

In making the decision to veto Subsections of Substitute Senate Bill 2768 I am fully aware that Amendment 62 of the Washington State Constitution provides that the Governor "may not object to less than an entire section." The combined subsections I am vetoing do comprise a "section" as defined in Apartment Associations vs. Evans 88 W2d 553, 564 P. 2d 788 (1977). Although Apartment Associations interpreted the meaning of "section" as it existed before Amendment 62, the definition is still applicable. Amendment 62 abrogated the Governor's power to veto an "item". The intent of the Legislature and the people was to prohibit the Governor from vetoing a word, a comma, or other integrated segment of a proposal by the Legislature. The Legislature did not address the definition of the word "section." Therefore the definition set out in Apartment Associations (supra) appears valid.

The court, in testing several vetoes, reveals that a section is determined by its severability from other parts of the bill, and its ability to stand alone as a complete concept. In the present situation, Section 77 of Substitute Senate Bill 2768 delegates duties to the Department of Social and Health Services. The subsections within section 77 set out individual duties. Subsections (3) and (4) embody one duty separate and distinct from the other duties, clearly this duty is severable from the others and is a complete "section" as defined in Apartment Associations.

It is not my intent to change the remainder of the bill. My objection is toward the single concept of mandating contracts for services.

With the exception of Subsection (3) and (4) of Section 77, which I have vetoed, the remainder of Substitute Senate Bill 2768 is approved."

CHAPTER 156

[House Bill No. 86]

DEBT ADJUSTING

AN ACT Relating to debt adjusting; amending section 1, chapter 201, Laws of 1967 as amended by section 1, chapter 97, Laws of 1970 ex. sess. and RCW 18.28.010; amending section 6, chapter 201, Laws of 1967 as last amended by section 20, chapter 292, Laws of 1971 ex. sess. and RCW 18.28.060; amending section 8, chapter 201, Laws of 1967 as amended by section 2, chapter 141, Laws of 1967 ex. sess. and RCW 18.28.080; amending section 10, chapter 201, Laws of 1967 and RCW 18.28.100; amending section 11, chapter 201, Laws of 1967 and RCW 18.28.110; amending section 15, chapter 201, Laws of 1967 and RCW 18.28.150; amending section 17, chapter 201, Laws of 1967 and RCW 18.28.170; amending section 14, chapter 289, Laws of 1977 ex. sess. and RCW 43.131.140; amending section 17, chapter 289, Laws of 1977 ex. sess. (uncodified); adding new sections to chapter 18.28 RCW; prescribing penalties; providing an effective date; and declaring an emergency.

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

Section 1. Section 1, chapter 201, Laws of 1967 as amended by section 1, chapter 97, Laws of 1970 ex. sess. and RCW 18.28.010 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter 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 advisors 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;

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

(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 chapter.

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

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

NEW SECTION. Sec. 2. There is added to chapter 18.28 RCW a new section to read as follows:

If the director finds at any time that the bond is insecure, depleted, exhausted, or otherwise doubtful, an additional bond of the character specified in RCW 18.28.040 and approved by the director in the sum of not more than ten thousand dollars, shall be filed by the licensee within ten days after written demand upon the licensee by the director.

Sec. 3. Section 6, chapter 201, Laws of 1967 as last amended by section 20, chapter 292, Laws of 1971 ex. sess. and RCW 18.28.060 are each amended to read as follows:

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 RCW 18.28.030.

(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: (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 chapter or of any valid rules, orders or decisions of the director promulgated under this chapter; (c) has had a license to engage in the business of debt adjusting revoked or removed for any reason other than for failure to pay licensing fees in this or any other state; or (d) is an employee or owner of a collection agency, or process serving business.

(3) An individual applicant is at least eighteen 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 chapter (~~(may)~~) shall be included in the examination. No applicant may use any books or other similar aids while taking the examination, and no applicant may take the examination more than three times in any twelve month period.

Sec. 4. Section 8, chapter 201, Laws of 1967 as amended by section 2, chapter 141, Laws of 1967 ex. sess. and RCW 18.28.080 are each amended to read as follows:

(1) 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)~~). The total fee for debt adjusting services may not exceed fifteen

percent of the total debt listed by the debtor on the contract. The fee retained by the licensee from any one payment made by or on behalf of the debtor may not exceed fifteen percent of the payment: PROVIDED, That the licensee may make an initial charge of up to twenty-five dollars which shall be considered part of the total fee. If an initial charge is made, no additional fee may be retained which will bring the total fee retained to date to more than fifteen percent of the total payments made to date. No fee whatsoever shall be applied against rent and utility payments for housing.

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 that portion of the remaining indebtedness listed on said contract which was due when the contract was entered into, but not to exceed ~~((seventy-five))~~ twenty-five dollars.

(2) 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.

Sec. 5. Section 10, chapter 201, Laws of 1967 and RCW 18.28.100 are each amended to read as follows:

Every contract between a licensee and a debtor shall:

(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 all of the licensee's charges and fees;

(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) Provide that the licensee shall notify the debtor, in writing, within five days of notification to the licensee by a creditor that the creditor refuses to accept payment pursuant to the contract between the licensee and the debtor;

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

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

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

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

(8) 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.

Sec. 6. Section 11, chapter 201, Laws of 1967 and RCW 18.28.110 are each amended to read as follows:

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))~~ eighty-five 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 RCW 18.28.080.))~~

(5) At least once every ~~((six))~~ month((s)) 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))~~ trust. The licensee shall in addition render such an account to a debtor within ten days after written demand.

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

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

NEW SECTION. Sec. 7. There is added to chapter 18.28 RCW a new section to read as follows:

For the purpose of discovering violations of this chapter or securing information lawfully required by him hereunder, the director may at any

time, either personally or by a person or persons duly designated by him, investigate the debt adjusting business and examine the books, accounts, records, and files used therein, of every licensee. For that purpose the director and his duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all licensees. The director and all persons duly designated by him may require the attendance of and examine under oath all persons whomsoever whose testimony he may require relative to such debt adjusting business or to the subject matter of any examination, investigation, or hearing.

Sec. 8. Section 15, chapter 201, Laws of 1967 and RCW 18.28.150 are each amended to read as follows:

(1) 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.

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

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

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

Sec. 9. Section 17, chapter 201, Laws of 1967 and RCW 18.28.170 are each amended to read as follows:

The director may promulgate rules, make specific decisions, orders and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of this chapter. The director (~~may~~) shall include among rules promulgated, those which describe and forbid deceptive advertising.

NEW SECTION. Sec. 10. There is added to chapter 18.28 RCW a new section to read as follows:

A violation of this chapter constitutes an unfair or deceptive act or practice in the conduct of trade or commerce under chapter 19.86 RCW.

Sec. 11. Section 14, chapter 289, Laws of 1977 ex. sess. and RCW 43-.131.140 are each amended to read as follows:

(1) The following programs shall be terminated on June 30, 1978:

- (a) ~~((Debt adjusting (chapter 18.28 RCW);~~
- ~~(b))~~ Proprietary schools (chapter 18.82 RCW);
- ~~((c))~~ (b) Grist mills (chapter 19.44 RCW); and
- ~~((d))~~ (c) Regulation of vessels (chapter 88.04 RCW).

(2) The following state agencies and programs shall be terminated on June 30, 1979:

- (a) Driving instructors examining committee;
- (b) Water well construction operators examining board;
- (c) Forest fire advisory board;
- (d) Escrow commission;
- (e) Employment agency advisory board.

(3) The state agencies scheduled for termination in this section shall be subject to all of the processes provided in this chapter. The state agencies set forth in this section may also be included in the schedule of state agencies to be terminated which shall be developed by the select joint committee as provided in RCW 43.131.120. If any state agency set forth in this section is reestablished or modified, such agency shall remain subject to the provisions of RCW 43.131.120. If any state agency set forth in this section is not reestablished or modified according to the provisions of this section, then the inclusion of that state agency in the schedule provided in RCW 43.131.120 shall be null.

Sec. 12. Section 17, chapter 289, Laws of 1977 ex. sess. (uncodified) is amended to read as follows:

The following acts or parts of acts are each repealed, effective June 30, 1979:

- (1) ~~((Section 1, chapter 201, Laws of 1967, section 1, chapter 97, Laws of 1970 ex. sess. and RCW 18.28.010;~~
- ~~(2) Section 2, chapter 201, Laws of 1967 and RCW 18.28.020;~~
- ~~(3) Section 3, chapter 201, Laws of 1967, section 4, chapter 266, Laws of 1971 ex. sess., section 23, chapter 30, Laws of 1975 1st ex. sess. and RCW 18.28.030;~~
- ~~(4) Section 4, chapter 201, Laws of 1967 and RCW 18.28.040;~~
- ~~(5) Section 5, chapter 201, Laws of 1967 and RCW 18.28.050;~~
- ~~(6) Section 6, chapter 201, Laws of 1967, section 1, chapter 141, Laws of 1967 ex. sess., section 20, chapter 292, Laws of 1971 ex. sess. and RCW 18.28.060;~~
- ~~(7) Section 7, chapter 201, Laws of 1967 and RCW 18.28.070;~~
- ~~(8) Section 8, chapter 201, Laws of 1967, section 2, chapter 141, Laws of 1967 ex. sess. and RCW 18.28.080;~~
- ~~(9) Section 9, chapter 201, Laws of 1967 and RCW 18.28.090;~~
- ~~(10) Section 10, chapter 201, Laws of 1967 and RCW 18.28.100;~~
- ~~(11) Section 11, chapter 201, Laws of 1967 and RCW 18.28.110;~~
- ~~(12) Section 12, chapter 201, Laws of 1967 and RCW 18.28.120;~~

- ~~(13)~~ Section 13, chapter 201, Laws of 1967 and RCW 18.28.130;
~~(14)~~ Section 14, chapter 201, Laws of 1967 and RCW 18.28.140;
~~(15)~~ Section 15, chapter 201, Laws of 1967 and RCW 18.28.150;
~~(16)~~ Section 16, chapter 201, Laws of 1967 and RCW 18.28.160;
~~(17)~~ Section 17, chapter 201, Laws of 1967 and RCW 18.28.170;
~~(18)~~ Section 18, chapter 201, Laws of 1967 and RCW 18.28.180;
~~(19)~~ Section 19, chapter 201, Laws of 1967 and RCW 18.28.190;
~~(20)~~ Section 20, chapter 201, Laws of 1967 and RCW 18.28.200;
~~(21)~~ Section 21, chapter 201, Laws of 1967 and RCW 18.28.210;
~~(22)~~ Section 22, chapter 201, Laws of 1967 and RCW 18.28.220;
~~(23)~~ Section 23, chapter 201, Laws of 1967 and RCW 18.28.900;
~~(24)~~ Section 24, chapter 201, Laws of 1967 and RCW 18.28.910;
~~(25))~~ Section 1, chapter 72, Laws of 1967 ex. sess. and RCW 18.82.010;
~~((26))~~ (2) Section 2, chapter 72, Laws of 1967 ex. sess. and RCW 18.82.020;
~~((27))~~ (3) Section 3, chapter 72, Laws of 1967 ex. sess., section 70, chapter 30, Laws of 1975 1st ex. sess. and RCW 18.82.030;
~~((28))~~ (4) Section 4, chapter 72, Laws of 1967 ex. sess. and RCW 18.82.040;
~~((29))~~ (5) Section 5, chapter 72, Laws of 1967 ex. sess. and RCW 18.82.050;
~~((30))~~ (6) Section 6, chapter 72, Laws of 1967 ex. sess., section 71, chapter 30, Laws of 1975 1st ex. sess. and RCW 18.82.060;
~~((31))~~ (7) Section 7, chapter 72, Laws of 1967 ex. sess. and RCW 18.82.070;
~~((32))~~ (8) Section 8, chapter 72, Laws of 1967 ex. sess. and RCW 18.82.080;
~~((33))~~ (9) Section 9, chapter 72, Laws of 1967 ex. sess. and RCW 18.82.090;
~~((34))~~ (10) Section 11, chapter 72, Laws of 1967 ex. sess. and RCW 18.82.900;
~~((35))~~ (11) Section 13, chapter 72, Laws of 1967 ex. sess. and RCW 18.82.910;
~~((36))~~ (12) Section 12, chapter 72, Laws of 1967 ex. sess. and RCW 18.82.920;
~~((37))~~ (13) Section 2533, Code of 1881 and RCW 19.44.010;
~~((38))~~ (14) Section 2536, Code of 1881 and RCW 19.44.020;
~~((39))~~ (15) Section 2534, Code of 1881 and RCW 19.44.030;
~~((40))~~ (16) Section 2532, Code of 1881 and RCW 19.44.040;
~~((41))~~ (17) Section 2535, Code of 1881 and RCW 19.44.050;
~~((42))~~ (18) Section 1, chapter 200, Laws of 1907 and RCW 88.04.010;

- ~~((43))~~ (19) Section 27, chapter 200, Laws of 1907, section 1, chapter 137, Laws of 1947, section 177, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 88.04.020;
- ~~((44))~~ (20) Section 28, chapter 200, Laws of 1907 and RCW 88.04.030;
- ~~((45))~~ (21) Section 2, chapter 200, Laws of 1907 and RCW 88.04.040;
- ~~((46))~~ (22) Section 3, chapter 200, Laws of 1907 and RCW 88.04.050;
- ~~((47))~~ (23) Section 4, chapter 200, Laws of 1907 and RCW 88.04.060;
- ~~((48))~~ (24) Section 26, chapter 200, Laws of 1907 and RCW 88.04.070;
- ~~((49))~~ (25) Section 14, chapter 200, Laws of 1907 and RCW 88.04.080;
- ~~((50))~~ (26) Section 8, chapter 200, Laws of 1907 and RCW 88.04.090;
- ~~((51))~~ (27) Section 9, chapter 200, Laws of 1907 and RCW 88.04.100;
- ~~((52))~~ (28) Section 5, chapter 200, Laws of 1907 and RCW 88.04.110;
- ~~((53))~~ (29) Section 6, chapter 200, Laws of 1907 and RCW 88.04.120;
- ~~((54))~~ (30) Section 7, chapter 200, Laws of 1907 and RCW 88.04.130;
- ~~((55))~~ (31) Section 10, chapter 200, Laws of 1907 and RCW 88.04.140;
- ~~((56))~~ (32) Section 13, chapter 200, Laws of 1907 and RCW 88.04.150;
- ~~((57))~~ (33) Section 19, chapter 200, Laws of 1907 and RCW 88.04.160;
- ~~((58))~~ (34) Section 20, chapter 200, Laws of 1907 and RCW 88.04.170;
- ~~((59))~~ (35) Section 15, chapter 200, Laws of 1907 and RCW 88.04.180;
- ~~((60))~~ (36) Section 11, chapter 200, Laws of 1907 and RCW 88.04.190;
- ~~((61))~~ (37) Section 17, chapter 200, Laws of 1907 and RCW 88.04.200;
- ~~((62))~~ (38) Section 18, chapter 200, Laws of 1907 and RCW 88.04.210;
- ~~((63))~~ (39) Section 12, chapter 200, Laws of 1907 and RCW 88.04.220;

~~((64))~~ (40) Section 16, chapter 200, Laws of 1907 and RCW 88.04.230;

~~((65))~~ (41) Section 21, chapter 200, Laws of 1907 and RCW 88.04.240;

~~((66))~~ (42) Section 22, chapter 200, Laws of 1907 and RCW 88.04.250;

~~((67))~~ (43) Section 23, chapter 200, Laws of 1907 and RCW 88.04.260;

~~((68))~~ (44) Section 24, chapter 200, Laws of 1907 and RCW 88.04.270; and

~~((69))~~ (45) Section 25, chapter 200, Laws of 1907 and RCW 88.04.280.

NEW SECTION. Sec. 13. 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.

NEW SECTION. Sec. 14. 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 June 30, 1979.

Passed the House February 22, 1979.

Passed the Senate March 7, 1979.

Approved by the Governor March 30, 1979.

Filed in Office of Secretary of State March 30, 1979.

CHAPTER 157

[House Bill No. 735]

INSURANCE—VALUATION—NONFORFEITURE

AN ACT Relating to insurance; amending section .12.15, chapter 79, Laws of 1947 as last amended by section 4, chapter 162, Laws of 1973 1st ex. sess. and RCW 48.12.150; amending section 5, chapter 104, Laws of 1969 as amended by section 6, chapter 163, Laws of 1973 1st ex. sess. and RCW 48.18A.050; amending section .23.20, chapter 79, Laws of 1947 and RCW 48.23.200; amending section .23.35, chapter 79, Laws of 1947 as last amended by section 5, chapter 162, Laws of 1973 1st ex. sess. and RCW 48.23.350; and adding a new section to chapter 48.23 RCW.

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

Section 1. Section .12.15, chapter 79, Laws of 1947 as last amended by section 4, chapter 162, Laws of 1973 1st ex. sess. and RCW 48.12.150 are each amended to read as follows:

(1) This section shall be known as the standard valuation law.

(2) Annual valuation: The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts