

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 76
Feb 11, 2021
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40052-TM-1

Short Title: Modernize Debt Settlement Prohibition.

(Public)

Sponsors: Representative Howard.

Referred to:

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

The General Assembly of North Carolina enacts:

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

"Article ~~56-9~~.

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

~~"§ 14-423. § 75-150. Definitions.~~

As used in this Article, the following definitions apply:

(1) ~~"Debt adjuster" means a person who engages in, attempts to engage in, or
offers to engage in the practice or business of debt adjusting.~~

(1) Affiliate. – Any person who controls, is controlled by, or is under common
control with any other person.

(2) ~~"Debt adjusting" means entering Debt adjusting. – Entering into or making a
contract, express or implied, with a particular debtor whereby the debtor
agrees to pay a certain amount of money periodically to the person engaged
in the debt adjusting business and that person, for consideration, agrees to
distribute, or distributes the same among certain specified one or more
creditors in accordance with a plan agreed upon. Debt adjusting includes the
business or practice of any person who holds himself out as acting or offering
or attempting to act for consideration as an intermediary between a debtor and
his creditors for the purpose of settling, compounding, or in any way altering
the terms of payment of any debt of a debtor, and to that end receives money
or other property from the debtor, or on behalf of the debtor, for the payment
to, or distribution among, the creditors of the debtor.~~

(3) ~~Debt adjusting also includes the business or practice of debt settlement or
foreclosure assistance whereby Debt settlement. – The business whereby any
person holds himself or herself themselves out as acting for consideration as
an intermediary between a debtor and one or more of the debtor's creditors for
the purpose of reducing, settling, or altering the terms of the payment of any
debt of the debtor, whether or not the person distributes the debtor's funds or~~



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. Engaging, etc., in business of debt § 75-152. 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, 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.

- (3)(4) Any person who is a creditor of the debtor, ~~or an agent of one or more creditors of the debtor, including the creditor's agent, and whose services in adjusting the debtor's debts are rendered who acts~~ without cost to the ~~debtor.~~ debtor with respect to debts owed to the creditor.
- (4)(5) Any person who at the request of a ~~debtor,~~ debtor arranges for or makes a loan to the ~~debtor,~~ debtor and ~~who, at the authorization of the debtor, acts as an adjuster of the debtor's debts engages in debt adjusting~~ in the disbursement of the proceeds of the ~~loan,~~ loan without ~~compensation~~ cost to the ~~debtor~~ for the services rendered in adjusting such ~~debts.~~ debts, except interest and fees authorized by law.
- (5) ~~An intermittent or casual adjustment of a debtor's debts, for compensation, by an individual or person who is not a debt adjuster or who is not engaged in the business or practice of debt adjusting, and who does not hold himself out as being regularly engaged in debt adjusting.~~
- (6) An attorney-at-law licensed to practice in this State ~~who is not employed by a debt adjuster and acting within the attorney-client relationship with the debtor or creditor, 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.~~
- (7) An organization that provides credit counseling, education, and debt management services to debtors if the organization also does all of the following:
- a. Provides individualized credit counseling and budgeting assistance to the debtor without charge prior to the debtor's enrollment in a debt management plan provided by the organization.
 - 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.
 - c. Disburses the debtor's funds to creditors pursuant to a debt management plan that the debtor ~~has paid for with no more than nominal consideration and~~ has agreed to in writing.
 - d. Charges no fee or 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.
 - ~~d.e.~~ 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.f.~~ 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.g.~~ Does not receive a payment, commission, or other benefit for referring the debtor to a provider of services.
 - ~~g.h.~~ Is accredited ~~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.

"§ 75-155. Contracts void.

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, 2021, and applies to offenses
4 committed on or after that date.