

Comments on and Suggested Amendments to HB 140

Background:

Industry Overview:

For over five decades the credit counseling industry has provided valued and valuable services to financially distressed consumers including personalized financial counseling, personal finance education and, where appropriate, debt management services. Over the past several years, thousands of consumers nationwide have been abused by some consumer credit counseling organizations that have misrepresented the services they offer and the fees they charge consumers for such services. These few, very large new players in the industry have created regulatory and law enforcement problems that were virtually non-existent only a few years ago. In response to this problem, there has been a flurry of legislative, regulatory and law enforcement activity at both the state and federal levels.

New state statutes regulating the activities of credit counseling organizations have been introduced in over a dozen states in the past year alone. Additionally, the Federal Trade Commission, numerous state attorneys general and the Internal Revenue Service have undertaken extensive auditing and enforcement actions directed at curbing the activities of organizations that have abused consumers and/or the 501c3 tax-exempt status granted to non-profit credit counseling organizations.

New legislation introduced by Montana Rep. John Parker in the form of HB 140 is directed at protecting Montana consumers from the types of abuses recently evidenced in the credit counseling industry and creates a level playing field in which legitimate credit counseling organizations can extend much needed services to financially distressed Montana households.

Take Charge America, Inc. Overview:

Take Charge America, Inc (TCA) is one of the nation's oldest and largest non-profit credit counseling organizations. TCA served a national clientele from its Bozeman, MT offices from 1987 through 1998. Although the Bozeman office, along with several other TCA branches, was consolidated into one national servicing center in Phoenix, AZ in early 1998, TCA continues to serve a significant number of Montana households. In partnership with Montana State University, TCA has developed a significant, national award winning financial literacy program. Through the program, scores of Montana high school teachers have developed and learned to deliver curricula in personal finance to thousands of Montana high school students. The prototype is now being exported to a national audience and is a true "Point of Pride" for MSU and all Montanans.

Each year, Take Charge America, Inc. administers over 75,000 debt management plans and manages over 500 million dollars of client trust funds. Additionally, TCA provides

personal financial counseling and educational services to another 100,000 U.S. households. TCA has been good corporate citizen in Montana and we fully support passage of HB 140 with the minor modifications outlined in this document.

TCA Comments on and Suggested Changes to HB 140 include:

Section 3. Definitions.

3.1 – We suggest that this section be changed to read:

“Consumer” means any individual who resides in the State of Montana.

Section 4. Requirements for licensure...

4.2a – We suggest that this section be changed to read:

that the licensee maintain a separate trust account in a federally insured bank into which all funds received from consumers under the terms of a debt management contract are deposited. All consumer funds must remain in the trust account until either disbursed to one or more creditors of a consumer engaged in a debt management agreement, disbursed to the licensee for fees earned under the terms of a debt management agreement or are returned to the consumer client.

4.2c – We suggest that this section be shortened to read:

that a majority of its owners, principals, officers, directors or employees are not persons who have a conflict of interest with the applicants mission.

4.2d – We suggest that this section be deleted from the statute:

The vast majority of states regulating the credit counseling process do not have such a provision in their state statute. Even those states that do have such a provision, such as Indiana, Wisconsin and Idaho do not enforce the provision upon non-resident licensees.

None of the numerous new state statutes introduced and/or enacted in 2003-2005 have such a requirement.

No consumer protection is afforded to the public through the inclusion of this provision. It is strictly intended to restrict competition in the credit counseling industry.

Take Charge America, Inc. is a model example of a non-resident company that has provided outstanding and problem free counseling, education and debt management services to Montana residents without the necessity of maintaining a local presence.

It is more sensible to license and manage credit counseling services than it is to deny Montana households the right to choose from amongst a host of legitimate service providers regardless of where they are domiciled.

Under the proposed statute, Montana regulators and law enforcement agencies should and will have the same right to audit resident and non-resident licensees to ensure their legitimacy and compliance with Montana law.

Take Charge America, Inc. is an Arizona non-profit corporation, is licensed and bonded in more than 20 states and is not required by any state other than Arizona, where TCA is domiciled, to maintain a local office.

The requirement to maintain a local office in Montana would impose undue economic burden upon TCA, endanger its current contractual relationships with Montana residents and imperil our more than \$1,000,000 educational programs development grant to Montana State University.

4.2e

We would recommend that HB 140 provide some guidelines to the department of administration relative to the establishment of bonding levels for perspective licensees.

Section 5 – Requirements for debt management plans

5.2c – We recommend that this section be amended to read:

a clear statement of all costs, including voluntary contributions, charged to consumers for all services that are to be provided under the terms of a debt management agreement.

5.2d – We recommend that this section be amended to read as follows:

a statement that the debt management plan may be terminated by the consumer at any time, for any reason and without penalty.

5.2f - We recommend that this provision be deleted from the statute.

The statute already provides for significant regulation of the process. Disputes should be resolved between the parties to the contract based upon their individual merit, using the contract agreement as the guideline for determining licensee performance or the lack thereof. If this section remains, significant discussion must be held between the department of administration and licensees to determine appropriate contract language.

5.3 – We recommend that this section be amended to read:

the credit counseling service shall provide a fully detailed statement of the consumers individual trust account activity that shows the disposition of all funds received since the

last report. Statements should be made available at any time upon a consumers' request or not less frequently than each 30 days.

Section 7 – Remedies

7.5 – We recommend that this section be deleted from the statute.

Sufficient protections are afforded to individual consumers through the enactment of this statute and extending the right to a consumer to file a class action does not enhance the rights or protections that this statute is intended to provide to that individual consumer.

Under certain conditions, class actions do make sense. Too often however, consumers have abused this right and have used the threat of class action to coerce legitimate service providers in many industries, who are not guilty of any contractual infraction, to succumb to unrealistic demands and to make unwarranted concessions.