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**ENGROSSED SUBSTITUTE SENATE BILL 5321**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Financial Institutions & Insurance (originally sponsored by Senators Benton, Mullet, Hobbs, Angel, and Fain)

AN ACT Relating to licensure of persons providing debt settlement services; amending RCW 42.56.230; reenacting and amending RCW 18.28.010; adding a new chapter to Title 18 RCW; creating new sections; prescribing penalties; and providing an effective date.

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

NEW SECTION. **Sec.**  This chapter may be known and cited as the debt settlement services act.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate" means:

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

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

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

(d) An executive officer or director of or an individual performing similar functions with respect to a person described in (a) of this subsection.

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

(3) "Business address" means the physical location of a business, including the name and number of a street.

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

(5) "Concessions" means assent by an individual's creditors to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and that creditor.

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

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

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

(9) "Debt settlement services" means services as an intermediary between an individual and one or more unsecured creditors of the individual for the purpose of (a) obtaining negotiated concessions involving a reduction in principal of the individual's unsecured debt, and (b) securing the discharge of such debt upon the individual's performance of the negotiated concessions.

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

(11) "Director" means the director of the department of financial institutions.

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

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

(14) "Individual" means a natural person.

(15) "Licensee" means a provider that is validly licensed pursuant to section 3 of this act. For purposes of an enforcement action under sections 23, 24, and 27 of this act, "licensee" also means a provider, whether located within or outside this state, who fails to obtain licensure under this chapter.

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

(17) "Principal amount of the debt" means the amount of a debt at the time such debt becomes the subject of an agreement for debt settlement services.

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

(19) "Provider" means a person required to be licensed pursuant to this chapter and that provides, offers to provide, or agrees to provide debt settlement services for compensation.

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

(21) "Statement of accounting" means a written or electronic document that a provider prepares for a consumer in accordance with section 16 of this act.

(22) "Third-party payment processor" means an entity that holds, or has access to, or can effectuate procession of, by any means, the moneys of a licensee's debtors, or distributes, or is in the chain of distribution of, such moneys to the creditors of such debtors, pursuant to an agreement or contract with the licensee.

NEW SECTION. **Sec.**  (1) A person may not engage in or advertise for debt settlement services in this state unless the person has first become licensed to provide debt settlement services with the director.

(2) A provider shall license its primary business address and shall identify each branch location.

(3) Licensure is not transferable or assignable.

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

(5)(a) A licensee may not conduct business in this state under a business name other than the business name that is listed on its license.

(b) Notwithstanding (a) of this subsection, a licensee may do business under a trade name if the licensee has licensed the trade name with the department and that the department does not object to the use of the trade name on the basis that it is deceptive.

NEW SECTION. **Sec.**  The following persons are exempt from this chapter:

(1) A provider's employees who perform debt settlement services on the provider's behalf in the regular course of their employment;

(2) Judicial officers, individuals acting under the direction of a court, or assignees for creditors' benefit;

(3) A financial institution;

(4) Attorneys licensed to practice law in this state who provide debt settlement services to consumers with whom the attorney also provides legal services within an attorney-client relationship to, and who do not, directly or indirectly, solicit debt settlement services business;

(5) A money transmitter licensed under chapter 19.230 RCW if such persons do not directly provide debt settlement services;

(6) Creditors or the creditors' employees who negotiate debt settlement with individuals or providers;

(7) Officers or employees of the United States or a state of the United States who perform debt settlement services for individuals on behalf of the federal government, any state, a municipality or a state agency, and receive compensation solely from such governmental entities;

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

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

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

(11) A third-party payment processor licensed under chapter 19.230 RCW if such person does not directly provide debt settlement services.

NEW SECTION. **Sec.**  (1) Application for a license under this chapter must be made to the nationwide licensing system and in the form prescribed by the director. Applicants shall pay an application fee set by rule. The director shall evaluate the applicant's financial responsibility, character, reputation, integrity and general fitness to determine whether the applicant will act lawfully, honestly, fairly, soundly, and efficiently in the public interest. The license is valid for a period of one year or less, depending on the date that it is issued, and expires on the last day of December each calendar year in which it was issued. The director shall determine the license renewal fee and the information required for an application by rule.

(2) The director may participate in the nationwide licensing system for the sharing of regulatory information. The applicant shall pay directly to the nationwide licensing system any additional fee relating to participation in the system.

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

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

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

(a) At the time of application, the applicant must inform the director as to whether the applicant will receive or hold customer funds. If so, the applicant is required to obtain a fidelity bond, and surety bond if necessary, as follows:

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

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

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

(c) The surety bonds described in subsection (1)(a) and (b) of this section must be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and must reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond shall be continuous and may be canceled by the surety only upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it is considered one continuous obligation, and the surety upon the bond is not liable in an aggregate amount exceeding the penal sum set forth on the face of the bond. In no event may the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond is not liable for any penalties imposed on the licensee including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090.

(2) For purposes of this section:

(a) "Employee" means any individual whose status in the company is that of a W-2 employee for purposes of federal income tax reporting, independent contractor, sole proprietor, partner, officer, member, or manager.

(b) "Fidelity bond" means a primary commercial blanket bond or its equivalent satisfactory to the director and written by an insurer authorized to transact this line of business in the state of Washington. The bond must provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the officers, partners, sole practitioners, and employees of the applicant engaged in debt settlement services transactions acting alone or in collusion with others. This bond is for the sole benefit of the licensee and under no circumstances whatsoever may the bonding company be liable under the bond to any other party unless the officer, partner, or sole practitioner commits a fraudulent or dishonest act, in which case, the bond is for the benefit of the harmed consumer. The bond must name the licensee as obligee and must protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the licensee. In the event that the fidelity bond required under this subsection is not reasonably available, the director may adopt rules to implement a surety bond requirement.

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

NEW SECTION. **Sec.**  If the director determines and the insurance commissioner concurs that a bond or bonds is not reasonably available, the director may waive the requirements for the bond or bonds for a fixed period of time.

NEW SECTION. **Sec.**  (1) A provider shall renew its license to provide debt settlement services annually.

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

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

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

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

(3) If a provider files a complete application for renewal of its license before the expiration date, the license remains effective until the department, in a record, notifies the applicant of the denial and states the reasons for the denial. If a provider does not file a complete application for renewal of its license before the expiration date, the license expires.

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

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

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

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

(3) If a licensee does not file an annual report or pay its annual assessment by the annual assessment due date, the director or the director's designee shall send the licensee a notice of suspension and assess the licensee a late fee not to exceed twenty-five percent of the annual assessment as established in rule by the director. The licensee's annual report and payment of both the annual assessment and the late fee must arrive in the department's offices by 5:00 p.m. on the thirtieth day after the assessment due date or any extension of time granted by the director, unless that date is not a business day, in which case the licensee's annual report and payment of both the annual assessment and the late fee must arrive in the department's offices by 5:00 p.m. on the next occurring business day. If the licensee's annual report and payment of both the annual assessment and late fee do not arrive by such date, the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after the assessment due date, unless that date is not a business day, in which case the expiration of the licensee's license is effective at 5:00 p.m. on the next occurring business day. The director, or the director's designee, may reinstate the license if, within twenty days after its expiration, the licensee files the annual report and pays both the annual assessment and the late fee.

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

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

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

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

(4) An officer, director, member, or principal of the applicant's business has been convicted of or pleaded nolo contendere to a felony involving fraud or financial misconduct within seven years of the filing of the present application;

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

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

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

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

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

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

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

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

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

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

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

(3) A licensee must receive notice and an opportunity to request a hearing under chapter 34.05 RCW before the director revokes or suspends a provider's license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The fee or consideration for settling each individual debt enrolled in a program either:

(i) Bears the same proportional relationship to the total fee for settling the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are amounts owed at the time the debt was enrolled in the program; or

(ii) Is a percentage of the amount saved as a result of the settlement. The percentage charged may not change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the program and the amount actually paid to satisfy the debt. By contract a provider may charge a total fee for debt adjusting services, including, but not limited to, any fee charged by a financial institution or a third-party account administrator, may not exceed twenty percent of the total debt listed by the debtor on the contract. The fee retained by the provider from any one payment made by or on behalf of the debtor may not exceed twenty percent of the payment.

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

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

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

(b) The individual, not the provider, owns and controls the funds held in the account and, if the account is interest-bearing, is paid accrued interest on the account;

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

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

(e) The individual may withdraw from the debt settlement services agreement at any time without penalty, and, upon notice by the individual to the third-party payment processor, must receive from the third-party payment processor all funds in the account, other than funds earned by the provider in compliance with this section, as specified in the account agreement between the individual and the financial institution.

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

NEW SECTION. **Sec.**  (1) A licensee shall maintain a separate trust account at a state chartered federally insured bank or credit union located in Washington to hold funds that it receives, actually or constructively, from or on behalf of consumers. Trust accounts must comply with rules that the director adopts pursuant to this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

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

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

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

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

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

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

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

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

(iii) Any written agreement made with the director;

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

(d) Becomes licensed by means of fraud, misrepresentation, concealment, or through mistake or inadvertence of the director;

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

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

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

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

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

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

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

(l) Commits any act of fraudulent or dishonest dealing. For the purposes of this section, a certified copy of the final holding of any court, tribunal, agency, or administrative body of competent jurisdiction is conclusive evidence in any hearing under this chapter;

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

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

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

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

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

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

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

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

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

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

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

(6) The director may enter into a consent order at any time with a person to resolve a matter arising under this chapter or a rule adopted or order issued under this chapter. A consent order must be signed by the person to whom it is issued or by the person's authorized representative, and must indicate agreement with the terms contained in the order.

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  The director shall take such steps and adopt rules necessary for the implementation, administration, and enforcement of this chapter and shall establish reasonable fees by rule sufficient to cover the costs of administering this chapter.

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

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

**Sec.**  RCW 18.28.010 and 2012 c 56 s 1 are each reenacted and 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 adjuster," which includes any person known as a debt pooler, debt manager, debt consolidator, debt prorater, or credit counselor, is any person engaging in or holding himself or herself 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, consumer finance businesses, consumer 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, insurance companies, or third-party account administrators;

(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 fifteen dollars per month;

(h) Persons licensed as providers of debt settlement services under chapter 18.--- RCW (the new chapter created in section 38 of this act).

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

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

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

**Sec.**  RCW 42.56.230 and 2014 c 142 s 1 are each amended to read as follows:

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

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

(2)(a) Personal information:

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

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

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

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

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

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

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

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

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

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

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

(8) All information related to individual claims resolution structured settlement agreements submitted to the board of industrial insurance appeals under RCW 51.04.063, other than final orders from the board of industrial insurance appeals; and

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

Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in subsection (7)(c) and (d) of this section that is subject to public disclosure.

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

NEW SECTION. **Sec.**  This act takes effect January 1, 2016.

NEW SECTION. **Sec.**  The director shall take such steps and adopt such rules as are necessary to implement this act by January 1, 2016.

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

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