

from the date the judgment and sentence is signed by the court.

Repeal.

Sec. 11. Section 3, chapter 42, Laws of 1955 and RCW 9.95.061 are each repealed.

Emergency.

Sec. 12. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Severability.

Sec. 13. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Passed the House March 8, 1967.

Passed the Senate March 7, 1967.

Approved by the Governor March 21, 1967.

CHAPTER 201.

[Substitute House Bill No. 16.]

DEBT ADJUSTING.

AN ACT relating to debt adjusting; providing for the supervision, regulation, licensing and bonding of debt adjusters and debt adjusting agencies; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Debt adjusters.
Definitions.

Section 1. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this act shall have the following meanings:

(1) "Debt adjusting" means the managing, counseling, settling, adjusting, prorating, or liquidating

of the indebtedness of a debtor, or receiving funds for the purpose of distributing said funds among creditors in payment or partial payment of obligations of a debtor.

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

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

(b) Any person, partnership, association, or corporation doing business under and as permitted by any law of this state or of the United States relating to banks, small loan companies, industrial loan companies, trust companies, mutual savings banks, savings and loan associations, building and loan associations, credit unions, crop credit associations, development credit corporations, industrial development corporations, title insurance companies, or insurance companies.

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

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

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

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

Debt adjusters.
Definitions.

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

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

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

(6) "Director" means the director of the department of motor vehicles.

License re-
quired.

Sec. 2. No debt adjuster, debt adjusting agency, or branch office of any debt adjusting agency may engage in the business of debt adjusting within this state except as authorized by this act and without first obtaining a license from the director.

Application
for license—
Fees—Bond—
Qualifications.

Sec. 3. An application for a license shall be in writing, under oath, and in the form prescribed by the director. The application shall contain such relevant information as the director may require, but in all cases shall contain the name and residential and business addresses of each individual applicant, and of each member when the applicant is a partnership or association, and of each director and officer when the applicant is a corporation.

Except as provided hereinafter in this section the applicant shall pay an investigation fee of fifty dollars and a licensing fee of fifty dollars: *Provided*, That a branch office of a licensed debt adjusting agency need not pay an investigation fee but only the licensing fee. If a license is not issued in response to the application, the director shall return fifty dollars to the applicant. An annual license fee of fifty dollars shall be paid to the director by January 1st of each year. If the annual license fee is not paid by January 1st, the licensee shall be assessed a

penalty for late payment in the amount of twenty-five dollars. And if the fee and penalty are not paid by January 31st, reapplication for a new license will be necessary, which may include taking any examination prescribed by the director.

The applicant shall file a surety bond with the director or in lieu thereof the applicant may file with the director a cash deposit or other negotiable security acceptable to the director and under conditions set forth in section 4 of this act: *Provided*, That each branch office of a debt adjusting agency shall be required to be bonded as provided herein, but no bond will be required of an individual applicant while he is employed by a bonded debt adjusting agency or branch thereof.

The applicant shall furnish the director with such proof as the director may reasonably require to establish the qualifications set forth in section 6 of this act.

If the applicant is an individual person making an original license application he shall pay an examination fee of fifty dollars.

If the applicant is applying for a debt adjusting agency license it shall furnish the director with complete forms of all contracts and assignments designed for execution by debtors making any assignments to or placing any property with the applicant for the purpose of paying the creditors of such debtors, and complete forms of all contracts and agreements designed for execution by creditors to whom payments are made by the applicant. Only such forms furnished the director and not disapproved by him shall be used by a debt adjusting agency licensee.

Sec. 4. The bond, required in section 3 of this act, shall be a surety bond, annually renewable on January 1st, to be approved by the director as to form and content, in the sum of ten thousand dollars,

Debt adjust-
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requirements
—Security in
lieu of bond.

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quirements—
Security in
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executed by the applicant as principal and by a surety company authorized to do business in this state as a surety, whose liability shall not exceed the said sum in the aggregate. Such bond shall run to the state of Washington as obligee for the benefit of the state and of any person or persons who may have cause of action against the principal of said bond under the provisions of this act. Such bond shall be conditioned that said principal as licensee hereunder will not commit any fraudulent act and will comply with the provisions of this act and the rules lawfully adopted hereunder, and will pay to the state and any such person or persons any and all moneys that may become due and owing from such principal under and by virtue of the provisions of this act. The surety on such bond shall be released and discharged from all liability accruing on such bond after the expiration of thirty days from the date upon which such surety shall have lodged with the director a written request to be released and discharged, but this provision shall not operate to relieve, release or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty day period. The director shall promptly upon receiving any such request notify the principal who furnished the bond; and unless the principal shall, on or before the expiration of the thirty day period, file a new bond, the director shall forthwith cancel the principal's license.

An applicant for a license under this act may furnish, file and deposit with the director, in lieu of the surety bond provided for herein, United States currency or bonds, representing obligations of the United States, or bonds of the state of Washington or any legal subdivision thereof, for which the faith of the United States, the state of Washington or any legal subdivision thereof is pledged, for the payment

of both the principal and interest, equal in amount to the amount of the bond required by this act. The security deposited with the director in lieu of the surety bond shall be returned to the licensee at the expiration of three years after the license issued thereon has expired or been revoked if no legal action has been instituted against the licensee or on the bond at the expiration of said three years.

Sec. 5. If the licensee has failed to account to a debtor or distribute to the debtor's creditors such amounts as are required by this act and the contract between the debtor and licensee, the debtor, his legal representative or receiver, or the director, shall have, in addition to all other legal remedies, a right of action in the name of the debtor on the bond or the security given pursuant to the provisions of section 4 of this act, for loss suffered by the debtor, not exceeding the face of the bond or security, and without the necessity of joining the licensee in such suit or action. No action shall be brought upon any bond or security given under section 4 of this act after the expiration of three years from the revocation or expiration of the license issued thereon. Upon entering judgment for plaintiff in any action on the bond required under section 4 of this act, for more than the sum tendered in the court by the defendant, if any, the court shall include in the judgment reasonable compensation for services of plaintiff's attorney in the action.

Action on
bond or se-
curity.

Sec. 6. The director shall issue a license to an applicant if the following requirements are met:

(1) The application is complete and the applicant has complied with section 3 of this act.

(2) Neither an individual applicant, nor any of the applicant's members if the applicant is a partnership or association, nor any of the applicant's officers or directors if the applicant is a corporation:

Debt adjusters
—Applicants
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Requirements.

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—Applicants
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Requirements.

(a) Has ever been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or any other like offense, or has been disbarred from the practice of law; (b) has participated in a violation of this act or of any valid rules, orders or decisions of the director promulgated under this act; (c) has had a license to engage in the business of debt adjusting revoked or removed in this or any other state; or (d) is an employee or owner of a retail business of any kind, a collection agency, or process serving business.

(3) An individual applicant is at least twenty-one years of age, a citizen of the United States, and a resident of this state for at least one year.

(4) An applicant which is a partnership, corporation, or association is authorized to do business in this state.

(5) An individual applicant for an original license as a debt adjuster has passed an examination administered by the director, which examination may be oral or written, or partly oral and partly written, and shall be practical in nature and sufficiently thorough to ascertain the applicant's fitness. Questions on bookkeeping, credit adjusting, business ethics, agency, contracts, debtor and creditor relationships, trust funds and the provisions of this act may be included in the examination.

NOTE: See also section 1, chapter 141, Laws of 1967 ex. sess.

Licenses—
Form—Con-
tents—Display
—Transferability.

Sec. 7. Each license shall:

(1) Be in the form and size prescribed by the director;

(2) Show the name of the licensee and the address at which the business of debt adjusting is to be conducted;

(3) Show the date of expiration of the license as December 31st, and show such other matter as may be prescribed by the director;

(4) While in force, be at all times conspicuously displayed in the outer office of the debt adjusting agency or branch thereof; and

(5) Not be transferable or assignable.

Sec. 8. By contract a licensee may charge a reasonable fee for debt adjusting services, which fee may not exceed fifteen percent of the total debts reported to and listed with the licensee by the debtor and/or the debtor's listed creditors. The licensee may require an initial payment by the debtor of an amount not to exceed twenty-five dollars which initial payment shall be part of the total allowable fee contracted for, and may not otherwise take or receive for services performed for any one person more than fifteen percent of the amount received by it at any one time from or on behalf of that person.

Fees—Limitations—Requirements.

In the event of cancellation or default on performance of the contract by the debtor prior to its successful completion, the licensee may collect in addition to fees previously received, six percent of the remaining indebtedness listed on said contract, but not to exceed seventy-five dollars.

A licensee shall not be entitled to retain any fee until notifying all creditors listed by the debtor that the debtor has engaged the licensee in a program of debt adjusting.

NOTE: See also section 2, chapter 141, Laws of 1967 ex. sess.

Sec. 9. If a licensee contracts for, receives or makes any charge in excess of the maximums permitted by this act, except as the result of an accidental and bona fide error, the licensee's contract with the debtor shall be void and the licensee shall return to the debtor the amount of all payments received from the debtor or on his behalf and not distributed to creditors.

Excess charges—Effect.

Sec. 10. Every contract between a licensee and a debtor shall:

Contract requirements.

Debt adjusters
—Contract—
Mandatory
provisions.

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

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

(3) Disclose in precise terms the rate and amount of the licensee's charge;

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

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

(6) Contain such other and further provisions or disclosures as the director shall determine are necessary for the protection of the debtor and the proper conduct of business by the licensee.

Licensees—
Function re-
quired to be
performed.

Sec. 11. Every licensee shall perform the following functions:

(1) Make a permanent record of all payments by debtors, or on the debtors' behalf, and of all disbursements to creditors of such debtors, and shall keep and maintain in this state all such records, and all payments not distributed to creditors. No person shall intentionally make any false entry in any such record, or intentionally mutilate, destroy or otherwise dispose of any such record. Such records shall at all times be open for inspection by the director or his authorized agent, and shall be preserved as original records or by microfilm or other methods of duplication acceptable to the director, for at least six years after making the final entry therein.

(2) Deliver a completed copy of the contract between the licensee and a debtor to the debtor immediately after the debtor executes the contract, and sign the debtor's copy of such contract.

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

(4) Distribute to the creditors of the debtor at least once each forty days after receipt of payment during the term of the contract at least sixty percent of each payment received from the debtor. No more than twenty-five percent of any payment shall be allocated to the debtor's undistributed reserve account. In the event of cancellation or default on performance of the contract by the debtor, the licensee must distribute to the creditors of the debtor the funds of the debtor held by the licensee, less the amount retained by the licensee in accordance with section 8 of this act.

(5) At least once every six months render an accounting to the debtor which shall indicate the total amount received from or on behalf of the debtor, the total amount paid to each creditor, the total amount which any creditor has agreed to accept as payment in full on any debt owed him by the debtor, the amount of charges deducted, and any amount held in reserve. The licensee shall in addition render such an account to a debtor within ten days after written demand.

Sec. 12. A licensee shall not:

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

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

(3) Lend money or credit;

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

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

Debt adjusters
—Licensees—
Prohibited
acts.

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

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

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

(9) Disclose to anyone, other than the director or his agent, the debtors who have contracted with the licensee; nor shall the licensee disclose the creditors of a debtor to anyone other than: (a) The debtor, or (b) the director or his agent, or (c) another creditor of the debtor and then only to the extent necessary to secure the cooperation of such a creditor in a debt adjusting plan.

Legal services
—Prohibited
acts.

Sec. 13. Without limiting the generality of the foregoing and other applicable laws, the licensee, manager or employee of a licensee shall not:

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

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

(3) Assume authority on behalf of creditors or a debtor or accept a power of attorney authorizing it

to employ or terminate the services of any attorney or to arrange the terms of or compensate for such services; or

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

Sec. 14. Nothing in this act shall be construed as prohibiting the assignment of wages by a debtor to a licensee, if such assignment is otherwise in accordance with the law of this state.

Assignment of wages not prohibited.

Sec. 15. Any payment received by a licensee from or on behalf of a debtor shall be held in trust by the licensee from the moment it is received. The licensee shall not commingle such payment with his own property or funds, but shall maintain a separate trust account and deposit in such account all such payments received. All disbursements whether to the debtor or to the creditors of the debtor, or to the licensee, shall be made from such account.

Payments trust account — Disbursements.

Sec. 16. The director shall, upon reasonable opportunity to be heard, revoke any license issued pursuant to this act if he finds that:

Revocation of license — Grounds.

(1) The licensee has failed to renew its bond as required by this act;

(2) The licensee has violated any provision of this act or any rule, promulgated by the director under the authority of this act or any order or decision of the director hereunder; or

(3) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the director in refusing originally to issue such license.

Sec. 17. The director may promulgate rules, make specific decisions, orders and rulings, including therein demands and findings, and take other

Debt adjusters — Rules, orders, decisions.

Debt adjusters
—Rules, or-
ders, de-
cisions.

necessary action for the implementation and enforcement of this act. The director may include among rules promulgated, those which describe and forbid deceptive advertising.

Administra-
tive proce-
dures act to
apply.

Sec. 18. The administrative procedure act, Chapter 34.04 RCW, shall wherever applicable herein, govern the rights, remedies, and procedures respecting the administration of this act.

Violations—
Penalty.

Sec. 19. Any person who violates any provision of this act or aids or abets such violation, or any rule lawfully promulgated hereunder or any order or decision of the director hereunder, or any person who operates as a debt adjuster without a license, shall be guilty of a misdemeanor.

Violations
may be
enjoined.

Sec. 20. Notwithstanding any other actions which may be brought under the laws of this state, the attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this act.

Violations—
Assurance of
discontin-
uance—Effect.

Sec. 21. The attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this act in the enforcement thereof from any person engaging in or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in the alternative, in Thurston county. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this act for the purpose of securing any injunction as provided for in section 20 of this act: *Provided*, That after commencement of any action by a prosecuting attorney, as provided therein, the attorney general may not accept an assurance of

discontinuance without the consent of said prosecuting attorney.

Sec. 22. Any person who violates any injunction issued pursuant to this act shall forfeit and pay a civil penalty of not more than one thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties.

Violation of
injunction—
Civil penalty.

Sec. 23. The provisions of this act shall not invalidate or make unlawful contracts between debt adjusters and debtors executed prior to the effective date of this act.

Savings.

Sec. 24. If any provision of this act, or its application to any person or circumstance, is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected.

Severability.

Passed the House March 8, 1967.

Passed the Senate March 7, 1967.

Approved by the Governor March 21, 1967.