

House Bill 385 (AS PASSED HOUSE AND SENATE)

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 definitions; to provide for exemptions from those
4 provisions related to debt adjustment; to require persons engaged in debt adjusting to obtain
5 an annual audit of all accounts and to maintain a certain amount and type of insurance
6 coverage; to provide for the disbursement of a debtor's funds within 30 days of receipt; to
7 require persons engaged in debt adjusting 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 **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 18-5-1, relating to definitions, and inserting in its place
15 the following:

16 "18-5-1.

17 As used in this chapter, the term:

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

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

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

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

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

SECTION 2.

Said chapter is further amended by striking Code Section 18-5-2, relating to the prohibition of debt adjusting, and inserting in its place the following:

"18-5-2.

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

SECTION 3.

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

"18-5-3.

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

SECTION 4.

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

1 "18-5-3.1.

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

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

9 (2) Obtain and maintain at all times insurance coverage for employee dishonesty,
10 depositor's forgery, and computer fraud in an amount not less than the greater of
11 \$100,000.00 or 10 percent of the monthly average for the immediately preceding six
12 months of the aggregate amount of all deposits made with such person by all debtors.
13 The deductible on such coverage shall not exceed 10 percent of the face amount of the
14 policy coverage. Such policy shall be issued by a company rated at least 'A-' or its
15 equivalent by a nationally recognized rating organization and such policy shall provide
16 for 30 days' advance written notice of termination of the policy to be provided to the
17 Governor's Office of Consumer Affairs.

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

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

24 SECTION 5.

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

26 "18-5-3.2.

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

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

33 SECTION 6.

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

1 "18-5-4.

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

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

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

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

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

16 (d) A violation of Code Section 18-5-2, 18-5-3.1, or 18-5-3.2 shall additionally be a
17 violation of the 'Fair Business Practices Act of 1975.'

18 **SECTION 7.**

19 This Act shall become effective July 1, 2003.

20 **SECTION 8.**

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