

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 216
95TH GENERAL ASSEMBLY

1058L.04C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 425.010, RSMo, and to enact in lieu thereof seven new sections relating to debt settlement providers.

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

Section A. Section 425.010, RSMo, is repealed and seven new sections enacted in lieu thereof, to be known as sections 425.010, 425.350, 425.352, 425.355, 425.357, 425.360, and 425.365, to read as follows:

425.010. As used in [this chapter] **sections 425.010 to 425.040**, 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 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;
- (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;
- (3) "Debtor", an individual or individuals jointly and severally or jointly or severally indebted;
- (4) "Reasonable consideration", a fee or contribution to cover the cost of administering a debt management plan, not to exceed:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 17 (a) Fifty dollars for an initial or set-up fee or charge for establishing a DMP; and
18 (b) The greater of thirty-five dollars per month or eight percent of the amount distributed
19 monthly to creditors under such DMP.

425.350. As used in sections 425.350 to 425.365, the following terms mean:

- 2 (1) "Debt settlement plan", a written agreement or contract between a debt
3 settlement provider and a debtor whereby the debt settlement provider agrees to provide
4 its services as such to the debtor in return for payment by the debtor of no more than
5 reasonable consideration;
- 6 (2) "Debt settlement provider", any person or entities engaging in or holding
7 himself or herself out as engaging in debt settlement services for compensation. The term
8 shall not include:
- 9 (a) Attorneys at law of the state;
- 10 (b) Any person, partnership, association, or corporation doing business under and
11 as permitted by any law of this state or of the United States relating to banks, escrow
12 agents, accountants, broker-dealers in securities, or investment advisors in securities, while
13 performing services solely incidental to the practice of their professions;
- 14 (c) Public officers while acting in their official capacities and persons acting under
15 court order;
- 16 (d) Any person while performing services incidental to the dissolution, winding up
17 or liquidating of a partnership, corporation, or other business enterprise;
- 18 (e) Any person who is a regular, full time employee of a debtor, and who negotiates
19 or settles his employer's debts;
- 20 (f) Any person who is a creditor of the debtor, or an agent of one or more creditors
21 of the debtor, and whose services in settling the debtor's debts are rendered without cost
22 to the debtor;
- 23 (g) Any person who, at the request and authorization of a debtor, negotiates and
24 settles the debts without compensation for the services rendered; or
- 25 (h) A debt adjuster if the debt settlement service it provides to a debtor
26 contemplates that creditors will settle debts for less than the principal amount of the debt
27 enrolled in a debt settlement plan;
- 28 (3) "Debt settlement service", the negotiation, settlement, or alteration of the terms
29 of payment of a consumer's unsecured debt with the consumer's creditor with or without
30 receiving or holding of money from a consumer for the purpose of distributing that money
31 to the creditor;
- 32 (4) "Reasonable consideration", a fee charged to provide debt settlement service
33 not to exceed:

34 (a) Four percent of the principal amount of the debt enrolled in the debt settlement
35 plan as an enrollment or set-up fee; and

36 (b) Twenty percent of the principal amount of the debt enrolled in the debt
37 settlement plan in aggregate fees, the balance minus the enrollment fee of which shall be
38 collected in equal payments over a period to be determined by the provider as long as the
39 last payment is due no sooner than the median month in the plan. Upon full completion
40 of the debt settlement plan, such aggregate fees shall not exceed the amount the debt
41 settlement plan reduces the principal amount of the debt enrolled in the plan. However, the
42 debtor may voluntarily accelerate or prepay any unpaid installment payment of fees, and
43 the provider may collect fees on a pro rata basis once the provider has obtained reasonable
44 offers of settlement from any creditors.

425.352. A debt settlement provider shall only engage in debt settlement services
2 for compensation under a debt settlement plan.

425.355. Nothing in sections 425.350 to 425.365 shall be construed to prevent any
2 individual or organization from administering a debt settlement plan free of charge.

425.357. If a debt settlement provider establishes debt settlement plans with
2 consumers whereby the provider receives or holds the debtors money for the purpose of
3 distributing that money to the creditor, the provider shall maintain a separate trust
4 account for handling consumer funds with a depository institution insured by the Federal
5 Deposit Insurance Corporation.

425.360. A debt settlement provider shall carry aggregate liability insurance in the
2 amount of at least one million dollars:

3 (1) Against the risks of dishonesty, fraud, theft, and other misconduct on the part
4 of the provider or a director, employee, or agent of the provider;

5 (2) Issued by an insurance company authorized to do business in this state and
6 rated at least "A" by a nationally recognized rating organization;

7 (3) Insuring against claims made by or on behalf of individuals in this or any other
8 state as their interests may appear.

425.365. A circuit court shall have power, in an action brought in the name of the
2 state by the attorney general, to enjoin any person from acting or offering to act as a debt
3 settlement provider and order a debt settlement provider to correct any violation of this
4 section, including making restitution of money or property to a person aggrieved by a
5 violation.

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