
SENATE BILL 5321

State of Washington

64th Legislature

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By Senators Benton, Mullet, Hobbs, Angel, and Fain

Read first time 01/19/15. Referred to Committee on Financial Institutions & Insurance.

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

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 contract between a provider and an
2 individual for the performance of debt settlement services.

3 (3) "Concessions" means assent to repayment of a debt on terms
4 more favorable to an individual than the terms of the contract
5 between the individual and a creditor.

6 (4) "Control" means the right to control ten percent or more of
7 the voting power of another person.

8 (5) "Debt settlement services" means services as an intermediary
9 between an individual and one or more unsecured creditors of the
10 individual for the purpose of obtaining concessions involving a
11 reduction in principal of the individual's unsecured debt. "Debt
12 settlement services" does not include the following, so long as debt
13 settlement services are not the primary business purpose of the
14 person described below:

15 (a) Legal services provided in an attorney-client relationship by
16 an attorney licensed or otherwise authorized to practice law in this
17 state;

18 (b) Accounting services provided in an accountant-client
19 relationship by a certified public accountant licensed to provide
20 accounting services in this state; or

21 (c) Financial planning services provided in a financial planner-
22 client relationship by a licensed member of a financial planning
23 profession.

24 (6) "Department" means the department of financial institutions.

25 (7) "Financial institution" means any person doing business under
26 the laws of any state or the United States relating to commercial
27 banks, bank holding companies, savings banks, savings and loan
28 associations, trust companies, or credit unions.

29 (8) "Good faith" means honesty in fact and the observance of
30 reasonable standards of fair dealing.

31 (9) "Person" means an individual, corporation, business trust,
32 estate, trust, partnership, limited liability company, association,
33 joint venture, or any other legal or commercial entity. "Person" does
34 not include a public corporation, government or governmental
35 subdivision, agency or instrumentality.

36 (10) "Principal amount of the debt" means the amount of a debt at
37 the time of the execution of an agreement for debt settlement
38 services.

39 (11) "Program" means a plan or strategy in which a provider
40 furnishes debt settlement services.

1 (12) "Provider" means a person required to be registered pursuant
2 to this chapter and that provides, offers to provide, or agrees to
3 provide debt settlement services for compensation.

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

7 NEW SECTION. **Sec. 3.** This chapter does not apply to the
8 following persons or their employees when the person or the employee
9 is engaged in the regular course of the person's business or
10 profession:

11 (1) A judicial officer, a person acting under an order of a court
12 or an administrative agency, or an assignee for the benefit of
13 creditors;

14 (2) A financial institution; or

15 (3) A title insurer, escrow company, or other person that
16 provides bill-paying services if the provision of debt settlement
17 services is incidental to the bill-paying services.

18 NEW SECTION. **Sec. 4.** (1) On or after the effective date of this
19 section, a provider may not provide debt settlement services to an
20 individual who it reasonably should know resides in this state at the
21 time it agrees to provide the services, unless the provider is
22 registered under this chapter.

23 (2) The department shall maintain and publicize a list of the
24 names of all registered providers.

25 NEW SECTION. **Sec. 5.** (1) An application for registration as a
26 provider must be in a form prescribed by the department.

27 (2) An application for registration as a provider must be
28 accompanied by:

29 (a) The fee established by the department;

30 (b) Evidence of minimum insurance in an amount specified by the
31 department;

32 (c) In lieu of the aggregate umbrella insurance required by (b)
33 of this subsection, a surety bond filed with the department, in a
34 form approved by the department, for a term no less than the
35 expiration of the term of registration and in the amount of not less
36 than ten thousand dollars or other larger amount that the department
37 determines is warranted by the financial condition and business

1 experience of the provider, the history of the provider in performing
2 debt settlement services, the risk to individuals, and any other
3 factor the department considers appropriate, but in no event greater
4 than fifty thousand dollars. The surety bond runs to the state for
5 the benefit of this state and of individuals who reside in this state
6 when they agree to receive debt settlement services from the
7 provider, as their interests may appear, payment of which is
8 conditioned upon noncompliance of the provider or its agent with this
9 chapter; and

10 (d) Proof that the provider is authorized by the laws of this
11 state to conduct business in this state.

12 NEW SECTION. **Sec. 6.** (1) An application for registration must
13 be signed by the applicant and declare as true any material matter
14 pursuant to the application for registration. The application form
15 must contain a statement informing the applicant that a false or
16 dishonest answer to a question may be grounds for denial or
17 subsequent suspension or revocation of the applicant's registration.

18 (2) An application must include the following:

19 (a) The applicant's name, principal business address and
20 telephone number, all other business addresses in this state,
21 electronic mail addresses, and internet web site addresses;

22 (b) All names under which the applicant conducts business in this
23 state;

24 (c) The address of each location in this state at which the
25 applicant will provide debt settlement services or a statement that
26 the applicant will have no such location;

27 (d) A copy of each form of agreement that the applicant will use
28 with individuals who reside in this state;

29 (e) The schedule of fees and charges that the applicant will use
30 with individuals who reside in this state; and

31 (f) Such other information that the department may reasonably
32 require.

33 NEW SECTION. **Sec. 7.** An applicant or provider shall notify the
34 department no later than sixty days after a material change in the
35 information provided in an application for registration.

1 NEW SECTION. **Sec. 8.** The department shall make available to the
2 public the information in an application for registration and renewal
3 of registration as a provider.

4 NEW SECTION. **Sec. 9.** (1) Except as otherwise provided in
5 subsection (2) of this section, the department shall issue a
6 certificate of registration as a provider to a person that complies
7 with sections 5 and 6 of this act.

8 (2) The department may deny registration if:

9 (a) The application contains information that is materially
10 erroneous or incomplete;

11 (b) An officer, director, or owner of the applicant has suffered
12 a civil judgment or been convicted of a crime involving dishonesty or
13 the violation of federal or state securities laws; or

14 (c) The application is not accompanied by the fee established by
15 the department.

16 NEW SECTION. **Sec. 10.** (1) The department shall approve or deny
17 an initial registration as a provider no later than sixty days after
18 an application is filed. The department may extend the sixty-day
19 period for not more than forty-five days. No later than seven days
20 after denying an application, the department, in a record, shall
21 inform the applicant of the reasons for the denial.

22 (2) If the department denies an application for registration as a
23 provider or does not act on an application within the time prescribed
24 in subsection (1) of this section, the applicant may appeal and
25 request a hearing under chapter 34.05 RCW.

26 (3) Subject to section 11(4) of this act, a registration as a
27 provider is valid for one year.

28 (4) Upon submission of an application for registration and until
29 such time as an application, or any appeal filed pursuant to
30 subsection (2) of this section, is approved or denied, the applicant
31 may continue to provide debt settlement services, but a denial of
32 registration terminates any further power to provide services unless
33 approved by the department.

34 NEW SECTION. **Sec. 11.** (1) A provider shall obtain a renewal of
35 its registration annually.

1 (2) An application for renewal of a registration as a provider
2 must be in a form prescribed by the department, signed under penalty
3 of perjury, and:

4 (a) Be filed not less than thirty days nor more than sixty days
5 before the registration expires;

6 (b) Be accompanied by the fee established by the department;

7 (c) Disclose any changes in the information contained in the
8 applicant's application for registration or its immediately previous
9 application for renewal, as applicable; and

10 (d) Provide any other information that the department may
11 reasonably require to perform the department's duties under this
12 section.

13 (3) If a provider files a timely and complete application for
14 renewal of registration, the registration remains effective until the
15 department, in a record, notifies the applicant of a denial and
16 states the reasons for the denial.

17 (4) If the department denies an application for renewal of
18 registration as a provider, the applicant, no later than thirty days
19 after receiving notice of the denial, may appeal and request a
20 hearing under chapter 34.05 RCW. While the appeal is pending, the
21 applicant shall continue to provide debt settlement services to
22 individuals with whom it has agreements. If the denial is affirmed,
23 the applicant shall continue to provide debt settlement services to
24 individuals with whom it has agreements until, with the approval of
25 the department, it transfers the agreements to another registered
26 provider.

27 NEW SECTION. **Sec. 12.** If a provider holds a license or
28 certificate of registration in another state authorizing it to
29 provide debt settlement services, the provider may submit a copy of
30 that license or certificate of registration and the application for
31 it instead of an application in the form prescribed by section 5(1),
32 6, or 11(2) of this act. The department shall accept the application
33 and the license or certificate from the other state as an application
34 for registration as a provider or for renewal of registration as a
35 provider, as appropriate, in this state if:

36 (1) The application in the other state contains information
37 substantially similar to or more comprehensive than that required in
38 an application submitted in this state; and

1 (2) The applicant, under penalty of perjury, certifies that the
2 information contained in the application is current or, to the extent
3 it is not current, supplements the application to make the
4 information current.

5 NEW SECTION. **Sec. 13.** A person registered as a provider under
6 this chapter is exempt from chapter 18.28 RCW.

7 NEW SECTION. **Sec. 14.** A provider shall act in good faith in all
8 matters under this chapter.

9 NEW SECTION. **Sec. 15.** (1) Before an individual consents to pay
10 for goods or services offered, a provider shall disclose truthfully,
11 in a clear and conspicuous manner, the following material
12 information:

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

15 (b) To the extent the debt settlement services may include a
16 settlement offer to any of the individual's creditors or debt
17 collectors:

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

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

25 (iii) The cost to the individual for providing debt settlement
26 services;

27 (c) To the extent that any aspect of the debt settlement services
28 relies upon or results in the individual's failure to make timely
29 payments to creditors or debt collectors, that the use of the debt
30 settlement services will likely adversely affect the individual's
31 creditworthiness, may result in the individual being subject to
32 collection actions or sued by creditors or debt collectors, and may
33 increase the amount of money the individual owes due to the accrual
34 of fees and interest; and

35 (d) To the extent that the provider requests or requires the
36 individual to place funds in an account at a financial institution,
37 that the individual owns the funds held in the account and that the

1 individual may withdraw from the debt settlement services at any time
2 without penalty.

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

12 (3) A provider may not receive payment of any fee or
13 consideration for any debt settlement services until and unless:

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

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

19 (c) The fee or consideration for settling each individual debt
20 enrolled in a debt settlement plan either:

21 (i) Bears the same proportional relationship to the total fee for
22 settling the entire debt balance as the individual debt amount bears
23 to the entire debt amount. The individual debt amount and the entire
24 debt amount are amounts owed at the time the debt was enrolled on the
25 debt relief service; or

26 (ii) Is a percentage of the amount saved as a result of the
27 settlement. The percentage charged may not change from one individual
28 debt to another. The amount saved is the difference between the
29 amount owed at the time the debt was enrolled in the debt relief
30 service and the amount actually paid to satisfy the debt.

31 (4) Nothing in this section prohibits requesting or requiring the
32 individual to place funds in an account to be used for payment of the
33 provider's fees and for payments to creditors or debt collectors in
34 connection with the renegotiation, settlement, reduction, or other
35 alteration of the terms of payment or other terms of debt if:

36 (a) The funds are held in a specifically designated account at a
37 financial institution;

38 (b) The individual, not the provider, owns and controls the funds
39 held in the account and is paid accrued interest on the account, if
40 any;

1 (c) If the provider does not administer the account, the entity
2 administering the account is not owned or controlled by the provider
3 and is not an affiliate of the provider;

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

7 (e) The individual may withdraw from the debt settlement services
8 at any time without penalty, and receives all funds in the account,
9 other than funds earned by the provider in compliance with this
10 section, as specified in the account agreement between the individual
11 and the financial institution.

12 (5) If a provider is not registered as required by this chapter
13 when an individual assents to an agreement, the agreement is voidable
14 by the individual.

15 NEW SECTION. **Sec. 16.** (1) The department may act on its own
16 initiative or in response to complaints and may receive complaints,
17 take action to obtain voluntary compliance with this chapter, and
18 seek or provide remedies as provided in this chapter.

19 (2) To determine compliance with this chapter, the department may
20 investigate and examine, in this state or elsewhere, by subpoena or
21 otherwise, the activities, books, accounts, and records of a person
22 that provides or offers to provide debt settlement services or of a
23 person to which a provider has delegated its obligations under an
24 agreement or this chapter. Information that identifies individuals
25 who have agreements with the provider may not be disclosed to the
26 public. In connection with the investigation, the department may:

27 (a) Charge the person the reasonable expenses necessarily
28 incurred to conduct the examination; and

29 (b) Require or permit a person to file a statement under oath as
30 to all the facts and circumstances of a matter to be investigated.

31 (3) The department may enforce violations of this chapter by
32 taking one or more of the following actions:

33 (a) Ordering a provider or a director, employee, or other agent
34 of a provider to cease and desist from any violations;

35 (b) Ordering a provider or a person that has caused a violation
36 to correct the violation, including making restitution of money or
37 property to a person aggrieved by a violation;

1 (c) Imposing on a provider or a person that has caused a
2 violation a civil penalty not exceeding one thousand dollars for each
3 violation; and

4 (d) Prosecuting a civil action to enforce an order or to obtain
5 restitution or an injunction or other equitable relief, or both.

6 NEW SECTION. **Sec. 17.** (1) The department may suspend, revoke,
7 or deny renewal of a provider's registration if:

8 (a) The provider has committed a material violation of this
9 chapter; or

10 (b) The provider is insolvent.

11 (2) If the department suspends or revokes a provider's
12 registration, the provider may appeal and request a hearing pursuant
13 to chapter 34.05 RCW.

14 NEW SECTION. **Sec. 18.** The director shall establish reasonable
15 fees by rule sufficient to cover the costs of administering this
16 chapter.

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

25 **Sec. 20.** RCW 18.28.010 and 2012 c 56 s 1 are each reenacted and
26 amended to read as follows:

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

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

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

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

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

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

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

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

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

25 (h) Persons registered as providers of debt settlement services
26 under chapter 18.— RCW (the new chapter created in section 23 of this
27 act).

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

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

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

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

7 **Sec. 21.** RCW 42.56.230 and 2014 c 142 s 1 are each amended to
8 read as follows:

9 The following personal information is exempt from public
10 inspection and copying under this chapter:

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

14 (2)(a) Personal information:

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

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

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

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

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

35 (5) Credit card numbers, debit card numbers, electronic check
36 numbers, card expiration dates, or bank or other financial account
37 numbers, except when disclosure is expressly required by or governed
38 by other law;

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

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

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

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

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

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

31 (9) Information obtained by the department of financial
32 institutions that identifies individuals who have agreements with a
33 provider of debt settlement services, as provided in section 16 of
34 this act.

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

1 NEW SECTION. **Sec. 22.** This act does not invalidate or make
2 unlawful contracts executed prior to the effective date of this
3 section.

4 NEW SECTION. **Sec. 23.** Sections 1 through 19 of this act
5 constitute a new chapter in Title 18 RCW.

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