

House Bill 369

By: Representatives Ashe of the 42nd, Post 2, Ehrhart of the 28th and Jackson of the 124th,
Post 1

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 18 of the Official Code of Georgia Annotated, relating to debt
2 adjustment, so as to limit the maximum charge that may be imposed for the provision of debt
3 adjustment services; to provide for exemptions from those provisions related to debt
4 adjustment; to require persons engaged in the business of debt adjustment to obtain an annual
5 audit of all accounts and to maintain a certain amount and type of insurance coverage; to
6 provide for the disbursement of a debtor's funds within 30 days of receipt; to require persons
7 engaged in the business of debt adjustment to maintain trust accounts for debtors' funds; to
8 provide for civil and criminal violations and penalties; to provide for investigation and
9 enforcement; to provide for related matters; to provide for an effective date; to repeal
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 5 of Title 18 of the Official Code of Georgia Annotated, relating to debt adjustment,
14 is amended by striking Code Section 18-5-2, relating to the prohibition of debt adjusting, and
15 inserting in its place the following:

16 "18-5-2.

17 It shall be unlawful for any person to ~~engage in the business of debt adjusting~~ impose upon
18 a debtor resident of this state either directly or indirectly any charge or fee, other than a
19 reasonable charge for insufficient fund checks, or to receive any contribution of any kind
20 for any purpose whatsoever from a debtor an amount in excess of 7.5 percent of the amount
21 paid monthly by a debtor to such person for distribution to creditors."

22 style="text-align:center">**SECTION 2.**

23 Said chapter is further amended by striking Code Section 18-5-3, relating to exemption for
24 incidental debt adjustment in the practice of law, and inserting in its place the following:

1 "18-5-3.
 2 Nothing in this chapter shall apply to those situations involving debt adjusting incurred
 3 incidentally in the practice of law in this state. Nothing in this chapter shall apply to those
 4 persons who incidentally engage in debt adjusting in consideration of having received from
 5 a debtor a deed to secure debt or mortgage on property owned by the debtor or to any debt
 6 which is adjusted by the person, corporation, or other entity to which the debt is owed.
 7 Nothing in this chapter shall apply to the following entities or their subsidiaries: the Federal
 8 National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a bank,
 9 bank holding company, trust company, savings and loan association, credit union, credit
 10 card bank, or savings bank that is regulated and supervised by the Office of the
 11 Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the
 12 Federal Deposit Insurance Corporation, the National Credit Union Administration, or the
 13 Georgia Department of Banking and Finance."

14 **SECTION 3.**

15 Said chapter is further amended by adding a new Code section 18-5-3.1 to read as follows:

16 "18-5-3.1.

17 (a) Any person engaged in the business of debt adjusting for debtors located in this state
 18 shall meet the following annual requirements:

19 (1) Obtain from an independent third party certified public accountant an annual audit
 20 of all accounts of such person in which the funds of debtors are deposited and from which
 21 payments are made to creditors on behalf of debtors. A copy of the summary results of
 22 such annual audit shall be made available upon written request to any party so requesting
 23 a copy for a charge not to exceed the cost of the reproduction of the annual audit; and

24 (2) Obtain and maintain at all times insurance coverage for employee dishonesty,
 25 depositor's forgery, and computer fraud in an amount not less than the greater of
 26 \$100,000.00 or 10 percent of the monthly average for the immediately preceding six
 27 months of the aggregate amount of all deposits made with such person by all debtors. The
 28 deductible on such coverage shall not exceed 10 percent of the face amount of the policy
 29 coverage. Such policy shall identify the debtors of such person as additional insured
 30 parties under the policy and shall be issued by a company rated at least 'A-' or its
 31 equivalent by a nationally recognized rating organization.

32 (b) A copy of the annual audits and insurance policies required by this Code section shall
 33 be filed annually with the Governor's Office of Consumer Affairs."

