

March 21, 2007

S 1198. REGULATE DEBT SETTLEMENT. Filed 3/21/07. *TO REGULATE THE PRACTICE OF DEBT SETTLEMENT BY THE STATE BANKING COMMISSION.*

Enacts new Article 9 of GS Chapter 23, regulating debt settlement service and providers. Defines *debt settlement service* as negotiation, adjustment, or settlement of an individual's debt with the individual's creditor (1) without holding or receiving the individual debtor's money or property and (2) without paying the debtor's money to or distributing the debtor's property among creditors.

Specifies that a license, issued by the Commissioner of Banks (Commissioner), is required in order to engage in the business of debt settlement. Provides detailed requirements for filing an application with the Commissioner. Requires the applicant to pay a filing fee of \$100.00 and provide proof of insurance in the amount of \$250,000 against the risks of any misconduct on the part of the applicant or the applicant's director, employee, or agent. Provides detailed requirements for records to be maintained by licensees and requires the filing of a financial statement with the application for a debt settlement license.

Directs the Commissioner to investigate the applicant's responsibility, experience, character, and general fitness. Provides guidelines as to required information should there be a board of directors and if the applicant is a corporation. Directs that a license may not be issued if the investigation reveals specified factors including evidence of prior criminal acts by the applicant.

Limits the amount that debt settlement provider may charge in fees to not exceed in the aggregate 20% of the principal debt and provides for a refund of a percentage of fees if the debtor cancels the contract before its successful completion. Requires a written contract between a debt settlement provider and the debtor. Includes detailed specifications as to the content of the contract.

Specifies functions required to be performed by the debt settlement provider and actions that are specifically prohibited. Prohibits debt settlement providers from holding themselves as authorized or competent to provide legal services. Specifies that this prohibition does not apply to licensed attorneys providing legal services in an attorney-client relationship.

Provides for sanctions and civil penalties to be assessed against debt settlement providers for violations of the act. Amends GS 14-423(2) defining "debt adjusting" to distinguish "debt adjusting" from "debt settlement service." Specifies that the term "debt adjusting" does not include the practice of debt settlement service as defined in GS 23-50. Effective October 1, 2007, and applies to contracts entered into on or after that date.

Intro. by Clodfelter.

GS 14, 23