
HOUSE BILL 2384

State of Washington 63rd Legislature 2014 Regular Session

By Representatives Hudgins, Ryu, Kirby, Hunt, and Pollet

Read first time 01/16/14. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to regulating debt adjusting services; amending RCW
2 18.28.080 and 18.28.120; reenacting and amending RCW 18.28.010; and
3 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, the
8 following words and phrases as hereinafter used in this chapter shall
9 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 out
13 as engaging in the business of debt adjusting for compensation. The
14 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 practice
18 of their professions;

1 (b) Any person, partnership, association, or corporation doing
2 business under and as permitted by any law of this state or of the
3 United States relating to banks, consumer finance businesses, consumer
4 loan companies, trust companies, mutual savings banks, savings and loan
5 associations, building and loan associations, credit unions, crop
6 credit associations, development credit corporations, industrial
7 development corporations, title insurance companies, insurance
8 companies, or third-party account administrators;

9 (c) Persons who, as employees on a regular salary or wage of an
10 employer not engaged in the business of debt adjusting, perform credit
11 services for their employer;

12 (d) Public officers while acting in their official capacities and
13 persons acting under court order;

14 (e) Any person while performing services incidental to the
15 dissolution, winding up or liquidation of a partnership, corporation,
16 or other business enterprise;

17 (f) Nonprofit organizations dealing exclusively with debts owing
18 from commercial enterprises to business creditors;

19 (g) Nonprofit organizations engaged in debt adjusting and which do
20 not assess against the debtor a service charge in excess of fifteen
21 dollars per month.

22 (2) "Debt adjusting" means the managing, counseling, settling,
23 adjusting, prorating, or liquidating of the indebtedness of a debtor,
24 or receiving funds for the purpose of distributing said funds among
25 creditors in payment or partial payment of obligations of a debtor.

26 (3) "Debt adjusting agency" is any partnership, corporation, or
27 association engaging in or holding itself out as engaging in the
28 business of debt adjusting.

29 (4) "Enrolled debt" means a debt or debts that a debt adjuster has
30 agreed to settle, adjust, or otherwise act upon on behalf of or for the
31 benefit of a debtor.

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

36 ((+5)) (6) "Principal amount of the debt" means the total amount
37 or outstanding balance owed by a debtor to one or more creditors for a

1 debt that is included in a contract for debt adjusting at the time when
2 the debtor enters into the contract.

3 (7) "Savings" means the difference between the present value of the
4 principal amount of the debt and the amount paid by the debt adjuster
5 to a creditor or negotiated by the debt adjuster and paid by the debtor
6 to the creditor pursuant to a settlement negotiated by the debt
7 adjuster on behalf of the debtor as full and complete satisfaction of
8 the creditor's claim with regard to that debt.

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

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

17 (1) A debt adjuster may enroll a debtor in a debt adjusting
18 contract only if, after a written evaluation of the debtor's current
19 income, expenses, assets, and liabilities, the debt adjuster reasonably
20 concludes that the debt adjuster's services will provide a tangible net
21 benefit to the debtor and the debtor can afford the services. The
22 written evaluation must consider:

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

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

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

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

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

34 (b) The fee retained by the debt adjuster from any one payment made
35 by or on behalf of the debtor may not exceed fifteen percent of the
36 payment((-));

1 (c) The debt adjuster may make an initial charge of up to twenty-
2 five dollars which shall be considered part of the total fee. If an
3 initial charge is made, no additional fee may be retained which will
4 bring the total fee retained to date to more than fifteen percent of
5 the total payments made to date((-));

6 (d) No fee whatsoever shall be applied against rent and utility
7 payments for housing((-); and

8 (e) In the event of cancellation or default on performance of the
9 contract by the debtor prior to its successful completion, the debt
10 adjuster may collect in addition to fees previously received, six
11 percent of that portion of the remaining (~~indebtedness listed on said~~
12 ~~contract~~) enrolled debt which was due when the contract was entered
13 into, but not to exceed twenty-five dollars.

14 ((+2)) (3) A debt adjuster shall not be entitled to retain any fee
15 until notifying all creditors listed by the debtor that the debtor has
16 engaged the debt adjuster in a program of debt adjusting.

17 ((+3)) (4) Any debtor who received debt adjusting services from a
18 debt adjuster and did not receive a tangible net benefit as a result of
19 those services is entitled to void the debt adjustment contract, a
20 refund of any moneys paid to the debt adjuster, damages equal to the
21 monetary loss suffered by the debtor as a direct result of the debt
22 adjuster's services, and any other remedies provided by law.

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

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

27 (1) Any person or entity that provides debt adjusting services in
28 this state shall provide the following information annually to the
29 department of financial institutions by September 1, 2014, and
30 thereafter annually on September 1st:

31 (a) The number and percentage of Washington debtors for whom the
32 debt adjuster provides or provided debt adjusting services in the
33 previous year who became inactive in, cancelled, or terminated those
34 services without settlement of all of the debtor's debts, by year of
35 enrollment;

36 (b) The total fees collected from Washington debtors during the
37 previous year;

1 (c) For each debtor for whom the debt adjuster provides debt
2 adjusting services:

3 (i) The date of contracting;

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

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

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

9 (v) If a debt has been settled, the settlement amount of the debt
10 and the savings amount, calculated by subtracting the amount paid to
11 settle the debt from the principal amount of the debt at the time the
12 contract was signed; and

13 (vi) The total fees charged to the debtor and how the fees were
14 calculated;

15 (d) For Washington debtors who became inactive in, cancelled, or
16 terminated debt adjuster services during the previous year, the number
17 and percentage of debtors who, as measured by the aggregate amount of
18 each debtor's enrolled debts:

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

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

21 (iii) Settled twenty-five percent to fifty percent of their
22 enrolled debt;

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

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

27 (e) The number and percentage of Washington debtors for whom the
28 debt adjuster provides or provided debt adjusting services in the
29 previous three years who fully settled one hundred percent of their
30 enrolled debt through those debt adjusting services, by year of
31 enrollment.

32 (2) The department of financial institutions shall make public and
33 submit a report to the appropriate committees of the legislature
34 summarizing the information received under subsection (1) of this
35 section by December 1, 2014, and annually thereafter.

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

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

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

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

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

10 (2) The disclosure required by subsection (1) of this section must
11 also be provided to the debtor at least annually while the debt
12 adjuster is providing debt adjusting services or products to the
13 debtor.

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

16 A debt adjuster shall not:

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

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

22 (3) Lend money or credit;

23 (4) Take any confession of judgment or power of attorney to confess
24 judgment against the debtor or appear as the debtor in any judicial
25 proceedings;

26 (5) Take, concurrent with the signing of the contract or as a part
27 of the contract or as part of the application for the contract, a
28 release of any obligation to be performed on the part of the debt
29 adjuster;

30 (6) Advertise services, display, distribute, broadcast or televise,
31 or permit services to be displayed, advertised, distributed,
32 broadcasted or televised in any manner whatsoever wherein any false,
33 misleading or deceptive statement or representation with regard to the
34 services to be performed by the debt adjuster, or the charges to be
35 made therefor, is made;

36 (7) Offer, pay, or give any cash, fee, gift, bonus, premiums,

1 reward, or other compensation to any person for referring any
2 prospective customer to the debt adjuster;

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

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

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

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