

Enrolled Senate Bill 327

Sponsored by Senator MORSE, Representative OLSON (at the request of Jan Amling, Consumer Credit Counseling Service of Linn-Benton, Inc.)

CHAPTER

AN ACT

Relating to debt consolidating agencies; creating new provisions; and amending ORS 697.662 and 697.692.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 697.692 is amended to read:

697.692. *[(1) This section specifies fees that a debt consolidating agency may charge.]*

[(2)] (1) A debt consolidating agency:

(a) May charge a client an initial set-up fee of not more than \$25.

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

[(4)] (c) *[Except as provided in subsection (5) of this section, a debt consolidating agency shall]* **May** not charge a person for any discussion with that person that may or may not result in an agreement for services of a debt consolidating agency.

[(5)] (d) *[A debt consolidating agency]* **Notwithstanding paragraph (c) of this subsection,** may charge a fee to cover the expenses for education classes if:

[(a)] (A) The classes are approved by the Director of the Department of Consumer and Business Services, or the classes are required by rule or order of a federal or state agency and the debt consolidating agency is certified by the federal or state agency to provide the education; and

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

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

(a) **The debt consolidating agency demonstrates to the director the need for the fee or the credit counseling is required by rule or order of a federal or state agency and the debt consolidating agency is certified by the federal or state agency to provide the credit counseling; and**

(b) **A request to charge the fee has been approved in writing by the director.**

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

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

SECTION 2. Section 3 of this 2005 Act is added to and made a part of ORS 697.602 to 697.842.

SECTION 3. (1) A debt consolidating agency may not charge or receive from a client a fee authorized under ORS 697.692 for any services provided by the agency to the client before the agency provides the disclosure required under this section.

(2) A debt consolidating agency shall disclose in writing to each client on a separate form:

(a) The maximum amount the debt consolidating agency may charge for services performed for the client; and

(b) That the client is responsible for payment of the amount charged.

(3) The form described in subsection (2) of this section must contain a space for the client to sign the form, indicating that the client has read and understands the information disclosed on the form.

SECTION 4. ORS 697.662 is amended to read:

697.662. (1) A debt consolidating agency commits an improper debt consolidating practice when the debt consolidating agency does any of the following:

(a) Takes a contract, promise to pay or other instrument that has any blank spaces when it is signed by a client.

(b) Takes a negotiable instrument, other than a check or draft, as payment or security for the charges of the debt consolidating agency.

(c) Takes a wage assignment, real estate mortgage, purchase money security interest or other security, all or any part of which is an amount greater than that provided in ORS 697.692, to secure the charges of the debt consolidating agency.

(d) Takes a confession of judgment or a power of attorney to confess judgment against the client or to appear for the client in a judicial proceeding.

(e) Takes a release from a client of an obligation to be performed on the part of the debt consolidating agency.

(f) Makes any contract or agreement with a client that provides for later charges or reserves for liquidated damages.

(g) Commingles a client’s wages, salaries, income, credits or property held by the debt consolidating agency with the property or funds of the debt consolidating agency.

(h) Except as authorized in ORS 697.712, cancels a debt consolidating contract or agreement without a client’s written authorization.

(i) **Violates section 3 of this 2005 Act.**

(2) A person commits an improper debt consolidating practice if the person advertises, prints, displays, publishes, distributes or broadcasts, or causes to be advertised, printed, displayed, published, distributed or broadcasted, any false or misleading statement or representation with regard to the rates, terms or services of a debt consolidating agency.

(3) A debt consolidating agency that commits an improper debt consolidating practice under this section is subject to ORS 697.752, 697.762, 697.832 and 697.990 (3).

(4) A person other than a debt consolidating agency that commits an improper debt consolidating practice under subsection (2) of this section is subject to ORS 697.762, 697.832 and 697.990 (3).

SECTION 5. (1) **The amendments to ORS 697.692 by section 1 of this 2005 Act apply to fees charged for credit counseling that occurs on or after the effective date of this 2005 Act.**

(2) **Section 3 of this 2005 Act and the amendments to ORS 697.662 by section 4 of this 2005 Act apply to services provided on or after the effective date of this 2005 Act.**

Passed by Senate April 18, 2005

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Secretary of Senate

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President of Senate

Passed by House June 2, 2005

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Speaker of House

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State