

FIRST REGULAR SESSION

SENATE BILL NO. 401

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAMPING.

Read 1st time March 1, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1697S.011

AN ACT

To repeal sections 425.010, 425.020, 425.025, 425.027, and 425.040, RSMo, and to enact in lieu thereof six new sections relating to debt adjusters, with existing penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 425.010, 425.020, 425.025, 425.027, and 425.040, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 425.010, 425.015, 425.020, 425.025, 425.027, and 425.040, to read as follows:

425.010. As used in this [chapter] **section to section 425.040**, the following terms mean:

(1) "Debt adjuster", a person who [acts] **provides** or offers to [act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in any wise altering the terms of payment of any debts of the debtor; and to that end the person receives money or other property from the debtor, or on behalf of the debtor, for payment to the debtor's credit by the person, or distribution among, the creditors by the person. This definition shall only apply to a person who collects funds from a debtor and delivers such funds to the debtor's creditors] **provide debt relief services for a consideration;**

(2) "Debt management plan" or "DMP", a written agreement or contract between a debt adjuster and a debtor whereby the debt adjuster [agrees to provide its services as such to the debtor], in return for payment by the debtor of no more than reasonable consideration, **will provide debt relief services that contemplate that creditors will reduce finance charges or fees for**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 **late payment, default, or delinquency;**

18 **(3) "Debt relief services", any program or service represented,**
19 **directly or by implication, to renegotiate, settle, or in any way alter the**
20 **terms of payment or other terms of the debt between a debtor and one**
21 **or more unsecured creditors or debt collectors, including, but not**
22 **limited to, a reduction in the balance, interest rate, or fees owed by a**
23 **person to an unsecured creditor or debt collector;**

24 **(4) "Debt settlement plan" or "DSP", a written agreement or**
25 **contract between a debt adjuster and a debtor whereby the debt**
26 **adjuster, in return for payment by the debtor of consideration, will**
27 **provide debt relief services that contemplate that creditors will settle**
28 **debts for less than the principal amount of the debt;**

29 **(5) "Debtor", an individual or individuals jointly and severally or jointly**
30 **or severally indebted;**

31 **[(4)] (6) "Reasonable consideration", a fee [or contribution] to cover the**
32 **cost of administering a debt management plan, not to exceed:**

33 **(a) Fifty dollars for an initial or set-up fee or charge for establishing a**
34 **DMP; and**

35 **(b) The greater of thirty-five dollars per month or eight percent of the**
36 **amount distributed monthly to creditors under such DMP.**

425.015. 1. Before a debtor consents to pay for goods or services
2 **offered, debt adjusters shall disclose truthfully, in a clear and**
3 **conspicuous manner, the following material information:**

4 **(1) The amount of time necessary to achieve the represented**
5 **results, and to the extent that the debt relief service may include a**
6 **settlement offer to any of the debtor's creditors or debt collectors, the**
7 **time by which the debt adjuster will make a bona fide settlement offer**
8 **to each of them;**

9 **(2) To the extent that the debt relief service may include a**
10 **settlement offer to any of the debtor's creditors or debt collectors, the**
11 **amount of money or the percentage of each outstanding debt that the**
12 **debtor shall accumulate before the debt adjuster will make a bona fide**
13 **settlement offer to each of them;**

14 **(3) To the extent that any aspect of the debt relief service relies**
15 **upon or results in the debtor's failure to make timely payments to**
16 **creditors or debt collectors, that the use of the debt relief service will**
17 **likely adversely affect the debtor's creditworthiness, may result in the**

18 debtor being subject to collection actions or sued by creditors or debt
19 collectors, and may increase the amount of money the debtor owes due
20 to the accrual of fees and interest; and

21 (4) To the extent that the debt adjuster requests or requires the
22 debtor to place funds in an account at an insured financial institution,
23 that the debtor owes the funds held in the account, the debtor may
24 withdraw from the debt relief service at any time without penalty, and,
25 if the debtor withdraws, the debtor shall receive all funds in the
26 account, other than funds earned by the debt adjuster, within seven
27 business days of the debtor's request.

28 2. A debt adjuster shall not misrepresent, directly or by
29 implication, any material aspect of any debt relief service, including,
30 but not limited to, the amount of money or the percentage of the debt
31 amount that a debtor may save by using such service, the amount of
32 time necessary to achieve the represented results, the amount of money
33 or the percentage of each outstanding debt that the debtor shall
34 accumulate before the debt adjuster will initiate attempts with the
35 debtor's creditors or debt collectors or make a bona fide offer to
36 negotiate, settle, or modify the terms of the debtor's debt, the effect of
37 the service on a debtor's creditworthiness, the effect of the service on
38 collection efforts of the debtor's creditors or debt collectors, the
39 percentage or number of debtors who attain the represented results,
40 and whether a debt relief service is offered or provided by a nonprofit
41 entity.

42 3. A debt adjuster shall not receive payment of any fee or
43 consideration for any debt relief service until and unless:

44 (1) The debt adjuster has renegotiated, settled, reduced, or
45 otherwise altered the terms of at least one debt pursuant to a debt
46 settlement plan or debt management plan;

47 (2) The debtor has made at least one payment pursuant to that
48 debt settlement plan or debt management plan; and

49 (3) The fee or consideration for settling each individual debt
50 enrolled in a debt settlement plan shall either:

51 (a) Bear the same proportional relationship to the total fee for
52 settling the entire debt balance as the individual debt amount bears to
53 the entire debt amount. The individual debt amount and the entire
54 debt amount are those owed at the time the debt was enrolled in the

55 **debt relief service; or**

56 **(b) Be a percentage of the amount saved as a result of the**
57 **settlement. The percentage charged cannot change from one individual**
58 **debt to another. The amount saved is the difference between the**
59 **amount owed at the time the debt was enrolled in the debt relief**
60 **service and the amount actually paid to satisfy the debt.**

61 **4. Nothing in this section prohibits requesting or requiring the**
62 **debtor to place funds in an account to be used for the debt adjuster's**
63 **fees and for payments to creditors or debt collectors in connection with**
64 **the renegotiation, settlement, reduction, or other alteration of the**
65 **terms of payment or other terms of a debt, provided that:**

66 **(1) The funds are held in an account at an insured financial**
67 **institution;**

68 **(2) The debtor owns the funds held in the account and is paid**
69 **accrued interest on the account, if any;**

70 **(3) If the debt adjuster does not administer the account, the**
71 **entity administering the account is not owned or controlled by, or in**
72 **any way affiliated with, the debt adjuster;**

73 **(4) The entity administering the account does not give or accept**
74 **any money or other compensation in exchange for referrals of business**
75 **by the debt adjuster; and**

76 **(5) The debtor may withdraw from the debt relief service at any**
77 **time without penalty, and shall receive all funds in the account, other**
78 **than funds earned by the debt adjuster in compliance with subdivision**
79 **(3) of subsection 3 of this section, within seven business days of the**
80 **debtor's request.**

2 425.020. Any person who acts or offers to act as a debt adjuster in this
3 state other than under a debt management plan **or debt settlement plan** is
4 guilty of a misdemeanor and upon conviction shall be punished as provided by
5 law.

2 425.025. Nothing in this chapter shall be construed to prevent any
3 individual or organization from administering a debt management plan **or debt**
4 **settlement plan** free of charge.

2 425.027. A debt adjuster shall provide a blanket bond in the amount of
3 one hundred thousand dollars in favor of the state of Missouri and a copy of the
4 bond shall be filed with the director of the division of finance. The bond shall be
5 for the benefit of any debtor who is damaged by the debt adjuster's breach of the

5 debt management plan **or debt settlement plan** or the debt adjuster's failure
6 to properly administer debtor funds collected or disbursed under the debt
7 management plan **or debt settlement plan**. The director of the division of
8 finance may investigate any debtor complaint and make claim on a bond for the
9 benefit of a debtor or release the bond to a debtor to make a claim.

425.040. The following persons shall not be considered debt adjusters for
2 the purposes of this chapter:

3 (1) Any attorney at law of this state;

4 (2) Any person who is a regular, full-time employee of a debtor, and who
5 acts as an adjuster of his employer's debts;

6 (3) Any person acting pursuant to any order or judgment of court, or
7 pursuant to authority conferred by any law of this state or of the United States;

8 (4) Any person who is a creditor of the debtor, or an agent of one or more
9 creditors of the debtor, and whose services in adjusting the debtor's debts are
10 rendered without cost to the debtor; and

11 (5) Any person who, at the request of a debtor, arranges for or makes a
12 loan to the debtor, and who, at the authorization of the debtor, acts as an
13 adjuster of the debtor's debts in the disbursement of the proceeds of the loan,
14 without compensation for the services rendered in [adjusting the debts]
15 **providing debt relief services.**

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