

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 661

96TH GENERAL ASSEMBLY

1661S.02T

2011

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 an existing penalty provision.

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
2 repealed and six new sections enacted in lieu thereof, to be known as sections 425.010, 425.020,
3 425.025, 425.027, 425.040, and 425.043, to read as follows:

425.010. As used in [this chapter] **sections 425.010 to 425.043**, the following terms
2 mean:

3 (1) "Debt adjuster", a person who [acts] **provides** or offers to [act for a consideration as
4 an intermediary between a debtor and his creditors for the purpose of settling, compounding, or
5 in any wise altering the terms of payment of any debts of the debtor; and to that end the person
6 receives money or other property from the debtor, or on behalf of the debtor, for payment to the
7 debtor's credit by the person, or distribution among, the creditors by the person. This definition
8 shall only apply to a person who collects funds from a debtor and delivers such funds to the
9 debtor's creditors] **provide debt relief services for a consideration;**
10 (2) "Debt management plan" or "DMP", a written agreement or contract between a debt
11 adjuster and a debtor whereby the debt adjuster [agrees to], **in return for payment by the**
12 **debtor of no more than reasonable consideration, will** provide [its] **debt relief** services [as
13 such to the debtor in return for payment by the debtor of no more than reasonable consideration]
14 **that contemplate that creditors will reduce finance charges or fees for late payment,**
15 **default, or delinquency;**

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.

16 (3) "Debtor", an individual or individuals jointly and severally or jointly or severally
17 indebted;

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

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

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

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

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

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

425.025. Nothing in [this chapter] **sections 425.010 to 425.043** shall be construed to
2 prevent any individual or organization from administering a debt management plan **or debt**
3 **settlement plan** free of charge.

425.027. [A debt adjuster shall provide a blanket bond in the amount of one hundred
2 thousand dollars in favor of the state of Missouri and a copy of the bond shall be filed with the
3 director of the division of finance.] **Each initial license application shall be accompanied by**
4 **a surety bond in the principal sum in accordance with the following categories:**

5 (1) **Fifty thousand dollars if the applicant declares that the operation will handle**
6 **no consumer monies; or**

7 (2) **One hundred thousand dollars otherwise.**
8

9 The bond shall be for the benefit of any debtor who is damaged by the debt adjuster's breach of
10 the debt management plan **or debt settlement plan** or the debt adjuster's failure to properly
11 administer debtor funds collected or disbursed under the debt management plan **or debt**
12 **settlement plan**. The director of the division of finance may investigate any debtor complaint
13 and make claim on a bond for the benefit of a debtor or release the bond to a debtor to make a
14 claim.

425.040. The following persons shall not be considered debt adjusters for the purposes of [this chapter] **sections 425.010 to 425.043:**

(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 or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the debtor; and

(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] **in providing debt relief services.**

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

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

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

(3) To the extent that any aspect of the debt relief service relies upon or results in the debtor's failure to make timely payments to creditors or debt collectors, that the use of the debt relief service will likely adversely affect the debtor's creditworthiness, may result in the debtor being subject to collection actions or sued by creditors or debt collectors, and may increase the amount of money the debtor owes due to the accrual of fees and interest; and

(4) To the extent that the debt adjuster requests or requires the debtor to place funds in an account at an insured financial institution, that the debtor owns the funds held in the account, the debtor may withdraw from the debt relief service at any time without penalty, and, if the debtor withdraws, the debtor shall receive all funds in the account,

22 other than funds earned by the debt adjuster, within seven business days of the debtor's
23 request.

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

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

37 (1) The debt adjuster has renegotiated, settled, reduced, or otherwise altered the
38 terms of at least one debt under a debt management plan or debt settlement plan;

39 (2) The debtor has made at least one payment under such debt management plan
40 or debt settlement plan; and

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

43 (a) Bear the same proportional relationship to the total fee for settling the entire
44 debt balance as the individual debt amount bears to the entire debt amount. The
45 individual debt amount and the entire debt amount are amounts owed at the time the debt
46 was enrolled on the debt relief service; or

47 (b) Be a percentage of the amount saved as a result of the settlement. The
48 percentage charged shall not change from one individual debt to another. The amount
49 saved is the difference between the amount owed at the time the debt was enrolled in the
50 debt relief service and the amount actually paid to satisfy the debt.

51 4. Nothing in this section prohibits requesting or requiring the debtor to place
52 funds in an account to be used for the debt adjuster's fees for payments to creditors or debt
53 collectors in connection with the renegotiation, settlement, reduction, or other alteration
54 of the terms of payment or other terms of debt, provided that:

55 (1) The funds are held in an account at an insured financial institution;

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

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

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

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

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