HOUSE BILL NO. 318

INTRODUCED BY KOTTEL

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING DEBT SETTLEMENT PROVIDERS; PROVIDING DEFINITIONS; PROVIDING INSURANCE AND ACCOUNTING REQUIREMENTS FOR DEBT SETTLEMENT PROVIDERS; ESTABLISHING PROHIBITED PRACTICES FOR DEBT SETTLEMENT PROVIDERS; AND PROVIDING REMEDIES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) (a) "Debt settlement provider" means any person or entity engaging in or holding itself out as engaging in the business of debt settlement for compensation that does not in the usual and regular course of business hold, receive, ~~and~~ OR disburse a debtor's funds in connection with debt settlement services.

(b) The term does not include any of the following:

(i) attorneys, escrow agents, accountants, broker dealers in securities, or investment advisors in securities, when acting in the ordinary practice of their professions;

(ii) any bank, AGENT OF A BANK, trust company, savings and loan association, savings bank, credit union, crop credit association, development credit corporation, industrial development corporation, title insurance company, or insurance company operating or organized under the laws of this state, another state, or the United States, or any other person authorized to make loans under Montana law;

(iii) persons who perform credit services for their employer while receiving a regular salary or wage when the employer is not engaged in the business of debt settlement;

(iv) public officers while acting in their official capacities and persons acting under court order;

(v) any person while performing services incidental to the dissolution, winding up, or liquidating of a partnership, corporation, or other business enterprise; or

(vi) any for-profit or nonprofit entity that is subject to the provisions of Title 30, chapter 14, part 20, the Montana Consumer Debt Management Services Act.

(2) "Debt settlement service" is the negotiation, adjustment, or settlement of a consumer's debt without holding, receiving, or disbursing the debtor's funds.

(3) "PRINCIPAL AMOUNT OF THE DEBT" MEANS THE TOTAL AMOUNT OF DEBT OF AN INDIVIDUAL AT THE TIME THE INDIVIDUAL IS ACCEPTED INTO A DEBT SETTLEMENT PROGRAM.

NEW SECTION. **Section 2. Requirements for debt settlement providers.** (1) (a) A debt settlement provider shall maintain INSURANCE coverage for dishonesty, fraud, theft, and other misconduct on the part of directors, officers, employees, or agents that is issued by an insurer rated at least A- or its equivalent by a nationally recognized rating organization. THE DEBT SETTLEMENT PROVIDER SHALL, AT THE REQUEST OF THE ATTORNEY GENERAL, MAKE AVAILABLE TO THE ATTORNEY GENERAL PROOF OF THE INSURANCE COVERAGE REQUIRED BY THIS SUBSECTION (1)(A).

(b) The insurance coverage must be in a minimum amount of $100,000 with a deductible of not more than $10,000. A debt settlement provider is required to give at least 30 days' advance written notice to the attorney general if the coverage is being replaced.

(2) (a) A debt settlement provider is required to maintain books and records in accordance with generally accepted accounting principles and file a financial statement annually with the attorney general. The attorney general may require an audit or review of the financial statement by an independent certified public accountant.

(b) ~~In addition to the required financial information, a financial statement must include~~ THE ANNUAL FILING BY THE DEBT SETTLEMENT PROVIDER MUST BE ACCOMPANIED BY A FILING FEE OF ~~$750~~ $250 AND MUST INCLUDE, IN ADDITION TO THE FINANCIAL STATEMENT, THE FOLLOWING:

(i) the name of the debt settlement provider;

(ii) the date of formation if the debt settlement provider is an entity;

(iii) the physical address of each location to be operated by the debt settlement provider;

(iv) the name and resident address of the owners or partners or, if the debt settlement provider is a corporation, limited liability company, or association, the name and resident address of officers, directors, trustees, and managers; and

(v) any other pertinent information required by the attorney general.

(C) FEES RECEIVED PURSUANT TO THIS SECTION AND ANY CIVIL FINES, FEES, COSTS, OR PENALTIES RECEIVED OR RECOVERED BY THE DEPARTMENT OF JUSTICE PURSUANT TO [SECTION 4] MUST BE DEPOSITED INTO A STATE SPECIAL REVENUE ACCOUNT TO THE CREDIT OF THE DEPARTMENT OF JUSTICE AND MUST BE USED TO DEFRAY THE EXPENSES OF THE DEPARTMENT IN DISCHARGING ITS ADMINISTRATIVE AND REGULATORY POWERS AND DUTIES IN RELATION TO [SECTIONS 1 THROUGH 4]. CIVIL PENALTIES, COSTS, OR SETTLEMENTS RECEIVED BY A COUNTY ATTORNEY MUST BE PAID TO THE GENERAL FUND OF THE COUNTY IN WHICH ANY ENFORCEMENT ACTION WAS COMMENCED.

(3) (A) A debt settlement provider ~~is required to~~ SHALL disclose in writing to a debtor, prior to entering into an agreement to provide services to the debtor, ~~all fees that will be charged, that a debt settlement might have a potential impact on the debtor's credit history, and that there may be tax consequences for the debtor as a result of a debt settlement.~~ THAT:

(I) THERE WILL BE FEES CHARGED BY THE DEBT SETTLEMENT PROVIDER AND SHALL DISCLOSE THE TYPE AND AMOUNT OF ALL OF THOSE FEES;

(II) THE SETTLEMENT OF DEBTS THROUGH A DEBT SETTLEMENT PROGRAM MIGHT HAVE AN IMPACT ON THE DEBTOR'S CREDIT HISTORY;

(III) THERE MAY BE TAX CONSEQUENCES FOR THE DEBTOR AS A RESULT OF A DEBT SETTLEMENT;

(IV) COLLECTION ACTIVITY BY THE CREDITOR FOR A DEBT MAY CONTINUE UNTIL THE CREDITOR ACCEPTS A SETTLEMENT FOR THAT DEBT;

(V) ANY SETTLEMENT AMOUNT IS AN ESTIMATE BASED ON THE EXPERIENCE OF PRIOR CUSTOMERS AND IS NOT GUARANTEED TO BE ACCEPTED BY THE CREDITOR;

(VI) A CREDITOR MAY NOT BE FORCED TO ACCEPT A PROPOSED SETTLEMENT;

(VII) THE DEBTOR IS REQUIRED TO MEET CERTAIN SAVINGS GOALS IN ORDER TO MAXIMIZE SETTLEMENT OPPORTUNITIES;

(VIII) THE DEBT SETTLEMENT PROVIDER DOES NOT PROVIDE LEGAL, ACCOUNTING, TAX, OR BANKRUPTCY ADVICE OR ASSISTANCE;

(IX) THE DEBT SETTLEMENT PROVIDER WILL NOT USE A PAYMENT MADE BY THE DEBTOR TO MAKE A PAYMENT TO A CREDITOR; AND

(X) DEBT SETTLEMENT MAY NOT BE THE ONLY OPTION AVAILABLE TO THE DEBTOR.

(B) The written disclosure must be in a minimum size of ~~16-point~~ 12-POINT type.

NEW SECTION. **Section 3. Prohibitions -- contract cancellation.** (1) A debt settlement provider may not do any of the following:

(a) provide debt settlement services without a written contract ~~or accept any contract or other written instrument that has incomplete or blank sections when the contract or written instrument is~~ signed by the debtor;

(b) receive or charge fees, OTHER THAN SETUP FEES, in an aggregate amount that ~~are~~ IS in excess of 20% of the principal amount of the debt~~;~~. NO MORE THAN 5% OF THE PRINCIPAL AMOUNT OF THE DEBT MAY BE CHARGED AS A SETUP FEE.

(c) make loans or offer credit;

(d) take any confession of judgment or power of attorney to confess judgment against the debtor or appear as the debtor or on behalf of the debtor in any judicial proceedings;

(e) take as part of any agreement to provide debt settlement services a release of any obligation to be performed on the part of the debt settlement provider;

(f) advertise, display, distribute, broadcast, or televise services or permit services to be displayed, advertised, distributed, broadcasted, or televised, in any manner whatsoever, that contains any false, misleading, or deceptive statements or representations with regard to the services to be performed or the fees to be charged by the debt settlement provider;

(g) receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the debtor or a person on the debtor's behalf ~~in connection with the debt settlement provider's activities~~ FOR PERFORMING DEBT SETTLEMENT SERVICES;

(h) disclose to anyone the name or any personal information of a debtor for whom the debt settlement provider has provided or is providing debt settlement service other than a debtor's own creditors or the debt settlement provider's agents, AFFILIATES, OR CONTRACTORS;

(i) disclose the name of a debtor's creditor to anyone other than the debtor, A COMPANY ACTING ON BEHALF OF THE DEBTOR OR THE DEBTOR'S DEBT SETTLEMENT PROVIDER, or another creditor of the debtor and then only to the extent necessary to secure the cooperation of a creditor in a debt settlement plan;

(j) enter into a contract with a debtor without first providing the disclosure required in [section 2(3)];

(k) collect fees until ~~actual services are provided~~ A WRITTEN DEBT SETTLEMENT SERVICES CONTRACT HAS BEEN EXECUTED BY THE DEBTOR CONTAINING A SCHEDULE OF FEES IN THE ACTUAL AMOUNT TO BE CHARGED THE DEBTOR AND STATING WHEN THOSE FEES WILL BE CHARGED;

(l) advertise services in any manner in this state without first filing a financial statement with the attorney general; ~~or~~

(m) misrepresent any material fact or make a false promise intended to convince a debtor to enter into a debt settlement plan; OR

(N) VIOLATE THE PROVISIONS OF ANY APPLICABLE STATE OR FEDERAL DO-NOT-CALL REGISTRY OR TITLE 30, CHAPTER 14, PART 5.

(2) If a debt settlement service contract is canceled by the debtor ~~prior to its successful completion, a debt settlement provider is required to refund 70% of any collected fees.~~ BEFORE THE CONTRACT IS COMPLETED, THE DEBT SETTLEMENT PROVIDER SHALL, ON REQUEST OF THE DEBTOR, REFUND 50% OF ANY COLLECTED BUT UNREFUNDED SERVICE FEE ON A PRO RATA BASIS FOR THOSE ACCOUNTS THAT HAVE NOT RECEIVED A SETTLEMENT OFFER

BY THE TIME OF THE CANCELLATION. FEES ASSOCIATED WITH THE SETUP OF A DEBT SETTLEMENT SERVICE CONTRACT ARE NOT REQUIRED TO BE REFUNDED.

NEW SECTION. **Section 4. Remedies.** (1) The attorney general or the county attorney of any county in which a debt settlement provider is doing business or a debtor resides may bring an action for a violation of [section 2 or 3]. Upon finding that a person has violated or is violating a provision of [section 2 or 3], a court may make any necessary order or judgment, including an injunction, restitution, and an award of reasonable attorney fees and costs for the investigation and litigation of the violations.

(2) The attorney general or county attorney may accept an assurance of discontinuance of any method, act, or practice that is in violation of the provisions of [section 2 or 3] from any person alleged to be engaged in the unlawful act. The assurance may include a stipulation for the voluntary payment of the costs of investigation or of an amount to be held in escrow pending the outcome of any action or as restitution for any aggrieved person, or both. The court may award to the state a civil penalty not exceeding $10,000 for any violation of an assurance of discontinuance. Any matter closed by the acceptance of an assurance may be reopened at any time.

(3) A violation of a provision of [section 2 or 3] is a violation of 30-14-103, and a debtor is entitled to any remedy available under the provisions of Title 30, chapter 14, part 1, or other applicable state law.

NEW SECTION. **Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 4].

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