

SENATE BILL REPORT

SHB 1283

As of March 20, 2015

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

Committee Activity: Financial Institutions & Insurance: 3/19/15.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Staff: Shani Bauer (786-7468)

Background: Debt adjusting is defined as (1) managing, counseling, settling, adjusting, pro-rating, or liquidating a debtor's indebtedness; or (2) 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 a debt adjuster specifically excludes the following:

1. attorneys, escrow agents, accountants, and investment advisors while performing services solely incidental to the practice of their professions;
2. persons doing business that is permitted by law related to banks, credit unions, trust companies, and insurance companies;
3. employees performing credit services for their employer;
4. public officers and persons acting under court order;
5. persons performing services incidental to the dissolution of a business entity; and
6. nonprofit organizations:
 - a. dealing exclusively with debts owing from commercial enterprises to business creditors; or
 - b. engaged in debt adjusting and which do not assess against the debtor a service charge in excess of \$15 per month.

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 Debt Adjusting Act regulates contract terms and prohibited actions of the debt adjuster in providing services to a debtor. Violation of the Debt Adjusting Act is a misdemeanor offense, and it is an unfair or deceptive act or practice under the Consumer Protection Act (CPA).

The act also limits the fees that may be charged by a debt adjuster. The total fee for debt adjusting services is capped at 15 percent of the debtor's total debt. Excess fees, except as a result of an accidental or bona fide error, 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.

Summary of Bill: Fair share is defined as creditor contributions paid to nonprofit 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. The 15 percent cap on fees charged by a nonprofit debt adjuster does not include fair share, and receiving fair share is not a prohibited activity.

A nonprofit organization engaged in debt adjusting must submit information to the Department of Financial Institutions (DFI) by June 30, 2016, and again on June 30, 2017, including the following:

- the number of debtors who terminated debt-adjusting services prior to settlement of all the debtor's debts;
- total fees collected from Washington debtors;
- total fair share contributions collected from creditors;
- detailed information regarding debt-adjusting contracts entered into and the resulting debt settlement from those contracts and fees charged;
- for debtors who terminated services, the percentage of the debtor's debt that was settled;
- the number of debtors in the past three years whose debt was fully settled; and
- the nonprofit organization's form 990 or other statement including compensation information for the organization's officers, directors, trustees, and employees.

DFI must make public the data received from nonprofit debt adjusters and submit reports to the Legislature no later than December 1, 2016, and again, on December 1, 2017.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: DFI has agreed to perform the reporting functions of this bill within existing funds. The associated work is minimal. Stakeholders have worked on this bill for the past three years. Nonprofit entities have a concern with the

reporting requirement in the House bill because it is very labor intensive. Staff has been reduced by two-thirds in the last year and this requirement will impact the services a nonprofit entity is able to provide.

Persons Testifying: PRO: Representative Parker, prime sponsor; Julie Griffith, Money Management International, Regional Director.

Persons Signed in to Testify But Not Testifying: No one.