

House Bill 385

By: Representatives Ashe of the 42nd, Post 2, Ehrhart of the 28th, Shaw of the 143rd, Oliver of the 56th, Post 2, Jackson of the 124th, Post 1, and others

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 In the course of being engaged in debt adjusting, it It shall be unlawful for any person to
18 engage in the business of debt adjusting:

19 (a) Impose upon a debtor resident of this state either directly or indirectly any charge or fee,
20 other than a reasonable charge for insufficient fund transactions; or

21 (b) Receive any contribution of any kind for any purpose whatsoever from a debtor resident
22 of this state an amount in excess of 7.5 percent of the amount paid monthly by such debtor
23 to such person for distribution to creditors of such debtor."

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

3 SECTION 4.

4 Said chapter is further amended by adding a new Code Section 18-5-3.2 to read as follows:
5 "18-5-3.2.

6 (a) Any person engaged in debt adjusting shall disburse to the appropriate creditors all
7 funds received from a debtor, less any fees authorized by this chapter, within 30 days of
8 receipt of such funds.

9 (b) Any person engaged in debt adjusting shall maintain a separate trust account for the
10 receipt of funds from debtors and the disbursement of such funds on behalf of debtors."

11 SECTION 5.

12 Said chapter is further amended by striking Code Section 18-5-4, relating to penalties for
13 engaging in business of debt adjusting, and inserting in its place the following:

14 "18-5-4.

15 (a) Any person who engages in the business of debt adjusting in violation of this chapter
16 shall be guilty of a misdemeanor.

17 (b) Any person who violates the provisions of Code Section 18-5-3.1 or subsection (b) of
18 Code Section 18-5-3.2 shall be liable for a fine of not less than \$50,000.00.

19 (c) Any person who violates the provisions of Code Section 18-5-2 or subsection (a) of
20 Code Section 18-5-3.2 shall be liable to the debtor in an amount equal to the total of all
21 fees, charges, or contributions paid by the debtor plus \$5,000.00. Such debtor shall have
22 the right to bring a cause of action directly against such person for violation of the
23 provisions of this chapter.

24 (d) The Attorney General and prosecuting attorneys shall have the authority to conduct the
25 criminal prosecution of all cases arising under this chapter. Concurrent jurisdiction for
26 investigation and enforcement of this chapter shall reside with the administrator of the
27 Governor's Office of Consumer Affairs pursuant to Code Section 10-1-395 and the
28 'Georgia Fair Business Practice Act of 1975.'"

29 SECTION 6.

30 This Act shall become effective upon its approval by the Governor or upon its becoming law
31 without such approval.

32 SECTION 7.

33 All laws and parts of laws in conflict with this Act are repealed.