

## CHAPTER 86

## (HB 166)

AN ACT relating to 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) "Person" includes, but is not limited to, individuals, partnerships, associations, corporations, limited liability companies, trusts, and other legal entities;
- (2) **"Debt adjuster" means a person engaged in the business of debt adjusting;**
- (3) "Debt adjusting" means doing business *in this state* in debt adjusting, budget counseling, debt management, **debt modification or settlement, foreclosure assistance**, or debt pooling service, or holding oneself out *as acting or offering or attempting to act as an intermediary between a debtor and his or her creditors for a fee, contribution, or other consideration, or* ~~by~~ by words of similar import, as providing services to debtors in the management, **settlement, modification, or adjustment** of their debts, to do any of the following:
  - (a) Effect the adjustment, compromise, **settlement, modification**, 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~~
- ~~(4)~~~~(3)~~ "Reside" means to live in a particular place on a temporary or permanent basis;
- (5) **"Debtor" means an individual who resides in Kentucky and is indebted to a creditor or creditors, including two (2) or more individuals who are jointly and severally, or jointly or severally, indebted to a creditor or creditors;**
- (6) (a) **"Personal information" means any information:**
  1. **That a debtor provides to a debt adjuster to obtain a debt-adjusting product or service from the debt adjuster;**
  2. **About a debtor resulting from any transaction involving debt adjusting between a debtor and the debt adjuster; or**
  3. **That a debt adjuster otherwise obtains about a debtor in connection with providing a debt-adjusting product or service to that debtor.**

(b) **"Personal information" does not include information that a debt adjuster has a reasonable basis to believe is lawfully made available to the general public from:**

  1. **Federal, state, or local government records;**
  2. **Widely distributed media; or**
  3. **Disclosures to the general public that are required to be made by federal, state, or local law.**

*For purposes of this paragraph, "reasonable basis" to believe that information is lawfully made available to the general public means the debt adjuster has taken steps to determine that the information is the type that is available to the general public and whether an individual may direct that the information not be made available to the general public and, if so, that the debt adjuster's consumer has not done so; and*
- (7) **"Additional interested party" means a party, including but not limited to the Attorney General, to whom written notice shall be sent at the same time that a notice is required to be sent to an insured regarding any cancellation, nonrenewal, modification, or change in the insurance coverage required by subsection (7) of Section 3 of this Act.**

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

- (1) *A person engaged in debt adjusting shall contract in writing with the debtor and obtain the debtor's signature on the contract which shall designate the date on which the debtor actually signs the contract as the date of the transaction and fully disclose the exact nature of the debt-adjusting services and the total amount and terms of compensation.*
- (2) *Any debtor entering into a contract to provide debt-adjusting services shall have a right to cancel the contract until midnight of the fourteenth day after the day on which the debtor signs a contract offer to enter into a contract for debt-adjusting services, except as provided in subsection (7) of this section.*
- (3) *The following notice, printed in at least twelve (12) point boldface type and completed with the name and address of the debt adjuster, shall appear on the contract under the conspicuous caption "DEBTOR'S RIGHT TO CANCEL" and shall read as follows:*

**NOTICE OF CANCELLATION**

.....

*(enter date of transaction)*

*You may cancel this contract or offer without penalty or monetary obligation, within fourteen (14) days from the above date. To cancel this transaction, you may use any of the following methods: mail or otherwise deliver a signed and dated copy of this cancellation notice, or any other written notice of cancellation which you sign and date to (enter physical address of debt adjuster) or e-mail a notice of cancellation to (enter name of debt adjuster) at (enter e-mail address of debt adjuster) not later than midnight of (enter date fourteen (14) days after transaction date).*

*I hereby cancel this transaction.*

.....

*(Date)*

.....

*(Debtor's Signature)*

- (4) *Cancellation occurs when the debtor gives written notice of cancellation to the debt adjuster at the physical or e-mail address stated in the contract or offer to perform services.*
- (5) *Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid and, if given by e-mail, when the debtor sends the e-mail.*
- (6) *Notice of cancellation given by the debtor is sufficient if it indicates in writing the intention of the debtor not to be bound by the contract or offer of services.*
- (7) *Until the debt adjuster has complied with the disclosure notice required by subsection (3) of this section, the debtor may cancel the contract or offer of services by notifying the debt adjuster of his or her intention to cancel.*

➔Section 3. KRS 380.040 is amended to read as follows:

- (1) Subject to subsection (3) of this section, a person, whether or not located in this state, **who is** engaged in debt adjusting **and actually or constructively receives any money or other thing of value, other than the fees permitted by this chapter, for the purpose of disbursing the money or thing of value to the debtor's creditors,** 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 **a fee, contribution, or other consideration**~~contributions or fees~~ for engaging in debt adjusting **is**~~are~~ accepted, directly or indirectly, a person engaged in debt adjusting shall not do any of the following:
  - (a) Accept a **fee, contribution, or other consideration**~~or fee~~ exceeding seventy-five dollars (\$75) from a debtor residing in this state for an initial set up;

- (b) Accept a ~~fee, [consultation]~~ contribution, **or other consideration** ~~[or fee]~~ exceeding fifty dollars (\$50) per calendar year from a debtor residing in this state **for consultation**; ~~[or]~~
- (c) ***If money or anything else of value is received and held by the person engaged in debt adjusting for the purpose of disbursing the money or thing of value to the debtor's unsecured creditors, accept a periodic fee, contribution, or other consideration*** ~~[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); **or**
- (d) ***Accept any other fee, contribution, or other consideration in advance of the complete performance of all promised services in relation to secured debt. Acceptance of a fee, contribution, or other consideration in advance of the complete performance of all promised services in relation to secured debt, including the placement of the fee, contribution, or other consideration into an escrow account to be paid upon completion of the services, is specifically prohibited. For purposes of this paragraph, "secured debt" means any debt primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property.***
- (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, **contributions, or other consideration** not prohibited by subsection (2) of this section.
- (4) Fees, ~~[or]~~ contributions, **or other consideration** 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) 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, **and violations of this chapter** 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:
1. ~~[(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);
  2. ~~[(b)]~~ The insurance coverage shall not include a deductible in excess of ten percent (10%) of the face amount of the policy coverage;
  3. ~~[(c)]~~ The insurance coverage shall be issued by an insurer and rated at least A-, or its equivalent, by a nationally recognized rating organization; and
  4. ~~[(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.

- (b) *If the debt adjuster engages in debt adjusting in relation to any debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property, the amount of insurance coverage required in paragraph (a) of this subsection shall be increased by two hundred fifty thousand dollars (\$250,000).*
- (8) (a) *A debt adjuster shall maintain a bond issued by a surety company admitted to do business in this Commonwealth. The bond shall be in the amount of twenty-five thousand dollars (\$25,000) in favor of the Attorney General for the benefit of the Commonwealth for any violation of this chapter or any person suffering injury or loss by reason of any violation of this chapter. A copy of the bond shall be filed with the Attorney General.*
- (b) *The bond required by paragraph (a) of this subsection shall be in effect during the period of the debt adjuster's registration as well as for two (2) years after the debt adjuster ceases to provide debt-adjusting services to debtors.*
- (c) *A change in ownership of a debt adjuster shall not release, cancel, or terminate liability under any bond previously filed unless the Attorney General agrees in writing to the release, cancellation, or termination because the debt adjuster has filed a new bond meeting the requirements of paragraph (a) of this subsection.*
- (d) *The proceeds of the bond required by paragraph (a) of this subsection shall be paid to any person suffering injury or loss by reason of any violation of this chapter or to the Attorney General for any violation of this chapter or shall be paid pursuant to the terms of any order of a court of competent jurisdiction. Any person who is damaged by any violation of this chapter may bring an action against the bond to recover damages pursuant to this paragraph, provided the aggregate liability of the surety shall not exceed the amount of the bond.*
- (e) *In lieu of the bond required by paragraph (a) of this subsection, a debt adjuster may, with the written approval of the Attorney General, deliver to the Attorney General an irrevocable letter of credit issued or confirmed by a financial institution authorized by law to transact business in the Commonwealth. The irrevocable letter of credit shall be in the amount of twenty-five thousand dollars (\$25,000) in favor of the Attorney General for the benefit of the Commonwealth or any person suffering injury or loss by reason of any violation of this chapter.*
- (f) *If the debt adjuster engages in debt adjusting in relation to any debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property, the amount of the bond required in paragraph (a) of this subsection or the irrevocable letter of credit approved pursuant to paragraph (e) of this subsection shall be increased by fifty thousand dollars (\$50,000).*
- (9) *A debt adjuster may not, directly or indirectly:*
- (a) *Misappropriate or misapply money held in trust;*
- (b) *Settle a debtor's debt if the amount the debtor will owe after settlement is equal to or more than fifty percent (50%) of the amount of the debt prior to settlement unless, after the creditor has assented, the debtor assents to a settlement for which the amount the debtor will owe after settlement is equal to or more than fifty percent (50%) of the amount of the debt prior to settlement;*
- (c) *Take a power of attorney that authorizes the debt adjuster to settle a debt, unless the power of attorney is expressly limited to the debtor's debts and grants authority to settle debts only if the amount the debtor will owe after settlement is less than fifty percent (50%) of the amount of the debt prior to settlement. However, in no event shall an agreement confer on a debt adjuster a power of attorney to negotiate or settle any of the debtor's debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property;*
- (d) *Exercise or attempt to exercise a power of attorney after a debtor has terminated an agreement;*
- (e) *Initiate a transfer from a debtor's account at a bank or with another person unless the transfer is:*
1. *A return of money to the debtor; or*

2. *Before termination of an agreement, properly authorized by the agreement and this chapter, and for payment to one (1) or more creditors pursuant to a plan or payment of a fee;*
  - (f) *Structure a plan in a manner that would result in a negative amortization of any of a debtor's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;*
  - (g) *Settle a debt or lead a debtor to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the debtor receives a certification by the creditor that the payment is in full settlement of the debt or is part of a payment plan, the terms of which are included in the certification, that upon completion will lead to full settlement of the debt;*
  - (h) *Make a representation that:*
    1. *The debt adjuster will furnish money to pay bills or prevent attachments;*
    2. *Payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness;*
    3. *Participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment, and will or may stop efforts to collect a debt from the debtor;*
    4. *Failure to make required minimum payments to creditors will not or may not break the terms of agreements with creditors, will not or may not lead creditors to increase finance charges and pursue litigation, will not or may not be reported to consumer reporting agencies, or will not or may not have an adverse effect on the debtor's credit report and credit score; or*
    5. *Fees paid to a debt adjuster will be used to pay creditors;*
  - (i) *Misrepresent that it is authorized or competent to furnish legal advice or perform legal services;*
  - (j) *Take a confession of judgment or power of attorney to confess judgment against a debtor;*
  - (k) *Purchase a debt or obligation of the debtor;*
  - (l) *Receive from or on behalf of the debtor:*
    1. *A promissory note or other negotiable instrument other than a check or a demand draft; or*
    2. *A postdated check or demand draft;*
  - (m) *Lend money or provide credit to the debtor, except as a deferral of a settlement fee at no additional expense to the debtor;*
  - (n) *Obtain a mortgage or other security interest from any person in connection with the services provided to the debtor;*
  - (o) *Provide the debtor less than the full benefit of a compromise of a debt arranged by the debt adjuster; or*
  - (p) *Charge the debtor for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt adjusting services or educational services concerning personal finance*~~*[Any person engaged in debt adjusting shall comply with the provisions of this section].*~~
- (10) *Any unfair, false, misleading, or deceptive act or practice in the conduct of debt adjusting is prohibited. For purposes of this subsection, "unfair" shall be construed to mean unconscionable.*

➔Section 4. KRS 380.990 is amended to read as follows:

- (1) *In any action brought alleging a violation of this chapter, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by this chapter, the Attorney General, upon petition to the court, may recover, on behalf of the Commonwealth, a civil penalty of not more than five thousand dollars (\$5,000) per violation.*

- (2) Any person who violates the provisions of KRS 380.040 in the state is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of five hundred dollars (\$500) or imprisonment not to exceed sixty (60) days, or both such fine and imprisonment.
- (3) *A violation of this chapter shall be deemed an unfair, false, misleading, or deceptive practice in the conduct of trade or commerce in violation of KRS 367.170. All of the remedies, powers, and duties provided by KRS 367.190 to 367.300 and the penalties pertaining to acts and practices declared unlawful under KRS 367.170 shall apply with equal force and effect to acts and practices in violation of this chapter, except as provided in subsection (1) of this section.*
- (4) *In addition to subsection (1) of this section:*
- (a) *A court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been paid out as a result of any practice in violation of this chapter;*
  - (b) *A court shall have jurisdiction in an action brought in the name of the Commonwealth by the Attorney General or the county attorney, to enjoin, as an unfair or deceptive trade practice pursuant to KRS 367.170, the continuation of any debt-adjusting business or the offering of any debt-adjusting services as defined in Section 1 of this Act;*
  - (c) *A court may appoint a receiver who shall have all the powers and authority pursuant to KRS 367.210 for the property and money employed in the transaction of business by a debt adjuster to ensure the return to debtors of their money and property received by the debt adjuster which has not been paid to the creditors of the debtors; and*
  - (d) *In any action brought by the Attorney General or a Commonwealth or county attorney under this chapter, in which the Commonwealth has substantially prevailed, the court shall award, in addition to the relief provide elsewhere in this chapter, reasonable attorney's fees, investigative costs, and litigation costs including expert witness fees and expenses.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

*Any waiver by the debtor of rights or protections provided in this chapter is contrary to public policy, is void and unenforceable, and will not relieve the debt adjuster of any obligation placed upon the debt adjuster by this chapter.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person who enters into a debt-adjusting transaction and thereby suffers any ascertainable loss of money or property, real or personal, as a result of a violation of this chapter, may bring an action under the Rules of Civil Procedure in the Circuit Court in which the person resides or where the transaction in question occurred, to recover actual damages. The court may, in its discretion, award actual damages and may provide such equitable relief as it deems necessary or proper. Nothing in this section shall be construed to limit a person's right to seek punitive damages where appropriate.*
- (2) *Upon commencement of any action brought under subsection (1) of this section, the clerk of the court shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment to the Attorney General.*
- (3) *In any action brought by a person under this section, the court may award to the prevailing party, in addition to the relief provided in this section, reasonable attorney's fees and costs.*
- (4) *Any person bringing an action under this section shall bring such action within one (1) year after any action of the Attorney General has been terminated or within two (2) years after the violation of this chapter, whichever is later.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

- (1) *A debt adjuster shall take reasonable measures to:*
  - (a) *Ensure the security and confidentiality of a debtor's personal information;*
  - (b) *Protect against any anticipated threats or hazards to the security or integrity of a debtor's personal information; and*
  - (c) *Protect against unauthorized access to or use of a debtor's personal information.*

- (2) *The reasonable measures required by this section shall include, at a minimum:*
- (a) *Design and implementation of a comprehensive information security program that:*
    - 1. *Is written in one (1) or more readily accessible parts;*
    - 2. *Contains administrative, technical, and physical safeguards that are appropriate to the size and complexity of the debt adjuster, the nature and scope of the debt adjuster's activities, and the sensitivity of any personal information at issue;*
    - 3. *Designates one (1) or more employees to coordinate compliance with the information security program; and*
    - 4. *Identifies reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of the personal information of a debtor that could result in the unauthorized access to or use of the information, and assesses the sufficiency of any safeguards in place to control these risks. At a minimum, the risk assessment required by this subparagraph shall include consideration of risks in each relevant area of the debt adjuster's operation, including employee training and management, information systems, information processing, information storage, information transmission, information disposal, and detecting, preventing, and responding to failures to comply with the information security program.*
  - (b) *Design and implementation of information safeguards to control the risks identified by the risk assessment required by this subsection, as well as regular testing or other monitoring of the effectiveness of the safeguards of key controls, systems, and procedures;*
  - (c) *Requirements for regular training of employees who will or may have access to records containing personal information of debtors regarding compliance with the information security program required by this subsection;*
  - (d) *Oversight of service providers to whom personal information of a debtor will be disclosed, by taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the personal information at issue, as well as requiring service providers, by contract, to implement and maintain those safeguards;*
  - (e) *Evaluation and adjustment of the information security program in light of the results of testing and monitoring, any material changes to the operation or business arrangements of the debt adjuster, or any other circumstances that the debt adjuster knows or has reason to know may have a material impact on compliance with the information security program; and*
  - (f) *A requirement that when records containing personal information of a debtor are disposed of the records shall be shredded, erased, or otherwise modified so the personal information is made unreadable or indecipherable through any means.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other provision of law, a debt adjuster shall not sell or transfer a debtor's personal information unless the debtor provides a valid authorization that includes a specification that the debtor's personal information may be sold or transferred by the debt adjuster who received the debtor's personal information.*
- (2) *An authorization shall:*
  - (a) *Be in writing; and*
  - (b) *Provide that prior to any sale or transfer of the debtor's personal information, the debt adjuster shall obtain a written confidentiality agreement from the person to whom the personal information is sold or transferred stating that the person will not sell or transfer the debtor's personal information.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

- (1) *Prior to obtaining a debtor's personal information, a debt adjuster shall provide a clear and conspicuous disclosure to the debtor of the debt adjuster's policies and practices with respect to:*
  - (a) *Disclosing the debtor's personal information to others, including the categories of personal information that may be disclosed;*

(b) *Disclosing the personal information of persons for whom the debt adjuster is no longer providing a debt-adjusting service or product; and*

(c) *Protecting the debtor's personal information.*

(2) *The disclosure required by this section shall also be provided to the debtor at least annually while the debt adjuster is providing debt-adjusting services or products to the debtor.*

➔Section 10. 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 *admitted to the practice of law in*~~of~~ *this state by the Supreme Court of this Commonwealth, who is not principally engaged in the business of debt adjusting, when the person renders services in the course of his or her practice as an attorney-at-law;*

(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 *from the debtor* 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 KRS 380.010; *and*

(7) *Any person who is a creditor of the debtor, when adjusting a debt or debts owed by the debtor to the person.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

(1) *An agreement for debt adjusting shall:*

(a) *Be in writing;*

(b) *Be dated and signed by the debt adjuster and the debtor;*

(c) *Include the name of the debtor and the address where the debtor resides;*

(d) *Include the name, business address, and telephone number of the debt adjuster;*

(e) *Be delivered to the debtor immediately upon formation of the agreement. Delivery of an electronic record occurs when the agreement is made available in a format in which the debtor may retrieve, save, and print the agreement and the debtor is notified that the electronic record is available;*

(f) *Disclose:*

1. *The services to be provided;*

2. *The amount, or method of determining the amount, of all fees, individually itemized, to be paid by the debtor;*

3. *The schedule of payments to be made by or on behalf of the debtor, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment;*

4. *Whether a plan provides for regular periodic payments to creditors and, if a plan provides for regular periodic payments to creditors:*

a. *Each creditor of the debtor to which payment will be made, the amount owed to each creditor, and any concessions the debt adjuster reasonably believes each creditor will offer; and*



- b. *The schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;*
  - 5. *Each creditor that the debt adjuster believes will not participate in the plan and to which the debt adjuster will not direct payment;*
  - 6. *That the debt adjuster may terminate the agreement for good cause, upon return of unexpended money of the debtor;*
  - 7. *That the debtor may cancel the agreement as provided in Section 2 of this Act;*
  - 8. *That the debtor may contact the Attorney General with any questions or complaints regarding the debt adjuster;*
  - 9. *The address, telephone number, and Internet address or Web site of the Attorney General;*
  - 10. *That participation in a plan may not prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment, and may not stop efforts to collect a debt from the debtor;*
  - 11. *That failure to make required minimum payments to creditors may be breaking the terms of agreements with creditors, may lead creditors to increase finance charges and pursue litigation, may be reported to consumer reporting agencies, and may have an adverse effect on the debtor's credit report and credit score;*
  - 12. *The earliest date by which the debt adjuster will contact each creditor to attempt to adjust the debtor's debts or, for settlement of unsecured debts, the estimated amount of money that shall be accumulated in savings before negotiations may begin; and*
  - 13. *That fees paid to a debt adjuster will not be used to pay creditors;*
- (g) *Provide that the debtor has a right to terminate the agreement at any time, without penalty or obligation, by giving the debt adjuster written or electronic notice, in which event:*
- 1. *The debt adjuster will refund all unexpended money that the debt adjuster or its agent has received from or on behalf of the debtor for the reduction or satisfaction of the individual's debt; and*
  - 2. *All powers of attorney granted by the debtor to the debt adjuster are revoked and ineffective;*
- (h) *Provide that the debtor authorizes any financial institution in which the debt adjuster or its agent has established a trust account to disclose to the Attorney General any financial records relating to the trust account; and*
- (i) *Provide that the debt adjuster will notify the debtor within five (5) days after learning of a creditor's decision to reject or withdraw from a plan. This notice shall include:*
- 1. *The identity of the creditor; and*
  - 2. *The right of the debtor to modify or terminate the agreement.*
- (2) *An agreement may confer on a debt adjuster a power of attorney to negotiate with creditors of the debtor on behalf of the debtor and to settle the debtor's debt if the amount the debtor will owe after settlement is less than fifty percent (50%) of the amount of the debt prior to settlement. An agreement shall not confer a power of attorney to settle the debtor's debt if the amount the debtor will owe after settlement is equal to or more than fifty percent (50%) of the amount of the debt prior to settlement. An agreement shall provide that the debt adjuster shall obtain the assent of the debtor prior to settling a debt if the creditor has assented to a settlement for which the amount the debtor will owe after settlement is equal to or more than fifty percent (50%) of the amount of the debt prior to settlement. However, in no event shall an agreement confer on a debt adjuster a power of attorney to negotiate or settle any of the debtor's debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property.*
- (3) *An agreement shall not:*

- (a) *Provide for application of the law of any jurisdiction other than the United States and this state;*
- (b) *Contain a provision that restricts the debtor's remedies under this chapter or under any other law; or*
- (c) *Contain a provision that:*
  - 1. *Limits or releases the liability of any person for not performing the agreement or for violating this chapter; or*
  - 2. *Indemnifies any person for liability arising under the agreement or this chapter.*
- (4) *All rights and obligations specified in paragraphs (g), (h), and (i) of subsection (1) of this section, subsection (2) of this section, subsection (3) of this section, and Section 2 of this Act, exist even if not provided in the agreement.*
- (5) *A provision in an agreement which violates paragraphs (g), (h), and (i) of subsection (1) of this section, subsection (2) of this section, or subsection (3) of this section is void.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

*Nothing in Sections 1 to 12 of this Act shall be construed to limit the ability of a financial institution licensed by KRS Chapter 286 from collecting on debts it is owed by a debtor.*

**Signed by Governor April 8, 2010.**