

HOUSE BILL REPORT

SHB 1283

As Amended by the Senate

Title: An act relating to nonprofit organizations engaged in debt adjusting.

Brief Description: Concerning nonprofit organizations engaged in debt adjusting.

Sponsors: House Committee on Business & Financial Services (originally sponsored by Representatives Parker, Kirby and Vick).

Brief History:

Committee Activity:

Business & Financial Services: 1/21/15, 1/28/15 [DPS].

Floor Activity:

Passed House: 3/10/15, 98-0.

Senate Amended.

Passed Senate: 4/8/15, 49-0.

Brief Summary of Substitute Bill

- Permits nonprofit debt adjusters regulated by the Debt Adjusting Act to receive contributions from creditors of their clients.
- Requires nonprofit debt adjusters to report to the Department of Financial Institutions.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kirby, Chair; Ryu, Vice Chair; Vick, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Blake, G. Hunt, Hurst, Kochmar, McCabe, Santos and Stanford.

Staff: David Rubenstein (786-7153).

Background:

Debt Adjusting Act.

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.

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 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. The fee retained by a debt adjuster from any one payment made by a debtor may not exceed 15 percent of the payment. 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.

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.

Exemptions from the DAA.

Numerous entities are exempt from regulation under the DAA. Among them are nonprofit organizations engaged in debt adjusting that charge debtors a fee of not more than \$15 per month.

Also exempt from the DAA are attorneys, escrow agents, accountants, investment advisors, banks, and consumer loan companies, among others.

Summary of Substitute Bill:

The prohibition against receiving compensation from any person other than the debtor excludes fair share, defined to mean creditor contributions paid to nonprofit debt adjusters by the creditors whose consumers receive debt adjusting services and pay down their debts accordingly. Fair share does not include grants received for services unrelated to debt adjusting. The fee retained by a debt adjuster from any one payment made by a debtor may not exceed 15 percent of the payment, not including fair share.

Nonprofit debt adjusters or nonprofit organizations exempt from regulation must submit a report to the Department of Financial Institutions (DFI) each year for two years. The report must contain the following information:

- the number and percentage of debtor clients who terminated or otherwise became inactive in debt adjusting services and what percentage of his or her debt each debtor settled;
- the total fees collected from Washington debtors; and
- the total fair share collected.

The report must also contain the following information for each debtor client:

- the date of contracting;
- the number of debts included in the contract;
- the principal amount of each debt at the time the contract was signed;
- the source of each debtor's obligations (e.g., credit card, student loan, medical debt, etc.);
- whether each debt is active, terminated, or settled;
- the settlement amount of the debt, if any;
- the total fees charged to the debtor; and
- the organization's Form 990 submitted to the Internal Revenue Service or a statement of the organization's compensation provided to high-earning employees.

The DFI is required to summarize the information received, make the summary report public, and submit it to the Legislature each December until December 2017.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment allows any debt adjuster, for-profit or not-for-profit, to collect fair share payments from creditors. It adds a requirement that the debt adjuster disclose its acceptance of fair share and explain fair share to the debtor, but strikes the requirement that the debt adjuster report information to the DFI and the requirement that the DFI report to the Legislature. The Senate amendment changes the title such that it applies to all debt adjusters, for-profit and non-profit.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Nonprofit debt management organizations serve approximately 300,000 Washingtonians. However, rising costs and continued limitation on the fees they can charge have resulted in layoffs. For some organizations, out-of-state arms that are able to charge as much as \$50 are subsidizing costs in Washington, where costs per client are about \$3,800 per year. Some creditors defray costs with contributions, but others do not. If this bill does not pass, some nonprofit organizations will be forced to either withdraw from Washington or convert to for-profit enterprises and shift more costs to the clients because creditor contributions are not allowed under the DAA.

The language was changed from "per month" to "per payment" because some organizations permit their clients to pay late, so they sometimes receive two payments in a month. The rate was changed to \$50 because that is common in other states subscribing to the Uniform Debt Management Services Act.

(With concerns) The change from "per month" to "per payment" poses problems. It's reasonable to raise the rate, but to make the frequency of the fee ambiguous poses a risk to consumers. It also blurs the lines between who should be included in the DAA and who should not. Additionally, this committee is likely to see more issues come up in the future with respect to student loan debt and debt adjusting scams relating to it.

(Opposed) The bill, as written, would apply to anyone who comes under the exemption, not just the organizations present today. Unscrupulous companies could exploit this as a loophole. The focus should be building a balance between consumer protections and allowing good actors to help consumers escape debt. Further, it is important to keep the lines clear between those who are included in the DAA and those who are not. Litigation surrounding debt adjusting often focuses on whether the entity involved is covered by the DAA. In this case, the exception could swallow the rule. If the payments are made monthly, this would constitute a 333-percent increase, but if the payments are made weekly it could be much more. In the world of credit counseling, there are real benefits if it is done well, and perhaps the fee should be increased, but we must be cautious with changing the frequency of the fee.

Persons Testifying: (In support) Julie Griffith, Money Management International; and Kelly Perkins, Apprisen.

(With concerns) Bruce Neas, Columbia Legal Services.

(Opposed) Larry Shannon, Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: None.