

HOUSE BILL REPORT

ESB 6155

As Reported by House Committee On:
Business & Financial Services

Title: An act relating to third-party account administrators.

Brief Description: Concerning third-party account administrators.

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

Brief History:

Committee Activity:

Business & Financial Services: 2/16/12, 2/21/12 [DP].

Brief Summary of Engrossed Bill

- Provides that, for purposes of the Debt Adjusting Act, the term "debt adjuster" does not include third-party account administrators.
- Includes any fee charged by a financial institution or a third-party account administrator in the total permissible fee for debt adjusting services.
- Requires that third-party account administrators be licensed as money transmitters and comply with other specified requirements.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 7 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Blake, Hurst and Rivers.

Minority Report: Do not pass. Signed by 6 members: Representatives Condotta, Hudgins, Kretz, Pedersen, Ryu and Stanford.

Staff: Alexa Silver (786-7190).

Background:

Regulation of Debt Adjusting.

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.

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.

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 Debt Adjusting Act constitutes a misdemeanor offense, as well as an unfair or deceptive act or practice under the Consumer Protection Act (CPA).

In May 2011 the 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 defines abusive telemarketing sales practices to include receiving a fee for debt relief services if certain requirements are not met. However, it allows a company to require a customer to place funds in an account to be used for debt relief fees and payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of a debt. The company must meet the following requirements: 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.

Regulation of Money Transmitters.

The Department of Financial Institutions (DFI) licenses money transmitters under the Uniform Money Services Act. Money transmission is the receipt of money for the purpose of transmitting or delivering it to another location. Licensing as a money transmitter includes an examination of the applicant's background, financial profile, experience, competence, character, and general fitness. Money transmitters are subject to bonding and net worth requirements. In addition, money transmitters must comply with the following requirements regarding customer service:

- money must be transmitted to the designated recipient within 10 days of receipt, unless otherwise ordered by the customer;
- customers must be provided with a receipt showing the details of the transaction, including any fees; and
- subject to certain conditions, refunds must be provided within 10 days of receipt of a written request from a customer.

Money transmitters are prohibited from employing any scheme to defraud or mislead any person and from engaging in unfair or deceptive acts or practices. The DFI has broad authority to conduct examinations and investigations of money transmitters.

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

Summary of Bill:

Regulation of Debt Adjusting.

For purposes of the Debt Adjusting Act, the term "debt adjuster" does not include third-party account administrators.

The total fees for debt adjusting services, which may not exceed 15 percent of the debtor's total debt, include, but are not limited to, any fee charged by a financial institution or a third-party account administrator.

A "third-party account administrator" is defined as 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 a debt. A "financial institution" means any state or federally chartered commercial bank, bank holding company, savings bank, savings and loan association, trust company, or credit union.

Regulation of Third-Party Account Administrators.

Third-party account administrators must be licensed as money transmitters and comply with the following requirements from the federal Telemarketing Sales Rule:

- A 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.
- A debtor may withdraw from the service without penalty and receives all funds in the account (except funds earned by a debt adjuster) within seven business days.

In addition, a contract between a third-party account administrator and a debtor must disclose the rate and amount of all charges and fees.

Violation of these requirements constitutes an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce under the CPA. All the remedies of the CPA are available to a person injured by a violation of the requirements. In addition, an injured person may bring a civil action to recover actual damages or \$1,000, whichever is greater.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) A recent court case threw third-party account administrators into the mix with debt adjusters. This impacted a company from downtown Tacoma, which had to lay people off as a result of the lack of clarity. The purposes of this bill are to achieve greater regulatory clarity and provide legal confidence. The bill maintains important consumer protections. It ensures oversight from the DFI, spells out requirements from the federal Telemarketing Sales Rule, clarifies the total costs to the consumer, and adds additional protection for consumers through application of the CPA to the requirements of third-party account administrators. It had strong support coming out of the Senate.

(In support with amendments) It makes sense to modernize the regulatory scheme by separating out third-party account administrators. However, there are some remaining concerns. A potential loophole related to the 15 percent cap on fees should be closed. The House version was preferable because it added the pay-to-play requirement, but that is also regulated by federal law. The debt adjuster side of this issue should be examined over the interim. In a court case related to debt adjusters, statistics indicated that over half the consumers whose files were uncovered made payments, but none of their money went to their creditors.

(In support with concerns) There are a lot of concerns regarding this industry. The 15 percent cap on fees that the Legislature enacted years ago should be maintained for the consumer, and the industry as a whole should not exceed that cap. Whether the cap is too high or too low can be discussed at a later time.

(Opposed) None.

Persons Testifying: (In support) Senator Kilmer, prime sponsor; Linda Remsberg, Meracord; and Michael Transue, Tacoma-Pierce County Chamber of Commerce.

(In support with amendments) Larry Shannon, Washington State Association of Justice.

(In support with concerns) Bruce Neas, Columbia Legal Services.

Persons Signed In To Testify But Not Testifying: None.