GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2023

H.B. 481 Mar 27, 2023 HOUSE PRINCIPAL CLERK

D

H
HOUSE BILL DRH40244-NH-65

1

2

3

4

5

6

7

8

9

10

11

12

13 14

15

16

17

18

19

2021

22

23

24

25

2627

28

29

30

31

32

33

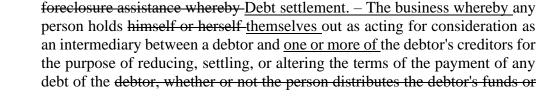
34

35

36

(3)

Short Title: Modernize Debt Settlement Prohibition. (Public) Representative Howard. Sponsors: 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. <u>§ 75-150.</u> Definitions. As used in this Article, the following definitions apply: "Debt adjuster" means a person who engages in, attempts to engage in, or (1)offers to engage in the practice or business of debt adjusting. Affiliate. – Any person who controls, is controlled by, or is under common <u>(1)</u> control with any other person. "Debt adjusting" means entering Debt adjusting. - Entering into or making a (2) 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

Debt adjusting also includes the business or practice of debt settlement or



to, or distribution among, the creditors of the debtor.

 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.

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

<u>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.</u>

'§ 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.

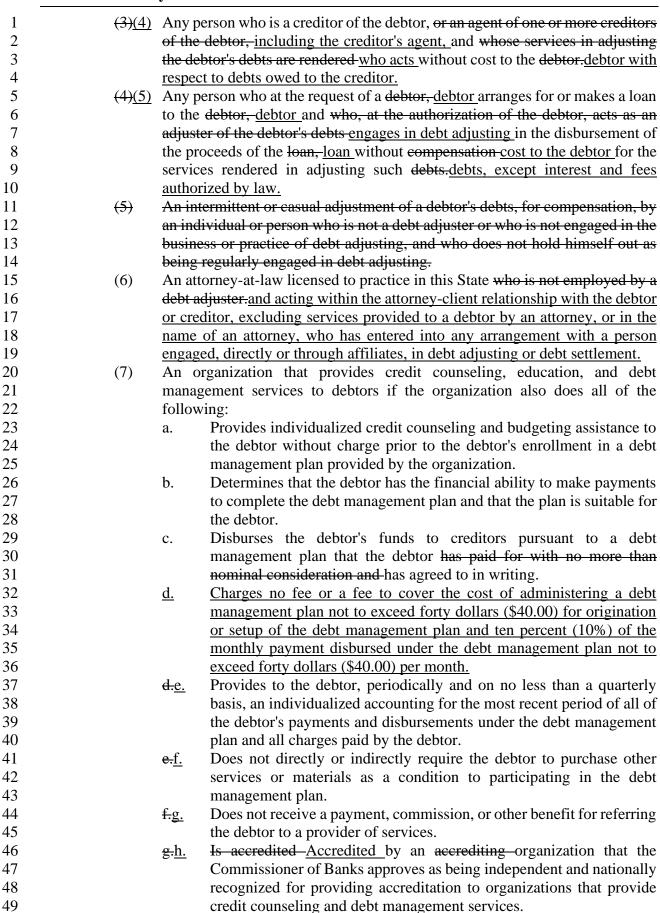
- (a) The superior court shall have jurisdiction, in an action brought in the name of the State by the Attorney General or the district attorney of the prosecutorial district as defined in G.S. 7A-60, to enjoin, as an unfair or deceptive trade practice, the continuation of any debt adjusting or debt 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 <u>in an action under this section</u> 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.

"\s\ 14-426. Certain persons and transactions not deemed debt adjusters or debt adjustment.\s\ 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.

Page 2 DRH40244-NH-65



"§ 75-155. Contracts void.

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

DRH40244-NH-65

50

51

"§ 75-156. Unfair trade practice.

1 2

3 4

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

SECTION 2. This act becomes effective July 1, 2023, and applies to offenses committed on or after that date.

Page 4 DRH40244-NH-65