

NORTH CAROLINA GENERAL ASSEMBLY
1963 SESSION

CHAPTER 394
SENATE BILL 109

1 AN ACT TO PROHIBIT THE BUSINESS OR PRACTICE OF DEBT ADJUSTING OR
2 ACTING FOR A CONSIDERATION AS INTERMEDIARIES BETWEEN DEBTORS
3 AND THEIR CREDITORS AND TO PROVIDE INJUNCTIVE RELIEF AND
4 PENALTIES FOR A VIOLATION THEREOF.
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6 WHEREAS, a national organization known as National Better Business Bureau
7 states: "that those who have swarmed into the debt adjustment field recently have included a
8 large proportion of unscrupulous or incompetent opportunists whose activities have spread
9 misery throughout the land. They have used extravagant and deceptive advertising to claim far
10 more than they were in position to deliver. They have made false promises to persons whom
11 they knew, or should have known, were beyond redemption credit-wise. They have withheld
12 their own fees from the debtors' payments and have failed to promptly make agreed payments
13 to creditors or to obtain creditors' accession to the pro rata plan devised. The net result of their
14 activities, in many cases, has been to leave already desperate people more hopelessly mired in
15 debt and litigation than before."; and

16 WHEREAS, said debt adjusters and their business and practices are known by
17 several names, such as pro raters, debt-poolers, debt managers, credit counsellors, budget
18 systems, funding agencies, debt-liquidators, and debt-lumpers, and these practices have grown
19 to such proportions that for the most part they have become a national menace by preying upon
20 unfortunate people and harassed debtors, and those engaged in such practices, except for a few,
21 have engaged in false advertising, have falsely held themselves out as being competent and
22 able to solve debt problems regardless of any and all circumstances, have lured ignorant and
23 unsuspecting people into executing contracts heavily loaded in their favor and have charged
24 large fees for alleged services which results in piling debt upon debt; and

25 WHEREAS, such practices have been condemned by Merchants Bureaus, Boards of
26 Trade, Better Business Bureaus, Chambers of Commerce, and have been designated by the
27 National Legal Aid Association as "The Meanest Racket Out", and many magazines of national
28 circulation such as Good Housekeeping, Readers Digest, the Kiplinger Magazine and Changing
29 Times, and many other reputable publications have published articles condemning such
30 practices; and

31 WHEREAS, said debt adjusters are now increasing in number in the State of North
32 Carolina and many instances of their unwarranted practices are now being made known in the
33 State, and instances of many sharp practices, hardships on the unfortunate, no services actually
34 performed, and increase of debt through false advertising and other fraudulent means, have
35 been committed and have been carried out in the capital City of Raleigh, with the result that
36 there are many cases before justices of the peace wherein creditors have brought suits against
37 debtors although these debtors have executed contracts and paid money to those who hold
38 themselves out as performing the service or business of debt adjusters: Now, therefore,

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40 The General Assembly of North Carolina do enact:
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42 **Section 1.** As used in this Act certain terms or words are hereby defined as follows:

- 1 (a) The word "person" means an individual, firm, partnership, limited
2 partnership, corporation or association.
- 3 (b) The term "debt adjuster" means a person who engages in, attempts to engage
4 in, or offers to engage in the practice or business of debt adjusting as said
5 term is defined in this Act.
- 6 (c) The term "debt adjusting" shall mean the entering into or making of a
7 contract, express or implied, with a particular debtor whereby the debtor
8 agrees to pay a certain amount of money periodically to the person engaged
9 in the debt adjusting business and who shall for a consideration, agree to
10 distribute, or distribute the same among certain specified creditors in
11 accordance with a plan agreed upon. The term "debt adjusting" is further
12 defined and shall also mean the business or practice of any person who holds
13 himself out as acting or offering or attempting to act for a consideration as
14 an intermediary between a debtor and his creditors for the purpose of
15 settling, compounding, or in anywise altering the terms of payment of any
16 debt of a debtor, and to that end receives money or other property from the
17 debtor, or on behalf of the debtor, for the payment to, or distribution among,
18 the creditors of the debtor.
- 19 (d) The term or word "debtor" means an individual, and includes two or more
20 individuals who are jointly and severally, or jointly or severally indebted to a
21 creditor or creditors.

22 **Sec. 2.** If any person shall engage in, or offer to or attempt to, engage in the
23 business or practice of debt adjusting, or if any person shall hereafter act, offer to act, or
24 attempt to act as a debt adjuster, he shall be guilty of a misdemeanor and upon conviction or
25 plea of guilty shall be punished in the discretion of the court by fine or imprisonment or by both
26 such fine and imprisonment.

27 **Sec. 3.** The Superior Court shall have jurisdiction, in an action brought in the name
28 of the State by the Solicitor of the Solicitorial District, to enjoin any person from acting,
29 offering to act, or attempting to act as a debt adjuster, or engaging in the business of debt
30 adjusting; and, in such action, may appoint a receiver for the property and money employed in
31 the transaction of business by such person as a debt adjuster, to insure, so far as may be
32 possible, the return to debtors of so much of their money and property as has been received by
33 the debt adjuster, and has not been paid to the creditors of the debtors.

34 **Sec. 4.** The following individuals or transactions shall not be deemed debt adjusters
35 or as being engaged in the business or practice of debt adjusting: (1) Any person or individual
36 who is a regular, full-time employee of a debtor, and who acts as an adjuster of his employer's
37 debts; (2) Any person or individual acting pursuant to any order or judgment of a court, or
38 pursuant to authority conferred by any law of this State or of the United States; (3) Any person
39 who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose
40 services in adjusting the debtor's debts are rendered without cost to the debtor; (4) Any person
41 who at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the
42 authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the
43 proceeds of the loan, without compensation for the services rendered in adjusting such debts;
44 (5) An intermittent or casual adjustment of a debtor's debts, for compensation, by an individual
45 or person who is not a debt adjuster or who is not engaged in the business or practice of debt
46 adjusting, and who does not hold himself out as being regularly engaged in debt adjusting.

47 **Sec. 5.** All laws and clauses of laws in conflict with this Act are hereby repealed.

48 **Sec. 6.** This Act shall be in full force and effect from and after its ratification.

49 In the General Assembly read three times and ratified, this the 8th day of May,

50 1963.