

ASSEMBLY, No. 4598

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JUNE 17, 2024

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

Assemblywoman VICTORIA A. FLYNN

District 13 (Monmouth)

SYNOPSIS

Makes certain for-profit debt adjusters eligible for licensing to conduct business in State.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the licensing of debt adjusters and amending
2 and supplementing P.L.1979, c.16.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1979, c.16 (C.17:16G-1) is amended to read
8 as follows:

9 1. As used in this act:

10 a. "Nonprofit social service agency" or "nonprofit consumer
11 credit counseling agency" means any corporation duly organized
12 under Title 15 of the Revised Statutes or Title 15A of the New
13 Jersey Statutes, no part of the assets, income or profit of which is
14 distributable to, or enures to the benefit of its members, directors or
15 officers, except to the extent permitted under this act, and which is
16 engaged in debt adjustment.

17 b. "Credit counseling" means any guidance or educational
18 program or advice offered by a nonprofit social service agency or
19 nonprofit consumer credit counseling agency for the purpose of
20 fostering the responsible use of credit and debt management.

21 c. (1) "Debt adjuster" means a person who either (a) acts or
22 offers to act for a consideration as an intermediary between a debtor
23 and his creditors for the purpose of settling, compounding, or
24 otherwise altering the terms of payment of any debts of the debtor,
25 or (b) who, to that end, receives money or other property from the
26 debtor, or on behalf of the debtor, for payment to, or distribution
27 among, the creditors of the debtor.

28 (2) The following persons shall not be deemed debt adjusters:

29 (a) **[an attorney-at-law of this State who is not principally engaged**
30 **as a debt adjuster]** any person engaged in the practice of law; (b) a
31 person who is a regular, full-time employee of a debtor, and who
32 acts as an adjuster of his employer's debts; (c) a person acting
33 pursuant to any order or judgment of court, or pursuant to authority
34 conferred by any law of this State or the United States; (d) a person
35 who is a creditor of the debtor, or an agent of one or more creditors
36 of the debtor, and whose services in adjusting the debtor's debts are
37 rendered without cost to the debtor; (e) a person who, at the request
38 of a debtor, arranges for or makes a loan to the debtor, and who, at
39 the authorization of the debtor, acts as an adjuster of the debtor's
40 debts in the disbursement of the proceeds of the loan, without
41 compensation for the services rendered in adjusting those debts; or
42 (f) a person who is: (i) certified by the United States Secretary of
43 Housing and Urban Development as a housing counseling
44 organization or agency pursuant to section 106 of Pub.L.90-448 (12
45 U.S.C. s.1701x); (ii) participating in a counseling program

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 approved by the New Jersey Housing and Mortgage Finance
2 Agency; and (iii) not holding
3 or disbursing the debtor's funds.

4 d. "Debtor" means an individual or two or more individuals
5 who are jointly and severally, or jointly or severally indebted.

6 e. "For-profit debt adjuster" means a person or entity that
7 conducts some or all of the activities described in paragraph 1 of
8 subsection c. of this section but: (1) does not receive or hold,
9 actually or constructively, consumer funds; and (2) is subject to the
10 provisions of 16 C.F.R. 310.4, or any successor federal law or
11 regulation.

12 (cf: P.L.2009, c.173, s.1)

13

14 2. Section 2 of P.L.1979, c.16 (C.17:16G-2) is amended to read
15 as follows:

16 2. a. No person other than a nonprofit social service agency
17 **[or]**, a nonprofit consumer credit counseling agency, or a for-profit
18 debt adjuster shall act as a debt adjuster.

19 b. It shall be unlawful for any nonprofit social service agency
20 **[or]**, nonprofit consumer credit counseling agency, or for-profit
21 debt adjuster to act as a debt adjuster without first obtaining a
22 license from the Commissioner of the Department of Banking
23 pursuant to this act.

24 c. A licensee is authorized to offer credit counseling.

25 (cf: P.L.1986, c.184, s.2)

26

27 3. Section 5 of P.L.1979, c.16 (C.17:16G-5) is amended to read
28 as follows:

29 5. a. Any nonprofit social service agency or nonprofit
30 consumer credit counseling agency licensed under this act shall be
31 bonded to the satisfaction of the commissioner for each location
32 pursuant to regulation. In setting the bonding requirements for each
33 location, the commissioner shall consider the number of debtors
34 provided credit counseling and debt adjustment services at that
35 location, and the balance of funds in the trust account required to be
36 maintained pursuant to section 3 of P.L.2005, c.287 (C.17:16G-9).
37 A for-profit debt adjuster shall not be subject to requirements of this
38 subsection.

39 b. The commissioner may require a licensee to file an annual
40 report containing that information required by the commissioner by
41 regulation concerning activities conducted as a licensee in the
42 preceding calendar year. The report shall be submitted under oath
43 and in the form and within the time specified by the commissioner
44 by regulation.

45 c. The commissioner may require a high-cost home loan
46 counselor to file an annual report containing that information
47 required by the commissioner by regulation concerning activities
48 conducted pursuant to subsection g. of section 5 of P.L.2003, c.64

1 (C.46:10B-26) as a registrant in the preceding calendar year. The
2 report shall be submitted under oath and in the form and within the
3 time specified by the commissioner by regulation.

4 d. Each licensee shall file with the commissioner on or before
5 April 1 of each year a copy of its annual report, containing the
6 information required by the commissioner by regulation pursuant to
7 P.L.1979, c.16 (C.17:16G-1 et seq.) and section 3 of P.L.2005,
8 c.287 (C.17:16G-9). A licensee or high-cost home loan counselor
9 that fails to make and file its annual report in the form and within
10 the time provided in this section shall be subject to a penalty of not
11 more than \$100 for each day's failure, and the commissioner may
12 revoke or suspend its authority to do business in this State. The
13 penalty may be collected in a summary proceeding pursuant to the
14 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
15 et seq.). A warrant may issue in lieu of a summons.

16 e. Each licensee shall have its financial records relating to debt
17 adjustment audited annually by a certified public accountant or a
18 public accountant, which audit shall be filed with the commissioner.
19 Such an audit shall certify that the salaries and expenses paid by the
20 licensee are reasonable compared to those incurred by comparable
21 organizations providing similar, except that a for-profit debt
22 adjuster shall not be required to provide this certification.

23 f. After reviewing the annual report and audit, the
24 Commissioner of Banking and Insurance may cause an examination
25 of the licensee to be made, the actual expenses of such an
26 examination shall be paid by the licensee, and the commissioner
27 may maintain any action against any licensee to recover the fees
28 and expenses herein provided for.

29 g. The licensee shall make a copy of the annual report and
30 audit available for public inspection at each of the licensee's
31 locations.

32 (cf: P.L.2007, c.81, s.25)

33

34 4. Section 6 of P.L.1979, c.16 (C.17:16G-6) is amended to read
35 as follows:

36 6. a. A licensee may charge a fee to cover the cost of
37 providing debt adjustment and credit counseling.

38 b. The fee for debt adjustment for a nonprofit social service
39 agency and a nonprofit consumer credit counseling agency shall not
40 exceed 1% of the gross monthly income of the person to whom the
41 service is rendered, but in no case more than \$15.00 in any one
42 month, except as may be otherwise provided by rule or regulation
43 promulgated by the commissioner. This fee may be waived in the
44 discretion of the licensee.

45 c. The commissioner is authorized to establish the maximum
46 fee that may be charged by a nonprofit social service agency and a
47 nonprofit consumer credit counseling agency for credit counseling.

1 d. The commissioner is authorized to establish maximum fees
2 that may be charged by for-profit debt adjusters for debt adjustment
3 and credit counseling
4 (cf: P.L.1986, c.184, s.4)

5
6 5. (New section) Every for-profit debt adjuster licensee shall, at
7 the time an agreement is executed by a debtor, or as shortly thereafter
8 as practical, distribute or otherwise make available to the debtor, in
9 paper form or by electronic means if the debtor so agrees, a copy of
10 the executed agreement. The agreement shall disclose:

11 a. the services that the licensee will perform;

12 b. the methodology that the licensee will use to calculate fees to
13 be charged for debt adjusting services and, if reasonably available at
14 the time the agreement is executed, the fees that the licensee will
15 charge;

16 c. the amount of time, estimated in good faith, to achieve the
17 resolution of all enrolled debts;

18 d. to the extent that the debt adjusting service may include a
19 resolution offer to any of the debtor's creditors:

20 (1) the amount of money or the percentage of each outstanding
21 debt that the debtor needs to accumulate before the licensee will make
22 a bona fide resolution offer to each of the creditors; and

23 (2) the date, estimated in good faith, when the licensee will make a
24 bona fide resolution offer to each of the creditors;

25 e. that debt adjusting may not be suitable for all individuals;

26 f. to the extent that any aspect of the debt adjusting service relies
27 upon or results in the debtor's failure to make timely payments to
28 creditors, that the failure to pay one's debts will likely adversely affect
29 the debtor's creditworthiness, may result in the debtor being subject to
30 collections efforts, including lawsuits by creditors, and may increase
31 the amount of money the debtor owes due to the accrual of fees and
32 interest;

33 g. that, unless the debtor is insolvent, if a creditor resolves a debt
34 for less than its full amount, the resolution may result in the creation of
35 taxable income to the debtor, even though the debtor does not receive
36 any money;

37 h. that specific results cannot be predicted or guaranteed and the
38 licensee cannot require a creditor to negotiate or resolve a debt;

39 i. that debt adjusting programs require that individuals meet
40 regular savings goals in order to enable resolutions;

41 j. that the licensee:

42 (1) does not provide tax, accounting, or legal advice to individuals,
43 unless the licensee is licensed to provide that advice;

44 (2) is the debtor's advocate and does not receive compensation of
45 any sort from creditors for providing debt adjusting services to the
46 debtor; and

47 (3) does not make monthly or other payments to the debtor's
48 creditors; and

1 k. the list of debts covered by the agreement.

2

3 6. (New section) The provisions of P.L.1979, c.16 (C.17:16G-
4 1 et seq.) that are applicable to for-profit debt adjusters are only
5 applicable to the extent that they are not in conflict with the
6 provisions of 16 C.F.R. 310.4 or any successor federal law or
7 regulation.

8

9 7. This act shall take effect immediately.

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STATEMENT

13

14 This bill allows certain for-profit debt adjustment companies to
15 conduct business in the State. A debt adjuster is a person or entity
16 who: acts or offers to act for a consideration as an intermediary
17 between a debtor and his creditors for the purpose of settling,
18 compounding, or otherwise altering the terms of payment of any
19 debts of the debtor; or receives money or other property from the
20 debtor, or on behalf of the debtor, for payment to, or distribution
21 among, the creditors of the debtor.

22 Under New Jersey's current "debt adjusters law," which is
23 administered and enforced by the Department of Banking and
24 Insurance, only nonprofit social service agencies and nonprofit
25 consumer credit counseling agencies may operate debt adjustment
26 services in the State.

27 The bill would create an exception to the current law to allow
28 for-profit debt adjustment companies to conduct business in the
29 State provided the company (1) does not receive or hold, actually or
30 constructively, consumer funds; and (2) is regulated by the Federal
31 Trade Commission pursuant to the commission's "Telemarketing
32 Sales Rule."

33 The bill would generally subject for-profit debt adjuster
34 companies to the same rules and restrictions as non-profit entities
35 licensed to operate debt adjustment services, but with certain
36 exceptions. Under the bill, a for-profit debt adjuster would not be
37 required to provide a certification about salaries and expenses as
38 part of its annual audit. The commissioner would be authorized to
39 establish maximum fees that may be charged by for-profit debt
40 adjusters. The bill further provides that the provisions of the debt
41 adjuster act are only applicable to for-profit debt adjusters to the
42 extent that they do not conflict with the federal "Telemarketing
43 Sales Rule."

44 The bill would provide that for-profit debt adjusters are not
45 subject to the bonding requirements that apply to nonprofit social
46 service agencies and nonprofit consumer credit counseling agencies
47 that perform debt adjuster services in the State.

1 The bill also requires for-profit debt adjuster licensees that enter
2 into an agreement with a debtor to disclose certain information to
3 the debtor.

4 Lastly, the bill clarifies language about persons engaged in the
5 practice of law that are not deemed to be debt adjusters.