



Bill Draft 2019-TM-7: Modernize Debt Settlement Prohibition.

2019-2020 General Assembly

Committee:
Introduced by:
Analysis of: 2019-TM-7

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OVERVIEW: *The bill draft would move the prohibition of debt adjusting and debt settlement from the criminal chapter into the civil chapter on consumer protection and would expand the prohibition as follows:*

- *Include the conduct of affiliates to determine if debt adjusting or debt settlement occurred*
- *Treat any fees paid as consideration, regardless of when paid*
- *Make debt adjusting and debt settlement unfair trade practices subject to civil remedies by the Attorney General and consumers under Article 75*
- *Void any contracts for debt adjusting or debt settlement*
- *Make other administrative and technical changes*

CURRENT LAW: Under Article 56 of Chapter 14, debt adjusting (i.e., receiving payments from a debtor to distribute among creditors for a fee) and debt settlement (i.e., negotiating on behalf of a debtor with creditors for a fee) are criminal offenses punishable as a Class 2 misdemeanor. The current criminal Article includes a civil remedy authorizing the Attorney General to seek civil relief to stop debt adjusting and debt settlement.

BILL ANALYSIS: The bill draft responds to concerns outlined in the Background section that debtors are under increased financial stress caused by the pandemic and that the prohibition against debt settlement needs updating to adequately protect debtors.

The bill draft would recodify the prohibition against debt adjusting and debt settlement from Article 56 of Chapter 14 (Criminal Law) to Article 9 of Chapter 75 (Monopolies, Trusts and Consumer Protection). Debt adjusting and debt settlement remain criminal offenses punishable at the current level of offense (Class 2 misdemeanor).

Under the modernized definitions in G.S. 75-150, debt adjusting occurs when a debtor agrees to make periodic payments to a person engaged in the debt adjusting business and that person, for consideration, agrees to distribute the payment among one or more creditors. Debt settlement occurs when any person holds themselves out as acting for consideration as an intermediary between a debtor and one or more creditors for the purpose of reducing, settling, or altering the terms of the payment of any debt of the debtor. Under current law, debt settlement is limited to payments made in advance

New G.S. 75-151 prohibits a person, directly or through affiliates, from engaging in, offering to engage in, or attempting to engage in debt adjusting or debt settlement. Current law does not expressly include the activities of affiliates.

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G.S. 75-153 maintains the current authorization for the Attorney General to bring a civil action to stop debt adjusting or debt settlement. New subsection (d) states that this civil remedy is in addition to other remedies under Chapter 75 and was needed when the language was moved into Chapter 75.

In addition to the authority of the Attorney General, the bill draft expands the protections to debtors by making debt adjusting and debt settlement contracts void and by declaring debt adjusting and debt settlement unfair trade practices. Debtors now have an express civil remedy under Chapter 75.

G.S. 75 -154 carries over the same exceptions to the prohibition against debt adjusting and debt settlement as current law with one change: an exception under current law for persons not engaged in the business of debt adjusting. This subdivision was removed because the definition of debt adjusting and debt settlement require the person be engaged in the business of debt adjusting or debt settlement making the exception redundant.

Specifically, the following persons are not engaged in debt adjusting or debt settlement:

- Regular full-time employee of a debtor who acts with respect to an employer's debts
- Any person acting pursuant to a court order
- Any person acting pursuant to authority conferred by a law of this State or of the United States
- Any person who is a creditor of the debtor, including the creditor's agent, and who acts without cost to the debtor with respect to debts owed to the creditor
- Any person who at the request of a debtor arranges for or makes a loan to the debtor and engages in debt adjusting in the disbursement of the proceeds of the loan without cost to the debtor for the services rendered in adjusting such debts, except interest and fees authorized by law
- An attorney licensed to practice in this State and acting within the attorney client relationship with the debtor, excluding services provided to a debtor by an attorney, or in the name of an attorney, who has entered into any arrangement with a person engaged, directly or through affiliates, in debt adjusting or debt settlement
- A provider of credit counseling, education, and debt management services if the provider is accredited by an organization that the Commissioner of Banks approves as being independent and nationally recognized for providing accreditation to providers of credit counseling and debt management services. The exception includes other limitations and a fee capped at the cost of administering a debt management plan not to exceed \$40 for setup of the debt management plan and 10% of the monthly payment disbursed not to exceed \$40 per month.

EFFECTIVE DATE: The bill draft would be effective July 1, 2020, and applies to offenses committed on or after that date.

BACKGROUND: Both the Resident Lenders of North Carolina and the NC Justice Center support modernizing the prohibition on debt settlement to enhance protections for debtors under financial strain caused by the pandemic.

The Attorney General's Office has identified abusive transactions that the current law does not explicitly prevent: using affiliates to prevent one company from completing the debt settlement transaction, claiming an attorney represents all debtors contacted by a debt settlement provider, and structuring the payment of

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fees to avoid the current definition of debt settlement. The bill draft explicitly prohibits these abusive transactions.