

SB 6155 - S AMD 82

By Senators Kilmer, Benton, Fain, Hobbs

ADOPTED 02/11/2012

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

3 "Sec. 1. RCW 18.28.010 and 1999 c 151 s 101 are each amended to
4 read as follows:

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

8 (1) "Debt adjusting" means the managing, counseling, settling,
9 adjusting, prorating, or liquidating of the indebtedness of a debtor,
10 or receiving funds for the purpose of distributing said funds among
11 creditors in payment or partial payment of obligations of a debtor.

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

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

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

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

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

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

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

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

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

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

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

23 **Sec. 2.** RCW 18.28.080 and 1999 c 151 s 102 are each amended to
24 read as follows:

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

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

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

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.230 RCW
11 to read as follows:

12 (1) A third-party account administrator must be licensed as a money
13 transmitter under this chapter and comply with the following additional
14 requirements:

15 (a) A debtor's funds must be held in an account at an insured
16 financial institution;

17 (b) A debtor owns the funds held in the account and must be paid
18 accrued interest on the account, if any;

19 (c) A third-party account administrator may not be owned or
20 controlled by, or in any way affiliated with, a debt adjuster;

21 (d) A third-party account administrator may not give or accept any
22 money or other compensation in exchange for referrals of business
23 involving a debt adjuster;

24 (e) A debtor may withdraw from the service provided by a third-
25 party account administrator at any time without penalty and must
26 receive all funds in the account, other than funds earned by a debt
27 adjuster in compliance with chapter 18.28 RCW, within seven business
28 days of the debtor's request; and

29 (f) A contract between a third-party account administrator and a
30 debtor must disclose in precise terms the rate and amount of all
31 charges and fees.

32 (2) The legislature finds and declares that any violation of this
33 section substantially affects the public interest and is an unfair and
34 deceptive act or practice and unfair method of competition in the
35 conduct of trade or commerce as set forth in RCW 19.86.020. In
36 addition to all remedies available in chapter 19.86 RCW, a person

1 injured by a violation of this section may bring a civil action to
2 recover the actual damages proximately caused by a violation of this
3 section, or one thousand dollars, whichever is greater.

4 (3) For purposes of this section:

5 (a) "Debt adjuster" has the same meaning as that term is defined in
6 RCW 18.28.010;

7 (b) "Third-party account administrator" means an entity that holds
8 or administers a dedicated bank account for fees and payments to
9 creditors or debt collectors in connection with the renegotiation,
10 settlement, reduction, or other alteration of the terms of payment or
11 other terms of a debt.

12 NEW SECTION. **Sec. 4.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected."

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16 On page 1, line 1 of the title, after "Relating to" strike the
17 remainder of the title and insert "third-party account administrators;
18 amending RCW 18.28.010 and 18.28.080; and adding a new section to
19 chapter 19.230 RCW."

EFFECT: (1) "Third-party account administrator" is defined. They
are not considered debt adjusters provided that they are licensed as
money transmitters and meet other specified requirements.

(2) The total fee for debt adjusting services cannot exceed 15
percent of the consumer's total listed debt. This fee includes fees
that may be charged by financial institutions or third-party account
administrators.

(3) A new section is added to the money transmitter statute regarding third-party account administrators and specifies they are subject to a per se violation of the Consumer Protection Act, and a person injured by a violation of the third-party account administrator statute may also bring a civil action to recover actual damages, or one thousand dollars, whichever is greater.

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