

ASSEMBLY, No. 2207

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblywoman BETTYLOU DECROCE

District 26 (Essex, Morris and Passaic)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Co-Sponsored by:

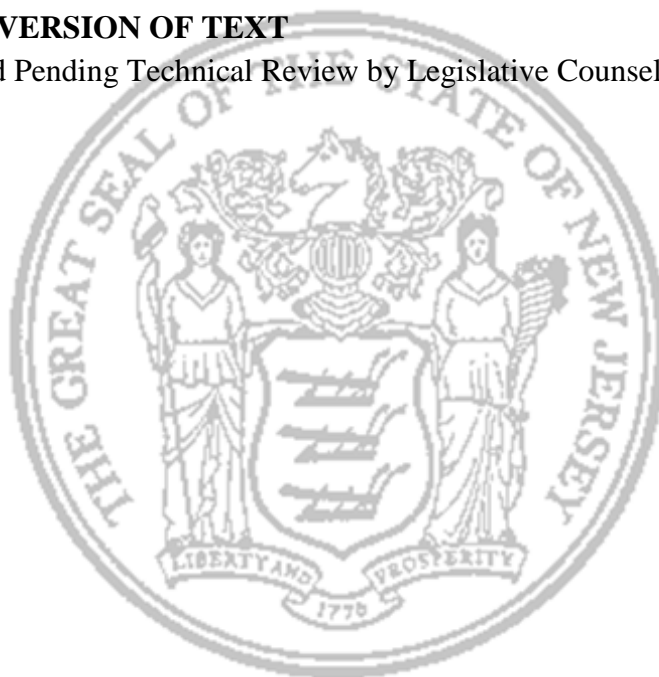
Assemblywoman Jasey, Assemblymen Caputo, DePhillips, Rooney and Mejjia

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 3/25/2021)

1 AN ACT concerning the licensing of debt adjusters and amending
2 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; (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 (e) a person who, at the request of a debtor, arranges for or makes a
38 loan to the debtor, and who, at the authorization of the debtor, acts
39 as an adjuster of the debtor's debts in the disbursement of the
40 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);
45 (ii) participating in a counseling program approved by the New

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

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

12

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

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

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

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

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

25

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

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

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

44 c. The commissioner may require a high-cost home loan
45 counselor to file an annual report containing that information
46 required by the commissioner by regulation concerning activities
47 conducted pursuant to subsection g. of section 5 of P.L.2003, c.64
48 (C.46:10B-26) as a registrant in the preceding calendar year. The

1 report shall be submitted under oath and in the form and within the
2 time specified by the commissioner by regulation.

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

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

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

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

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

32

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

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

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

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

47 d. The commissioner is authorized to establish maximum fees

1 that may be charged by for-profit debt adjusters for debt adjustment
2 and credit counseling

3 (cf: P.L.1986, c.184, s.4)

4

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

10

11 6. This act shall take effect immediately.

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STATEMENT

15

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

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

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

35 The bill would generally subject for-profit debt adjuster companies
36 to the same rules and restrictions as non-profit entities licensed to
37 operate debt adjustment services, but with certain exceptions. Under
38 the bill, a for-profit debt adjuster would not be required to provide a
39 certification about salaries and expenses as part of its annual audit. The
40 commissioner would be authorized to establish maximum fees that
41 may be charged by for-profit debt adjusters. The bill further provides
42 that the provisions of the debt adjuster act are only applicable to for-
43 profit debt adjusters to the extent that they do not conflict with the
44 federal "Telemarketing Sales Rule" at 16 C.F.R. 310.4.

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