
Business & Financial Services Committee

HB 2383

Brief Description: Concerning the definition of debt adjusters.

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

Brief Summary of Bill

- Exempts independent entities that hold or administer a dedicated bank account from regulation as debt adjusters.

Hearing Date: 1/23/12

Staff: Alexa Silver (786-7190).

Background:

Regulation of Debt Adjusters in Washington

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.

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.

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, 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 the sale of debt relief services if certain requirements are not met. 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 Bill:

The term "debt adjuster" does not include independent entities that hold or administer a dedicated bank account as provided in the federal Telemarketing Sales Rule.

Appropriation: None.

Fiscal Note: Not requested.

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