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SENATE BILL 5527

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Hobbs, Mullet, and Baumgartner

Read first time 02/01/13. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to debt adjusting services; amending RCW 18.28.080,  
2 18.28.090, 18.28.110, 18.28.150, 18.28.165, and 18.28.190; reenacting  
3 and amending RCW 18.28.010; adding new sections to chapter 18.28 RCW;  
4 creating a new section; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 18.28.010 and 2012 c 56 s 1 are each reenacted and  
7 amended to read as follows:

8 Unless a different meaning is plainly required by the context, the  
9 following words and phrases as hereinafter used in this chapter shall  
10 have the following meanings:

11 (1) "Debt adjuster," which includes any person known as a debt  
12 pooler, debt manager, debt consolidator, debt prorater, or credit  
13 counselor, is any person engaging in or holding himself or herself out  
14 as engaging in the business of debt adjusting for compensation. The  
15 term shall not include:

16 (a) Attorneys-at-law licensed in Washington, escrow agents,  
17 accountants, broker-dealers in securities, or investment advisors in  
18 securities, while performing services solely incidental to the practice  
19 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  
11 credit 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) "Department" means the department of financial institutions.

30 (5) "Director" means the director of the department of financial  
31 institutions.

32 (6) "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)~~) (7) "Third-party account administrator" means an  
37 independent entity that holds or administers a dedicated bank account  
38 for fees and payments to creditors, debt collectors, debt adjusters, or

1 debt adjusting agencies in connection with the renegotiation,  
2 settlement, reduction, or other alteration of the terms of payment or  
3 other terms of a debt.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.28 RCW  
5 to read as follows:

6 (1) No person or entity may provide or attempt to provide debt  
7 adjusting services except as provided in subsection (2) of this  
8 section.

9 (2) A nonprofit social service agency or a nonprofit consumer  
10 credit counseling agency may provide debt adjusting services if the  
11 agency is licensed by the department under this chapter.

12 (3) An application for the issuance or renewal of a debt adjuster  
13 license must, at a minimum, include the following information:

14 (a) The name, business address, and telephone number of the  
15 applicant;

16 (b) The names under which the applicant will do business;

17 (c) If the applicant is not a corporation that is domiciled in this  
18 state, the name and contact information for the applicant's agent for  
19 service of process in this state;

20 (d) The name, address, and contact information for any individual  
21 or any corporation, partnership, or other business entity that owns ten  
22 percent or more of the applicant;

23 (e) Proof that the applicant is organized as a nonprofit social  
24 service agency or a nonprofit consumer credit counseling agency; and

25 (f) Any other relevant information required by the department.

26 (4) Applications for licensure must be made to the department on  
27 forms approved by the director. A license is valid for one year and  
28 must be renewed on or before the expiration date.

29 (5) The appropriate fees must accompany all applications for  
30 original licensure and renewal.

31 (6) Each applicant shall file and maintain a surety bond, approved  
32 by the director, executed by the applicant as obligor and by a surety  
33 company authorized to do a surety business in this state as surety,  
34 whose liability as the surety may not exceed in the aggregate the penal  
35 sum of the bond. The director shall establish the penal sum of the  
36 bond by rule. The bond must run to the state of Washington as obligee  
37 for the use and benefit of the state and of any person or persons who

1 may have a cause of action against the obligor under this chapter. The  
2 bond must be conditioned that: (a) The obligor will faithfully conform  
3 to and abide by this chapter and all the rules adopted under this  
4 chapter; and (b) the bond will pay to the state and any person or  
5 persons having a cause of action against the obligor all moneys that  
6 may become due and owing to the state and those persons under and by  
7 virtue of this chapter.

8 (7) An applicant whose application is denied may appeal under  
9 chapter 34.05 RCW.

10 **Sec. 3.** RCW 18.28.080 and 2012 c 56 s 2 are each amended to read  
11 as follows:

12 (1) By contract a debt adjuster may charge a reasonable fee for  
13 debt adjusting services. The total fee for debt adjusting services,  
14 including, but not limited to, any fee charged by a financial  
15 institution or a third-party account administrator, may not exceed  
16 fifteen ~~((percent of the total debt listed by the debtor on the~~  
17 ~~contract. The fee retained by the debt adjuster from any one payment~~  
18 ~~made by or on behalf of the debtor may not exceed fifteen percent of~~  
19 ~~the payment. The debt adjuster may make an initial charge of up to~~  
20 ~~twenty five dollars which shall be considered part of the total fee.~~  
21 ~~If an initial charge is made, no additional fee may be retained which~~  
22 ~~will bring the total fee retained to date to more than fifteen percent~~  
23 ~~of the total payments made to date))~~ dollars per month. No fee  
24 whatsoever shall be applied against rent and utility payments for  
25 housing.

26 ~~((In the event of cancellation or default on performance of the~~  
27 ~~contract by the debtor prior to its successful completion, the debt~~  
28 ~~adjuster may collect in addition to fees previously received, six~~  
29 ~~percent of that portion of the remaining indebtedness listed on said~~  
30 ~~contract which was due when the contract was entered into, but not to~~  
31 ~~exceed twenty five dollars.))~~

32 (2) A debt adjuster shall not be entitled to retain any fee until  
33 notifying all creditors listed by the debtor that the debtor has  
34 engaged the debt adjuster in a program of debt adjusting.

35 (3) The department ~~((of financial institutions))~~ has authority to  
36 enforce compliance with this section.

1       **Sec. 4.** RCW 18.28.090 and 1999 c 151 s 103 are each amended to  
2 read as follows:

3       (1) If a debt adjuster contracts for, receives or makes any charge  
4 in excess of the maximums permitted by this chapter, except as the  
5 result of an accidental and bona fide error, the debt adjuster's  
6 contract with the debtor shall be void and the debt adjuster shall  
7 return to the debtor the amount of all payments received from the  
8 debtor or on the debtor's behalf and not distributed to creditors.

9       (2) If a person or entity performs debt adjusting services in  
10 violation of this chapter, the contract with the debtor is void, and  
11 the person or entity shall return to the debtor the amount of all  
12 payments received from the debtor or on the debtor's behalf.

13       **Sec. 5.** RCW 18.28.110 and 1999 c 151 s 105 are each amended to  
14 read as follows:

15       Every debt adjuster shall perform the following functions:

16       (1) Make a permanent record of all payments by debtors, or on the  
17 debtors' behalf, and of all disbursements to creditors of such debtors,  
18 and shall keep and maintain in this state all such records, and all  
19 payments not distributed to creditors. No person shall intentionally  
20 make any false entry in any such record, or intentionally mutilate,  
21 destroy or otherwise dispose of any such record. Such records shall at  
22 all times be open for inspection by the department and the attorney  
23 general or the attorney general's authorized agent, and shall be  
24 preserved as original records or by microfilm or other methods of  
25 duplication for at least six years after making the final entry  
26 therein.

27       (2) Deliver a completed copy of the contract between the debt  
28 adjuster and a debtor to the debtor immediately after the debtor  
29 executes the contract, and sign the debtor's copy of such contract.

30       (3) Unless paid by check or money order, deliver a receipt to a  
31 debtor for each payment within five days after receipt of such payment.

32       ~~(4) ((Distribute to the creditors of the debtor at least once each~~  
33 ~~forty days after receipt of payment during the term of the contract at~~  
34 ~~least eighty five percent of each payment received from the debtor.~~

35       +5)) At least once every month render an accounting to the debtor  
36 which shall indicate the total amount received from or on behalf of the  
37 debtor, the total amount paid to each creditor, the total amount which

1 any creditor has agreed to accept as payment in full on any debt owed  
2 the creditor by the debtor, the amount of charges deducted, and any  
3 amount held in trust. The debt adjuster shall in addition render such  
4 an account to a debtor within ten days after written demand.

5 ~~((+6+))~~ (5) Notify the debtor, in writing, within five days of  
6 notification to the debt adjuster by a creditor that the creditor  
7 refuses to accept payment pursuant to the contract between the debt  
8 adjuster and the debtor.

9 NEW SECTION. **Sec. 6.** A new section is added to chapter 18.28 RCW  
10 to read as follows:

11 (1) The director may require a debt adjuster to file an annual  
12 report containing information regarding the debt adjusting services  
13 provided in the preceding calendar year. The department shall  
14 determine by rule the information to be provided in the annual report.  
15 The report must be submitted under oath and in the form and within the  
16 time specified by the director.

17 (2) Each debt adjuster shall have its financial records relating to  
18 debt adjusting services audited annually by a certified public  
19 accountant. The audit must be filed with the director.

20 (3) After reviewing the annual report and audit filed under this  
21 section, the director may cause an examination of the debt adjuster to  
22 be made, the actual expense of which must be paid by the debt adjuster.

23 (4) The debt adjuster shall make a copy of the annual report and  
24 audit available for public inspection at each of the debt adjuster's  
25 locations.

26 (5) The director shall compile the information provided in all  
27 annual reports filed under this section and make those results  
28 available to the public. This information may be published only in  
29 composite form. A debt adjuster's annual report must remain  
30 confidential and exempt from public disclosure under chapter 42.56 RCW.

31 **Sec. 7.** RCW 18.28.150 and 1999 c 151 s 109 are each amended to  
32 read as follows:

33 (1) Any payment received by a debt adjuster from or on behalf of a  
34 debtor shall be held in trust by the debt adjuster from the moment it  
35 is received. The debt adjuster shall not commingle such payment with  
36 the debt adjuster's own property or funds, but shall maintain a

1 separate trust account and deposit in such account all such payments  
2 received. All disbursements whether to the debtor or to the creditors  
3 of the debtor, or to the debt adjuster, shall be made from such  
4 account.

5 (2) In the event that the debtor cancels or defaults on the  
6 contract between the debtor and the debt adjuster, the debt adjuster  
7 shall close out the debtor's trust account in the following manner:

8 (a) The debt adjuster may take from the account that amount  
9 necessary to satisfy any fees(~~(, other than any cancellation or default~~  
10 ~~fee,~~) authorized by this chapter.

11 (b) After deducting the fees provided in subsection (2)(a) of this  
12 section, the debt adjuster shall distribute the remaining amount in the  
13 account to the creditors of the debtor. The distribution shall be made  
14 within five days of the demand therefor by the debtor, but if the  
15 debtor fails to make the demand, then the debt adjuster shall make the  
16 distribution within thirty days of the date of cancellation or default.

17 NEW SECTION. **Sec. 8.** A new section is added to chapter 18.28 RCW  
18 to read as follows:

19 The director may conduct disciplinary proceedings, impose  
20 sanctions, and assess fines in accordance with chapter 34.05 RCW for:

21 (1) Providing debt adjusting services without obtaining a license  
22 under this chapter;

23 (2) Contracting for, receiving, or making any charge in excess of  
24 the maximums permitted by this chapter, except as the result of an  
25 accidental and bona fide error; and

26 (3) Violating any provision of this chapter or any rule adopted  
27 under it.

28 NEW SECTION. **Sec. 9.** A new section is added to chapter 18.28 RCW  
29 to read as follows:

30 The department may adopt rules to:

31 (1) Administer and enforce this chapter; and

32 (2) Establish reasonable fees to be paid by debt adjusters for the  
33 expense of administering this chapter. The fees must be set at a  
34 sufficient level to defray the costs of administering this chapter.

1       **Sec. 10.** RCW 18.28.165 and 1999 c 151 s 110 are each amended to  
2 read as follows:

3       For the purpose of discovering violations of this chapter or  
4 securing information lawfully required under this chapter, the  
5 department and the office of the attorney general may at any time:  
6 Investigate the debt adjusting business and examine the books,  
7 accounts, records, and files used; have free access to the offices and  
8 places of business, books, accounts, papers, records, files, safes, and  
9 vaults of debt adjusters; and require the attendance of and examine  
10 under oath all persons whomsoever whose testimony might be required  
11 relative to such debt adjusting business or to the subject matter of  
12 any examination, investigation, or hearing.

13       **Sec. 11.** RCW 18.28.190 and 1999 c 151 s 111 are each amended to  
14 read as follows:

15       Any person who violates any provision of this chapter or aids or  
16 abets such violation, or any rule lawfully adopted under this chapter  
17 or any order made under this chapter, is guilty of a misdemeanor and is  
18 subject to a civil penalty of not less than five hundred dollars and  
19 not more than two thousand five hundred dollars for each violation.  
20 This penalty is in addition to any other remedies provided under law.

21       NEW SECTION.   **Sec. 12.** The provisions of this act do not  
22 invalidate or make unlawful contracts between debt adjusters and  
23 debtors executed prior to the effective date of this section.

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