

SHB 1283 - S COMM AMD

By Committee on Financial Institutions & Insurance

ADOPTED 4/8/2015

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 18.28.010 and 2012 c 56 s 1 are each reenacted and  
4 amended to read as follows:

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

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

13 (a) Attorneys-at-law, escrow agents, accountants, broker-dealers  
14 in securities, or investment advisors in securities, while performing  
15 services solely incidental to the practice of their professions;

16 (b) Any person, partnership, association, or corporation doing  
17 business under and as permitted by any law of this state or of the  
18 United States relating to banks, consumer finance businesses,  
19 consumer loan companies, trust companies, mutual savings banks,  
20 savings and loan associations, building and loan associations, credit  
21 unions, crop credit associations, development credit corporations,  
22 industrial development corporations, title insurance companies,  
23 insurance companies, or third-party account administrators;

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

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

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

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

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

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

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

11 (4) "Financial institution" means any person doing business under  
12 the laws of any state or the United States relating to commercial  
13 banks, bank holding companies, savings banks, savings and loan  
14 associations, trust companies, or credit unions.

15 (5) "Third-party account administrator" means an independent  
16 entity that holds or administers a dedicated bank account for fees  
17 and payments to creditors, debt collectors, debt adjusters, or debt  
18 adjusting agencies in connection with the renegotiation, settlement,  
19 reduction, or other alteration of the terms of payment or other terms  
20 of a debt.

21 (6) "Fair share" means the creditor contributions paid to debt  
22 adjusters by the creditors whose consumers receive debt adjusting  
23 services from the debt adjusters and pay down their debt accordingly.  
24 "Fair share" does not include grants received by debt adjusters for  
25 services unrelated to debt adjusting.

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

28 (1) By contract a debt adjuster may charge a reasonable fee for  
29 debt adjusting services. The total fee for debt adjusting services,  
30 including, but not limited to, any fee charged by a financial  
31 institution or a third-party account administrator, may not exceed  
32 fifteen percent of the total debt listed by the debtor on the  
33 contract. The fee retained by the debt adjuster from any one payment  
34 made by or on behalf of the debtor may not exceed fifteen percent of  
35 the payment not including fair share. The debt adjuster may make an  
36 initial charge of up to twenty-five dollars which shall be considered  
37 part of the total fee. If an initial charge is made, no additional  
38 fee may be retained which will bring the total fee retained to date  
39 to more than fifteen percent of the total payments made to date. No

1 fee whatsoever shall be applied against rent and utility payments for  
2 housing.

3 In the event of cancellation or default on performance of the  
4 contract by the debtor prior to its successful completion, the debt  
5 adjuster may collect in addition to fees previously received, six  
6 percent of that portion of the remaining indebtedness listed on said  
7 contract which was due when the contract was entered into, but not to  
8 exceed twenty-five dollars.

9 (2) A debt adjuster who receives fair share must disclose this in  
10 writing, along with an explanation of fair share, to the debtor prior  
11 to accepting any fair share.

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

15 ~~((3))~~ (4) The department of financial institutions has  
16 authority to enforce compliance with this section.

17 **Sec. 3.** RCW 18.28.120 and 1999 c 151 s 106 are each amended to  
18 read as follows:

19 A debt adjuster shall not:

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

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

25 (3) Lend money or credit;

26 (4) Take any confession of judgment or power of attorney to  
27 confess judgment against the debtor or appear as the debtor in any  
28 judicial proceedings;

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

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

1 (7) Offer, pay, or give any cash, fee, gift, bonus, premiums,  
2 reward, or other compensation to any person for referring any  
3 prospective customer to the debt adjuster;

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

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

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13 On page 1, line 1 of the title, after "Relating to" strike the  
14 remainder of the title and insert "debt adjusters; amending RCW  
15 18.28.080 and 18.28.120; and reenacting and amending RCW 18.28.010."

EFFECT: Nonprofit and for-profit debt adjusters may receive fair share payments. Provisions requiring nonprofit debt adjusters to report information and data to the department of financial institutions (DFI) and requiring DFI to present a summary report of the information to the legislature are removed. Prior to accepting a fair share payment, a debt adjuster must provide the debtor with an explanation about fair share and disclose the payment. The title is amended.

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