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**HOUSE BILL 1488**

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

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

AN ACT Relating to regulating debt adjusting services; amending RCW 18.28.080 and 18.28.120; reenacting and amending RCW 18.28.010; and adding new sections to chapter 18.28 RCW.

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 licensed in Washington, 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) "Enrolled debt" means a debt or debts that a debt adjuster has agreed to settle, adjust, or otherwise act upon on behalf of or for the benefit of a debtor.

(5) "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)~~))(6) "Principal amount of the debt" means the total amount or outstanding balance owed by a debtor to one or more creditors for a debt that is included in a contract for debt adjusting at the time when the debtor enters into the contract.

(7) "Savings" means the difference between the present value of the principal amount of the debt and the amount paid by the debt adjuster to a creditor or negotiated by the debt adjuster and paid by the debtor to the creditor pursuant to a settlement negotiated by the debt adjuster on behalf of the debtor as full and complete satisfaction of the creditor's claim with regard to that debt.

(8) "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.

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

(1) A debt adjuster may enroll a debtor in a debt adjusting contract only if, after a written evaluation of the debtor's current income, expenses, assets, and liabilities, the debt adjuster reasonably concludes that the debt adjuster's services will provide a tangible net benefit to the debtor and the debtor can afford the services. The written evaluation must consider:

(a) Whether the debtor's creditors are likely to settle debts for less than the full principal amount of debt owed;

(b) Whether bankruptcy is a more viable option; and

(c) Whether the debtor's income is protected from garnishment, attachment, or other legal process.

(2) By contract a debt adjuster may charge a reasonable fee for debt adjusting services((~~.~~))subject to the following:

(a) 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.~~))savings;

(b) 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((~~.~~));

(c) 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((~~.~~));

(d) 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~~))enrolled debt which was due when the contract was entered into, but not to exceed twenty-five dollars.

((~~(2)~~))(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) Any debtor who received debt adjusting services from a debt adjuster and did not receive a tangible net benefit as a result of those services is entitled to void the debt adjustment contract, a refund of any moneys paid to the debt adjuster, damages equal to the monetary loss suffered by the debtor as a direct result of the debt adjuster's services, and any other remedies provided by law.

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

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

(1) Any person or entity that provides debt adjusting services in this state shall provide the following information to the department of financial institutions by September 1, 2015, and thereafter annually on September 1st:

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

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

(c) For each debtor for whom the debt adjuster provides debt adjusting services:

(i) The date of contracting;

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

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

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

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

(vi) The total fees charged to the debtor and how the fees were calculated;

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

(i) Settled zero percent of their enrolled debt;

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

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

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

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

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

(2) The department of financial institutions shall make public and submit a report to the appropriate committees of the legislature summarizing the information received under subsection (1) of this section by December 1, 2015, and annually thereafter.

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

(1) Prior to obtaining a debtor's personal information, a debt adjuster shall provide a clear and conspicuous disclosure to the debtor of the debt adjuster's policies and practices with respect to:

(a) Disclosing the debtor's personal information to others, including the categories of personal information that may be disclosed;

(b) Disclosing the personal information of persons for whom the debt adjuster is no longer providing a debt adjusting service or product; and

(c) Protecting the debtor's personal information.

(2) The disclosure required by subsection (1) of this section must also be provided to the debtor at least annually while the debt adjuster is providing debt adjusting services or products to the debtor.

**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 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; or

(10) Take an appointment as attorney-in-fact or power of attorney.

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