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**HOUSE BILL 2142**

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**State of Washington****63rd Legislature****2014 Regular Session****By** Representatives Kirby, Vick, Hurst, Blake, Kochmar, and Pollet

Prefiled 01/06/14. Read first time 01/13/14. Referred to Committee on Business &amp; Financial Services.

1 AN ACT Relating to registration of persons providing debt  
2 settlement services; reenacting and amending RCW 18.28.010 and  
3 42.56.230; 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 otherwise.

10 (1) "Affiliate" means:

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

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

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

17 (d) An executive officer or director of or an individual performing

1 similar functions with respect to a person described in (a) of this  
2 subsection.

3 (2) "Agreement" means a contract between a provider and an  
4 individual for the performance of debt settlement services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (2) A financial institution; or

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

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

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

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

30 (2) An application for registration as a provider must be  
31 accompanied by:

32 (a) The fee established by the department;

33 (b) Evidence of minimum insurance in an amount specified by the  
34 department;

1 (c) In lieu of the aggregate umbrella insurance required by (b) of  
2 this subsection, a surety bond filed with the department, in a form  
3 approved by the department, for a term no less than the expiration of  
4 the term of registration and in the amount of not less than ten  
5 thousand dollars or other larger amount that the department determines  
6 is warranted by the financial condition and business experience of the  
7 provider, the history of the provider in performing debt settlement  
8 services, the risk to individuals, and any other factor the department  
9 considers appropriate, but in no event greater than fifty thousand  
10 dollars. The surety bond runs to the state for the benefit of this  
11 state and of individuals who reside in this state when they agree to  
12 receive debt settlement services from the provider, as their interests  
13 may appear, payment of which is conditioned upon noncompliance of the  
14 provider or its agent with this chapter; and

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

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

23 (2) An application must include the following:

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

27 (b) All names under which the applicant conducts business in this  
28 state;

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

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

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

36 (f) Such other information that the department may reasonably  
37 require.

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

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

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

11        (2) The department may deny registration if:

12        (a) The application contains information that is materially  
13 erroneous or incomplete;

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

17        (c) The application is not accompanied by the fee established by  
18 the department.

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

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

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

31        (4) Upon submission of an application for registration and until  
32 such time as an application, or any appeal filed pursuant to subsection  
33 (2) of this section, is approved or denied, the applicant may continue  
34 to provide debt settlement services, but a denial of registration

1 terminates any further power to provide services unless approved by the  
2 department.

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

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

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

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

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

14 (d) Provide any other information that the department may  
15 reasonably require to perform the department's duties under this  
16 section.

17 (3) If a provider files a timely and complete application for  
18 renewal of registration, the registration remains effective until the  
19 department, in a record, notifies the applicant of a denial and states  
20 the reasons for the denial.

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

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

1 license or certificate from the other state as an application for  
2 registration as a provider or for renewal of registration as a  
3 provider, as appropriate, in this state if:

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

7 (2) The applicant, under penalty of perjury, certifies that the  
8 information contained in the application is current or, to the extent  
9 it is not current, supplements the application to make the information  
10 current.

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

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

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

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

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

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

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

30 (iii) The cost to the individual for providing debt settlement  
31 services;

32 (c) To the extent that any aspect of the debt settlement services  
33 relies upon or results in the individual's failure to make timely  
34 payments to creditors or debt collectors, that the use of the debt  
35 settlement services will likely adversely affect the individual's

1 creditworthiness, may result in the individual being subject to  
2 collection actions or sued by creditors or debt collectors, and may  
3 increase the amount of money the individual owes due to the accrual of  
4 fees and interest; and

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

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

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

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

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

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

27 (i) Bears the same proportional relationship to the total fee for  
28 settling the entire debt balance as the individual debt amount bears to  
29 the entire debt amount. The individual debt amount and the entire debt  
30 amount are amounts owed at the time the debt was enrolled on the debt  
31 relief service; or

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

37 (4) Nothing in this section prohibits requesting or requiring the  
38 individual to place funds in an account to be used for payment of the



1 provider's fees and for payments to creditors or debt collectors in  
2 connection with the renegotiation, settlement, reduction, or other  
3 alteration of the terms of payment or other terms of debt if:

4 (a) The funds are held in a specifically designated account at a  
5 financial institution;

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

9 (c) If the provider does not administer the account, the entity  
10 administering the account is not owned or controlled by the provider  
11 and is not an affiliate of the provider;

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

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

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

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

27 (2) To determine compliance with this chapter, the department may  
28 investigate and examine, in this state or elsewhere, by subpoena or  
29 otherwise, the activities, books, accounts, and records of a person  
30 that provides or offers to provide debt settlement services or of a  
31 person to which a provider has delegated its obligations under an  
32 agreement or this chapter. Information that identifies individuals who  
33 have agreements with the provider may not be disclosed to the public.  
34 In connection with the investigation, the department may:

35 (a) Charge the person the reasonable expenses necessarily incurred  
36 to conduct the examination; and

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

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

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

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

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

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

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

17 (a) The provider has committed a material violation of this  
18 chapter; or

19 (b) The provider is insolvent.

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

23 NEW SECTION. **Sec. 18.** The director shall establish reasonable  
24 fees by rule sufficient to cover the costs of administering this  
25 chapter.

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

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

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

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

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

14       (b) Any person, partnership, association, or corporation doing  
15 business under and as permitted by any law of this state or of the  
16 United States relating to banks, consumer finance businesses, consumer  
17 loan companies, trust companies, mutual savings banks, savings and loan  
18 associations, building and loan associations, credit unions, crop  
19 credit associations, development credit corporations, industrial  
20 development corporations, title insurance companies, insurance  
21 companies, or third-party account administrators;

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

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

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

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

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

35       (h) Persons registered as providers of debt settlement services  
36 under chapter 18.-- RCW (the new chapter created in section 23 of this  
37 act).

1 (2) "Debt adjusting" means the managing, counseling, settling,  
2 adjusting, prorating, or liquidating of the indebtedness of a debtor,  
3 ((or)) and receiving funds for the purpose of distributing said funds  
4 among creditors in payment or partial payment of obligations of a  
5 debtor.

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

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

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

19 **Sec. 21.** RCW 42.56.230 and 2013 c 220 s 1 and 2013 c 336 s 3 are  
20 each reenacted and amended to read as follows:

21 The following personal information is exempt from public inspection  
22 and copying under this chapter:

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

26 (2)(a) Personal information:

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

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

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

36 (3) Personal information in files maintained for employees,

1 appointees, or elected officials of any public agency to the extent  
2 that disclosure would violate their right to privacy;

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

9 (5) Credit card numbers, debit card numbers, electronic check  
10 numbers, card expiration dates, or bank or other financial account  
11 numbers, except when disclosure is expressly required by or governed by  
12 other law;

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

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

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

20 (c) Any record pertaining to a vehicle license plate, driver's  
21 license, or identicard issued under RCW 46.08.066 that, alone or in  
22 combination with any other records, may reveal the identity of an  
23 individual, or reveal that an individual is or was, performing an  
24 undercover or covert law enforcement, confidential public health work,  
25 public assistance fraud, or child support investigative activity. This  
26 exemption does not prevent the release of the total number of vehicle  
27 license plates, drivers' licenses, or identicards that, under RCW  
28 46.08.066, an agency or department has applied for, been issued,  
29 denied, returned, destroyed, lost, and reported for misuse.

30 (d) Any record pertaining to a vessel registration issued under RCW  
31 88.02.330 that, alone or in combination with any other records, may  
32 reveal the identity of an individual, or reveal that an individual is  
33 or was, performing an undercover or covert law enforcement activity.  
34 This exemption does not prevent the release of the total number of  
35 vessel registrations that, under RCW 88.02.330, an agency or department  
36 has applied for, been issued, denied, returned, destroyed, lost, and  
37 reported for misuse. ((e)) Upon request by the legislature, the

1 department of licensing shall provide a report to the legislature  
2 containing all of the information in (c) (~~and (d)~~) of this subsection  
3 and this subsection (7)(d) that is subject to public disclosure.

4 (8) Information obtained by the department of financial  
5 institutions that identifies individuals who have agreements with a  
6 provider of debt settlement services, as provided in section 16 of this  
7 act.

8 NEW SECTION. Sec. 22. This act does not invalidate or make  
9 unlawful contracts executed prior to the effective date of this  
10 section.

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

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