

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 1067
PROPOSED COMMITTEE SUBSTITUTE H1067-PCS40602-TM-29

Short Title: Modernize Debt Settlement Prohibition.

(Public)

Sponsors:

Referred to:

May 12, 2020

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE AND EXPAND THE PROHIBITION OF DEBT SETTLEMENT
3 BY MAKING DEBT SETTLEMENT AN UNFAIR TRADE PRACTICE, CLARIFYING
4 THE DEFINITION OF DEBT SETTLEMENT, EXPANDING CIVIL REMEDIES
5 AVAILABLE TO DEBTORS, LIMITING DEBT SETTLEMENT ACTS THAT ARE
6 AUTHORIZED, AND MAKE OTHER ADMINISTRATIVE AND TECHNICAL
7 CHANGES.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Article 56 of Chapter 14 of the General Statutes is recodified as Article
10 9 of Chapter 75 of the General Statutes and reads as rewritten:

11 "Article 56-9.

12 "~~Debt Adjusting.~~ Adjusting and Debt Settlement Prohibited.

13 "~~§ 14-423.~~ § 75-150. Definitions.

14 As used in this Article, the following definitions apply:

- 15 (1) "~~Debt adjuster~~" means a person who engages in, attempts to engage in, or
16 offers to engage in the practice or business of debt adjusting.
- 17 (1) Affiliate. – Any person who controls, is controlled by, or is under common
18 control with, any other person.
- 19 (2) "~~Debt adjusting~~" means entering Debt adjusting. – Entering into or making a
20 contract, express or implied, with a ~~particular~~ debtor whereby the debtor
21 agrees to pay a certain amount of money periodically to the person engaged
22 in the debt adjusting business and that person, for consideration, agrees to
23 distribute, or distributes the same among ~~certain specified~~ one or more
24 creditors in accordance with a plan agreed upon. ~~Debt adjusting includes the~~
25 ~~business or practice of any person who holds himself out as acting or offering~~
26 ~~or attempting to act for consideration as an intermediary between a debtor and~~
27 ~~his creditors for the purpose of settling, compounding, or in any way altering~~
28 ~~the terms of payment of any debt of a debtor, and to that end receives money~~
29 ~~or other property from the debtor, or on behalf of the debtor, for the payment~~
30 ~~to, or distribution among, the creditors of the debtor.~~
- 31 (3) ~~Debt adjusting also includes the business or practice of debt settlement or~~
32 ~~foreclosure assistance whereby Debt settlement.~~ – The business whereby any
33 person holds himself or herself themselves out as acting for consideration as
34 an intermediary between a debtor and one or more of the debtor's creditors for
35 the purpose of reducing, settling, or altering the terms of the payment of any
36 debt of the debtor, whether or not the person distributes the debtor's funds or



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property among the creditors, and receives a fee or other consideration for reducing, settling, or altering the terms of the payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full debtor.

(3)(4) "~~Debtor~~" means an Debtor. – An individual who resides in North Carolina, and includes two or more individuals who are jointly and severally, or jointly or severally, indebted to a creditor or creditors.

(3a) "~~Nominal consideration~~" means a fee or a contribution to cover the cost of administering a debt management plan not to exceed forty dollars (\$40.00) for origination or setup of the debt management plan and ten percent (10%) of the monthly payment disbursed under the debt management plan, not to exceed forty dollars (\$40.00) per month.

(4)(5) "~~Person~~" means an Person. – An individual, firm, partnership, limited partnership, corporation, or ~~association~~ association, or other entity.

"§ 75-151. Debt adjusting and debt settlement prohibited.

No person, directly or through affiliates, shall engage in, offer to engage in, or attempt to engage in debt adjusting or debt settlement.

"§ 14-424. § 75-152. Engaging, etc., in business of debt ~~Debt~~ adjusting and debt settlement a misdemeanor.

~~If any~~ Any person shall engage who engages in, or offer offers to engage in, or attempt to, attempts to engage in the business or practice of debt adjusting, or if any person shall hereafter act, offer to act, or attempt to act as a debt adjuster, he shall be adjusting or debt settlement is guilty of a Class 2 misdemeanor.

"§ 14-425. ~~Enjoining practice of debt adjusting; appointment of receiver for money and property employed.~~ § 75-153. Jurisdiction of the superior court to enjoin debt adjusting or debt settlement.

(a) The superior court shall have jurisdiction, in an action brought in the name of the State by the Attorney General or the district attorney of the prosecutorial district as defined in G.S. 7A-60, to enjoin, as an unfair or ~~deceptive~~ trade practice, the continuation of any debt adjusting or debt settlement business or the offering of any debt adjusting ~~services~~ services or debt settlement services in violation of this Article.

(b) The Attorney General or the district attorney who brings an action under this section may appoint a receiver for the property and money employed in the transaction of business by such person as a ~~debt adjuster~~, to ensure, so far as may be possible, the return to debtors of so much of their money and property as has been received by the ~~debt adjuster~~, and has not been paid to the creditors of the debtors.

(c) The court in an action under this section may also assess civil penalties under G.S. 75-15.2 and award attorneys' fees to the State under G.S. 75-16.1.

(d) This section is in addition to any other remedies available under Chapter 75 of the General Statutes or other laws.

"§ 14-426. ~~Certain persons and transactions not deemed debt adjusters or debt adjustment.~~ § 75-154. Acts authorized.

The following individuals or transactions shall persons are not be deemed debt adjusters or as being engaged in the business or practice of debt adjusting: adjusting or debt settlement:

- (1) Any person or individual who is a regular full-time employee of a ~~debtor~~, debtor and who acts as an ~~adjuster~~ of his with respect to an employer's debts.
- (2) Any person or individual acting pursuant to any order or judgment of a court, or a court order.
- (3) Any person acting pursuant to authority conferred by any a law of this State or of the United States.

- 1 ~~(3)~~(4) Any person who is a creditor of the debtor, ~~or an agent of one or more creditors~~
2 ~~of the debtor, including the creditor's agent, and whose services in adjusting~~
3 ~~the debtor's debts are rendered who acts~~ without cost to the ~~debtor.~~debtor with
4 respect to debts owed to the creditor.
- 5 ~~(4)~~(5) Any person who at the request of a ~~debtor,~~debtor arranges for or makes a loan
6 to the ~~debtor,~~debtor and ~~who, at the authorization of the debtor, acts as an~~
7 ~~adjuster of the debtor's debts engages in debt adjusting~~ in the disbursement of
8 the proceeds of the ~~loan,~~loan without ~~compensation~~cost to the debtor for the
9 services rendered in adjusting such ~~debts.~~debts, except interest and fees
10 authorized by law.
- 11 (5) ~~An intermittent or casual adjustment of a debtor's debts, for compensation, by~~
12 ~~an individual or person who is not a debt adjuster or who is not engaged in the~~
13 ~~business or practice of debt adjusting, and who does not hold himself out as~~
14 ~~being regularly engaged in debt adjusting.~~
- 15 (6) An attorney-at-law licensed to practice in this State ~~who is not employed by a~~
16 ~~debt adjuster and acting within the attorney-client relationship with the debtor~~
17 ~~or creditor, excluding services provided to a debtor by an attorney, or in the~~
18 ~~name of an attorney, who has entered into any arrangement with a person~~
19 ~~engaged, directly or through affiliates, in debt adjusting or debt settlement.~~
- 20 (7) An organization that provides credit counseling, education, and debt
21 management services to debtors if the organization also does all of the
22 following:
- 23 a. Provides individualized credit counseling and budgeting assistance to
24 the debtor without charge prior to the debtor's enrollment in a debt
25 management plan provided by the organization.
- 26 b. Determines that the debtor has the financial ability to make payments
27 to complete the debt management plan and that the plan is suitable for
28 the debtor.
- 29 c. Disburses the debtor's funds to creditors pursuant to a debt
30 management plan that the debtor ~~has paid for with no more than~~
31 ~~nominal consideration and has agreed to in writing.~~
- 32 d. Charges no fee or a fee to cover the cost of administering a debt
33 management plan not to exceed forty dollars (\$40.00) for origination
34 or setup of the debt management plan and ten percent (10%) of the
35 monthly payment disbursed under the debt management plan not to
36 exceed forty dollars (\$40.00) per month.
- 37 ~~d.e.~~ Provides to the debtor, periodically and on no less than a quarterly
38 basis, an individualized accounting for the most recent period of all of
39 the debtor's payments and disbursements under the debt management
40 plan and all charges paid by the debtor.
- 41 ~~e.f.~~ Does not directly or indirectly require the debtor to purchase other
42 services or materials as a condition to participating in the debt
43 management plan.
- 44 ~~f.g.~~ Does not receive a payment, commission, or other benefit for referring
45 the debtor to a provider of services.
- 46 ~~g.h.~~ Is accredited ~~Accredited~~ by an ~~accrediting~~ organization that the
47 Commissioner of Banks approves as being independent and nationally
48 recognized for providing accreditation to organizations that provide
49 credit counseling and debt management services.

50 **"§ 75-155. Contracts void.**

51 Contracts for debt adjusting or debt settlement are void as against public policy.

1 **"§ 75-156. Unfair trade practice.**

2 A violation of this Article is an unfair trade practice under G.S. 75-1.1."

3 **SECTION 2.** This act becomes effective July 1, 2020, and applies to offenses
4 committed on or after that date.