

SENATE, No. 2765

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED MAY 4, 2009

Sponsored by:

Senator RONALD L. RICE

District 28 (Essex)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

SYNOPSIS

Exempts certain HUD certified counseling agencies from licensing and regulation as debt adjusters; revises criminal practice of acting as debt adjuster.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/8/2009)

1 AN ACT concerning certain debt adjustment activities, and
2 amending P.L.1979, c.16 and N.J.S.2C:21-19.

3

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

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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; (b) a person who is a regular, full-time employee
31 of a debtor, and who acts as an adjuster of his employer's debts; (c)
32 a person acting pursuant to any order or judgment of court, or
33 pursuant to authority conferred by any law of this State or the
34 United States; (d) a person who is a creditor of the debtor, or an
35 agent of one or more creditors of the debtor, and whose services in
36 adjusting the debtor's debts are rendered without cost to the debtor;
37 **[or]** (e) a person who, at the request of a debtor, arranges for or
38 makes a loan to the debtor, and who, at the authorization of the
39 debtor, acts as an adjuster of the debtor's debts in the disbursement
40 of the proceeds of the loan, without compensation for the services
41 rendered in adjusting those debts; or (f) a person who is: (i)
42 certified by the United States Secretary of Housing and Urban
43 Development as a housing counseling organization or agency
44 pursuant to section 106 of Pub.L.90-448 (12 U.S.C. s.1701x); (ii)
45 participating in a counseling program approved by the New Jersey

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 Housing and Mortgage Finance Agency; and (iii) not holding or
2 disbursing the debtor's funds.

3 d. "Debtor" means an individual or two or more individuals
4 who are jointly and severally, or jointly or severally indebted.
5 (cf: P.L.1986, c.184, s.1)

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7 2. N.J.S.2C:21-19 is amended to read as follows:

8 2C:21-19. Wrongful Credit Practices and Related Offenses.

9 a. Criminal usury. A person is guilty of criminal usury when
10 not being authorized or permitted by law to do so, he:

11 (1) Loans or agrees to loan, directly or indirectly, any money or
12 other property at a rate exceeding the maximum rate permitted by
13 law; or

14 (2) Takes, agrees to take, or receives any money or other
15 property as interest on the loan or on the forbearance of any money
16 or other interest in excess of the maximum rate permitted by law.

17 For the purposes of this section and notwithstanding any law of
18 this State which permits as a maximum interest rate a rate or rates
19 agreed to by the parties of the transaction, any loan or forbearance
20 with an interest rate which exceeds 30% per annum shall not be a
21 rate authorized or permitted by law, except if the loan or
22 forbearance is made to a corporation, limited liability company or
23 limited liability partnership any rate not in excess of 50% per
24 annum shall be a rate authorized or permitted by law.

25 Criminal usury is a crime of the second degree if the rate of
26 interest on any loan made to any person exceeds 50% per annum or
27 the equivalent rate for a longer or shorter period. It is a crime of the
28 third degree if the interest rate on any loan made to any person
29 except a corporation, limited liability company or limited liability
30 partnership does not exceed 50% per annum but the amount of the
31 loan or forbearance exceeds \$1,000.00. Otherwise, making a loan to
32 any person in violation of subsections a.(1) and a.(2) of this section
33 is a disorderly persons offense.

34 b. Business of criminal usury. Any person who knowingly
35 engages in the business of making loans or forbearances in violation
36 of subsection a. of this section is guilty of a crime of the second
37 degree and, notwithstanding the provisions of N.J.S. 2C:43-3, shall
38 be subject to a fine of not more than \$250,000.00 and any other
39 appropriate disposition authorized by N.J.S. 2C:43-2b.

40 c. Possession of usurious loan records. A person is guilty of a
41 crime of the third degree when, with knowledge of the nature
42 thereof, he possesses any writing, paper instrument or article used
43 to record criminally usurious transactions prohibited by subsection
44 a. of this section.

45 d. Unlawful collection practices. A person is guilty of a
46 disorderly persons offense when, with purpose to enforce a claim or
47 judgment for money or property, he sends, mails or delivers to
48 another person a notice, document or other instrument which has no

1 judicial or official sanction and which in its format or appearance
2 simulates a summons, complaint, court order or process or an
3 insignia, seal or printed form of a federal, State or local government
4 or an instrumentality thereof, or is otherwise calculated to induce a
5 belief that such notice, document or instrument has a judicial or
6 official sanction.

7 e. Making a false statement of credit terms. A person is guilty
8 of a disorderly persons offense when he understates or fails to state
9 the interest rate, or makes a false or inaccurate or incomplete
10 statement of any other credit terms.

11 f. Debt adjusters. Any person who shall act or offer to act as a
12 debt adjuster without a license as required by P.L.1979, c.16
13 (C.17:16G-1 et seq.), unless exempt from licensure pursuant to that
14 act, shall be guilty of a crime of the fourth degree.

15 ["Debt adjuster" means a person who either (1) acts or offers to
16 act for a consideration as an intermediary between a debtor and his
17 creditors for the purpose of settling, compounding, or otherwise
18 altering the terms of payment of any debts of the debtor, or (2) who,
19 to that end, receives money or other property from the debtor, or on
20 behalf of the debtor, for payment to, or distribution among, the
21 creditors of the debtor. "Debtor" means an individual or two or
22 more individuals who are jointly and severally, or jointly or
23 severally indebted.

24 The following persons shall not be deemed debt adjusters for the
25 purposes of this section: an attorney at law of this State who is not
26 principally engaged as a debt adjuster; a nonprofit social service or
27 consumer credit counseling agency licensed pursuant to P.L.1979,
28 c.16 (C.17:16G-1 et seq.); a person who is a regular, full-time
29 employee of a debtor, and who acts as an adjuster of his employer's
30 debts; a person acting pursuant to any order or judgment of court, or
31 pursuant to authority conferred by any law of this State or of the
32 United States; a person who is a creditor of the debtor, or an agent
33 of one or more creditors of the debtor, and whose services in
34 adjusting the debtor's debts are rendered without cost to the debtor;
35 or a person who, at the request of the debtor, arranges for or makes
36 a loan to the debtor, and who, at the authorization of the debtor, acts
37 as an adjuster of the debtor's debts in the disbursement of the
38 proceeds of the loan, without compensation for the services
39 rendered in adjusting such debts.]

40 (cf: P.L.1997, c.426, s.2)

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42 3. This act shall take effect immediately.

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STATEMENT

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47 This bill exempts counseling agencies from the State licensing
48 and regulatory requirements of the debt adjusters act, P.L.1979,

S2765 RICE

1 c.16 (C.17:16G-1 et seq.), if they are: (1) certified by the United
2 States Secretary of Housing and Urban Development as a housing
3 counseling organization or agency pursuant to section 106 of
4 Pub.L.90-448 (12 U.S.C. 1701x); (2) participating in a counseling
5 program approved by the New Jersey Housing and Mortgage
6 Finance Agency; and (3) not holding or disbursing the debtor's
7 funds.

8 Additionally, the bill updates the criminal practice, under
9 N.J.S.2C:21-19, of improperly acting as an unlicensed debt adjuster,
10 or acting without an appropriate licensing exemption, by cross-
11 referencing to the licensing requirements and exemptions under the
12 debt adjusters act, instead of maintaining a separate, but identical
13 definition, in the criminal statute.