
SENATE BILL 5265

State of Washington

54th Legislature

1995 Regular Session

By Senators Pelz, Newhouse, Heavey, Wood and West; by request of Department of Licensing

Read first time 01/17/95. Referred to Committee on Labor, Commerce & Trade.

1 AN ACT Relating to deregulating debt adjusters; amending RCW
2 18.28.010, 18.28.080, 18.28.090, 18.28.100, 18.28.110, 18.28.120,
3 18.28.130, 18.28.150, 18.28.165, and 18.28.190; repealing RCW
4 18.28.020, 18.28.030, 18.28.040, 18.28.045, 18.28.050, 18.28.060,
5 18.28.070, 18.28.160, and 18.28.170; and prescribing penalties.

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

7 **Sec. 1.** RCW 18.28.010 and 1979 c 156 s 1 are each amended to read
8 as follows:

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

12 (1) "Debt adjusting" means the managing, counseling, settling,
13 adjusting, prorating, or liquidating of the indebtedness of a debtor,
14 or receiving funds for the purpose of distributing said funds among
15 creditors in payment or partial payment of obligations of a debtor.

16 (2) "Debt adjuster", which includes any person known as a debt
17 pooler, debt manager, debt consolidator, debt prorater, or credit
18 counselor, is any person engaging in or holding himself out as engaging

1 in the business of debt adjusting for compensation. The term shall not
2 include:

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

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

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

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

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

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

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

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

30 (~~(4) "License" means a debt adjuster license or debt adjusting
31 agency license issued under the provisions of this chapter.~~

32 ~~(5) "Licensee" means a debt adjuster or debt adjusting agency to
33 whom a license has been issued under the provisions of this chapter.~~

34 ~~(6) "Director" means the director of the department of licensing.)~~

35 **Sec. 2.** RCW 18.28.080 and 1979 c 156 s 4 are each amended to read
36 as follows:

37 (1) By contract a (~~licensee~~) debt adjuster may charge a
38 reasonable fee for debt adjusting services. The total fee for debt

1 adjusting services may not exceed fifteen percent of the total debt
2 listed by the debtor on the contract. The fee retained by the
3 ((licensee)) debt adjuster from any one payment made by or on behalf of
4 the debtor may not exceed fifteen percent of the payment(~~(:—PROVIDED,~~
5 ~~That))~~. However, the ((licensee)) debt adjuster may make an initial
6 charge of up to twenty-five dollars which shall be considered part of
7 the total fee. If an initial charge is made, no additional fee may be
8 retained which will bring the total fee retained to date to more than
9 fifteen percent of the total payments made to date. No fee whatsoever
10 shall be applied against rent and utility payments for housing.

11 In the event of cancellation or default on performance of the
12 contract by the debtor prior to its successful completion, the
13 ((licensee)) debt adjuster may collect in addition to fees previously
14 received, six percent of that portion of the remaining indebtedness
15 listed on said contract which was due when the contract was entered
16 into, but not to exceed twenty-five dollars.

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

21 **Sec. 3.** RCW 18.28.090 and 1967 c 201 s 9 are each amended to read
22 as follows:

23 If a ((licensee)) debt adjuster contracts for, receives or makes
24 any charge in excess of the maximums permitted by this chapter, except
25 as the result of an accidental and bona fide error, the ((licensee's))
26 debt adjuster's contract with the debtor shall be void and the
27 ((licensee)) debt adjuster shall return to the debtor the amount of all
28 payments received from the debtor or on ((his)) the debtor's behalf and
29 not distributed to creditors.

30 **Sec. 4.** RCW 18.28.100 and 1979 c 156 s 5 are each amended to read
31 as follows:

32 Every contract between a ((licensee)) debt adjuster and a debtor
33 shall:

34 (1) List every debt to be handled with the creditor's name and
35 disclose the approximate total of all known debts;

36 (2) Provide in precise terms payments reasonably within the ability
37 of the debtor to pay;

1 (3) Disclose in precise terms the rate and amount of all ((of)) the
2 ((licensee's)) charges and fees;

3 (4) Disclose the approximate number and amount of installments
4 required to pay the debts in full;

5 (5) Disclose the name and address of the ((licensee)) debt adjuster
6 and of the debtor;

7 (6) Provide that the ((licensee)) debt adjuster shall notify the
8 debtor, in writing, within five days of notification to the
9 ((licensee)) debt adjuster by a creditor that the creditor refuses to
10 accept payment pursuant to the contract between the ((licensee)) debt
11 adjuster and the debtor;

12 (7) Contain the following notice in ten point boldface type or
13 larger directly above the space reserved in the contract for the
14 signature of the buyer: NOTICE TO DEBTOR:

15 (a) Do not sign this contract before you read it or if any spaces
16 intended for the agreed terms are left blank.

17 (b) You are entitled to a copy of this contract at the time you
18 sign it.

19 (c) You may cancel this contract within three days of signing by
20 sending notice of cancellation by certified mail return receipt
21 requested to the debt adjuster at his address shown on the contract,
22 which notice shall be posted not later than midnight of the third day
23 (excluding Sundays and holidays) following your signing of the
24 contract; and

25 (8) Contain such other and further provisions or disclosures as
26 ((the director shall determine)) are necessary for the protection of
27 the debtor and the proper conduct of business by the ((licensee)) debt
28 adjuster.

29 **Sec. 5.** RCW 18.28.110 and 1979 c 156 s 6 are each amended to read
30 as follows:

31 Every ((licensee)) debt adjuster shall perform the following
32 functions:

33 (1) Make a permanent record of all payments by debtors, or on the
34 debtors' behalf, and of all disbursements to creditors of such debtors,
35 and shall keep and maintain in this state all such records, and all
36 payments not distributed to creditors. No person shall intentionally
37 make any false entry in any such record, or intentionally mutilate,
38 destroy or otherwise dispose of any such record. Such records shall at

1 all times be open for inspection by the (~~director~~) attorney general
2 or (~~his~~) the attorney general's authorized agent, and shall be
3 preserved as original records or by microfilm or other methods of
4 duplication (~~acceptable to the director,~~) for at least six years
5 after making the final entry therein.

6 (2) Deliver a completed copy of the contract between the
7 (~~licensee~~) debt adjuster and a debtor to the debtor immediately after
8 the debtor executes the contract, and sign the debtor's copy of such
9 contract.

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

12 (4) Distribute to the creditors of the debtor at least once each
13 forty days after receipt of payment during the term of the contract at
14 least eighty-five percent of each payment received from the debtor.

15 (5) At least once every month render an accounting to the debtor
16 which shall indicate the total amount received from or on behalf of the
17 debtor, the total amount paid to each creditor, the total amount which
18 any creditor has agreed to accept as payment in full on any debt owed
19 (~~him~~) the creditor by the debtor, the amount of charges deducted, and
20 any amount held in trust. The (~~licensee~~) debt adjuster shall in
21 addition render such an account to a debtor within ten days after
22 written demand.

23 (6) Notify the debtor, in writing, within five days of notification
24 to the (~~licensee~~) debt adjuster by a creditor that the creditor
25 refuses to accept payment pursuant to the contract between the
26 (~~licensee~~) debt adjuster and the debtor.

27 (~~(7) Furnish the director with all contracts, assignments, and~~
28 ~~forms as described in RCW 18.28.030 which are currently in use.))~~

29 **Sec. 6.** RCW 18.28.120 and 1967 c 201 s 12 are each amended to read
30 as follows:

31 A (~~licensee~~) debt adjuster shall not:

32 (1) Take any contract, or other instrument which has any blank
33 spaces when signed by the debtor;

34 (2) Receive or charge any fee in the form of a promissory note or
35 other promise to pay or receive or accept any mortgage or other
36 security for any fee, whether as to real or personal property;

37 (3) Lend money or credit;

1 (4) Take any confession of judgment or power of attorney to confess
2 judgment against the debtor or appear as the debtor in any judicial
3 proceedings;

4 (5) Take, concurrent with the signing of the contract or as a part
5 of the contract or as part of the application for the contract, a
6 release of any obligation to be performed on the part of the
7 ((licensee)) debt adjuster;

8 (6) Advertise ((his)) services, display, distribute, broadcast or
9 televise, or permit ((his)) services to be displayed, advertised,
10 distributed, broadcasted or televised in any manner whatsoever wherein
11 any false, misleading or deceptive statement or representation with
12 regard to the services to be performed by the ((licensee)) debt
13 adjuster, or the charges to be made therefor, is made;

14 (7) Offer, pay, or give any cash, fee, gift, bonus, premiums,
15 reward, or other compensation to any person for referring any
16 prospective customer to the ((licensee)) debt adjuster;

17 (8) Receive any cash, fee, gift, bonus, premium, reward, or other
18 compensation from any person other than the debtor or a person in the
19 debtor's behalf in connection with ((his)) activities as a ((licensee))
20 debt adjuster; or

21 (9) Disclose to anyone(~~(, other than the director or his agent,)~~)
22 the debtors who have contracted with the ((licensee)) debt adjuster;
23 nor shall the ((licensee)) debt adjuster disclose the creditors of a
24 debtor to anyone other than: (a) The debtor(~~(, or (b) the director or~~
25 ~~his agent,)~~); or ((+e)) (b) another creditor of the debtor and then
26 only to the extent necessary to secure the cooperation of such a
27 creditor in a debt adjusting plan.

28 **Sec. 7.** RCW 18.28.130 and 1967 c 201 s 13 are each amended to read
29 as follows:

30 Without limiting the generality of the foregoing and other
31 applicable laws, the ((licensee, manager)) debt adjuster or an employee
32 of ((a licensee)) the debt adjuster shall not:

33 (1) Prepare, advise, or sign a release of attachment or
34 garnishment, stipulation, affidavit for exemption, compromise agreement
35 or other legal or court document, nor furnish legal advice or perform
36 legal services of any kind;

37 (2) Represent that he or she is authorized or competent to furnish
38 legal advice or perform legal services;

1 (3) Assume authority on behalf of creditors or a debtor or accept
2 a power of attorney authorizing it to employ or terminate the services
3 of any attorney or to arrange the terms of or compensate for such
4 services; or

5 (4) Communicate with the debtor or creditor or any other person in
6 the name of any attorney or upon the stationery of any attorney or
7 prepare any form or instrument which only attorneys are authorized to
8 prepare.

9 **Sec. 8.** RCW 18.28.150 and 1979 c 156 s 8 are each amended to read
10 as follows:

11 (1) Any payment received by a ((licensee)) debt adjuster from or on
12 behalf of a debtor shall be held in trust by the ((licensee)) debt
13 adjuster from the moment it is received. The ((licensee)) debt
14 adjuster shall not commingle such payment with ((his)) the debt
15 adjuster's own property or funds, but shall maintain a separate trust
16 account and deposit in such account all such payments received. All
17 disbursements whether to the debtor or to the creditors of the debtor,
18 or to the ((licensee)) debt adjuster, shall be made from such account.

19 (2) In the event that the debtor cancels or defaults on the
20 contract between the debtor and the ((licensee)) debt adjuster, the
21 ((licensee)) debt adjuster shall close out the debtor's trust account
22 in the following manner:

23 (a) The ((licensee)) debt adjuster may take from the account that
24 amount necessary to satisfy any fees, other than any cancellation or
25 default fee, authorized by this chapter.

26 (b) After deducting the fees provided in subsection (2)(a) of this
27 section, the ((licensee)) debt adjuster shall distribute the remaining
28 amount in the account to the creditors of the debtor. The distribution
29 shall be made within five days of the demand therefor by the debtor,
30 but if the debtor fails to make the demand, then the ((licensee)) debt
31 adjuster shall make the distribution within thirty days of the date of
32 cancellation or default.

33 **Sec. 9.** RCW 18.28.165 and 1979 c 156 s 7 are each amended to read
34 as follows:

35 For the purpose of discovering violations of this chapter or
36 securing information lawfully required ((~~by him hereunder~~)) under this
37 chapter, the ((director)) consumer protection division of the attorney

1 general's office may at any time(~~(, either personally or by a person or~~
2 ~~persons duly designated by him,))): Investigate the debt adjusting
3 business and examine the books, accounts, records, and files used
4 therein(~~(, of every licensee. For that purpose the director and his~~
5 ~~duly designated representatives shall))); have free access to the
6 offices and places of business, books, accounts, papers, records,
7 files, safes, and vaults of all (~~licensees. The director and all~~
8 ~~persons duly designated by him may~~) debt adjusters; and require the
9 attendance of and examine under oath all persons whomsoever whose
10 testimony (~~he may require~~) might be required relative to such debt
11 adjusting business or to the subject matter of any examination,
12 investigation, or hearing.~~~~

13 **Sec. 10.** RCW 18.28.190 and 1967 c 201 s 19 are each amended to
14 read as follows:

15 Any person who violates any provision of this chapter or aids or
16 abets such violation, or any rule lawfully (~~promulgated hereunder~~)
17 adopted under this chapter or any order or decision (~~of the director~~
18 ~~hereunder, or any person who operates as a debt adjuster without a~~
19 ~~license, shall be~~) made under this chapter, is guilty of a
20 misdemeanor.

21 NEW SECTION. **Sec. 11.** The following acts or parts of acts are
22 each repealed:

- 23 (1) RCW 18.28.020 and 1967 c 201 s 2;
- 24 (2) RCW 18.28.030 and 1985 c 7 s 18, 1975 1st ex.s. c 30 s 23, 1971
25 ex.s. c 266 s 6, & 1967 c 201 s 3;
- 26 (3) RCW 18.28.040 and 1967 c 201 s 4;
- 27 (4) RCW 18.28.045 and 1967 c 156 s 2;
- 28 (5) RCW 18.28.050 and 1967 c 201 s 5;
- 29 (6) RCW 18.28.060 and 1979 c 156 s 3, 1971 ex.s. c 292 s 20, 1967
30 ex.s. c 141 s 1, & 1967 c 201 s 6;
- 31 (7) RCW 18.28.070 and 1967 c 201 s 7;
- 32 (8) RCW 18.28.160 and 1967 c 201 s 16; and
- 33 (9) RCW 18.28.170 and 1979 c 156 s 9 & 1967 c 201 s 17.

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