

# SENATE BILL REPORT

## SB 5485

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As Reported by Senate Committee On:  
Financial Institutions & Insurance, February 12, 2015

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

**Brief Description:** Concerning nonprofit organizations engaged in debt adjusting. [**Revised for 1st Substitute:** Concerning debt adjusters.]

**Sponsors:** Senators Hobbs and Benton.

**Brief History:**

**Committee Activity:** Financial Institutions & Insurance: 2/05/15, 2/12/15 [DPS].

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** That Substitute Senate Bill No. 5485 be substituted therefor, and the substitute bill do pass.

Signed by Senators Benton, Chair; Angel, Vice Chair; Mullet, Ranking Minority Member; Darneille, Hobbs and Roach.

**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:

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- 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.

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 (Recommended Substitute):** Fair share is defined as creditor contributions paid to 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 debt adjuster does not include fair share, and receiving fair share is not a prohibited activity.

**EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE (Recommended Substitute):** Provisions are removed increasing the acceptable fee for a nonprofit debt adjuster from \$15 per month to \$50 per payment. Fair share is defined as creditor contributions paid to 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 debt adjuster does not include fair share and receiving fair share is not a prohibited activity.

The reference to nonprofit in the title is removed as provisions apply to both for profit and nonprofit debt adjusters.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Original Bill:** PRO: Nonprofit debt counselors provide important services to struggling debtors. They help low to moderate-income persons by providing counseling and financial education. Clients experience substantial benefits from these services. With fees allowed in Washington, we are not sure we will be able to

continue to operate in the state. Other states are currently subsidizing services in Washington. This amendment allows nonprofits to have parity with for-profit corporations. It costs a nonprofit \$1,800 per year to deliver services to a debtor, for which the nonprofit can only charge \$15 per month. Nonprofits serve 300,000 clients in the state among eight nonprofit agencies. Very few people qualify for a debt management plan because the debtor must have sufficient income to contribute to a plan. Only about 25 percent of clientele meet that requirement.

CON: We opposed the increase in fee from \$15 per month to \$50 per payment. There is no objection to the proposed substitute.

**Persons Testifying:** PRO: Senator Hobbs, prime sponsor; Kelly Perkins, Director, Apprisen; Michelle Blackmon, Director, Regulatory Compliance.

CON: Bruce Neas, Columbia Legal Services.