

SENATE BILL REPORT

ESSB 5338

As Passed Senate, March 13, 2013

Title: An act relating to debt adjusters.

Brief Description: Addressing debt adjuster compensation.

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

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/14/13, 2/19/13 [DPS, DNP].

Passed Senate: 3/13/13, 49-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 5338 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hobbs, Chair; Mullet, Vice Chair; Benton, Ranking Member; Fain, Hatfield and Roach.

Minority Report: Do not pass.

Signed by Senator Nelson.

Staff: Alison Mendiola (786-7483)

Background: The Debt Adjusting Act (DAA) regulates the provision of debt adjusting services, which includes 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 debt adjuster excludes the following: nonprofits that deal exclusively with debts from commercial enterprises; nonprofits that do not assess debtors more than \$15 per month; attorneys, escrow agents, accountants, and investment advisors while performing services solely incidental to the practice of their professions; financial institutions, insurance companies, and third-party account administrators; employees performing credit services for their employer; public officers; and persons performing services incidental to the dissolution of a business entity.

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.

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 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. 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.

Violation of the DAA constitutes a misdemeanor offense, as well as an unfair or deceptive act or practice under the Consumer Protection Act. Debt adjusters may not receive any cash, fee, gift, bonus, premiums, reward, or other compensation from any person other than the debtor or a person on the debtor's behalf in connection with the debt adjuster's activities as a debt adjuster. The Office of the Attorney General may investigate debt-adjusting businesses and examine their books and records.

Summary of Engrossed Substitute Bill: The definition of fair share is added to the DAA which are creditor contributions paid to debt adjusters by the creditors whose consumers receive debt-adjusting services from nonprofit debt adjusters and pay down their debt accordingly.

Fair share does not include grants received by debt adjusters for services unrelated to debt adjusting.

It is clarified that the 15 percent cap on fees charged by a debt adjuster does not include fair share and receiving fair share is not a prohibited activity.

A stakeholder group must discuss the concept of fair share and whether debt adjusters may receive such compensation from creditors, among other related issues. The stakeholder group must provide any legislative proposals to the Legislature by December 1, 2013.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This bill clarifies that those who do debt management, as opposed to debt settlement, can receive money from creditors. It costs about \$1,060 per year per client to cover the client's costs and clients pay about 4 percent so the money from creditors allows nonprofit credit management programs to continue operations. Fair share is voluntary. Credit counseling is free for 65 percent of clients.

CON: Why limit fair share to just nonprofits?

Persons Testifying: PRO: Julie Griffith, Money Management International; Charles Helms, Apprisen; Bruce McClary, ClearPoint Credit Counseling Solutions.

CON: Mark Guimond, American Fair Credit Council.