
HOUSE BILL 1491

State of Washington 63rd Legislature 2013 Regular Session

By Representatives Ryu, O'Ban, Parker, Santos, Sullivan, Habib, Kochmar, Stanford, and Pollet

Read first time 01/29/13. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to debt adjusting services; amending RCW 18.28.080,
2 18.28.090, 18.28.110, 18.28.150, 18.28.165, and 18.28.190; reenacting
3 and amending RCW 18.28.010; adding new sections to chapter 18.28 RCW;
4 creating a new section; prescribing penalties; and providing an
5 effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 18.28.010 and 2012 c 56 s 1 are each reenacted and
8 amended to read as follows:

9 Unless a different meaning is plainly required by the context, the
10 following words and phrases as hereinafter used in this chapter shall
11 have the following meanings:

12 (1) "Debt adjuster," which includes any person known as a debt
13 pooler, debt manager, debt consolidator, debt prorater, or credit
14 counselor, is any person engaging in or holding himself or herself out
15 as engaging in the business of debt adjusting for compensation. The
16 term shall not include:

17 (a) Attorneys-at-law licensed in Washington, escrow agents,
18 accountants, broker-dealers in securities, or investment advisors in

1 securities, while performing services solely incidental to the practice
2 of their professions;

3 (b) Any person, partnership, association, or corporation doing
4 business under and as permitted by any law of this state or of the
5 United States relating to banks, consumer finance businesses, consumer
6 loan companies, trust companies, mutual savings banks, savings and loan
7 associations, building and loan associations, credit unions, crop
8 credit associations, development credit corporations, industrial
9 development corporations, title insurance companies, insurance
10 companies, or third-party account administrators;

11 (c) Persons who, as employees on a regular salary or wage of an
12 employer not engaged in (~~the business of~~) debt adjusting, perform
13 credit services for their employer;

14 (d) Public officers while acting in their official capacities and
15 persons acting under court order;

16 (e) Any person while performing services incidental to the
17 dissolution, winding up or liquidation of a partnership, corporation,
18 or other business enterprise(~~(+~~

19 ~~(f) Nonprofit organizations dealing exclusively with debts owing
20 from commercial enterprises to business creditors;~~

21 ~~(g) Nonprofit organizations engaged in debt adjusting and which do
22 not assess against the debtor a service charge in excess of fifteen
23 dollars per month)).~~

24 (2) "Debt adjusting" means the managing, counseling, settling,
25 adjusting, prorating, or liquidating of the indebtedness of a debtor,
26 or receiving funds for the purpose of distributing said funds among
27 creditors in payment or partial payment of obligations of a debtor.

28 (3) "Debt adjusting agency" is any partnership, corporation, or
29 association engaging in or holding itself out as engaging in the
30 business of debt adjusting.

31 (4) "Department" means the department of financial institutions.

32 (5) "Director" means the director of the department of financial
33 institutions.

34 (6) "Financial institution" means any person doing business under
35 the laws of any state or the United States relating to commercial
36 banks, bank holding companies, savings banks, savings and loan
37 associations, trust companies, or credit unions.

1 (~~(+5)~~) (7) "Third-party account administrator" means an
2 independent entity that holds or administers a dedicated bank account
3 for fees and payments to creditors, debt collectors, debt adjusters, or
4 debt adjusting agencies in connection with the renegotiation,
5 settlement, reduction, or other alteration of the terms of payment or
6 other terms of a debt.

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9 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.28 RCW
10 to read as follows:

11 (1) No person or entity may provide or attempt to provide debt
12 adjusting services except as provided in subsection (2) of this
13 section.

14 (2) A nonprofit social service agency or a nonprofit consumer
15 credit counseling agency may provide debt adjusting services if the
16 agency is licensed by the department under this chapter.

17 (3) An application for the issuance or renewal of a debt adjuster
18 license must, at a minimum, include the following information:

19 (a) The name, business address, and telephone number of the
20 applicant;

21 (b) The names under which the applicant will do business;

22 (c) If the applicant is not a corporation that is domiciled in this
23 state, the name and contact information for the applicant's agent for
24 service of process in this state;

25 (d) The name, address, and contact information for any individual
26 or any corporation, partnership, or other business entity that owns ten
27 percent or more of the applicant;

28 (e) Proof that the applicant is organized as a nonprofit social
29 service agency or a nonprofit consumer credit counseling agency; and

30 (f) Any other relevant information required by the department.

31 (4) Applications for licensure must be made to the department on
32 forms approved by the director. A license is valid for one year and
33 must be renewed on or before the expiration date.

34 (5) The appropriate fees must accompany all applications for
35 original licensure and renewal.

36 (6) Each applicant shall file and maintain a surety bond, approved
37 by the director, executed by the applicant as obligor and by a surety

1 company authorized to do a surety business in this state as surety,
2 whose liability as the surety may not exceed in the aggregate the penal
3 sum of the bond. The director shall establish the penal sum of the
4 bond by rule. The bond must run to the state of Washington as obligee
5 for the use and benefit of the state and of any person or persons who
6 may have a cause of action against the obligor under this chapter. The
7 bond must be conditioned that: (a) The obligor will faithfully conform
8 to and abide by this chapter and all the rules adopted under this
9 chapter; and (b) the bond will pay to the state and any person or
10 persons having a cause of action against the obligor all moneys that
11 may become due and owing to the state and those persons under and by
12 virtue of this chapter.

13 (7) An applicant whose application is denied may appeal under
14 chapter 34.05 RCW.

15 **Sec. 3.** RCW 18.28.080 and 2012 c 56 s 2 are each amended to read
16 as follows:

17 (1) By contract a debt adjuster may charge a reasonable fee for
18 debt adjusting services. The total fee for debt adjusting services,
19 including, but not limited to, any fee charged by a financial
20 institution or a third-party account administrator, may not exceed
21 fifteen ~~((percent of the total debt listed by the debtor on the~~
22 ~~contract. The fee retained by the debt adjuster from any one payment~~
23 ~~made by or on behalf of the debtor may not exceed fifteen percent of~~
24 ~~the payment. The debt adjuster may make an initial charge of up to~~
25 ~~twenty five dollars which shall be considered part of the total fee.~~
26 ~~If an initial charge is made, no additional fee may be retained which~~
27 ~~will bring the total fee retained to date to more than fifteen percent~~
28 ~~of the total payments made to date)) dollars per month. No fee~~
29 ~~whatsoever shall be applied against rent and utility payments for~~
30 ~~housing.~~

31 ~~((In the event of cancellation or default on performance of the~~
32 ~~contract by the debtor prior to its successful completion, the debt~~
33 ~~adjuster may collect in addition to fees previously received, six~~
34 ~~percent of that portion of the remaining indebtedness listed on said~~
35 ~~contract which was due when the contract was entered into, but not to~~
36 ~~exceed twenty five dollars.))~~

1 (2) A debt adjuster shall not be entitled to retain any fee until
2 notifying all creditors listed by the debtor that the debtor has
3 engaged the debt adjuster in a program of debt adjusting.

4 (3) The department (~~(of financial institutions)~~) has authority to
5 enforce compliance with this section.

6 **Sec. 4.** RCW 18.28.090 and 1999 c 151 s 103 are each amended to
7 read as follows:

8 (1) If a debt adjuster contracts for, receives or makes any charge
9 in excess of the maximums permitted by this chapter, except as the
10 result of an accidental and bona fide error, the debt adjuster's
11 contract with the debtor shall be void and the debt adjuster shall
12 return to the debtor the amount of all payments received from the
13 debtor or on the debtor's behalf and not distributed to creditors.

14 (2) If a person or entity performs debt adjusting services in
15 violation of this chapter, the contract with the debtor is void, and
16 the person or entity shall return to the debtor the amount of all
17 payments received from the debtor or on the debtor's behalf.

18 **Sec. 5.** RCW 18.28.110 and 1999 c 151 s 105 are each amended to
19 read as follows:

20 Every debt adjuster shall perform the following functions:

21 (1) Make a permanent record of all payments by debtors, or on the
22 debtors' behalf, and of all disbursements to creditors of such debtors,
23 and shall keep and maintain in this state all such records, and all
24 payments not distributed to creditors. No person shall intentionally
25 make any false entry in any such record, or intentionally mutilate,
26 destroy or otherwise dispose of any such record. Such records shall at
27 all times be open for inspection by the department and the attorney
28 general or the attorney general's authorized agent, and shall be
29 preserved as original records or by microfilm or other methods of
30 duplication for at least six years after making the final entry
31 therein.

32 (2) Deliver a completed copy of the contract between the debt
33 adjuster and a debtor to the debtor immediately after the debtor
34 executes the contract, and sign the debtor's copy of such contract.

35 (3) Unless paid by check or money order, deliver a receipt to a
36 debtor for each payment within five days after receipt of such payment.

1 (4) (~~Distribute to the creditors of the debtor at least once each~~
2 ~~forty days after receipt of payment during the term of the contract at~~
3 ~~least eighty five percent of each payment received from the debtor.~~

4 (5)) At least once every month render an accounting to the debtor
5 which shall indicate the total amount received from or on behalf of the
6 debtor, the total amount paid to each creditor, the total amount which
7 any creditor has agreed to accept as payment in full on any debt owed
8 the creditor by the debtor, the amount of charges deducted, and any
9 amount held in trust. The debt adjuster shall in addition render such
10 an account to a debtor within ten days after written demand.

11 ((+6)) (5) Notify the debtor, in writing, within five days of
12 notification to the debt adjuster by a creditor that the creditor
13 refuses to accept payment pursuant to the contract between the debt
14 adjuster and the debtor.

15 NEW SECTION. **Sec. 6.** A new section is added to chapter 18.28 RCW
16 to read as follows:

17 (1) The director may require a debt adjuster to file an annual
18 report containing information regarding the debt adjusting services
19 provided in the preceding calendar year. The department shall
20 determine by rule the information to be provided in the annual report.
21 The report must be submitted under oath and in the form and within the
22 time specified by the director.

23 (2) Each debt adjuster shall have its financial records relating to
24 debt adjusting services audited annually by a certified public
25 accountant. The audit must be filed with the director.

26 (3) After reviewing the annual report and audit filed under this
27 section, the director may cause an examination of the debt adjuster to
28 be made, the actual expense of which must be paid by the debt adjuster.

29 (4) The debt adjuster shall make a copy of the annual report and
30 audit available for public inspection at each of the debt adjuster's
31 locations.

32 (5) The director shall compile the information provided in all
33 annual reports filed under this section and make those results
34 available to the public. This information may be published only in
35 composite form. A debt adjuster's annual report must remain
36 confidential and exempt from public disclosure under chapter 42.56 RCW.

1 **Sec. 7.** RCW 18.28.150 and 1999 c 151 s 109 are each amended to
2 read as follows:

3 (1) Any payment received by a debt adjuster from or on behalf of a
4 debtor shall be held in trust by the debt adjuster from the moment it
5 is received. The debt adjuster shall not commingle such payment with
6 the debt adjuster's own property or funds, but shall maintain a
7 separate trust account and deposit in such account all such payments
8 received. All disbursements whether to the debtor or to the creditors
9 of the debtor, or to the debt adjuster, shall be made from such
10 account.

11 (2) In the event that the debtor cancels or defaults on the
12 contract between the debtor and the debt adjuster, the debt adjuster
13 shall close out the debtor's trust account in the following manner:

14 (a) The debt adjuster may take from the account that amount
15 necessary to satisfy any fees(~~(, other than any cancellation or default~~
16 ~~fee,)) authorized by this chapter.~~

17 (b) After deducting the fees provided in subsection (2)(a) of this
18 section, the debt adjuster shall distribute the remaining amount in the
19 account to the creditors of the debtor. The distribution shall be made
20 within five days of the demand therefor by the debtor, but if the
21 debtor fails to make the demand, then the debt adjuster shall make the
22 distribution within thirty days of the date of cancellation or default.

23 NEW SECTION. **Sec. 8.** A new section is added to chapter 18.28 RCW
24 to read as follows:

25 The director may conduct disciplinary proceedings, impose
26 sanctions, and assess fines in accordance with chapter 34.05 RCW for:

27 (1) Providing debt adjusting services without obtaining a license
28 under this chapter;

29 (2) Contracting for, receiving, or making any charge in excess of
30 the maximums permitted by this chapter, except as the result of an
31 accidental and bona fide error; and

32 (3) Violating any provision of this chapter or any rule adopted
33 under it.

34 NEW SECTION. **Sec. 9.** A new section is added to chapter 18.28 RCW
35 to read as follows:

36 The department may adopt rules to:

- 1 (1) Administer and enforce this chapter; and
2 (2) Establish reasonable fees to be paid by debt adjusters for the
3 expense of administering this chapter. The fees must be set at a
4 sufficient level to defray the costs of administering this chapter.

5 **Sec. 10.** RCW 18.28.165 and 1999 c 151 s 110 are each amended to
6 read as follows:

7 For the purpose of discovering violations of this chapter or
8 securing information lawfully required under this chapter, the
9 department and the office of the attorney general may at any time:
10 Investigate the debt adjusting business and examine the books,
11 accounts, records, and files used; have free access to the offices and
12 places of business, books, accounts, papers, records, files, safes, and
13 vaults of debt adjusters; and require the attendance of and examine
14 under oath all persons whomsoever whose testimony might be required
15 relative to such debt adjusting business or to the subject matter of
16 any examination, investigation, or hearing.

17 **Sec. 11.** RCW 18.28.190 and 1999 c 151 s 111 are each amended to
18 read as follows:

19 Any person who violates any provision of this chapter or aids or
20 abets such violation, or any rule lawfully adopted under this chapter
21 or any order made under this chapter, is guilty of a misdemeanor and is
22 subject to a civil penalty of not less than five hundred dollars and
23 not more than two thousand five hundred dollars for each violation.
24 This penalty is in addition to any other remedies provided under law.

25 NEW SECTION. **Sec. 12.** The provisions of this act do not
26 invalidate or make unlawful contracts between debt adjusters and
27 debtors executed prior to the effective date of this section.

28 NEW SECTION. **Sec. 13.** This act takes effect January 1, 2014.

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