

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS15196-MUF-27

Short Title: NC Debt Settlement Services Act. (Public)

Sponsors: Senators Johnson, Overcash, and Jackson (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO LICENSE, EXAMINE, AND REGULATE DEBT SETTLEMENT SERVICES IN
THE STATE OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 53 of the General Statutes is amended by adding a new Article
to read:

"Article 26.

"North Carolina Debt Settlement Services Act.

"§ 53-441. Title.

This Article may be cited as the North Carolina Debt Settlement Services Act.

"§ 53-442. Definitions.

In this Article, the following definitions apply:

- (1) Commission. – The State Banking Commission.
- (2) Commissioner. – The Commissioner of Banks.
- (3) Consumer reporting agency. – Defined in 15 U.S.C. § 1681a(f).
- (4) Covered military member. – A member of the Armed Forces to which either
of the following applies:
 - a. The member is on active duty for a period of more than 30 days, as
defined in 10 U.S.C. § 101(d).
 - b. The member is on active Guard and Reserve duty, as defined in 10
U.S.C. § 101(d), with a rank of E4 or below.
- (5) Creditor. – Includes persons that extend credit to, or persons that service loans
made to, debtors. This term does not include doctors, lawyers, or other
professionals who receive payment for their services in installments or
persons whose only participation in a credit transaction is to honor a credit
card.
- (6) Debt collector. – A debt collector, as defined in 15 U.S.C. § 1692a, or a
collection agency, as defined in G.S. 58-70-15.
- (7) Debt management organization. – An organization that satisfies all of the
following requirements:
 - a. Provides individualized credit counseling and budgeting assistance to
a debtor without charge prior to the debtor's enrollment in a debt
management plan.
 - b. Determines that the debtor has the financial ability to make payments
to complete the debt management plan and that the plan is suitable for
the debtor.



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- c. Disburses the debtor's funds to creditors pursuant to a debt management plan that the debtor has paid for with nominal consideration and has agreed to in a record.
- d. Provides to the debtor, periodically and on no less than a quarterly basis, an individualized accounting for the most recent period of all of the debtor's payments and disbursements under the debt management plan and all charges paid by the debtor.
- e. Does not directly or indirectly require the debtor to purchase other services or materials as a condition to participating in the debt management plan.
- f. Does not receive a payment, commission, or other benefit for referring the debtor to a provider of services.
- g. Is accredited by an accrediting organization that the Commissioner of Banks approves as being independent and nationally recognized for providing accreditation to organizations that provide credit counseling and debt management services.
- (8) Debt settlement services. – Any action or negotiation initiated or taken on behalf of a debtor with any creditor of the debtor for the purpose of obtaining debt forgiveness of all or a portion of the credit extended by the creditor to the debtor or a reduction of payments, charges, or fees payable by the debtor. With respect to student loan forgiveness or student loan payment reduction programs established under federal or State law and widely available to similarly situated debtors at no cost, the facilitation of enrollment in or qualification for these programs does not constitute an action or negotiation.
- (9) Debtor. – An individual who resides in this State or an entity registered to do business in this State. The term includes two or more individuals who are jointly or severally, or jointly and severally, indebted to a creditor.
- (10) Duplicate original. – An exact copy with signatures created by the same impression as the original, an exact copy bearing an original signature, or, in the case of an electronic transaction, an electronic version with electronic signatures.
- (11) Electronic signature. – Defined in G.S. 66-312.
- (12) Licensee. – A person licensed under this Article.
- (13) Nominal consideration. – A fee 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.
- (14) Principal. – A person that, directly or indirectly, owns or controls ten percent (10%) or more of the outstanding stock of a corporation or a ten percent (10%) or greater interest in a person.

"§ 53-443. Rules by Commissioner.

The Commissioner may make rules to implement this Article.

"§ 53-444. License requirement; exceptions.

(a) No person shall engage in the business of providing or offering to provide debt settlement services to any debtor, whether or not the person has an office, facility, agent, or other physical presence in the State, unless the person obtains from the Commissioner a license issued pursuant to this Article. This Article does not apply to any bank, savings institution, credit union, refund anticipation loan act licensee under Article 20 of this Chapter, trust company doing business under Chapter 53C of the General Statutes, savings and loan association doing business under Chapter 54 or 54B of the General Statutes, savings bank doing business under Chapter 54C

of the General Statutes, consumer finance licensee under Article 15 of this Chapter, or any person licensed to practice law in this State.

(b) A debt management organization is not required to be licensed under this Article if it offers to provide or provides debt settlement services solely in connection with offering to provide or providing debt management plans. A nonprofit organization providing credit counseling services that satisfies the requirements of 26 U.S.C. § 501(q) is also not required to be licensed under this Article.

(c) This Article shall be construed by the Commissioner to promote sound personal financial advice and management.

"§ 53-445. Application for license; form; content; fee.

(a) An application for a license under this Article shall be made in a record, under oath, and on a form provided by the Commissioner.

(b) The application shall include all of the following:

(1) The name and address of the applicant and the following:

a. If the applicant is a partnership, firm, or association, the name and address of each partner or member.

b. If the applicant is a corporation or limited liability company, the name and address of each director, member, registered agent, and principal.

c. If the applicant is a business trust, the name and address of each trustee and beneficiary.

(2) The name and address of each manager and officer of the applicant.

(3) The address of each location of the applicant.

(4) The financial statements of the applicant.

(5) A current copy of the applicant's standard debt settlement services agreement.

(6) The applicant's consent to a federal and State criminal history record check and a set of the applicant's fingerprints in a form acceptable to the Commissioner. In the case of an applicant that is a person other than a natural person, each individual who has control of the applicant or who is the qualifying individual or a branch manager shall consent to a federal and State criminal history record check and submit a set of that individual's fingerprints.

(7) Payment of an application fee of two thousand dollars (\$2,000). The application fee shall not be refundable and shall not be abated by surrender, suspension, or revocation of the license.

(8) Any other information required by the Commissioner concerning the financial responsibility, background, experience, and activities of the applicant and the persons described in this section.

"§ 53-446. Surety bond.

(a) Applicants shall be required to post a surety bond with the Commissioner at the time of the application for licensure and each licensee shall maintain a surety bond in the amount of one million dollars (\$1,000,000).

(b) The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to debt settlement engagements. The Commissioner has the discretion to require the applicant to obtain additional insurance coverage to address related cybersecurity risks inherent in the applicant's business model as it relates to debt settlement engagements and to the extent these risks are not within the scope of the required surety bond.

(c) The aggregate liability of the surety in no event shall exceed the principal sum of the bond. Claimants against the licensee may themselves bring suit directly on the security bond, or the Commissioner may bring suit on behalf of claimants, either in one action or in successive actions.

(d) The surety bond shall remain in effect until cancellation, which may occur only after 90 days' written notice to the Commissioner. Cancellation does not affect any liability incurred or accrued during that period.

(e) The surety bond shall remain in place for no less than five years after the licensee's debt settlement operations cease in this State. However, the Commissioner may permit the surety bond to be reduced or eliminated prior to that time to the extent of the amount of the licensee's outstanding enrolled debt.

(f) The surety bond proceeds are deemed by operation of law to be held in trust for the benefit of the debtors in a debt settlement engagement in the event of the bankruptcy of the licensee.

"§ 53-447. Qualifications.

(a) After investigating an applicant, the Commissioner shall issue to the applicant a license at the locations specified in the application if the Commissioner finds all of the following:

(1) The financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, officers, directors, trustees, and principals warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law.

(2) The applicant has made acceptable provision for the avoidance of conflicts of interest.

(3) No more than one-third of the board of directors or managing members are employees, officers, members, principals, trustees, directors, agents, or other representatives of organizations that grant credit to consumers.

(4) The applicant is not the subject of any pending material administrative proceedings by any governmental authority and has not received a materially adverse determination in any past administrative proceedings by any governmental authority. The Commissioner has sole discretion to determine the materiality of any proceedings or determinations.

(5) The applicant has complied with this Article and any rules adopted under it.

(b) If the Commissioner fails to make these findings, no license shall be issued, and the Commissioner shall notify the applicant of the denial and the reasons for the denial.

(c) A license shall not be issued to a creditor or debt collector.

"§ 53-448. Licenses; places of business; changes.

(a) Each license shall state the address or addresses at which the business is to be conducted and shall fully state the legal name of the licensee, as well as any assumed business name by which the licensee is operating in this State, whether physically or electronically. Each license shall be posted prominently in each place of business of the licensee. Licenses are not transferable or assignable, by operation of law or otherwise. No licensee shall use any name in this State other than the legal name or assumed business name set forth in the license.

(b) No licensee shall open an additional office or relocate any place of business without prior approval of the Commissioner. Applications for this approval shall be made in a record on a form provided by the Commissioner and shall be accompanied by payment of a five hundred dollar (\$500.00) nonrefundable application fee. The application shall be approved unless the Commissioner finds that the applicant has not conducted business under this Article efficiently, fairly, in the public interest, and in accordance with law. The application is deemed approved if notice to the contrary has not been mailed by the Commissioner to the applicant within 30 days of the date the application is received by the Commissioner; however, the Commissioner may extend this period for good cause. After approval, the applicant shall give notice in a record to the Commissioner within 20 days of the commencement of business at the additional location or relocated place of business.

(c) A licensee shall notify the Commissioner in a record of the closing of any business location within 20 days of the closing. A licensee shall provide any other information regarding the closing that the Commissioner requires.

(d) A license shall remain in force until it has been surrendered, revoked, or suspended. The surrender, revocation, or suspension of a license does not affect any preexisting legal right or obligation of the licensee.

"§ 53-449. Acquisition of control; application.

(a) Except as otherwise provided in this section, no person shall acquire, directly or indirectly, twenty-five percent (25%) or more of the ownership of a licensee, or, if the licensee is a corporation, twenty-five percent (25%) of its voting shares, unless the person first does all of the following:

(1) Files an application with the Commissioner in a form prescribed by the Commissioner.

(2) Submits any information required by the Commissioner concerning the financial responsibility, background, experience, and activities of the person, its directors, officers, trustees, beneficiaries, principals, and members, and any proposed new directors, officers, principals, or members of the licensee.

(3) Pays an application fee in an amount prescribed by the Commissioner.

(b) After investigating the applicant, the Commissioner shall permit the applicant to acquire the interest in the licensee if it finds that the applicant and its directors, officers, members, trustees, beneficiaries, and principals, and any proposed new directors, officers, principals, or members of the licensee have the financial responsibility, character, reputation, experience, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The Commissioner shall grant or deny the application within 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by the Commissioner. If the Commissioner extends this period, the Commissioner shall notify the applicant of the reasons for the extension. If the application is denied, the Commissioner shall notify the applicant of the denial and the reasons for the denial.

(c) This section does not apply to any of the following:

(1) The acquisition of an interest in a licensee, directly or indirectly, including an acquisition by merger or consolidation, by or with another licensee.

(2) The acquisition of an interest in a licensee, directly or indirectly, including an acquisition by merger or consolidation, by or with a person affiliated through common ownership with the licensee.

(3) The acquisition of an interest in a licensee by a person by devise, descent, survivorship, or operation of law.

(d) A person acquiring an interest in a licensee in a transaction described in subsection (c) of this section shall send written notice to the Commissioner of the acquisition within 30 days of its closing.

"§ 53-450. Retention of books, accounts, and records; responding to the Commissioner.

(a) A licensee shall maintain in its offices any books, accounts, and records required by the Commissioner to determine whether the licensee is complying with this Article and rules adopted under it. These books, accounts, and records shall be maintained separately from any other business in which the licensee is involved. Records relating to debt settlement services agreements shall be retained for at least three years after the debt settlement services agreements are terminated. To safeguard the privacy of debtors, records containing personal financial information shall be shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may arrange for disposal from a business record destruction vendor.

(b) If the Commissioner requests a response in a record from the licensee, or any books, accounts, records, or other documents from a licensee, the licensee shall submit a response in a record, along with the requested documents, within the time period specified by the

Commissioner. In determining this time period or whether to extend this time period, the Commissioner shall consider the volume and complexity of the request. If the Commissioner does not specify a time period, the licensee shall respond within 30 days of the request.

(c) No person shall make any false statement or knowingly and willfully make any omission of a material fact in connection with any information or report filed with the Commissioner or another governmental agency, or in connection with any oral or written communication with the Commissioner or another governmental agency. If the information contained in any document filed with the Commissioner or at the direction of the Commissioner becomes inaccurate or incomplete in any material respect, the licensee or exempt person shall within 30 days file a correcting amendment to the information contained in the document.

(d) The Commissioner may, by rule, impose terms and conditions under which the records and files of a licensee may be maintained outside this State. A principal place of business shall not be located at an individual's home or residence. A licensee shall maintain a record of the principal place of business with the Commissioner and report any change of address of the principal place of business or any branch office within 15 days after the change.

"§ 53-451. Annual report.

A licensee shall submit a report in a record to the Commissioner no later than 90 days after the end of each calendar year. The report shall be made under oath and shall be in a form prescribed by the Commissioner. The report shall contain any information required by the Commissioner concerning the licensee's business and operations during the prior calendar year as well as all of the following data:

- (1) The number of debts and the delinquency status of each debt enrolled at the time of contract enrollment for debt settlement services as follows:
 - a. Delinquent for 60 to 89 days.
 - b. Delinquent for 90 to 119 days.
 - c. Delinquent for 120 to 179 days.
 - d. Delinquent for 180 days or more.
- (2) The number of debtors enrolled in debt settlement services in the prior calendar year.
- (3) The number of debts enrolled by debtors in debt settlement services in the prior calendar year.
- (4) The total dollar amount of debts placed in debt settlement services with the licensee.
- (5) The number and dollar amount of settlements paid by debtors enrolled in debt settlement services.
- (6) The number of debts enrolled in debt settlement services that failed to reach settlement.
- (7) The number of debtors that had a contract with the licensee at some point during the prior calendar year that have filed for bankruptcy under the United States Bankruptcy Code, Title 11 of the United States Code.
- (8) Total dollar amount of fees for all charges to debtors enrolled in debt settlement services.

"§ 53-452. Other reporting requirements.

(a) Within 15 days after any of the following events, a licensee shall submit a report in a record to the Commissioner describing the event and its expected impact on its business:

- (1) The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee.
- (2) The institution of administrative proceedings against the licensee by any governmental authority.
- (3) The institution of an action against the licensee by the Attorney General or any other governmental authority.

- 1 (4) Any felony indictment of the licensee or any of its members, partners,
2 directors, officers, trustees, beneficiaries, or principals, if known.
3 (5) Any felony conviction of the licensee or any of its members, partners,
4 directors, officers, trustees, beneficiaries, or principals, if known.
5 (6) Any other event prescribed by the Commissioner by rule.

6 (b) Within 30 days after a judgment against a licensee in a civil action relating to the debt
7 settlement services agreement with a debtor, the licensee shall submit a report in a record to the
8 Commissioner describing the event and its expected impact on the business of the licensee.

9 (c) Within 10 days after receipt of a qualified audit, a licensee shall notify the
10 Commissioner and describe what steps are being taken to address the concerns raised in the audit.

11 **"§ 53-453. Investigations; examinations.**

12 (a) The Commissioner may, as often as the Commissioner deems necessary, investigate
13 and examine the affairs, business, premises, records, and filed complaints related to any person
14 licensed or required to be licensed under this Article to determine whether the business complies
15 with this Article and rules adopted under it. Examinations of licensees shall be conducted at least
16 once every three years. During an investigation or examination, the owners, members, officers,
17 directors, partners, trustees, beneficiaries, and employees of the person being investigated or
18 examined shall, upon demand of the Commissioner, afford full access to all premises, books,
19 records, and information.

20 (b) The Commissioner may do one or more of the following pursuant to an investigation
21 or examination under this section:

- 22 (1) Issue subpoenas, including subpoenas duces tecum.
23 (2) Compel the attendance of witnesses and the production of any documents.
24 (3) Administer oaths, conduct hearings, and transcribe testimony.
25 (4) Give publicity to the examination or investigation if the Commissioner deems
26 it best for the public interest.

27 **"§ 53-454. Confidential information; shared agreements with other governmental agencies.**

28 (a) Notwithstanding any State law to the contrary, the Commissioner shall report
29 enforcement actions under this Article and may report other relevant information.

30 (b) The Commissioner may enter agreements or sharing arrangements with other
31 governmental agencies, the Conference of State Bank Supervisors, or other associations
32 representing governmental agencies and may share otherwise confidential information pursuant
33 to these written agreements.

34 (c) The requirements of G.S. 53C-2-7 regarding the privacy or confidentiality of any
35 information or material provided under subsections (a) and (b) of this section, and any privilege
36 arising under any other federal or State law with respect to the information or material, continue
37 to apply to the information or material after it has been disclosed to an entity described in
38 subsection (a) or (b) of this section. Information or material held by the entity is not subject to
39 disclosure under any State law governing the disclosure to the public of information held by an
40 officer or agency of the State. The entities described in subsections (a) and (b) of this section
41 may share information and material with all State and federal regulatory officials with debt
42 settlement industry oversight authority without the loss of privilege or the loss of confidentiality
43 protections provided by State or federal law.

44 (d) Any provision of Chapter 132 of the General Statutes relating to the disclosure of
45 confidential supervisory information or of any information or material described in subsection
46 (a) of this section that is inconsistent with this section is superseded by the requirements of this
47 section.

48 (e) The confidentiality provisions contained in subsection (c) of this section do not apply
49 to information or material relating to the employment history of and publicly adjudicated
50 disciplinary and enforcement actions for debt settlement service providers.

51 **"§ 53-455. Annual fees; reimbursement of travel expenses.**

(a) To defray the costs of the regulation of licensees, a licensee shall pay an annual fee of one thousand dollars (\$1,000). A licensee shall also pay to the Commissioner an assessment not to exceed eighteen dollars (\$18.00) per one hundred thousand dollars (\$100,000) of debt enrolled in debt settlement services. All fees shall be assessed on or after November 1 each calendar year, and all fees shall be paid by the licensee on or before July 1 following each assessment.

(b) In addition to the annual fee, if it becomes necessary to examine the books, accounts, and records of a licensee at a location outside this State, the licensee is liable for and shall pay to the Commissioner, within 30 days after the presentation of an itemized statement, the actual travel and subsistence expenses incurred on account of the Commissioner's examination, or shall pay a per diem to the Commissioner at a rate approved by the Commission.

"§ 53-456. Licensees providing debt settlement services; prohibited and required business methods.

A licensee engaged in the business of providing or offering to provide debt settlement services to any debtor shall comply with all of the following requirements:

(1) Each debt settlement services agreement shall be in a record and shall be signed by the debtor and an individual representing the licensee. The agreement may be signed by the parties either in writing or electronically. The agreement shall set forth all of the following:

- a. The name and address of both the debtor and the licensee.
- b. A full description of all services to be performed for the debtor by the licensee.
- c. A clear explanation, highlighted in bold type, of the costs to the debtor.
- d. A statement that the debt settlement services agreement may be terminated for any reason by the debtor and that the debtor has no obligation to continue the arrangement unless satisfied with the services provided.
- e. An explanation of the method of dispute resolution under the agreement.
- f. An explanation of the obligations of the debtor and the licensee.
- g. Notification of privacy policies in compliance with State and federal law.
- h. The phone number, email, and physical address of the North Carolina Commissioner of Banks and the North Carolina Consumer Protection Division of the North Carolina Office of Justice for the purpose of filing complaints related to debt settlement services.

(2) A licensee shall give to the debtor a duplicate original of the agreement executed by the debtor and licensee upon execution.

(3) A licensee shall not request or receive payment or other compensation for any debt settlement services until and unless:

- a. The licensee has negotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to the debt settlement services agreement.
- b. The debtor has made at least one payment to a creditor following the licensee's negotiation, settlement, reduction, or other alteration of at least one debt owed by the debtor to that creditor.

(4) Prior to the execution of a debt settlement services agreement, a licensee shall disclose to the debtor in a record, and retain a copy of, all of the following:

- a. The amount of time necessary to achieve the represented results and, to the extent that the services may include a settlement offer to any of

- 1 the debtor's creditors or debt collectors, the time by which the licensee
2 will make a bona fide settlement offer to each of them.
- 3 b. To the extent that the services may include a settlement offer to any of
4 the debtor's creditors or debt collectors, the amount of money or the
5 percentage of each outstanding debt that the debtor shall accumulate
6 before the licensee will make a bona fide settlement offer to each of
7 them.
- 8 c. To the extent that any aspect of the debt settlement services relies upon
9 or results in the debtor's failure to make timely payments to creditors
10 or debt collectors, that the use of the debt settlement services will
11 likely adversely affect the debtor's creditworthiness, may result in the
12 debtor being subject to collections or sued by creditors or debt
13 collectors, and may increase the amount of money the debtor owes due
14 to the accrual of fees and interest.
- 15 (5) A licensee shall not require a debtor to execute a power of attorney as a
16 condition of receiving debt settlement services.
- 17 (6) A licensee shall not require a debtor to open an account with a depository
18 institution as a condition of receiving debt settlement services. A licensee may
19 request that a debtor open an account in connection with its provision of debt
20 settlement services so long as all of the following apply:
- 21 a. The debtor's funds are held in an account at a financial institution
22 insured by the Federal Deposit Insurance Corporation or National
23 Credit Union Administration.
- 24 b. The debtor owns the funds held in the account and is paid accrued
25 interest on the account, if any.
- 26 c. The entity administering the account is not owned or controlled by, or
27 in any way affiliated with, the licensee.
- 28 d. The entity administering the account does not give or accept any
29 money or other compensation in exchange for referrals of business
30 from the licensee.
- 31 e. The debtor may withdraw from the debt settlement services at any time
32 without penalty and shall receive all funds in the account, other than
33 the fee earned by the licensee for completed services, if any, subject
34 to the limitations imposed by this Article.
- 35 (7) A licensee, or its affiliate, subsidiary, or partner, shall not receive a gift, bonus,
36 premium, reward, or other compensation, directly or indirectly, for advising,
37 arranging, or assisting a debtor in connection with obtaining any extension of
38 credit or other service from a creditor, except for educational or counseling
39 services required in connection with a government-sponsored program.
- 40 (8) A licensee shall not enroll a debtor in a debt settlement for a debt that is less
41 than 60 days delinquent, as determined by a consumer reporting agency.
- 42 (9) A licensee shall not enroll a debt for debt settlement services whose
43 origination date is less than 180 days from the date of enrollment.
- 44 (10) A licensee shall not instruct, encourage, or promote a debtor to obtain
45 additional extensions of credit as part of the enrollment for debt settlement
46 services.
- 47 (11) A licensee shall not solicit or advise a debtor or potential customer to default
48 on any loan.
- 49 (12) A licensee shall not send a cease-and-desist notice to a creditor of a debtor to
50 which the licensee is offering or providing debt settlement services.

(13) A licensee shall not receive money from a debtor for transmission to a debtor's creditors or engage in the business of providing or offering to provide debt management plans to debtors unless the licensee is also licensed under Article 16B of this Chapter.

(14) A licensee shall not enroll a covered military member.

"§ 53-457. Fee for debt settlement services.

(a) If a licensee successfully reaches a settlement for a debt of a debtor, the licensee may charge the debtor a fee that does not exceed either of the following:

(1) Fifteen percent (15%) of the principal amount of the debt.

(2) Twenty percent (20%) of the difference between the amount of the debt at the time the licensee settles the debt and the amount to be paid by the debtor pursuant to the settlement.

(b) A licensee shall not charge a debtor any other fee for providing debt settlement services.

"§ 53-458. Advertising.

No person licensed or required to be licensed under this Article shall use or cause to be published any advertisement that contains any false, misleading, or deceptive statement or representation or identifies the person by any name other than the name set forth on the license issued by the Commissioner.

"§ 53-459. Suspension or revocation of license.

(a) The Commissioner may suspend or revoke a license issued under this Article upon any of the following grounds:

(1) Any ground for denial of a license under this Article.

(2) Any violation of the provisions of this Article or rules adopted under it, or a violation of any other law applicable to the conduct of the licensee's business.

(3) A course of conduct consisting of the failure to perform debt settlement services agreements.

(4) Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

(5) Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit.

(6) Entry of a federal or State administrative order against the licensee for violation of any law related to the conduct of the licensee's business.

(7) Refusal to permit an investigation or examination by the Commissioner.

(8) Failure to pay any fee or assessment imposed by this Article.

(9) Failure to comply with any order of the Commissioner.

(10) Insolvency of the licensee.

(b) For the purposes of this section, acts of any officer, director, member, trustee, beneficiary, partner, or principal are deemed acts of the licensee.

(c) A licensee has the right to cancel and surrender its license, upon notification in a record to the Commissioner.

"§ 53-460. Civil penalty.

After notice of opportunity for a hearing, the Commissioner may impose a civil penalty upon a person that has violated any of the provisions of this Article or rules adopted under it. The civil penalty shall not exceed one thousand dollars (\$1,000) per violation. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"§ 53-461. Injunctions; receivers.

If the Commissioner has reasonable cause to believe that a person is violating or is threatening to violate any provision of this Article or rule adopted under it, the Commissioner may enter an order requiring the person to cease and desist from the violation. The Commissioner may also

1 seek, and a court may award, an injunction against the person. In accordance with Article 38 of
2 Chapter 1 of the General Statutes, a court may also appoint a receiver for the property and
3 business of the person, including any books, accounts, and records that the court deems necessary
4 to prevent future violations.

5 **"§ 53-462. Authority of Attorney General.**

6 (a) If the Commissioner determines that a person is in violation, or has violated, any
7 provision of this Article or rule adopted under it, the Commissioner may refer the case to the
8 Attorney General and may request that the Attorney General investigate the violation.

9 (b) With or without a referral, the Attorney General may seek, and a court may award, an
10 injunction for a violation of this Article. If the Attorney General files an action for an injunction,
11 the Attorney General shall provide notice of the action to the Commissioner. The Attorney
12 General may also seek, and a court may award, damages and any other relief allowed by law,
13 including restitution to debtors. The Attorney General shall identify any debtors entitled to relief
14 within 180 days after the date of an order awarding restitution.

15 (c) In an action brought by the Attorney General under this section, the Attorney General
16 is entitled to reasonable attorneys' fees and costs.

17 **"§ 53-463. Hearings and appeals.**

18 (a) An administrative hearing held by the Commissioner shall be conducted in
19 accordance with Article 3A of Chapter 150B of the General Statutes. The officer presiding at the
20 hearing may be the Commissioner, a deputy commissioner, or another suitable person designated
21 by the Commissioner.

22 (b) A party may appeal a final order of the Commissioner to the State Banking
23 Commission within 30 days after the order. The party shall give a notice of appeal to the
24 Commissioner. The notice of appeal shall state the grounds for the appeal and set forth in
25 numbered order the assignments of error for review by the Commission. Failure to state the
26 grounds for the appeal and assignments of error constitutes grounds to dismiss the appeal. Failure
27 to comply with the briefing schedule provided by the Commission also constitutes grounds to
28 dismiss the appeal. Upon receipt of a notice of appeal, the Commissioner shall, within 30 days
29 of the notice, certify to the Commission the record on appeal.

30 (c) The Chair of the Commission may appoint an appellate review panel of not fewer
31 than three members to review the record on appeal, hear oral arguments, and make a
32 recommended decision to the Commission.

33 (d) A party may petition the Superior Court of Wake County for judicial review of a final
34 order of the Commission within 30 days after the order. A copy of the petition for judicial review
35 shall be served upon the Commissioner pursuant to G.S. 150B-46. The petition shall be placed
36 on the civil issue docket of the court and has precedence over other civil actions. Within 15 days
37 after service of the petition for judicial review, the Commissioner shall certify the record to the
38 Clerk of Superior Court of Wake County. The standard of review of a petition for judicial review
39 of a final order of the Commission is as provided in G.S. 150B-51(b).

40 **"§ 53-464. Private right of action; unfair or deceptive trade practice.**

41 A person that suffers loss because of another person's violation of this Article or rule adopted
42 under it may bring a civil action against the person. If the plaintiff prevails in the action, a court
43 shall award reasonable attorneys' fees and any other litigation expenses incurred by bringing the
44 action. A violation of this Article or rules adopted under it constitutes an unfair or deceptive trade
45 practice under G.S. 75-1.1.

46 **"§ 53-465. Criminal penalty.**

47 A violation of this Article is a Class 3 misdemeanor. Each transaction in violation of this
48 Article is a separate offense."

49 **SECTION 2.** Article 56 of Chapter 14 of the General Statutes is repealed.

50 **SECTION 3.** This act becomes effective January 1, 2026.