S-1578.1

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**SUBSTITUTE SENATE BILL 5485**

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

**By** Senate Financial Institutions & Insurance (originally sponsored by Senators Hobbs and Benton)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) "Fair share" means the creditor contributions paid to debt adjusters by the creditors whose consumers receive debt adjusting services from the debt adjusters and pay down their debt accordingly. "Fair share" does not include grants received by debt adjusters for services unrelated to debt adjusting.

**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. 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 not including fair share. 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 who receives fair share must disclose this in writing, along with an explanation of fair share, to the debtor prior to accepting any fair share.

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

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

A debt adjuster shall not:

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

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

(3) Lend money or credit;

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

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

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

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

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

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

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