

Senate Bill 337

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Exempts attorney and law firm that employs attorney or with which attorney is affiliated from regulation as debt management service provider if attorney or law firm provides debt management services in course of practicing law.

Becomes operative January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to exempting attorneys from regulation as debt management service providers in certain
3 circumstances; creating new provisions; amending ORS 697.612; and prescribing an effective
4 date.

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

6 **SECTION 1.** ORS 697.612 is amended to read:

7 697.612. (1) A person that has not registered with the Director of the Department of Consumer
8 and Business Services under ORS 697.632 may not engage in business in this state in the course of
9 which the person:

10 (a) Performs a debt management service; or

11 (b) Receives money or other valuable consideration or expects to receive money or other valu-
12 able consideration for:

13 (A) Soliciting or receiving an application from a consumer for a debt management service;

14 (B) Forwarding or providing a completed application for a debt management service to a debt
15 management service provider;

16 (C) Referring a consumer to another debt management service provider, if the person is a debt
17 management service provider;

18 (D) Providing a consumer's name, address or other information that identifies the consumer to
19 a debt management service provider for the purpose of arranging the provision of a debt manage-
20 ment service; or

21 (E) Providing advice, assistance, instruction or instructional material concerning a debt man-
22 agement service to a consumer.

23 (2) A debt management service provider registered under ORS 697.632 may negotiate on a
24 consumer's behalf for a reasonable alternative repayment schedule or to reduce a claim described
25 in 11 U.S.C. 502 if the debt management service provider is a nonprofit budget and credit counseling
26 agency approved in accordance with 11 U.S.C. 111.

27 (3) Subsection (1) of this section does not apply to:

28 (a) An employee of a debt management service provider, if the debt management service pro-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 vider is registered under ORS 697.632.

2 (b) An attorney licensed or authorized to practice law in this state, **or a law firm that employs**
 3 **the attorney or with which the attorney is affiliated**, if the attorney **or the law firm** provides
 4 a debt management service [*only incidentally in the practice of law.*] **in the course of practicing**
 5 **law. An attorney or law firm that is subject to this paragraph is not subject to any provisions**
 6 **of ORS 697.602 to 697.842.**

7 (c) A financial institution or a trust company, both as defined in ORS 706.008.

8 (d) A consumer finance company licensed under ORS chapter 725.

9 (e) An escrow agent licensed under ORS 696.505 to 696.590 to the extent that the escrow agent
 10 is acting to close an escrow, as defined in ORS 696.505, is engaging in activity related to a collection
 11 escrow, as defined in ORS 696.505, or is serving as a trustee of a trust deed in accordance with ORS
 12 86.713. This paragraph does not apply if the escrow agent:

13 (A) Assists an unregistered debt management service provider that is not exempt from regis-
 14 tration under this subsection in performing a debt management service; or

15 (B) Provides escrow services to a consumer in accordance with a debt management services plan
 16 executed by an unregistered debt management services provider that is not exempt from registration
 17 under this subsection.

18 (f) A mortgage banker or mortgage broker licensed under ORS 86A.095 to 86A.198 or a mortgage
 19 loan originator, as defined in ORS 86A.100.

20 (g) A broker-dealer registered with the United States Securities and Exchange Commission or
 21 the United States Commodity Futures Trading Commission, if the broker-dealer is subject to and
 22 acts in accordance with regulations promulgated by either commission.

23 (h) A consumer reporting agency, as defined in 15 U.S.C. 1681a(f).

24 (i) A public body, as defined in ORS 174.109.

25 (j) A person that is obeying or acting in accordance with a court order.

26 (k) An accredited educational institution or program that offers or performs a debt management
 27 service without receiving money or other valuable consideration, if the institution or program per-
 28 forms the debt management service as an incidental part of a class or a duty the institution or
 29 program provides regularly.

30 (L) A nonprofit budget and credit counseling agency approved in accordance with 11 U.S.C. 111
 31 that:

32 (i) Provides only an individual or group briefing, as described in 11 U.S.C. 109(h), or an in-
 33 structional course concerning personal financial management, as described in 11 U.S.C. 111; and

34 (ii) Does not receive or offer to receive funds from a consumer for the purpose of distributing
 35 the funds among the consumer's creditors in full or partial payment of the consumer's debts.

36 (m) A nonprofit entity that provides advice, assistance, instruction or instructional materials to
 37 a consumer in return for a fee that is reasonably calculated to pay the cost of making the advice,
 38 assistance, instruction or instructional materials available.

39 (n) An organization or a counselor approved by the United States Department of Housing and
 40 Urban Development under 12 U.S.C. 1701x.

41 **SECTION 2. (1) The amendments to ORS 697.612 by section 1 of this 2017 Act become**
 42 **operative on January 1, 2018.**

43 **(2) The Director of the Department of Consumer and Business Services may adopt rules**
 44 **and take any other action before the operative date specified in subsection (1) of this section**
 45 **that is necessary to enable the director, on and after the operative date specified in sub-**

1 section (1) of this section, to exercise all of the duties, functions and powers conferred on
2 the director by the amendments to ORS 697.612 by section 1 of this 2017 Act.

3 **SECTION 3.** This 2017 Act takes effect on the 91st day after the date on which the 2017
4 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

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