

O.C.G.A. Title 18, Ch. 5

Current through the 2023 Regular Session of the General Assembly.

***Official Code of Georgia Annotated > TITLE 18 Debtor and Creditor (Chs. 1 — 5) > CHAPTER 5
Debt Adjustment (§§ 18-5-1 — 18-5-5)***

CHAPTER 5 Debt Adjustment

Official Code of Georgia Annotated

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O.C.G.A. § 18-5-1

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18-5-1. Definitions.

As used in this chapter, the term:

- (1) “Debt adjusting” means doing business in debt adjustments, 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 and contracting with a debtor for a fee to:
 - (A) Effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of the debtor; or
 - (B) Receive from the debtor and disburse to his or her creditors any money or other thing of value.
- (2) “Person” means an individual, corporation, partnership, trust, association, or other legal entity.
- (3) “Resides” means to live in a particular place, whether on a temporary or permanent basis.

History

Ga. L. 1956, p. 797, § 1; Ga. L. 2003, p. 392, § 1; Ga. L. 2015, p. 1088, § 18/SB 148.

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O.C.G.A. § 18-5-2

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18-5-2. Debt adjusting permitted.

In the course of engaging in debt adjusting, it shall be unlawful for any person to accept from a debtor who resides in this state, either directly or indirectly, any charge, fee, contribution, or combination thereof in an amount in excess of 7.5 percent of the amount paid monthly by such debtor to such person for distribution to creditors of such debtor; provided, however, no provision of this chapter shall prohibit any person, in the course of engaging in debt adjusting, from imposing upon a debtor who resides in this state a reasonable and separate charge or fee for insufficient funds transactions.

History

Ga. L. 1956, p. 797, § 2; Ga. L. 2003, p. 392, § 2; Ga. L. 2015, p. 1088, § 18/SB 148.

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O.C.G.A. § 18-5-3

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18-5-3. Exemption for debt adjustment by certain individuals or entities.

Nothing in this chapter shall apply to those situations involving debt adjusting incurred in the practice of law in this state. Nothing in this chapter shall apply to those persons or entities who incidentally engage in debt adjustment to adjust the indebtedness owed to said person or entity. Nothing in this chapter shall apply to the following entities or their subsidiaries: the Federal National Mortgage Association; the Federal Home Loan Mortgage Corporation; a bank, bank holding company, trust company, savings and loan association, credit union, credit card bank, or savings bank that is regulated and supervised by the Office of the Comptroller of the Currency, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, or the Georgia Department of Banking and Finance; or persons as defined in Code Section 7-3-3 operating under Chapter 3 of Title 7, the “Georgia Installment Loan Act.”

History

Ga. L. 1956, p. 797, § 4; Ga. L. 2003, p. 392, § 3; Ga. L. 2015, p. 5, § 18/HB 90; Ga. L. 2015, p. 1088, § 18/SB 148; Ga. L. 2020, p. 156, § 9/SB 462.

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O.C.G.A. § 18-5-3.1

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18-5-3.1. Annual requirements for persons engaged in debt adjusting; designation of repository office.

(a) Any person engaged in debt adjusting for debtors residing in this state shall meet the following annual requirements:

(1) Obtain from an independent third party certified public accountant an annual audit of all accounts of such person in which the funds of debtors are deposited and from which payments are made to creditors on behalf of debtors. A copy of the summary results of such annual audit shall be made available upon written request to any party so requesting a copy for a charge not to exceed the cost of the reproduction of the annual audit; and

(2) Obtain and maintain at all times insurance coverage for employee dishonesty, depositor's forgery, and computer fraud in an amount not less than the greater of \$100,000.00 or 10 percent of the monthly average for the immediately preceding six months of the aggregate amount of all deposits made with such person by all debtors. The deductible on such coverage shall not exceed 10 percent of the face amount of the policy coverage. Such policy shall be issued by a company rated at least "A-" or its equivalent by a nationally recognized rating organization and such policy shall provide for 30 days' advance written notice of termination of the policy to be provided to the Attorney General's office.

(b) A copy of the annual audits and insurance policies required by this Code section shall be filed annually with the Attorney General's office.

(c) The Attorney General's office shall act as a repository for the audits, insurance, and termination notices furnished to such office pursuant to this Code section. No oversight responsibility shall be imposed upon such office by virtue of its receipt of such documents.

History

Code 1981, § 18-5-3.1, enacted by Ga. L. 2003, p. 392, § 4; Ga. L. 2015, p. 1088, § 18/SB 148.

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O.C.G.A. § 18-5-3.2

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18-5-3.2. Timing of disbursements to appropriate creditors; trust account required.

- (a) Any person engaged in debt adjusting shall disburse to the appropriate creditors all funds received from a debtor, less any fees authorized by this chapter, within 30 days of receipt of such funds.
- (b) Any person engaged in debt adjusting shall maintain a separate trust account for the receipt of any and all funds from debtors and the disbursement of such funds on behalf of debtors.

History

Code 1981, § 18-5-3.2, enacted by Ga. L. 2003, p. 392, § 5.

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O.C.G.A. § 18-5-4

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18-5-4. Penalty for unlawfully engaging in business of debt adjusting.

- (a) Any person who engages in debt adjusting in violation of this chapter shall be guilty of a misdemeanor.
- (b) Without limiting the applicability of subsection (a) of this Code section:
 - (1) Any person who engages in debt adjusting in violation of the provisions of Code Section 18-5-3.1 or subsection (b) of Code Section 18-5-3.2 shall further be liable for a civil fine of not less than \$50,000.00; and
 - (2) Any person who engages in debt adjusting in violation of the provisions of Code Section 18-5-2 or subsection (a) of Code Section 18-5-3.2 shall further be liable to the debtor in an amount equal to the total of all fees, charges, or contributions paid by the debtor plus \$5,000.00. Such debtor shall have the right to bring a cause of action directly against such person for violation of the provisions of this chapter.
- (c) The Attorney General and prosecuting attorneys shall have the authority to conduct the criminal prosecution of all cases arising under this chapter and to conduct civil prosecution of cases arising under this chapter.
- (d) A violation of Code Section 18-5-2, 18-5-3.1, or 18-5-3.2 shall additionally be a violation of Part 2 of Article 15 of Chapter 1 of Title 10, the “Fair Business Practices Act of 1975.”

History

Ga. L. 1956, p. 797, § 3; Ga. L. 2003, p. 392, § 6; Ga. L. 2004, p. 631, § 18; Ga. L. 2015, p. 1088, § 18/SB 148.

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O.C.G.A. § 18-5-5

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18-5-5. Role of Attorney General in promulgating rules and regulations.

The Attorney General shall have the authority to promulgate rules and regulations and establish procedures necessary to carry into effect, implement, and enforce the provisions of this chapter. The authority granted to the Attorney General pursuant to this Code section shall be exercised at all times in conformity with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

History

Code 1981, § 18-5-5, enacted by Ga. L. 2015, p. 1088, § 18/SB 148.

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