
ENGROSSED SUBSTITUTE SENATE BILL 5321

State of Washington

64th Legislature

2015 Regular Session

By Senate Financial Institutions & Insurance (originally sponsored by Senators Benton, Mullet, Hobbs, Angel, and Fain)

READ FIRST TIME 02/19/15.

1 AN ACT Relating to licensure of persons providing debt settlement
2 services; amending RCW 42.56.230; reenacting and amending RCW
3 18.28.010; adding a new chapter to Title 18 RCW; creating new
4 sections; prescribing penalties; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** This chapter may be known and cited as the
7 debt settlement services act.

8 NEW SECTION. **Sec. 2.** The definitions in this section apply
9 throughout this chapter unless the context clearly requires
10 otherwise.

11 (1) "Affiliate" means:

12 (a) A person that controls, is controlled by, or is under common
13 control with the provider;

14 (b) An executive officer of or individual performing similar
15 functions with respect to the provider;

16 (c) A director of or individual performing similar functions with
17 respect to the provider; and

18 (d) An executive officer or director of or an individual
19 performing similar functions with respect to a person described in
20 (a) of this subsection.

- 1 (2) "Agreement" means a written contract between a provider and
2 an individual for the performance of debt settlement services.
- 3 (3) "Business address" means the physical location of a business,
4 including the name and number of a street.
- 5 (4) "Business day" means Monday through Saturday excluding
6 federally recognized bank holidays.
- 7 (5) "Concessions" means assent by an individual's creditors to
8 repayment of a debt on terms more favorable to an individual than the
9 terms of the contract between the individual and that creditor.
- 10 (6) "Consumer" means an individual who has unsecured debt, which
11 arises out of personal, family or household obligations, and who has
12 executed an agreement with a provider.
- 13 (7) "Control" means the right to control ten percent or more of
14 the voting power of another person.
- 15 (8) "Creditor" means a person that has extended credit to an
16 individual.
- 17 (9) "Debt settlement services" means services as an intermediary
18 between an individual and one or more unsecured creditors of the
19 individual for the purpose of (a) obtaining negotiated concessions
20 involving a reduction in principal of the individual's unsecured
21 debt, and (b) securing the discharge of such debt upon the
22 individual's performance of the negotiated concessions.
- 23 (10) "Department" means the department of financial institutions.
- 24 (11) "Director" means the director of the department of financial
25 institutions.
- 26 (12) "Financial institution" means any person doing business
27 under the laws of any state or the United States relating to
28 commercial banks, bank holding companies, savings banks, savings and
29 loan associations, trust companies, or credit unions.
- 30 (13) "Good faith" means honesty in fact and the observance of
31 reasonable standards of fair dealing.
- 32 (14) "Individual" means a natural person.
- 33 (15) "Licensee" means a provider that is validly licensed
34 pursuant to section 3 of this act. For purposes of an enforcement
35 action under sections 23, 24, and 27 of this act, "licensee" also
36 means a provider, whether located within or outside this state, who
37 fails to obtain licensure under this chapter.
- 38 (16) "Person" means an individual, corporation, business trust,
39 estate, trust, partnership, limited liability company, association,
40 joint venture, or any other legal or commercial entity. "Person" does

1 not include a public corporation, government or governmental
2 subdivision, agency or instrumentality.

3 (17) "Principal amount of the debt" means the amount of a debt at
4 the time such debt becomes the subject of an agreement for debt
5 settlement services.

6 (18) "Program" means a plan or strategy in which a provider
7 furnishes debt settlement services.

8 (19) "Provider" means a person required to be licensed pursuant
9 to this chapter and that provides, offers to provide, or agrees to
10 provide debt settlement services for compensation.

11 (20) "Record" means information that is inscribed on a tangible
12 medium or that is stored in an electronic or other medium and is
13 retrievable in perceivable form.

14 (21) "Statement of accounting" means a written or electronic
15 document that a provider prepares for a consumer in accordance with
16 section 16 of this act.

17 (22) "Third-party payment processor" means an entity that holds,
18 or has access to, or can effectuate procession of, by any means, the
19 moneys of a licensee's debtors, or distributes, or is in the chain of
20 distribution of, such moneys to the creditors of such debtors,
21 pursuant to an agreement or contract with the licensee.

22 NEW SECTION. **Sec. 3.** (1) A person may not engage in or
23 advertise for debt settlement services in this state unless the
24 person has first become licensed to provide debt settlement services
25 with the director.

26 (2) A provider shall license its primary business address and
27 shall identify each branch location.

28 (3) Licensure is not transferable or assignable.

29 (4) A licensee shall file a bond in an amount and form provided
30 in section 6 of this act before it may conduct business in this
31 state.

32 (5)(a) A licensee may not conduct business in this state under a
33 business name other than the business name that is listed on its
34 license.

35 (b) Notwithstanding (a) of this subsection, a licensee may do
36 business under a trade name if the licensee has licensed the trade
37 name with the department and that the department does not object to
38 the use of the trade name on the basis that it is deceptive.

1 NEW SECTION. **Sec. 4.** The following persons are exempt from this
2 chapter:

3 (1) A provider's employees who perform debt settlement services
4 on the provider's behalf in the regular course of their employment;

5 (2) Judicial officers, individuals acting under the direction of
6 a court, or assignees for creditors' benefit;

7 (3) A financial institution;

8 (4) Attorneys licensed to practice law in this state who provide
9 debt settlement services to consumers with whom the attorney also
10 provides legal services within an attorney-client relationship to,
11 and who do not, directly or indirectly, solicit debt settlement
12 services business;

13 (5) A money transmitter licensed under chapter 19.230 RCW if such
14 persons do not directly provide debt settlement services;

15 (6) Creditors or the creditors' employees who negotiate debt
16 settlement with individuals or providers;

17 (7) Officers or employees of the United States or a state of the
18 United States who perform debt settlement services for individuals on
19 behalf of the federal government, any state, a municipality or a
20 state agency, and receive compensation solely from such governmental
21 entities;

22 (8) Certified public accountants licensed or otherwise authorized
23 to provide accounting services in this state who provide debt
24 settlement services to consumers with whom the certified public
25 accountant also provides accounting services within an accountant-
26 client relationship to, and who do not, directly or indirectly,
27 solicit debt settlement services business;

28 (9) Financial planners licensed in this state who provide
29 financial planning services provided in a financial planner-client
30 relationship to, and who do not, directly or indirectly, solicit debt
31 settlement services business;

32 (10) A title insurer, escrow agent licensed under chapter 18.44
33 RCW, or other person that provides bill-paying services if the
34 provision of debt settlement is incidental to the bill paying
35 services;

36 (11) A third-party payment processor licensed under chapter
37 19.230 RCW if such person does not directly provide debt settlement
38 services.

1 NEW SECTION. **Sec. 5.** (1) Application for a license under this
2 chapter must be made to the nationwide licensing system and in the
3 form prescribed by the director. Applicants shall pay an application
4 fee set by rule. The director shall evaluate the applicant's
5 financial responsibility, character, reputation, integrity and
6 general fitness to determine whether the applicant will act lawfully,
7 honestly, fairly, soundly, and efficiently in the public interest.
8 The license is valid for a period of one year or less, depending on
9 the date that it is issued, and expires on the last day of December
10 each calendar year in which it was issued. The director shall
11 determine the license renewal fee and the information required for an
12 application by rule.

13 (2) The director may participate in the nationwide licensing
14 system for the sharing of regulatory information. The applicant shall
15 pay directly to the nationwide licensing system any additional fee
16 relating to participation in the system.

17 (3) As part of or in connection with an application for a license
18 under this section, or periodically upon renewal, each officer,
19 director, and owner applicant shall furnish information concerning
20 his or her identity, including fingerprints for submission to the
21 Washington state patrol, the federal bureau of investigation, or any
22 governmental agency or entity authorized to receive this information
23 for a state and national criminal history background check, personal
24 history, experience, business record, purposes, and other pertinent
25 facts, as the director may reasonably require. The applicant must pay
26 the cost of collecting fingerprints and the cost of processing the
27 fingerprints by the department. As part of or in connection with an
28 application for a license under this chapter, or periodically upon
29 renewal, the director is authorized to receive criminal history
30 record information that includes nonconviction data as defined in RCW
31 10.97.030. The director may only disseminate nonconviction data
32 obtained under this section to criminal justice agencies. This
33 section does not apply to financial institutions regulated under
34 chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

35 (4) The director may waive one or more requirements of this
36 section or permit an applicant to submit other information in lieu of
37 the required information.

38 NEW SECTION. **Sec. 6.** (1) At the time of filing an application
39 for a license, or any renewal or reinstatement of a license to

1 provide debt settlement services, the applicant shall provide
2 satisfactory evidence to the director of having obtained the
3 following as evidence of financial responsibility:

4 (a) At the time of application, the applicant must inform the
5 director as to whether the applicant will receive or hold customer
6 funds. If so, the applicant is required to obtain a fidelity bond,
7 and surety bond if necessary, as follows:

8 (i) A fidelity bond providing coverage in the aggregate amount of
9 one hundred fifty thousand dollars with a deductible no greater than
10 ten thousand dollars covering each officer, partner, and employee of
11 the applicant engaged in providing debt settlement services;

12 (ii) A surety bond in the amount of ten thousand dollars executed
13 by the applicant as obligor and by a surety company authorized to do
14 a surety business in this state as surety, unless the fidelity bond
15 obtained by the licensee to satisfy the requirement in (a) of this
16 subsection does not have a deductible. The bond must run to the state
17 of Washington as obligee, and must run to the benefit of the state
18 and any person or persons who suffer loss by reason of the
19 applicant's or its employee's violation of this chapter.

20 (b) If at the time of application the applicant informs the
21 director that it will not hold or receive consumer funds, the
22 licensee is only required to obtain a surety bond in the aggregate
23 amount of fifty thousand dollars executed by the applicant as obligor
24 and by a surety company authorized to do a surety business in this
25 state as surety. The bond must run to the state of Washington as
26 obligee, and must run to the benefit of the state and any person or
27 persons who suffer loss by reason of the applicant's or its
28 employee's violation of this chapter. A licensee that holds only a
29 surety bond may not accept or hold consumer funds prior to notifying
30 the department and obtaining a fidelity bond in compliance with (a)
31 of this subsection.

32 (c) The surety bonds described in subsection (1)(a) and (b) of
33 this section must be conditioned that the obligor as licensee will
34 faithfully conform to and abide by this chapter and all rules adopted
35 under this chapter, and must reimburse all persons who suffer loss by
36 reason of a violation of this chapter or rules adopted under this
37 chapter. The bond shall be continuous and may be canceled by the
38 surety only upon the surety giving written notice to the director of
39 its intent to cancel the bond. The cancellation is effective thirty
40 days after the notice is received by the director. Whether or not the

1 bond is renewed, continued, reinstated, reissued, or otherwise
2 extended, replaced, or modified, including increases or decreases in
3 the penal sum, it is considered one continuous obligation, and the
4 surety upon the bond is not liable in an aggregate amount exceeding
5 the penal sum set forth on the face of the bond. In no event may the
6 penal sum, or any portion thereof, at two or more points in time be
7 added together in determining the surety's liability. The bond is not
8 liable for any penalties imposed on the licensee including, but not
9 limited to, any increased damages or attorneys' fees, or both,
10 awarded under RCW 19.86.090.

11 (2) For purposes of this section:

12 (a) "Employee" means any individual whose status in the company
13 is that of a W-2 employee for purposes of federal income tax
14 reporting, independent contractor, sole proprietor, partner, officer,
15 member, or manager.

16 (b) "Fidelity bond" means a primary commercial blanket bond or
17 its equivalent satisfactory to the director and written by an insurer
18 authorized to transact this line of business in the state of
19 Washington. The bond must provide fidelity coverage for any
20 fraudulent or dishonest acts committed by any one or more of the
21 officers, partners, sole practitioners, and employees of the
22 applicant engaged in debt settlement services transactions acting
23 alone or in collusion with others. This bond is for the sole benefit
24 of the licensee and under no circumstances whatsoever may the bonding
25 company be liable under the bond to any other party unless the
26 officer, partner, or sole practitioner commits a fraudulent or
27 dishonest act, in which case, the bond is for the benefit of the
28 harmed consumer. The bond must name the licensee as obligee and must
29 protect the obligee against the loss of money or other real or
30 personal property belonging to the obligee, or in which the obligee
31 has a pecuniary interest, or for which the obligee is legally liable
32 or held by the obligee in any capacity, whether the obligee is
33 legally liable therefor or not. The bond may be canceled by the
34 insurer upon delivery of thirty days' written notice to the director
35 and to the licensee. In the event that the fidelity bond required
36 under this subsection is not reasonably available, the director may
37 adopt rules to implement a surety bond requirement.

38 (3) Except as provided in section 7 of this act, the fidelity
39 bond and surety bond required by this section must be kept in full
40 force and effect as a condition precedent to the licensee's authority

1 to transact debt settlement services business in this state, and the
2 licensee shall supply the director with satisfactory evidence thereof
3 upon request.

4 NEW SECTION. **Sec. 7.** If the director determines and the
5 insurance commissioner concurs that a bond or bonds is not reasonably
6 available, the director may waive the requirements for the bond or
7 bonds for a fixed period of time.

8 NEW SECTION. **Sec. 8.** (1) A provider shall renew its license to
9 provide debt settlement services annually.

10 (2) An application for renewal of a license as a provider must be
11 in a form prescribed by the department, signed under penalty of
12 perjury, and:

13 (a) Be accompanied by the fee established by the department;

14 (b) Disclose any changes in the information contained in the
15 applicant's application for a license or its immediately previous
16 application for renewal, as applicable; and

17 (c) Provide any other information that the department may
18 reasonably require to perform the department's duties under this
19 section and section 5 of this act to ensure that the minimum
20 standards for licensing continue to be satisfied.

21 (3) If a provider files a complete application for renewal of its
22 license before the expiration date, the license remains effective
23 until the department, in a record, notifies the applicant of the
24 denial and states the reasons for the denial. If a provider does not
25 file a complete application for renewal of its license before the
26 expiration date, the license expires.

27 (4) If the department denies an application for renewal of a
28 license as a provider, the applicant may appeal and request a hearing
29 under chapter 34.05 RCW. While the appeal is pending, the applicant
30 shall continue to provide debt settlement services to individuals
31 with whom it has agreements. If the denial is affirmed, the applicant
32 shall continue to provide debt settlement services to individuals
33 with whom it has agreements until, with the approval of the
34 department, it transfers the agreements to another licensee.

35 NEW SECTION. **Sec. 9.** An applicant or licensee shall notify the
36 department no later than ten days after a material change in the

1 information provided in an application for a license or in any
2 renewal.

3 NEW SECTION. **Sec. 10.** (1) A licensee shall pay an annual
4 assessment as established in rule by the director no later than the
5 annual assessment due date or, if the annual assessment due date is
6 not a business day, on the next business day. In setting an annual
7 assessment amount, the director may base the assessment on volume of
8 debt settlement business conducted in this state, debt settlement
9 fees received from residents of this state, or other method that
10 fairly apportions the assessment obligation among licensees. The
11 director may set a minimum yearly assessment amount.

12 (2) A licensee shall submit an accurate annual report with the
13 annual assessment, in a form and in a medium prescribed by the
14 director in rule. As part of the annual report, the director may
15 require a copy of the licensee's most recent audited annual financial
16 statement or any other information that the director deems necessary
17 in connection with reviewing the assessment amount that is due. In
18 addition, the report must contain any additional information required
19 by the director related to the conduct of a licensee's business.

20 (3) If a licensee does not file an annual report or pay its
21 annual assessment by the annual assessment due date, the director or
22 the director's designee shall send the licensee a notice of
23 suspension and assess the licensee a late fee not to exceed twenty-
24 five percent of the annual assessment as established in rule by the
25 director. The licensee's annual report and payment of both the annual
26 assessment and the late fee must arrive in the department's offices
27 by 5:00 p.m. on the thirtieth day after the assessment due date or
28 any extension of time granted by the director, unless that date is
29 not a business day, in which case the licensee's annual report and
30 payment of both the annual assessment and the late fee must arrive in
31 the department's offices by 5:00 p.m. on the next occurring business
32 day. If the licensee's annual report and payment of both the annual
33 assessment and late fee do not arrive by such date, the expiration of
34 the licensee's license is effective at 5:00 p.m. on the thirtieth day
35 after the assessment due date, unless that date is not a business
36 day, in which case the expiration of the licensee's license is
37 effective at 5:00 p.m. on the next occurring business day. The
38 director, or the director's designee, may reinstate the license if,

1 within twenty days after its expiration, the licensee files the
2 annual report and pays both the annual assessment and the late fee.

3 NEW SECTION. **Sec. 11.** The director may deny a license if:

4 (1) The applicant does not satisfy the criteria set forth in
5 section 5 of this act;

6 (2) The application contains information that is materially
7 erroneous or incomplete;

8 (3) The applicant fails to provide information that the director
9 may request, in a timely manner or within the time specified by the
10 director;

11 (4) An officer, director, member, or principal of the applicant's
12 business has been convicted of or pleaded nolo contendere to a felony
13 involving fraud or financial misconduct within seven years of the
14 filing of the present application;

15 (5) An officer, director, member, or principal of the applicant
16 has had a professional license revoked, suspended, or subjected to
17 administrative action in any jurisdiction;

18 (6) The applicant or any of its officers, directors, members, or
19 principals has defaulted in the payment of money collected for
20 others;

21 (7) The applicant's license has been revoked or suspended in
22 another jurisdiction; or

23 (8) The applicant has engaged in unlicensed debt settlement
24 services in this state or otherwise committed violations of this
25 chapter after the effective date of this section.

26 NEW SECTION. **Sec. 12.** (1) The director may condition, suspend,
27 revoke, or deny renewal of a license if:

28 (a) A licensee has violated this chapter or any rule or
29 regulation adopted hereunder or any other law applicable to the
30 conduct of its business;

31 (b) A fact or condition exists that, if it had existed when the
32 licensee applied for a license, would have warranted the director
33 refusing to issue the initial license;

34 (c) The licensee does not satisfy the criteria required under
35 section 5 of this act;

36 (d) The licensee has refused to permit the director to examine
37 the licensee books and records under this chapter, failed to comply

1 with section 20 of this act, or made a material misrepresentation or
2 omission in complying with section 20 of this act; or

3 (e) The licensee has failed to comply with any written directive
4 or order of the director.

5 (2) If the director suspends, revokes, or denies renewal of a
6 license, the director may seek a court order to seize the licensee's
7 books, records, accounts, property, or money in a trust account
8 maintained by the provider.

9 (3) A licensee must receive notice and an opportunity to request
10 a hearing under chapter 34.05 RCW before the director revokes or
11 suspends a provider's license.

12 (4) A licensee may deliver a written notice to the director to
13 surrender its licensed status. However, if a licensee surrenders its
14 licensed status, its civil or criminal liability for acts committed
15 before the surrender is not affected.

16 NEW SECTION. **Sec. 13.** (1) Before an individual consents to pay
17 for goods or services offered, a provider shall disclose truthfully,
18 in a clear and conspicuous manner, the following material
19 information:

20 (a) A good faith estimate of the amount of time necessary to
21 achieve the represented results;

22 (b) To the extent the debt settlement services may include a
23 settlement offer to any of the individual's creditors or debt
24 collectors:

25 (i) A good faith estimate of the time by which the provider will
26 start to make bona fide settlement offers to the individual's
27 creditors;

28 (ii) A good faith estimate of the amount of money or the
29 percentage of each outstanding debt that the individual will need to
30 accumulate before the provider will make a bona fide settlement offer
31 to one or more of such creditors;

32 (iii) The cost to the individual for providing debt settlement
33 services;

34 (c) To the extent that any aspect of the debt settlement services
35 relies upon or results in the individual's failure to make timely
36 payments to creditors or debt collectors, that the use of the debt
37 settlement services may adversely affect the individual's
38 creditworthiness, may result in the individual being subject to
39 collection actions or sued by creditors or debt collectors, and may

1 increase the amount of money the individual owes due to the accrual
2 of fees and interest; and

3 (d) To the extent that the provider requests or requires the
4 individual to place funds in an account at a financial institution,
5 that the individual owns the funds held in the account and that the
6 individual may withdraw from the debt settlement services agreement
7 at any time without penalty.

8 (2) A provider may not misrepresent, directly or by implication,
9 any material aspect of any debt settlement services, including but
10 not limited to: The amount of money or the percentage of the debt
11 amount that an individual may save by using such service; the effect
12 of the service on the individual's creditworthiness; the effect of
13 the service on collection efforts of the individual's creditors or
14 debt collectors; the percentage or number of individuals who attain
15 the represented results; and whether debt settlement services are
16 offered or provided by a nonprofit entity.

17 (3) A provider may not directly or indirectly employ any scheme,
18 device, or artifice to defraud or mislead consumers or to defraud any
19 person;

20 (4) A provider may not engage in any unfair or deceptive practice
21 toward any person;

22 (5) A provider may not receive payment of any fee or
23 consideration for any debt settlement services until and unless:

24 (a) The provider has renegotiated, settled, reduced, or otherwise
25 altered the terms of at least one debt under a debt settlement
26 program;

27 (b) The individual has made at least one payment to a creditor in
28 furtherance of a settlement with that creditor; and

29 (c) The fee or consideration for settling each individual debt
30 enrolled in a program either:

31 (i) Bears the same proportional relationship to the total fee for
32 settling the entire debt balance as the individual debt amount bears
33 to the entire debt amount. The individual debt amount and the entire
34 debt amount are amounts owed at the time the debt was enrolled in the
35 program; or

36 (ii) Is a percentage of the amount saved as a result of the
37 settlement. The percentage charged may not change from one individual
38 debt to another. The amount saved is the difference between the
39 amount owed at the time the debt was enrolled in the program and the
40 amount actually paid to satisfy the debt. By contract a provider may

1 charge a total fee for debt adjusting services, including, but not
2 limited to, any fee charged by a financial institution or a third-
3 party account administrator, may not exceed twenty percent of the
4 total debt listed by the debtor on the contract. The fee retained by
5 the provider from any one payment made by or on behalf of the debtor
6 may not exceed twenty percent of the payment.

7 (6) Unless authorized by another chapter, a provider may not
8 provide services for compensation as an intermediary between an
9 individual and one or more secured creditors of the individual for
10 purposes of obtaining concessions involving a reduction in principal
11 or interest of the individual's secured debt.

12 (7) Nothing in this section prohibits requesting or requiring the
13 individual to place funds in an account to be used for payment of the
14 provider's fees and for payments to creditors or debt collectors in
15 connection with the renegotiation settlement, reduction, or other
16 alteration of the terms of payment or other terms of debt if:

17 (a) The funds are held in a specifically designated account at a
18 financial institution;

19 (b) The individual, not the provider, owns and controls the funds
20 held in the account and, if the account is interest-bearing, is paid
21 accrued interest on the account;

22 (c) If the provider does not administer the account, the entity
23 administering the account is not owned or controlled by the provider
24 and is not an affiliate of the provider;

25 (d) The entity administering the account does not give or accept
26 any money or other compensation in exchange for referrals of business
27 by the provider; and

28 (e) The individual may withdraw from the debt settlement services
29 agreement at any time without penalty, and, upon notice by the
30 individual to the third-party payment processor, must receive from
31 the third-party payment processor all funds in the account, other
32 than funds earned by the provider in compliance with this section, as
33 specified in the account agreement between the individual and the
34 financial institution.

35 (8) If a provider is not licensed as required by this chapter
36 when an individual assents to an agreement, the agreement is voidable
37 by the individual.

38 NEW SECTION. **Sec. 14.** (1) A licensee shall maintain a separate
39 trust account at a state chartered federally insured bank or credit

1 union located in Washington to hold funds that it receives, actually
2 or constructively, from or on behalf of consumers. Trust accounts
3 must comply with rules that the director adopts pursuant to this
4 chapter.

5 (2) A licensee may not commingle money collected for a creditor
6 with the licensee's own funds or use any part of a consumer's money
7 in the conduct of the licensee's business.

8 NEW SECTION. **Sec. 15.** A licensee may not impose charges or
9 receive payment for debt settlement services until the licensee and
10 the individual have signed an agreement that complies with section 13
11 of this act and the rules adopted pursuant to this chapter.

12 NEW SECTION. **Sec. 16.** (1) A statement of accounting must
13 contain the following information:

14 (a) The amount of money that the consumer has paid to the
15 provider since the provider prepared the last statement;

16 (b) The amounts, dates, and creditors that the provider paid on
17 the consumer's behalf, since the provider prepared the last
18 statement;

19 (c) The amounts of money that the provider collected as
20 compensation from the consumer's payments;

21 (d) The amount of money that the provider holds in trust for the
22 consumer; and

23 (e) If, since the last statement date, the consumer's creditor
24 accepted a payment from the provider in full or partial satisfaction
25 of the consumer's debt with that creditor: (i) The total amount of
26 money that the provider paid the creditor to settle a consumer's
27 debt; (ii) the amount of the debt at the time the provider and a
28 consumer entered their agreement; (iii) the amount of a debt at the
29 time a consumer's creditor agreed to settle a debt with a provider;
30 and (iv) the amount of compensation that the provider receives to
31 settle a debt.

32 (2) A licensee shall distribute a statement of accounting to a
33 consumer:

34 (a) While an agreement is in effect: (i) At least once per month;
35 and (ii) on or before the fifth business day after a consumer demands
36 a statement of accounting from a licensee; provided, however, a
37 licensee may refuse to comply with more than one request for a
38 statement of accounting per month; and

1 (b) On the day on which a consumer or a licensee rescinds or
2 terminates an agreement.

3 (3) Notwithstanding the requirements set forth in subsection (2)
4 of this section, a provider that enables, or arranges to enable,
5 twenty-four hours a day, seven days a week, electronic access by a
6 consumer to all of the consumer's deposit account transaction
7 information, including, but not limited to, all deposit and
8 withdrawal activity, and electronic access by a consumer to debt
9 settlement account activity, including, but not limited to, such
10 settlement information as account status, settlement dates,
11 settlement amounts, and fees paid, is deemed to have satisfied the
12 statement of account distribution requirements in subsections (1) and
13 (2) of this section.

14 NEW SECTION. **Sec. 17.** (1) A person may not advertise, announce,
15 broadcast, display, distribute, print, publish, televise, or permit
16 any other person to advertise, announce, broadcast, display,
17 distribute, print, publish, or televise on its behalf a statement or
18 representation that is deceptive, false, or misleading.

19 (2) Advertisements that a licensee authorizes must clearly state
20 its licensed business name and its license number. The director may
21 establish rules that waive or modify this requirement for some types
22 of advertising where such a disclosure is not practicable and where
23 the consumer has a way to easily obtain the information.

24 NEW SECTION. **Sec. 18.** A provider shall act in good faith in all
25 matters under this chapter.

26 NEW SECTION. **Sec. 19.** If a licensee delegates a duty or
27 obligation that this chapter mandates to another person, including an
28 independent contractor, the licensee is liable for the other person's
29 conduct that violates an agreement, this chapter, or any rule of the
30 department.

31 NEW SECTION. **Sec. 20.** (1) The director or the director's
32 designee may at any time examine and investigate the business and
33 examine the books, accounts, records, and files, or other
34 information, wherever located, of any licensee or person who the
35 director has reason to believe is engaging in the business governed
36 by this chapter. For these purposes, the director or the director's

1 designee may require the attendance of and examine under oath all
2 persons whose testimony may be required about the business or the
3 subject matter of the investigation. The director or the director's
4 designee may require the production of original books, accounts,
5 records, files, or other information, or may make copies of the
6 original books, accounts, records, files, or other information. The
7 director or the director's designee may issue a subpoena or subpoena
8 duces tecum requiring attendance and testimony, or the production of
9 the books, accounts, records, files, or other information. The
10 director shall collect from the licensee the actual cost of the
11 examination or investigation.

12 (2) The director may recover the costs in connection with both
13 investigations and examinations. In connection with the examination,
14 the director may require a licensee to pay expenses on or before the
15 thirtieth day after the licensee receives an invoice, which the
16 department incurs in conducting an examination, including expenses
17 for examination staff time and travel within or outside the state.

18 (3) The director may distribute any information, report,
19 examination, or statement relating to a licensee to any regulatory or
20 law enforcement agency.

21 NEW SECTION. **Sec. 21.** (1) The director or authorized assistants
22 may apply for and obtain a superior court order approving and
23 authorizing a subpoena in advance of its issuance. The application
24 may be made in the county where the subpoenaed person resides or is
25 found, or the county where the subpoenaed documents, records, or
26 evidence are located, or in Thurston county. The application must:

27 (a) State that an order is sought under this section;

28 (b) Adequately specify the documents, records, evidence, or
29 testimony; and

30 (c) Include a declaration made under oath that an investigation
31 is being conducted for a lawfully authorized purpose related to an
32 investigation within the department's authority and that the
33 subpoenaed documents, records, evidence, or testimony are reasonably
34 related to an investigation within the department's authority.

35 (2) When an application under this section is made to the
36 satisfaction of the court, the court must issue an order approving
37 the subpoena. An order under this subsection constitutes authority of
38 law for the agency to subpoena the documents, records, evidence, or
39 testimony.

1 (3) The director or authorized assistants may seek approval and a
2 court may issue an order under this section without prior notice to
3 any person, including the person to whom the subpoena is directed and
4 the person who is the subject of an investigation. An application for
5 court approval is subject to the fee and process set forth in RCW
6 36.18.012(3).

7 NEW SECTION. **Sec. 22.** The licensee shall keep and use in the
8 business books, accounts, records, papers, documents, files, and
9 other information as will enable the director to determine whether
10 the licensee is complying with this chapter and with the rules
11 adopted by the director under this chapter. The director must have
12 free access to the books, accounts, records, papers, documents,
13 files, and other information wherever located. Every licensee shall
14 preserve the books, accounts, records, papers, documents, files, and
15 other information relevant to providing debt settlement services for
16 at least three years after providing such services. A licensee or
17 person subject to examination or investigation under this chapter may
18 not withhold, abstract, remove, mutilate, destroy, or secrete any
19 books, accounts, records, papers, documents, files, or other
20 information.

21 NEW SECTION. **Sec. 23.** (1) The director may issue and serve upon
22 a licensee or applicant, or any director, officer, sole proprietor,
23 partner, or controlling person of a licensee or applicant, a
24 statement of charges if, in the opinion of the director, any licensee
25 or applicant, or any director, officer, sole proprietor, partner, or
26 controlling person of a licensee or applicant:

27 (a) Is engaging or has engaged in an unsafe or unsound financial
28 practice in conducting a business governed by this chapter;

29 (b) Is violating or has violated this chapter, including
30 violations of:

31 (i) Any rules, order, or subpoenas issued by the director under
32 any act;

33 (ii) Any condition imposed in writing by the director in
34 connection with the granting of any application or other request by
35 the licensee; or

36 (iii) Any written agreement made with the director;

1 (c) Is about to do the acts prohibited in (a) or (b) of this
2 subsection when the opinion that the threat exists is based upon
3 reasonable cause;

4 (d) Becomes licensed by means of fraud, misrepresentation,
5 concealment, or through mistake or inadvertence of the director;

6 (e) Provides false statements or omits material information on an
7 application;

8 (f) Knowingly or negligently omits material information during or
9 in response to an examination or in connection with an investigation
10 by the director;

11 (g) Fails to pay a fee required by the director or any multistate
12 licensing system prescribed by the director, or fails to maintain the
13 required bond;

14 (h) Commits a crime against the laws of any jurisdiction
15 involving moral turpitude, financial misconduct, or dishonest
16 dealings. For the purposes of this section, a certified copy of the
17 final holding of any court, tribunal, agency, or administrative body
18 of competent jurisdiction is conclusive evidence in any hearing under
19 this chapter;

20 (i) Knowingly commits or is a party to any material fraud,
21 misrepresentation, concealment, conspiracy, collusion, trick, scheme,
22 or device whereby any other person relying upon the word,
23 representation, or conduct acts to his or her injury or damage;

24 (j) Converts any money or its equivalent to his or her own use or
25 to the use of his or her principal or of any other person;

26 (k) Fails to disclose any information within his or her knowledge
27 or fails to produce any document, book, or record in his or her
28 possession for inspection by the director upon demand;

29 (l) Commits any act of fraudulent or dishonest dealing. For the
30 purposes of this section, a certified copy of the final holding of
31 any court, tribunal, agency, or administrative body of competent
32 jurisdiction is conclusive evidence in any hearing under this
33 chapter;

34 (m) Commits an act or engages in conduct that demonstrates
35 incompetence or untrustworthiness, or is a source of injury and loss
36 to the public;

37 (n) Violates any applicable state or federal law relating to the
38 activities governed by this chapter.

39 (2) The statement of charges must be issued under chapter 34.05
40 RCW. The director or the director's designee may impose the following

1 sanctions against any licensee or applicant, or any directors,
2 officers, sole proprietors, partners, controlling persons, or
3 employees of a licensee or applicant:

4 (a) Deny, revoke, suspend, or condition a license;

5 (b) Order the licensee or person to cease and desist from
6 practices that violate this chapter or constitute unsafe and unsound
7 financial practices;

8 (c) Impose a fine not to exceed one hundred dollars per day per
9 violation for each day's violation of this chapter;

10 (d) Order restitution or refunds or both to consumers or other
11 parties for violations of this chapter or take other affirmative
12 action as necessary to comply with this chapter; and

13 (e) Remove from office or ban from participation in the affairs
14 of any licensee any director, officer, sole proprietor, partner,
15 controlling person, or employee of a licensee.

16 (3) The proceedings to impose the sanctions described in
17 subsection (2) of this section, including any hearing or appeal of
18 the statement of charges, are governed by chapter 34.05 RCW.

19 (4) Unless the licensee or person personally appears at the
20 hearing or is represented by a duly authorized representative, the
21 licensee is deemed to have consented to the statement of charges and
22 the sanctions imposed in the statement of charges.

23 (5) Except to the extent prohibited by another statute, the
24 director may engage in informal settlement of complaints or
25 enforcement actions including, but not limited to, payment to the
26 department for purposes of financial literacy and education programs
27 authorized under RCW 43.320.150.

28 (6) The director may enter into a consent order at any time with
29 a person to resolve a matter arising under this chapter or a rule
30 adopted or order issued under this chapter. A consent order must be
31 signed by the person to whom it is issued or by the person's
32 authorized representative, and must indicate agreement with the terms
33 contained in the order.

34 NEW SECTION. **Sec. 24.** Whenever the director determines that the
35 acts specified in section 23 of this act or their continuation is
36 likely to cause insolvency or substantial injury to the public, the
37 director may also issue a temporary cease and desist order requiring
38 the licensee to cease and desist from the violation or practice. The
39 order becomes effective upon service upon the licensee and remains

1 effective unless set aside, limited, or suspended by a court under
2 section 25 of this act pending the completion of the administrative
3 proceedings under the notice and until such time as the director
4 dismisses the charges specified in the notice or until the effective
5 date of the cease and desist order issued against the licensee under
6 section 23 of this act.

7 NEW SECTION. **Sec. 25.** Within ten days after a licensee has been
8 served with a temporary cease and desist order, the licensee may
9 apply to the superior court in the county of its principal place of
10 business or Thurston county for an injunction setting aside,
11 limiting, or suspending the order pending the completion of the
12 administrative proceedings pursuant to the notice served under
13 section 24 of this act. The superior court has jurisdiction to issue
14 the injunction.

15 NEW SECTION. **Sec. 26.** In the case of a violation or threatened
16 violation of a temporary cease and desist order issued under section
17 24 of this act, the director may apply to the superior court of the
18 county of the principal place of business of the licensee or Thurston
19 county for an injunction.

20 NEW SECTION. **Sec. 27.** Upon application by the director or any
21 other interested party and upon a showing that the interest of
22 creditors or consumers so requires, the superior court may appoint a
23 receiver to take over, operate, or liquidate any licensee.

24 NEW SECTION. **Sec. 28.** (1) The requirements under any federal
25 law or laws of another state regarding the privacy or confidentiality
26 of any information or material provided to the department, and any
27 privilege arising under federal or state law, including the rules of
28 any federal or state court, with respect to that information or
29 material, continues to apply to the information or material after the
30 information or material has been disclosed to the department. If
31 consistent with applicable law, the information and material may be
32 shared with all state and federal regulatory officials without the
33 loss of privilege or the loss of confidentiality protections provided
34 by federal or state law.

35 (2) When the department is a party to a memoranda of
36 understanding or enforcement order issued by the consumer financial

1 protection bureau, the privacy, confidentiality, or privilege
2 accorded to the document by federal law continues to apply even after
3 the memoranda or order has been signed by the director or a designee.

4 NEW SECTION. **Sec. 29.** A person licensed as a provider under
5 this chapter is exempt from chapter 18.28 RCW.

6 NEW SECTION. **Sec. 30.** The director shall take such steps and
7 adopt rules necessary for the implementation, administration, and
8 enforcement of this chapter and shall establish reasonable fees by
9 rule sufficient to cover the costs of administering this chapter.

10 NEW SECTION. **Sec. 31.** The legislature finds that the practices
11 governed by this chapter are matters vitally affecting the public
12 interest for the purpose of applying the consumer protection act,
13 chapter 19.86 RCW. Any violation of this chapter is not reasonable in
14 relation to the development and preservation of business and is an
15 unfair or deceptive act or practice and unfair method of competition
16 in the conduct of trade or commerce in violation of RCW 19.86.020.
17 Remedies provided by chapter 19.86 RCW are cumulative and not
18 exclusive.

19 NEW SECTION. **Sec. 32.** This chapter modifies, limits, and
20 supersedes the federal electronic signatures in global and national
21 commerce act (P.L. 106-229, 15 U.S.C. Sec. 7001 et seq.), but does
22 not modify, limit, or supersede section 101(c) of the federal
23 electronic signatures in global and national commerce act, 15 U.S.C.
24 Sec. 7001(c), or authorize electronic delivery of any of the notices
25 described in section 103(b) of the federal electronic signatures in
26 global and national commerce act, 15 U.S.C. Sec. 7003(b).

27 **Sec. 33.** RCW 18.28.010 and 2012 c 56 s 1 are each reenacted and
28 amended to read as follows:

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

32 (1) "Debt adjuster," which includes any person known as a debt
33 pooler, debt manager, debt consolidator, debt prorater, or credit
34 counselor, is any person engaging in or holding himself or herself

1 out as engaging in the business of debt adjusting for compensation.

2 The term shall not include:

3 (a) Attorneys-at-law, escrow agents, accountants, broker-dealers
4 in securities, or investment advisors in securities, while performing
5 services solely incidental to the practice of their professions;

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

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

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

19 (e) Any person while performing services incidental to the
20 dissolution, winding up or liquidation of a partnership, corporation,
21 or other business enterprise;

22 (f) Nonprofit organizations dealing exclusively with debts owing
23 from commercial enterprises to business creditors;

24 (g) Nonprofit organizations engaged in debt adjusting and which
25 do not assess against the debtor a service charge in excess of
26 fifteen dollars per month;

27 (h) Persons licensed as providers of debt settlement services
28 under chapter 18.--- RCW (the new chapter created in section 38 of
29 this act).

30 (2) "Debt adjusting" means the managing, counseling, settling,
31 adjusting, prorating, or liquidating of the indebtedness of a debtor,
32 ((~~or~~)) and receiving funds for the purpose of distributing said funds
33 among creditors in payment or partial payment of obligations of a
34 debtor.

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

38 (4) "Financial institution" means any person doing business under
39 the laws of any state or the United States relating to commercial

1 banks, bank holding companies, savings banks, savings and loan
2 associations, trust companies, or credit unions.

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

9 **Sec. 34.** RCW 42.56.230 and 2014 c 142 s 1 are each amended to
10 read as follows:

11 The following personal information is exempt from public
12 inspection and copying under this chapter:

13 (1) Personal information in any files maintained for students in
14 public schools, patients or clients of public institutions or public
15 health agencies, or welfare recipients;

16 (2)(a) Personal information:

17 (i) For a child enrolled in licensed child care in any files
18 maintained by the department of early learning; or

19 (ii) For a child enrolled in a public or nonprofit program
20 serving or pertaining to children, adolescents, or students,
21 including but not limited to early learning or child care services,
22 parks and recreation programs, youth development programs, and after-
23 school programs.

24 (b) Emergency contact information under this subsection (2) may
25 be provided to appropriate authorities and medical personnel for the
26 purpose of treating the individual during an emergency situation;

27 (3) Personal information in files maintained for employees,
28 appointees, or elected officials of any public agency to the extent
29 that disclosure would violate their right to privacy;

30 (4) Information required of any taxpayer in connection with the
31 assessment or collection of any tax if the disclosure of the
32 information to other persons would: (a) Be prohibited to such persons
33 by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance
34 authorized under RCW 35.102.145; or (b) violate the taxpayer's right
35 to privacy or result in unfair competitive disadvantage to the
36 taxpayer;

37 (5) Credit card numbers, debit card numbers, electronic check
38 numbers, card expiration dates, or bank or other financial account

1 numbers, except when disclosure is expressly required by or governed
2 by other law;

3 (6) Personal and financial information related to a small loan or
4 any system of authorizing a small loan in RCW 31.45.093;

5 (7)(a) Any record used to prove identity, age, residential
6 address, social security number, or other personal information
7 required to apply for a driver's license or identicard.

8 (b) Information provided under RCW 46.20.111 that indicates that
9 an applicant declined to register with the selective service system.

10 (c) Any record pertaining to a vehicle license plate, driver's
11 license, or identicard issued under RCW 46.08.066 that, alone or in
12 combination with any other records, may reveal the identity of an
13 individual, or reveal that an individual is or was, performing an
14 undercover or covert law enforcement, confidential public health
15 work, public assistance fraud, or child support investigative
16 activity. This exemption does not prevent the release of the total
17 number of vehicle license plates, drivers' licenses, or identicards
18 that, under RCW 46.08.066, an agency or department has applied for,
19 been issued, denied, returned, destroyed, lost, and reported for
20 misuse.

21 (d) Any record pertaining to a vessel registration issued under
22 RCW 88.02.330 that, alone or in combination with any other records,
23 may reveal the identity of an individual, or reveal that an
24 individual is or was, performing an undercover or covert law
25 enforcement activity. This exemption does not prevent the release of
26 the total number of vessel registrations that, under RCW 88.02.330,
27 an agency or department has applied for, been issued, denied,
28 returned, destroyed, lost, and reported for misuse; (~~and~~)

29 (8) All information related to individual claims resolution
30 structured settlement agreements submitted to the board of industrial
31 insurance appeals under RCW 51.04.063, other than final orders from
32 the board of industrial insurance appeals; and

33 (9) Information obtained by the department of financial
34 institutions that identifies individuals who have agreements with a
35 provider of debt settlement services, as provided in section 20 of
36 this act.

37 Upon request by the legislature, the department of licensing
38 shall provide a report to the legislature containing all of the
39 information in subsection (7)(c) and (d) of this section that is
40 subject to public disclosure.

1 NEW SECTION. **Sec. 35.** This act does not invalidate or make
2 unlawful contracts executed prior to the effective date of this
3 section.

4 NEW SECTION. **Sec. 36.** This act takes effect January 1, 2016.

5 NEW SECTION. **Sec. 37.** The director shall take such steps and
6 adopt such rules as are necessary to implement this act by January 1,
7 2016.

8 NEW SECTION. **Sec. 38.** Sections 1 through 32 of this act
9 constitute a new chapter in Title 18 RCW.

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