Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Business & Financial Services Committee

ESSB 5338

Brief Description: Addressing debt adjuster compensation.

Sponsors: Senate Committee on Financial Institutions, Housing & Insurance (originally sponsored by Senators Hobbs, Mullet, Fain and Benton).

Brief Summary of Engrossed Substitute Bill

- Requires a stakeholder group to convene and discuss the concept of fair share compensation to debt adjusters, and requires the stakeholder group to provide any legislative proposals to the Legislature by December 1, 2013.

Hearing Date: 3/20/13

Staff: Alexa Silver (786-7190).

Background:

Debt Adjusting Act.
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 total fee for debt adjusting services is capped at 15 percent of the debtor's total debt; excess fees void the contract. Before retaining the fee, the debt adjuster must notify all creditors that the debtor has engaged the debt adjuster's services. A debt adjuster may not receive any cash, bonus, reward, or other compensation from a person other than a debtor or a person acting on the debtor's behalf in connection with his or her activities as a debt adjuster.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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.

<u>"Fair Share" Contributions to Credit Counseling Agencies</u>.
In addition to providing education and counseling on personal finances, credit counseling agencies develop and administer debt management plans for debtors. The credit counseling agency negotiates with creditors to obtain more favorable terms for the debtor, such as lower interest rates and fees. The debtor makes a monthly payment to the credit counseling agency, and the credit counseling agency distributes the payment to the creditors.

Creditors who participate in debt management plans make voluntary contributions to credit counseling agencies; these are termed "fair share" contributions. Fair share contributions are generally calculated as a percentage of the debtor's payment through the debt management plan, up to 15 percent. The Internal Revenue Code limits the amount of fair share contributions that a nonprofit credit counseling agency may receive to 50 percent of the agency's total revenues.

Summary of Bill:

A stakeholder group must convene to discuss the concept of fair share compensation from creditors and whether debt adjusters may receive fair share compensation, among other related issues. The stakeholder group is comprised of a representative of the Office of the Attorney General and debt adjuster stakeholders, including but not limited to for-profit and nonprofit debt adjusters who conduct business in Washington.

The stakeholder group must provide any legislative proposals to the Legislature by December 1, 2013.

Appropriation: None.

Fiscal Note: Not requested.

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