

CHAPTER 38

(HB 294)

AN ACT relating to the business of debt adjusting.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 380.010 is amended to read as follows:

As used in this chapter, the following terms mean:

- (1) ~~"Debt adjuster," a person who acts or offers to act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or in anywise altering the terms of payment of any debts of the debtor; and to that end, receives money or other property from the debtor, or on behalf of the debtor, for payment to, or distribution among, the creditors of the debtor.~~
- (2) ~~"Debtor," an individual or individuals jointly and severally, or jointly or severally indebted.]~~
- "Person" includes, but is not limited to, individuals, partnerships, associations, corporations, limited liability companies, trusts, and other legal entities;*
- (2) *"Debt adjusting" means doing business in debt adjusting, budget counseling, debt management, or debt pooling service, or holding oneself out, by words of similar import, as providing services to debtors in the management of their debts, to do any of the following:*
- (a) *Effect the adjustment, compromise, or discharge of any account, note or other indebtedness of the debtor;*
- (b) *Receive from the debtor and disburse to the debtor's creditors any money or other thing of value; or*
- (c) *Solicit business and advertise as a debt adjuster; and*
- (3) *"Reside" means to live in a particular place on a temporary or permanent basis.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to subsection (3) of this section, a person, whether or not located in this state, engaged in debt adjusting shall do both of the following:*
- (a) *Unless specifically instructed otherwise by a debtor, disburse to the appropriate creditors all funds received from the debtor, less any contributions or fees not prohibited by subsection (2) of this section, within thirty (30) days of receipt of the funds from the debtor; and*
- (b) *Maintain a separate trust account for the receipt of any funds from debtors and the disbursement of the funds to creditors on behalf of the debtors.*
- (2) *If contributions or fees for engaging in debt adjusting are accepted, directly or indirectly, a person engaged in debt adjusting shall not do any of the following:*
- (a) *Accept a contribution or fee exceeding seventy-five dollars (\$75) from a debtor residing in this state for an initial set up;*
- (b) *Accept a consultation contribution or fee exceeding fifty dollars (\$50) per calendar year from a debtor residing in this state; or*

- (c) *Accept a periodic contribution or fee from a debtor who resides in this state that exceeds the greater of eight and one-half percent (8.5%) of the amount paid by the debtor each month for distribution to the debtor's creditors or thirty dollars (\$30).*
- (3) *Subsections (1) and (2) of this section shall not prohibit a person engaged in debt adjusting for a debtor who resides in this state from charging the debtor a bad check charge of twenty dollars (\$20) or the amount passed on from the debt adjuster's bank, whichever is greater, in addition to contributions or fees not prohibited by subsection (2) of this section.*
- (4) *Fees or contributions permitted in subsections (1), (2), and (3) of this section may be adjusted on an annual basis by the amount equivalent to any increase in the consumer price index, published by the United States Department of Labor, Bureau of Labor Statistics.*
- (5) *Any person that engages in debt adjusting shall file an initial registration form, accompanied by an initial registration fee of two hundred fifty dollars (\$250), and the registration shall be renewed each year thereafter for a fee of two hundred fifty dollars (\$250) to cover the actual cost of filing the registration, in accordance with administrative regulations promulgated by the Attorney General.*
- (6) *Any person that engages in debt adjusting shall arrange for and undergo an annual audit of the person's business, including any trust funds deposited and distributed to creditors on behalf of debtors, which shall be conducted by an independent, third-party certified public accountant. Both of the following shall apply to an audit performed under this subsection:*
- (a) *The person shall file the results of the audit and the auditor's opinion with the Consumer Protection Division of the Office of the Attorney General within thirty (30) days of the anniversary date of filing the initial registration; and*
- (b) *The Attorney General shall make available a summary of the results of the audit and the auditor's opinion upon written request of any person and payment of a fee not to exceed the cost of copying the summary and opinion.*
- (7) *A person engaged in debt adjusting shall obtain and at all times maintain insurance coverage for errors and omissions, employee dishonesty, depositor's forgery, and computer fraud in the amount of ten percent (10%) of the monthly average for the immediately preceding six (6) months of the aggregate amount of all deposits made with the person by all debtors. The insurance coverage shall comply with all of the following:*
- (a) *The minimum limit of the insurance coverage shall not be less than one hundred thousand dollars (\$100,000), and the maximum limit of the insurance coverage shall not be more than two hundred fifty thousand dollars (\$250,000);*
- (b) *The insurance coverage shall not include a deductible in excess of ten percent (10%) of the face amount of the policy coverage;*
- (c) *The insurance coverage shall be issued by an insurer and rated at least A-, or it's equivalent, by a nationally recognized rating organization; and*
- (d) *The insurance coverage shall provide that the Consumer Protection Division of the Office of the Attorney General shall be named as an additional interested party.*
- (8) *Any person engaged in debt adjusting shall comply with the provisions of this section.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

The Attorney General shall promulgate administrative regulations in accordance with KRS Chapter 13A to ensure the proper administration and enforcement of this chapter.

Section 4. KRS 380.030 is amended to read as follows:

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

- (1) Any attorney-at-law of this state;
- (2) Any person who is a regular, full-time employee of a debtor, and who acts as an adjuster of his employer's debts;
- (3) Any person acting pursuant to any order or judgment of court, or pursuant to authority conferred by any law of this state or of the United States;
- (4) Any person who is a creditor of the debtor, or an agent of one (1) or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the debtor;
- (5) Any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting the debts; and
- (6) Any charitable, religious or educational organization, determined to be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code *that is not in the business of debt adjusting, as defined in Section 1 of this Act.*

Section 5. KRS 380.990 is amended to read as follows:

Any person who *violates the provisions of Section 2 of this Act* ~~acts or offers to act as a debt adjuster~~ in the state is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of *five hundred dollars (\$500)* ~~[\$500]~~ or imprisonment not to exceed sixty (60) days, or both such fine and imprisonment.

Section 6. The following KRS section is repealed:

380.020 Injunction against debt adjuster -- Appointment of receiver.

Approved March 8, 2005.