

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 590

Short Title: Consumer Credit Counseling/Debt Management. (Public)

Sponsors: Senators Dorsett; Albertson, Cowell, Dannelly, Forrester, Holloman, Jenkins, Lucas, Malone, Purcell, Rand, Stevens, and Thomas.

Referred to: Commerce.

March 16, 2005

A BILL TO BE ENTITLED
AN ACT TO FURTHER PROTECT CONSUMERS SEEKING ASSISTANCE WITH
MANAGING THEIR DEBTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-426 reads as rewritten:

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

The following individuals or transactions shall not be deemed debt adjusters or as being engaged in the business or practice of debt adjusting:

- (1) Any person or individual who is a regular full-time employee of a debtor, and who acts as an adjuster of his employer's ~~debts;~~debts.
- (2) Any person or individual acting pursuant to any order or judgment of a court, or pursuant to authority conferred by any law of this State or of the United ~~States;~~States.
- (3) Any person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the ~~debtor;~~debtor.
- (4) Any person who at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting such ~~debts;~~debts.
- (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.

- 1 (6) An attorney at law licensed to practice in this State who is not
2 primarily engaged in the business of debt adjusting but who engages in
3 debt adjusting activities incidental to the practice of law.
- 4 (7) An organization that is a tax-exempt nonprofit organization pursuant to
5 section 501(c)(3) of the Internal Revenue Code and provides credit
6 counseling and debt management services to debtors if the
7 organization also does all of the following:
- 8 a. Provides individualized credit counseling and budgeting
9 assistance to the debtor without charge prior to the debtor's
10 enrollment in a debt management plan provided by the
11 organization.
- 12 b. Determines that the debtor has the financial ability to make
13 payments to complete the debt management plan and that the
14 plan is suitable for the debtor.
- 15 c. Disburses the debtor's funds to creditors pursuant to a debt
16 management plan that the debtor has paid for with no more than
17 nominal consideration and has agreed to in writing. For
18 purposes of this sub-subdivision, 'nominal consideration' means
19 a fee or a contribution to cover the cost of administering the
20 plan, such fee or contribution not to exceed forty dollars
21 (\$40.00) for origination or setup of the debt management plan
22 and ten percent (10%) of the monthly payment disbursed under
23 the plan, not to exceed forty dollars (\$40.00) per month.
- 24 d. Provides to the debtor, periodically and on no less than a
25 quarterly basis, an individualized accounting for the most recent
26 period of all of the debtor's payments and disbursements under
27 the debt management plan and all charges paid by debtor.
- 28 e. Does not directly or indirectly require the debtor to purchase
29 other services or materials as a condition to participating in the
30 debt management plan.
- 31 f. Does not purchase any goods, services, or facilities for debt
32 management services from any for-profit entity that is affiliated
33 with the nonprofit organization or its officers or employees by
34 common ownership or control.
- 35 g. Is accredited by an accrediting organization that the
36 Commissioner of Banks approves as being independent and
37 nationally recognized for providing accreditation to
38 organizations that provide credit counseling and debt
39 management services."

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

41 "**§ 14-423. Definitions.**

42 As used in this Article certain terms or words are hereby defined as follows: Article,
43 the following definitions apply:

- 1 (1) ~~The term "debt"~~Debt adjuster" means a person who engages in,
2 attempts to engage in, or offers to engage in the practice or business of
3 debt adjusting as said term is defined in this Article.~~adjusting.~~
- 4 (2) ~~The term "debt"~~Debt adjusting" shall ~~mean~~mean entering into or
5 making ~~of~~ a contract, express or implied, with a particular debtor
6 whereby the debtor agrees to pay a certain amount of money
7 periodically to the person engaged in the debt adjusting business and
8 ~~who shall that person,~~ for a consideration, ~~agree~~agrees to distribute, or
9 ~~distribute~~distributes the same among certain specified creditors in
10 accordance with a plan agreed upon. ~~The term "debt adjusting" is~~
11 ~~further defined and shall also mean~~Debt adjusting includes the
12 business or practice of any person who holds himself out as acting or
13 offering or attempting to act for a consideration as an intermediary
14 between a debtor and his creditors for the purpose of settling,
15 compounding, or in ~~anywise~~any way altering the terms of payment of
16 any debt of a debtor, and to that end receives money or other property
17 from the debtor, or on behalf of the debtor, for the payment to, or
18 distribution among, the creditors of the debtor. Debt adjusting also
19 includes the business or practice of debt settlement or foreclosure
20 assistance whereby any person holds himself or herself out as acting
21 for consideration as an intermediary between a debtor and the debtor's
22 creditors for the purpose of reducing, settling, or altering the terms of
23 the payment of any debt of the debtor, whether or not the person
24 distributes the creditor's funds or property among the creditors, and
25 receives a fee or other consideration for reducing, settling, or altering
26 the terms of the payment of the debt in advance of the debt settlement
27 having been completed or in advance of all the services agreed to
28 having been rendered in full.
- 29 (3) ~~The term or word "debtor"~~"Debtor" means an individual, and includes
30 two or more individuals who are jointly and ~~severally~~severally, or
31 jointly or ~~severally~~severally, indebted to a creditor or creditors.
- 32 (4) ~~The word "person"~~"Person" means an individual, firm, partnership,
33 limited partnership, ~~corporation~~corporation, or association."

34 **SECTION 3.** G.S. 14-424 reads as rewritten:

35 "**§ 14-424. Engaging, etc., in business of debt adjusting a ~~misdemeanor~~Class I**
36 **felony.**

37 If any person shall ~~engage in, or offer to or attempt to,~~engages in, or offers to or
38 ~~attempts to,~~ engage in the business or practice of debt adjusting, or if any person shall
39 ~~hereafter act, offer to act, or attempt~~acts, offers to act, or attempts to act as a debt
40 adjuster, ~~he shall be~~the person is guilty of a ~~Class 2 misdemeanor~~Class I felony."

41 **SECTION 4.** G.S. 14-425 reads as rewritten:

42 "**§ 14-425. Enjoining practice of debt adjusting; appointment of receiver for**
43 **money and property employed.**

1 The superior court shall have jurisdiction, in an action brought in the name of the
2 State by the Attorney General or the district attorney of the prosecutorial district as
3 defined in G.S. 7A-60, to enjoin any person from acting, offering to act, or attempting to
4 act, as a debt adjuster, or engaging in the business of debt adjusting; and, in such action,
5 enjoin, as an unfair or deceptive trade practice, the continuation of any debt adjusting
6 business or the offering of any debt adjusting services. The Attorney General or the
7 district attorney who brings an action under this section may appoint a receiver for the
8 property and money employed in the transaction of business by such person as a debt
9 adjuster, to insure, ensure, so far as may be possible, the return to debtors of so much of
10 their money and property as has been received by the debt adjuster, and has not been
11 paid to the creditors of the debtors. The court may also assess civil penalties under
12 G.S. 75-15.2 and award attorneys' fees to the State under G.S. 75-16.1."

13 **SECTION 5.** G.S. 53-93 reads as rewritten:

14 **"§ 53-93. Powers and duties of Commissioner.**

15 (a) The Commissioner of Banks shall have the powers, ~~duties~~ duties, and
16 functions herein given, and in addition ~~thereto~~ such other powers and rights as ~~may be~~
17 are necessary or incident to the proper discharge of the Commissioner's duties. The
18 Commissioner may appoint and assign a member of the staff of the Office of the
19 Commissioner of Banks to preside at administrative hearings required by Article 3A of
20 Chapter 150B of the General Statutes, the Administrative Procedure Act, and make a
21 recommended decision to the Commissioner.

22 (b) The Commissioner of Banks shall determine which accrediting organizations
23 are independent and are nationally recognized for providing accreditation to an
24 organization that is a tax-exempt nonprofit organization pursuant to section 501(c)(3) of
25 the Internal Revenue Code, provides credit counseling and debt management services to
26 debtors, and otherwise complies with G.S. 14-426(7). The Commissioner of Banks may
27 adopt any rules necessary for implementing this subsection."

28 **SECTION 6.** This act is effective when it becomes law.