

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 590
Commerce Committee Substitute Adopted 5/18/05
Finance Committee Substitute Adopted 5/26/05
House Committee Substitute Favorable 8/2/05
House Committee Substitute #2 Favorable 8/23/05

Short Title: Consumer Credit Counseling/Debt Management.

(Public)

Sponsors:

Referred to:

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

1 who does not hold himself out as being regularly engaged in debt
 2 adjusting.

3 (6) An attorney-at-law licensed to practice in this State who is not
 4 primarily engaged in the business of debt adjusting but who engages in
 5 debt adjusting activities incidental to the practice of law.

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

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

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

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

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

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

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

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

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

34 **"§ 14-423. Definitions.**

35 (a) ~~As used in this Article certain terms or words are hereby defined as~~
 36 ~~follows:~~ Article, the following definitions apply:

37 (1) ~~The term "debt"~~Debt adjuster" means a person who engages in,
 38 attempts to engage in, or offers to engage in the practice or business of
 39 debt adjusting as said term is defined in this Article.~~adjusting.~~

40 (2) ~~The term "debt"~~Debt adjusting" shall mean ~~the~~means entering into or
 41 making ~~of~~a contract, express or implied, with a particular debtor
 42 whereby the debtor agrees to pay a certain amount of money
 43 periodically to the person engaged in the debt adjusting business and
 44 ~~who shall~~that person, for a consideration, ~~agree~~agrees to distribute, or

1 ~~distribute~~ distributes the same among certain specified creditors in
2 accordance with a plan agreed upon. ~~The term "debt adjusting" is~~
3 ~~further defined and shall also mean~~ Debt adjusting includes the
4 business or practice of any person who holds himself out as acting or
5 offering or attempting to act for a ~~consideration~~ as an intermediary
6 between a debtor and his creditors for the purpose of settling,
7 compounding, or in ~~anywise~~ any way altering the terms of payment of
8 any debt of a debtor, and to that end receives money or other property
9 from the debtor, or on behalf of the debtor, for the payment to, or
10 distribution among, the creditors of the debtor. Debt adjusting also
11 includes the business or practice of debt settlement or foreclosure
12 assistance whereby any person holds himself or herself out as acting
13 for consideration as an intermediary between a debtor and the debtor's
14 creditors for the purpose of reducing, settling, or altering the terms of
15 the payment of any debt of the debtor, whether or not the person
16 distributes the debtor's funds or property among the creditors, and
17 receives a fee or other consideration for reducing, settling, or altering
18 the terms of the payment of the debt in advance of the debt settlement
19 having been completed or in advance of all the services agreed to
20 having been rendered in full.

21 (3) ~~The term or word "debtor"~~ "Debtor" means an ~~individual~~ individual
22 who resides in North Carolina, and includes two or more individuals
23 who are jointly and ~~severally~~ severally, or jointly or ~~severally~~
24 severally, indebted to a creditor or creditors.

25 (3a) "Nominal consideration" means a fee or a contribution to cover the
26 cost of administering a debt management plan not to exceed forty
27 dollars (\$40.00) for origination or setup of the debt management plan
28 and ten percent (10%) of the monthly payment disbursed under the
29 debt management plan, not to exceed forty dollars (\$40.00) per month.

30 (4) ~~The word "person"~~ "Person" means an individual, firm, partnership,
31 limited partnership, ~~corporation~~ corporation, or association."

32 **SECTION 3.** G.S. 14-425 reads as rewritten:

33 **"§ 14-425. Enjoining practice of debt adjusting; appointment of receiver for**
34 **money and property employed.**

35 The superior court shall have jurisdiction, in an action brought in the name of the
36 State by the Attorney General or the district attorney of the prosecutorial district as
37 defined in G.S. 7A-60, to ~~enjoin any person from acting, offering to act, or attempting to~~
38 ~~act, as a debt adjuster, or engaging in the business of debt adjusting; and, in such action,~~
39 enjoin, as an unfair or deceptive trade practice, the continuation of any debt adjusting
40 business or the offering of any debt adjusting services. The Attorney General or the
41 district attorney who brings an action under this section may appoint a receiver for the
42 property and money employed in the transaction of business by such person as a debt
43 adjuster, to ~~insure~~ ensure, so far as may be possible, the return to debtors of so much of
44 their money and property as has been received by the debt adjuster, and has not been

1 paid to the creditors of the debtors. The court may also assess civil penalties under
2 G.S. 75-15.2 and award attorneys' fees to the State under G.S. 75-16.1."

3 **SECTION 4.** G.S. 14-426(7)g., as enacted by Section 1 of this act, becomes
4 effective October 1, 2005. G.S. 14-423(a)(2) as amended by Section 2 of this act
5 becomes effective December 31, 2005. The remainder of this act is effective when it
6 becomes law. This act expires October 1, 2007.