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SENATE BILL 5338

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Hobbs, Mullet, Fain, and Benton

Read first time 01/28/13. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to nonprofit debt adjusters; amending RCW 18.28.080  
2 and 18.28.120; and reenacting and amending RCW 18.28.010.

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

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

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

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

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

1 loan companies, trust companies, mutual savings banks, savings and loan  
2 associations, building and loan associations, credit unions, crop  
3 credit associations, development credit corporations, industrial  
4 development corporations, title insurance companies, insurance  
5 companies, or third-party account administrators;

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

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

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

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

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

19 (2) "Debt adjusting" means the managing, counseling, settling,  
20 adjusting, prorating, or liquidating of the indebtedness of a debtor,  
21 or receiving funds for the purpose of distributing said funds among  
22 creditors in payment or partial payment of obligations of a debtor.

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

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

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

36 (6) "Fair share" means the creditor contributions paid to nonprofit  
37 debt adjusters by the creditors whose consumers receive debt adjusting

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

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

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

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

25 (2) A debt adjuster shall not be entitled to retain any fee until  
26 notifying all creditors listed by the debtor that the debtor has  
27 engaged the debt adjuster in a program of debt adjusting.

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

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

32 A debt adjuster shall not:

33 (1) Take any contract, or other instrument which has any blank  
34 spaces when signed by the debtor;

35 (2) Receive or charge any fee in the form of a promissory note or

1 other promise to pay or receive or accept any mortgage or other  
2 security for any fee, whether as to real or personal property;

3 (3) Lend money or credit;

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

7 (5) Take, concurrent with the signing of the contract or as a part  
8 of the contract or as part of the application for the contract, a  
9 release of any obligation to be performed on the part of the debt  
10 adjuster;

11 (6) Advertise services, display, distribute, broadcast or televise,  
12 or permit services to be displayed, advertised, distributed,  
13 broadcasted or televised in any manner whatsoever wherein any false,  
14 misleading or deceptive statement or representation with regard to the  
15 services to be performed by the debt adjuster, or the charges to be  
16 made therefor, is made;

17 (7) Offer, pay, or give any cash, fee, gift, bonus, premiums,  
18 reward, or other compensation to any person for referring any  
19 prospective customer to the debt adjuster;

20 (8) Receive any cash, fee, gift, bonus, premium, reward, or other  
21 compensation, other than fair share, from any person other than the  
22 debtor or a person in the debtor's behalf in connection with his or her  
23 activities as a debt adjuster; or

24 (9) Disclose to anyone the debtors who have contracted with the  
25 debt adjuster; nor shall the debt adjuster disclose the creditors of a  
26 debtor to anyone other than: (a) The debtor; or (b) another creditor  
27 of the debtor and then only to the extent necessary to secure the  
28 cooperation of such a creditor in a debt adjusting plan.

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