pooling as a business is prohibited as the unauthorized practice of law. The West Virginia law also differs from the majority. That law makes it unlawful to solicit the rendering of advice and services to a debtor in connection with a debt-pooling plan, and provides that those who are exempt from the law (e.g., attorneys or voluntary associations) who render such service may not charge more than 2 percent of the total money collected pursuant to the plan.

Exemptions

The most common exemption is that of attorneys, which is found in 19 of the prohibitory laws, i.e., all but the North Carolina, Ohio, and Oklahoma. Five of these States, Delaware, Georgia, Kansas, Virginia, and Wyoming, qualify the exemption by limiting it to the performance of debt-pooling services as an incidence to the regular practice of law. In 10 of these States it is the only exemption; Florida, Georgia, Kansas, Maine, Massachusetts, New York, South Carolina, Rhode Island, Virginia, and Wyoming.

A few examples of some of the other types of exemptions are:

Judicial officers or others acting pursuant to court order are exempted in seven States: Arkansas, Hawaii, Missouri, New Jersey, New Mexico, North Carolina, and Texas.

Five States exempt nonprofit organizations. Arkansas exempts such organizations if no charge is made for the service. Delaware and Hawaii permit a nominal charge as reimbursement for expenses. New Mexico exempts such an organization when it is organized as a community effort to assist debtors. Pennsylvania exempts welfare agencies which act as debt poolers on behalf of debtors without compensation or profit. Hawaii and Pennsylvania exempt Legal Aid Bureaus.

Five States exempt full-time employees of a debtor who act as an adjuster of his employer's debts: Hawaii, Missouri, New Jersey, New Mexico, and North Carolina. Four States exempt a creditor of the debtor rendering adjustment service without charge: Missouri, New Jersey, New Mexico, and North Carolina.

The only exemption in the Ohio law is for a person who was licensed and regulated by the legislative authority of the political subdivision in which such person operated prior to January 1, 1958 (the effective date of the act); and Oklahoma exempts only retail merchants' trade associations and nonprofit groups formed to collect accounts and exchange credit information.

Constitutionality

Five prohibitory laws, Massachusetts, New Jersey, Pennsylvania, Kansas, and Ohio, have been challenged in the courts.

The Supreme Judicial Court of Massachusetts in 1957 held in a declaratory decree[5] that the statute providing that debt-pooling services constitute the practice of law "is not unconstitutional as an interference with the purely judicial function to determine who may practice law but is a valid enactment in aid of the court's powers to make such a determination."

The Pennsylvania Supreme Court in 1960[6] unheld the decision of the Superior Court that the State law (Act 224, L. 1955) prohibiting the business of budget planning is an unconstitutional exercise of the police power, notwithstanding that the planner's activity in collecting and distributing the debtor's money may afford the planner the opportunity to defraud the public. Following the court's decision, the Governor recommended and the legislature enacted a new law in 1961. It differs from the earlier law in that it does not outlaw budget planning, but only debt pooling for a fee. The new law has not been challenged.

The New Jersey Superior Court[7] in 1961 upheld the constitutionality of the State law. The court implied its agreement with the decision of the Massachusetts court and disagreement with the decision reached by Pennsylvania, in what were apparently similar laws.

The U.S. District Court for the District of Kansas found that the State law prohibiting the business of debt adjusting was unconstitutional.[8] In a decision issued April 22, 1963, the U.S. Supreme Court reversed the lower court.[9] The Court said that Kansas statute does not violate the due process clause of the 14th amendment; that States have power to legislate against injurous practices

[5] *Home Budget Service, Inc.* v. *Boston Bar Association,* 335 Mass. 228, 139 N.E. 2d (387) (1957).

[6] *Commonwealth* v. *Stone,* 191 Pa. Super 117; 155 A. 2d (453) (1960).

[7] *American Budget Corp.* v. *Furman,* 170 A. 2d 63 (1961).

[8] *Skrupa* v. *Sanborn,* 210 F. Supp. 200 (1961).

[9] *Ferguson* v. *Skrupa,* d/b/a Credit Advisors, 372 U.S. 726 (1963).