

SENATE BILL REPORT

SB 6155

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, January 25, 2012

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

Brief Description: Concerning the definition of debt adjusters.

Sponsors: Senators Kilmer, Carrell, Hobbs, Kastama, Regala, Fain, Conway and Keiser.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/18/12, 1/25/12 [DPS].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 6155 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Benton, Ranking Minority Member; Fain, Haugen and Keiser.

Staff: Alison Mendiola (786-7483)

Background: State Statute. Under RCW 18.28.010(1), debt adjusting means the managing, counseling, settling, prorating, or liquidating of the indebtedness of the debtor, or receiving funds for the purpose of distributing said funds among creditors in payment, or partial payment of obligations of a debtor.

In a recent State Supreme Court case, *Carlsen v. Global Client Solutions*, the court found that third-party payment servicers are debt adjusters and thus subject to the debt adjusting statute. A number of entities are excluded from the debt adjusting statute, including non-profits engaged in debt adjusting so long as the consumer is not charged a service fee in excess of \$15 a month. A violation of the debt adjusting statute is a per se violation of the Consumer Protection Act

Federal law. The Federal Trade Commission (FTC) is tasked with protecting consumers against unfair, deceptive, or fraudulent practices in the marketplace, among other things. Through recent changes in Telephone Sales Rule (TSR) (16 C.F.R. Part 310) the FTC asserted that independent entities that hold or administer a dedicated bank account who meet specified criteria may charge the consumer directly for the account. Otherwise, under the

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TSR debt adjusters may not charge a consumer for its services until a debt settlement is reached.

DFI regulates money services businesses (money transmitters and currency exchangers) under the Uniform Money Services Act. Money transmission is the receipt of money for the purpose of transmitting or delivering the money to another location, whether inside or outside the United States. The transmission or delivery of the money can take place by any means, including wire, facsimile, or electronic transfer.

Summary of Bill (Recommended Substitute): Independent entities that are licensed money transmitters and that hold or administer a dedicated bank account as provided for the under the FTC's TSR are not considered debt adjusters under 18.28 RCW.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Substitute): To be exempt from the debt adjusting statute, chapter 18.28 RCW, an independent entity that holds or administers a dedicated bank account as provided for under the FTC's TSR must also be licensed as a money transmitter. The federal citation is more specific.

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: PRO: A recent State Supreme Ruling held that third party account administrators are debt adjusters, and thus subject to Chapter 18.28 RCW. This bill carves out a small exemption for third-party account administrators and treats them as the feds do. Meracord is a thirty-year-old Tacoma-based business and they've had to lay off many employees as a result of this ruling. Meracord used to employ 150 people but had to lay off 50 and are continuing to provide third-party account administration for current clients for free. The FTC has called out the responsibilities of debt adjusters but specifically excluded third-party account administrators. Despite having escrow, money transmitters, and consumer loan act licensees, they are considered debt adjusters which doesn't accurately describe the business that they do. This bill would mirror the federal treatment of third-party account administrators.

Persons Testifying: PRO: Senator Kilmer, prime sponsor; Linda Remsberg, Owner/CEO Meracord.