

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS55323-LTf-82 (3/13)

Short Title: Regulate Debt Settlement.

(Public)

Sponsors: Senator Clodfelter.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE THE PRACTICE OF DEBT SETTLEMENT BY THE
3 STATE BANKING COMMISSION.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 23 of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 9.

8 "Debt Settlement.

9 "§ 23-50. Definitions.

10 The following definitions apply in this Article:

11 (1) "Commissioner" means the Commissioner of Banks.

12 (2) "Debt settlement provider" means any person or entity engaging in or
13 holding itself out as engaging in the business of debt settlement for
14 compensation. The term shall not include any of the following:

15 a. Attorneys-at-law, escrow agents, accountants, broker-dealers in
16 securities, or investment advisors in securities while performing
17 services during the course of the practice of their professions.

18 b. Any person, partnership, association, or corporation doing
19 business under, and as permitted by, any law of this State or any
20 federal law relating to banks, consumer finance businesses,
21 consumer loan companies, trust companies, mutual savings
22 banks, savings and loan associations, building and loan
23 associations, credit unions, crop credit associations,
24 development credit corporations, industrial development
25 corporations, title insurance companies, or insurance
26 companies.

- 1 c. Persons who, as employees on a regular salary or wage of an
2 employer not engaged in the business of debt adjusting, perform
3 credit services for their employer.
4 d. Public officers while acting in their official capacities and
5 persons acting under court order.
6 e. Any person while performing services incidental to the
7 dissolution, winding up, or liquidating of a partnership,
8 corporation, or other business enterprise.

- 9 (3) "Debt settlement service" means the negotiation, adjustment, or
10 settlement of a consumer's debt with the consumer's creditor without
11 holding or receiving the debtor's funds or property and without paying
12 the debtor's funds to, or distributing the debtor's property among,
13 creditors.

14 **§ 23-51. License required.**

15 (a) No person shall engage in the business of debt settlement in this State without
16 a license. An applicant for a license to engage in the business of debt settlement shall
17 file an application with the Commissioner in writing and under oath that includes all of
18 the following:

- 19 (1) The name and exact address of the applicant and the name and address
20 of each of the following, as applicable:
21 a. If the applicant is a corporation, its officers and directors.
22 b. If the applicant is an association, its officers and directors.
23 c. If the applicant is a partnership, its partners.
24 d. If the applicant is a limited liability company, its manager or
25 managers.
26 e. If the applicant is any other legal entity, its manager or other
27 person designated to control the operation of that legal entity.
28 (2) A copy of a certificate of an assumed name, if applicable.
29 (3) One or more of the following, as applicable:
30 a. If the applicant is a corporation, a copy of the articles of
31 incorporation.
32 b. If the applicant is an association, a copy of the organizational
33 documents of the association.
34 c. If the applicant is a partnership, a copy of the partnership
35 agreement.
36 d. If the applicant is a limited liability company, a copy of the
37 articles of organization.
38 (4) The telephone number, e-mail address, and Web site URL of the
39 applicant.
40 (5) The address of each office in this State, if any, where the applicant will
41 provide debt settlement services.
42 (6) A description or sample forms of the applicant's budget analysis and
43 initial budget plan, including any form or electronic model, that are
44 used to evaluate the financial condition of the debtors.

- 1 (7) A copy of the agreement form that the applicant will use with the
2 debtor.
- 3 **(b) When filing the application, the applicant shall do all of the following:**
- 4 (1) Pay to the Commissioner an initial license fee of one hundred dollars
5 (\$100.00).
- 6 (2) Provide evidence of insurance in the amount of two hundred fifty
7 thousand dollars (\$250,000) against the risks of dishonesty, fraud,
8 theft, and other misconduct on the part of the applicant or a director,
9 employee, or agent of the applicant. The insurance shall be issued by
10 an insurance company authorized to do business in this State and rated
11 at least by a nationally recognized rating organization. The insurance
12 shall have no greater than a ten thousand dollar (\$10,000) deductible
13 and shall be payable to the applicant, the individuals who have
14 agreements with the applicant, and this State, as their interests may
15 appear. The insurance shall not be subject to cancellation by the
16 applicant without a replacement policy in place.
- 17 **(c) Unless surrendered, revoked, or suspended, a license issued under this Article**
18 **expires on December 31 of the year for which it is issued. A licensee may renew a**
19 **license before the expiration date as provided in this Article.**
- 20 **(d) A licensee shall create, maintain, and preserve accurate and complete books**
21 **and records relating to the licensee's business. A licensee shall maintain the books and**
22 **records according to generally accepted accounting principles. A licensee or an**
23 **applicant shall notify the Commissioner in writing of the address where the books and**
24 **records are kept. If a licensee changes the location of the books and records, the licensee**
25 **shall notify the Commissioner in writing within 10 business days after the change. The**
26 **Commissioner may prescribe by rule or order the form and contents of books and**
27 **records relating to a licensee's business.**
- 28 **(e) An applicant shall file a financial statement with an application for a debt**
29 **settlement license. The Commissioner may require an audit or review of the financial**
30 **statement by an independent certified public accountant.**
- 31 **(f) If a licensee has a board of directors or the equivalent, the Commissioner**
32 **shall not require that the licensee provide information concerning a member of the**
33 **board of directors or the equivalent, nor require that the member satisfy the examination**
34 **provisions of this Article, if that member does not receive a salary, stock dividend, or**
35 **other financial benefit from that corporation other than reimbursement of the actual**
36 **expenses incurred in carrying out the duties of a director of that corporation.**
- 37 **(g) Upon receiving the application and determining that the applicant has**
38 **complied with subsection (b) of this section, the Commissioner shall investigate the**
39 **applicant's responsibility, experience, character, and general fitness. If after**
40 **investigation, the Commissioner believes that the business will be operated fairly and**
41 **honestly within the provisions of this Article, the Commissioner shall issue a license to**
42 **the applicant. The investigation of the applicant shall at least include investigation of the**
43 **following, as applicable:**
- 44 (1) If the applicant is a corporation, its officers and directors.

- 1 (2) If the applicant is a partnership, its partners.
2 (3) If the applicant is an association, its officers.
3 (4) If the applicant is a limited liability company, its manager or
4 managers.
5 (5) If the applicant is any other legal entity, its manager or other person
6 designated to control the operation of that legal entity.
7 (h) A license shall not be issued if the investigation reveals one or more of the
8 following:
9 (1) That an individual investigated did any of the following:
10 a. Was ever convicted of a crime involving moral turpitude,
11 including forgery, embezzlement, obtaining money under false
12 pretenses, larceny, extortion, conspiracy to defraud, or any
13 other similar offense.
14 b. Violated or failed to comply with this Article or a rule adopted
15 pursuant to this Article.
16 c. Had a license to engage in the business of debt settlement
17 revoked or suspended for any reason other than failure to pay
18 licensing fees in this State or another state.
19 d. Defaulted in the payment of money collected for others,
20 including the discharge of debts through bankruptcy
21 proceedings. The Commissioner may, at the Commissioner's
22 discretion, waive this restriction if provided with evidence of
23 justifiable cause for the bankruptcy, plus convincing evidence
24 of the fitness of the bankrupt party to carry out that party's
25 duties and responsibilities pursuant to this Article.
26 (2) An individual applicant is not at least 18 years of age and a citizen of
27 the United States.
28 (3) An applicant that is a partnership, corporation, limited liability
29 company, association, or other legal entity required by law to obtain
30 authority to do business in this State has not been granted authority to
31 do business in this State.

32 **"§ 23-52. Contract fees.**

33 By contract, a debt settlement provider shall not charge fees in an aggregate amount
34 exceeding twenty percent (20%) of the principal amount of the debt. In the event of
35 cancellation of the contract by the debtor prior to its successful completion, the debt
36 settlement provider shall refund fifty percent (50%) of any collected fees associated
37 with the amount of debt remaining unsettled at the time of the termination of the
38 contract.

39 **"§ 23-53. Debt settlement contract requirements.**

40 Every contract between a debt settlement provider and a debtor shall:

- 41 (1) List every debt to be handled with the creditor's name and disclose the
42 approximate total of all known debts.
43 (2) Provide fees charged by the debt settlement provider for services.

- 1 (3) Disclose the approximate number and amount of savings required to
2 pay the debts in full.
- 3 (4) Disclose the name and address of the debt settlement provider and of
4 the debtor.
- 5 (5) State that the debt settlement provider shall notify the debtor, in
6 writing, within five days of notification to the debt settlement provider
7 by a creditor that the creditor refuses to negotiate with the debt
8 settlement provider pursuant to the contract.
- 9 (6) Contain the following notice within the contract or agreement to
10 engage the services of the debt settlement provider:
11 'NOTICE TO DEBTOR:
12 Do not sign this contract before you read it.
13 Do not sign this contract if any spaces intended for the agreed terms
14 are left blank.
15 You are entitled to a copy of this contract at the time you sign it.
16 You may cancel this contract within three days of signing the contract
17 by sending notice of cancellation by certified mail, return receipt
18 requested, to the debt settlement provider at his or her address shown
19 on the contract, which notice shall be posted not later than midnight of
20 the third day (excluding Sundays and the holidays) or by fax following
21 your signing of the contract.'
- 22 (7) Contain any other provision or disclosure that is necessary for the
23 protection of the debtor and the proper conduct of business by the debt
24 settlement provider.

25 **"§ 23-54. Debt settlement provider; functions required to be performed.**

26 Every debt settlement provider shall perform the following functions:

- 27 (1) Make a permanent record of all payments by debtors. The record may
28 be in an electronic format. No person shall intentionally make any
29 false entry in any record or intentionally mutilate, destroy, or
30 otherwise dispose of any record. Records shall at all times be open for
31 inspection by the Attorney General or the Attorney General's
32 authorized agent and shall be preserved (i) as original records, (ii) in
33 an electronic format, or (iii) in a form of duplication, for at least six
34 years after making the final entry therein.
- 35 (2) Sign and deliver a completed copy of the contract between the debt
36 settlement provider and a debtor to the debtor immediately after the
37 debtor executes the contract.
- 38 (3) Notify the debtor of any offer of settlement made by the creditor no
39 later than five days of receiving the offer.

40 **"§ 23-55. Debt settlement provider; prohibited acts.**

41 A debt settlement provider shall not:

- 42 (1) Take any contract or other instrument which has any blank spaces
43 when signed by the debtor.

- 1 (2) Receive or charge any fee in the form of a promissory note or other
2 promise to pay.
- 3 (3) Receive or accept any mortgage or other security for any fee, whether
4 as to real or personal property.
- 5 (4) Lend money or credit.
- 6 (5) Take any confession of the judgment or power of attorney to confess
7 judgment against the debtor or appear as the debtor in any judicial
8 proceeding.
- 9 (6) Take, concurrent with the signing of the contract or as a part of the
10 contract or the application for the contract, a release of any obligation
11 to be performed on the part of the debt settlement provider.
- 12 (7) Advertise, display, distribute, broadcast, or televise services or permit
13 services to be displayed, advertised, distributed, broadcasted, or
14 televised in any manner in which a false, misleading, or deceptive
15 statement or representation is made with regard to either (i) the
16 services to be performed by the debt settlement provider or (ii) the fees
17 to be charged by the debt settlement provider.
- 18 (8) Receive any cash, fee, gift, bonus, premium, reward, or other
19 compensation from any person other than the debtor or a person in the
20 debtor's behalf in connection with that person's activities as a debt
21 settlement provider.
- 22 (9) Disclose to anyone the debtors who have contracted with the debt
23 settlement provider other than a debtor's own creditors or the
24 provider's agents. The debt settlement provider shall not disclose the
25 creditors of a debtor to anyone other than the debtor or another creditor
26 of the debtor and then only to the extent necessary to secure the
27 cooperation of the creditor in a debt settlement plan.

28 **"§ 23-56. Legal services; prohibited actions.**

29 (a) Without limiting the generality of this Article and other applicable laws, the
30 debt settlement provider, manager, or an employee of the debt settlement provider shall
31 not do any of the following:

- 32 (1) Prepare, advise, or sign a release of attachment or garnishment,
33 stipulation, affidavit for exemption, compromise agreement, or other
34 legal or court document, nor furnish legal advice or perform legal
35 services of any kind.
- 36 (2) Represent that the debt settlement provider is authorized or competent
37 to furnish legal advice or perform legal services.
- 38 (3) Communicate with the debtor or creditor or any other person in the
39 name of any attorney or upon the stationery of any attorney or prepare
40 any form or instrument which only attorneys are authorized to prepare.

41 (b) This section does not apply to a licensed attorney who provides legal services
42 in an attorney-client relationship or who is otherwise authorized to practice law in this
43 State.

44 **"§ 23-57. Violations and sanctions.**

1 (a) Notwithstanding any other actions which may be brought under the laws of
2 this State, the Attorney General or the prosecuting attorney of any county within the
3 State may bring an action in the name of the State against any person to restrain and
4 prevent any violation of this Article.

5 (b) The Attorney General may accept an assurance of discontinuance of any act
6 or practice deemed in violation of this Article in the enforcement thereof from any
7 person engaging in, or who has engaged in, the act or practice. The assurance shall be in
8 writing and be filed with and subject to the approval of the superior court of the county
9 in which the alleged violator resides or has a principal place of business or, in the
10 alternative, in Wake County.

11 (c) Any person who violates an injunction issued pursuant to this Article shall
12 forfeit and pay a civil penalty of not more than five thousand dollars (\$5,000). The clear
13 proceeds of civil penalties assessed pursuant to this subsection shall be credited to the
14 Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1.

15 **"§ 23-58. Saving prior contracts.**

16 The provisions of this Article shall not invalidate or make unlawful contracts
17 between debt settlement providers and debtors executed lawfully prior to October 1,
18 2007."

19 **SECTION 2.** G.S. 14-423(2) reads as rewritten:

20 "(2) The term "debt adjusting" shall mean the entering into or making of a
21 contract, express or implied, with a particular debtor whereby the
22 debtor agrees to pay a certain amount of money periodically to the
23 person engaged in the debt adjusting business and who shall for a
24 consideration, agree to distribute, or distribute the same among certain
25 specified creditors in accordance with a plan agreed upon. The term
26 "debt adjusting" is further defined and shall also mean the business or
27 practice of any person who holds himself out as acting or offering or
28 attempting to act for a consideration as an intermediary between a
29 debtor and his creditors for the purpose of ~~settling, compounding,~~
30 compounding or in ~~anywise~~ any way altering the terms of payment of
31 any debt of a debtor, and to that end receives money or other property
32 from the debtor, or on behalf of the debtor, for the payment to, or
33 distribution among, the creditors of the debtor. The term "debt
34 adjusting" shall not include the practice of debt settlement service as
35 defined in G.S. 23-50."

36 **SECTION 3.** G.S. 14-426(6) reads as rewritten:

37 "~~6) An attorney at law licensed to practice in this State who is not~~
38 ~~employed by a debt adjuster. A licensed attorney who provides legal~~
39 ~~services in an attorney-client relationship or who is otherwise~~
40 authorized to practice law in this State."

41 **SECTION 4.** Sections 1 and 2 of this act become effective October 1, 2007,
42 and apply to acts occurring and contracts entered into on or after that date. The
43 remainder of this act is effective when it becomes law.