

House Bill 901

By: Representatives Weldon of the 3<sup>rd</sup>, Bryant of the 160<sup>th</sup>, Lane of the 167<sup>th</sup>, Harden of the 147<sup>th</sup>, Powell of the 171<sup>st</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 18 of the Official Code of Georgia Annotated, relating to debtor and creditor,  
2 so as to revise certain provisions relating to debt adjustment; to revise and provide for  
3 definitions; to exclude certain transactions from limitations on debt adjusting; to revise  
4 provisions relating to requirements for persons engaged in debt adjusting; to provide that  
5 debt adjusting shall not be considered the practice of law; to provide for related matters; to  
6 repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 18 of the Official Code of Georgia Annotated, relating to debtor and creditor, is  
10 amended by revising Chapter 5, relating to debt adjustment, as follows:

11 "CHAPTER 5

12  
13 18-5-1.

14 As used in this chapter, the term:

15 (1) 'Debt adjusting' means doing business in debt adjustments, debt settlement, budget  
16 counseling, debt management, or debt pooling service or holding oneself out, by words  
17 of similar import, as providing services to debtors in the management of their debts and  
18 contracting with a debtor for a fee to:

19 (A) Effect the adjustment, compromise, or discharge of any account, note, or other  
20 indebtedness of the debtor; or

21 (B) Receive from the debtor and disburse to his or her creditors any money or other  
22 thing of value.

23 (1.1) 'Debt settlement' means when a person negotiates an agreement on behalf of an  
24 individual consumer debtor which contemplates that the creditor will settle in full  
25 satisfaction of the debt for less than the principal amount owed, and such person does not

26 request or receive payment of any fee or consideration from such debtor until and unless  
 27 the debt is settled and the individual consumer debtor has made at least one payment  
 28 pursuant to a settlement agreement or other valid contractual agreement between the  
 29 individual consumer debtor and creditor.

30 (2) 'Person' means an individual, corporation, partnership, trust, association, or other  
 31 legal entity.

32 (3) 'Resides' means to live in a particular place, whether on a temporary or permanent  
 33 basis.

34 18-5-2.

35 (a) In the course of engaging in debt adjusting, it shall be unlawful for any person to accept  
 36 from a debtor who resides in this state, either directly or indirectly, any charge, fee,  
 37 contribution, or combination thereof in an amount in excess of 7.5 percent of the amount  
 38 paid monthly by such debtor to such person for distribution to creditors of such debtor;  
 39 provided, however, that no provision of this chapter shall prohibit any person, in the course  
 40 of engaging in debt adjusting, from imposing upon a debtor who resides in this state a  
 41 reasonable and separate charge or fee for insufficient funds transactions.

42 (b) This Code section shall not apply when a person engages in debt settlement.

43 18-5-3.

44 Nothing in this chapter shall apply to those situations involving debt adjusting incurred in  
 45 the practice of law in this state. Nothing in this chapter shall apply to those persons or  
 46 entities who incidentally engage in debt adjustment to adjust the indebtedness owed to said  
 47 person or entity. Nothing in this chapter shall apply to the following entities or their  
 48 subsidiaries: the Federal National Mortgage Association; the Federal Home Loan Mortgage  
 49 Corporation; a bank, bank holding company, trust company, savings and loan association,  
 50 credit union, credit card bank, or savings bank that is regulated and supervised by the  
 51 Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal  
 52 Reserve, the Federal Deposit Insurance Corporation, the National Credit Union  
 53 Administration, or the Georgia Department of Banking and Finance; or persons as defined  
 54 in Code Section 7-3-3 operating under Chapter 3 of Title 7, the 'Georgia Industrial Loan  
 55 Act.'

56 18-5-3.1.

57 (a) Any person engaged in debt adjusting for debtors residing in this state shall meet the  
 58 following annual requirements:

59 (1) ~~Obtain~~ If the person holds funds of a debtor, obtain from an independent third party  
 60 certified public accountant an annual audit of all accounts of such person in which the  
 61 funds of debtors are deposited and from which payments are made to creditors on behalf  
 62 of debtors. A copy of the summary results of such annual audit shall be made available  
 63 upon written request to any party so requesting a copy for a charge not to exceed the cost  
 64 of the reproduction of the annual audit; and

65 (2) Obtain and maintain at all times insurance coverage for employee dishonesty,  
 66 depositor's forgery, and computer fraud in an amount ~~not less than the greater of equal~~  
 67 to \$100,000.00 or, if the person holds funds of a debtor, 10 percent of the monthly  
 68 average for the immediately preceding six months of the aggregate amount of all deposits  
 69 made with such person by all debtors. The deductible on such coverage shall not exceed  
 70 10 percent of the face amount of the policy coverage. Such policy shall be issued by a  
 71 company rated at least 'A-' or its equivalent by a nationally recognized rating  
 72 organization, and such policy shall provide for 30 days' advance written notice of  
 73 termination of the policy to be provided to the Governor's Office of Consumer Affairs.

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

76 (c) The Governor's Office of Consumer Affairs shall act as a repository for the audits,  
 77 insurance, and termination notices furnished to such office pursuant to this Code section.  
 78 No oversight responsibility shall be imposed upon such office by virtue of its receipt of  
 79 such documents.

80 18-5-3.2.

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

84 (b) Any person engaged in debt adjusting who holds funds of a debtor shall maintain a  
 85 separate trust account for the receipt of any and all funds from debtors and the  
 86 disbursement of such funds on behalf of debtors.

87 18-5-4.

88 (a) Any person who engages in debt adjusting in violation of this chapter shall be guilty  
 89 of a misdemeanor.

90 (b) Without limiting the applicability of subsection (a) of this Code section:

91 (1) Any person who engages in debt adjusting in violation of the provisions of Code  
 92 Section 18-5-3.1 or subsection (b) of Code Section 18-5-3.2 shall further be liable for a  
 93 civil fine of not less than \$50,000.00; ~~and~~

94 (2) Any person who engages in debt adjusting in violation of the provisions of Code  
95 Section 18-5-2 or subsection (a) of Code Section 18-5-3.2 shall further be liable to the  
96 debtor in an amount equal to the total of all fees, charges, or contributions paid by the  
97 debtor plus \$5,000.00. Such debtor shall have the right to bring a cause of action directly  
98 against such person for violation of the provisions of this chapter; and

99 (3) Any person who engages in debt adjusting shall not be deemed to be engaging in the  
100 practice of law, as defined in Code Section 15-19-50.

101 (c) The Attorney General and prosecuting attorneys shall have the authority to conduct the  
102 criminal prosecution of all cases arising under this chapter and to conduct civil prosecution  
103 of cases arising under this chapter.

104 (d) A violation of Code Section 18-5-2, 18-5-3.1, or 18-5-3.2 shall additionally be a  
105 violation of Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act  
106 of 1975.'"

107

## SECTION 2.

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