

FINAL BILL REPORT

ESB 6155

C 56 L 12
Synopsis as Enacted

Brief Description: Concerning third-party account administrators.

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

Senate Committee on Financial Institutions, Housing & Insurance
House Committee on Business & Financial Services

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 (CPA).

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

The Department of Financial Institutions (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.

Consumer Protection Act. The CPA prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce. The Attorney General may bring an action to enforce the provisions of the CPA. In addition, the CPA allows a person

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.

injured by a violation of the CPA to bring a private cause of action for actual damages, costs, attorneys' fees, and treble damages.

Summary: Debt adjusters. The 15 percent cap on fees that a debt adjuster may charge a debtor is clarified to also cover all fees including, but not limited, to fees assessed by financial institutions and third-party account administrators. It is clarified that third-party account administrators who are money transmitters are not debt adjusters. DFI is granted the authority to enforce this statutory cap on fees.

Any person or entity providing debt adjusting services in this state is to provide DFI with specified information by September 1, 2012. DFI is to summarize the information received and submit a report to the Legislature by December 1, 2012.

Third-Party Account Administrators (TPAA). Under the money transmitter statute, TPAAAs must follow specific requirements when working with debt adjusters. TPAAAs must be licensed as money transmitters and comply with the following requirements from the federal Telemarketing Sales Rule:

- the debtor's funds must be held in an account at an insured financial institution;
- the debtor owns the funds in the account, as well as 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 involving a debt adjusters; and
- a debtor may withdraw from the service without penalty and receives all funds in the account within seven business days.

Additionally, certain records must be kept for five years and the books of TPAAAs are open to inspection by DFI.

Also, a contract between a TPAA and a debtor must disclose the rate and amount of all charges and fees and include a statement regarding the 15 percent cap law under the Debt Adjuster statute.

Violation of these requirements constitutes a per se violation of the CPA. In addition, an injured person may bring a civil action to recover \$1,000 or actual damages, whichever is greater.

Votes on Final Passage:

Senate	46	1	
House	97	0	(House amended)
Senate	45	0	(Senate concurred)

Effective: June 7, 2012