

HOUSE BILL NO. 140

INTRODUCED BY PARKER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A MONTANA CONSUMER DEBT MANAGEMENT
5 SERVICES ACT; REQUIRING LICENSURE OF CREDIT COUNSELING SERVICES; ESTABLISHING
6 REQUIREMENTS FOR DEBT MANAGEMENT PLANS ENTERED INTO BETWEEN CONSUMERS AND
7 CREDIT COUNSELING SERVICES; DESIGNATING PROHIBITED PRACTICES FOR CREDIT COUNSELING
8 SERVICES; PROVIDING THE DEPARTMENT OF ADMINISTRATION WITH RULEMAKING AUTHORITY; AND
9 PROVIDING REMEDIES AND PENALTIES; REPEALING CERTAIN DEBT ADJUSTMENT LAWS; AND
10 AMENDING SECTION 5, CHAPTER 125, LAWS OF 2005; REPEALING SECTIONS 31-3-201, 31-3-202, AND
11 31-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15 NEW SECTION. Section 1. Short title. [Sections 1 through 7] may be cited as the "Montana Consumer
16 Debt Management Services Act".
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18 NEW SECTION. Section 2. Scope. (1) The provisions of [sections 1 through 7] apply to any person
19 that provides or offers to provide debt management plans to residents of this state.

20 (2) The provisions of [sections 1 through 7] do not apply to:

21 (a) banking institutions, as defined in 32-1-601, building and loan associations, credit unions, escrow
22 businesses, as defined in 32-7-102, or title companies;

23 (b) the services of an attorney licensed to practice law in this state if providing credit counseling services
24 is incidental to and not the principal business of the attorney; ~~and~~

25 (c) the services of a certified public accountant licensed to practice accounting in this state if providing
26 credit counseling services is incidental to and not the principal business of the certified public accountant; ~~AND~~

27 (D) DEBT COLLECTORS THAT DO NOT ADVERTISE OR HOLD THEMSELVES OUT AS A CREDIT COUNSELING SERVICE.
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29 NEW SECTION. Section 3. Definitions. As used in [sections 1 through 7], the following definitions
30 apply:



1 (1) "Consumer" means an individual who, singly or jointly with another individual, owes money to one
2 or more creditors for personal, family, or household purposes.

3 (2) "Credit counseling service" means a person that provides or offers to provide debt management plan
4 services to consumers for consideration.

5 (3) "Credit counselor" means a person who is an employee or agent of a credit counseling service and
6 who designs debt management plans and provides consumers with budget, basic financial planning, and
7 consumer education services.

8 (4) "Debt management plan" means a written agreement under which a credit counseling service is to
9 receive money from a consumer for the purpose of distributing that money to one or more creditors of the
10 consumer as full or partial payment of the consumer's obligation to the creditor or creditors.

11 (5) "Department" means the department of administration provided for in 2-15-1001.

12 (6) "Person" means an individual, sole proprietorship, firm, partnership, corporation, limited liability
13 partnership or company, or other entity and includes a nonprofit organization exempt from taxation under
14 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3).

15 (7) "Trust account" means an account:

16 (a) established by a credit counseling service in a federally insured financial institution;

17 (b) designated as a trust account or other appropriate designation indicating that the funds in the
18 account are not funds of the credit counseling service or its directors, officers, employees, or agents;

19 (c) used exclusively for funds paid by consumers to the credit counseling service for disbursement to
20 creditors of the consumers; and

21 (d) that is unavailable to creditors of the credit counseling service.

22

23 **NEW SECTION. Section 4. Requirements for licensure -- fees -- rulemaking authority -- refusal**
24 **to grant license -- suspension or revocation of license -- rules.** (1) A credit counseling service may not
25 provide or offer to provide debt management plans or other consumer credit counseling services to the
26 consumers of this state without first being licensed by the department.

27 (2) In order to obtain a license or annually renew a license, an applicant shall pay the required license
28 fee as established by the department by rule. The fee must be in an amount commensurate with the cost of
29 administering [sections 1 through 7], and the applicant shall provide evidence:

30 (a) that it maintains a trust account for handling consumer funds;

1 (b) (i) that it has been accredited by a bona fide third-party accreditation provider that ensures
2 compliance with industry standards and best practices; and

3 (ii) that its credit counselors have been certified by a bona fide third-party certification provider as
4 possessing the competence to provide consumer credit counseling services;

5 (c) that a majority of its owners, principals, officers, board of directors, or employees are not persons
6 who have a conflict of interest with the applicant's mission. Persons with a conflict of interest include creditors,
7 creditors' representatives, bankruptcy attorneys, and other persons having a direct stake in the outcome of the
8 consumer credit counseling process.

9 ~~_____ (d) that it maintains an office in the state with a credit counselor on the premises;~~

10 ~~(e)(D)~~ that it has obtained a surety bond for the benefit of consumers harmed by a violation of the
11 provisions of [sections 1 through 7] in an amount, form, and duration as required by the department by rule,
12 EXCEPT THAT AN APPLICANT THAT DOES NOT MAINTAIN AN OFFICE IN THIS STATE WITH A CREDIT COUNSELOR ON THE
13 PREMISES SHALL POST A SURETY BOND IN THE AMOUNT OF \$50,000; and

14 ~~(f)(E)~~ that it has contracted at its own expense for annual audits by an independent certified public
15 accountant to be conducted within 6 months of the close of each of its fiscal years.

16 (3) An applicant for a license or license renewal shall provide any additional information that the
17 department requires. The department shall adopt rules to implement the provisions of this section. The
18 department shall designate by rule acceptable third-party accreditation and certification providers for purposes
19 of subsection (2)(b).

20 (4) The department may refuse to grant a license to or suspend or revoke the license of any credit
21 counseling service that fails to comply with the provisions of subsections (1) through (3) or any rules adopted
22 pursuant to this section.

23
24 **NEW SECTION. Section 5. Requirements for debt management plans -- RULEMAKING AUTHORITY.**

25 (1) A credit counseling service may not require or accept any consideration from a consumer for the provision
26 of services or the offer to provide services unless a written and dated debt management plan meeting the
27 requirements of this section has been signed by the consumer. A copy of the debt management plan must be
28 provided to the consumer.

29 (2) The debt management plan must include the following:

30 (a) the name and principal business address of the credit counseling service and the name and address

1 of the consumer;

2 (b) a full and detailed description of the services to be performed by the credit counseling service for
3 the consumer;

4 (c) a clear statement of the costs to the consumer, including contributions or fees, highlighted in bold
5 type;

6 ~~(d) a statement that the debt management plan may be terminated for any reason by the consumer and~~
7 ~~that the consumer is not obligated to continue the arrangement unless satisfied with the services provided~~ A
8 STATEMENT, IN A PROMINENT LOCATION IN THE PLAN IN AT LEAST 10-POINT BOLD TYPE, THAT EITHER PARTY MAY CANCEL
9 THE AGREEMENT WITHOUT PENALTY AT ANY TIME UPON 10 DAYS' NOTICE AND THAT A CONSUMER WHO CANCELS AN
10 AGREEMENT IS ENTITLED TO A REFUND OF ALL UNEXPENDED FUNDS THAT THE CONSUMER HAS PAID TO THE CREDIT
11 COUNSELING SERVICE AS OF THE DATE OF THE NOTICE;

12 (e) a complete list of the obligations of each party that are subject to the terms of the agreement; ~~and~~

13 (f) an indication of how disputes are to be resolved; AND

14 (G) A STATEMENT THAT THE CREDIT COUNSELING SERVICE HAS A FIDUCIARY DUTY TO THE CONSUMER WHO IS
15 A PARTY TO A DEBT MANAGEMENT PLAN DUTY TO ADVOCATE THE INTERESTS OF THE CONSUMER WHO IS A PARTY TO THE
16 DEBT MANAGEMENT PLAN AND NOT PROMOTE THE INTERESTS OF ANY THIRD PARTY THAT IS IN CONFLICT WITH THE
17 PRIMARY OBLIGATION OF ADVOCATING THE INTERESTS OF THE CONSUMER.

18 (3) A credit counseling service shall provide each consumer who is a party to a debt management plan
19 with a report that shows the funds received from the consumer since the last report and the disbursement of
20 those funds made to each creditor of the consumer. The credit counseling service shall provide the reports to
21 consumers on at least a quarterly basis.

22 (4) (A) A CREDIT COUNSELING SERVICE MAY NOT IMPOSE ANY FEES OR OTHER CHARGES ON A CONSUMER OR
23 RECEIVE ANY PAYMENT FROM A CONSUMER OR OTHER PERSON ON BEHALF OF A CONSUMER EXCEPT AS ALLOWED BY THIS
24 SECTION.

25 (B) THE FEES OR CHARGES REFERRED TO IN THIS SUBSECTION (4) INCLUDE VOLUNTARY CONTRIBUTIONS AND
26 ANY OTHER FEES CHARGED TO OR COLLECTED FROM A CONSUMER OR ON BEHALF OF A CONSUMER.

27 (C) A CREDIT COUNSELING SERVICE MAY NOT CHARGE AN INITIAL CONSULTATION FEE THAT EXCEEDS AN AMOUNT
28 SET BY THE DEPARTMENT BY RULE. THE FEE OR PORTION OF THE FEE MAY NOT BE CHARGED UNTIL THE CREDIT
29 COUNSELING SERVICE HAS COMPLIED WITH THE PROVISIONS OF THIS SECTION.

30 (D) A CREDIT COUNSELING SERVICE MAY CHARGE A MONTHLY MAINTENANCE FEE. IN THE ABSENCE OF

1 EXCEPTIONAL CIRCUMSTANCES AS DEFINED IN THE DEPARTMENT'S RULES, A CREDIT COUNSELING SERVICE MAY NOT HAVE
 2 A TOTAL MONTHLY FEE IN AN AMOUNT THAT EXCEEDS THE AMOUNT SET BY THE RULES.

3 (E) A CREDIT COUNSELING SERVICE MAY NOT, AS A CONDITION OF ENTERING INTO A DEBT MANAGEMENT PLAN,
 4 REQUIRE A CONSUMER TO PURCHASE FOR A FEE A COUNSELING SESSION, AN EDUCATIONAL PROGRAM, OR MATERIALS
 5 AND SUPPLIES.

6 (F) FEES CHARGED FOR SERVICES OTHER THAN CREDIT COUNSELING SERVICES MUST BE FAIR AND REASONABLE.

7 (G) IF THE CREDIT COUNSELING SERVICE IMPOSES ANY FEE OR OTHER CHARGE OR RECEIVES ANY FUNDS OR
 8 OTHER PAYMENTS NOT AUTHORIZED BY THIS SECTION, EXCEPT AS A RESULT OF A BONA FIDE ERROR, THE DEBT
 9 MANAGEMENT PLAN IS VOID AND THE CREDIT COUNSELING SERVICE SHALL RETURN TO THE CONSUMER ALL FEES RECEIVED
 10 FROM OR ON BEHALF OF THE CONSUMER.

11 (5) CREDIT COUNSELING SERVICES ARE PROHIBITED FROM USING HOLD HARMLESS CLAUSES, CONFESSIONS OF
 12 JUDGMENT, AND WAIVERS OF THE RIGHT TO JURY TRIALS IN DEBT MANAGEMENT PLANS.

13 (6) THE DEPARTMENT MAY PROMULGATE RULES AS NECESSARY TO IMPLEMENT THE PROVISIONS OF [SECTIONS
 14 1 THROUGH 7], INCLUDING SETTING FEES.

15
 16 NEW SECTION. Section 6. Prohibited practices. (1) A credit counseling service may not:
 17 (a) purchase any debt or obligation of a consumer;
 18 (b) lend money or provide credit to a consumer;
 19 (c) obtain a mortgage or other security interest in any property of a consumer;
 20 (d) operate as a collection agency;
 21 (e) structure a debt management plan in a way that at the debt management plan's conclusion any
 22 debts of the consumer that are subject to the debt management plan are not fully amortized;
 23 (f) charge for or provide credit insurance; ~~or~~
 24 (g) cause or attempt to cause a consumer to waive or forego any right or benefit that the consumer has
 25 under the provisions of [sections 1 through 7]; OR

26 (H) OPERATE IN THIS STATE WITHOUT A LICENSE.

27 (2) (a) A credit counseling service may not advertise its services in any manner in this state without first
 28 being licensed by the department.

29 (b) A credit counseling service or any person on a credit counseling service's behalf may not
 30 misrepresent any material fact or make a false promise intended to induce a consumer into entering a debt

1 management plan.

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3 **NEW SECTION. Section 7. Remedies -- PENALTY.** (1) The remedies provided in this section are
4 cumulative and apply to licensees and unlicensed persons to whom [sections 1 through 7] apply.

5 (2) Any violation of [sections 1 through 7] constitutes an unfair or deceptive trade practice and is a
6 violation of 30-14-103.

7 (3) A person found to have violated [sections 1 through 7] is liable to the person harmed for actual and
8 consequential damages or \$500, whichever is greater, for each violation, plus costs and attorney fees.

9 (4) A person harmed by a violation of [sections 1 through 7] may sue for injunctive and other appropriate
10 equitable relief.

11 (5) A person harmed by a violation of [sections 1 through 7] may bring a class action suit.

12 (6) The remedies provided in this section are not intended to be the exclusive remedies available to a
13 consumer for a violation of [sections 1 through 7].

14 (7) The department, the attorney general, or a county attorney, on behalf of state residents who have
15 suffered a loss or harm as a result of a violation of [sections 1 through 7], may seek any remedy provided by Title
16 30, chapter 14, part 1.

17 **(8) A PERSON ENGAGED IN CREDIT COUNSELING IN THIS STATE WITHOUT A LICENSE, A PERSON WHO FAILS TO**
18 **MAINTAIN A SEPARATE TRUST ACCOUNT FOR CONSUMER FUNDS, OR A PERSON WHO FAILS TO MAINTAIN ANY RECORDS**
19 **REQUIRED BY THE PROVISIONS OF [SECTIONS 1 THROUGH 7] OR BY DEPARTMENT RULE SHALL BE FINED AN AMOUNT NOT**
20 **TO EXCEED \$5,000 FOR EACH VIOLATION.**

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22 **SECTION 8. SECTION 5, CHAPTER 125, LAWS OF 2005, IS AMENDED TO READ:**

23 **"Section 5. Retroactive applicability -- applicability.** (1) Except as provided in subsection (2), [This
24 this act] applies retroactively, within the meaning of 1-2-109, to loans subject to [this act] made on or after
25 October 1, 1985, the effective date of Chapter 406, Laws of 1985.

26 (2) [This act] does not apply to loans that are the subject of a lawsuit filed prior to [the effective date of
27 this act]."

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29 **NEW SECTION. SECTION 9. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE**
30 **SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS**

1 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
2 APPLICATIONS.

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4 NEW SECTION. SECTION 10. REPEALER. SECTIONS 31-3-201, 31-3-202, AND 31-3-203, MCA, ARE
5 REPEALED.

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7 NEW SECTION. SECTION 11. Codification instruction. [Sections 1 through 7] are intended to be
8 codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections
9 1 through 7].

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11 NEW SECTION. SECTION 12. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

12 - END -