

SENATE BILL REPORT

ESB 6155

As Amended by House, March 1, 2012

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: Financial Institutions, Housing & Insurance: 1/18/12, 1/25/12 [DPS].

Passed Senate: 2/11/12, 46-1.

Passed House: 3/01/12, 97-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 6155 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Benton, Ranking Minority Member; Fain, Haugen and Keiser.

Staff: Alison Mendiola (786-7483)

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

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

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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.

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 (CPA). 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 Engrossed Bill: 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.

Third-Party Account Administrators. Under the money transmitter statute, third-party account administrators must follow specific requirements when working with debt adjusters. Third-party account administrators 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.

Also, 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 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.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: A recent State Supreme Ruling held that third party account administrators are debt adjusters, and thus subject to Chapter 18.28 RCW. This bill carves out a small exemption for third-party account administrators and treats them as the feds do. Meracord is a thirty-year-old Tacoma-based business and they've had to lay off many employees as a result of this ruling. Meracord used to employ 150 people but had to lay off 50 and are continuing to provide third-party account administration for current clients for free. The FTC has called out the responsibilities of debt adjusters but specifically excluded third-party account administrators. Despite having escrow, money transmitters, and consumer loan act licensees, they are considered debt adjusters which doesn't accurately describe the business that they do. This bill would mirror the federal treatment of third-party account administrators.

Persons Testifying: PRO: Senator Kilmer, prime sponsor; Linda Remsberg, Owner/CEO Meracord.

House Amendment(s):

- 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 five years.
- Provides that records are open to inspection by DFI.
- Requires that any person or entity providing debt adjusting services in the state to provide DFI with specified information by September 1, 2012, and that DFI submit a report to the Legislature summarizing that information 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.