

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6155

62nd Legislature
2012 Regular Session

Passed by the Senate March 3, 2012
YEAS 45 NAYS 0

President of the Senate

Passed by the House March 1, 2012
YEAS 97 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6155** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6155

AS AMENDED BY THE HOUSE

Passed Legislature - 2012 Regular Session

State of Washington **62nd Legislature** **2012 Regular Session**

By Senators Kilmer, Carrell, Hobbs, Kastama, Regala, Fain, Conway, and Keiser

Read first time 01/12/12. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to third-party account administrators; amending RCW
2 18.28.010 and 18.28.080; adding new sections to chapter 19.230 RCW; and
3 creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 18.28.010 and 1999 c 151 s 101 are each amended to
6 read as follows:

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

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

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

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

4 (b) Any person, partnership, association, or corporation doing
5 business under and as permitted by any law of this state or of the
6 United States relating to banks, consumer finance businesses, consumer
7 loan companies, trust companies, mutual savings banks, savings and loan
8 associations, building and loan associations, credit unions, crop
9 credit associations, development credit corporations, industrial
10 development corporations, title insurance companies, ~~((or))~~ insurance
11 companies, or third-party account administrators;

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

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

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

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

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

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

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

32 (5) "Third-party account administrator" means an independent entity
33 that holds or administers a dedicated bank account for fees and
34 payments to creditors, debt collectors, debt adjusters, or debt
35 adjusting agencies in connection with the renegotiation, settlement,
36 reduction, or other alteration of the terms of payment or other terms
37 of a debt.

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

3 (1) By contract a debt adjuster may charge a reasonable fee for
4 debt adjusting services. The total fee for debt adjusting services,
5 including, but not limited to, any fee charged by a financial
6 institution or a third-party account administrator, may not exceed
7 fifteen percent of the total debt listed by the debtor on the contract.
8 The fee retained by the debt adjuster from any one payment made by or
9 on behalf of the debtor may not exceed fifteen percent of the payment.
10 The debt adjuster may make an initial charge of up to twenty-five
11 dollars which shall be considered part of the total fee. If an initial
12 charge is made, no additional fee may be retained which will bring the
13 total fee retained to date to more than fifteen percent of the total
14 payments made to date. No fee whatsoever shall be applied against rent
15 and utility payments for housing.

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

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

25 (3) The department of financial institutions has authority to
26 enforce compliance with this section.

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

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

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

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

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

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

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

9 (f) A contract between a third-party account administrator and a
10 debtor must disclose in precise terms the rate and amount of all
11 charges and fees. In addition, the contract must include a statement
12 that is substantially similar to the following: "Under the Washington
13 Debt Adjusting Act, the total fees you are charged for debt adjusting
14 services may not exceed fifteen percent of the total amount of debt you
15 listed on your contract with the debt adjuster. This includes fees
16 charged by a debt adjuster, a third-party account administrator, and a
17 financial institution." The disclosures required by this subsection
18 (1)(f) must be on the front page of the contract and must be in at
19 least twelve-point type.

20 (2) The legislature finds and declares that any violation of this
21 section substantially affects the public interest and is an unfair and
22 deceptive act or practice and unfair method of competition in the
23 conduct of trade or commerce as set forth in RCW 19.86.020. In
24 addition to all remedies available in chapter 19.86 RCW, a person
25 injured by a violation of this section may bring a civil action to
26 recover the actual damages proximately caused by a violation of this
27 section, or one thousand dollars, whichever is greater.

28 (3) For purposes of this section and section 4 of this act:

29 (a) "Debt adjuster" has the same meaning as defined in RCW
30 18.28.010;

31 (b) "Third-party account administrator" means an independent entity
32 that holds or administers a dedicated bank account for fees and
33 payments to creditors, debt collectors, debt adjusters, or debt
34 adjusting agencies in connection with the renegotiation, settlement,
35 reduction, or other alteration of the terms of payment or other terms
36 of a debt. "Third-party account administrator" does not include an
37 entity that is otherwise exempt from this chapter under RCW 19.230.020.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.230 RCW
2 to read as follows:

3 (1) A third-party account administrator shall maintain the
4 following records for at least five years:

5 (a) All contracts the third-party account administrator has entered
6 into with debtors and debt adjusters;

7 (b) Account statements identifying and itemizing deposits,
8 transfers, disbursements, and fees; and

9 (c) Any other records required in rule by the director.

10 (2) All records maintained by the third-party account administrator
11 are open to inspection by the director or the director's designee.

12 NEW SECTION. **Sec. 5.** (1) Any person or entity that provides debt
13 adjusting services, as defined in RCW 18.28.010, in this state shall
14 provide the following information to the department of financial
15 institutions by September 1, 2012:

16 (a) The percentage of Washington debtors for whom the debt adjuster
17 provides or provided debt adjusting services in the previous three
18 years who canceled, terminated, or otherwise stopped using the debt
19 adjuster's services without settlement of all of the debtor's debts;

20 (b) The total fees collected from Washington debtors during the
21 previous three years; and

22 (c) For each debtor for whom the debt adjuster provides debt
23 adjusting services:

24 (i) The number of debts included in the contract between the debt
25 adjuster and the debtor;

26 (ii) The principal amount of each debt at the time the contract was
27 signed;

28 (iii) Whether each debt is active, terminated, or settled;

29 (iv) If a debt has been settled, the settlement amount of the debt
30 and the savings amount; and

31 (v) The total fees charged to the debtor and how the fees were
32 calculated.

33 (2) The department of financial institutions shall submit a report
34 to the appropriate committees of the legislature summarizing the
35 information received under subsection (1) of this section by December
36 1, 2012.

1 NEW SECTION. **Sec. 6.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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