

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1397

Short Title: Debt Settling Restrictions. (Public)

Sponsors: Representatives Hall, Luebke, Lucas (Primary Sponsors); Adams, Barnhart, Bryant, Cole, Faison, Goforth, Harrison, Jackson, Killian, Lewis, Mackey, Martin, Pierce, Steen, Stewart, Stiller, Underhill, and Wainwright.

Referred to: Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II.

April 13, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT CERTAIN RESTRICTIONS AND REQUIREMENTS RELATING TO
3 THE PRACTICE OR BUSINESS OF DEBT SETTLING.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** The title of Article 56 of Chapter 14 of the General Statutes reads as
6 rewritten:

7 "Article 56.

8 Debt Adjusting and Debt Settling."

9 **SECTION 2.** G.S. 14-423 reads as rewritten:

10 **"§ 14-423. Definitions.**

11 ~~As used in this Article, the following definitions apply:~~The following definitions apply in
12 this Article:

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



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1 ~~debt settlement having been completed or in advance of all the services~~
 2 ~~agreed to having been rendered in full.~~ Debt adjusting. – Any of the
 3 following:

4 a. Entering into or making a contract, express or implied, with a
 5 particular debtor whereby the debtor agrees to pay a certain amount
 6 of money periodically to the person engaged in the debt adjusting
 7 business and that person, for consideration, agrees to distribute or
 8 distributes the same among certain specified creditors in accordance
 9 with a plan agreed upon.

10 b. The business or practice of any person who holds himself out as
 11 acting or offering or attempting to act for consideration as an
 12 intermediary between a debtor and his creditors for the purpose of
 13 settling, compounding, or in any way altering the terms of payment
 14 of any debt of a debtor, and to that end receives money or other
 15 property from the debtor, or on behalf of the debtor, for the payment
 16 to, or distribution among, the creditors of the debtor.

17 c. Debt settling in which the fee or other consideration is received in
 18 advance of the debt settlement having been completed or in advance
 19 of all the services agreed to having been rendered in full.

20 (2a) Debt settling. – The business or practice of debt assistance or foreclosure
 21 assistance whereby any person holds himself or herself out as acting for
 22 consideration as an intermediary between a debtor and the debtor's creditors
 23 for the purpose of reducing, settling, or altering the terms of the payment of
 24 any debt of the debtor, whether or not the person distributes the debtor's
 25 funds or property among the creditors, and receives a fee or other
 26 consideration for reducing, settling, or altering the terms of the payment of
 27 the debt.

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

31 (3a) ~~"Nominal consideration" means a~~ Nominal consideration. – A fee or a
 32 contribution to cover the cost of administering a debt management plan not
 33 to exceed forty dollars (\$40.00) for origination or setup of the debt
 34 management plan and ten percent (10%) of the monthly payment disbursed
 35 under the debt management plan, not to exceed forty dollars (\$40.00) per
 36 month.

37 (4) ~~"Person" means an~~ Person. – An individual, firm, partnership, limited
 38 partnership, corporation, or association.

39 (5) Unlawful debt settling practice. – Any debt settling that violates any
 40 provision of G.S. 14-426.1."

41 **SECTION 3.** Article 56 of Chapter 14 of the General Statutes is amended by
 42 adding a new section to read:

43 **"§ 14-426.1. Additional debt settling restrictions and requirements.**

44 (a) A debt settler shall not do any of the following:

45 (1) Make any representation regarding the debt settler's ability to obtain a
 46 particular result with respect to reducing, settling, or altering the terms of
 47 payment of a debt.

48 (2) Charge a debtor on a contingency fee basis.

49 (3) Solicit or accept a power of attorney from a debtor.

50 (4) Enter into a debt settling agreement with a debtor without first receiving the
 51 signed statement required by subsection (b) of this section.

1 (b) Prior to entering into any debt settling agreement, the debt settler shall provide the
2 debtor with written notice about nonprofits that provide substantially similar services as those
3 provided by the debt settler. The debt settler shall also inform the debtor that no debt settlement
4 agreement can be entered into unless the debtor provides the debt settler with a signed
5 statement that the debtor either has received counseling from a nonprofit or that such
6 counseling was not available."

7 **SECTION 4.** G.S. 14-424 reads as rewritten:

8 "**§ 14-424. Engaging, etc., in business of debt adjusting a ~~misdemeanor.~~misdemeanor;**
9 **unlawful debt settling practices a misdemeanor.**

10 (a) If any person shall engage in, or offer to or attempt to, engage in the business or
11 practice of debt adjusting, or if any person shall hereafter act, offer to act, or attempt to act as a
12 debt adjuster, ~~he~~the person shall be guilty of a Class 2 misdemeanor.

13 (b) If any person shall engage in unlawful debt settling practices, the person shall be
14 guilty of a Class 2 misdemeanor."

15 **SECTION 5.** G.S. 14-425 reads as rewritten:

16 "**§ 14-425. Enjoining practice of debt ~~adjusting;~~adjusting and unlawful debt settling**
17 **practices; appointment of receiver for money and property employed.**

18 The superior court shall have jurisdiction, in an action brought in the name of the State by
19 the Attorney General or the district attorney of the prosecutorial district as defined in
20 G.S. 7A-60, to enjoin, as an unfair or deceptive trade practice, the continuation of any debt
21 adjusting ~~business or business,~~ the offering of any debt adjusting ~~services.~~services, or unlawful
22 debt settling practices. The Attorney General or the district attorney who brings an action under
23 this section may appoint a receiver for the property and money employed in the transaction of
24 business by such person as a debt ~~adjuster,~~adjuster or debt settler, to ensure, so far as may be
25 possible, the return to debtors of so much of their money and property as has been received by
26 the debt ~~adjuster,~~adjuster or debt settler and has not been paid to the creditors of the debtors.
27 The court may also assess civil penalties under G.S. 75-15.2 and award attorneys' fees to the
28 State under G.S. 75-16.1."

29 **SECTION 6.** G.S. 14-426 reads as rewritten:

30 "**§ 14-426. Certain persons and transactions not deemed debt adjusters or debt**
31 **adjustment.****adjustment; certain persons and transactions not deemed debt**
32 **settlers or debt settlement.**

33 The following individuals or transactions shall not be deemed debt adjusters or as being
34 engaged in the business or practice of debt ~~adjusting;~~adjusting, and shall not be deemed debt
35 settlers or as being engaged in the business or practice of debt settling:

- 36 (1) Any person or individual who is a regular full-time employee of a debtor,
37 and who acts as an adjuster or settler of his employer's debts.
- 38 (2) Any person or individual acting pursuant to any order or judgment of a
39 court, or pursuant to authority conferred by any law of this State or of the
40 United States.
- 41 (3) Any person who is a creditor of the debtor, or an agent of one or more
42 creditors of the debtor, and whose services in adjusting or settling the
43 debtor's debts are rendered without cost to the debtor.
- 44 (4) Any person who at the request of a debtor, arranges for or makes a loan to
45 the debtor, and who, at the authorization of the debtor, acts as an adjuster or
46 settler of the debtor's debts in the disbursement of the proceeds of the loan,
47 without compensation for the services rendered in adjusting or settling such
48 debts.
- 49 (5) An intermittent or casual adjustment or settler of a debtor's debts, for
50 compensation, by an individual or person who is not a debt adjuster or settler
51 or who is not engaged in the business or practice of debt ~~adjusting,~~adjusting

1 or debt settling, and who does not hold himself out as being regularly
2 engaged in debt ~~adjusting~~adjusting or debt settling.

3 (6) An attorney-at-law licensed to practice in this State who is not employed by
4 a debt ~~adjuster~~adjuster or debt settler.

5 (7) An organization that provides credit counseling, education, and debt
6 management services to debtors if the organization also does all of the
7 following:

8 a. Provides individualized credit counseling and budgeting assistance to
9 the debtor without charge prior to the debtor's enrollment in a debt
10 management plan provided by the organization.

11 b. Determines that the debtor has the financial ability to make payments
12 to complete the debt management plan and that the plan is suitable
13 for the debtor.

14 c. Disburses the debtor's funds to creditors pursuant to a debt
15 management plan that the debtor has paid for with no more than
16 nominal consideration and has agreed to in writing.

17 d. Provides to the debtor, periodically and on no less than a quarterly
18 basis, an individualized accounting for the most recent period of all
19 of the debtor's payments and disbursements under the debt
20 management plan and all charges paid by the debtor.

21 e. Does not directly or indirectly require the debtor to purchase other
22 services or materials as a condition to participating in the debt
23 management plan.

24 f. Does not receive a payment, commission, or other benefit for
25 referring the debtor to a provider of services.

26 g. Is accredited by an accrediting organization that the Commissioner of
27 Banks approves as being independent and nationally recognized for
28 providing accreditation to organizations that provide credit
29 counseling and debt management services."

30 **SECTION 7.** This act becomes effective December 1, 2009, and applies to
31 offenses committed on or after that date.