 formation of an agreement.

23 (4) At the time of providing the materials and agreement required
24 by sections 17 (3) and (4), 19, and 27 of this act, a provider shall
25 inform the individual that on electronic, telephonic, or written
26 request, it will send the individual a written copy of the materials,
27 and shall comply with a request as provided in subsection (5) of this
28 section.

29 (5) If a provider is requested, before the expiration of ninety
30 days after an agreement is completed or terminated, to send a written
31 copy of the materials required by section 17 (3) and (4), 19, or 27 of
32 this act, the provider shall send them at no charge no later than three
33 business days after the request. The provider need not comply with a
34 request more than once per calendar month or if it reasonably believes
35 the request is made for purposes of harassment. If a request is made
36 more than ninety days after an agreement is completed or terminated,

1 the provider shall send within a reasonable time a written copy of the
2 materials requested.

3 (6) A provider that maintains an internet web site shall disclose
4 on the home page of its web site or on a page that is clearly and
5 conspicuously connected to the home page by a link that clearly reveals
6 its contents:

7 (a) Its name and all names under which it does business;

8 (b) Its principal business address, telephone number, and e-mail
9 address, if any; and

10 (c) The names of its principal officers.

11 (7) Subject to subsection (8) of this section, if a consumer who
12 has consented to electronic communication in the manner provided by
13 section 101 of the federal act withdraws consent as provided in the
14 federal act, a provider may terminate its agreement with the consumer.

15 (8) If a provider wishes to terminate an agreement with a consumer
16 pursuant to subsection (7) of this section, it shall notify the
17 consumer that it will terminate the agreement unless the consumer, no
18 later than thirty days after receiving the notification, consents to
19 electronic communication in the manner provided in section 101(c) of
20 the federal act. If the consumer consents, the provider may terminate
21 the agreement only as permitted by section 19(1)(g)(vii) of this act.

22 (9) For the purposes of this section:

23 (a) "Consumer" means an individual who seeks or obtains goods or
24 services that are used primarily for personal, family, or household
25 purposes.

26 (b) "Federal act" means the electronic signatures in global and
27 national commerce act (15 U.S.C. Sec. 7001 et seq.).

28 NEW SECTION. **Sec. 19.** (1) An agreement must:

29 (a) Be in a record;

30 (b) Be dated and signed by the provider and the individual;

31 (c) Include the name of the individual and the address where the
32 individual resides;

33 (d) Include the name, business address, and telephone number of the
34 provider;

35 (e) Disclose the total amount of all known debts;

36 (f) Be delivered to the individual immediately on formation of the
37 agreement; and

1 (g) Disclose:

2 (i) The services to be provided;

3 (ii) The amount, or method of determining the amount, of all fees,
4 individually itemized, to be paid by the individual;

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

8 (iv) If a plan provides for regular periodic payments to creditors:

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

12 (B) The schedule of expected payments to each creditor, including
13 the amount of each payment and the date on which it will be made; and

14 (C) Each creditor that the provider believes will not participate
15 in the plan and to which the provider will not direct payment;

16 (v) If a plan contemplates the settlement of the individual's debt
17 for less than the principal amount of the debt, an estimate of:

18 (A) The duration of the plan based on all enrolled debts;

19 (B) The length of time before the individual may reasonably expect
20 a settlement offer; and

21 (C) The amount of savings needed to accrue before the individual
22 may reasonably expect a settlement offer, expressed as both a dollar
23 amount and percentage, for each enrolled debt;

24 (vi) How the provider will comply with its obligations under
25 section 27(1) of this act;

26 (vii) That the provider may terminate the agreement for good cause,
27 upon return of unexpended money of the individual;

28 (viii) That the individual may terminate the agreement at any time
29 by giving written or electronic notice, and that, if notice of
30 termination is given, the individual will receive all unexpended money
31 that the provider or its designee has received from or on behalf of the
32 individual for payment of a creditor and, except to the extent they
33 have been earned, the provider's fees;

34 (ix) That the individual may contact the administrator with any
35 questions or complaints regarding the provider; and

36 (x) The address, telephone number, and internet address or web site
37 of the administrator.

1 (2) For purposes of subsection (1)(e) of this section, delivery of
2 an electronic record occurs when it is made available in a format in
3 which the individual may retrieve, save, and print it and the
4 individual is notified that it is available.

5 (3) If the administrator supplies the provider with any information
6 required under subsection (1)(f)(x) of this section, the provider may
7 comply with that requirement only by disclosing the information
8 supplied by the administrator.

9 (4) An agreement must provide that:

10 (a) The individual authorizes any bank in which the provider or its
11 agent has established a trust account to disclose to the administrator
12 any financial records relating to the trust account; and

13 (b) The provider will notify the individual no later than five days
14 after learning of a creditor's final decision to reject or withdraw
15 from a plan and that this notice will include:

16 (i) The identity of the creditor; and

17 (ii) The right of the individual to modify or terminate the
18 agreement.

19 (5) An agreement may confer on a provider a power of attorney to
20 settle the individual's debt for no more than fifty percent of the
21 principal amount of the debt. An agreement may not confer a power of
22 attorney to settle a debt for more than fifty percent of that amount,
23 but may confer a power of attorney to negotiate with creditors of the
24 individual on behalf of the individual. An agreement must provide that
25 the provider will obtain the assent of the individual after a creditor
26 has assented to a settlement for more than fifty percent of the
27 principal amount of the debt.

28 (6) An agreement may not:

29 (a) Provide for application of the law of any jurisdiction other
30 than the United States and this state;

31 (b) Except as permitted by section 2 of the federal arbitration act
32 (9 U.S.C. Sec. 2) or chapter 7.04A RCW, contain a provision that
33 modifies or limits otherwise available forums or procedural rights,
34 including the right to trial by jury, that are generally available to
35 the individual under law other than this chapter;

36 (c) Contain a provision that restricts the individual's remedies
37 under this chapter or law other than this chapter; or

38 (d) Contain a provision that:

1 (i) Limits or releases the liability of any person for not
2 performing the agreement or for violating this chapter; or
3 (ii) Indemnifies any person for liability arising under the
4 agreement or this chapter.
5 (7) A provision in an agreement which violates subsection (4), (5),
6 or (6) of this section is void.

7 NEW SECTION. **Sec. 20.** (1) An individual who is a party to an
8 agreement may terminate the agreement at any time, without penalty or
9 obligation, by giving the provider notice in a record.

10 (2) A provider may terminate an agreement if an individual who is
11 a party to the agreement fails for sixty days to make a payment or
12 deposit required by the agreement or if other good cause exists.

13 (3) If an agreement is terminated:
14 (a) The provider, no later than seven business days after the
15 termination, shall pay the individual who is a party to the agreement
16 all money the provider or its designee received from or on behalf of
17 the individual, other than:
18 (i) An amount properly disbursed to a creditor; and
19 (ii) Fees earned pursuant to section 23 of this act; and
20 (b) Any power of attorney granted by the individual to the provider
21 is revoked.

22 NEW SECTION. **Sec. 21.** Unless the administrator, by rule, provides
23 otherwise, the disclosures and documents required by this chapter must
24 be in English. If a provider communicates with an individual primarily
25 in a language other than English, the provider shall furnish a
26 translation in the other language of the disclosures and documents
27 required by this chapter.

28 NEW SECTION. **Sec. 22.** (1) All money paid to a provider by or on
29 behalf of an individual for distribution to creditors pursuant to an
30 agreement is held in trust. No later than two business days after
31 receipt, the provider shall deposit the money in a trust account
32 established for the benefit of individuals to whom the provider is
33 furnishing debt management services.

34 (2) A provider whose agreement contemplates the settlement of an

1 individual's debt for less than the principal amount of the debt may
2 request or require the individual to place money in an account to be
3 used to pay a creditor or the provider's fees, or both, if:

4 (a) The money is held in an insured account at a bank;

5 (b) The individual owns the money held in the account and is paid
6 any interest accrued on the account;

7 (c) The entity administering the account is not the provider or an
8 affiliate of the provider, unless the affiliate is described in section
9 2(2)(b)(iv) of this act;

10 (d) The entity administering the account does not give or accept
11 any money or other compensation in exchange for a referral of business
12 involving debt management services; and

13 (e) The individual may terminate the agreement at any time without
14 penalty and on termination must receive all money in the account, other
15 than money earned by the provider in compliance with this section.

16 (3) If an agreement contemplates the reduction of finance charges
17 or fees for late payment, default, or delinquency and the provider
18 complies with subsection (1) of this section, the provider may request
19 or require the individual to make payment to be used for both
20 distribution to creditors and payment of the provider's fees.

21 (4) Money held in trust by a provider is not property of the
22 provider or its designee. The money is not available to creditors of
23 the provider or designee, except an individual from whom or on whose
24 behalf the provider received money, to the extent that the money has
25 not been disbursed to creditors of the individual.

26 (5) A provider shall:

27 (a) Maintain separate records of account for each individual to
28 whom the provider is furnishing debt management services;

29 (b) Disburse money paid by or on behalf of the individual to
30 creditors of the individual as disclosed in the agreement, except that:

31 (i) The provider may delay payment to the extent that a payment by
32 the individual is not final; and

33 (ii) If a plan provides for regular periodic payments to creditors,
34 the disbursement must comply with the due dates established by each
35 creditor; and

36 (c) Promptly correct any payments that are not made or that are
37 misdirected as a result of an error by the provider or other person in

1 control of the trust account and reimburse the individual for any costs
2 or fees imposed by a creditor as a result of the failure to pay or
3 misdirection.

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

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

9 (8) If a provider has established a trust account pursuant to
10 subsection (1) of this section, the provider shall reconcile the trust
11 account at least once a month. The reconciliation must compare the
12 cash balance in the trust account with the sum of the balances in each
13 individual's account. If the provider or its designee has more than
14 one trust account, each trust account must be individually reconciled.

15 (9) If a provider discovers, or has a reasonable suspicion of,
16 embezzlement or other unlawful appropriation of money held in trust,
17 the provider shall immediately notify the administrator by a method
18 approved by the administrator. Unless the administrator by rule
19 provides otherwise, no later than five days thereafter, the provider
20 shall give notice to the administrator describing the remedial action
21 taken or to be taken.

22 (10) If an individual terminates an agreement or it becomes
23 reasonably apparent to a provider that a plan has failed, the provider
24 shall refund promptly to the individual all money paid by or on behalf
25 of the individual which has not been paid to creditors, less fees that
26 are payable to the provider under section 23 of this act.

27 (11) Before relocating a trust account from one bank to another, a
28 provider shall inform the administrator of the name, business address,
29 and telephone number of the new bank. As soon as practicable, the
30 provider shall inform the administrator of the account number of the
31 trust account at the new bank.

32 NEW SECTION. **Sec. 23.** (1) A provider may not impose directly or
33 indirectly a fee or other charge on an individual or receive money from
34 or on behalf of an individual for debt management services except as
35 permitted by this section.

36 (2) A provider may not impose charges or receive payment for debt

1 management services until the provider and the individual have signed
2 an agreement that complies with sections 19 and 28 of this act.

3 (3) If an individual assents to an agreement, a provider may not
4 impose a fee or other charge for educational, counseling, or similar
5 services, except as otherwise provided in this section and section
6 28(4) of this act. The administrator may authorize a provider to
7 charge a fee based on the nature and extent of the services furnished
8 by the provider.

9 (4) Subject to adjustment of dollar amounts pursuant to section
10 32(6) of this act, the following rules apply:

11 (a) Except to the extent permitted by section 22 of this act, a
12 provider may not request or receive any compensation from or on behalf
13 of an individual unless:

14 (i) The provider has secured the assent of the individual and at
15 least one creditor of the individual to a concession; and

16 (ii) The individual has made a payment toward satisfying the debt
17 as part of a plan.

18 (b) The provider's fee for debt management services must be
19 reasonable. The total fee for debt management services, including, but
20 not limited to, any fee charged by a bank or a third-party account
21 administrator, may not exceed fifteen percent of the total debt
22 disclosed in the agreement.

23 (c) If the provider's compensation is received in installments:

24 (i) Each installment must be made simultaneously with the
25 individual's installment payments to the creditor; and

26 (ii) An installment of the compensation may not be a greater
27 percentage of the provider's total compensation for settlement of the
28 debt than the simultaneous payment to the creditor is of the entire
29 settlement amount for the debt.

30 (d) The provider may make an initial charge of up to twenty-five
31 dollars which shall be considered part of the total fee. If an initial
32 charge is made, no additional fee may be retained which will bring the
33 total fee retained to date to more than fifteen percent of the total
34 payments made to date.

35 (e) If an individual does not assent to an agreement, a provider
36 may receive for educational and counseling services it provides to the
37 individual a fee not exceeding one hundred dollars or, with the

1 approval of the administrator, a larger fee. The administrator may
2 approve a fee larger than one hundred dollars if the nature and extent
3 of the educational and counseling services warrant the larger fee.

4 (f) No fee whatsoever shall be applied against rent and utility
5 payments for housing.

6 (5) If, before the expiration of ninety days after the completion
7 or termination of educational or counseling services, an individual
8 assents to an agreement, the provider shall refund to the individual
9 any fee paid pursuant to subsection (4)(f) of this section.

10 (6) Subject to adjustment of the dollar amount pursuant to section
11 32(6) of this section, if a payment to a provider by an individual
12 under this chapter is dishonored, a provider may impose a reasonable
13 charge on the individual, not to exceed the lesser of twenty-five
14 dollars and the amount permitted by law other than this chapter.

15 NEW SECTION. **Sec. 24.** A provider may not solicit a voluntary
16 contribution from an individual or an affiliate of the individual for
17 any service provided to the individual. A provider may accept
18 voluntary contributions from an individual but, until thirty days after
19 completion or termination of a plan, the aggregate amount of money
20 received from or on behalf of the individual may not exceed the total
21 amount the provider may charge the individual under section 23 of this
22 act.

23 NEW SECTION. **Sec. 25.** (1) If a provider imposes a fee or other
24 charge or receives money or other payments not authorized by section 23
25 or 24 of this act, the individual may void the agreement and recover as
26 provided in section 35 of this act.

27 (2) If a provider is not registered as required by this chapter
28 when an individual assents to an agreement, the agreement is voidable
29 by the individual.

30 (3) If an individual voids an agreement under subsection (2) of
31 this section, the provider does not have a claim against the individual
32 for breach of contract or for restitution.

33 NEW SECTION. **Sec. 26.** For each individual for whom a provider
34 provides debt management services, the provider shall maintain records
35 for five years after the final payment made by the individual. The

1 provider shall produce a copy of the records to the individual within
2 a reasonable time after a request for the records. The provider may
3 use electronic or other means of storage of the records.

4 NEW SECTION. **Sec. 27.** (1) A provider shall provide the accounting
5 required by subsection (2) of this section:

- 6 (a) On cancellation or termination of an agreement; and
- 7 (b) Before cancellation or termination of any agreement:
 - 8 (i) At least once each month; and
 - 9 (ii) No later than five business days after a request by an
10 individual, but the provider need not comply with more than one request
11 in any calendar month.

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

- 14 (a) The amount in an account containing money paid by or on behalf
15 of the individual for fees or distribution to a creditor, or both, as
16 of the date one month before the date of the accounting;
 - 17 (b) The amount paid into the account since the last report;
 - 18 (c) The amounts and dates of disbursement made on the individual's
19 behalf, or by the individual on the direction of the provider, since
20 the last report, to each creditor listed in the plan;
 - 21 (d) The amounts deducted, as fees or otherwise, from the amount
22 paid into the account since the last report;
 - 23 (e) If, since the last report, a creditor has agreed to accept as
24 payment in full an amount less than the principal amount of the debt
25 owed by the individual:
 - 26 (i) The total amount and terms of the settlement;
 - 27 (ii) The amount of the debt when the individual assented to the
28 plan;
 - 29 (iii) The amount of the debt when the creditor agreed to the
30 settlement; and
 - 31 (iv) The calculation of a settlement fee; and
 - 32 (f) The amount in the account as of the date of the accounting.
- 33 (3) If an agreement contemplates that a creditor will settle a debt
34 for less than the principal amount of the debt and the provider
35 delegates performance of its duties under this section to another
36 person, the provider may provide the information required by subsection

1 (2)(e) of this section in a record separate from the record containing
2 the other information required by subsection (2) of this section.

3 NEW SECTION. **Sec. 28.** (1) A provider may not, directly or
4 indirectly:

5 (a) Include a secured debt in a plan, except as authorized by law
6 other than this chapter;

7 (b) Misappropriate or misapply money held in trust;

8 (c) Settle a debt on behalf of an individual for more than fifty
9 percent of the principal amount of the debt owed a creditor, unless the
10 individual assents to the settlement after the creditor has assented;

11 (d) Take a power of attorney that authorizes it to settle a debt,
12 unless the power of attorney expressly limits the provider's authority
13 to settle debts for not more than fifty percent of the principal amount
14 of the debt owed a creditor;

15 (e) Exercise or attempt to exercise a power of attorney after an
16 individual has terminated an agreement;

17 (f) Initiate a transfer from an individual's account at a bank or
18 with another person unless the transfer is:

19 (i) A return of money to the individual; or

20 (ii) Before termination of an agreement, properly authorized by the
21 agreement and this chapter, and for:

22 (A) Payment to one or more creditors pursuant to an agreement; or

23 (B) Payment of a fee;

24 (g) Offer a gift or bonus, premium, reward, or other compensation
25 to an individual for executing an agreement;

26 (h) Offer, pay, or give a gift or bonus, premium, reward, or other
27 compensation to a lead generator or other person for referring a
28 prospective customer, if the person making the referral:

29 (i) Has a financial interest in the outcome of debt management
30 services provided to the customer, unless neither the provider nor the
31 person making the referral communicates to the prospective customer the
32 identity of the source of the referral; or

33 (ii) Compensates its employees on the basis of a formula that
34 incorporates the number of individuals the employee refers to the
35 provider;

36 (i) Receive a bonus, commission, or other benefit for referring an
37 individual to a person;

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

5 (k) Compensate its employees on the basis of a formula that
6 incorporates the number of individuals the employee induces to enter
7 into agreements;

8 (l) Settle a debt or lead an individual to believe that a payment
9 to a creditor is in settlement of a debt to the creditor unless, at the
10 time of settlement, the individual receives a certification by the
11 creditor that the payment is in full settlement of the debt or is part
12 of a settlement plan, the terms of which are included in the
13 certification, that, if completed according to its terms, will satisfy
14 the debt;

15 (m) Make a representation that:

16 (i) The provider will furnish money to pay bills or prevent
17 attachments;

18 (ii) Payment of a certain amount will permit satisfaction of a
19 certain amount or range of indebtedness; or

20 (iii) Participation in a plan will or may prevent litigation,
21 garnishment, attachment, repossession, foreclosure, eviction, or loss
22 of employment;

23 (n) Misrepresent that it is authorized or competent to furnish
24 legal advice or perform legal services;

25 (o) Represent in its agreements, disclosures required by this
26 chapter, advertisements, or internet web site that it is a:

27 (i) Not-for-profit entity unless it is organized and properly
28 operating as a not-for-profit entity under the law of the state in
29 which it was formed; or

30 (ii) Tax-exempt entity unless it has received certification of tax-
31 exempt status from the internal revenue service and is properly
32 operating as a not-for-profit entity under the law of the state in
33 which it was formed;

34 (p) Take a confession of judgment or power of attorney to confess
35 judgment against an individual; or

36 (q) Employ an unfair, unconscionable, or deceptive act or practice,
37 including the knowing omission of any material information.

1 (2) If a provider furnishes debt management services to an
2 individual, the provider may not, directly or indirectly:

3 (a) Purchase a debt or obligation of the individual;

4 (b) Receive from or on behalf of the individual:

5 (i) A promissory note or other negotiable instrument other than a
6 check or a demand draft; or

7 (ii) A postdated check or demand draft;

8 (c) Lend money or provide credit to the individual, except as a
9 deferral of a settlement fee at no additional expense to the
10 individual;

11 (d) Obtain a mortgage or other security interest from any person in
12 connection with the services provided to the individual;

13 (e) Except as permitted by federal law, disclose the identity or
14 identifying information of the individual or the identity of the
15 individual's creditors, except to:

16 (i) The administrator, on proper demand;

17 (ii) A creditor of the individual, to the extent necessary to
18 secure the cooperation of the creditor in a plan; or

19 (iii) The extent necessary to administer the plan;

20 (f) Except as otherwise provided in section 23 of this act, provide
21 the individual less than the full benefit of a compromise of a debt
22 arranged by the provider;

23 (g) Charge the individual for or provide credit or other insurance,
24 coupons for goods or services, membership in a club, access to
25 computers or the internet, or any other matter not directly related to
26 debt management services or educational services concerning personal
27 finance; or

28 (h) Furnish legal advice or perform legal services, unless the
29 person furnishing that advice to or performing those services for the
30 individual is licensed to practice law.

31 (3) This section does not authorize any person to engage in the
32 practice of law.

33 (4) A provider may not receive a gift or bonus, premium, reward, or
34 other compensation, directly or indirectly, for advising, arranging, or
35 assisting an individual in connection with obtaining, an extension of
36 credit or other service from a lender or service provider, except for
37 educational or counseling services required in connection with a

1 government-sponsored program or authorized under section 23(4)(e) of
2 this act.

3 (5) Unless a person supplies goods, services, or facilities
4 generally and supplies them to the provider at a cost no greater than
5 the cost the person generally charges to others, a provider may not
6 purchase goods, services, or facilities from the person if an employee
7 or a person that the provider should reasonably know is an affiliate of
8 the provider:

9 (a) Owns more than ten percent of the person; or

10 (b) Is an employee or affiliate of the person.

11 NEW SECTION. **Sec. 29.** No later than thirty days after a provider
12 has been served with notice of a civil action for violation of this
13 chapter by or on behalf of an individual who resides in this state at
14 either the time of an agreement or the time the notice is served, the
15 provider shall notify the administrator in a record that it has been
16 sued.

17 NEW SECTION. **Sec. 30.** (1) If a provider whose agreements
18 contemplate that creditors will reduce finance charges or fees for late
19 payment, default, or delinquency advertises debt management services,
20 it shall disclose, in an easily comprehensible manner, that using a
21 debt management plan may make it harder for the individual to obtain
22 credit.

23 (2) If a provider whose agreements contemplate that creditors will
24 settle for less than the full principal amount of debt advertises debt
25 management services, it shall disclose, in an easily comprehensible
26 manner, the information specified in section 17(4) (c) and (d) of this
27 act.

28 NEW SECTION. **Sec. 31.** (1) If a provider delegates any of its
29 duties or obligations under an agreement or this chapter to another
30 person, including an independent contractor, the provider is liable for
31 conduct of the person which, if done by the provider, would violate the
32 agreement or this chapter.

33 (2) A lead generator or other person that provides services to or
34 for a provider may not engage in an unfair, unconscionable, or
35 deceptive act or practice, including the knowing omission of any

1 material information, with respect to an individual who the lead
2 generator or other person has reason to believe is or may become a
3 customer of the provider.

4 NEW SECTION. **Sec. 32.** (1) The administrator may act on its own
5 initiative or in response to complaints and may receive complaints,
6 take action to obtain voluntary compliance with this chapter, refer
7 cases to the attorney general, and seek or provide remedies as provided
8 in this chapter.

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

17 (a) Charge the person the reasonable expenses necessarily incurred
18 to conduct the examination;

19 (b) Require or permit a person to file a statement under oath as to
20 all the facts and circumstances of a matter to be investigated; and

21 (c) Seek a court order authorizing seizure from a bank at which the
22 person maintains an account contemplated by section 22 of this act, any
23 or all money, books, records, accounts, and other property of the
24 provider that is in the control of the bank and relates to individuals
25 who reside in this state.

26 (3) The administrator may adopt rules to implement the provisions
27 of this chapter in accordance with chapter 34.05 RCW.

28 (4) The administrator may enter into cooperative arrangements with
29 any other federal or state agency having authority over providers and
30 may exchange with any of those agencies information about a provider,
31 including information obtained during an examination of the provider.

32 (5) The administrator, by rule, shall establish reasonable fees to
33 be paid by providers for the expense of administering this chapter.

34 (6) The administrator, by rule, shall adopt dollar amounts instead
35 of those specified in sections 2, 5, 9, 13, 23, 33, and 35 of this act
36 to reflect inflation, as measured by the United States bureau of labor
37 statistics consumer price index for all urban consumers or, if that

1 index is not available, another index adopted by rule by the
2 administrator. The administrator shall adopt a base year and adjust
3 the dollar amounts, effective July 1st of each year, if the change in
4 the index from the base year, as of December 31st of the preceding
5 year, is at least ten percent. The dollar amount must be rounded to
6 the nearest one hundred dollars, except that the amounts in section 23
7 of this act must be rounded to the nearest dollar.

8 (7) The administrator shall notify registered providers of any
9 change in dollar amounts made pursuant to subsection (6) of this
10 section and make that information available to the public.

11 NEW SECTION. **Sec. 33.** (1) The administrator may enforce this
12 chapter and rules adopted under this chapter by taking one or more of
13 the following actions:

14 (a) Ordering a provider, lead generator, person administering an
15 account pursuant to section 22(2) of this act, or a director, employee,
16 or other agent of a provider, lead generator, person administering an
17 account pursuant to section 22(2) of this act, to cease and desist from
18 any violations;

19 (b) Ordering a provider, lead generator, person administering an
20 account pursuant to section 22(2) of this act, or a person that has
21 caused a violation to correct the violation, including making
22 restitution of money or property to a person aggrieved by a violation;

23 (c) Subject to adjustment of the dollar amount pursuant to section
24 32(6) of this act, imposing on a provider, lead generator, person
25 administering an account pursuant to section 22(2) of this act, or
26 other person that violates or causes a violation a civil penalty not
27 exceeding ten thousand dollars for each violation;

28 (d) Prosecuting a civil action to:

29 (i) Enforce an order; or

30 (ii) Obtain restitution or other equitable relief, or both;

31 (e) Intervening in an action brought under section 35 of this act.

32 (2) Subject to adjustment of the dollar amount pursuant to section
33 32(6) of this act, if a person violates or knowingly authorizes,
34 directs, or aids in the violation of a final order issued under
35 subsection (1)(a) or (b) of this section, the administrator may impose
36 a civil penalty not exceeding twenty thousand dollars for each
37 violation.

1 (3) The administrator may maintain an action to enforce this
2 chapter in any county.

3 (4) The administrator may recover the reasonable costs of enforcing
4 this chapter under subsections (1) through (3) of this section,
5 including attorneys' fees based on the hours reasonably expended and
6 the hourly rates for attorneys of comparable experience in the
7 community.

8 (5) In determining the amount of a civil penalty to impose under
9 subsection (1) or (2) of this section, the administrator shall consider
10 the seriousness of the violation, the good faith of the violator, any
11 previous violations by the violator, the deleterious effect of the
12 violation on the public, the net worth of the violator, and any other
13 factor the administrator considers relevant to the determination of the
14 civil penalty.

15 NEW SECTION. **Sec. 34.** (1) The administrator may suspend, revoke,
16 or deny renewal of a provider's registration if:

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

20 (b) The provider has committed a material violation of this chapter
21 or a rule or order of the administrator under this chapter;

22 (c) The provider is insolvent;

23 (d) The provider, an employee or affiliate of the provider, a lead
24 generator for the provider, a person administering an account for the
25 provider pursuant to section 22(2) of this act, or a person to which
26 the provider has delegated its obligations under an agreement or this
27 chapter has refused to permit the administrator to make an examination
28 authorized by this chapter, failed to comply with section 32(2)(b) of
29 this act within fifteen days of request, or made a material
30 misrepresentation or omission in complying with section 32(2)(b) of
31 this act; or

32 (e) The provider has not responded within a reasonable time and in
33 an appropriate manner to communications from the administrator.

34 (2) If a provider does not comply with section 22(8) of this act,
35 or if the administrator otherwise finds that the public health or
36 safety or general welfare requires emergency action, the administrator

1 may order a summary suspension of the provider's registration,
2 effective on the date specified in the order.

3 (3) If the administrator suspends, revokes, or denies renewal of
4 the registration of a provider, the administrator may seek a court
5 order authorizing seizure of any or all of the money in a trust account
6 required by section 22 of this act, books, records, accounts, and other
7 property of the provider which are located in this state.

8 (4) If the administrator suspends or revokes a provider's
9 registration, the provider may appeal and request a hearing under
10 chapter 34.05 RCW, the administrative procedure act.

11 (5) For the purposes of this section, "insolvent" means:

12 (a) Having generally ceased to pay debts in the ordinary course of
13 business other than as a result of good faith dispute;

14 (b) Being unable to pay debts as they become due; or

15 (c) Being insolvent within the meaning of the federal bankruptcy
16 law (11 U.S.C. Sec. 101 et seq.).

17 NEW SECTION. **Sec. 35.** (1) If an individual voids an agreement
18 pursuant to section 25(2) of this act, the individual may recover in a
19 civil action all money paid or deposited by or on behalf of the
20 individual pursuant to the agreement, except amounts paid to creditors,
21 in addition to the recovery under subsection (3)(c) and (d) of this
22 section.

23 (2) If an individual voids an agreement pursuant to section 25(1)
24 of this act, the individual may recover in a civil action three times
25 the total amount of the fees, charges, money, and payments made by the
26 individual to the provider, in addition to the recovery under
27 subsection (3)(d) of this section.

28 (3) Subject to subsection (4) of this section, an individual with
29 respect to whom a provider violates this chapter may recover in a civil
30 action from the provider and any person that caused the violation:

31 (a) Compensatory damages for injury, including noneconomic injury,
32 caused by the violation;

33 (b) Except as otherwise provided in subsection (4) of this section
34 and subject to adjustment of the dollar amount pursuant to section
35 32(6) of this act, with respect to a violation of section 17, 19, 20,
36 21, 22, 23, 24, 27, or 28 (1), (2), or (4) of this act, the greater of

1 the amount recoverable under subsection (1) of this section or five
2 thousand dollars;

3 (c) Punitive damages; and

4 (d) Reasonable attorneys' fees and costs.

5 (4) In a class action, except for a violation of section 28(1)(f)
6 of this act, the minimum damages provided in subsection (3)(b) of this
7 section do not apply.

8 (5) A provider is not liable under this section for a violation of
9 this chapter if the provider proves that the violation was not
10 intentional and resulted from a good faith error notwithstanding the
11 maintenance of procedures reasonably adapted to avoid the error. An
12 error of legal judgment with respect to a provider's obligations under
13 this chapter is not a good faith error. If, in connection with a
14 violation, the provider has received more money than authorized by an
15 agreement or this chapter, the defense provided by this subsection is
16 not available unless the provider refunds the excess no later than two
17 business days after learning of the violation.

18 (6) The administrator shall assist an individual in enforcing a
19 judgment against the surety bond or other security provided under
20 section 13 or 14 of this act.

21 NEW SECTION. **Sec. 36.** If an act or practice of a provider
22 violates both this chapter and is an unfair or deceptive act in trade
23 or commerce for the purpose of applying the consumer protection act,
24 chapter 19.86 RCW, an individual may not recover under both for the
25 same act or practice.

26 NEW SECTION. **Sec. 37.** (1) An action or proceeding brought
27 pursuant to section 33 (1), (2), or (3) of this act must be commenced
28 no later than four years after the conduct that is the basis of the
29 administrator's complaint.

30 (2) An action brought pursuant to section 35 of this act must be
31 commenced no later than two years after the latest of:

32 (a) The individual's last transmission of money to a provider;

33 (b) The individual's last transmission of money to a creditor at
34 the direction of the provider;

35 (c) The provider's last disbursement to a creditor of the
36 individual;

1 (d) The provider's last accounting to the individual pursuant to
2 section 27(1) of this act;

3 (e) The date on which the individual discovered or reasonably
4 should have discovered the facts giving rise to the individual's claim;
5 or

6 (f) Termination of actions or proceedings by the administrator with
7 respect to a violation of this chapter.

8 (3) The period prescribed in subsection (2)(e) of this section is
9 tolled during any period during which the provider or, if different,
10 the defendant has materially and willfully misrepresented information
11 required by this chapter to be disclosed to the individual, if the
12 information so misrepresented is material to the establishment of the
13 liability of the defendant under this chapter.

14 NEW SECTION. **Sec. 38.** In applying and construing this chapter,
15 consideration must be given to the need to promote uniformity of the
16 law with respect to its subject matter among states that enact it.

17 NEW SECTION. **Sec. 39.** This chapter modifies, limits, and
18 supersedes the electronic signatures in global and national commerce
19 act (15 U.S.C. Sec. 7001 et seq.) but does not modify, limit, or
20 supersede section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or
21 authorize electronic delivery of any of the notices described in
22 section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

23 NEW SECTION. **Sec. 40.** Transactions entered into before the
24 effective date of this section and the rights, duties, and interests
25 resulting from them may be completed, terminated, or enforced as
26 required or permitted by a law amended, repealed, or modified by this
27 act as though the amendment, repeal, or modification had not occurred.

28 NEW SECTION. **Sec. 41.** The following acts or parts of acts are
29 each repealed:

30 (1) RCW 18.28.010 (Definitions) and 2012 c 56 s 1, 1999 c 151 s
31 101, 1979 c 156 s 1, 1970 ex.s. c 97 s 1, & 1967 c 201 s 1;

32 (2) RCW 18.28.080 (Fees for debt adjusting services--Limitations--
33 Requirements) and 2012 c 56 s 2, 1999 c 151 s 102, 1979 c 156 s 4, 1967
34 ex.s. c 141 s 2, & 1967 c 201 s 8;

- 1 (3) RCW 18.28.090 (Excess charges--Contract void--Return of
2 payments) and 1999 c 151 s 103 & 1967 c 201 s 9;
- 3 (4) RCW 18.28.100 (Contract requirements) and 1999 c 151 s 104,
4 1979 c 156 s 5, & 1967 c 201 s 10;
- 5 (5) RCW 18.28.110 (Debt adjuster--Functions required to be
6 performed) and 1999 c 151 s 105, 1979 c 156 s 6, & 1967 c 201 s 11;
- 7 (6) RCW 18.28.120 (Debt adjuster--Prohibited acts) and 1999 c 151
8 s 106 & 1967 c 201 s 12;
- 9 (7) RCW 18.28.130 (Legal services--Rendering or obtaining--Using
10 name of attorney--Prohibited) and 1999 c 151 s 107 & 1967 c 201 s 13;
- 11 (8) RCW 18.28.140 (Assignment of wages not prohibited) and 1999 c
12 151 s 108 & 1967 c 201 s 14;
- 13 (9) RCW 18.28.150 (Trust account for payments by debtor--
14 Disbursements) and 1999 c 151 s 109, 1979 c 156 s 8, & 1967 c 201 s 15;
- 15 (10) RCW 18.28.165 (Investigations) and 1999 c 151 s 110 & 1979 c
16 156 s 7;
- 17 (11) RCW 18.28.180 (Administrative procedure act to govern
18 administration) and 1967 c 201 s 18;
- 19 (12) RCW 18.28.185 (Violations--Unfair practice under chapter 19.86
20 RCW) and 1979 c 156 s 10;
- 21 (13) RCW 18.28.190 (Violations--Penalty) and 1999 c 151 s 111 &
22 1967 c 201 s 19;
- 23 (14) RCW 18.28.200 (Violations--Injunctions) and 1967 c 201 s 20;
- 24 (15) RCW 18.28.210 (Violations--Assurance of discontinuance--
25 Effect) and 2011 c 336 s 476 & 1967 c 201 s 21;
- 26 (16) RCW 18.28.220 (Violation of injunction--Civil penalty) and
27 1967 c 201 s 22;
- 28 (17) RCW 18.28.900 (Saving prior contracts) and 1967 c 201 s 23;
29 and
- 30 (18) RCW 18.28.910 (Severability--1967 c 201) and 1967 c 201 s 24.

31 **Sec. 42.** RCW 18.100.140 and 2012 c 10 s 38 are each amended to
32 read as follows:

33 Nothing in this chapter shall authorize a director, officer,
34 shareholder, agent, or employee of a corporation organized under this
35 chapter, or a corporation itself organized under this chapter, to do or
36 perform any act which would be illegal, unethical, or unauthorized
37 conduct under the provisions of the following acts: (1) Physicians and

1 surgeons, chapter 18.71 RCW; (2) anti-rebating act, chapter 19.68 RCW;
2 (3) state bar act, chapter 2.48 RCW; (4) professional accounting act,
3 chapter 18.04 RCW; (5) professional architects act, chapter 18.08 RCW;
4 (6) professional auctioneers act, chapter 18.11 RCW; (7)
5 cosmetologists, barbers, and manicurists, chapter 18.16 RCW; (8)
6 assisted living facilities act, chapter 18.20 RCW; (9) podiatric
7 medicine and surgery, chapter 18.22 RCW; (10) chiropractic act, chapter
8 18.25 RCW; (11) registration of contractors, chapter 18.27 RCW; (12)
9 (~~debt adjusting act, chapter 18.28 RCW~~) uniform debt management
10 services act, chapter 18.-- RCW (the new chapter created in section 49
11 of this act); (13) dental hygienist act, chapter 18.29 RCW; (14)
12 dentistry, chapter 18.32 RCW; (15) dispensing opticians, chapter 18.34
13 RCW; (16) naturopathic physicians, chapter 18.36A RCW; (17) embalmers
14 and funeral directors, chapter 18.39 RCW; (18) engineers and land
15 surveyors, chapter 18.43 RCW; (19) escrow agents registration act,
16 chapter 18.44 RCW; (20) birthing centers, chapter 18.46 RCW; (21)
17 midwifery, chapter 18.50 RCW; (22) nursing homes, chapter 18.51 RCW;
18 (23) optometry, chapter 18.53 RCW; (24) osteopathic physicians and
19 surgeons, chapter 18.57 RCW; (25) pharmacists, chapter 18.64 RCW; (26)
20 physical therapy, chapter 18.74 RCW; (27) registered nurses, advanced
21 registered nurse practitioners, and practical nurses, chapter 18.79
22 RCW; (28) psychologists, chapter 18.83 RCW; (29) real estate brokers
23 and salespersons, chapter 18.85 RCW; (30) veterinarians, chapter 18.92
24 RCW.

25 **Sec. 43.** RCW 18.118.020 and 1987 c 514 s 5 are each amended to
26 read as follows:

27 The definitions contained in this section shall apply throughout
28 this chapter unless the context clearly requires otherwise.

29 (1) "Applicant group" includes any business professional group or
30 organization, any individual, or any other interested party which
31 proposes that any business professional group not presently regulated
32 be regulated or which proposes legislation to substantially increase
33 the scope of practice or the level of regulation of the profession.

34 (2) "Business professions" means those business occupations or
35 professions which are not health professions under chapter 18.120 RCW
36 and includes, in addition to real estate brokers and salespersons under
37 chapter 18.85 RCW, the following professions and occupations:

1 Accountancy under chapter 18.04 RCW; architects under chapter 18.08
2 RCW; auctioneering under chapter 18.11 RCW; cosmetologists, barbers,
3 and manicurists under chapter 18.16 RCW; contractors under chapter
4 18.27 RCW; (~~debt adjusting under chapter 18.28 RCW~~) debt management
5 under chapter 18.-- RCW (the new chapter created in section 49 of this
6 act); engineers and surveyors under chapter 18.43 RCW; escrow agents
7 under chapter 18.44 RCW; landscape architects under chapter 18.96 RCW;
8 water well construction under chapter 18.104 RCW; plumbers under
9 chapter 18.106 RCW; and art dealers under chapter 18.110 RCW.

10 (3) "Certificate" and "certification" mean a voluntary process by
11 which a statutory regulatory entity grants recognition to an individual
12 who (a) has met certain prerequisite qualifications specified by that
13 regulatory entity, and (b) may assume or use "certified" in the title
14 or designation to perform prescribed professional tasks.

15 (4) "Grandfather clause" means a provision in a regulatory statute
16 applicable to practitioners actively engaged in the regulated
17 profession prior to the effective date of the regulatory statute which
18 exempts the practitioners from meeting the prerequisite qualifications
19 set forth in the regulatory statute to perform prescribed occupational
20 tasks.

21 (5) "Inspection" means the periodic examination of practitioners by
22 a state agency in order to ascertain whether the practitioners'
23 occupation is being carried out in a fashion consistent with the public
24 health, safety, and welfare.

25 (6) "Legislative committees of reference" means the standing
26 legislative committees designated by the respective rules committees of
27 the senate and house of representatives to consider proposed
28 legislation to regulate business professions not previously regulated.

29 (7) "License", "licensing", and "licensure" mean permission to
30 engage in a business profession which would otherwise be unlawful in
31 the state in the absence of the permission. A license is granted to
32 those individuals who meet prerequisite qualifications to perform
33 prescribed professional tasks and for the use of a particular title.

34 (8) "Professional license" means an individual, nontransferable
35 authorization to carry on an activity based on qualifications which
36 include: (a) Graduation from an accredited or approved program, and
37 (b) acceptable performance on a qualifying examination or series of
38 examinations.

1 (9) "Practitioner" means an individual who (a) has achieved
2 knowledge and skill by practice, and (b) is actively engaged in a
3 specified business profession.

4 (10) "Public member" means an individual who is not, and never was,
5 a member of the business profession being regulated or the spouse of a
6 member, or an individual who does not have and never has had a material
7 financial interest in either the rendering of the business professional
8 service being regulated or an activity directly related to the
9 profession being regulated.

10 (11) "Registration" means the formal notification which, prior to
11 rendering services, a practitioner shall submit to a state agency
12 setting forth the name and address of the practitioner; the location,
13 nature and operation of the business activity to be practiced; and, if
14 required by the regulatory entity, a description of the service to be
15 provided.

16 (12) "Regulatory entity" means any board, commission, agency,
17 division, or other unit or subunit of state government which regulates
18 one or more professions, occupations, industries, businesses, or other
19 endeavors in this state.

20 (13) "State agency" includes every state office, department, board,
21 commission, regulatory entity, and agency of the state, and, where
22 provided by law, programs and activities involving less than the full
23 responsibility of a state agency.

24 **Sec. 44.** RCW 19.230.350 and 2012 c 56 s 3 are each amended to read
25 as follows:

26 (1) A third-party account administrator must be licensed as a money
27 transmitter under this chapter and comply with the following additional
28 requirements:

29 (a) A debtor's funds must be held in an account at an insured
30 financial institution;

31 (b) A debtor owns the funds held in the account and must be paid
32 accrued interest on the account, if any;

33 (c) A third-party account administrator may not be owned or
34 controlled by, or in any way affiliated with, a (~~debt adjuster~~)
35 provider of debt management services;

36 (d) A third-party account administrator may not give or accept any

1 money or other compensation in exchange for referrals of business
2 involving a (~~debt adjuster~~) provider of debt management services;

3 (e) A debtor may withdraw from the service provided by a third-
4 party account administrator at any time without penalty and must
5 receive all funds in the account, other than funds earned by a (~~debt~~
6 ~~adjuster~~) provider of debt management services in compliance with
7 chapter (~~18.28~~) 18.-- RCW (the new chapter created by section 49 of
8 this act), within seven business days of the debtor's request; and

9 (f) A contract between a third-party account administrator and a
10 debtor must disclose in precise terms the rate and amount of all
11 charges and fees. In addition, the contract must include a statement
12 that is substantially similar to the following: "Under the
13 (~~Washington Debt Adjusting~~) Uniform Debt Management Services Act, the
14 total fees you are charged for debt (~~adjusting~~) management services
15 may not exceed fifteen percent of the total amount of debt you listed
16 on your (~~contract~~) agreement with the debt (~~adjuster~~) management
17 services provider. This includes fees charged by a debt (~~adjuster~~)
18 management services provider, a third-party account administrator, and
19 a (~~financial institution~~) bank." The disclosures required by this
20 subsection (1)(f) must be on the front page of the contract and must be
21 in at least twelve-point type.

22 (2) The legislature finds and declares that any violation of this
23 section substantially affects the public interest and is an unfair and
24 deceptive act or practice and (~~an~~) an unfair method of competition
25 in the conduct of trade or commerce as set forth in RCW 19.86.020. In
26 addition to all remedies available in chapter 19.86 RCW, a person
27 injured by a violation of this section may bring a civil action to
28 recover the actual damages proximately caused by a violation of this
29 section, or one thousand dollars, whichever is greater.

30 (3) For purposes of this section and RCW 19.230.360:

31 (a) (~~"Debt adjuster" has the same meaning as defined in RCW~~
32 ~~18.28.010~~) "Debt management services" has the same meaning as in
33 section 2 of this act;

34 (b) "Provider" has the same meaning as in section 2 of this act;

35 (c) "Third-party account administrator" means an independent entity
36 that holds or administers a dedicated bank account for fees and
37 payments to creditors, debt collectors, (~~debt adjusters, or debt~~
38 ~~adjusting agencies~~) or providers in connection with the renegotiation,

1 settlement, reduction, or other alteration of the terms of payment or
2 other terms of a debt. "Third-party account administrator" does not
3 include an entity that is otherwise exempt from this chapter under RCW
4 19.230.020.

5 **Sec. 45.** RCW 19.230.360 and 2012 c 56 s 4 are each amended to read
6 as follows:

7 (1) A third-party account administrator shall maintain the
8 following records for at least five years:

9 (a) All contracts the third-party account administrator has entered
10 into with debtors and (~~debt adjusters~~) providers of debt management
11 services;

12 (b) Account statements identifying and itemizing deposits,
13 transfers, disbursements, and fees; and

14 (c) Any other records required in rule by the director.

15 (2) All records maintained by the third-party account administrator
16 are open to inspection by the director or the director's designee.

17 **Sec. 46.** RCW 42.56.230 and 2011 c 350 s 2 and 2011 c 173 s 1 are
18 each reenacted and amended to read as follows:

19 The following personal information is exempt from public inspection
20 and copying under this chapter:

21 (1) Personal information in any files maintained for students in
22 public schools, patients or clients of public institutions or public
23 health agencies, or welfare recipients;

24 (2) Personal information(~~(7)~~) including, but not limited to,
25 addresses, telephone numbers, personal electronic mail addresses,
26 social security numbers, emergency contact and date of birth
27 information for a participant in a public or nonprofit program serving
28 or pertaining to children, adolescents, or students, including but not
29 limited to early learning or child care services, parks and recreation
30 programs, youth development programs, and after-school programs.
31 Emergency contact information may be provided to appropriate
32 authorities and medical personnel for the purpose of treating the
33 individual during an emergency situation;

34 (3) Personal information in files maintained for employees,
35 appointees, or elected officials of any public agency to the extent
36 that disclosure would violate their right to privacy;

1 (4) Information required of any taxpayer in connection with the
2 assessment or collection of any tax if the disclosure of the
3 information to other persons would: (a) Be prohibited to such persons
4 by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance
5 authorized under RCW 35.102.145; or (b) violate the taxpayer's right to
6 privacy or result in unfair competitive disadvantage to the taxpayer;

7 (5) Credit card numbers, debit card numbers, electronic check
8 numbers, card expiration dates, or bank or other financial account
9 numbers, except when disclosure is expressly required by or governed by
10 other law;

11 (6) Personal and financial information related to a small loan or
12 any system of authorizing a small loan in RCW 31.45.093; (~~and~~)

13 (7)(a) Documents and related materials and scanned images of
14 documents and related materials used to prove identity, age,
15 residential address, social security number, or other personal
16 information required to apply for a driver's license or identicard.

17 (b) Information provided under RCW 46.20.111 that indicates that an
18 applicant declined to register with the selective service system; and

19 (8) Information obtained by the department of financial
20 institutions that identifies individuals who have agreements with
21 providers of debt management services, as provided in section 32(2) of
22 this act, as well as addresses obtained by the department of financial
23 institutions under section 6(4) of this act.

24 **Sec. 47.** RCW 42.56.270 and 2011 1st sp.s. c 14 s 15 are each
25 amended to read as follows:

26 The following financial, commercial, and proprietary information is
27 exempt from disclosure under this chapter:

28 (1) Valuable formulae, designs, drawings, computer source code or
29 object code, and research data obtained by any agency within five years
30 of the request for disclosure when disclosure would produce private
31 gain and public loss;

32 (2) Financial information supplied by or on behalf of a person,
33 firm, or corporation for the purpose of qualifying to submit a bid or
34 proposal for (a) a ferry system construction or repair contract as
35 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
36 or improvement as required by RCW 47.28.070;

1 (3) Financial and commercial information and records supplied by
2 private persons pertaining to export services provided under chapters
3 43.163 and 53.31 RCW, and by persons pertaining to export projects
4 under RCW 43.23.035;

5 (4) Financial and commercial information and records supplied by
6 businesses or individuals during application for loans or program
7 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
8 43.168 RCW, or during application for economic development loans or
9 program services provided by any local agency;

10 (5) Financial information, business plans, examination reports, and
11 any information produced or obtained in evaluating or examining a
12 business and industrial development corporation organized or seeking
13 certification under chapter 31.24 RCW;

14 (6) Financial and commercial information supplied to the state
15 investment board by any person when the information relates to the
16 investment of public trust or retirement funds and when disclosure
17 would result in loss to such funds or in private loss to the providers
18 of this information;

19 (7) Financial and valuable trade information under RCW 51.36.120;

20 (8) Financial, commercial, operations, and technical and research
21 information and data submitted to or obtained by the clean Washington
22 center in applications for, or delivery of, program services under
23 chapter 70.95H RCW;

24 (9) Financial and commercial information requested by the public
25 stadium authority from any person or organization that leases or uses
26 the stadium and exhibition center as defined in RCW 36.102.010;

27 (10)(a) Financial information, including but not limited to account
28 numbers and values, and other identification numbers supplied by or on
29 behalf of a person, firm, corporation, limited liability company,
30 partnership, or other entity related to an application for a horse
31 racing license submitted pursuant to RCW 67.16.260(1)(b), liquor
32 license, gambling license, or lottery retail license;

33 (b) Internal control documents, independent auditors' reports and
34 financial statements, and supporting documents: (i) Of house-banked
35 social card game licensees required by the gambling commission pursuant
36 to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes
37 with an approved tribal/state compact for class III gaming;

1 (11) Proprietary data, trade secrets, or other information that
2 relates to: (a) A vendor's unique methods of conducting business; (b)
3 data unique to the product or services of the vendor; or (c)
4 determining prices or rates to be charged for services, submitted by
5 any vendor to the department of social and health services for purposes
6 of the development, acquisition, or implementation of state purchased
7 health care as defined in RCW 41.05.011;

8 (12)(a) When supplied to and in the records of the department of
9 commerce:

10 (i) Financial and proprietary information collected from any person
11 and provided to the department of commerce pursuant to RCW
12 43.330.050(8); and

13 (ii) Financial or proprietary information collected from any person
14 and provided to the department of commerce or the office of the
15 governor in connection with the siting, recruitment, expansion,
16 retention, or relocation of that person's business and until a siting
17 decision is made, identifying information of any person supplying
18 information under this subsection and the locations being considered
19 for siting, relocation, or expansion of a business;

20 (b) When developed by the department of commerce based on
21 information as described in (a)(i) of this subsection, any work product
22 is not exempt from disclosure;

23 (c) For the purposes of this subsection, "siting decision" means
24 the decision to acquire or not to acquire a site;

25 (d) If there is no written contact for a period of sixty days to
26 the department of commerce from a person connected with siting,
27 recruitment, expansion, retention, or relocation of that person's
28 business, information described in (a)(ii) of this subsection will be
29 available to the public under this chapter;

30 (13) Financial and proprietary information submitted to or obtained
31 by the department of ecology or the authority created under chapter
32 70.95N RCW to implement chapter 70.95N RCW;

33 (14) Financial, commercial, operations, and technical and research
34 information and data submitted to or obtained by the life sciences
35 discovery fund authority in applications for, or delivery of, grants
36 under chapter 43.350 RCW, to the extent that such information, if
37 revealed, would reasonably be expected to result in private loss to the
38 providers of this information;

1 (15) Financial and commercial information provided as evidence to
2 the department of licensing as required by RCW 19.112.110 or
3 19.112.120, except information disclosed in aggregate form that does
4 not permit the identification of information related to individual fuel
5 licensees;

6 (16) Any production records, mineral assessments, and trade secrets
7 submitted by a permit holder, mine operator, or landowner to the
8 department of natural resources under RCW 78.44.085;

9 (17)(a) Farm plans developed by conservation districts, unless
10 permission to release the farm plan is granted by the landowner or
11 operator who requested the plan, or the farm plan is used for the
12 application or issuance of a permit;

13 (b) Farm plans developed under chapter 90.48 RCW and not under the
14 federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to
15 RCW 42.56.610 and 90.64.190;

16 (18) Financial, commercial, operations, and technical and research
17 information and data submitted to or obtained by a health sciences and
18 services authority in applications for, or delivery of, grants under
19 RCW 35.104.010 through 35.104.060, to the extent that such information,
20 if revealed, would reasonably be expected to result in private loss to
21 providers of this information;

22 (19) Information gathered under chapter 19.85 RCW or RCW 34.05.328
23 that can be identified to a particular business;

24 (20) Financial and commercial information submitted to or obtained
25 by the University of Washington, other than information the university
26 is required to disclose under RCW 28B.20.150, when the information
27 relates to investments in private funds, to the extent that such
28 information, if revealed, would reasonably be expected to result in
29 loss to the University of Washington consolidated endowment fund or to
30 result in private loss to the providers of this information; (~~and~~)

31 (21) Financial, commercial, operations, and technical and research
32 information and data submitted to or obtained by innovate Washington in
33 applications for, or delivery of, grants and loans under chapter 43.333
34 RCW, to the extent that such information, if revealed, would reasonably
35 be expected to result in private loss to the providers of this
36 information; and

37 (22) Information submitted to the department of financial
38 institutions under section 6 (7), (14), and (17) of this act.

1 NEW SECTION. **Sec. 48.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 49.** Sections 1 through 39 of this act
6 constitute a new chapter in Title 18 RCW.

7 NEW SECTION. **Sec. 50.** This act takes effect October 1, 2013.

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