

SSB 5485 - H COMM AMD

By Committee on Business & Financial Services

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 18.28.010 and 2012 c 56 s 1 are each reenacted and
4 amended to read as follows:

5 Unless a different meaning is plainly required by the context,
6 the following words and phrases as hereinafter used in this chapter
7 shall have the following meanings:

8 (1) "Debt adjuster," which includes any person known as a debt
9 pooler, debt manager, debt consolidator, debt prorater, or credit
10 counselor, is any person engaging in or holding himself or herself
11 out as engaging in the business of debt adjusting for compensation.
12 The term shall not include:

13 (a) Attorneys-at-law, escrow agents, accountants, broker-dealers
14 in securities, or investment advisors in securities, while
15 performing services solely incidental to the practice of their
16 professions;

17 (b) Any person, partnership, association, or corporation doing
18 business under and as permitted by any law of this state or of the
19 United States relating to banks, consumer finance businesses,
20 consumer loan companies, trust companies, mutual savings banks,
21 savings and loan associations, building and loan associations,
22 credit unions, crop credit associations, development credit
23 corporations, industrial development corporations, title insurance
24 companies, insurance companies, or third-party account
25 administrators;

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1 (c) Persons who, as employees on a regular salary or wage of an
2 employer not engaged in the business of debt adjusting, perform
3 credit services for their employer;

4 (d) Public officers while acting in their official capacities
5 and persons acting under court order;

6 (e) Any person while performing services incidental to the
7 dissolution, winding up or liquidation of a partnership,
8 corporation, or other business enterprise;

9 (f) Nonprofit organizations dealing exclusively with debts owing
10 from commercial enterprises to business creditors;

11 (g) Nonprofit organizations engaged in debt adjusting and which
12 do not assess against the debtor a service charge in excess of
13 fifteen dollars per month.

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

19 (3) "Debt adjusting agency" is any partnership, corporation, or
20 association engaging in or holding itself out as engaging in the
21 business of debt adjusting.

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

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

32 (6) "Fair share" means the creditor contributions paid to
33 nonprofit debt adjusters by the creditors whose consumers receive
34 debt adjusting services from the nonprofit debt adjusters and pay

1 down their debt accordingly. "Fair share" does not include grants
2 received by nonprofit debt adjusters for services unrelated to debt
3 adjusting.

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5 **Sec. 2.** RCW 18.28.080 and 2012 c 56 s 2 are each amended to
6 read as follows:

7 (1) By contract a debt adjuster may charge a reasonable fee for
8 debt adjusting services. The total fee for debt adjusting services,
9 including, but not limited to, any fee charged by a financial
10 institution or a third-party account administrator, may not exceed
11 fifteen percent of the total debt listed by the debtor on the
12 contract. The fee retained by the debt adjuster from any one payment
13 made by or on behalf of the debtor may not exceed fifteen percent of
14 the payment not including fair share contributions to a nonprofit
15 debt adjuster. The debt adjuster may make an initial charge of up to
16 twenty-five dollars which shall be considered part of the total fee.
17 If an initial charge is made, no additional fee may be retained
18 which will bring the total fee retained to date to more than fifteen
19 percent of the total payments made to date. No fee whatsoever shall
20 be applied against rent and utility payments for housing.

21 In the event of cancellation or default on performance of the
22 contract by the debtor prior to its successful completion, the debt
23 adjuster may collect in addition to fees previously received, six
24 percent of that portion of the remaining indebtedness listed on said
25 contract which was due when the contract was entered into, but not
26 to exceed twenty-five dollars.

27 (2) A debt adjuster who receives fair share must disclose this
28 in writing, along with an explanation of fair share, to the debtor
29 prior to accepting any fair share.

30 (3) A debt adjuster shall not be entitled to retain any fee
31 until notifying all creditors listed by the debtor that the debtor
32 has engaged the debt adjuster in a program of debt adjusting.

33 ~~((3))~~ (4) The department of financial institutions has
34 authority to enforce compliance with this section.

1 **Sec. 3.** RCW 18.28.120 and 1999 c 151 s 106 are each amended to
2 read as follows:

3 (1) A debt adjuster shall not:

4 ~~((+2))~~(a) Take any contract, or other instrument which has any
5 blank spaces when signed by the debtor;

6 ~~((+3))~~(b) Receive or charge any fee in the form of a promissory
7 note or other promise to pay or receive or accept any mortgage or
8 other security for any fee, whether as to real or personal property;

9 ~~((+3))~~(c) Lend money or credit;

10 ~~((+4))~~(d) Take any confession of judgment or power of attorney
11 to confess judgment against the debtor or appear as the debtor in
12 any judicial proceedings;

13 ~~((+5))~~(e) Take, concurrent with the signing of the contract or
14 as a part of the contract or as part of the application for the
15 contract, a release of any obligation to be performed on the part of
16 the debt adjuster;

17 ~~((+6))~~(f) Advertise services, display, distribute, broadcast or
18 televise, or permit services to be displayed, advertised,
19 distributed, broadcasted or televised in any manner whatsoever
20 wherein any false, misleading or deceptive statement or
21 representation with regard to the services to be performed by the
22 debt adjuster, or the charges to be made therefor, is made;

23 ~~((+7))~~(g) Offer, pay, or give any cash, fee, gift, bonus,
24 premiums, reward, or other compensation to any person for referring
25 any prospective customer to the debt adjuster;

26 ~~((+8))~~(h) Receive any cash, fee, gift, bonus, premium, reward,
27 or other compensation, other than fair share contributions to a
28 nonprofit debt adjuster, from any person other than the debtor or a
29 person in the debtor's behalf in connection with his or her
30 activities as a debt adjuster; or

31 ~~((+9))~~(i) Disclose to anyone the debtors who have contracted
32 with the debt adjuster; nor shall the debt adjuster disclose the
33 creditors of a debtor to anyone other than: (a) The debtor; or (b)
34 another creditor of the debtor and then only to the extent necessary

1 to secure the cooperation of such a creditor in a debt adjusting
2 plan.

3 (2) Any nonprofit organization engaged in debt adjusting in
4 this state or exempt from this chapter pursuant to RCW
5 18.28.010(1)(g) shall provide the following information to the
6 department of financial institutions in a form prescribed by the
7 department by June 30, 2016 and again on June 30th, 2017:

8 (a) The number and percentage of Washington debtors for whom the
9 debt adjuster provides or provided debt adjusting services in the
10 previous year who became inactive in, canceled, or terminated those
11 services without settlement of all of the debtor's debts, by year of
12 enrollment;

13 (b) The total fees collected from Washington debtors during the
14 previous year;

15 (c) The total fair share contributions collected from creditors
16 of Washington debtors during the previous year;

17 (d) For each debtor for whom the debt adjuster provides debt
18 adjusting services:

19 (i) The date of contracting;

20 (ii) The number of debts included in the contract between the
21 debt adjuster and the debtor;

22 (iii) The principal amount of each debt at the time the contract
23 was signed;

24 (iv) The source of each debtor's obligation, categorized as
25 credit card, student loans, auto, medical, small loans under chapter
26 31.45 RCW, other secured debt, and other unsecured debt;

27 (v) Whether each debt is active, terminated, or settled;

28 (vi) If a debt has been settled, the settlement amount of the
29 debt and the savings amount, calculated by subtracting the amount
30 paid to settle the debt from the principal amount of the debt at the
31 time the contract was signed; and

32 (vii) The total fees charged to the debtor and how the fees were
33 calculated;

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1 (e) For Washington debtors who became inactive in, canceled, or
2 terminated debt adjuster services during the previous year, the
3 number and percentage of debtors who, as measured by the aggregate
4 amount of each debtor's enrolled debts:

5 (i) Settled zero percent of their enrolled debt;

6 (ii) Settled up to twenty-five percent of their enrolled debt;

7 (iii) Settled twenty-five percent to fifty percent of their
8 enrolled debt;

9 (iv) Settled fifty-one percent to seventy-five percent of their
10 enrolled debt;

11 (v) Settled seventy-six percent to ninety-nine percent of their
12 enrolled debt;

13 (f) The number and percentage of Washington debtors for whom the
14 debt adjuster provides or provided debt adjusting services in the
15 previous three years who fully settled one hundred percent of their
16 enrolled debt through those debt adjusting services, by year of
17 enrollment; and

18 (g)(i) The nonprofit organization's form 990 submitted to the
19 internal revenue service in the preceding year; or

20 (ii) A statement of previous year's base salary and other
21 compensation of the nonprofit organization's officers, directors,
22 trustees, and other employees and independent contractors receiving
23 greater than one hundred fifty thousand dollars in total
24 compensation, if the form 990 does not contain such information or
25 if the organization did not submit a form 990 in the preceding year.

26 (3) The department of financial institutions shall make public and
27 submit to the appropriate committees of the legislature a report
28 summarizing the information received under subsection (1) of this
29 section by December 1, 2016 and again on December 1, 2017."

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EFFECT:

- Limits availability of fair share to nonprofit debt adjusters.
- Requires nonprofit debt adjusters to submit reports to the Department of Financial Institutions (DFI) detailing the fees charged, fair share contributions collected, sources of debt

managed, status of debt managed, debtor outcomes, and the nonprofit organizations IRS Form 990, including executive compensation.

- Requires DFI to aggregate the information received into a report that must be made public and submitted to the legislature December 2016 and December 2017.

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