

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form..

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on 8/14/09 by the
Date prior to or same as filing date

Dept. of Consumer & Business Services, Div. of Finance & Corporate Securities OAR 441
Agency and Division Administrative Rules Chapter Number

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Rules Coordinator Address Telephone

to become effective August 14, 2009 through February 9, 2010
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Clarifies application of new law to debt management contracts and implements additional counseling fee.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

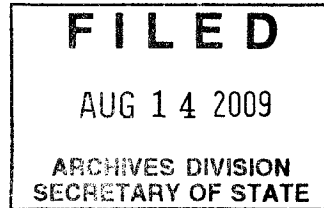
List each rule number separately, 000-000-0000.

Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT: 441-910-9000, 441-910-9001

AMEND: 441-910-0000

SUSPEND: 441-910-0092, 441-910-0095



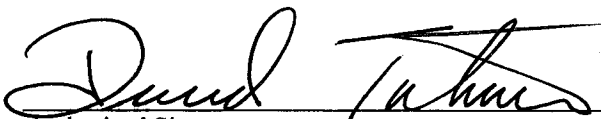
Stat. Auth.: ORS 697.632, 2009 Or Laws ch. 604, §§ 9 and 21

Other Auth.:

Stats. Implemented: 2009 Or Laws ch. 604, §§ 5, 9 and 29

RULE SUMMARY

The 2009 legislative assembly passed House Bill 2191 to regulate debt management practices in Oregon. Among other things, the bill required written contracts with certain terms, regulated the maximum fees charged by a debt management service provider, and authorized a limited counseling fee to be implemented by the Department of Consumer and Business Services through rule. The bill applies to contracts made on or after the effective date of the bill. This temporary rulemaking clarifies the provisions of House Bill 2191 that apply to contracts made for debt management services. This temporary rulemaking also implements the limited counseling fee by rule as directed by the legislature.


Authorized Signer

David C. Tatman
Printed name

8/14/09
Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. ARC 940-2005

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Dept. of Consumer & Business Services, Div. of Finance & Corporate Securities

OAR 441

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Adopting 441-910-9000, 441-910-9001; amending 441-910-0000; and suspending 441-910-0092 and 441-910-0095.

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Clarifies application of new law to debt management contracts and implements additional counseling fee

Statutory Authority: ORS 697.632, 2009 Or Laws ch. 604, §§ 9 and 21

Other Authority:

Stats. Implemented: 2009 Or Laws ch. 604, §§ 5, 9 and 29

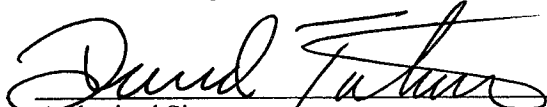
Need for the Temporary Rule(s): The 2009 legislative assembly passed House Bill 2191 to regulate debt management practices in Oregon. Among other things, the bill required written contracts with certain terms, regulated the maximum fees charged by a debt management service provider, and authorized a limited counseling fee to be implemented by the Department of Consumer and Business Services (DCBS) through rule. The bill applies to contracts made on or after the effective date of the bill. This temporary rulemaking clarifies the provisions of House Bill 2191 that apply to contracts made for debt management services. This temporary rulemaking also implements the limited counseling fee by rule as directed by the legislature.

Documents Relied Upon, and where they are available:

Justification of Temporary Rule(s): The general public will be seriously prejudiced if DCBS does not immediately adopt guidance concerning which sections of HB 2191 apply to contracts made for debt management services. Without guidance, the general public may not receive all the protections provided by the bill, such as the use of default contract terms, disclosures, and allowable fees under the agreement. Furthermore, entities providing debt management services will be seriously prejudiced without knowing which sections of the bill the entities must follow when making contracts with consumers before registrations as debt management service providers are required.

This rule also provides immediate guidance to entities that are not currently required to register as either a debt consolidation agency or a credit service organization.

Entities that provide debt management services will be seriously prejudiced if DCBS does not adopt additional counseling fees under rule. The fee structure enacted under the bill may affect the costs that an entity providing debt management services may recoup from consumers. Two fees allowable under current administrative rules – fees for education classes and fees for general counseling – are no longer applicable under the bill, further affecting the ability to recoup costs. The adoption of the additional counseling fee by rule allows current debt consolidation agencies and credit service organizations to recoup some of the costs associated with providing debt management services.



Authorized Signer

David C. Tatman

Printed name

8/14/09

Date

Temporary Administrative Rules effective August 14, 2009

441-910-0000

Definitions

The definitions of terms used in OAR chapter 441, division 910, are:

~~(1) "Comprehensive counseling session" means an interview, other than for a bankruptcy pre-filing briefing or which does not concurrently result in a debt management plan, lasting a minimum of 45 minutes with a client's full and active participation covering the following topics:~~

- ~~(a) Causes and conditions of the client's current financial situation;~~
- ~~(b) The client's goals and responsibilities;~~
- ~~(c) Options available to the client;~~
- ~~(d) Development of a spending plan or budget; and~~
- ~~(e) Possible referrals to outside organizations or agencies.~~

~~(2)(1) "Fee" means a sum of money paid by the client that is retained by the debt consolidating agency for services rendered or to be rendered, regardless of the term used by the debt consolidating agency for this sum of money.~~

~~(3)(2) "Fidelity bond" means insurance coverage against losses due to employee dishonesty.~~

~~(4)(3) "For-profit debt consolidating agency" means a debt consolidating agency other than a non-profit debt consolidating agency.~~

~~(5)(4) "Non-profit debt consolidating agency" means an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, as amended and in effect on April 1, 1983, and which actually operates as a non-profit organization.~~

~~(6)(5) "Surety bond" means insurance coverage against losses due to failure in performance of required duties or responsibilities.~~

~~(7)(6) "Trust account" means an account held in a financial institution into which all funds received or handled by the debt consolidating agency on behalf of the agency's clients are initially deposited.~~

~~(8)(7) "Voluntary contribution" means a payment of money by a creditor to support the debt consolidating agency's services.~~

Stat. Auth.: ORS 697.632, 2009 Or Laws ch. 604, § 21

Stats. Implemented: ORS 697.632

441-910-9000

Contract Applicability

(1) A debt consolidation agency registered under ORS 697.612 or a credit service organization registered under ORS 646A.256 shall be considered a debt management service provider for purposes of entering into contracts under 2009 Or Laws ch. 604, §§ 5, 8, 9, 11, 14, 20, and 23.

(2) A person that performs a debt management service as described under 2009 Or Laws ch. 604, § 1 for a consumer but is not required to be registered until January 1, 2010 shall enter into contracts in compliance with the provisions of 2009 Or Laws ch. 604, §§ 5, 8, 9, 11, 14, 20, and 23.

Stat. Auth.: 2009 Or Laws ch. 604, § 21

Stat. Implemented: 2009 Or Laws ch. 604, §§ 5 and 29

Hist.: New.

441-910-9001

Additional Counseling Fees

(1) In addition to the fees allowed in exchange for debt management services under ORS 697.692, as amended by 2009 Or Laws ch. 604, § 9, a debt consolidation agency, a credit service organization, or a person performing debt management services may charge a consumer fee of \$25 for a counseling session. A debt management service provider shall not charge a consumer more than \$50 for all instances of counseling occurring within a 30-day period.

(2) For purposes of this rule, "counseling" means instruction, advice, or recommendations given as a result of consultation with a consumer that:

- (a) Occurs in one continuous span of 45 minutes;

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- (b) Occurs after a consumer signs a contract for debt management services;
 - (c) Covers ongoing services provided by the debt management service provider, as described in the contract for debt management services; and
 - (d) Advises the consumer on particular topics with respect to the services as described in the contract for debt management services, including:
 - (A) Causes and conditions of the consumer's current financial situation;
 - (B) The consumer's financial goals and responsibilities;
 - (C) Options available to the consumer;
 - (D) Development of a spending plan or budget;
 - (E) Possible referrals to outside organizations or agencies; and
 - (F) Review and revisions necessary to implement the budget plan.
- Stat. Auth.: 2009 Or Laws ch. 604, § 9
Stat. Implemented: 2009 Or Laws ch. 604, § 9
Hist.: New.

SUSPENDING 441-910-0092:

441-910-0092

Fee for General Counseling

- (1) A non-profit debt consolidating agency may submit to the director a written request to charge a fee not to exceed \$35 for a comprehensive counseling session.
- (2) The request must demonstrate the need to charge the fee by including:
 - (a) The debt consolidating agency's total fund balance or net worth for the prior two fiscal years;
 - (b) Projected costs of providing comprehensive counseling sessions;
 - (c) Any sources of revenue to cover the projected costs of providing comprehensive counseling sessions; and
 - (d) Any other information the debt consolidating agency deems relevant for the director's decision.
- (3) A debt consolidating agency must consider the consumer's ability to pay the fee described in section (1) of this rule, and if appropriate, reduce or waive the fee.
- (4) A debt consolidating agency may not charge the set-up fee described in ORS 697.692 to any client who has paid the counseling fee described in section (1) of this rule.
- (5) A debt consolidating agency may charge no more than one fee described in section (1) of this rule to any client in any 90 day period.
- (6) Any approval of the fee will be made in writing by the director and is effective until approval is cancelled or withdrawn by the director.

Stat. Auth.: ORS 697.692

Stats. Implemented: ORS 697.692

Hist.: FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

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SUSPENDING 441-910-0095:

441-910-0095

Fee for Education Class

- (1) At least 30 days prior to conducting a new category of education classes, a debt consolidating agency may submit a written request for approval of fees to be charged.
- (2) The request shall enumerate all expenses by category and include a description of the purpose of the class and a description of all materials for which the debt consolidating agency seeks to charge consumers.
- (3) Expenses for which approval is sought must not exceed the actual cost for materials and services.
- (4) If the expenses for which approval is sought are associated with a federally or state mandated class, the debt consolidating agency must identify the class in its request and indicate whether or not the agency has been certified to provide the education.
- (5) Approval by the Director shall be made in writing for each category of class and shall continue for each such class taught until cancelled or withdrawn by the Director.
- (6) Prior to making any substantive changes to materials used in an approved class or any increase in fees charged, the debt consolidating agency must submit the proposed changes to the Director for review and approval.

Stat. Auth.: ORS 697.632

Stats. Implemented: ORS 697.692(5)

Hist.: FCS 5-2000, f. & cert. ef. 3-9-00; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06