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**HOUSE BILL 1490**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Hudgins, Walkinshaw, Reykdal, Stanford, McBride, Fitzgibbon, Santos, Pollet, and Farrell

AN ACT Relating to protecting Washington seniors, veterans, and other vulnerable consumers from out-of-state corporations by establishing a fiduciary interest to the consumer on the part of providers of debt adjusting services; amending RCW 18.28.080; adding a new section to chapter 18.28 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that many nonattorney debt adjustors providing their services to Washington consumers are not currently domiciled in Washington state.

The legislature further finds that credit card debt significantly affects seniors, military personnel, and low-income consumers.

The legislature further finds that Washington consumers have been injured by debt adjuster practices including overcharging of fees and misrepresentation of debt adjusting programs. The attorney general and class action lawsuits on behalf of private citizens have secured restitution for Washington consumers injured by those practices. Certain debt adjusting companies are now barred from accepting new clients in Washington state as a result.

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

A debt adjuster has a fiduciary relationship with the debtor. For the purposes of this section, the fiduciary duty means that the debt adjuster has the following duties:

(1) A debt adjuster must act in the debtor's best interest and in the utmost good faith toward the debtor, and shall disclose any and all interests to the debtor including, but not limited to, interests that may lie with the creditor that are used to facilitate a debtor's request. A debt adjuster shall not accept, provide, or charge any undisclosed compensation or realize any undisclosed remuneration that inures to the benefit of the debt adjuster on an expenditure made for the debtor;

(2) A debt adjuster must carry out all lawful instructions provided by the debtor;

(3) A debt adjuster must disclose to the debtor all material facts of which the debt adjuster has knowledge that might reasonably affect the debtor's rights, interests, or ability to receive the debtor's intended benefit from the debt adjusting services;

(4) A debt adjuster must use reasonable care in performing duties; and

(5) A debt adjuster must provide an accounting to the debtor for all money and property received from the debtor.

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

(1) By contract a debt adjuster may charge a reasonable fee for debt adjusting services. The total fee for debt adjusting services, including, but not limited to, any fee charged by a financial institution or a third-party account administrator, may not exceed fifteen percent of the total debt listed by the debtor on the contract and must be disclosed to the debtor before the contract is signed or services are provided. The fee retained by the debt adjuster from any one payment made by or on behalf of the debtor may not exceed fifteen percent of the payment. The debt adjuster may make an initial charge of up to twenty-five dollars which shall be considered part of the total fee. If an initial charge is made, no additional fee may be retained which will bring the total fee retained to date to more than fifteen percent of the total payments made to date. No fee whatsoever shall be applied against rent and utility payments for housing.

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

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

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

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