

Colorado Revised Statutes 2017

TITLE 5

DEBT MANAGEMENT

ARTICLE 19

Debt-Management Services

Editor's note: This article was added with relocations in 2017. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

PART 2

UNIFORM DEBT-MANAGEMENT SERVICES ACT

5-19-201. Short title. The short title of this part 2 is the "Uniform Debt-Management Services Act".

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1137, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-201 as it existed prior to 2017.

5-19-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Administrator" means the assistant attorney general designated by the attorney general pursuant to section 5-6-103.

(2) "Affiliate":

(A) With respect to an individual, means:

(i) The spouse of the individual;

(ii) A sibling of the individual or the spouse of a sibling;

(iii) An individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual's spouse;

(iv) An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or

(v) Any other individual occupying the residence of the individual; and

(B) With respect to an entity, means:

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

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

entity;

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

(iv) A person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year or a person that owns more than ten percent of, or an individual who is employed by or is a director of, a person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year;

(v) An officer or director of, or an individual performing similar functions with respect to, a person described in subsection (2)(B)(i) of this section;

(vi) The spouse of, or an individual occupying the residence of, an individual described in subsections (2)(B)(i) to (2)(B)(v) of this section; or

(vii) An individual who has the relationship specified in subsection (2)(A)(iv) of this section to an individual or the spouse of an individual described in subsections (2)(B)(i) to (2)(B)(v) of this section.

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

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

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

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

(7) "Day" means calendar day.

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

(i) Legal services provided in an attorney-client relationship by an attorney licensed to practice law in this state;

(ii) Accounting services provided in an accountant-client relationship by a certified public accountant certified or authorized by the state board of accountancy to provide accounting services in this state; or

(iii) Representative services provided before the internal revenue service, the department of revenue, or the department of labor and employment in an enrolled agent-client relationship for tax purposes by an enrolled agent who is authorized by and in good standing with the United States department of treasury, if the enrolled agent is not engaging in other debt management services.

(B) The exemptions in subsection (8)(A) of this section do not apply to any person who directly or indirectly provides any debt management services on behalf of a licensed attorney, certified public accountant, or enrolled agent if that person is not an employee of the licensed attorney, certified public accountant, or enrolled agent.

- (9) "Entity" means a person other than an individual.
- (10) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.
- (11) "Individual" means a natural person.
- (12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.
- (13) "Plan" means a program or strategy in which a provider furnishes debt-management services to an individual and that includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual.
- (14) "Principal amount of the debt" means the amount of a debt at the time of an agreement.
- (15) "Provider" means a person that provides, offers to provide, or agrees to provide debt-management services directly or through others.
- (16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (17) "Settlement fee" means a charge imposed on or paid by an individual in connection with a creditor's assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.
- (18) "Sign" means, with present intent to authenticate or adopt a record:
- (A) To execute or adopt a tangible symbol; or
 - (B) To attach to or logically associate with the record an electronic sound, symbol, or process.
- (19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (20) (A) "Trust account" means an account held by a provider that is:
- (i) Established in an insured bank;
 - (ii) Separate from other accounts of the provider or its designee;
 - (iii) Designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider; and
 - (iv) Used to hold money of one or more individuals for disbursement to creditors of the individuals.
- (B) For a plan under which creditors will settle debts for less than the principal amount of the debt, nothing in this part 2 prohibits a provider from requesting or requiring an individual to place funds in an account, separate from the individual's then-existing bank account, to be used for the provider's fees and for payments to creditors or debt collectors in connection with the debt management services, if:
- (i) The funds are held in an account at an insured financial institution;
 - (ii) The individual owns the funds held in the account and is paid accrued interest on the account, if any;
 - (iii) The entity administering the account is not owned, controlled by, or in any way

affiliated with the provider;

(iv) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt management provider or plan; and

(v) The individual may withdraw from the debt management plan at any time without penalty, and immediately receives all funds in the account, other than fees earned in compliance with section 5-19-223, as required by section 5-19-226.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1137, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-202 as it existed prior to 2017.

5-19-203. Exempt agreements and persons. (a) This part 2 does not apply to an agreement with an individual who the provider has no reason to know resides in this state at the time of the agreement.

(b) This part 2 does not apply to a provider to the extent that the provider:

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

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

(3) Provides debt-management services only to persons that have incurred debt in the conduct of business; or

(4) Is subject to the "Colorado Foreclosure Protection Act", part 11 of article 1 of title 6.

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

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

(2) A bank;

(3) An affiliate, as defined in section 5-19-202 (2)(B)(i), of a bank if the affiliate is regulated by a federal or state banking regulatory authority; or

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

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1140, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-203 as it existed prior to 2017.

5-19-204. Registration required. (a) Except as otherwise provided in subsection (b) of this section, on or after July 1, 2008, a provider may not provide debt-management services to an individual who it reasonably should know resides in this state at the time it agrees to provide the

services, unless the provider is registered under this part 2.

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

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

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1141, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-204 as it existed prior to 2017.

5-19-205. Application for registration - form, fee, and accompanying documents. (a) An application for registration as a provider shall be in a form prescribed by the administrator.

(b) An application for registration as a provider shall be accompanied by:

(1) The fee established by the administrator. The administrator shall transmit the fee to the state treasurer, who shall deposit it in the uniform consumer credit code cash fund, created in section 5-6-204 (1).

(2) The bond required by section 5-19-213;

(3) Identification of all trust accounts required by section 5-19-222 and an irrevocable consent authorizing the administrator to review and examine the trust accounts;

(4) Proof of compliance with the requirements of title 7 that specify the prerequisites for an entity to do business in this state; and

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

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1141, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-205 as it existed prior to 2017.

5-19-206. Application for registration - required information. An application for registration shall be signed under penalty of false statement and include:

(1) The applicant's name, principal business address and telephone number, and all other business addresses in this state, electronic-mail addresses, and internet website addresses;

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

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

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

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

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

(B) Individuals have resided when they received debt-management services from the applicant;

(6) A statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to initiate transactions to the trust account required by section 5-19-222;

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

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

(9) A description of the applicant's financial analysis and initial plan, including any form or electronic model, used to evaluate the financial condition of individuals. The description shall be deemed to be confidential commercial data under section 24-72-204 (3)(a)(IV).

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

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

(12) At the applicant's expense, the results of a state and national fingerprint-based criminal history records check, conducted within the immediately preceding twelve months, covering every officer of the applicant and every employee or agent of the applicant who is authorized to initiate transactions to the trust account required by section 5-19-222. The administrator shall be the authorized agency to receive information regarding the result of the national criminal history records check.

(13) The names and addresses of all employers of each director during the five years immediately preceding the application; except that if a director receives no compensation from the provider, the applicable period shall be two years. The names and addresses shall be deemed to be confidential.

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

(A) Any affiliate of the applicant; or

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

(15) For not-for-profit providers, a statement of the amount of compensation of the applicant's five most highly compensated employees for each of the three years immediately preceding the application or, if it has not been in operation for the three years immediately preceding the application, for the period of its existence;

(16) The identity of each director who is an affiliate, as defined in section 5-19-202 (2)(A) or (2)(B)(i), (2)(B)(ii), (2)(B)(iv), (2)(B)(v), (2)(B)(vi), or (2)(B)(vii), of the applicant; and

(17) Any other information that the administrator reasonably requires to perform the administrator's duties under section 5-19-209.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1142, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-206 as it existed prior to 2017.

5-19-207. Application for registration - obligation to update information. An applicant or registered provider shall notify the administrator within fifteen days after a change in the information specified in section 5-19-205 (b)(5) or section 5-19-206 (1), (3), (6), (10), or (11).

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1144, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-207 as it existed prior to 2017.

5-19-208. Application for registration - public information. Except for the information required by section 5-19-206 (7), (9), (12), (13), and (15), and the addresses required by section 5-19-206 (4), the administrator shall make the information in an application for registration as a provider available to the public.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1144, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-208 as it existed prior to 2017.

5-19-209. Certificate of registration - issuance or denial. (a) Except as otherwise provided in subsections (b) and (c) of this section, the administrator shall issue a certificate of registration as a provider to a person that complies with sections 5-19-205 and 5-19-206.

(b) The administrator may deny registration if:

- (1) The application contains information that is materially erroneous or incomplete;
- (2) An officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;
- (3) The applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others; or
- (4) The administrator, upon reasonable belief, finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this part 2.

(c) The administrator shall deny registration if:

- (1) The application is not accompanied by the fee established by the administrator; or
- (2) With respect to an applicant that is organized as a not-for-profit entity or has obtained

tax-exempt status under the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501, as amended, the applicant's board of directors is not independent of the applicant's employees and agents.

(d) A board of directors is not independent for purposes of subsection (c) of this section if more than one-fourth of its members:

(1) Are affiliates of the applicant, as defined in section 5-19-202 (2)(A), (2)(B)(i), (2)(B)(ii), (2)(B)(iv), (2)(B)(v), (2)(B)(vi), or (2)(B)(vii); or

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

(e) The administrator may temporarily approve a certificate of registration in the event an applicant has made a timely effort to obtain a criminal records check as required in section 5-19-206 (12), but for which a timely return of information has not occurred, for a reasonable period of time but no longer than one hundred twenty days, provided that the applicant has provided all other required information in the application for registration and the administrator finds no reason to believe from the information that has been provided that the applicant may not provide fair and honest services to debtors under this part 2.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1144, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-209 as it existed prior to 2017.

5-19-210. Certificate of registration - timing. (a) The administrator shall approve or deny an initial registration as a provider within ninety days after an application is filed. In connection with a request pursuant to section 5-19-206 (17) for additional information, the administrator may extend the ninety-day period for not more than thirty days. Within seven days after denying an application, the administrator, in a record, shall inform the applicant of the reasons for the denial.

(b) If the administrator denies an application for registration as a provider or does not act on an application within the time prescribed in subsection (a) of this section, the applicant may appeal and request a hearing pursuant to article 4 of title 24.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1145, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-210 as it existed prior to 2017.

5-19-211. Renewal of registration. (a) A provider shall obtain a renewal of its registration annually before the expiration date of the registration to be renewed, as specified in this section.

(b) An application for renewal of registration as a provider shall be in a form prescribed by the administrator, signed under penalty of false statement, and:

- (1) Be filed before the registration expires;
 - (2) Be accompanied by the fee established by the administrator and the bond required by section 5-19-213;
 - (3) Contain a financial statement, reviewed by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application; except that the third renewal after initial registration and every fourth renewal thereafter shall be audited rather than reviewed;
 - (4) Disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable;
 - (5) Disclose the total amount of money received by the applicant pursuant to plans during the preceding twelve months from or on behalf of individuals who reside in this state and the total amount of money distributed to creditors of those individuals during that period;
 - (6) If the applicant does not hold money on behalf of any debtor, disclose for business done with debtors in the state of Colorado during the preceding twelve months, the number of debtors with whom the applicant has had agreements, the number of fully settled debt agreements with creditors that applicant concluded for debtors, and an estimate of the total amount of debt under contract between applicant and debtors; and
 - (7) Provide any other information that the administrator reasonably requires to perform the administrator's duties under this section.
- (c) Except for the information required by section 5-19-206 (7), (9), (12), (13), and (15) and the addresses required by section 5-19-206 (4), the administrator shall make the information in an application for renewal of registration as a provider available to the public.
- (d) If a registered provider files a timely and complete application for renewal of registration, the registration remains effective until the administrator, in a record, notifies the applicant of a denial and states the reasons for the denial.
- (e) If the administrator denies an application for renewal of registration as a provider, the applicant, within thirty days after receiving notice of the denial, may appeal and request a hearing pursuant to article 4 of title 24. Subject to section 5-19-234, while the appeal is pending, the applicant shall continue to provide debt-management services to individuals with whom it has agreements. If the denial is affirmed, subject to the administrator's order and section 5-19-234, the applicant shall continue to provide debt-management services to individuals with whom it has agreements until, with the approval of the administrator, it transfers the agreements to another registered provider or returns to the individuals all unexpended money that is under the applicant's control.
- (f) If a registered provider fails to file by July 1 a complete application for renewal of registration and the required renewal fee, the registration shall automatically expire on that date.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1145, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-211 as it existed prior to 2017.

5-19-212. Registration in another state. If a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, the provider may

submit a copy of that license or certificate and the application for it instead of an application in the form prescribed by section 5-19-205 (a), 5-19-206, or 5-19-211 (b). The administrator shall accept the application and the license or certificate from the other state as an application for registration as a provider or for renewal of registration as a provider, as appropriate, in this state if:

- (1) The application in the other state contains information substantially similar to, or more comprehensive than, that required in an application submitted in this state;
- (2) The applicant provides the information required by section 5-19-206 (1), (3), (8), (10), and (11);
- (3) The applicant, under penalty of false statement, certifies that the information contained in the application is current or, to the extent it is not current, supplements the application to make the information current; and
- (4) The application is accompanied by the items required in section 5-19-205 (b).

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1146, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-212 as it existed prior to 2017.

5-19-213. Bond required. (a) Except as otherwise provided in section 5-19-214, a provider that is required to be registered under this part 2 shall file a surety bond with the administrator, which shall:

- (1) Be in effect during the period of registration and for two years after the provider ceases providing debt-management services to individuals in this state; and
- (2) Run to this state for the benefit of this state and of individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear.

(b) A surety bond filed pursuant to subsection (a) of this section shall:

- (1) Be in the amount of fifty thousand dollars or other larger or smaller amount that the administrator determines is warranted by the financial condition and business experience of the provider, the history of the provider in performing debt-management services, the risk to individuals, and any other factor the administrator considers appropriate;
- (2) Be issued by a bonding, surety, or insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization; and
- (3) Have payment conditioned upon noncompliance of the provider or its agent with this part 2.

(c) If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider and the surety shall notify the administrator immediately and, within thirty days after notice by the administrator, the provider shall file a new or additional surety bond in an amount set by the administrator. The amount of the new or additional bond shall be at least the amount of the bond immediately before payment of the claim or judgment. If for any reason a surety terminates a bond, the surety shall provide written notice of the termination to the administrator immediately, and the provider shall immediately file a new surety bond in the

amount of fifty thousand dollars or other amount determined pursuant to subsection (b) of this section.

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

(1) The administrator assesses expenses under section 5-19-232 (b)(1), issues a final order under section 5-19-233 (a)(2), or recovers a final judgment under section 5-19-233 (a)(4), (a)(5), or (d); or

(2) An individual recovers a final judgment pursuant to section 5-19-235 (a), (b), (c)(1), (c)(2), or (c)(4).

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

(1) To satisfaction of a final order or judgment under section 5-19-233 (a)(2), (a)(4), (a)(5), or (d);

(2) To final judgments recovered by individuals pursuant to section 5-19-235 (a), (b), (c)(1), (c)(2), or (c)(4), pro rata;

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

(4) If a final order or judgment is issued under section 5-19-233 (a), to the expenses charged pursuant to section 5-19-232 (b)(1).

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1147, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-213 as it existed prior to 2017.

5-19-214. Bond required - substitute. (a) Instead of the surety bond required by section 5-19-213, a provider may deliver to the administrator, in the amount required by section 5-19-213 (b), and, except as otherwise provided in subsection (a)(1) of this section, payable or available to this state and to individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear, if the provider or its agent does not comply with this part 2:

(1) With the approval of the administrator, an irrevocable letter of credit, issued or confirmed by a bank approved by the administrator, payable upon presentation of a certificate by the administrator stating that the provider or its agent has not complied with this part 2.

(b) If a provider furnishes a substitute pursuant to subsection (a) of this section, the provisions of section 5-19-213 (a), (c), (d), and (e) apply to the substitute.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1148, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-214 as it existed prior to 2017.

5-19-215. Good faith requirement. A provider shall act in good faith in all matters under this part 2.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1149, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-215 as it existed prior to 2017.

5-19-216. Customer service. A provider required to be registered under this part 2 shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a counselor, debt specialist, or customer-service representative, as appropriate, during ordinary business hours.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1149, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-216 as it existed prior to 2017.

5-19-217. Prerequisites for providing debt-management services. (a) Before providing or contracting to provide debt-management services, a registered provider shall give the individual an itemized list of goods and services and the charges for each. The list shall be clear and conspicuous, be in a record the individual may keep whether or not the individual assents to an agreement, and describe the goods and services the provider offers:

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

Set-up fee	<i>dollar amount of fee</i>
Monthly service fee	<i>dollar amount of fee or method of determining amount</i>
Settlement fee	<i>dollar amount of fee or method of determining amount</i>
Goods and services in addition to those provided in connection with a plan:	

(item) dollar amount or method of determining amount

(item) dollar amount or method of determining amount.

(b) A provider may not furnish or contract to furnish debt-management services unless the provider, through the services of a counselor or debt specialist:

- (1) Provides the individual with reasonable education about the management of personal finance;
- (2) Has prepared a financial analysis; and
- (3) If the individual is to make regular, periodic payments:

- (A) Has prepared a plan for the individual;
- (B) Has made a determination, based on the provider's analysis of the information provided by the individual and otherwise available to it, that the plan is suitable for the individual and the individual will be able to meet the payment obligations under the plan; and
- (C) Believes that each creditor of the individual listed as a participating creditor in the plan will accept payment of the individual's debts as provided in the plan.
 - (c) Before an individual assents to an agreement to engage in a plan, a provider shall:
 - (1) Provide the individual with a copy of the analysis and plan required by subsection (b) of this section in a record that identifies the provider and that the individual may keep whether or not the individual assents to the agreement;
 - (2) Inform the individual of the availability, at the individual's option, of assistance by a toll-free communication system or in person to discuss the financial analysis and plan required by subsection (b) of this section; and
 - (3) With respect to all creditors identified by the individual or otherwise known by the provider to be creditors of the individual, provide the individual with a list of:
 - (A) Creditors that the provider expects to participate in the plan and grant concessions;
 - (B) Creditors that the provider expects to participate in the plan but not grant concessions;
 - (C) Creditors that the provider expects not to participate in the plan; and
 - (D) All other creditors.
 - (d) Before an individual assents to an agreement to engage in a plan, the provider shall inform the individual, in a record that contains nothing else, that is given separately, and that the individual may keep whether or not the individual assents to the agreement:
 - (1) Of the name and business address of the provider;
 - (2) That plans are not suitable for all individuals and the individual may ask the provider about other ways, including bankruptcy, to deal with indebtedness;
 - (3) That establishment of a plan may adversely affect the individual's credit rating or credit scores;
 - (4) That nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;
 - (5) Unless it is not true, that the provider may receive compensation from the creditors of the individual; and
 - (6) That, unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the individual, even though the individual does not receive any money.
 - (e) If a provider may receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

- (2) Using a debt-management plan may hurt your credit rating or credit scores.
- (3) We may receive compensation for our services from your creditors.

Name and business address of provider

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

IMPORTANT INFORMATION FOR YOU TO CONSIDER

- (1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.
- (2) Using a debt-management plan may hurt your credit rating or credit scores.

Name and business address of provider

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

IMPORTANT INFORMATION FOR YOU TO CONSIDER

- (1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.
 - (2) Nonpayment of your debts under our program may:
 - Hurt your credit rating or credit scores;
 - Lead your creditors to increase finance and other charges; and
 - Lead your creditors to undertake activity, including lawsuits, to collect the debts.
 - (3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

Name and business address of provider

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1149, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-217 as it existed prior to 2017.

5-19-218. Communication by electronic or other means - definitions. (a) As used in this section, unless the context otherwise requires:

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

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

(b) A provider may satisfy the requirements of section 5-19-217, 5-19-219, or 5-19-227 by means of the internet or other electronic means if the provider obtains a consumer's consent in the manner provided by section 101 (c) (1) of the federal act.

(c) The disclosures and materials required by sections 5-19-217, 5-19-219, and 5-19-227 shall be presented in a form that is capable of being accurately reproduced for later reference.

(d) With respect to disclosure by means of an internet website, the disclosure of the information required by section 5-19-217 (d) shall appear on one or more screens that:

(1) Contain no other information; and

(2) The individual must see before proceeding to assent to formation of a plan.

(e) At the time of providing the materials and agreement required by sections 5-19-217 (c) and (d), 5-19-219, and 5-19-227, a provider shall inform the individual that upon electronic, telephonic, or written request, it will send the individual a written copy of the materials, and shall comply with a request as provided in subsection (f) of this section.

(f) If a provider is requested, before the expiration of ninety days after a plan is completed or terminated, to send a written copy of the materials required by section 5-19-217 (c) and (d), 5-19-219, or 5-19-227, the provider shall send them at no charge within three business days after the request, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than ninety days after a plan is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

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

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

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

(3) The names of its principal officers.

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

(i) If a provider wishes to terminate an agreement with a consumer pursuant to subsection (h) of this section, it shall notify the consumer that it will terminate the agreement unless the consumer, within thirty days after receiving the notification, consents to electronic communication in the manner provided in section 101 (c) of the federal act. If the consumer consents, the provider may terminate the agreement only as permitted by section 5-19-219 (a)(6)(H).

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1152, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-218 as it existed prior to 2017.

5-19-219. Form and contents of agreement. (a) An agreement shall:

(1) Be in a record;

(2) Be dated and signed by the provider and the individual;

(3) Include the name of the individual and the address where the individual resides;

(4) Include the name, business address, and telephone number of the provider;

- (5) Be delivered to the individual immediately upon formation of the agreement; and
- (6) Disclose:
 - (A) The services to be provided;
 - (B) In a clear and conspicuous manner, the amount, percentage, or method of determining the amount, of all fees, individually itemized, to be paid by the individual, using only the terminology contained in section 5-19-223;
 - (C) The schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due, an estimate of the date of the final payment, and an estimate of the total of all payments to be made under the plan;
 - (D) In a clear and conspicuous manner, the following information:
 - (i) The amount of time necessary to achieve the represented results;
 - (ii) If the plan includes a settlement offer to any of the individual's creditors or debt collectors, the time by which the provider will make a bona fide settlement offer to each of them and the amount of money or the percentage of each outstanding debt that the individual must accumulate before the provider will make a bona fide settlement offer to each of them; and
 - (iii) If the provider requests or requires the individual to place funds in an account at an insured financial institution, that the individual owns the funds held in the account, the individual may withdraw from the plan at any time without penalty, and, if the individual withdraws, the individual must receive all funds in the account, other than funds earned by the provider in compliance with section 5-19-222 (h);
 - (E) If a plan provides for regular periodic payments to creditors:
 - (i) Each creditor of the individual to which payment will be made, the amount owed to each creditor, and any concessions the provider reasonably believes each creditor will offer; and
 - (ii) The schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;
 - (F) If the provider holds money on behalf of the individual, each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;
 - (G) How the provider will comply with its obligations under section 5-19-227 (a);
 - (H) If the provider holds money on behalf of the individual, that the provider may terminate the agreement for good cause, upon return of unexpended money of the individual;
 - (I) That the individual may cancel the agreement as provided in section 5-19-220;
 - (J) That the individual may contact the administrator with any questions or complaints regarding the provider; and
 - (K) The address, telephone number, and internet address or website of the administrator.
 - (b) For purposes of subsection (a)(5) of this section, delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save, and print it, and the individual is notified that it is available.
 - (c) If the administrator supplies the provider with any information required under subsection (a)(6)(K) of this section, the provider may comply with that requirement only by disclosing the information supplied by the administrator.
 - (d) An agreement shall provide that:
 - (1) The individual has a right to terminate the agreement at any time, without penalty or

obligation, by giving the provider written or electronic notice, in which event:

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

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

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

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

(A) The identity of the creditor; and

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

(e) An agreement may not:

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

(2) Except as permitted by the uniform arbitration act, part 2 of article 22 of title 13, contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this part 2;

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

(4) Contain a provision that:

(A) Limits or releases the liability of any person for not performing the agreement or for violating this part 2; or

(B) Indemnifies any person for liability arising under the agreement or this part 2.

(f) All rights and obligations specified in subsection (d) of this section and section 5-19-220 exist even if not provided in the agreement. A provision in an agreement that violates subsection (d), (e), or (f) of this section is void.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1153, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-219 as it existed prior to 2017.

5-19-220. Cancellation of agreement - waiver. (a) An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with subsection (b) of this section or section 5-19-219 or 5-19-228, in which event the individual may cancel the agreement within thirty days after the individual assents to it. To exercise the right to cancel, the individual shall give notice in a record to the provider. Notice by mail is given when mailed.

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

Notice of Right to Cancel

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

To cancel this agreement during this period, send an e-mail to (E-mail address of provider) or mail or deliver a signed, dated copy of this notice, or any other written notice to (Name of provider) at (Address of provider) before midnight on (Date).

If you cancel this agreement within the 3-day period, we will refund all money you already have paid us.

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

I cancel this agreement,

Print your name

Signature

Date

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

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1156, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-220 as it existed prior to 2017.

5-19-221. Required language. Unless the administrator, by rule, provides otherwise, the disclosures and documents required by this part 2 shall be in English. If a provider communicates with an individual primarily in a language other than English, the provider shall furnish a translation into the other language of the disclosures and documents required by this part 2.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1157, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-221 as it existed prior to 2017.

5-19-222. Trust account. (a) All money paid to a provider by or on behalf of an individual pursuant to a plan for distribution to creditors is held in trust. Within two business

days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

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

(c) A provider shall:

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

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

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

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

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

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

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

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

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

(h) If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual that has not been paid to creditors, less fees that are payable to the provider under section 5-19-223.

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

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1157, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-222 as it existed prior to 2017.

5-19-223. Fees and other charges. (a) A provider may not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt-management services except as permitted by this section.

(b) A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with sections 5-19-219 and 5-19-228.

(c) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or counseling services, or the like, except as otherwise provided in this subsection (c) and section 5-19-228 (d). The administrator may authorize a provider to charge a fee based on the nature and extent of the educational or counseling services furnished by the provider.

(d) The following rules apply:

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

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

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

(2) If an individual assents to a plan that contemplates that creditors or debt collectors will settle debts for less than the principal amount of the debt:

(A) A provider may not request or receive payment of any fee or consideration until and unless:

(i) The provider has settled the terms of at least one debt pursuant to a settlement agreement or other valid contractual agreement executed by the individual;

(ii) The individual has made at least one payment pursuant to that settlement agreement or other valid contractual agreement between the individual and the creditor or debt collector; and

(iii) The fee or consideration either: Bears the same proportional relationship to the total fee for settling the terms of the entire debt balance as the individual debt amount bears to the entire debt amount, in which case the individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or is a percentage of the amount saved as a result of the settlement. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the plan and the amount actually paid to satisfy the debt.

(B) Notwithstanding subsection (d)(2)(A) of this section, no individual who completes all of his or her obligations under the agreement may be charged fees such that those fees, when added to the aggregate of offers of settlement obtained by the provider for the debtor, exceeds the principal amount of the debt.

(3) A provider may not impose or receive fees under both subsection (d)(1) and (d)(2) of this section.

(4) Except as otherwise provided in section 5-19-228 (d), if an individual does not assent to an agreement, a provider may receive for educational and counseling services it provides to the individual a fee not exceeding one hundred dollars or, with the approval of the administrator, a larger fee. The administrator may approve a fee larger than one hundred dollars if the nature and extent of the educational and counseling services warrant the larger fee.

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

(f) If a payment to a provider by an individual under this part 2 is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of twenty-five dollars and the amount permitted by law other than this part 2.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1158, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-223 as it existed prior to 2017.

5-19-224. Voluntary contributions. A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until thirty days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under section 5-19-223.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1160, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-224 as it existed prior to 2017.

5-19-225. Voidable agreements. (a) If a provider imposes a fee or other charge or receives money or other payments not authorized by section 5-19-223 or 5-19-224, the individual may void the agreement and recover as provided in section 5-19-235.

(b) If a provider is not registered as required by this part 2 when an individual assents to an agreement, the agreement is voidable by the individual.

(c) If an individual voids an agreement under subsection (b) of this section, the provider does not have a claim against the individual for breach of contract or for restitution.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1160, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-225 as it existed prior to 2017.

5-19-226. Termination of agreements. (a) If an individual who has entered into an agreement fails for sixty days to make payments required by the agreement, a provider may terminate the agreement.

(b) If a provider or an individual terminates an agreement, the provider shall immediately return to the individual any money of the individual held in trust for the benefit of the individual.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1160, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-226 as it existed prior to 2017.

5-19-227. Periodic reports - retention of records. (a) A provider shall provide the accounting required by subsection (b) of this section:

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

(2) Before cancellation or termination of any agreement:

(A) At least once each month; and

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

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

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

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

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

(4) The amount held in reserve; and

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

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

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

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

(D) The calculation of a settlement fee.

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

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1161, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-227 as it existed prior to 2017.

5-19-228. Prohibited acts and practices. (a) A provider may not, directly or indirectly:

- (1) Misappropriate or misapply money held in trust;
- (2) Settle a debt on behalf of an individual without the individual's agreement to the settlement terms pursuant to a settlement agreement or other valid contractual agreement executed by the individual;
- (3) Exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;
- (4) Initiate a transfer from an individual's account at a bank or with another person unless the transfer is:
 - (A) A return of money to the individual; or
 - (B) Before termination of an agreement, properly authorized by the agreement and this part 2, and for:
 - (i) Payment to one or more creditors pursuant to a plan; or
 - (ii) Payment of a fee;
- (5) Offer a gift or bonus, premium, reward, or other compensation to an individual for executing an agreement;
- (6) Offer, pay, or give a gift or bonus, premium, reward, or other compensation to a person for referring a prospective customer, except for a sales lead, if the person making the referral has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral;
- (7) Receive a bonus, commission, or other benefit for referring an individual to a person;
- (8) Structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;
- (9) Compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;
- (10) Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt;
- (11) Make a representation that:
 - (A) The provider will furnish money to pay bills or prevent attachments;
 - (B) Payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or
 - (C) Participation in a plan will or may prevent litigation, collection activity, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;
- (12) Misrepresent that it is authorized or competent to furnish legal advice or perform legal services;
- (13) Represent that it is a not-for-profit entity unless it is organized and properly operating as a not-for-profit under the law of the state in which it was formed or that it is a tax-exempt entity unless it has received certification of tax-exempt status from the federal internal revenue service; except that, if the provider represents that it is a not-for-profit entity and the provider does not have tax-exempt status under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, the provider shall state, in a clear and conspicuous manner

and in close proximity to the representation: "We are not an educational, charitable, or religious organization granted tax-exempt status by the Internal Revenue Service."

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

(15) Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information; or

(16) Advise, encourage, or suggest to the individual not to make a payment to creditors under the plan.

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

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

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

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

(B) A post-dated check or demand draft;

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

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

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

(A) The administrator, upon proper demand;

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

(C) The extent necessary to administer the plan;

(6) Except as otherwise provided in section 5-19-223 (d)(2), provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

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

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

(c) This part 2 does not authorize any person to engage in the practice of law.

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

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

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

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

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1161, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-228 as it existed prior to 2017.

5-19-229. Notice of litigation. No later than thirty days after a provider has been served with notice of a civil action for violation of this part 2 by or on behalf of an individual who resides in this state at either the time of an agreement or the time the notice is served, the provider shall notify the administrator in a record that it has been sued.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1164, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-229 as it existed prior to 2017.

5-19-230. Advertising. A provider that advertises debt-management services shall disclose, in an easily comprehensible manner, the information specified in section 5-19-217 (d)(3) and (d)(4).

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1164, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-230 as it existed prior to 2017.

5-19-231. Liability for the conduct of other persons. If a provider delegates any of its duties or obligations under an agreement or this part 2 to another person, including an independent contractor, the provider is liable for conduct of the person that, if done by the provider, would violate the agreement or this part 2.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1164, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-231 as it existed prior to 2017.

5-19-232. Powers of administrator - rules. (a) The administrator may act on its own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this part 2, and seek or provide remedies as provided in this part 2.

(b) The administrator may investigate and examine, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts, and records of a person that provides or offers to provide debt-management services, or a person to which a provider has delegated its obligations under an agreement or this part 2, to determine compliance with this part 2. Information that identifies individuals who have agreements with the provider shall not be

disclosed to the public. In connection with the investigation, the administrator may:

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

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

(3) Seek a court order authorizing seizure from a bank at which the person maintains a trust account required by section 5-19-222, any or all money, books, records, accounts, and other property of the provider that is in the control of the bank and relates to individuals who reside in this state.

(c) The administrator may adopt rules to implement the provisions of this part 2 in accordance with section 24-4-103.

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

(e) The administrator, by rule, shall establish reasonable fees to be paid by providers for the expense of administering this part 2. The fees may vary by the type of debt-management service provided.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1165, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-232 as it existed prior to 2017.

5-19-233. Administrative and legal remedies. (a) The administrator may enforce this part 2 and rules adopted under this part 2 by taking one or more of the following actions:

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

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

(3) Imposing on a provider or a person that has caused a violation a civil penalty not exceeding ten thousand dollars for each violation;

(4) Prosecuting a civil action to:

(A) Enforce an order; or

(B) Obtain restitution, a civil penalty not to exceed ten thousand dollars per violation, an injunction, or other equitable relief;

(5) Intervening in an action brought under section 5-19-235.

(b) If a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under subsection (a)(1) or (a)(2) of this section, the administrator or court may impose a civil penalty not exceeding twenty thousand dollars for each violation.

(c) The administrator may maintain an action to enforce this part 2 in any county.

(d) The administrator may recover the reasonable costs of enforcing this part 2 under subsections (a) to (c) of this section, including attorney fees based on the hours reasonably

expended and the hourly rates for attorneys of comparable experience in the community.

(e) In determining the amount of a civil penalty to impose under subsection (a) or (b) of this section, the administrator or the court shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the administrator or the court considers relevant to the determination of the civil penalty.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1165, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-233 as it existed prior to 2017.

5-19-234. Suspension, revocation, or nonrenewal of registration - definitions. (a) In this section, "insolvent" means:

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

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

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

(b) In addition to the remedies otherwise available under this part 2, the administrator may suspend, revoke, or deny renewal of a provider's registration if:

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

(2) The provider has committed a material violation of this part 2 or a rule or order of the administrator under this part 2;

(3) The provider is insolvent;

(4) The provider or an employee or affiliate of the provider has refused to permit the administrator to make an examination authorized by this part 2, failed to comply with section 5-19-232 (b)(2) within fifteen days after request, or made a material misrepresentation or omission in complying with section 5-19-232 (b)(2); or

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

(c) If a provider does not comply with section 5-19-222 (f) or if the administrator otherwise finds that the public health, safety, or general welfare requires emergency action, the administrator may order a summary suspension of the provider's registration, effective on the date specified in the order.

(d) If the administrator suspends, revokes, or denies renewal of the registration of a provider, the administrator may seek a court order authorizing seizure of any or all of the money in a trust account required by section 5-19-222, books, records, accounts, and other property of the provider that are located in this state.

(e) If the administrator suspends or revokes a provider's registration, the provider may appeal and request a hearing pursuant to section 24-4-105.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1166, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-234 as it existed prior to 2017.

5-19-235. Private enforcement. (a) If an individual voids an agreement pursuant to section 5-19-225 (b), the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to the recovery under subsections (c)(3) and (c)(4) of this section.

(b) If an individual voids an agreement pursuant to section 5-19-225 (a), the individual may recover in a civil action three times the total amount of the fees, charges, money, and payments made by the individual to the provider, in addition to the recovery under subsection (c)(4) of this section.

(c) Subject to subsection (d) of this section, an individual with respect to whom a provider violates this part 2 may recover in a civil action from the provider and any person that caused the violation:

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

(2) Except as otherwise provided in subsection (d) of this section, with respect to a violation of section 5-19-217, 5-19-219 to 5-19-224, 5-19-227, or 5-19-228 (a), (b), or (d), the greater of the amount recoverable under subsection (c)(1) of this section or five thousand dollars;

(3) Punitive damages; and

(4) Reasonable attorney fees and costs.

(d) In a class action, except for a violation of section 5-19-228 (a)(4), the minimum damages provided in subsection (c)(2) of this section do not apply.

(e) In addition to the remedy available under subsection (c) of this section, if a provider violates an individual's rights under section 5-19-220, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except for amounts paid to creditors.

(f) A provider is not liable under this section for a violation of this part 2 if the provider proves that the violation was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this part 2 is not a good-faith error. If, in connection with a violation, the provider has received more money than authorized by an agreement or this part 2, the defense provided by this subsection (f) is not available unless the provider refunds the excess within two business days after learning of the violation.

(g) The administrator shall assist an individual in enforcing a judgment against the surety bond or other security provided under section 5-19-213 or 5-19-214.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1167, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-235 as it existed prior to 2017.

5-19-236. Violation of unfair or deceptive practices statute. If an act or practice of a provider violates both this part 2 and section 6-1-105, an individual may not recover under both for the same act or practice.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1168, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-236 as it existed prior to 2017.

5-19-237. Statute of limitations. (a) An action or proceeding brought pursuant to section 5-19-233 (a), (b), or (c) shall be commenced within four years after the conduct that is the basis of the administrator's complaint.

(b) An action brought pursuant to section 5-19-235 shall be commenced within two years after the latest of:

- (1) The individual's last transmission of money to a provider;
- (2) The individual's last transmission of money to a creditor at the direction of the provider;
- (3) The provider's last disbursement to a creditor of the individual;
- (4) The provider's last accounting to the individual pursuant to section 5-19-227 (a);
- (5) The date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim; or
- (6) Termination of actions or proceedings by the administrator with respect to a violation of this part 2.

(c) The period prescribed in subsection (b)(5) of this section is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this part 2 to be disclosed to the individual, if the information so misrepresented is material to the establishment of the liability of the defendant under this part 2.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1168, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-237 as it existed prior to 2017.

5-19-238. Uniformity of application and construction. In applying and construing this part 2, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1169, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-238 as it existed prior to 2017.

5-19-239. Relation to federal "Electronic Signatures in Global and National Commerce Act". This part 2 modifies, limits, and supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1169, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-239 as it existed prior to 2017.

5-19-240. Transitional provisions - application to existing transactions. Transactions entered into before January 1, 2008, and the rights, duties, and interests resulting from them may be completed, terminated, or enforced as required or permitted by a law amended, repealed, or modified by this part 2 as though the amendment, repeal, or modification had not occurred.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1169, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-240 as it existed prior to 2017.

5-19-241. Severability. If any provision of this part 2 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part 2 that can be given effect without the invalid provision or application, and to this end the provisions of this part 2 are severable.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1169, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-241 as it existed prior to 2017.

5-19-242. Repeal of part. This part 2 is repealed, effective September 1, 2024. Prior to repeal, the department of regulatory agencies shall review the functions of the administrator pursuant to this part 2 and the registration of providers as provided for in section 24-34-104.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1169, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-242 as it existed prior to 2017.