

SENATE BILL REPORT

SB 5527

As of February 14, 2013

Title: An act relating to debt adjusting services.

Brief Description: Concerning debt adjusting services.

Sponsors: Senators Hobbs, Mullet and Baumgartner.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/14/13.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

Background: Regulation of Debt Adjusting. 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: 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.

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.

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.

Federal Telemarketing Sales Rule. The federal Telemarketing Sales Rule defines abusive telemarketing sales practices to include receiving a fee for debt relief services unless:

- the seller or telemarketer altered the terms of at least one debt pursuant to the agreement with the debtor;
- the debtor made at least one payment pursuant to the agreement; and
- if the debts are renegotiated, settled, reduced, or otherwise altered, the fee either: bears the same proportional relationship to the total fee as the individual debt amount bears to the entire debt amount; or is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration.

2012 Legislation and Report. ESB 6155, enacted during the 2012 legislative session, amended the DAA to address services provided by third-party account administrators. The bill excluded third-party account administrators from the definition of debt adjuster, but included any fees charged by a third-party account administrator or a financial institution within the 15 percent fee cap.

ESB 6155 also required any person or entity that provides debt-adjusting services in Washington to report information about their services and customers to the Department of Financial Institutions (Department). Of the 230 debt-adjusting companies that the Department contacted, 46 responded. Seventeen companies indicated that they provided debt-adjusting services to Washington residents in the previous three years; other respondents indicated that they were nonprofit entities, their services did not include debt adjusting, or they had not provided debt-adjusting services in the previous three years. Respondents to the survey were located in 12 states. The total fees collected from Washington debtors for debt adjusting ranged from \$3.1 to \$3.9 million per year. Fee structures varied among the respondents; many charged an enrollment fee, all charged a monthly fee, and one charged a final fee.

Summary of Bill: Only nonprofit social service agencies or nonprofit consumer credit counseling agencies licensed by the Department may provide debt-adjusting services.

An application to be licensed as a debt adjuster must include specified information, including proof that the applicant is organized as an eligible nonprofit, as well as any other relevant information required by the Department and a licensing fee. An applicant must also maintain a surety bond in an amount established by the Department. Licenses are valid for a period of one year. If a person provides debt-adjusting services in violation of the law, the contract with the debtor is void, and the person must return any payments to the debtor.

The total fee for debt-adjusting services, including those charged by a third-party account administrator and a financial institution, may not exceed \$15 per month.

On an annual basis, the Department may require debt adjusters to file a report containing information related to the services they provide. Debt adjusters' financial records must also be audited annually by a certified public accountant. The Department must compile the

reports and make them available in composite form. A debt adjuster's report is exempt from public disclosure, but the debt adjuster must make the report and audit available for public inspection.

Based on a review of the annual report and audit, the Department may perform an examination of the debt adjuster. The Department may also inspect the books and records of debt adjusters, conduct disciplinary proceedings, impose sanctions, and assess fines in accordance with the Administrative Procedures Act if a person provides debt-adjusting services without a license, charges excess fees – except in case of a bona fide error, or violates the DAA or a rule adopted under the DAA.

The definition of debt adjuster excludes an attorney licensed in Washington. Exemptions from the definition of debt adjuster for nonprofits that deal exclusively with debts from commercial enterprises and nonprofits that do not assess more than \$15 per month are deleted. The requirement that a debt adjuster distribute 85 percent of payments to creditors is deleted.

The law may not be applied to invalidate current contracts.

Appropriation: None.

Fiscal Note: Requested on February 13, 2013.

Committee/Commission/Task Force Created: No.

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