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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

Read first time 01/21/15. Referred to Committee on Business & Financial Services.

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

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

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

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

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

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

19 (b) Any person, partnership, association, or corporation doing  
20 business under and as permitted by any law of this state or of the  
21 United States relating to banks, consumer finance businesses,

1 consumer loan companies, trust companies, mutual savings banks,  
2 savings and loan associations, building and loan associations, credit  
3 unions, crop credit associations, development credit corporations,  
4 industrial development corporations, title insurance companies,  
5 insurance 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  
8 credit 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  
17 do not assess against the debtor a service charge in excess of  
18 fifteen 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) "Enrolled debt" means a debt or debts that a debt adjuster  
27 has agreed to settle, adjust, or otherwise act upon on behalf of or  
28 for the benefit of a debtor.

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

33 ~~((+5))~~ (6) "Principal amount of the debt" means the total amount  
34 or outstanding balance owed by a debtor to one or more creditors for  
35 a debt that is included in a contract for debt adjusting at the time  
36 when the debtor enters into the contract.

37 (7) "Savings" means the difference between the present value of  
38 the principal amount of the debt and the amount paid by the debt  
39 adjuster to a creditor or negotiated by the debt adjuster and paid by  
40 the debtor to the creditor pursuant to a settlement negotiated by the

1 debt adjuster on behalf of the debtor as full and complete  
2 satisfaction of the creditor's claim with regard to that debt.

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

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

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

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

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

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

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

24 (a) The total fee for debt adjusting services, including, but not  
25 limited to, any fee charged by a financial institution or a third-  
26 party account administrator, may not exceed fifteen percent of the  
27 ~~((total debt listed by the debtor on the contract.))~~ savings;

28 (b) The fee retained by the debt adjuster from any one payment  
29 made by or on behalf of the debtor may not exceed fifteen percent of  
30 the payment ~~((--))~~ ;

31 (c) The debt adjuster may make an initial charge of up to twenty-  
32 five dollars which shall be considered part of the total fee. If an  
33 initial charge is made, no additional fee may be retained which will  
34 bring the total fee retained to date to more than fifteen percent of  
35 the total payments made to date ~~((--))~~ ;

36 (d) No fee whatsoever shall be applied against rent and utility  
37 payments for housing.

38 In the event of cancellation or default on performance of the  
39 contract by the debtor prior to its successful completion, the debt

1 adjuster may collect in addition to fees previously received, six  
2 percent of that portion of the remaining (~~indebtedness listed on~~  
3 ~~said contract~~) enrolled debt which was due when the contract was  
4 entered into, but not to exceed twenty-five dollars.

5 ~~((+2))~~ (3) A debt adjuster shall not be entitled to retain any  
6 fee until notifying all creditors listed by the debtor that the  
7 debtor has engaged the debt adjuster in a program of debt adjusting.

8 ~~((+3))~~ (4) Any debtor who received debt adjusting services from  
9 a debt adjuster and did not receive a tangible net benefit as a  
10 result of those services is entitled to void the debt adjustment  
11 contract, a refund of any moneys paid to the debt adjuster, damages  
12 equal to the monetary loss suffered by the debtor as a direct result  
13 of the debt adjuster's services, and any other remedies provided by  
14 law.

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

17 NEW SECTION. Sec. 3. A new section is added to chapter 18.28  
18 RCW to read as follows:

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

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

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

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

32 (i) The date of contracting;

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

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

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

38 (v) If a debt has been settled, the settlement amount of the debt  
39 and the savings amount, calculated by subtracting the amount paid to

1 settle the debt from the principal amount of the debt at the time the  
2 contract was signed; and

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

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

9 (i) Settled zero percent of their enrolled debt;

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

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

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

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

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

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

26 NEW SECTION. **Sec. 4.** A new section is added to chapter 18.28  
27 RCW to read as follows:

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

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

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

37 (c) Protecting the debtor's personal information.

38 (2) The disclosure required by subsection (1) of this section  
39 must also be provided to the debtor at least annually while the debt

1 adjuster is providing debt adjusting services or products to the  
2 debtor.

3 **Sec. 5.** RCW 18.28.120 and 1999 c 151 s 106 are each amended to  
4 read as follows:

5 A debt adjuster shall not:

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

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

11 (3) Lend money or credit;

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

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

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

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

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

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

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

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