6155.E AMH KELL SILV 203

**ESB 6155** - H AMD **1280**

By Representative KelleyBy Representative KelleyBy Representative Kelley

**ADOPTED 03/01/2012**

 Strike everything after the enacting clause and insert the following:

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

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

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

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

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

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

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

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

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

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

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

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

 (4) "Financial institution" means any person doing business under the laws of any state or the United States relating to commercial banks, bank holding companies, savings banks, savings and loan associations, trust companies, or credit unions.
 (5) "Third-party account administrator" means an independent entity that holds or administers a dedicated bank account for fees and payments to creditors, debt collectors, debt adjusters, or debt adjusting agencies in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 Correct the title.

|  |  |
| --- | --- |
|  |  EFFECT:   Grants the Department of Financial Institutions (DFI) authority to enforce the statutory restrictions on the fees that may be charged for debt adjusting services.Requires a contract between a third-party account administrator and a debtor to provide a statement regarding the 15 percent cap on fees under the Debt Adjusting Act.Requires third-party account administrators to maintain certain records for a period of five years. Provides that the records are open to inspection by the DFI. Requires any person or entity providing debt adjusting services in the state to provide the DFI with specified information by September 1, 2012. Requires the DFI to submit a report summarizing that information to the Legislature by December 1, 2012.Modifies the definition of "third-party account administrator" to mean an independent entity that holds or administers an account for fees to debt adjusters and debt adjusting agencies, in addition to payments to creditors and debt collectors. Clarifies that entities exempt from the Uniform Money Services Act are not included in the definition of "third-party account administrator." |

**--- END ---**