

HOUSE BILL REPORT

HB 2383

As Reported by House Committee On:
Business & Financial Services

Title: An act relating to the definition of debt adjuster.

Brief Description: Concerning the definition of debt adjusters.

Sponsors: Representatives Kelley, Dammeier, Kirby, Bailey, Ladenburg, Zeiger and Jinkins.

Brief History:

Committee Activity:

Business & Financial Services: 1/23/12, 1/24/12, 1/26/12, 1/27/12, 1/31/12 [DPS].

Brief Summary of Substitute Bill

- Exempts third-party account administrators from regulation as debt adjusters.
- Provides that the total permissible fee for debt adjusting services include fees charged by a financial institution and a third-party account administrator.
- Imposes requirements on third-party account administrators, including requirements related to licensing as a money transmitter, the amount and timing of fees and payments, relationships with debt adjusters, contract disclosures, and withdrawal from the service.
- Provides that violation of the requirements imposed on third-party account administrators is a violation of the Consumer Protection Act.

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; Kelley, Vice Chair; Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Blake, Hudgins, Hurst, Kretz, Pedersen, Rivers and Ryu.

Minority Report: Do not pass. Signed by 1 member: Representative Condotta.

Staff: Alexa Silver (786-7190).

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.

Background:

Regulation of Debt Adjusting.

Washington law regulates "debt adjusting," which 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 "debt adjuster" excludes: attorneys, escrow agents, accountants, and investment advisors while performing services solely incidental to the practice of their professions; banks, credit unions, trust companies, and insurance companies; employees performing credit services for their employer; public officers and persons acting under court order; persons performing services incidental to the dissolution of a business entity; and certain nonprofit organizations.

By statute, 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. 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.

Violation of the law constitutes a misdemeanor offense, as well as an unfair or deceptive act or practice under the Consumer Protection Act (CPA), which provides for treble damages.

In May 2011 the Washington State Supreme Court held that a company engaged in debt adjusting by receiving debtors' funds into a custodial account and disbursing the funds to creditors after a debt settlement company negotiated a settlement.

Federal Telemarketing Sales Rule.

The federal Telemarketing Sales Rule, 16 C.F.R. Part 310, defines deceptive and abusive telemarketing sales practices. The rule defines abusive telemarketing practices to include receiving a fee for debt relief services if certain requirements are not met. This includes a requirement that the customer make at least one payment pursuant to a settlement agreement. The rule allows a company to require the customer to place funds in an account for payments to creditors if: the funds are held in an insured financial institution; the customer owns the funds and is paid any accrued interest; the entity that administers the account is not affiliated with the debt relief service; the entity administering the account does not pay for referrals from the debt relief service; and the customer may withdraw from the debt relief service without penalty.

Summary of Substitute Bill:

Regulation of Debt Adjusting.

Third-party account administrators that provide payment processing are exempt from the definition of "debt adjuster." The total fees for debt adjusting services, which may not exceed 15 percent, include any fee charged by a financial institution or a third-party account administrator that provides payment processing.

A "third-party account administrator" is an entity that holds or administers a dedicated bank account for fees and payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt. A "financial institution" is a person doing business under state or federal law relating to commercial banks, bank holding companies, savings banks, savings and loan associations, trust companies, or credit unions.

Regulation of Money Transmitters.

Third-party account administrators that provide payment processing must be licensed as money transmitters and comply with the following requirements:

- The total fee for debt adjusting services, including any fee charged by a financial institution or a third-party account administrator, may not exceed 15 percent of the debtor's total debt.
- A financial institution and third-party account administrator must distribute to the debtor's creditors at least once each 40 days after receipt of payment at least 85 percent of the payment received.
- A financial institution or third-party account administrator may only charge the debtor a fee after the debtor has made at least one payment pursuant to a settlement agreement.
- The debtor's funds must be held in an account at an insured financial institution. The debtor owns the funds held in the account and must be paid any interest that accrues.
- A third-party account administrator may not be owned or controlled by or in any way affiliated with a debt adjuster. A third-party account administrator may not give or accept compensation for referrals from a debt adjuster.
- A debtor may withdraw from the service at any time without penalty and must receive all funds in the account, other than funds earned by a debt adjuster in compliance with the Debt Adjusting Act, within seven business days.
- A contract between a third-party account administrator and a debtor must disclose in precise terms the rate and amount of all charges and fees.

Violation of these requirements constitutes an unfair or deceptive act or practice in the conduct of trade or commerce under the CPA.

Substitute Bill Compared to Original Bill:

The substitute bill adds the requirements related to regulation of third-party account administrators as money transmitters. It adds financial institutions and third-party account administrators to the statute capping total fees for debt adjusting services at 15 percent. It also provides definitions and changes the terminology used from "independent entities that administer and hold a dedicated bank account" to "third-party account administrators that provide payment processing."

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill would remove a conflict between a Federal Trade Commission (FTC) rule and a Supreme Court decision. Payment processing for contracts, including debt relief contracts, is a specific niche. The FTC put some form around the industry when it enacted a rule in 2010. Companies that take a conservative approach to complying with the rule require that a debt be settled before disbursing fees. In May 2011 the Supreme Court issued a surprising ruling that found that payment processors are debt adjusters. The statute should be aligned with the FTC rule to treat payment processors as separate from debt adjusters. Payment processors already hold three licenses in Washington. They are not debt adjusters, because they do not settle debt or negotiate with credit card companies. The fee structure of the debt adjuster laws are not a concern, but the vagueness leaves companies susceptible to litigation. Based on this case, one company that had been growing has stopped doing business in Washington and has reduced staff. There is a need for an objective, third-party payment processor. Washington consumers have less protection than they had before the ruling.

(Opposed) None.

Persons Testifying: Representative Kelley, prime sponsor; and Linda Remsberg, Meracord.

Persons Signed In To Testify But Not Testifying: None.