
Business & Financial Services Committee

HB 1398

Brief Description: Concerning registration of persons providing debt settlement services.

Sponsors: Representatives Kirby, Vick, Hurst, Parker, Blake, G. Hunt and Stanford.

Brief Summary of Bill

- Creates a registration and regulatory framework for persons and entities providing debt settlement services.
- Provides that registered debt settlement providers are exempt from the Debt Adjusting Act.

Hearing Date: 2/6/15

Staff: David Rubenstein (786-7153).

Background:

"Debt adjusting" is defined as: managing, counseling, settling, adjusting, pro-rating, or liquidating a debtor's indebtedness; or receiving funds for distribution among creditors in payment of a debtor's obligations. A "debt adjuster" is a person who engages in debt adjusting for compensation. It includes debt poolers, debt managers, debt consolidators, debt pro-raters, and credit counselors.

The definition of a "debt adjuster" excludes: attorneys, escrow agents, accountants, and investment advisors while performing services solely incidental to the practice of their profession. It also excludes persons doing business that is permitted by law related to banks, credit unions, trust companies, and insurance companies; employees performing credit services for their employer; public officers and persons acting under court order; persons performing services incidental to the dissolution of a business entity; and certain nonprofit organizations.

After a Washington Supreme Court ruling holding that an entity that received funds into a custodial account and then distributed such funds to creditors was a debt adjuster, the Legislature

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amended the definition of a debt adjuster to exclude such entities. Under the current definition of a debt adjuster, 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 alternation of the terms of payment or other terms of a debt is considered a "third-party account administrator" and not a debt adjuster.

Debt Adjuster Contracts.

Every contract between the debt adjuster and the debtor must contain various disclosures, including the following:

- a list of every debt to be handled;
- the precise terms of payments reasonably within the ability of the debtor to pay;
- the precise terms of the rate and amount of all of the debt insurer's charges and fees;
- the approximate number and amount of installments required to pay the debts in full;
- the name and address of the debt adjuster and of the debtor;
- a provision that the debt adjuster must notify the debtor, in writing, within five days of receiving notice that a creditor will not accept payment pursuant to the debtor's contract with the debt adjuster;
- a notice to the debtor regarding reading the contract before signing and not accepting blank spaces and that the debtor is entitled to a copy of the contract at the time of signing;
- a notice to the debtor that the contract may be canceled within three days of signing by sending notice; and
- other provisions necessary for the protection of the debtor and the proper conduct of business by the debt adjuster.

Debt Adjuster Fees.

The total fee for debt-adjusting services is capped at 15 percent of the debtor's total debt. Excess fees, except as a result of an accidental or bona fide error, void the contract. Before retaining the fee, the debt adjuster must notify all creditors that the debtor has engaged the debt adjuster's services. The debt adjuster must distribute at least 85 percent of the debtor's payments to creditors at least once every 40 days. A debtor's payments to a debt adjuster must be held in a separate trust account.

Prohibited Acts.

A debt adjuster must not do any of the following:

- take a contract which has any blank spaces when signed by a debtor;
- receive or charge any fee in the form of a promissory note to receive or accept any mortgage or other security for a fee, whether regarding real or personal property;
- lend money or credit;
- take a confession of judgment against the debtor or appear as the debtor in any judicial proceedings;
- take a release of any obligation to be performed by the debt adjuster, concurrent with signing the contract with the debtor;
- make false, misleading, or deceptive statements or representations in advertisement;
- offer to pay cash, fees, gifts, premiums, bonuses, or rewards for referrals of customers;

- receive any cash, fee, gift bonus, premium or award, or other compensation in connection with activities as a debt adjuster; or
- disclose to anyone the debtors who have contracted with the debt adjuster, nor disclose the creditors to anyone other than the debtor or another creditor, and then only to the extent necessary to secure the cooperation of the creditor in a debt adjusting plan.

Violation of the Debt Adjusting Act is a misdemeanor offense, and it is an unfair or deceptive act or practice under the Consumer Protection Act.

Electronic Records and Signatures.

Under federal law, the Electronic Signatures in Global and National Commerce Act (E-Sign Act), allows the use of electronic records and signatures to satisfy any statutes, regulations, or rules of law requiring that such information be provided in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent. Before obtaining a consumer's consent, the entity requiring electronic records must disclose the consumer's right to use paper documents and the process for obtaining them, whether the consent applies only to the particular transaction or to an entire category of documents, and the procedures for withdrawing consent.

Summary of Bill:

A new chapter, titled the "Debt Settlement Services Act" (Act), is created in Title 18 RCW,

"Debt-settlement services" is defined to mean serving as an intermediary between an individual and that person's creditors for the purpose of obtaining concessions in reducing the principal of the individual's debt. The definition excludes professional services provided by:

- Washington-licensed attorneys;
- Washington-licensed accountants; and
- licensed financial planners.

The Act also excludes from registration and regulation judicial officers and persons acting under court order, financial institutions, title insurers, and escrow companies or other persons providing bill-paying services.

Application, Registration, and Renewal.

No person may provide debt-settlement services without registering as a debt-settlement provider with the Department of Financial Institutions (Department).

Insurance and Bonds: An applicant for registration must prove that it has adequate insurance as specified by the Department, pay a fee set by the Department, and post a surety bond running to the state for the benefit of the state and resident clients of the provider. The surety bond must be at least \$10,000 but the Department may increase it up to \$50,000 depending on the financial condition, experience, and history of the provider; risk to individuals; and other factors deemed appropriate. Payout from the bond occurs in the event of the provider's violation of the Act.

Initial Application: The applicant must also provide the following information:

- the applicant's name and contact information;

- the applicant's trade names, if any;
- the address of each location where the applicant will provide debt-settlement services, if any;
- a copy of each form of agreement the applicant will use;
- the schedule of the applicant's fees and charges; and
- other information required by the Department.

Any misrepresentation of any of the required information may result in denial or revocation of the provider's registration. If any information changes after application or registration, the applicant must notify the Department within 30 days.

Denial and Appeal: Once the application is complete, the Department must approve or deny the registration within 60 days, but may extend the timeline another 45 days if necessary. If the Department denies the registration, it must notify the applicant within seven days and give the applicant an opportunity for administrative appeal.

An applicant for registration may provide debt-settlement services until its application is denied and administrative review is exhausted.

Renewal: Debt-settlement providers (Providers) must renew annually from the date of registration. Applications for renewal must be signed under penalty of perjury, submitted 30 to 60 days before the Provider's registration expires, and include a fee required by the Department. The Provider must also state whether any information has changed since its first application or most recent renewal and include other information required by the Department. If the Provider files for renewal at least 30 days before expiration, its registration remains effective until the renewal is approved or denied. If denied, the Provider has the opportunity for administrative review and may continue to provide services to preexisting clients during the appeal and must transfer the clients to another Provider if the appeal is denied.

Reciprocity: If the applicant is registered or licensed as a debt-settlement services provider out-of-state, the applicant may submit a certificate or license along with the original application from the other state in lieu of a new application. The Department must accept the application if: (1) the application is substantially similar to or more comprehensive than the requirements of the Act; and (2) the applicant swears that the information in the application is current or supplements the application with current information.

Exemption from the Debt Adjusting Act.

Registered Providers are exempt from the Debt Adjusting Act.

Regulation of Debt Settlement Providers.

Providers must act in good faith in all matters, meaning honesty in fact and the observance of reasonable standards of fair dealing.

Disclosure: Before any consumer agrees to pay for goods or services offered by the Provider, the Provider must truthfully, conspicuously, and clearly disclose the following information:

- a good faith estimate of the amount of time necessary to achieve the represented results;

- a good faith estimate of the time by which the Provider will start to make bona fide settlement offers to the consumer's creditors;
- a good faith estimate of the amount of money or the percentage of each outstanding debt that the consumer will need to accumulate before a bona fide settlement offer may be made;
- the cost to the consumer for providing debt-settlement services;
- the potential adverse effects to the customer's creditworthiness and potential increase in the amount of money owed, where the services offered result in the consumer's failure to make timely payments to creditors or debt collections; and
- that the individual owns any funds placed in an account at a financial institution as a result of debt-settlement services.

Prohibitions: The Provider is prohibited from misrepresenting any material aspect of the services offered or provided, including:

- the amount of money or the percentage of the debt amount that a consumer may save by using the service;
- the effect of the service on the consumer's creditworthiness;
- the effect of the service on collection efforts of the consumer's creditors or debt collectors;
- the percentage of the number of consumers who attain the represented results; and
- whether debt settlement services are offered or provided by a nonprofit entity.

Payment and Fees: The Provider may not receive payment of any fee for its services until:

- the Provider has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt under a debt-settlement program;
- the consumer has made at least one payment to a creditor in furtherance of a settlement with that creditor; and
- the fee or consideration for settling each individual debt in a debt-settlement plan either bears the same proportional relationship to the total fee for settling the entire debt balance as the individual debt amount bears to the entire debt amount, or is a percent of the amount saved as a result of the settlement.

Account for Payments to Creditors and Provider: A Provider may request or require that the consumer place funds in an account to be used for payment of creditors and the Provider's fees in connection with the services if:

- the funds are held in a specifically designated account at a financial institution;
- the consumer, not the Provider, owns and controls the funds in the account and any interest paid;
- the Provider does not administer the account, the administering entity is not owned by the Provider, and receives no referral compensation;
- the consumer may withdraw from the debt-settlement services at any time and may withdraw the funds at any time without penalty except for fees already earned by the Provider.

Agreement Voidable.

If a Provider is not registered when a customer enters into an agreement for debt-settlement services, the agreement may be voided by the customer.

Examination and Enforcement by the Department of Financial Institutions.

On its own initiative or in response to a complaint, the Department may investigate and seek voluntary compliance. To determine compliance, the Department may investigate and examine by subpoena or otherwise the activities, books, accounts, and records of a Provider or its delegate. In connection with its investigation, the Department may also charge the costs of the investigation to the person being investigated and require the person to file a statement under oath.

If it finds a violation, the Department may suspend, deny, or revoke a registration or may:

- issue a cease and desist order to directors or employees of the Provider;
- order restitution to a person harmed by the violation;
- impose a civil penalty of \$1,000 per violation;
- pursue a civil action in court to enforce a restitution order, injunction, or other equitable relief.

The Department may also suspend, revoke, or deny a registration if the Provider is insolvent. The Provider has an opportunity for administrative review.

The Department must establish reasonable fees sufficient to cover the costs of administering the chapter.

E-Sign Act Modified.

The new chapter supersedes the federal E-Sign Act except insofar as electronic documents and notices may be used with the consumer's informed consent.

Public Disclosure Act.

Information obtained by the Department that identifies individuals who have agreements with a provider of debt-settlement services is exempt from public inspection and copying.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.