
HOUSE BILL 2670

State of Washington

63rd Legislature

2014 Regular Session

By Representative Kirby

Read first time 01/24/14. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to licensure of persons providing debt settlement
2 services; reenacting and amending RCW 18.28.010 and 42.56.230; adding
3 a new chapter to Title 18 RCW; creating a new section; and prescribing
4 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) "Business address" means the physical location of a business,
6 including the name and number of a street.

7 (4) "Business day" means Monday through Saturday excluding
8 federally recognized bank holidays.

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

12 (6) "Consumer" means an individual who has unsecured debt, which
13 arises out of personal, family, or household obligations, and who has
14 executed an agreement with a provider.

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

17 (8) "Creditor" means a person that has extended credit to an
18 individual.

19 (9) "Debt settlement services" means services as an intermediary
20 between an individual and one or more unsecured creditors of the
21 individual for the purpose of obtaining concessions involving a
22 reduction in principal or interest of the individual's unsecured debt.

23 (10) "Department" means the department of financial institutions.

24 (11) "Director" means the director of the department.

25 (12) "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 (13) "Good faith" means honesty in fact and the observance of
30 reasonable standards of fair dealing.

31 (14) "Individual" means a natural person.

32 (15) "Licensee" means a provider that possesses a valid license
33 issued pursuant to section 3 of this act. For purposes of an
34 enforcement action under sections 23, 24, and 27 of this act,
35 "licensee" also means a provider, whether located within or outside
36 this state, who fails to obtain the license required by this chapter.

37 (16) "Person" means an individual, corporation, business trust,
38 estate, trust, partnership, limited liability company, association,

1 joint venture, or any other legal or commercial entity. "Person" does
2 not include a public corporation, government or governmental
3 subdivision, agency, or instrumentality.

4 (17) "Principal amount of the debt" means the amount of a debt at
5 the time of the execution of an agreement for debt 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 to
9 this chapter and that provides, offers to provide, or agrees to provide
10 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, or
18 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, pursuant
21 to an agreement or contract with the licensee.

22 NEW SECTION. **Sec. 3.** (1) A person may not engage in or advertise
23 for debt settlement services in this state unless such person has first
24 obtained a debt settlement services license from the director.

25 (2) A provider shall obtain a license for its primary business
26 address and shall identify each branch location.

27 (3) A license is not transferable or assignable.

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

30 (5) A licensee may not conduct business in this state under a
31 business name other than the business name that is listed on its
32 license. Notwithstanding the foregoing, a licensee may do business
33 under a trade name, provided that the licensee has registered such
34 trade name with the department and that the department does not object
35 to the use of the trade name on the basis that it is similar to a
36 currently existing licensee name or trade name.

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 on
4 the provider's behalf in the regular course of their employment;

5 (2) Judicial officers, individuals acting under the direction of a
6 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, and
11 who do not, directly or indirectly, solicit debt settlement services
12 business;

13 (5) A money transmitter licensed under chapter 19.230 RCW if such
14 persons do not perform 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 state
20 agency, and receive compensation solely from such governmental
21 entities;

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

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

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

34 (11) A third-party payment processor which does not provide debt
35 settlement services.

36 NEW SECTION. **Sec. 5.** (1) The application for the license and the
37 application for the license renewal must be in a form prescribed by the

1 director, signed under oath and containing information as the director
2 determines. Applicants shall pay an application fee set by rule. The
3 director shall evaluate the applicant's financial responsibility,
4 character, reputation, integrity, and general fitness to determine
5 whether the applicant will act lawfully, honestly, fairly, soundly, and
6 efficiently in the public interest. The license is effective for a
7 period of one year or less, depending on the date that it is issued,
8 and expires on the last day of December each calendar year in which it
9 is issued. The director shall determine the license renewal fee and
10 the information required for an application by rule.

11 (2) The director may participate in a multistate licensing system
12 for the sharing of regulatory information and for the licensing and
13 application, by electronic or other means, of entities engaged in the
14 business of debt settlement services. The director may establish
15 requirements for participation by an applicant in a multistate
16 licensing system which may vary from the provisions set out in this
17 section and section 8 of this act. The applicant shall pay directly to
18 such multistate licensing system any additional fee relating to
19 participation in such multistate licensing system.

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

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

4 NEW SECTION. **Sec. 6.** (1) At the time of filing an application for
5 a license, or any renewal or reinstatement of a debt settlement
6 services license, the applicant shall provide satisfactory evidence to
7 the director of having obtained the following as evidence of financial
8 responsibility:

9 (a) At the time of application, the applicant must inform the
10 director as to whether the applicant will receive or hold customer
11 funds. If so, the department shall require the applicant to obtain a
12 fidelity bond, and surety bond if necessary, as follows:

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

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

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

36 (c) The surety bonds described in (a) and (b) of this subsection
37 must be conditioned that the obligor as licensee will faithfully

1 conform to and abide by this chapter and all rules adopted under this
2 chapter, and must reimburse all persons who suffer loss by reason of a
3 violation of this chapter or rules adopted under this chapter. The
4 bond must be continuous and may be canceled by the surety only upon the
5 surety giving written notice to the director of its intent to cancel
6 the bond. The cancellation is effective thirty days after the notice
7 is received by the director. Whether or not the bond is renewed,
8 continued, reinstated, reissued, or otherwise extended, replaced, or
9 modified, including increases or decreases in the penal sum, it must
10 be considered one continuous obligation, and the surety upon the bond
11 is not liable in an aggregate amount exceeding the penal sum set forth
12 on the face of the bond. In no event may the penal sum, or any portion
13 thereof, at two or more points in time be added together in determining
14 the surety's liability. The bond is not liable for any penalties
15 imposed on the licensee including, but not limited to, any increased
16 damages or attorneys' fees, or both, awarded under RCW 19.86.090.

17 (d) For purposes of (a) through (c) of this subsection, "employee"
18 means any individual whose status in the company is that of a W-2
19 employee for purposes of federal income tax reporting, independent
20 contractor, sole proprietor, partner, officer, member, or manager.

21 (2) For the purposes of this section, a "fidelity bond" means a
22 primary commercial blanket bond or its equivalent satisfactory to the
23 director and written by an insurer authorized to transact this line of
24 business in the state of Washington. The bond must provide fidelity
25 coverage for any fraudulent or dishonest acts committed by any one or
26 more of the officers, partners, sole practitioners, and employees of
27 the applicant engaged in debt settlement services transactions acting
28 alone or in collusion with others. This bond must be for the sole
29 benefit of the licensee and under no circumstances whatsoever may the
30 bonding company be liable under the bond to any other party unless the
31 officer, partner, or sole practitioner commits a fraudulent or
32 dishonest act, in which case, the bond must be for the benefit of the
33 harmed consumer. The bond must name the licensee as obligee and must
34 protect the obligee against the loss of money or other real or personal
35 property belonging to the obligee, or in which the obligee has a
36 pecuniary interest, or for which the obligee is legally liable or held
37 by the obligee in any capacity, whether the obligee is legally liable
38 therefor or not. A licensee's bond must be maintained until all

1 accounts have been reconciled and any trust account balance is zero.
2 The bond may be canceled by the insurer upon delivery of thirty days'
3 written notice to the director and to the licensee. In the event that
4 the fidelity bond required under this subsection is not reasonably
5 available, the director may adopt rules to implement a surety bond
6 requirement.

7 (3) Except as provided in section 7 of this act, the fidelity bond
8 and surety bond required by this section must be kept in full force and
9 effect as a condition precedent to the licensee's authority to transact
10 debt settlement services business in this state, and the licensee shall
11 supply the director with satisfactory evidence thereof upon request.

12 NEW SECTION. **Sec. 7.** The director shall, within thirty days after
13 a written request, hold a public hearing to determine whether either
14 the fidelity bond or surety bond, or both, specified in section 6 of
15 this act is reasonably available to a substantial number of licensees.
16 If the director determines and the insurance commissioner concurs that
17 the bond or bonds are not reasonably available, the director shall
18 waive the requirements for such bond or bonds for a fixed period of
19 time.

20 NEW SECTION. **Sec. 8.** (1) A provider shall obtain a renewal of its
21 debt settlement services license annually.

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

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

26 (b) Disclose any changes in the information contained in the
27 applicant's application for license or its immediately previous
28 application for renewal, as applicable; and

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

33 (3) If a provider files a timely and complete application for
34 renewal of license, the license remains effective until the department,
35 in a record, notifies the applicant of a denial and states the reasons
36 for the denial.

1 (4) If the department denies an application for renewal of a
2 license as a provider, the applicant may appeal and request a hearing
3 under chapter 34.05 RCW. While the appeal is pending, the applicant
4 shall continue to provide debt settlement services to individuals with
5 whom it has agreements. If the denial is affirmed, the applicant shall
6 continue to provide debt settlement services to individuals with whom
7 it has agreements until, with the approval of the department, it
8 transfers the agreements to another licensed provider.

9 NEW SECTION. **Sec. 9.** An applicant or licensee shall notify the
10 department no later than ten days after a material change in the
11 information provided in an application for licensure.

12 NEW SECTION. **Sec. 10.** (1) A licensee shall pay an annual
13 assessment as established in rule by the director no later than the
14 annual assessment due date or, if the annual assessment due date is not
15 a business day, on the next business day. In setting an annual
16 assessment amount, the director may base the assessment on volume of
17 debt settlement services business conducted in this state, debt
18 settlement fees received from residents of this state, or such other
19 method that fairly apportions the assessment obligation among
20 licensees. The director may set a minimum yearly assessment amount.

21 (2) A licensee shall submit an accurate annual report with the
22 annual assessment, in a form and in a medium prescribed by the director
23 in rule. As part of the annual report, the director may require a copy
24 of the licensee's most recent audited annual financial statement or any
25 such other information that the director deems necessary in connection
26 with reviewing the assessment amount that is due. In addition, the
27 report must contain any additional information required by the director
28 related to the conduct of a licensee's business.

29 (3) If a licensee does not file an annual report or pay its annual
30 assessment by the annual assessment due date, the director or the
31 director's designee shall send the licensee a notice of suspension and
32 assess the licensee a late fee not to exceed twenty-five percent of the
33 annual assessment as established in rule by the director. The
34 licensee's annual report and payment of both the annual assessment and
35 the late fee must arrive in the department's offices by 5:00 p.m. on
36 the thirtieth day after the assessment due date or any extension of

1 time granted by the director, unless that date is not a business day,
2 in which case the licensee's annual report and payment of both the
3 annual assessment and the late fee must arrive in the department's
4 offices by 5:00 p.m. on the next occurring business day. If the
5 licensee's annual report and payment of both the annual assessment and
6 late fee do not arrive by that date, the expiration of the licensee's
7 license is effective at 5:00 p.m. on the thirtieth day after the
8 assessment due date, unless that date is not a business day, in which
9 case the expiration of the licensee's license is effective at 5:00 p.m.
10 on the next occurring business day. The director, or the director's
11 designee, may reinstate the license if, within twenty days after its
12 effective date, the licensee files the annual report and pays both the
13 annual assessment and the late fee.

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

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

17 (2) The application contains information that is materially
18 erroneous or incomplete;

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

22 (4) An officer, director, member, or principal of the applicant's
23 business has (a) been convicted of or pleaded nolo contendere to a
24 felony, or (b) committed an act involving fraud, deceit, or dishonesty;

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

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

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

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

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

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

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

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

8 (d) The licensee has refused to permit the director to examine the
9 licensee's books and records under this chapter, failed to comply with
10 section 20 of this act, or made a material misrepresentation or
11 omission in complying with section 20 of this act; or

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

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

18 (3) A licensee must receive notice and a hearing under chapter
19 34.05 RCW before the director revokes or suspends a license.

20 (4) A licensee may deliver a written notice to the director to
21 surrender its license. However, if a licensee surrenders its license,
22 its civil or criminal liability for acts committed before the surrender
23 is not affected.

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

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

29 (b) To the extent the debt settlement services may include a
30 settlement offer to any of the individual's creditors or debt
31 collectors:

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

35 (ii) A good faith estimate of the amount of money or the percentage
36 of each outstanding debt that the individual will need to accumulate

1 before the provider will make a bona fide settlement offer to one or
2 more of such creditors;

3 (iii) The cost to the individual for providing debt settlement
4 services;

5 (c) To the extent that any aspect of the debt settlement services
6 relies upon or results in the individual's failure to make timely
7 payments to creditors or debt collectors, that the use of the debt
8 settlement services may adversely affect the individual's
9 creditworthiness, may result in the individual being subject to
10 collection actions or sued by creditors or debt collectors, and may
11 increase the amount of money the individual owes due to the accrual of
12 fees and interest; and

13 (d) To the extent that the provider requests or requires the
14 individual to place funds in an account at a financial institution,
15 that the individual owns the funds held in the account and that the
16 individual may withdraw from the debt settlement services agreement at
17 any time without penalty.

18 (2) A provider may not misrepresent, directly or by implication,
19 any material aspect of any debt settlement services including, but not
20 limited to: The amount of money or the percentage of the debt amount
21 that an individual may save by using the service; the effect of the
22 service on the individual's creditworthiness; the effect of the service
23 on collection efforts of the individual's creditors or debt collectors;
24 the percentage or number of individuals who attain the represented
25 results; and whether debt settlement services are offered or provided
26 by a nonprofit entity.

27 (3) A provider may not directly or indirectly employ any scheme,
28 device, or artifice to defraud or mislead consumers or to defraud any
29 person.

30 (4) A provider may not engage in any unfair or deceptive practice
31 toward any person.

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

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

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

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

3 (i) Bears the same proportional relationship to the total fee for
4 settling the entire debt balance as the individual debt amount bears to
5 the entire debt amount. The individual debt amount and the entire debt
6 amount are amounts owed at the time the debt was enrolled on the debt
7 relief service; or

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

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

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

23 (a) The funds are held in a specifically designated account at a
24 financial institution;

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

28 (c) If the provider does not administer the account, the entity
29 administering the account is not owned or controlled by the provider
30 and is not an affiliate of the provider;

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

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

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

4 NEW SECTION. **Sec. 14.** (1) A licensee shall maintain a separate
5 trust account at a federally insured bank to hold funds that it
6 receives, directly or indirectly, from consumers, other than fees
7 received pursuant to section 13 of this act. Trust accounts shall
8 comply with rules that the director adopts pursuant to this chapter.

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

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

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

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

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

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

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

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

34 (2) A licensee shall distribute a statement of accounting to a
35 consumer:

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

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

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

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

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

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

31 NEW SECTION. **Sec. 19.** If a licensee delegates a duty or
32 obligation that this chapter mandates to another person, including an
33 independent contractor, the licensee is liable for the other person's
34 conduct that violates an agreement, this chapter, or any rule of the
35 department.

1 NEW SECTION. **Sec. 20.** (1) The director or the director's designee
2 may at any time examine and investigate the business and examine the
3 books, accounts, records, and files, or other information, wherever
4 located, of any licensee or person who the director has reason to
5 believe is engaging in the business governed by this chapter. For
6 these purposes, the director or the director's designee may require the
7 attendance of and examine under oath all persons whose testimony may be
8 required about the business or the subject matter of the investigation.
9 The director or the director's designee may require the production of
10 original books, accounts, records, files, or other information, or may
11 make copies of such original books, accounts, records, files, or other
12 information. The director or the director's designee may issue a
13 subpoena or subpoena duces tecum requiring attendance and testimony, or
14 the production of the books, accounts, records, files, or other
15 information. The director shall collect from the licensee the actual
16 cost of the examination or investigation.

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

23 (3) The director may distribute any information, report,
24 examination, or statement relating to a licensee to any regulatory or
25 law enforcement agency.

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

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

33 (b) Adequately specify the documents, records, evidence, or
34 testimony; and

35 (c) Include a declaration made under oath that an investigation is
36 being conducted for a lawfully authorized purpose related to an

1 investigation within the department's authority and that the subpoenaed
2 documents, records, evidence, or testimony are reasonably related to an
3 investigation within the department's authority.

4 (2) When an application under this section is made to the
5 satisfaction of the court, the court must issue an order approving the
6 subpoena. An order under this subsection constitutes authority of law
7 for the agency to subpoena the documents, records, evidence, or
8 testimony.

9 (3) The director or authorized assistants may seek approval and a
10 court may issue an order under this section without prior notice to any
11 person, including the person to whom the subpoena is directed and the
12 person who is the subject of an investigation. An application for
13 court approval is subject to the fee and process set forth in RCW
14 36.18.012(3).

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

28 NEW SECTION. **Sec. 23.** (1) The director may issue and serve upon
29 a licensee or applicant, or any director, officer, sole proprietor,
30 partner, or controlling person of a licensee or applicant, a statement
31 of charges if, in the opinion of the director, any licensee or
32 applicant, or any director, officer, sole proprietor, partner, or
33 controlling person of a licensee or applicant:

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

1 (b) Is violating or has violated this chapter, including violations
2 of:

3 (i) Any rules, orders, or subpoenas issued by the director under
4 any act;

5 (ii) Any condition imposed in writing by the director in connection
6 with the granting of any application or other request by the licensee;
7 or

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

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

12 (d) Obtains a license by means of fraud, misrepresentation,
13 concealment, or through mistake or inadvertence of the director;

14 (e) Provides false statements or omits material information on an
15 application;

16 (f) Knowingly or negligently omits material information during or
17 in response to an examination or in connection with an investigation by
18 the director;

19 (g) Fails to pay a fee required by the director or any multistate
20 licensing system prescribed by the director, or fails to maintain the
21 required bond;

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

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

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

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

36 (l) Commits any act of fraudulent or dishonest dealing. For the
37 purposes of this section, a certified copy of the final holding of any

1 court, tribunal, agency, or administrative body of competent
2 jurisdiction is conclusive evidence in any hearing under this chapter;

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

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

8 (2) The statement of charges must be issued under chapter 34.05
9 RCW. The director or the director's designee may impose the following
10 sanctions against any licensee or applicant, or any directors,
11 officers, sole proprietors, partners, controlling persons, or employees
12 of a licensee or applicant:

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

14 (b) Order the licensee or person to cease and desist from practices
15 that violate this chapter or constitute unsafe and unsound financial
16 practices;

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

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

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

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

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

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

37 (6) The director may enter into a consent order at any time with a
38 person to resolve a matter arising under this chapter or a rule adopted

1 or order issued under this chapter. A consent order must be signed by
2 the person to whom it is issued or by the person's authorized
3 representative, and must indicate agreement with the terms contained in
4 the order.

5 NEW SECTION. **Sec. 24.** Whenever the director determines that the
6 acts specified in section 23 of this act or their continuation is
7 likely to cause insolvency or substantial injury to the public, the
8 director may also issue a temporary cease and desist order requiring
9 the licensee to cease and desist from the violation or practice. The
10 order becomes effective upon service upon the licensee and remains
11 effective unless set aside, limited, or suspended by a court under
12 section 25 of this act pending the completion of the administrative
13 proceedings under the notice and until such time as the director
14 dismisses the charges specified in the notice or until the effective
15 date of the cease and desist order issued against the licensee under
16 section 23 of this act.

17 NEW SECTION. **Sec. 25.** Within ten days after a licensee has been
18 served with a temporary cease and desist order, the licensee may apply
19 to the superior court in the county of its principal place of business
20 or Thurston county for an injunction setting aside, limiting, or
21 suspending the order pending the completion of the administrative
22 proceedings pursuant to the notice served under section 24 of this act.
23 The superior court has jurisdiction to issue the injunction.

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

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

1 NEW SECTION. **Sec. 28.** (1) The requirements under any federal law
2 or laws of another state regarding the privacy or confidentiality of
3 any information or material provided to the department, and any
4 privilege arising under federal or state law, including the rules of
5 any federal or state court, with respect to that information or
6 material, continues to apply to the information or material after the
7 information or material has been disclosed to the department. If
8 consistent with applicable law, the information and material may be
9 shared with all state and federal regulatory officials without the loss
10 of privilege or the loss of confidentiality protections provided by
11 federal or state law.

12 (2) When the department is a party to a memoranda of understanding
13 or enforcement order issued by the consumer financial protection
14 bureau, the privacy, confidentiality, or privilege accorded to the
15 document by federal law continues to apply even after the memoranda or
16 order has been signed by the director or a designee.

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

19 NEW SECTION. **Sec. 30.** The director shall adopt rules for the
20 administration and enforcement of this chapter and shall establish
21 reasonable fees by rule sufficient to cover the costs of administering
22 this chapter.

23 NEW SECTION. **Sec. 31.** The legislature finds that the practices
24 governed by this chapter are matters vitally affecting the public
25 interest for the purpose of applying the consumer protection act,
26 chapter 19.86 RCW. Any violation of this chapter is not reasonable in
27 relation to the development and preservation of business and is an
28 unfair or deceptive act or practice and an unfair method of competition
29 in the conduct of trade or commerce in violation of RCW 19.86.020.
30 Remedies provided by chapter 19.86 RCW are cumulative and not
31 exclusive.

32 NEW SECTION. **Sec. 32.** This chapter modifies, limits, and
33 supersedes the electronic signatures in global and national commerce
34 act (P.L. 106-229, 15 U.S.C. Sec. 7001 et seq.), but does not modify,

1 limit, or supersede section 101(c) of the electronic signatures in
2 global and national commerce act, 15 U.S.C. Sec. 7001(c), or authorize
3 electronic delivery of any of the notices described in section 103(b)
4 of the electronic signatures in global and national commerce act, 15
5 U.S.C. Sec. 7003(b).

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

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

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

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

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

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

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

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

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

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

4 (h) Persons licensed as providers of debt settlement services under
5 chapter 18.-- RCW (the new chapter created in section 36 of this act).

6 (2) "Debt adjusting" means the managing, counseling, settling,
7 adjusting, prorating, or liquidating of the indebtedness of a debtor,
8 ((~~or~~)) and receiving funds for the purpose of distributing said funds
9 among creditors in payment or partial payment of obligations of a
10 debtor.

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

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

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

24 **Sec. 34.** RCW 42.56.230 and 2013 c 220 s 1 and 2013 c 336 s 3 are
25 each reenacted and amended to read as follows:

26 The following personal information is exempt from public inspection
27 and copying under this chapter:

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

31 (2)(a) Personal information:

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

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

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

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

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

13 (5) Credit card numbers, debit card numbers, electronic check
14 numbers, card expiration dates, or bank or other financial account
15 numbers, except when disclosure is expressly required by or governed by
16 other law;

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

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

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

24 (c) Any record pertaining to a vehicle license plate, driver's
25 license, or identicard issued under RCW 46.08.066 that, alone or in
26 combination with any other records, may reveal the identity of an
27 individual, or reveal that an individual is or was, performing an
28 undercover or covert law enforcement, confidential public health work,
29 public assistance fraud, or child support investigative activity. This
30 exemption does not prevent the release of the total number of vehicle
31 license plates, drivers' licenses, or identicards that, under RCW
32 46.08.066, an agency or department has applied for, been issued,
33 denied, returned, destroyed, lost, and reported for misuse.

34 (d) Any record pertaining to a vessel registration issued under RCW
35 88.02.330 that, alone or in combination with any other records, may
36 reveal the identity of an individual, or reveal that an individual is
37 or was, performing an undercover or covert law enforcement activity.
38 This exemption does not prevent the release of the total number of

1 vessel registrations that, under RCW 88.02.330, an agency or department
2 has applied for, been issued, denied, returned, destroyed, lost, and
3 reported for misuse. (~~(e)~~) Upon request by the legislature, the
4 department of licensing shall provide a report to the legislature
5 containing all of the information in (c) (~~and (d)~~) of this subsection
6 and this subsection (7)(d) that is subject to public disclosure.

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

11 NEW SECTION. Sec. 35. This act does not invalidate or make
12 unlawful contracts executed prior to the effective date of this
13 section.

14 NEW SECTION. Sec. 36. Sections 1 through 32 of this act
15 constitute a new chapter in Title 18 RCW.

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