
Business & Financial Services Committee

HB 2384

Brief Description: Concerning debt adjusting services.

Sponsors: Representatives Hudgins, Ryu, Kirby, S. Hunt and Pollet.

Brief Summary of Bill

- Imposes limitations on who may act as a debt adjuster and who a debt adjuster may enroll in a debt adjustment contract.
- Requires screening of debtors before enrollment.
- Creates a "not-worse-off" remedy for debtors who did receive a tangible net benefit from a debt adjustment contract.
- Limits fees that debt adjusters may charge to 15 percent of total savings to the debtor.
- Requires annual reporting by debt adjusters.

Hearing Date: 1/28/14

Staff: David Rubenstein (786-7153).

Background:

Debt Adjusting Act Generally.

Washington's Debt Adjusting Act (DAA) regulates the provision of debt adjusting services, which are 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 and includes creditor counselors and debt settlement providers. The definition of debt adjuster excludes attorneys-at-law.

Fees.

The contract between the debt adjuster and the debtor must contain various disclosures, including the debt adjuster's fees, and must require the debt adjuster to notify the debtor if a creditor

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refuses to accept payment. The total fee for debt adjusting services is capped at 15 percent of the debtor's total debt; excess fees void the contract. The fee retained by a debt adjuster from any one payment made by a debtor may not exceed 15 percent of the payment. Before retaining the fee, the debt adjuster must notify all creditors that the debtor has engaged the debt adjuster's services.

Prohibited Practices.

Debt adjusters are prohibited from a variety of practices, including taking a contract from a debtor that had any blank spaces when signed, taking payment in promissory notes, lending, false or misleading advertising, referral rewards, taking gifts, and disclosure of the identity of debtors or their creditors.

Penalties for Violation.

Violation of the DAA constitutes a misdemeanor offense, as well as an unfair or deceptive act or practice under the Consumer Protection Act. The Office of the Attorney General may investigate debt adjusting businesses and examine their books and records.

Summary of Bill:

Attorneys

The exclusion of attorneys-at-law from the definition of debt adjuster is modified to require that the attorneys be licensed in Washington. Additionally, debt adjusters are prohibited from taking an appointment as an attorney-in-fact or power of attorney. An attorney-in-fact has the authority to sign a document or conduct business on behalf of another person.

Screening.

Before enrolling a debtor in a debt adjusting contract, debt adjusters must conduct a written evaluation of debtor's current income, expenses, and liabilities and conclude that the debt adjuster's services will provide a tangible net benefit which the debtor can afford. The evaluation must consider whether creditors are likely to settle for less than the debtor owes, whether bankruptcy is a more viable option, and whether the debtor is protected from garnishment, attachment, or other legal process.

Disclosures.

Before obtaining a debtor's personal information, the debt adjuster must clearly and conspicuously disclose the debt adjuster's policy and practice with respect to the debtor's personal information during and after the term of the contract. If the contract lasts more than a year, the debt adjuster must make this disclosure annually.

Fee.

Debt adjusters may take up to 15 percent of the total savings to the debtor, rather than the total debt. Savings is defined as the difference between the present value of a debt and the amount paid in full satisfaction of the debt as a result of the debt adjuster's services.

Restitution.

A debtor who has not received a tangible net benefit from the debt adjuster's services is entitled to void the contract, a refund of any money paid to the debt adjuster, damages equal to the

monetary loss suffered as a direct result of the services, and any other remedy provided by law, including those provided by the Consumer Protection Act.

Reporting.

Debt adjusters must make an annual report to the Department of Financial Institutions, which must make the reports public and submit a summary to the legislature. The reporting by debt adjusters must include:

- the number and percentage of Washington debtors for whom services were provided and who canceled or otherwise terminated the services before all debts were settled;
- the total fees collected from Washington debtors;
- for each debtor, the date of contracting, the number and principal amount of debts included in the contract, whether each debt is active, terminated, or settled, the amount of any settlement and the savings, if any, and the total fees charged to the debtor; and
- for Washington debtors, the number and percentage of debtors who settled portions their debts to various thresholds before termination of the debt adjusting contract.

Appropriation: None.

Fiscal Note: Requested on January 27, 2014.

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