

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 11-0661.01 Kate Meyer

HOUSE BILL 11-1206

HOUSE SPONSORSHIP

Gardner B.,

SENATE SPONSORSHIP

Bacon,

House Committees
Economic and Business Development

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE "UNIFORM DEBT-MANAGEMENT SERVICES ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill amends the "Uniform Debt-Management Services Act" (UDMSA), which regulates agreements for debt-management services (services) between individuals and debt-management services providers (providers).

The bill conforms the UDMSA to relevant debt relief service rules, promulgated by the federal trade commission (FTC), that took effect in 2010. This includes:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

- ! Prohibiting advance fees for debt-management services and making a conforming amendment to remove the statutory fee cap (which permitted advance fees);
- ! Withdrawing the ability of a provider to settle a debt with a power of attorney;
- ! Requiring an individual's signed authorization for each settlement;
- ! Harmonizing with FTC rules the UDMSA provisions regarding consumer disclosures, except where state law already included those disclosures or provided greater consumer protection; and
- ! Conforming trust account requirements to comply with FTC rules.

The bill continues to allow minimal advance fees of up to \$50 per month for credit counseling (a program that reduces finance charges, late fees, and default fees, compared to debt settlement, where the principal amount of the debt is reduced).

Currently, the UDMSA administrator is directed to adopt by rule dollar amounts that differ from those contained in the UDMSA in order to account for inflation. The bill repeals this provision and recurring references to the inflation adjustment.

The bill retains and narrows the current exemption from certain UDMSA provisions for licensed attorneys and certified public accountants (CPAs). Specifically, the bill exempts a licensed attorney or CPA, and an employee of such attorney or CPA, from the requirement to register as a provider, but applies the remainder of the UDMSA to such persons. A person providing services on behalf of, but not employed by, an attorney or CPA is ineligible for the registration exemption.

The bill repeals provisions that, in practice, do not provide consumer protection, including:

- ! Requiring a provider to be insured against the risks of misconduct, leaving intact the existing UDMSA requirement that a provider post a surety bond; and
- ! Mandating certification of provider employees.

The bill also allows the administrator of the UDMSA to recover in a lawsuit the penalties now available through administrative action.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 12-14.5-202 (2) (B) (iv), (6), (7), (10), and (21),
3 Colorado Revised Statutes, are amended, and the said 12-14.5-202 is
4 further amended BY THE ADDITION OF A NEW SUBSECTION, to

1 read:

2 **12-14.5-202. Definitions.** As used in this part 2, unless the
3 context otherwise requires:

4 (2) "Affiliate":

5 (B) With respect to an entity, means:

6 (iv) ~~Subject to adjustment of the dollar amount pursuant to section~~
7 ~~12-14.5-232(f)~~, A person that receives or received more than twenty-five
8 thousand dollars from the entity in either the current year or the preceding
9 year or a person that owns more than ten percent of, or an individual who
10 is employed by or is a director of, a person that receives or received more
11 than twenty-five thousand dollars from the entity in either the current year
12 or the preceding year;

13 (6) ~~"Certified counselor" means an individual certified by a~~
14 ~~training program or certifying organization, approved by the~~
15 ~~administrator, that authenticates the competence of individuals providing~~
16 ~~education and assistance to other individuals in connection with~~
17 ~~debt-management services.~~

18 (7) ~~"Certified debt specialist" means an individual certified by a~~
19 ~~training program or certifying organization, approved by the~~
20 ~~administrator, that authenticates the competence of individuals providing~~
21 ~~education and assistance to debtors as part of the initial enrollment for~~
22 ~~debt-management services offered by a person that does not hold money~~
23 ~~for individuals with whom agreements are made.~~

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

27 (A) (i) Legal services provided in an attorney-client relationship

1 by an attorney licensed ~~or otherwise authorized~~ to practice law in this
2 state, WHO HAS ENTERED INTO A WRITTEN CONTRACT FOR LEGAL SERVICES
3 WITH AN INDIVIDUAL IN WHICH ALL OF THE LEGAL AND
4 DEBT-MANAGEMENT SERVICES ARE BEING PERFORMED BY THE ATTORNEY
5 AND PERSONS DIRECTLY EMPLOYED AND SUPERVISED BY THE ATTORNEY;
6 OR

7 ~~(B)~~ (ii) Accounting services provided in an accountant-client
8 relationship by a certified public accountant ~~licensed~~ CERTIFIED OR
9 AUTHORIZED BY THE STATE BOARD OF ACCOUNTANCY to provide
10 accounting services in this state ~~or~~ WHO HAS ENTERED INTO A CONTRACT
11 FOR ACCOUNTING SERVICES WITH AN INDIVIDUAL IN WHICH ALL OF THE
12 ACCOUNTING AND DEBT-MANAGEMENT SERVICES ARE BEING PERFORMED
13 BY THE CERTIFIED PUBLIC ACCOUNTANT AND PERSONS DIRECTLY
14 EMPLOYED AND SUPERVISED BY THE CERTIFIED PUBLIC ACCOUNTANT.

15 ~~(C)~~ ~~Financial-planning services provided in a financial~~
16 ~~planner-client relationship by a member of a financial-planning~~
17 ~~profession whose members the administrator, by rule, determines are:~~

- 18 ~~(i) Licensed by this state;~~
- 19 ~~(ii) Subject to a disciplinary mechanism;~~
- 20 ~~(iii) Subject to a code of professional responsibility; and~~
- 21 ~~(iv) Subject to a continuing-education requirement.~~

22 (B) THE EXEMPTIONS IN SUBPARAGRAPH (A) OF THIS PARAGRAPH
23 (10) DO NOT APPLY TO ANY PERSON WHO DIRECTLY OR INDIRECTLY
24 PROVIDES ANY DEBT MANAGEMENT SERVICES TO A LICENSED ATTORNEY
25 OR CERTIFIED PUBLIC ACCOUNTANT IF THAT PERSON IS NOT AN EMPLOYEE
26 OF THE LICENSED ATTORNEY OR CERTIFIED PUBLIC ACCOUNTANT.

27 (12.5) "INDIVIDUAL" MEANS A NATURAL PERSON.

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

3 ~~(A)~~ (i) Established in an insured bank;

4 ~~(B)~~ (ii) Separate from other accounts of the provider or its
5 designee;

6 ~~(C)~~ (iii) Designated as a trust account or other account designated
7 to indicate that the money in the account is not the money of the provider;
8 ~~or its designee;~~ AND

9 ~~(D)~~ (iv) Used to hold money of one or more individuals for
10 disbursement to creditors of the individuals. ~~and~~

11 ~~(E) Not an account held by a person other than a provider or an~~
12 ~~affiliate.~~

13 (B) FOR A PLAN UNDER WHICH CREDITORS WILL SETTLE DEBTS FOR
14 LESS THAN THE PRINCIPAL AMOUNT OF THE DEBT, NOTHING IN THIS ACT
15 PROHIBITS A PROVIDER FROM REQUESTING OR REQUIRING AN INDIVIDUAL
16 TO PLACE FUNDS IN AN ACCOUNT, SEPARATE FROM THE INDIVIDUAL'S
17 THEN-EXISTING BANK ACCOUNT, TO BE USED FOR THE PROVIDER'S FEES
18 AND FOR PAYMENTS TO CREDITORS OR DEBT COLLECTORS IN CONNECTION
19 WITH THE DEBT MANAGEMENT SERVICES, IF:

20 (i) THE FUNDS ARE HELD IN AN ACCOUNT AT AN INSURED
21 FINANCIAL INSTITUTION;

22 (ii) THE INDIVIDUAL OWNS THE FUNDS HELD IN THE ACCOUNT AND
23 IS PAID ACCRUED INTEREST ON THE ACCOUNT, IF ANY;

24 (iii) THE ENTITY ADMINISTERING THE ACCOUNT IS NOT OWNED,
25 CONTROLLED BY, OR IN ANY WAY AFFILIATED WITH THE PROVIDER;

26 (iv) THE ENTITY ADMINISTERING THE ACCOUNT DOES NOT GIVE OR
27 ACCEPT ANY MONEY OR OTHER COMPENSATION IN EXCHANGE FOR

1 REFERRALS OF BUSINESS INVOLVING THE DEBT MANAGEMENT PROVIDER
2 OR PLAN; AND

3 (v) THE INDIVIDUAL MAY WITHDRAW FROM THE DEBT
4 MANAGEMENT PLAN AT ANY TIME WITHOUT PENALTY, AND IMMEDIATELY
5 RECEIVES ALL FUNDS IN THE ACCOUNT, OTHER THAN FEES EARNED IN
6 COMPLIANCE WITH SECTION 12-14.5-223, AS REQUIRED BY SECTION
7 12-14.5-226.

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9

10 **SECTION 2.** The introductory portion to 12-14.5-205 (b) and
11 12-14.5-205 (b) (4), Colorado Revised Statutes, are amended to read:

12 **12-14.5-205. Application for registration - form, fee, and**
13 **accompanying documents.** (b) ~~Subject to adjustment of dollar amounts~~
14 ~~pursuant to section 12-14.5-232 (f);~~ An application for registration as a
15 provider shall be accompanied by:

16 (4) ~~Evidence of insurance in the amount of one million dollars:~~

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

20 (B) ~~Issued by an insurance company authorized to do business in~~
21 ~~this state and rated at least A by a nationally recognized rating~~
22 ~~organization;~~

23 (C) ~~With a maximum deductible of five thousand dollars;~~

24 (D) ~~Insuring the applicant for claims made by individuals in this~~
25 ~~or any other state, who have agreements with the applicant, and this state,~~
26 ~~as their interests may appear.~~

27 **SECTION 3. Repeal.** 12-14.5-206 (8) and (9), Colorado Revised

1 Statutes, are repealed as follows:

2 **12-14.5-206. Application for registration - required**
3 **information.** An application for registration shall be signed under
4 penalty of false statement and include:

5 ~~(8) Evidence of accreditation by an independent accrediting~~
6 ~~organization approved by the administrator;~~

7 ~~(9) Evidence that, within twelve months after initial employment,~~
8 ~~each of the applicant's counselors or debt specialists becomes certified as~~
9 ~~a certified counselor or certified debt specialist;~~

10 **SECTION 4.** 12-14.5-207, Colorado Revised Statutes, is
11 amended to read:

12 **12-14.5-207. Application for registration - obligation to update**
13 **information.** An applicant or registered provider shall notify the
14 administrator within fifteen days after a change in the information
15 specified in section 12-14.5-205 ~~(b) (4)~~ or (b) (6) or section 12-14.5-206
16 (1), (3), (6), (12), or (13).

17 **SECTION 5.** The introductory portion to 12-14.5-209 (d),
18 Colorado Revised Statutes, is amended to read:

19 **12-14.5-209. Certificate of registration - issuance or denial.**
20 ~~(d) Subject to adjustment of the dollar amount pursuant to section~~
21 ~~12-14.5-232 (f);~~ A board of directors is not independent for purposes of
22 subsection (c) of this section if more than one-fourth of its members:

23 **SECTION 6. Repeal.** 12-14.5-210 (c), Colorado Revised
24 Statutes, is repealed as follows:

25 **12-14.5-210. Certificate of registration - timing.** ~~(c) Until such~~
26 ~~time as an initial application is approved or denied, the applicant may~~
27 ~~continue to provide debt-management services, but a denial terminates~~

1 any further power to provide debt-management services unless approved
2 by the administrator.

3 **SECTION 7.** 12-14.5-211 (b), (c) (1), (c) (3), and (c) (5),
4 Colorado Revised Statutes, are amended to read:

5 **12-14.5-211. Renewal of registration.** (b) ~~The administrator~~
6 ~~shall mail an application for renewal to each provider at least sixty days~~
7 ~~prior to the expiration date of a registration.~~

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

11 (1) ~~Be filed no fewer than thirty and no more than sixty days~~
12 ~~before the registration expires;~~

13 (3) ~~Contain the matter required for initial registration as a provider~~
14 ~~by section 12-14.5-206(8) and (9) and a financial statement, reviewed by~~
15 ~~an accountant licensed to conduct audits, for the applicant's fiscal year~~
16 ~~immediately preceding the application; except that the third renewal after~~
17 ~~initial registration and every fourth renewal thereafter shall be audited~~
18 ~~rather than reviewed;~~

19 (5) ~~Supply evidence of insurance in an amount equal to the larger~~
20 ~~of one million dollars or the highest daily balance attributable to residents~~
21 ~~of Colorado in the trust account required by section 12-14.5-222 during~~
22 ~~the six-month period immediately preceding the application:~~

23 (A) ~~Against risks of dishonesty, fraud, theft, and other misconduct~~
24 ~~on the part of the applicant or a director, employee, or agent of the~~
25 ~~applicant;~~

26 (B) ~~Issued by an insurance company authorized to do business in~~
27 ~~this state and rated at least A by a nationally recognized rating~~

1 organization;

2 ~~(C) With a maximum deductible of five thousand dollars; and~~

3 ~~(D) Insuring the applicant for claims made by individuals in this~~
4 ~~or any other state, who have agreements with the applicant, and this state,~~
5 ~~as their interests may appear.~~

6 **SECTION 8.** The introductory portion to 12-14.5-213 (b) and
7 12-14.5-213 (c), Colorado Revised Statutes, are amended to read:

8 **12-14.5-213. Bond required.** (b) ~~Subject to adjustment of the~~
9 ~~dollar amount pursuant to section 12-14.5-232 (f),~~ A surety bond filed
10 pursuant to subsection (a) of this section shall:

11 (c) If the principal amount of a surety bond is reduced by payment
12 of a claim or a judgment, the provider AND THE SURETY shall immediately
13 notify the administrator IMMEDIATELY and, within thirty days after notice
14 by the administrator, THE PROVIDER SHALL file a new or additional surety
15 bond in an amount set by the administrator. The amount of the new or
16 additional bond shall be at least the amount of the bond immediately
17 before payment of the claim or judgment. If for any reason a surety
18 terminates a bond, THE SURETY SHALL PROVIDE WRITTEN NOTICE OF THE
19 TERMINATION TO THE ADMINISTRATOR IMMEDIATELY, AND the provider
20 shall immediately file a new surety bond in the amount of fifty thousand
21 dollars or other amount determined pursuant to subsection (b) of this
22 section.

23 **SECTION 9. Repeal.** 12-14.5-214 (a) (1), Colorado Revised
24 Statutes, is repealed as follows:

25 **12-14.5-214. Bond required - substitute.** (a) Instead of the
26 surety bond required by section 12-14.5-213, a provider may deliver to
27 the administrator, in the amount required by section 12-14.5-213 (b), and,

1 except as otherwise provided in paragraph (2) of this subsection (a),
2 payable or available to this state and to individuals who reside in this state
3 when they agree to receive debt-management services from the provider,
4 as their interests may appear, if the provider or its agent does not comply
5 with this part 2:

6 (1) ~~A certificate of insurance issued by an insurance company~~
7 ~~authorized to do business in this state and rated at least A by a nationally~~
8 ~~recognized rating organization; or~~

9 **SECTION 10.** 12-14.5-216, Colorado Revised Statutes, is
10 amended to read:

11 **12-14.5-216. Customer service.** A provider that is required to be
12 registered under this part 2 shall maintain a toll-free communication
13 system, staffed at a level that reasonably permits an individual to speak
14 to a ~~certified~~ counselor, ~~certified~~ debt specialist, or customer-service
15 representative, as appropriate, during ordinary business hours.

16 **SECTION 11.** The introductory portions to 12-14.5-217 (a) and
17 (b), Colorado Revised Statutes, are amended to read:

18 **12-14.5-217. Prerequisites for providing debt-management**
19 **services.** (a) Before providing OR CONTRACTING TO PROVIDE
20 debt-management services, a registered provider shall give the individual
21 an itemized list of goods and services and the charges for each. The list
22 shall be clear and conspicuous, be in a record the individual may keep
23 whether or not the individual assents to an agreement, and describe the
24 goods and services the provider offers:

25 (b) A provider may not furnish OR CONTRACT TO FURNISH
26 debt-management services unless the provider, through the services of a
27 ~~certified~~ counselor or ~~certified~~ debt specialist:

1 **SECTION 12.** 12-14.5-219 (a) (6) (B), (a) (6) (C), (a) (6) (E), (a)
2 (6) (G), (d) (1) (A), (d) (1) (B), and (e), Colorado Revised Statutes, are
3 amended, and the said 12-14.5-219 (a) (6) is further amended BY THE
4 ADDITION OF A NEW SUBPARAGRAPH, to read:

5 **12-14.5-219. Form and contents of agreement.** (a) An
6 agreement shall:

7 (6) Disclose:

8 (B) IN A CLEAR AND CONSPICUOUS MANNER, the amount,
9 PERCENTAGE, or method of determining the amount, of all fees,
10 individually itemized, to be paid by the individual, USING ONLY THE
11 TERMINOLOGY CONTAINED IN SECTION 12-14.5-223;

12 (C) The schedule of payments to be made by or on behalf of the
13 individual, including the amount of each payment, the date on which each
14 payment is due, ~~and~~ an estimate of the date of the final payment, AND AN
15 ESTIMATE OF THE TOTAL OF ALL PAYMENTS TO BE MADE UNDER THE PLAN;

16 (C.5) IN A CLEAR AND CONSPICUOUS MANNER, THE FOLLOWING
17 INFORMATION:

18 (i) THE AMOUNT OF TIME NECESSARY TO ACHIEVE THE
19 REPRESENTED RESULTS;

20 (ii) IF THE PLAN INCLUDES A SETTLEMENT OFFER TO ANY OF THE
21 INDIVIDUAL'S CREDITORS OR DEBT COLLECTORS, THE TIME BY WHICH THE
22 PROVIDER WILL MAKE A BONA FIDE SETTLEMENT OFFER TO EACH OF THEM
23 AND THE AMOUNT OF MONEY OR THE PERCENTAGE OF EACH OUTSTANDING
24 DEBT THAT THE INDIVIDUAL MUST ACCUMULATE BEFORE THE PROVIDER
25 WILL MAKE A BONA FIDE SETTLEMENT OFFER TO EACH OF THEM; AND

26 (iii) IF THE PROVIDER REQUESTS OR REQUIRES THE INDIVIDUAL TO
27 PLACE FUNDS IN AN ACCOUNT AT AN INSURED FINANCIAL INSTITUTION,

1 THAT THE INDIVIDUAL OWNS THE FUNDS HELD IN THE ACCOUNT, THE
2 INDIVIDUAL MAY WITHDRAW FROM THE PLAN AT ANY TIME WITHOUT
3 PENALTY, AND, IF THE INDIVIDUAL WITHDRAWS, THE INDIVIDUAL MUST
4 RECEIVE ALL FUNDS IN THE ACCOUNT, OTHER THAN FUNDS EARNED BY THE
5 PROVIDER IN COMPLIANCE WITH SECTION 12-14.5-222 (h);

6 (E) If the provider holds money on behalf of the ~~debtor~~
7 INDIVIDUAL, each creditor that the provider believes will not participate
8 in the plan and to which the provider will not direct payment;

9 (G) If the provider holds money on behalf of the ~~debtor~~
10 INDIVIDUAL, that the provider may terminate the agreement for good
11 cause, upon return of unexpended money of the individual;

12 (d) An agreement shall provide that:

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

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

19 (B) ~~With respect to an agreement that contemplates that creditors~~
20 ~~will settle debts for less than the principal amount of debt, the provider~~
21 ~~will refund sixty-five percent of any portion of the set-up fee that has not~~
22 ~~been credited against the settlement fee; and~~

23 (e) ~~An agreement may confer on a provider a power of attorney~~
24 ~~to settle the individual's debt for no more than fifty percent of the actual~~
25 ~~balance of the debt owed at the time of settlement. An agreement may~~
26 ~~not confer a power of attorney to settle a debt for more than fifty percent~~
27 ~~of that amount, but may confer a power of attorney to negotiate with~~

1 ~~creditors of the individual on behalf of the individual. An agreement~~
2 ~~shall provide that the provider will obtain the assent of the individual~~
3 ~~after a creditor has assented to a settlement for more than fifty percent of~~
4 ~~the actual balance of the debt owed at the time of settlement.~~

5 **SECTION 13.** The introductory portion to 12-14.5-220 (b),
6 Colorado Revised Statutes, is amended to read:

7 **12-14.5-220. Cancellation of agreement - waiver.** (b) An
8 agreement shall be accompanied by a SEPARATE form that contains in
9 bold-faced type, surrounded by bold black lines:

10 **SECTION 14.** The introductory portion to 12-14.5-223 (d) and
11 12-14.5-223 (d) (1) (A), (d) (2), (d) (5), and (f), Colorado Revised
12 Statutes, are amended to read:

13 **12-14.5-223. Fees and other charges.** (d) ~~Subject to adjustment~~
14 ~~of dollar amounts pursuant to section 12-14.5-232 (f),~~ The following rules
15 apply:

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

19 (A) A fee not exceeding fifty dollars for consultation, obtaining
20 a credit report, AND setting up an account; ~~and the like;~~ and

21 (2) If an individual assents to a plan that contemplates that
22 creditors OR DEBT COLLECTORS will settle debts for less than the principal
23 amount of the debt:

24 (A) ~~A provider may charge total fees in an amount not to exceed~~
25 ~~eighteen percent of the principal amount of the debt, which shall include,~~
26 ~~subject to section 12-14.5-219 (d), a fee for consultation, obtaining a~~
27 ~~credit report, setting up an account, and the like, in an amount not~~

1 ~~exceeding four percent of the principal amount of the debt.~~ A PROVIDER
2 MAY NOT REQUEST OR RECEIVE PAYMENT OF ANY FEE OR CONSIDERATION
3 UNTIL AND UNLESS:

4 (i) THE PROVIDER HAS SETTLED THE TERMS OF AT LEAST ONE DEBT
5 PURSUANT TO A SETTLEMENT AGREEMENT OR OTHER VALID CONTRACTUAL
6 AGREEMENT EXECUTED BY THE INDIVIDUAL;

7 (ii) THE INDIVIDUAL HAS MADE AT LEAST ONE PAYMENT PURSUANT
8 TO THAT SETTLEMENT AGREEMENT OR OTHER VALID CONTRACTUAL
9 AGREEMENT BETWEEN THE INDIVIDUAL AND THE CREDITOR OR DEBT
10 COLLECTOR; AND

11 (iii) THE FEE OR CONSIDERATION EITHER: BEARS THE SAME
12 PROPORTIONAL RELATIONSHIP TO THE TOTAL FEE FOR SETTLING THE
13 TERMS OF THE ENTIRE DEBT BALANCE AS THE INDIVIDUAL DEBT AMOUNT
14 BEARS TO THE ENTIRE DEBT AMOUNT, IN WHICH CASE THE INDIVIDUAL
15 DEBT AMOUNT AND THE ENTIRE DEBT AMOUNT ARE THOSE OWED AT THE
16 TIME THE DEBT WAS ENROLLED IN THE SERVICE; OR IS A PERCENTAGE OF
17 THE AMOUNT SAVED AS A RESULT OF THE SETTLEMENT. THE PERCENTAGE
18 CHARGED CANNOT CHANGE FROM ONE INDIVIDUAL DEBT TO ANOTHER.
19 THE AMOUNT SAVED IS THE DIFFERENCE BETWEEN THE AMOUNT OWED AT
20 THE TIME THE DEBT WAS ENROLLED IN THE PLAN AND THE AMOUNT
21 ACTUALLY PAID TO SATISFY THE DEBT.

22 (B) ~~Total fees may be collected over no less than half of the length~~
23 ~~of the plan as estimated at the inception of the plan unless accelerated by~~
24 ~~the individual or until offers of settlement by creditors are obtained on at~~
25 ~~least half of the debts enrolled to provider.~~

26 (C) ~~In no case shall aggregate fees exceed eighteen percent of the~~
27 ~~total principal amount of the debt.~~

1 (D) Notwithstanding ~~the other subparagraphs~~ SUBPARAGRAPH (A)
2 of this paragraph (2), no ~~debtor~~ INDIVIDUAL who completes all of his or
3 her obligations under the agreement may be charged fees such that those
4 fees, when added to the aggregate of offers of settlement obtained by THE
5 provider for the debtor, exceeds the principal amount of the debt.

6 (5) ~~In no case shall aggregate fees exceed eighteen percent of the~~
7 ~~total principal amount of the debt.~~

8 (f) ~~Subject to adjustment of the dollar amount pursuant to section~~
9 ~~12-14.5-232 (f),~~ If a payment to a provider by an individual under this
10 part 2 is dishonored, a provider may impose a reasonable charge on the
11 individual, not to exceed the lesser of twenty-five dollars and the amount
12 permitted by law other than this part 2.

13 **SECTION 15.** 12-14.5-226 (b) (1) and (b) (2), Colorado Revised
14 Statutes, are amended to read:

15 **12-14.5-226. Termination of agreements.** (b) If a provider or
16 an individual terminates an agreement, the provider shall immediately
17 return to the individual:

18 (1) Any money of the individual held in trust for the benefit of the
19 individual. ~~and~~

20 (2) ~~Sixty-five percent of any portion of the set-up fee received~~
21 ~~pursuant to section 12-14.5-223 (d) (2) that has not been credited against~~
22 ~~settlement fees.~~

23 **SECTION 16.** 12-14.5-228 (a) (2), (a) (3), and (a) (14), Colorado
24 Revised Statutes, are amended to read:

25 **12-14.5-228. Prohibited acts and practices.** (a) A provider may
26 not, directly or indirectly:

27 (2) Settle a debt on behalf of an individual ~~for more than fifty~~

1 ~~percent of the actual balance of the debt owed a creditor at the time of~~
2 ~~settlement, unless the individual assents to the settlement after the~~
3 ~~creditor has assented~~ WITHOUT THE INDIVIDUAL'S AGREEMENT TO THE
4 SETTLEMENT TERMS PURSUANT TO A SETTLEMENT AGREEMENT OR OTHER
5 VALID CONTRACTUAL AGREEMENT EXECUTED BY THE INDIVIDUAL;

6 (3) ~~Take a power of attorney that authorizes it to settle a debt,~~
7 ~~unless the power of attorney expressly limits the provider's authority to~~
8 ~~settle debts for not more than fifty percent of the actual balance of the~~
9 ~~debt owed a creditor at the time of settlement;~~

10 (14) Represent that it is a not-for-profit entity unless it is
11 organized and properly operating as a not-for-profit under the law of the
12 state in which it was formed or that it is a tax-exempt entity unless it has
13 received certification of tax-exempt status from the federal internal
14 revenue service; EXCEPT THAT, IF THE PROVIDER REPRESENTS THAT IT IS
15 A NOT-FOR-PROFIT ENTITY AND THE PROVIDER DOES NOT HAVE
16 TAX-EXEMPT STATUS UNDER SECTION 501 (c) (3) OF THE FEDERAL
17 "INTERNAL REVENUE CODE OF 1986", AS AMENDED, THE PROVIDER SHALL
18 STATE, IN A CLEAR AND CONSPICUOUS MANNER AND IN CLOSE PROXIMITY
19 TO THE REPRESENTATION: "WE ARE NOT AN EDUCATIONAL, CHARITABLE,
20 OR RELIGIOUS ORGANIZATION GRANTED TAX-EXEMPT STATUS BY THE
21 INTERNAL REVENUE SERVICE."

22 **SECTION 17. Repeal.** 12-14.5-232 (f) and (g), Colorado
23 Revised Statutes, are repealed as follows:

24 **12-14.5-232. Powers of administrator - rules.** (f) ~~The~~
25 ~~administrator, by rule, shall adopt dollar amounts instead of those~~
26 ~~specified in sections 12-14.5-202, 12-14.5-205, 12-14.5-209,~~
27 ~~12-14.5-213, 12-14.5-223, 12-14.5-233, and 12-14.5-235 to reflect~~

1 ~~inflation, as measured by the United States bureau of labor statistics~~
2 ~~consumer price index for all urban consumers or, if that index is not~~
3 ~~available, another index adopted by rule by the administrator. The~~
4 ~~administrator shall adopt a base year and adjust the dollar amounts,~~
5 ~~effective on July 1 of each year, if the change in the index from the base~~
6 ~~year, as of December 31 of the preceding year, is at least ten percent. The~~
7 ~~dollar amount shall be rounded to the nearest one hundred dollars, except~~
8 ~~that the amounts in section 12-14.5-223 shall be rounded to the nearest~~
9 ~~dollar.~~

10 (g) ~~The administrator shall notify registered providers of any~~
11 ~~change in dollar amounts made pursuant to subsection (f) of this section~~
12 ~~and make that information available to the public.~~

13 **SECTION 18.** 12-14.5-233 (a) (3), (a) (4) (B), (b), and (e),
14 Colorado Revised Statutes, are amended to read:

15 **12-14.5-233. Administrative and legal remedies.** (a) The
16 administrator may enforce this part 2 and rules adopted under this part 2
17 by taking one or more of the following actions:

18 (3) ~~Subject to adjustment of the dollar amount pursuant to section~~
19 ~~12-14.5-232 (f); Imposing on a provider or a person that has caused a~~
20 ~~violation a civil penalty not exceeding ten thousand dollars for each~~
21 ~~violation;~~

22 (4) Prosecuting a civil action to:

23 (B) Obtain restitution, ~~or~~ A CIVIL PENALTY NOT TO EXCEED TEN
24 THOUSAND DOLLARS PER VIOLATION, an injunction, or other equitable
25 relief; ~~or both;~~

26 (b) ~~Subject to adjustment of the dollar amount pursuant to section~~
27 ~~12-14.5-232 (f); If a person violates or knowingly authorizes, directs, or~~

1 aids in the violation of a final order issued under paragraph (1) or (2) of
2 subsection (a) of this section, the administrator OR COURT may impose a
3 civil penalty not exceeding twenty thousand dollars for each violation.

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

11 **SECTION 19.** The introductory portion to 12-14.5-234 (b),
12 Colorado Revised Statutes, is amended to read:

13 **12-14.5-234. Suspension, revocation, or nonrenewal of**
14 **registration.** (b) IN ADDITION TO THE REMEDIES OTHERWISE AVAILABLE
15 UNDER THIS ARTICLE, the administrator may suspend, revoke, or deny
16 renewal of a provider's registration if:

17 **SECTION 20.** 12-14.5-235 (c) (2), Colorado Revised Statutes, is
18 amended to read:

19 **12-14.5-235. Private enforcement.** (c) Subject to subsection (d)
20 of this section, an individual with respect to whom a provider violates this
21 part 2 may recover in a civil action from the provider and any person that
22 caused the violation:

23 (2) Except as otherwise provided in subsection (d) of this section,
24 ~~and subject to adjustment of the dollar amount pursuant to section~~
25 ~~12-14.5-232 (f)~~, with respect to a violation of section 12-14.5-217,
26 12-14.5-219 to 12-14.5-224, 12-14.5-227, or 12-14.5-228 (a), (b), or (d),
27 the greater of the amount recoverable under paragraph (1) of this

1 subsection (c) or five thousand dollars;

2 **SECTION 21.** 12-14-103 (2) (b) (V), Colorado Revised Statutes,
3 is amended to read:

4 **12-14-103. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (2) (b) "Collection agency" does not include:

7 (V) ~~Any nonprofit organization which, at the request of~~
8 ~~consumers, performs bona fide consumer credit counseling and assists~~
9 ~~consumers in the liquidation of their debts by receiving payments from~~
10 ~~such consumers and distributing such amounts to creditors~~
11 DEBT-MANAGEMENT SERVICES PROVIDER OPERATING IN COMPLIANCE WITH
12 OR EXEMPT FROM THE "UNIFORM DEBT-MANAGEMENT SERVICES ACT",
13 PART 2 OF ARTICLE 14.5 OF TITLE 12, C.R.S.;

14 **SECTION 22. Effective date - applicability.** This act shall take
15 effect July 1, 2011, and shall apply to conduct occurring on or after said
16 date.

17 **SECTION 23. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.