
HOUSE BILL 1489

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2015 Regular Session

By Representatives Ryu, S. Hunt, Reykdal, Walkinshaw, McBride, Fitzgibbon, Santos, Pollet, Appleton, and Farrell

Read first time 01/21/15. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to prohibiting debt adjusting services and
2 defining and regulating debt management services; amending RCW
3 18.28.080, 18.28.090, 18.28.100, 18.28.110, 18.28.120, 18.28.130,
4 18.28.140, 18.28.150, 18.28.165, 18.28.185, and 18.28.900; reenacting
5 and amending RCW 18.28.010; and adding a new section to chapter 18.28
6 RCW.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **Sec. 1.** RCW 18.28.010 and 2012 c 56 s 1 are each reenacted and
9 amended to read as follows:

10 ~~((Unless a different meaning is plainly required by the context,~~
11 ~~the following words and phrases as hereinafter used in this chapter~~
12 ~~shall have the following meanings:)) The definitions in this section
13 apply throughout this chapter unless the context clearly requires
14 otherwise.~~

15 (1) ~~(("Debt adjuster," which includes any person known as a debt~~
16 ~~pooler, debt manager, debt consolidator, debt prorater, or credit~~
17 ~~counselor, is any person engaging in or holding himself or herself~~
18 ~~out as engaging in the business of debt adjusting for compensation.~~
19 ~~The term shall not include:))~~

20 (a) "Debt adjusting" means, except under a debt management plan:

1 (i) The receiving of money from a consumer for the purpose of
2 distributing one or more payments to or among one or more creditors
3 of the consumer in full or partial payment of the consumer's
4 obligation;

5 (ii) Arranging or assisting a consumer to arrange for the
6 distribution of one or more payments to or among one or more
7 creditors of the consumer in full or partial payment of the
8 consumer's obligation;

9 (iii) Exercising control, directly or indirectly, or arranging
10 for the exercise of control over funds of a consumer for the purpose
11 of distributing payments to or among one or more creditors of the
12 consumer in full or partial payment of the consumer's obligation;

13 (iv) Advising a consumer to withhold payments from a creditor or
14 deposit such payments in an account controlled by the consumer or a
15 third party for the purpose of distributing one or more payments to
16 or among one or more creditors of the consumer in full or partial
17 payment of the consumer's obligation; or

18 (v) Acting or offering to act as an intermediary between a
19 consumer and one or more creditors of the consumer for the purpose of
20 adjusting, settling, discharging, reaching a compromise on, or
21 otherwise altering the terms of payment of the consumer's obligation.

22 (b) "Debt adjusting" does not include:

23 (i) Debt management services;

24 (ii) Services offered free of charge or any fee;

25 (iii) Services provided by:

26 (A) Attorneys-at-law, escrow agents, accountants, broker-dealers
27 in securities, or investment advisors in securities, while performing
28 services solely incidental to the practice of their professions;

29 ~~((b))~~ (B) Any person, partnership, association, or corporation
30 doing business under and as permitted by any law of this state or of
31 the United States relating to banks, consumer finance businesses,
32 consumer loan companies, trust companies, mutual savings banks,
33 savings and loan associations, building and loan associations, credit
34 unions, crop credit associations, development credit corporations,
35 industrial development corporations, title insurance companies,
36 insurance companies, or third-party account administrators;

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

1 ~~(d)~~) (C) Public officers while acting in their official
2 capacities and persons acting under court order;

3 ~~((e))~~ (D) Any person while performing services incidental to
4 the dissolution, winding up, or liquidation of a partnership,
5 corporation, or other business enterprise;

6 ~~((f))~~ (E) Nonprofit organizations dealing exclusively with
7 debts owing from commercial enterprises to business creditors(~~(+~~

8 ~~(g) Nonprofit organizations engaged in debt adjusting and which
9 do not assess against the debtor a service charge in excess of
10 fifteen dollars per month)).~~

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

15 "Debt management" means services as an intermediary between a debtor
16 and one or more creditors that includes the development and
17 implementation of debt management plans and may include the receiving
18 of money from a debtor for the purpose of distributing one or more
19 payments to the debtor's creditors or arranging or assisting a debtor
20 to arrange for the distribution of one or more payments to the
21 debtor's creditors. "Debt management" does not include debt
22 adjusting.

23 (3) "Debt ~~((adjusting))~~ management agency" is any partnership,
24 corporation, or association engaging in or holding itself out as
25 engaging in the business of debt ~~((adjusting))~~ management.

26 (4) "Debt management plan" means a plan which contemplates that:

27 (a) Regular, periodic payments will be made to an individual's
28 creditor or creditors by or on behalf of the individual to whom debt
29 management services are being provided; and

30 (b) The individual's creditors will reduce financing charges or
31 fees for late payment, default, or delinquency; and

32 (c) The individual's principal debt obligation is not reduced.

33 (5) "Debt manager" means any person engaging in or holding
34 himself or herself out as engaging in the business of debt
35 management.

36 (6) "Financial institution" means any person doing business under
37 the laws of any state or the United States relating to commercial
38 banks, bank holding companies, savings banks, savings and loan
39 associations, trust companies, or credit unions.

1 (~~(5)~~) (7) "Third-party account administrator" means an
2 independent entity that holds or administers a dedicated bank account
3 for fees and payments to creditors, debt collectors, debt
4 (~~adjusters~~) managers, or debt (~~adjusting~~) management agencies in
5 connection with the renegotiation, settlement, reduction, or other
6 alteration of the terms of payment or other terms of a debt.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.28
8 RCW to read as follows:

9 (1) Except as provided in subsection (2) of this section, it is
10 unlawful to engage in debt adjusting.

11 (2) Nonprofit organizations engaged in debt adjusting or debt
12 management and that do not assess against the debtor a service charge
13 in excess of fifteen dollars per month are exempt from this chapter.

14 **Sec. 3.** RCW 18.28.080 and 2012 c 56 s 2 are each amended to read
15 as follows:

16 (1) By contract a debt (~~adjuster~~) manager may charge a
17 reasonable fee for debt (~~adjusting~~) management services. The total
18 fee for debt (~~adjusting~~) management services, including, but not
19 limited to, any fee charged by a financial institution or a third-
20 party account administrator, may not exceed fifteen percent of the
21 total debt listed by the debtor on the contract. The fee retained by
22 the debt (~~adjuster~~) manager from any one payment made by or on
23 behalf of the debtor may not exceed fifteen percent of the payment.
24 The debt (~~adjuster~~) manger may make an initial charge of up to
25 twenty-five dollars which shall be considered part of the total fee.
26 If an initial charge is made, no additional fee may be retained which
27 will bring the total fee retained to date to more than fifteen
28 percent of the total payments made to date. No fee whatsoever shall
29 be applied against rent and utility payments for housing.

30 In the event of cancellation or default on performance of the
31 contract by the debtor prior to its successful completion, the debt
32 (~~adjuster~~) manager may collect, in addition to fees previously
33 received, six percent of that portion of the remaining indebtedness
34 listed on said contract which was due when the contract was entered
35 into, but not to exceed twenty-five dollars.

36 (2) A debt (~~adjuster~~) manager shall not be entitled to retain
37 any fee until notifying all creditors listed by the debtor that the

1 debtor has engaged the debt ((adjuster)) manager in a program of debt
2 ((adjusting)) management.

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

5 **Sec. 4.** RCW 18.28.090 and 1999 c 151 s 103 are each amended to
6 read as follows:

7 If a debt ((adjuster)) manager contracts for, receives, or makes
8 any charge in excess of the maximums permitted by this chapter,
9 except as the result of an accidental and bona fide error, the debt
10 ((adjuster's)) manager's contract with the debtor shall be void and
11 the debt ((adjuster)) manager shall return to the debtor the amount
12 of all payments received from the debtor or on the debtor's behalf
13 and not distributed to creditors.

14 **Sec. 5.** RCW 18.28.100 and 1999 c 151 s 104 are each amended to
15 read as follows:

16 Every contract between a debt ((adjuster)) manager and a debtor
17 shall:

18 (1) List every debt to be handled with the creditor's name and
19 disclose the approximate total of all known debts;

20 (2) Provide in precise terms payments reasonably within the
21 ability of the debtor to pay;

22 (3) Disclose in precise terms the rate and amount of all of the
23 debt ((adjuster's)) manager's charges and fees;

24 (4) Disclose the approximate number and amount of installments
25 required to pay the debts in full;

26 (5) Disclose the name and address of the debt ((adjuster))
27 manager and of the debtor;

28 (6) Provide that the debt ((adjuster)) manager shall notify the
29 debtor, in writing, within five days of notification to the debt
30 ((adjuster)) manager by a creditor that the creditor refuses to
31 accept payment pursuant to the contract between the debt ((adjuster))
32 manager and the debtor;

33 (7) Contain the following notice in ten point boldface type or
34 larger directly above the space reserved in the contract for the
35 signature of the buyer: NOTICE TO DEBTOR:

36 (a) Do not sign this contract before you read it or if any spaces
37 intended for the agreed terms are left blank.

1 (b) You are entitled to a copy of this contract at the time you
2 sign it.

3 (c) You may cancel this contract within three days of signing by
4 sending notice of cancellation by certified mail return receipt
5 requested to the debt (~~(adjuster)~~) manager at his or her address
6 shown on the contract, which notice shall be posted not later than
7 midnight of the third day (excluding Sundays and holidays) following
8 your signing of the contract; and

9 (8) Contain such other and further provisions or disclosures as
10 are necessary for the protection of the debtor and the proper conduct
11 of business by the debt (~~(adjuster)~~) manager.

12 **Sec. 6.** RCW 18.28.110 and 1999 c 151 s 105 are each amended to
13 read as follows:

14 Every debt (~~(adjuster)~~) manager shall perform the following
15 functions:

16 (1) Make a permanent record of all payments by debtors, or on the
17 debtors' behalf, and of all disbursements to creditors of such
18 debtors, and shall keep and maintain in this state all such records,
19 and all payments not distributed to creditors. No person shall
20 intentionally make any false entry in any such record, or
21 intentionally mutilate, destroy, or otherwise dispose of any such
22 record. Such records shall at all times be open for inspection by the
23 attorney general or the attorney general's authorized agent, and
24 shall be preserved as original records or by microfilm or other
25 methods of duplication for at least six years after making the final
26 entry therein.

27 (2) Deliver a completed copy of the contract between the debt
28 (~~(adjuster)~~) manager and a debtor to the debtor immediately after the
29 debtor executes the contract, and sign the debtor's copy of such
30 contract.

31 (3) Unless paid by check or money order, deliver a receipt to a
32 debtor for each payment within five days after receipt of such
33 payment.

34 (4) Distribute to the creditors of the debtor at least once each
35 forty days after receipt of payment during the term of the contract
36 at least eighty-five percent of each payment received from the
37 debtor.

38 (5) At least once every month render an accounting to the debtor
39 which shall indicate the total amount received from or on behalf of

1 the debtor, the total amount paid to each creditor, the total amount
2 which any creditor has agreed to accept as payment in full on any
3 debt owed the creditor by the debtor, the amount of charges deducted,
4 and any amount held in trust. The debt ((~~adjuster~~)) manager shall in
5 addition render such an account to a debtor within ten days after
6 written demand.

7 (6) Notify the debtor, in writing, within five days of
8 notification to the debt ((~~adjuster~~)) manager by a creditor that the
9 creditor refuses to accept payment pursuant to the contract between
10 the debt ((~~adjuster~~)) manager and the debtor.

11 **Sec. 7.** RCW 18.28.120 and 1999 c 151 s 106 are each amended to
12 read as follows:

13 A debt ((~~adjuster~~)) manager shall not:

14 (1) Take any contract((~~r~~)) or other instrument which has any
15 blank spaces when signed by the debtor;

16 (2) Receive or charge any fee in the form of a promissory note or
17 other promise to pay or receive or accept any mortgage or other
18 security for any fee, whether as to real or personal property;

19 (3) Lend money or credit;

20 (4) Take any confession of judgment or power of attorney to
21 confess judgment against the debtor or appear as the debtor in any
22 judicial proceedings;

23 (5) Take, concurrent with the signing of the contract or as a
24 part of the contract or as part of the application for the contract,
25 a release of any obligation to be performed on the part of the debt
26 ((~~adjuster~~)) manager;

27 (6) Advertise services, display, distribute, broadcast, or
28 televise, or permit services to be displayed, advertised,
29 distributed, broadcasted, or televised in any manner whatsoever
30 wherein any false, misleading, or deceptive statement or
31 representation with regard to the services to be performed by the
32 debt ((~~adjuster~~)) manager, or the charges to be made therefor, is
33 made;

34 (7) Offer, pay, or give any cash, fee, gift, bonus, premiums,
35 reward, or other compensation to any person for referring any
36 prospective customer to the debt ((~~adjuster~~)) manager;

37 (8) Receive any cash, fee, gift, bonus, premium, reward, or other
38 compensation from any person other than the debtor or a person in the

1 debtor's behalf in connection with his or her activities as a debt
2 (~~adjuster~~) manager; or

3 (9) Disclose to anyone the debtors who have contracted with the
4 debt (~~adjuster~~) manager; nor shall the debt (~~adjuster~~) manager
5 disclose the creditors of a debtor to anyone other than: (a) The
6 debtor; or (b) another creditor of the debtor and then only to the
7 extent necessary to secure the cooperation of such a creditor in a
8 debt (~~adjusting~~) management plan.

9 **Sec. 8.** RCW 18.28.130 and 1999 c 151 s 107 are each amended to
10 read as follows:

11 Without limiting the generality of the foregoing and other
12 applicable laws, the debt (~~adjuster~~), manager or an employee of the
13 debt (~~adjuster~~) manager shall not:

14 (1) Prepare, advise, or sign a release of attachment or
15 garnishment, stipulation, affidavit for exemption, compromise
16 agreement, or other legal or court document, nor furnish legal advice
17 or perform legal services of any kind;

18 (2) Represent that he or she is authorized or competent to
19 furnish legal advice or perform legal services;

20 (3) Assume authority on behalf of creditors or a debtor or accept
21 a power of attorney authorizing it to employ or terminate the
22 services of any attorney or to arrange the terms of or compensate for
23 such services; or

24 (4) Communicate with the debtor or creditor or any other person
25 in the name of any attorney or upon the stationery of any attorney or
26 prepare any form or instrument which only attorneys are authorized to
27 prepare.

28 **Sec. 9.** RCW 18.28.140 and 1999 c 151 s 108 are each amended to
29 read as follows:

30 Nothing in this chapter shall be construed as prohibiting the
31 assignment of wages by a debtor to a debt (~~adjuster~~) manager, if
32 such assignment is otherwise in accordance with the law of this
33 state.

34 **Sec. 10.** RCW 18.28.150 and 1999 c 151 s 109 are each amended to
35 read as follows:

36 (1) Any payment received by a debt (~~adjuster~~) manager from or
37 on behalf of a debtor shall be held in trust by the debt (~~adjuster~~)

1 manager from the moment it is received. The debt (~~((adjuster))~~) manager
2 shall not commingle such payment with the debt (~~((adjuster's))~~)
3 manager's own property or funds, but shall maintain a separate trust
4 account and deposit in such account all such payments received. All
5 disbursements whether to the debtor or to the creditors of the
6 debtor, or to the debt (~~((adjuster))~~) manager, shall be made from such
7 account.

8 (2) In the event that the debtor cancels or defaults on the
9 contract between the debtor and the debt (~~((adjuster))~~) manager, the
10 debt (~~((adjuster))~~) manager shall close out the debtor's trust account
11 in the following manner:

12 (a) The debt (~~((adjuster))~~) manager may take from the account that
13 amount necessary to satisfy any fees, other than any cancellation or
14 default fee, authorized by this chapter.

15 (b) After deducting the fees provided in (~~((subsection-(2)))~~)(a) of
16 this subsection, the debt (~~((adjuster))~~) manager shall distribute the
17 remaining amount in the account to the creditors of the debtor. The
18 distribution shall be made within five days of the demand therefor by
19 the debtor, but if the debtor fails to make the demand, then the debt
20 (~~((adjuster))~~) manager shall make the distribution within thirty days
21 of the date of cancellation or default.

22 **Sec. 11.** RCW 18.28.165 and 1999 c 151 s 110 are each amended to
23 read as follows:

24 For the purpose of discovering violations of this chapter or
25 securing information lawfully required under this chapter, the office
26 of the attorney general may at any time: Investigate the debt
27 (~~((adjusting))~~) management business and examine the books, accounts,
28 records, and files used; have free access to the offices and places
29 of business, books, accounts, papers, records, files, safes, and
30 vaults of debt (~~((adjusters))~~) managers; and require the attendance of
31 and examine under oath all persons whomsoever whose testimony might
32 be required relative to such debt (~~((adjusting))~~) management business
33 or to the subject matter of any examination, investigation, or
34 hearing.

35 **Sec. 12.** RCW 18.28.185 and 1979 c 156 s 10 are each amended to
36 read as follows:

37 (~~((A violation of this chapter constitutes an unfair or deceptive~~
38 ~~act or practice in the conduct of trade or commerce under chapter~~

1 ~~19.86 RCW.~~) The legislature finds that the practices covered by this
2 chapter are matters vitally affecting the public interest for the
3 purpose of applying the consumer protection act, chapter 19.86 RCW. A
4 violation of this chapter or aiding or abetting a violation of this
5 chapter is not reasonable in relation to the development and
6 preservation of business and is an unfair or deceptive act in trade
7 or commerce and an unfair method of competition for the purpose of
8 applying the consumer protection act, chapter 19.86 RCW.

9 **Sec. 13.** RCW 18.28.900 and 1967 c 201 s 23 are each amended to
10 read as follows:

11 The provisions of this chapter shall not invalidate or make
12 unlawful contracts between debt adjusters and debtors or debt
13 managers and debtors executed prior to the effective date of this
14 chapter.

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