

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2191

By COMMITTEE ON CONSUMER PROTECTION AND PUBLIC AFFAIRS

June 2

- 1 On page 1 of the printed A-engrossed bill, line 15, after “performs” insert “or agrees to
2 perform”.
- 3 On page 2, line 10, after “loan” insert “or obligation”.
- 4 On page 3, line 4, after “provider” insert “for the purpose of arranging the provision of a debt
5 management service”.
- 6 In line 42, after “(n)” insert “An organization or”.
- 7 On page 4, line 40, before “business” insert “debt management service”.
- 8 Delete lines 42 and 43 and insert:
9 “(d) The names of any managing members, managing partners, executive officers, directors,
10 principals or agents the applicant has;”.
- 11 On page 6, line 20, after “rule” insert a period and delete the rest of the line and lines 21 and
12 22.
- 13 In line 27, delete “or (3)”.
- 14 In line 28, delete “that is not a nonprofit entity”.
- 15 Delete lines 31 and 32.
- 16 In line 33, delete “(b)” and insert “(a)”.
- 17 In line 34, delete “(c)” and insert “(b)”.
- 18 Delete lines 38 through 45.
- 19 On page 7, line 1, delete “(4)” and insert “(3)”.
- 20 In line 8, delete “(5)” and insert “(4)”.
- 21 On page 8, line 4, delete “and address”.
- 22 In line 5, before the period insert “, if the debt management service provider holds, directly or
23 indirectly, a consumer’s funds for distribution to creditors”.
- 24 Delete lines 16 and 17 and insert:
25 “(B) Request the debt management service provider to deliver to the consumer a full and com-
26 plete written statement of the consumer’s account:
27 “(i) Within two business days, if the debt management service provider delivers the statement
28 electronically; or
29 “(ii) Within seven business days, if the debt management service provider delivers the statement
30 by mail.”.
- 31 Delete line 45.
- 32 On page 9, delete lines 1 through 7 and insert:
33 “(2) Before the consumer and the debt management service provider sign the agreement de-
34 scribed in subsection (1) of this section, the debt management service provider shall give the con-
35 sumer an analysis of the consumer’s budget that is separate from the agreement and that evaluates

1 whether the debt management services the debt management service provider proposes to perform
2 are advantageous to the consumer.

3 “(3) As soon as is practicable after the consumer and the debt management service provider sign
4 and date the agreement described in subsection (1) of this section, the debt management service
5 provider shall provide the consumer with a legible copy of the signed and dated agreement.”.

6 On page 10, delete lines 18 through 20 and insert:

7 “(4) Offer to perform a debt management service without evaluating as part of the budget anal-
8 ysis the debt management service provider must perform under ORS 697.652 (2) whether the debt
9 management service is or would be advantageous to the consumer.”.

10 On page 12, line 45, before the period insert “to the extent that the interest earned exceeds the
11 fees the financial institution charges to maintain the trust account”.

12 On page 13, delete lines 14 through 45.

13 On page 14, delete lines 1 through 30 and insert:

14 “**SECTION 9.** ORS 697.692 is amended to read:

15 “697.692. [(1) A debt consolidating agency:]

16 “[a) May charge a client an initial set-up fee of not more than \$25.]

17 “[b) May charge for services performed for the client in an amount of not more than 15 percent
18 of the amount actually received by the debt consolidating agency on behalf of a client for payment to
19 creditors. A debt consolidating agency may not receive an amount from the client under this paragraph
20 until the first installment under the contract or agreement with the client is paid to any creditor of the
21 client.]

22 “[c) May not charge a person for any discussion with that person that may or may not result in
23 an agreement for services of a debt consolidating agency.]

24 “[d) Notwithstanding paragraph (c) of this subsection, may charge a fee to cover the expenses for
25 education classes if:]

26 “[A) The classes are approved by the Director of the Department of Consumer and Business Ser-
27 vices, or the classes are required by rule or order of a federal or state agency and the debt consol-
28 idating agency is certified by the federal or state agency to provide the education; and]

29 “[B) A request to charge the fee has been approved in writing by the director.]

30 “[2) Notwithstanding subsection (1)(c) of this section, a debt consolidating agency that is a
31 nonprofit organization may charge a fee in an amount set by the director by rule to cover the expenses
32 of credit counseling if:]

33 “[a) The debt consolidating agency demonstrates to the director the need for the fee or the credit
34 counseling is required by rule or order of a federal or state agency and the debt consolidating agency
35 is certified by the federal or state agency to provide the credit counseling; and]

36 “[b) A request to charge the fee has been approved in writing by the director.]

37 “[3) A debt consolidating agency that charges a fee not authorized under this section is subject to
38 ORS 697.752, 697.762, 697.832 and 697.990 (3).]

39 “[4) As used in this section, ‘nonprofit organization’ means an organization described in section
40 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the
41 Internal Revenue Code.]

42 “(1) A debt management service provider may charge a consumer only the following fees:

43 “(a) An initial fee of not more than \$50.

44 “(b) A fee reasonably calculated to recover the costs that the debt management service
45 provider incurs in providing an initial counseling session or education class. The debt man-

1 agement service provider may charge the fee described in this paragraph in advance, but the
2 fee may not exceed \$50.

3 “(c) A monthly fee equivalent to 15 percent of the funds that the debt management ser-
4 vice provider receives from a consumer for payment to the consumer’s creditors. The debt
5 management service provider may charge the fee described in this paragraph only if the debt
6 management service provider holds a consumer’s funds, directly or indirectly, on the con-
7 sumer’s behalf. The fee described in this paragraph may not exceed \$65 per month.

8 “(d) A fee equivalent to 15 percent of the amount of debt a consumer owes to one or
9 more creditors at the time the consumer signs the agreement described in ORS 697.652 and
10 places funds in a bank account that the consumer establishes or maintains in the consumer’s
11 own name with an insured institution, as defined in ORS 706.008, and designates specifically
12 for making disbursements in connection with a debt management service. The debt man-
13 agement service provider may charge the fee described in this paragraph only if the debt
14 management service provider does not hold a consumer’s funds directly or indirectly. The
15 debt management service provider may not charge the fee described in this paragraph in
16 amounts or installments that exceed \$65 per month.

17 “(e) A fee equivalent to 7.5 percent of the difference between the principal amount of the
18 debt the consumer owed to the consumer’s creditor at the time the consumer signed the
19 agreement described in ORS 697.652 and the amount the consumer paid to the creditor to
20 settle the debt, exclusive of fees the consumer paid to the debt management service provider
21 under paragraph (a), (b) or (d) of this subsection. The debt management service provider
22 may charge the fee described in this paragraph only if the debt management service provider
23 obtains from the consumer’s creditor a reduction in the principal amount of the consumer’s
24 debt.

25 “(f) Additional counseling fees that the Director of the Department of Consumer and
26 Business Services specifies by rule, provided that the director limits the counseling fee to:

27 “(A) \$25 per counseling session; and

28 “(B) \$50 for all counseling sessions that occur within a 30-day period.

29 “(2) A debt management service provider may accept payment for a fee described in
30 subsection (1) of this section by means of:

31 “(a) A check, draft or similar paper instrument; or

32 “(b) A transfer of funds through an electronic terminal, telephonic instrument, computer
33 or magnetic tape that transmits an order, instruction or authorization to a financial insti-
34 tution to debit or credit an account.

35 “**SECTION 9a.** ORS 697.692, as amended by section 9 of this 2009 Act, is amended to read:

36 “697.692. (1) A debt management service provider may charge a consumer only the following
37 fees:

38 “(a) An initial fee of not more than \$50.

39 “(b) A fee reasonably calculated to recover the costs that the debt management service provider
40 incurs in providing an initial counseling session or education class. The debt management service
41 provider may charge the fee described in this paragraph in advance, but the fee may not exceed \$50.

42 “(c) A monthly fee equivalent to 15 percent of the funds that the debt management service
43 provider receives from a consumer for payment to the consumer’s creditors. The debt management
44 service provider may charge the fee described in this paragraph only if the debt management service
45 provider holds a consumer’s funds, directly or indirectly, on the consumer’s behalf. The fee described

1 in this paragraph may not exceed \$65 per month.

2 “(d) A fee equivalent to 15 percent of the amount of debt a consumer owes to one or more
3 creditors at the time the consumer signs the agreement described in ORS 697.652 and places funds
4 in a bank account that the consumer establishes or maintains in the consumer’s own name with an
5 insured institution, as defined in ORS 706.008, and designates specifically for making disbursements
6 in connection with a debt management service. The debt management service provider may charge
7 the fee described in this paragraph only if the debt management service provider does not hold a
8 consumer’s funds directly or indirectly. The debt management service provider may not charge the
9 fee described in this paragraph in amounts or installments that exceed \$65 per month.

10 “(e) A fee equivalent to 7.5 percent of the difference between the principal amount of the debt
11 the consumer owed to the consumer’s creditor at the time the consumer signed the agreement de-
12 scribed in ORS 697.652 and the amount the consumer paid to the creditor to settle the debt, exclu-
13 sive of fees the consumer paid to the debt management service provider under paragraph (a), (b) or
14 (d) of this subsection. The debt management service provider may charge the fee described in this
15 paragraph only if the debt management service provider obtains from the consumer’s creditor a re-
16 duction in the principal amount of the consumer’s debt.

17 “[*f*] *Additional counseling fees that the Director of the Department of Consumer and Business*
18 *Services specifies by rule, provided that the director limits the counseling fee to:]*

19 “[*A*] *\$25 per counseling session; and]*

20 “[*B*] *\$50 for all counseling sessions that occur within a 30-day period.]*

21 “(2) A debt management service provider may accept payment for a fee described in subsection
22 (1) of this section by means of:

23 “(a) A check, draft or similar paper instrument; or

24 “(b) A transfer of funds through an electronic terminal, telephonic instrument, computer or
25 magnetic tape that transmits an order, instruction or authorization to a financial institution to debit
26 or credit an account.”.

27 On page 15, delete lines 20 through 27.

28 In line 28, delete “(e)” and insert “(c)”.

29 In line 30, delete “(f)” and insert “(d)”.

30 In line 33, delete “(g)” and insert “(e)”.

31 After line 34, insert:

32 “(3) A debt management service provider that performs a debt management service as defined
33 in ORS 697.602 (2)(b) or described in ORS 697.612 (1)(b)(E), in the document required under sub-
34 section (2) of this section, shall:

35 “(a) Describe, accurately and completely, the consumer’s right to review consumer credit infor-
36 mation about the consumer that a consumer reporting agency, as defined in 15 U.S.C. 1681a, main-
37 tains; and

38 “(b) State the approximate price that a consumer reporting agency will charge a consumer to
39 review the consumer credit information described in paragraph (a) of this subsection and that the
40 consumer may review the information at no charge if the consumer makes a request to the consumer
41 reporting agency within 30 days after the consumer was denied credit.”.

42 In line 35, delete “(3)” and insert “(4)”.

43 On page 16, line 8, delete “(4)” and insert “(5)”.

44 On page 18, line 29, after “Filed” insert “, knowingly or negligently,”.

45 On page 20, delete lines 3 through 5 and insert:

1 “(a) Violated, is violating or is about to violate ORS 697.612, 697.642 to 697.702 or 697.752, a rule
2 adopted under ORS 697.632 or an order issued under ORS 697.652 or 697.732, issue an order to cease
3 and desist from the violation.”.

4 On page 21, delete lines 11 through 16 and insert:

5 “(4) A court may award reasonable attorney fees to the prevailing party in an action brought
6 under this section.”.

7 On page 31, line 1, delete “1 to 18” and insert “1 to 9, 10 to 18”.

8 In line 11, delete “18” and insert “9, 10 to 18”.

9 After line 11, insert:

10 **“SECTION 29. Sections 20 and 21 of this 2009 Act, the amendments to ORS 192.502,**
11 **646.608, 646A.110, 646A.628, 697.602, 697.612, 697.632, 697.642, 697.652, 697.662, 697.672, 697.682,**
12 **697.692, 697.702, 697.707, 697.722, 697.732, 697.752, 697.762, 697.822, 697.825, 697.832 and 705.137**
13 **by sections 1 to 9, 10 to 18 and 22 to 26 of this 2009 Act and the repeal of ORS 646A.250,**
14 **646A.252, 646A.254, 646A.256, 646A.258, 646A.260, 646A.262, 646A.264, 646A.266, 646A.268,**
15 **646A.270, 697.622, 697.712, 697.742, 697.772, 697.782, 697.792, 697.802 and 697.812 by section 27**
16 **of this 2009 Act apply to a contract for debt management services entered into on or after**
17 **the effective date of this 2009 Act.**

18 **“SECTION 30. The amendments to ORS 697.692 by section 9a of this 2009 Act become**
19 **operative on January 1, 2012.”.**

20 In line 12, delete “29” and insert “31”.

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