

FIRST REGULAR SESSION

HOUSE BILL NO. 476

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BURNETT (Sponsor), YAEGER,
WILDBERGER AND GRILL (Co-sponsors).

Read 1st time January 18, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0627L.011

AN ACT

To repeal sections 425.010, 425.020, 425.030, and 425.040, RSMo, and to enact in lieu thereof forty-two new sections relating to debt-management services.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 425.010, 425.020, 425.030, and 425.040, RSMo, are repealed and
2 forty-two new sections enacted in lieu thereof, to be known as sections 425.050, 425.052,
3 425.054, 425.056, 425.058, 425.060, 425.062, 425.064, 425.066, 425.068, 425.070, 425.072,
4 425.074, 425.076, 425.078, 425.080, 425.082, 425.084, 425.086, 425.088, 425.090, 425.092,
5 425.094, 425.096, 425.098, 425.100, 425.102, 425.104, 425.106, 425.108, 425.110, 425.112,
6 425.114, 425.116, 425.118, 425.120, 425.122, 425.124, 425.126, 425.128, 425.130, and 425.132,
7 to read as follows:

425.050. Sections 425.050 to 425.132 shall be known and may be cited as the
2 **"Uniform Debt-Management Services Act".**

425.052. As used in sections 425.050 to 425.132, the following words shall mean:

2 **(1) "Administrator", the attorney general who is in charge of enforcing sections**
3 **425.050 to 425.132;**

4 **(2) "Affiliate":**

5 **(a) With respect to an individual:**

6 **a. The spouse of the individual;**

7 **b. A sibling of the individual or the spouse of a sibling;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 8 c. An individual or the spouse of an individual who is a lineal ancestor or lineal
9 descendant of the individual; or
- 10 d. An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece,
11 or grandnephew, whether related by the whole- or the half-blood or adoption, or the
12 spouse of any of them; or
- 13 e. Any other individual occupying the residence of the individual;
- 14 (b) With respect to an entity:
- 15 a. A person that directly or indirectly controls, is controlled by, or is under common
16 control with the entity;
- 17 b. An officer of, or an individual performing similar functions with respect to, the
18 entity;
- 19 c. A director of, or an individual performing similar functions with respect to, the
20 entity;
- 21 d. Subject to adjustment of the dollar amount under subsection 6 of section
22 425.112, a person that receives or received more than twenty-five thousand dollars from
23 the entity in either the current year or the preceding year or a person that owns more than
24 ten percent of, or an individual who is employed by or is a director of, a person that
25 receives or received more than twenty-five thousand dollars from the entity in either the
26 current year or the preceding year;
- 27 e. An officer or director of, or an individual performing similar functions with
28 respect to, a person described in subparagraph a. of paragraph (a) of this subdivision;
- 29 f. The spouse of, or an individual occupying the residence of, an individual
30 described in subparagraphs a. to e. of paragraph (a) of this subdivision; or
- 31 g. An individual who has the relationship specified in subparagraph d. of
32 paragraph (a) of this subdivision to an individual or the spouse of an individual described
33 in subparagraphs a. to e. of paragraph (a) of this subdivision;
- 34 (3) "Agreement", an agreement between a provider and an individual for the
35 performance of debt-management services;
- 36 (4) "Bank", a financial institution, including a commercial bank, savings bank,
37 savings and loan association, credit union, and trust company, engaged in the business of
38 banking, chartered under federal or state law, and regulated by a federal or state banking
39 regulatory authority;
- 40 (5) "Business address", the physical location of a business, including the name and
41 number of a street;
- 42 (6) "Certified counselor", an individual certified by a training program or
43 certifying organization, approved by the administrator, that authenticates the competence

44 of individuals providing education and assistance to other individuals in connection with
45 debt-management services;

46 (7) "Concessions", assent to repayment of a debt on terms more favorable to an
47 individual than the terms of the contract between the individual and a creditor;

48 (8) "Day", calendar day;

49 (9) "Debt-management services", services as an intermediary between an
50 individual and one or more creditors of the individual for the purpose of obtaining
51 concessions, but shall not include:

52 (a) Legal services provided in an attorney-client relationship by an attorney
53 licensed or otherwise authorized to practice law in this state;

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

56 (c) Financial-planning services provided in a financial planner-client relationship
57 by a member of a financial-planning profession whose members the administrator, by rule,
58 determines are:

59 a. Licensed by this state;

60 b. Subject to a disciplinary mechanism;

61 c. Subject to a code of professional responsibility; and

62 d. Subject to a continuing-education requirement;

63 (10) "Entity", a person other than an individual;

64 (11) "Good faith", honesty in fact and the observance of reasonable standards of
65 fair dealing;

66 (12) "Person", an individual, corporation, business trust, estate, trust, partnership,
67 limited liability company, association, joint venture, or any other legal or commercial
68 entity. The term does not include a public corporation, government, or governmental
69 subdivision, agency, or instrumentality;

70 (13) "Plan", a program or strategy in which a provider furnishes debt-management
71 services to an individual and which includes a schedule of payments to be made by or on
72 behalf of the individual and used to pay debts owed by the individual;

73 (14) "Principal amount of the debt", the amount of a debt at the time of an
74 agreement;

75 (15) "Provider", a person that provides, offers to provide, or agrees to provide
76 debt-management services directly or through others;

77 (16) "Record", information that is inscribed on a tangible medium or that is stored
78 in an electronic or other medium and is retrievable in perceivable form;

79 (17) "Settlement fee", a charge imposed on or paid by an individual in connection
80 with a creditor's assent to accept in full satisfaction of a debt an amount less than the
81 principal amount of the debt;

82 (18) "Sign", present intent to authenticate or adopt a record:

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

84 (b) To attach to or logically associate with the record an electronic sound, symbol,
85 or process;

86 (19) "State", a state of the United States, the District of Columbia, Puerto Rico, the
87 United States Virgin Islands, or any territory or insular possession subject to the
88 jurisdiction of the United States;

89 (20) "Trust account", an account held by a provider that is:

90 (a) Established in an insured bank;

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

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

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

425.054. 1. Sections 425.050 to 425.132 shall not apply to an agreement with an
2 individual who the provider has no reason to know resides in this state at the time of the
3 agreement.

4 2. Sections 425.050 to 425.132 shall not apply to a provider to the extent that the
5 provider:

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

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

11 3. Sections 425.050 to 425.132 shall not apply to the following persons or their
12 employees when the person or the employee is engaged in the regular course of the person's
13 business or profession:

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

16 (2) A bank;

17 (3) An affiliate, as defined in subdivision (2) of section 425.052, of a bank if the
18 affiliate is regulated by a federal or state banking regulatory authority; or

19 (4) A title insurer, escrow company, or other person that provides bill-paying
20 services if the provision of debt-management services is incidental to the bill-paying
21 services.

425.056. 1. Except as otherwise provided in subsection 2 of this section, a provider
2 shall not provide debt-management services to an individual who it reasonably should
3 know resides in this state at the time it agrees to provide the services, unless the provider
4 is registered under sections 425.050 to 425.132.

5 **2.** If a provider is registered under sections 425.050 to 425.132, subsection 1 of this
6 section shall not apply to an employee or agent of the provider.

7 **3.** The administrator shall maintain and publicize a list of the names of all
8 registered providers.

425.058. 1. An application for registration as a provider shall be in a form
2 prescribed by the administrator.

3 **2.** Subject to adjustment of dollar amounts under subsection 6 of section 425.112,
4 an application for registration as a provider shall be accompanied by:

5 (1) The fee established by the administrator;

6 (2) The bond required by section 425.074;

7 (3) Identification of all trust accounts required by section 425.092 and an
8 irrevocable consent authorizing the administrator to review and examine the trust
9 accounts;

10 (4) Evidence of insurance in the amount of two hundred fifty thousand dollars:

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

13 (b) Issued by an insurance company authorized to do business in this state and
14 rated at least "A" by a nationally recognized rating organization;

15 (c) With no deductible;

16 (d) Payable to the applicant, the individuals who have agreements with the
17 applicant, and this state, as their interests may appear; and

18 (e) Not subject to cancellation by the applicant without the approval of the
19 administrator;

20 (5) A record consenting to the jurisdiction of this state containing:

21 (a) The name, business address, and other contact information of its registered
22 agent in this state for the purposes of service of process; or

23 (b) The appointment of the administrator or other state official as agent of the
24 provider for purposes of service of process; and

25 **(6) If the applicant is organized as a not-for-profit entity or is exempt from**
26 **taxation, evidence of not-for-profit and tax-exempt status applicable to the applicant under**
27 **section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501) as amended.**

425.060. An application for registration shall be signed under oath and include:

2 **(1) The applicant's name, principal business address and telephone number, and**
3 **all other business addresses in this state, electronic-mail addresses, and Internet web site**
4 **addresses;**

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

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

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

10 **(5) Identification of every jurisdiction in which, during the five years immediately**
11 **preceding the application:**

12 **(a) The applicant or any of its officers or directors has been licensed or registered**
13 **to provide debt-management services; or**

14 **(b) Individuals have resided when they received debt-management services from**
15 **the applicant;**

16 **(6) A statement describing, to the extent it is known or should be known by the**
17 **applicant, any material civil or criminal judgment or litigation and any material**
18 **administrative or enforcement action by a governmental agency in any jurisdiction against**
19 **the applicant, any of its officers, directors, owners, or agents, or any person who is**
20 **authorized to have access to the trust account required by section 425.092;**

21 **(7) The applicant's financial statements, audited by an accountant licensed to**
22 **conduct audits, for each of the two years immediately preceding the application or, if it has**
23 **not been in operation for the two years preceding the application, for the period of its**
24 **existence;**

25 **(8) Evidence of accreditation by an independent accrediting organization approved**
26 **by the administrator;**

27 **(9) Evidence that, within twelve months after initial employment, each of the**
28 **applicant's counselors becomes certified as a certified counselor;**

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

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

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

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

39 (14) At the applicant's expense, the results of a criminal-records check, including
40 fingerprints, conducted within the immediately preceding twelve months, covering every
41 officer of the applicant and every employee or agent of the applicant who is authorized to
42 have access to the trust account required by section 425.092;

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

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

47 (a) Any affiliate of the applicant; or

48 (b) Any entity that provides products or services to the applicant or any individual
49 relating to the applicant's debt-management services;

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

54 (18) The identity of each director who is an affiliate, as defined in paragraph (a)
55 of subdivision (2) of section 425.052 or subparagraph a., b., d., e., f., or g. of paragraph (b)
56 of subdivision (2) of section 425.052, of the applicant; and

57 (19) Any other information that the administrator reasonably requires to perform
58 the administrator's duties under section 425.066.

2 425.062. An applicant or registered provider shall notify the administrator within
3 ten days after a change in the information specified in subdivision (4) of subsection 2 of
4 section 425.058 or subdivision (1), (3), (6), (12), or (13) of section 425.060.

2 425.064. Except for the information required by subdivisions (7), (14), and (17) of
3 section 425.060 and the addresses required by subdivision (4) of section 425.060, the
4 administrator shall make the information in an application for registration as a provider
5 available to the public.

2 **425.066. 1. Except as otherwise provided in subsections 2 and 3 of this section, the**
3 **administrator shall issue a certificate of registration as a provider to a person that complies**
4 **with sections 425.058 and 425.060.**

5 **2. The administrator may deny registration if:**

6 **(1) The application contains information that is materially erroneous or**
7 **incomplete;**

8 **(2) An officer, director, or owner of the applicant has been convicted of a crime, or**
9 **suffered a civil judgment, involving dishonesty or the violation of state or federal securities**
10 **laws;**

11 **(3) The applicant or any of its officers, directors, or owners has defaulted in the**
12 **payment of money collected for others; or**

13 **(4) The administrator finds that the financial responsibility, experience, character,**
14 **or general fitness of the applicant or its owners, directors, employees, or agents does not**
15 **warrant belief that the business will be operated in compliance with sections 425.050 to**
16 **425.132.**

17 **3. The administrator shall deny registration if:**

18 **(1) The application is not accompanied by the fee established by the administrator;**
19 **or**

20 **(2) With respect to an applicant that is organized as a not-for-profit entity or has**
21 **obtained tax-exempt status under section 501 of the Internal Revenue Code of 1986 (26**
22 **U.S.C. 501) as amended, the applicant's board of directors is not independent of the**
23 **applicant's employees and agents.**

24 **4. Subject to adjustment of the dollar amount under subsection 6 of section 425.112,**
25 **a board of directors shall not be independent for purposes of subsection 3 of this section**
26 **if more than one-fourth of its members:**

27 **(1) Are affiliates of the applicant, as defined in paragraph (a) of subdivision (2) of**
28 **section 425.052 or subparagraph a., b., d., e., f., or g. of paragraph (b) of subdivision (2)**
29 **of section 425.052, of the applicant; or**

30 **(2) After the date ten years before first becoming a director of the applicant, were**
31 **employed by or directors of a person that received from the applicant more than twenty-**
32 **five thousand dollars in either the current year or the preceding year.**

33 **425.068. 1. The administrator shall approve or deny an initial registration as a**
34 **provider within one hundred twenty days after an application is filed. In connection with**
35 **a request under subdivision (19) of section 425.060 for additional information, the**
36 **administrator may extend the one-hundred-twenty-day period for not more than sixty**

5 days. Within seven days after denying an application, the administrator, in a record, shall
6 inform the applicant of the reasons for the denial.

7 2. If the administrator denies an application for registration as a provider or does
8 not act on an application within the time prescribed in subsection 1 of this section, the
9 applicant may appeal and request a hearing under chapter 536, RSMo.

10 3. Subject to subsection 4 of section 425.070 and section 425.116, a registration as
11 a provider is valid for one year.

425.070. 1. A provider shall obtain a renewal of its registration annually.

2 2. An application for renewal of registration as a provider shall be in a form
3 prescribed by the administrator, signed under oath, and:

4 (1) Be filed no fewer than thirty and no more than sixty days before the registration
5 expires;

6 (2) Be accompanied by the fee established by the administrator and the bond
7 required by section 425.074;

8 (3) Contain the matter required for initial registration as a provider by
9 subdivisions (8) and (9) of section 425.060 and a financial statement, audited by an
10 accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding
11 the application;

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

14 (5) Supply evidence of insurance in an amount equal to the larger of two hundred
15 fifty thousand dollars or the highest daily balance in the trust account required by section
16 425.092 during the six-month period immediately preceding the application:

17 (a) Against risks of dishonesty, fraud, theft, and other misconduct on the part of
18 the applicant or a director, employee, or agent of the applicant;

19 (b) Issued by an insurance company authorized to do business in this state and
20 rated at least "A" by a nationally recognized rating organization;

21 (c) With no deductible;

22 (d) Payable to the applicant, the individuals who have agreements with the
23 applicant, and this state, as their interests may appear; and

24 (e) Not subject to cancellation by the applicant without the approval of the
25 administrator;

26 (6) Disclose the total amount of money received by the applicant under plans
27 during the preceding twelve months from or on behalf of individuals who reside in this
28 state and the total amount of money distributed to creditors of those individuals during
29 that period;

30 (7) Disclose, to the best of the applicant's knowledge, the gross amount of money
31 accumulated during the preceding twelve months under plans by or on behalf of
32 individuals who reside in this state and with whom the applicant has agreements; and

33 (8) Provide any other information that the administrator reasonably requires to
34 perform the administrator's duties under this section.

35 3. Except for the information required by subdivisions (7), (14), and (17) of section
36 425.060 and the addresses required by subdivision (4) of section 425.060, the administrator
37 shall make the information in an application for renewal of registration as a provider
38 available to the public.

39 4. If a registered provider files a timely and complete application for renewal of
40 registration, the registration remains effective until the administrator, in a record, notifies
41 the applicant of a denial and states the reasons for the denial.

42 5. If the administrator denies an application for renewal of registration as a
43 provider, the applicant, within thirty days after receiving notice of the denial, may appeal
44 and request a hearing under chapter 536, RSMo. Subject to section 425.116, while the
45 appeal is pending the applicant shall continue to provide debt-management services to
46 individuals with whom it has agreements. If the denial is affirmed, subject to the
47 administrator's order and section 425.116, the applicant shall continue to provide
48 debt-management services to individuals with whom it has agreements until, with the
49 approval of the administrator, it transfers the agreements to another registered provider
50 or returns to the individuals all unexpended money that is under the applicant's control.

2 425.072. If a provider holds a license or certificate of registration in another state
3 authorizing it to provide debt-management services, the provider may submit a copy of
4 that license or certificate and the application for it instead of an application in the form
5 prescribed by subsection 1 of section 425.058, section 425.060, or subsection 2 of section
6 425.070. The administrator shall accept the application and the license or certificate from
7 the other state as an application for registration as a provider or for renewal of registration
8 as a provider, as appropriate, in this state if:

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

11 (2) The applicant provides the information required by subdivisions (1), (3), (10),
12 (12), and (13) of section 425.060; and

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

2 **425.074. 1. Except as otherwise provided in section 425.076, a provider that is**
3 **required to be registered under sections 425.050 to 425.132 shall file a surety bond with the**
4 **administrator, which shall:**

5 **(1) Be in effect during the period of registration and for two years after the**
6 **provider ceases providing debt-management services to individuals in this state; and**

7 **(2) Run to this state for the benefit of this state and of individuals who reside in this**
8 **state when they agree to receive debt-management services from the provider, as their**
9 **interests may appear.**

10 **2. Subject to adjustment of the dollar amount under subsection 6 of section 425.112,**
11 **a surety bond filed under subsection 1 of this section shall:**

12 **(1) Be in the amount of fifty thousand dollars or other larger or smaller amount**
13 **that the administrator determines is warranted by the financial condition and business**
14 **experience of the provider, the history of the provider in performing debt-management**
15 **services, the risk to individuals, and any other factor the administrator considers**
16 **appropriate;**

17 **(2) Be issued by a bonding, surety, or insurance company authorized to do business**
18 **in this state and rated at least "A" by a nationally recognized rating organization; and**

19 **(3) Have payment conditioned upon noncompliance of the provider or its agent**
20 **under sections 425.050 to 425.132.**

21 **3. If the principal amount of a surety bond is reduced by payment of a claim or a**
22 **judgment, the provider shall immediately notify the administrator and, within thirty days**
23 **after notice by the administrator, file a new or additional surety bond in an amount set by**
24 **the administrator. The amount of the new or additional bond shall be at least the amount**
25 **of the bond immediately before payment of the claim or judgment. If for any reason a**
26 **surety terminates a bond, the provider shall immediately file a new surety bond in the**
27 **amount of fifty thousand dollars or other amount determined under subsection 2 of this**
28 **section.**

29 **4. The administrator or an individual may obtain satisfaction out of the surety**
30 **bond procured under this section if:**

31 **(1) The administrator assesses expenses under subdivision (1) of subsection 2 of**
32 **section 425.112, issues a final order under subdivision (2) of subsection 1 of section 425.114,**
33 **or recovers a final judgment under subdivision (4) or (5) of subsection 1 or subsection 4 of**
34 **section 425.114; or**

35 **(2) An individual recovers a final judgment under subsection 1 or 2 of section**
425.118 or subdivision (1), (2), or (4) of subsection 3 of section 425.118.

36 **5. If claims against a surety bond exceed or are reasonably expected to exceed the**
37 **amount of the bond, the administrator, on the initiative of the administrator or on petition**
38 **of the surety, shall, unless the proceeds are adequate to pay all costs, judgments, and**
39 **claims, distribute the proceeds in the following order:**

40 **(1) To satisfaction of a final order or judgment under subdivision (2), (4), or (5) of**
41 **subsection 1 of section 425.114 or subsection 4 of section 425.114;**

42 **(2) To final judgments recovered by individuals under subsection 1 or 2 of section**
43 **425.118 or subdivision (1), (2), or (4) of subsection 3 of section 425.118, pro-rata;**

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

46 **(4) If a final order or judgment is issued under subsection 1 of section 425.114, to**
47 **the expenses charged under subdivision (1) of subsection 2 of section 425.112.**

425.076. 1. Instead of the surety bond required by section 425.074, a provider may
2 **deliver to the administrator, in the amount required by subsection 2 of section 425.074,**
3 **and, except as otherwise provided in paragraph (a) of subdivision (2) of this subsection,**
4 **payable or available to this state and to individuals who reside in this state when they agree**
5 **to receive debt-management services from the provider, as their interests may appear, if**
6 **the provider or its agent does not comply with sections 425.050 to 425.132:**

7 **(1) A certificate of insurance issued by an insurance company authorized to do**
8 **business in this state and rated at least "A" by a nationally recognized rating organization,**
9 **with no deductible; or**

10 **(2) With the approval of the administrator:**

11 **(a) An irrevocable letter of credit, issued or confirmed by a bank approved by the**
12 **administrator, payable upon presentation of a certificate by the administrator stating that**
13 **the provider or its agent has not complied with sections 425.050 to 425.134; or**

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

17 **2. If a provider furnishes a substitute under subsection 1 of this section, the**
18 **provisions of subsections 1, 3, 4, and 5 of section 425.074 apply to the substitute.**

425.078. A provider shall act in good faith in all matters under sections 425.050 to
2 **425.132.**

425.080. A provider that is required to be registered under sections 425.050 to
2 **425.132 shall maintain a toll-free communication system, staffed at a level that reasonably**
3 **permits an individual to speak to a certified counselor or customer-service representative,**
4 **as appropriate, during ordinary business hours.**

425.082. 1. Before providing debt-management services, a registered provider shall
2 **give the individual an itemized list of goods and services and the charges for each. The list**
3 **shall be clear and conspicuous, be in a record the individual may keep whether or not the**
4 **individual assents to an agreement, and describe the goods and services the provider offers:**

5 (1) **Free of additional charge if the individual enters into an agreement;**
6 (2) **For a charge if the individual does not enter into an agreement; and**
7 (3) **For a charge if the individual enters into an agreement, using the following**
8 **terminology, as applicable:**

- 9 (a) **Set-up fee in a specific dollar amount;**
10 (b) **Monthly service fee in a specific dollar amount or method of determining**
11 **amount;**
12 (c) **Settlement fee in a specific dollar amount or method of determining the amount;**
13 **and**
14 (d) **Goods and services in addition to those provided in connection with a plan, with**
15 **a specific dollar amount or method of determining the amount.**

16 **2. A provider shall not furnish debt-management services unless the provider,**
17 **through the services of a certified counselor:**

- 18 (1) **Provides the individual with reasonable education about the management of**
19 **personal finance;**
20 (2) **Has prepared a financial analysis; and**
21 (3) **If the individual is to make regular, periodic payments:**
22 (a) **Has prepared a plan for the individual;**
23 (b) **Has made a determination, based on the provider's analysis of the information**
24 **provided by the individual and otherwise available to it, that the plan is suitable for the**
25 **individual and the individual will be able to meet the payment obligations under the plan;**
26 **and**
27 (c) **Believes that each creditor of the individual listed as a participating creditor in**
28 **the plan will accept payment of the individual's debts as provided in the plan.**

29 **3. Before an individual assents to an agreement to engage in a plan, a provider**
30 **shall:**

- 31 (1) **Provide the individual with a copy of the analysis and plan required by**
32 **subsection 2 of this section in a record that identifies the provider and that the individual**
33 **may keep whether or not the individual assents to the agreement;**
34 (2) **Inform the individual of the availability, at the individual's option, of assistance**
35 **by a toll-free communication system or in person to discuss the financial analysis and plan**
36 **required by subsection 2 of this section; and**

37 **(3) With respect to all creditors identified by the individual or otherwise known by**
38 **the provider to be creditors of the individual, provide the individual with a list of:**

39 **(a) Creditors that the provider expects to participate in the plan and grant**
40 **concessions;**

41 **(b) Creditors that the provider expects to participate in the plan but not grant**
42 **concessions;**

43 **(c) Creditors that the provider expects not to participate in the plan; and**

44 **(d) All other creditors.**

45 **4. Before an individual assents to an agreement to engage in a plan, the provider**
46 **shall inform the individual, in a record that contains nothing else, that is given separately,**
47 **and that the individual may keep whether or not the individual assents to the agreement:**

48 **(1) Of the name and business address of the provider;**

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

51 **(3) That establishment of a plan may adversely affect the individual's credit rating**
52 **or credit scores;**

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

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

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

60 **5. If a provider may receive payments from an individual's creditors and the plan**
61 **contemplates that the individual's creditors will reduce finance charges or fees for late**
62 **payment, default, or delinquency, the provider may comply with subsection 4 of this**
63 **section by providing the following disclosure, surrounded by black lines:**

64 **(1) That the information was important information for the individual to consider;**

65 **(2) That debt-management plans are not right for all individuals, and the**
66 **individual may ask the provider for information about other ways, including bankruptcy,**
67 **to deal with the individual's debts;**

68 **(3) That using a debt-management plan may hurt the individual's credit rating or**
69 **credit scores;**

70 **(4) That the individual may be required to compensate the provider for services**
71 **from the individual's creditors; and**

72 **(5) The name and business address of the provider.**

73 **6. If a provider will not receive payments from an individual's creditors and the**
74 **plan contemplates that the individual's creditors will reduce finance charges or fees for late**
75 **payment, default, or delinquency, a provider may comply with subsection 4 of this section**
76 **by providing the following disclosure, surrounded by black lines:**

77 **(1) That the information is important information for the individual to consider;**

78 **(2) That debt-management plans are not right for all individuals, and the**
79 **individual may ask the provider to provide information about other ways, including**
80 **bankruptcy, to deal with the individual's debts;**

81 **(3) That using a debt-management plan may hurt the individual's credit rating or**
82 **credit scores; and**

83 **(4) The name and business address of provider.**

84 **7. If a plan contemplates that creditors will settle debts for less than the full**
85 **principal amount of debt owed, a provider may comply with subsection 4 of this section by**
86 **providing the following disclosure, surrounded by black lines:**

87 **(1) That the information is important information for the individual to consider;**

88 **(2) That the provider's program is not right for all individuals, and the individual**
89 **may ask the provider to provide information about bankruptcy and other ways to deal**
90 **with the individual's debts;**

91 **(3) That nonpayment of the individual's debts under the provider's program may**
92 **hurt the individual's credit rating or credit scores; lead the individual's creditors to**
93 **increase finance and other charges; and lead the individual's creditors to undertake**
94 **activity, including lawsuits, to collect the debts;**

95 **(4) That reduction of debt under our program may result in taxable income to the**
96 **individual, even though the individual will not actually receive any money; and**

97 **(5) The name and business address of provider.**

425.084. 1. As used in this section, the following terms mean:

2 **(1) "Federal act", the Electronic Signatures in Global and National Commerce Act,**
3 **15 U.S.C. 7001 et seq., as amended.**

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

6 **2. A provider may satisfy the requirements of section 425.082, 425.086, or 425.102**
7 **by means of the Internet or other electronic means if the provider obtains a consumer's**
8 **consent in the manner provided by section 101(c)(1) of the federal act.**

9 **3. The disclosures and materials required by sections 425.082, 425.086, and 425.102**
10 **shall be presented in a form that is capable of being accurately reproduced for later**
11 **reference.**

12 **4. With respect to disclosure by means of an Internet web site, the disclosure of the**
13 **information required by subsection 4 of section 425.082 shall appear on one or more**
14 **screens that:**

15 **(1) Contain no other information; and**

16 **(2) The individual shall see before proceeding to assent to formation of a plan.**

17 **5. At the time of providing the materials and agreement required by subsections**
18 **3 and 4 of section 425.082, and sections 425.086 and 425.102, a provider shall inform the**
19 **individual that upon electronic, telephonic, or written request, it will send the individual**
20 **a written copy of the materials, and shall comply with a request as provided in subsection**
21 **6 of this section.**

22 **6. If a provider is requested, before the expiration of ninety days after a plan is**
23 **completed or terminated, to send a written copy of the materials required by subsections**
24 **3 and 4 of section 425.082 or section 425.086 or 425.102, the provider shall send them at no**
25 **charge within three business days after the request, but the provider need not comply with**
26 **a request more than once per calendar month or if it reasonably believes the request is**
27 **made for purposes of harassment. If a request is made more than ninety days after a plan**
28 **is completed or terminated, the provider shall send within a reasonable time a written copy**
29 **of the materials requested.**

30 **7. A provider that maintains an Internet web site shall disclose on the home page**
31 **of its web site or on a page that is clearly and conspicuously connected to the home page**
32 **by a link that clearly reveals its contents:**

33 **(1) Its name and all names under which it does business;**

34 **(2) Its principal business address, telephone number, and electronic-mail address,**
35 **if any; and**

36 **(3) The names of its principal officers.**

37 **8. Subject to subsection 9 of this section, if a consumer who has consented to**
38 **electronic communication in the manner provided by section 101 of the federal act**
39 **withdraws consent as provided in the federal act, a provider may terminate its agreement**
40 **with the consumer.**

41 **9. If a provider wishes to terminate an agreement with a consumer under**
42 **subsection 8 of this section, it shall notify the consumer that it will terminate the agreement**
43 **unless the consumer, within thirty days after receiving the notification, consents to**
44 **electronic communication in the manner provided in section 101(c) of the federal act. If**
45 **the consumer consents, the provider may terminate the agreement only as permitted by**
46 **paragraph (f) of subdivision (6) of subsection 1 of section 425.086.**

425.086. 1. An agreement shall:

- 2 **(1) Be in a record;**
3 **(2) Be dated and signed by the provider and the individual;**
4 **(3) Include the name of the individual and the address where the individual resides;**
5 **(4) Include the name, business address, and telephone number of the provider;**
6 **(5) Be delivered to the individual immediately upon formation of the agreement;**
7 **and**
8 **(6) Disclose:**
9 **(a) The services to be provided;**
10 **(b) The amount, or method of determining the amount, of all fees, individually**
11 **itemized, to be paid by the individual;**
12 **(c) The schedule of payments to be made by or on behalf of the individual,**
13 **including the amount of each payment, the date on which each payment is due, and an**
14 **estimate of the date of the final payment;**
15 **(d) If a plan provides for regular periodic payments to creditors:**
16 **a. Each creditor of the individual to which payment will be made, the amount owed**
17 **to each creditor, and any concessions the provider reasonably believes each creditor will**
18 **offer; and**
19 **b. The schedule of expected payments to each creditor, including the amount of**
20 **each payment and the date on which it will be made;**
21 **(e) Each creditor that the provider believes will not participate in the plan and to**
22 **which the provider will not direct payment;**
23 **(f) How the provider will comply with its obligations under subsection 1 of section**
24 **425.102;**
25 **(g) That the provider may terminate the agreement for good cause, upon return of**
26 **unexpended money of the individual;**
27 **(h) That the individual may cancel the agreement as provided in section 425.088;**
28 **(i) That the individual may contact the administrator with any questions or**
29 **complaints regarding the provider; and**
30 **(j) The address, telephone number, and Internet address or web site of the**
31 **administrator.**
32 **2. For purposes of subdivision (5) of subsection 1 of this section, delivery of an**
33 **electronic record occurs when it is made available in a format in which the individual may**
34 **retrieve, save, and print it and the individual is notified that it is available.**
35 **3. If the administrator supplies the provider with any information required under**
36 **paragraph (j) of subdivision (6) of subsection 1 of this section, the provider may comply**
37 **with that requirement only by disclosing the information supplied by the administrator.**

38 **4. An agreement shall provide that:**

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

41 **(a) The provider will refund all unexpended money that the provider or its agent**
42 **has received from or on behalf of the individual for the reduction or satisfaction of the**
43 **individual's debt;**

44 **(b) With respect to an agreement that contemplates that creditors will settle debts**
45 **for less than the principal amount of debt, the provider will refund sixty-five percent of**
46 **any portion of the set-up fee that has not been credited against the settlement fee; and**

47 **(c) All powers of attorney granted by the individual to the provider are revoked**
48 **and ineffective;**

49 **(2) The individual authorizes any bank, in which the provider or its agent has**
50 **established a trust account, to disclose to the administrator any financial records relating**
51 **to the trust account; and**

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

54 **(a) The identity of the creditor; and**

55 **(b) The right of the individual to modify or terminate the agreement.**

56 **5. An agreement may confer on a provider a power of attorney to settle the**
57 **individual's debt for no more than fifty percent of the principal amount of the debt. An**
58 **agreement may not confer a power of attorney to settle a debt for more than fifty percent**
59 **of that amount, but may confer a power of attorney to negotiate with creditors of the**
60 **individual on behalf of the individual. An agreement shall provide that the provider will**
61 **obtain the assent of the individual after a creditor has assented to a settlement for more**
62 **than fifty percent of the principal amount of the debt.**

63 **6. An agreement shall not:**

64 **(1) Provide for application of the law of any jurisdiction other than the United**
65 **States and this state;**

66 **(2) Except as permitted by section 2 of the Federal Arbitration Act (9 U.S.C. 2), as**
67 **amended, contain a provision that modifies or limits otherwise available forums or**
68 **procedural rights, including the right to trial by jury, that are generally available to the**
69 **individual under law other than in sections 425.050 to 425.132;**

70 **(3) Contain a provision that restricts the individual's remedies under sections**
71 **425.050 to 425.132 or law other than in sections 425.050 to 425.132; or**

72 **(4) Contain a provision that:**

73 (a) Limits or releases the liability of any person for not performing the agreement
74 or for violating sections 425.050 to 425.132; or

75 (b) Indemnifies any person for liability arising under the agreement or sections
76 425.050 to 425.132.

77 7. All rights and obligations specified in subsection 4 of this section and section
78 425.088 exist even if not provided in the agreement. A provision in an agreement which
79 violates subsection 4, 5, or 6 of this section is void.

425.088. 1. An individual may cancel an agreement before midnight of the third
2 business day after the individual assents to it, unless the agreement does not comply with
3 subsection 2 of this section or section 425.086 or 425.104, in which event the individual may
4 cancel the agreement within thirty days after the individual assents to it. To exercise the
5 right to cancel, the individual shall give notice in a record to the provider. Notice by mail
6 is given when mailed.

7 2. An agreement shall be accompanied by a form that contains in bold-face type,
8 surrounded by bold black lines the following information:

9 (1) Notice of right to cancel;

10 (2) Notification that the person may cancel the agreement, without any penalty or
11 obligation, at any time before midnight of the third business day that begins the day after
12 the person agrees to it by electronic communication or by signing it;

13 (3) Notification that the person may cancel the agreement during the period to send
14 an e-mail to the appropriate person or mail or deliver a signed, dated copy of the notice,
15 or any other written notice to the appropriate person;

16 (4) Name of provider, the address of the provider and a specific time;

17 (5) The date;

18 (6) Notification that if the person cancels the agreement within the three-day
19 period, he or she will receive a refund of all money the person paid;

20 (7) Notification that the person may terminate the agreement at any later time, but
21 may not receive a refund of the fees paid;

22 (8) The person stating that he or she cancels the agreement; and

23 (9) The person's printed and signed name and the date.

24 3. If a personal financial emergency necessitates the disbursement of an
25 individual's money to one or more of the individual's creditors before the expiration of
26 three days after an agreement is signed, an individual may waive the right to cancel. To
27 waive the right, the individual shall send or deliver a signed, dated statement in the
28 individual's own words describing the circumstances that necessitate a waiver. The waiver

29 shall explicitly waive the right to cancel. A waiver by means of a standard-form record is
30 void.

2 **425.090.** Unless the administrator, by rule, provides otherwise, the disclosures and
3 documents required by sections 425.050 to 425.132 shall be in English. If a provider
4 communicates with an individual primarily in a language other than English, the provider
5 shall furnish a translation into the other language of the disclosures and documents
6 required by sections 425.050 to 425.132.

2 **425.092. 1.** All money paid to a provider by or on behalf of an individual under a
3 plan for distribution to creditors is held in trust. Within two business days after receipt,
4 the provider shall deposit the money in a trust account established for the benefit of
5 individuals to whom the provider is furnishing debt-management services.

2 **2.** Money held in trust by a provider is not property of the provider or its designee.
3 The money is not available to creditors of the provider or designee, except an individual
4 from whom or on whose behalf the provider received money, to the extent that the money
5 has not been disbursed to creditors of the individual.

2 **3.** A provider shall:

10 **(1)** Maintain separate records of account for each individual to whom the provider
11 is furnishing debt-management services;

12 **(2)** Disburse money paid by or on behalf of the individual to creditors of the
13 individual as disclosed in the agreement, except that:

14 **(a)** The provider may delay payment to the extent that a payment by the individual
15 is not final; and

16 **(b)** If a plan provides for regular periodic payments to creditors, the disbursement
17 shall comply with the due dates established by each creditor; and

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

22 **4.** A provider shall not commingle money in a trust account established for the
23 benefit of individuals to whom the provider is furnishing debt-management services with
24 money of other persons.

25 **5.** A trust account shall at all times have a cash balance equal to the sum of the
26 balances of each individual's account.

27 **6.** If a provider has established a trust account under subsection 1 of this section,
28 the provider shall reconcile the trust account at least once a month. The reconciliation
29 shall compare the cash balance in the trust account with the sum of the balances in each

30 individual's account. If the provider or its designee has more than one trust account, each
31 trust account shall be individually reconciled.

32 7. If a provider discovers, or has a reasonable suspicion of, embezzlement or other
33 unlawful appropriation of money held in trust, the provider immediately shall notify the
34 administrator by a method approved by the administrator. Unless the administrator by
35 rule provides otherwise, within five days thereafter, the provider shall give notice to the
36 administrator describing the remedial action taken or to be taken.

37 8. If an individual terminates an agreement or it becomes reasonably apparent to
38 a provider that a plan has failed, the provider shall promptly refund to the individual all
39 money paid by or on behalf of the individual which has not been paid to creditors, less fees
40 that are payable to the provider under section 425.094.

41 9. Before relocating a trust account from one bank to another, a provider shall
42 inform the administrator of the name, business address, and telephone number of the new
43 bank. As soon as practicable, the provider shall inform the administrator of the account
44 number of the trust account at the new bank.

425.094. 1. A provider shall not impose directly or indirectly a fee or other charge
2 on an individual or receive money from or on behalf of an individual for debt-management
3 services except as permitted by this section.

4 2. A provider shall not impose charges or receive payment for debt-management
5 services until the provider and the individual have signed an agreement that complies with
6 sections 425.086 and 425.104.

7 3. If an individual assents to an agreement, a provider shall not impose a fee or
8 other charge for educational or counseling services, or the like, except as otherwise
9 provided in this subsection and subsection 4 of section 425.104. The administrator may
10 authorize a provider to charge a fee based on the nature and extent of the educational or
11 counseling services furnished by the provider.

12 4. Subject to adjustment of dollar amounts under subsection 6 of section 425.112,
13 the following rules apply:

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

16 (a) A fee not exceeding fifty dollars for consultation, obtaining a credit report,
17 setting up an account, and the like; and

18 (b) A monthly service fee, not to exceed ten dollars times the number of creditors
19 remaining in a plan at the time the fee is assessed, but not more than fifty in any month;

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

22 (a) Subject to subsection 4 of section 425.086, a fee for consultation, obtaining a
23 credit report, setting up an account, and the like, in an amount not exceeding the lesser of
24 four hundred dollars and four percent of the debt in the plan at the inception of the plan;
25 and

26 (b) A monthly service fee, not to exceed ten dollars times the number of creditors
27 remaining in a plan at the time the fee is assessed, but not more than fifty dollars in any
28 month;

29 (3) A provider shall not impose or receive fees under both subdivisions (1) and (2)
30 of this subsection.

31 (4) Except as otherwise provided in subsection 4 of section 425.104, if an individual
32 does not assent to an agreement, a provider may receive for educational and counseling
33 services it provides to the individual a fee not exceeding one hundred dollars or, with the
34 approval of the administrator, a larger fee. The administrator may approve a fee larger
35 than one hundred dollars if the nature and extent of the educational and counseling
36 services warrant the larger fee.

37 5. If, before the expiration of ninety days after the completion or termination of
38 educational or counseling services, an individual assents to an agreement, the provider
39 shall refund to the individual any fee paid under subdivision (4) of subsection 4 of this
40 section.

41 6. Except as otherwise provided in subsections 3 and 4 of this section, if a plan
42 contemplates that creditors may settle an individual's debts for less than the principal
43 amount of the debt, compensation for services in connection with settling a debt shall not
44 exceed, with respect to each debt thirty percent of the excess of the principal amount of the
45 debt over the amount paid the creditor under the plan less to the extent it has not been
46 credited against an earlier settlement fee:

47 (1) The fee charged under paragraph (a) of subdivision (2) of subsection 4 of this
48 section; and

49 (2) The aggregate of fees charged under paragraph (b) of subdivision (2) of
50 subsection 4 of this section.

51 7. Subject to adjustment of the dollar amount under subsection 6 of section 425.112,
52 if a payment to a provider by an individual under sections 425.050 to 425.132 is
53 dishonored, a provider may impose a reasonable charge on the individual, not to exceed
54 the lesser of twenty-five dollars and the amount permitted by law other than under sections
55 425.050 to 425.132.

425.096. A provider shall not solicit a voluntary contribution from an individual
2 or an affiliate of the individual for any service provided to the individual. A provider may

3 accept voluntary contributions from an individual but, until thirty days after completion
4 or termination of a plan, the aggregate amount of money received from or on behalf of the
5 individual shall not exceed the total amount the provider may charge the individual under
6 section 425.094.

2 **425.098. 1. If a provider imposes a fee or other charge or receives money or other
3 payments not authorized by section 425.094 or 425.096, the individual may void the
4 agreement and recover as provided in section 425.118.**

4 **2. If a provider is not registered as required by sections 425.050 to 425.132 when
5 an individual assents to an agreement, the agreement is voidable by the individual.**

6 **3. If an individual voids an agreement under subsection 2 of this section, the
7 provider shall not have a claim against the individual for breach of contract or for
8 restitution.**

2 **425.100. 1. If an individual who has entered into an agreement fails for sixty days
3 to make payments required by the agreement, a provider may terminate the agreement.**

3 **2. If a provider or an individual terminates an agreement, the provider shall
4 immediately return to the individual:**

5 **(1) Any money of the individual held in trust for the benefit of the individual; and**

6 **(2) Sixty-five percent of any portion of the set-up fee received under subdivision (2)
7 of subsection 4 of section 425.094 which has not been credited against settlement fees.**

2 **425.102. 1. A provider shall provide the accounting required by subsection 2 of this
3 section:**

3 **(1) Upon cancellation or termination of an agreement; and**

4 **(2) Before cancellation or termination of any agreement:**

5 **(a) At least once each month; and**

6 **(b) Within five business days after a request by an individual, but the provider
7 need not comply with more than one request in any calendar month.**

8 **2. A provider, in a record, shall provide each individual for whom it has established
9 a plan, an accounting of the following information:**

10 **(1) The amount of money received from the individual since the last report;**

11 **(2) The amounts and dates of disbursement made on the individual's behalf, or by
12 the individual upon the direction of the provider, since the last report to each creditor
13 listed in the plan;**

14 **(3) The amounts deducted from the amount received from the individual;**

15 **(4) The amount held in reserve; and**

16 **(5) If, since the last report, a creditor has agreed to accept as payment in full an
17 amount less than the principal amount of the debt owed by the individual:**

- 18 (a) The total amount and terms of the settlement;
19 (b) The amount of the debt when the individual assented to the plan;
20 (c) The amount of the debt when the creditor agreed to the settlement; and
21 (d) The calculation of a settlement fee.

22 3. A provider shall maintain records for each individual for whom it provides
23 debt-management services for five years after the final payment made by the individual
24 and produce a copy of the records to the individual within a reasonable time after a request
25 for the records. The provider may use electronic or other means of storage of the records.

 425.104. 1. A provider shall not, directly or indirectly:

- 2 (1) Misappropriate or misapply money held in trust;
3 (2) Settle a debt on behalf of an individual for more than fifty percent of the
4 principal amount of the debt owed a creditor, unless the individual assents to the
5 settlement after the creditor has assented;
6 (3) Take a power of attorney that authorizes it to settle a debt, unless the power of
7 attorney expressly limits the provider's authority to settle debts for not more than fifty
8 percent of the principal amount of the debt owed a creditor;
9 (4) Exercise or attempt to exercise a power of attorney after an individual has
10 terminated an agreement;
11 (5) Initiate a transfer from an individual's account at a bank or with another
12 person unless the transfer is:
13 (a) A return of money to the individual; or
14 (b) Before termination of an agreement, properly authorized by the agreement and
15 sections 425.050 to 425.132, and for:
16 a. Payment to one or more creditors under a plan; or
17 b. Payment of a fee;
18 (6) Offer a gift or bonus, premium, reward, or other compensation to an individual
19 for executing an agreement;
20 (7) Offer, pay, or give a gift or bonus, premium, reward, or other compensation to
21 a person for referring a prospective customer, if the person making the referral has a
22 financial interest in the outcome of debt-management services provided to the customer,
23 unless neither the provider nor the person making the referral communicates to the
24 prospective customer the identity of the source of the referral;
25 (8) Receive a bonus, commission, or other benefit for referring an individual to a
26 person;

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

30 **(10) Compensate its employees on the basis of a formula that incorporates the**
31 **number of individuals the employee induces to enter into agreements;**

32 **(11) Settle a debt or lead an individual to believe that a payment to a creditor is in**
33 **settlement of a debt to the creditor unless, at the time of settlement, the individual receives**
34 **a certification by the creditor that the payment is in full settlement of the debt;**

35 **(12) Make a representation that:**

36 **(a) The provider will furnish money to pay bills or prevent attachments;**

37 **(b) Payment of a certain amount will permit satisfaction of a certain amount or**
38 **range of indebtedness; or**

39 **(c) Participation in a plan will or may prevent litigation, garnishment, attachment,**
40 **repossession, foreclosure, eviction, or loss of employment;**

41 **(13) Misrepresent that it is authorized or competent to furnish legal advice or**
42 **perform legal services;**

43 **(14) Represent that it is a not-for-profit entity unless it is organized and properly**
44 **operating as a not-for-profit under the law of the state in which it was formed or that it is**
45 **a tax-exempt entity unless it has received certification of tax-exempt status from the**
46 **Internal Revenue Service;**

47 **(15) Take a confession of judgment or power of attorney to confess judgment**
48 **against an individual; or**

49 **(16) Employ an unfair, unconscionable, or deceptive act or practice, including the**
50 **knowing omission of any material information.**

51 **2. If a provider furnishes debt-management services to an individual, the provider**
52 **shall not, directly or indirectly:**

53 **(1) Purchase a debt or obligation of the individual;**

54 **(2) Receive from or on behalf of the individual:**

55 **(a) A promissory note or other negotiable instrument other than a check or a**
56 **demand draft; or**

57 **(b) A post-dated check or demand draft;**

58 **(3) Lend money or provide credit to the individual, except as a deferral of a**
59 **settlement fee at no additional expense to the individual;**

60 **(4) Obtain a mortgage or other security interest from any person in connection with**
61 **the services provided to the individual;**

62 (5) Except as permitted by federal law, disclose the identity or identifying
63 information of the individual or the identity of the individual's creditors, except to:

64 (a) The administrator, upon proper demand;

65 (b) A creditor of the individual, to the extent necessary to secure the cooperation
66 of the creditor in a plan; or

67 (c) The extent necessary to administer the plan;

68 (6) Except as otherwise provided in subsection 6 of section 425.094, provide the
69 individual less than the full benefit of a compromise of a debt arranged by the provider;

70 (7) Charge the individual for or provide credit or other insurance, coupons for
71 goods or services, membership in a club, access to computers or the Internet, or any other
72 matter not directly related to debt-management services or educational services concerning
73 personal finance; or

74 (8) Furnish legal advice or perform legal services, unless the person furnishing that
75 advice to or performing those services for the individual is licensed to practice law.

76 3. Sections 425.050 to 425.132 shall not authorize any person to engage in the
77 practice of law.

78 4. A provider shall not receive a gift or bonus, premium, reward, or other
79 compensation, directly or indirectly, for advising, arranging, or assisting an individual in
80 connection with obtaining, an extension of credit or other service from a lender or service
81 provider, except for educational or counseling services required in connection with a
82 government-sponsored program.

83 5. Unless a person supplies goods, services, or facilities generally and supplies them
84 to the provider at a cost no greater than the cost the person generally charges to others, a
85 provider shall not purchase goods, services, or facilities from the person if an employee or
86 a person that the provider should reasonably know is an affiliate of the provider:

87 (1) Owns more than ten percent of the person; or

88 (2) Is an employee or affiliate of the person.

2 425.106. No later than thirty days after a provider has been served with notice of
3 a civil action for violation of sections 425.050 to 425.132 by or on behalf of an individual
4 who resides in this state at either the time of an agreement or the time the notice is served,
5 the provider shall notify the administrator in a record that it has been sued.

2 425.108. A provider that advertises debt-management services shall disclose, in an
3 easily comprehensible manner, the information specified in subdivisions (3) and (4) of
4 subsection 4 of section 425.082.

2 425.110. If a provider delegates any of its duties or obligations under an agreement
3 or under sections 425.050 to 425.132 to another person, including an independent

3 contractor, the provider is liable for conduct of the person which, if done by the provider,
4 would violate the agreement or sections 425.050 to 425.132.

2 425.112. 1. The administrator may act on its own initiative or in response to
2 complaints and may receive complaints, take action to obtain voluntary compliance with
3 sections 425.050 to 425.132, and seek or provide remedies as provided under sections
4 425.050 to 425.132.

5 2. The administrator may investigate and examine, in this state or elsewhere, by
6 subpoena or otherwise, the activities, books, accounts, and records of a person that
7 provides or offers to provide debt-management services, or a person to which a provider
8 has delegated its obligations under an agreement or under sections 425.050 to 425.132, to
9 determine compliance under sections 425.050 to 425.132. Information that identifies
10 individuals who have agreements with the provider shall not be disclosed to the public. In
11 connection with the investigation, the administrator may:

12 (1) Charge the person the reasonable expenses necessarily incurred to conduct the
13 examination;

14 (2) Require or permit a person to file a statement under oath as to all the facts and
15 circumstances of a matter to be investigated; and

16 (3) Seek a court order authorizing seizure from a bank at which the person
17 maintains a trust account required by section 425.092, any or all money, books, records,
18 accounts, and other property of the provider that is in the control of the bank and relates
19 to individuals who reside in this state.

20 3. The administrator may adopt rules to implement the provisions of sections
21 425.050 to 425.132 in accordance with chapter 536, RSMo.

22 4. The administrator may enter into cooperative arrangements with any other
23 federal or state agency having authority over providers and may exchange with any of
24 those agencies information about a provider, including information obtained during an
25 examination of the provider.

26 5. The administrator, by rule, shall establish reasonable fees to be paid by
27 providers for the expense of administering sections 425.050 to 425.132.

28 6. The administrator, by rule, shall adopt dollar amounts instead of those specified
29 in sections 425.052, 425.058, 425.066, 425.074, 425.094, 425.114, and 425.118 to reflect
30 inflation, as measured by the United States Bureau of Labor Statistics Consumer Price
31 Index for All Urban Consumers or, if that index is not available, another index adopted by
32 rule by the administrator. The administrator shall adopt a base year and adjust the dollar
33 amounts, effective on July first of each year, if the change in the index from the base year,
34 as of December thirty-first of the preceding year, is at least ten percent. The dollar amount

35 shall be rounded to the nearest one hundred dollars, except that the amounts in section
36 425.094 must be rounded to the nearest dollar.

37 7. The administrator shall notify registered providers of any change in dollar
38 amounts made under subsection 6 of this section and make that information available to
39 the public.

425.114. 1. The administrator may enforce sections 425.050 to 425.132 and rules
2 adopted under sections 425.050 to 425.132 by taking one or more of the following actions:

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

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

8 (3) Subject to adjustment of the dollar amount under subsection 6 of section
9 425.112, imposing on a provider or a person that has caused a violation a civil penalty not
10 exceeding ten thousand dollars for each violation;

11 (4) Prosecuting a civil action to:

12 (a) Enforce an order; or

13 (b) Obtain restitution or an injunction or other equitable relief, or both;

14 (5) Intervening in an action brought under section 425.118.

15 2. Subject to adjustment of the dollar amount under subsection 6 of section 425.118,
16 if a person violates or knowingly authorizes, directs, or aids in the violation of a final order
17 issued under subdivision (1) or (2) of subsection 1 of this section, the administrator may
18 impose a civil penalty not exceeding twenty thousand dollars for each violation.

19 3. The administrator may maintain an action to enforce sections 425.050 to 425.132
20 in any county.

21 4. The administrator may recover the reasonable costs of enforcing sections 425.050
22 to 425.132 under subsections 1 to 3 of this section, including attorney's fees based on the
23 hours reasonably expended and the hourly rates for attorneys of comparable experience
24 in the community.

25 5. In determining the amount of a civil penalty to impose under subsection 1 or 2
26 of this section, the administrator shall consider the seriousness of the violation, the good
27 faith of the violator, any previous violations by the violator, the deleterious effect of the
28 violation on the public, the net worth of the violator, and any other factor the
29 administrator considers relevant to the determination of the civil penalty.

425.116. 1. As used in this section, "insolvent" means:

2 (1) Having generally ceased to pay debts in the ordinary course of business other
3 than as a result of good-faith dispute;

4 (2) Being unable to pay debts as they become due; or

5 (3) Being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. 101
6 et seq., as amended.

7 2. The administrator may suspend, revoke, or deny renewal of a provider's
8 registration if:

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

11 (2) The provider has committed a material violation under sections 425.050 to
12 425.132 or a rule or order of the administrator under sections 425.050 to 425.132;

13 (3) The provider is insolvent;

14 (4) The provider or an employee or affiliate of the provider has refused to permit
15 the administrator to make an examination authorized under sections 425.050 to 425.132,
16 failed to comply with subdivision (2) of subsection 2 of section 425.112 within fifteen days
17 after request, or made a material misrepresentation or omission in complying with
18 subdivision (2) of subsection 2 of section 425.112; or

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

21 3. If a provider does not comply with subsection 6 of section 425.092 or if the
22 administrator otherwise finds that the public health or safety or general welfare requires
23 emergency action, the administrator may order a summary suspension of the provider's
24 registration, effective on the date specified in the order.

25 4. If the administrator suspends, revokes, or denies renewal of the registration of
26 a provider, the administrator may seek a court order authorizing seizure of any or all of
27 the money in a trust account required by section 425.112, books, records, accounts, and
28 other property of the provider which are located in this state.

29 5. If the administrator suspends or revokes a provider's registration, the provider
30 may appeal and request a hearing under chapter 536, RSMo.

 425.118. 1. If an individual voids an agreement under section 425.098, the
2 individual may recover in a civil action all money paid or deposited by or on behalf of the
3 individual under the agreement, except amounts paid to creditors, in addition to the
4 recovery under subdivisions (3) and (4) of subsection 3 of this section.

5 2. If an individual voids an agreement under subsection 1 of section 425.098, the
6 individual may recover in a civil action three times the total amount of the fees, charges,

7 money, and payments made by the individual to the provider, in addition to the recovery
8 under subdivision (4) of subsection 3 of this section.

9 **3. Subject to subsection 4 of this section, an individual with respect to whom a**
10 **provider violates under sections 425.050 to 425.132 may recover in a civil action from the**
11 **provider and any person that caused the violation:**

12 **(1) Compensatory damages for injury, including noneconomic injury, caused by**
13 **the violation;**

14 **(2) Except as otherwise provided in subsection 4 of this section and subject to**
15 **adjustment of the dollar amount under subsection 6 of section 425.112, with respect to a**
16 **violation of section 425.082, 425.086, 425.088, 425.090, 425.092, 425.094, 425.096, or**
17 **425.102, or subsection 1, 2, or 4 of section 425.104, the greater of the amount recoverable**
18 **under subdivision (1) of this subsection or five thousand dollars;**

19 **(3) Punitive damages; and**

20 **(4) Reasonable attorney's fees and costs.**

21 **4. In a class action, except for a violation of subdivision (5) of subsection 1 of section**
22 **425.108, the minimum damages provided in subdivision (2) of subsection 3 of this section**
23 **do not apply.**

24 **5. In addition to the remedy available under subsection 3 of this section, if a**
25 **provider violates an individual's rights under section 425.088, the individual may recover**
26 **in a civil action all money paid or deposited by or on behalf of the individual under the**
27 **agreement, except for amounts paid to creditors.**

28 **6. A provider is not liable under this section for a violation under sections 425.050**
29 **to 425.132 if the provider proves that the violation was not intentional and resulted from**
30 **a good-faith error notwithstanding the maintenance of procedures reasonably adapted to**
31 **avoid the error. An error of legal judgment with respect to a provider's obligations under**
32 **sections 425.050 to 425.132 is not a good-faith error. If, in connection with a violation, the**
33 **provider has received more money than authorized by an agreement or under sections**
34 **425.050 to 425.132, the defense provided by this subsection is not available unless the**
35 **provider refunds the excess within two business days of learning of the violation.**

36 **7. The administrator shall assist an individual in enforcing a judgment against the**
37 **surety bond or other security provided under section 425.074 or 425.076.**

425.120. If an act or practice of a provider violates both sections 425.050 to 425.132
2 **and chapter 407, RSMo, an individual shall not recover under both for the same act or**
3 **practice.**

425.122. 1. An action or proceeding brought under subsection 1, 2, or 3 of section 2 425.114 shall be commenced within four years after the conduct that is the basis of the 3 administrator's complaint.

4 2. An action brought under section 425.118 shall be commenced within two years 5 after the latest of:

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

7 (2) The individual's last transmission of money to a creditor at the direction of the 8 provider;

9 (3) The provider's last disbursement to a creditor of the individual;

10 (4) The provider's last accounting to the individual under subsection 1 of section 11 425.102;

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

14 (6) Termination of actions or proceedings by the administrator with respect to a 15 violation under sections 425.050 to 425.132.

16 3. The period prescribed in subdivision (5) of subsection 2 of this section is tolled 17 during any period during which the provider or, if different, the defendant has materially 18 and willfully misrepresented information required under sections 425.050 to 425.132 to be 19 disclosed to the individual, if the information so misrepresented is material to the 20 establishment of the liability of the defendant under sections 425.050 to 425.132.

425.124. In applying and construing sections 425.050 to 425.132, consideration shall 2 be given to the need to promote uniformity of the law with respect to its subject matter 3 among states that enact similar sections.

425.126. As authorized in 15 U.S.C 7002, as amended, sections 425.050 to 425.132 2 modify, limit, and supersede the federal Electronic Signatures in Global and National 3 Commerce Act (15 U.S.C. 7001 et seq.), but do not modify, limit, or supersede section 4 101(c) of that Act (15 U.S.C. 7001(c)), as amended, or authorize electronic delivery of any 5 of the notices described in section 103(b) of that Act (15 U.S.C. 7003(b)), as amended.

425.128. Transactions entered into before sections 425.050 to 425.132 takes effect 2 and the rights, duties, and interests resulting from them may be completed, terminated, or 3 enforced as required or permitted by a law amended, repealed, or modified under sections 4 425.050 to 425.132 as though the amendment, repeal, or modification had not occurred.

425.130. If any provision under sections 425.050 to 425.132 or its application to any 2 person or circumstance is held invalid, the invalidity shall not affect other provisions or 3 applications of sections 425.050 to 425.132 that can be given effect without the invalid 4 provision or application, and the provisions of sections 425.050 to 425.132 are severable.

425.132. Sections 425.050 to 425.132 shall become effective August 28, 2007.

[425.010. As used in this chapter, the following terms mean:

2 (1) "Debt adjuster", a person who acts or offers to act for a consideration
3 as an intermediary between a debtor and his creditors for the purpose of settling,
4 compounding, or in any wise altering the terms of payment of any debts of the
5 debtor; and to that end receives money or other property from the debtor, or on
6 behalf of the debtor, for payment to, or distribution among, the creditors of the
7 debtor;

8 (2) "Debtor", an individual or individuals jointly and severally or jointly
9 or severally indebted.]

10

[425.020. Any person who acts or offers to act as a debt adjuster in this
2 state is guilty of a misdemeanor and upon conviction shall be punished as
3 provided by law.]

4

[425.030. The circuit court shall have power, in an action brought in the
2 name of the state by the attorney general, to enjoin any person from acting or
3 offering to act as a debt adjuster; and, in the action, may appoint a receiver for the
4 property and money employed in the transaction of business by the person as a
5 debt adjuster, to insure, so far as may be possible, the return to debtors of so
6 much of their money and property as has been received by the debt adjuster, and
7 has not been paid to the creditors of the debtors.]

8

[425.040. The following persons shall not be considered debt adjusters
2 for the purposes of this chapter:

- 3 (1) Any attorney at law of this state;
4 (2) Any person who is a regular, full-time employee of a debtor, and who
5 acts as an adjuster of his employer's debts;
6 (3) Any person acting pursuant to any order or judgment of court, or
7 pursuant to authority conferred by any law of this state or of the United States;
8 (4) Any person who is a creditor of the debtor, or an agent of one or more
9 creditors of the debtor, and whose services in adjusting the debtor's debts are
10 rendered without cost to the debtor; and
11 (5) Any person who, at the request of a debtor, arranges for or makes a
12 loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster
13 of the debtor's debts in the disbursement of the proceeds of the loan, without
14 compensation for the services rendered in adjusting the debts.]

