

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

4

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

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 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 provides credit counseling, education, and debt
5 management services to debtors if the organization also does all of the
6 following:
- 7 a. Provides individualized credit counseling and budgeting
8 assistance to the debtor without charge prior to the debtor's
9 enrollment in a debt management plan provided by the
10 organization.
- 11 b. Determines that the debtor has the financial ability to make
12 payments to complete the debt management plan and that the
13 plan is suitable for the debtor.
- 14 c. Disburses the debtor's funds to creditors pursuant to a debt
15 management plan that the debtor has paid for with no more than
16 nominal consideration and has agreed to in writing.
- 17 d. Provides to the debtor, periodically and on no less than a
18 quarterly basis, an individualized accounting for the most recent
19 period of all of the debtor's payments and disbursements under
20 the debt management plan and all charges paid by the debtor.
- 21 e. Does not directly or indirectly require the debtor to purchase
22 other services or materials as a condition to participating in the
23 debt management plan.
- 24 f. Does not receive a payment, commission, or other benefit for
25 referring the debtor to a provider of services.
- 26 g. Is accredited by an accrediting organization that the
27 Commissioner of Banks approves as being independent and
28 nationally recognized for providing accreditation to
29 organizations that provide credit counseling and debt
30 management services."

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

32 "**§ 14-423. Definitions.**

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

- 35 (1) ~~The term "debt adjuster" means a person who engages in,~~
36 ~~attempts to engage in, or offers to engage in the practice or business of~~
37 ~~debt adjusting as said term is defined in this Article.~~ adjusting.
- 38 (2) ~~The term "debt adjusting" shall mean the~~ means entering into or
39 ~~making of~~ a contract, express or implied, with a particular debtor
40 whereby the debtor agrees to pay a certain amount of money
41 periodically to the person engaged in the debt adjusting business and
42 ~~who shall~~ that person, for a consideration, ~~agree~~ agrees to distribute, or
43 ~~distribute~~ distributes the same among certain specified creditors in
44 accordance with a plan agreed upon. ~~The term "debt adjusting" is~~

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

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

23 (3a) "Nominal consideration" means a fee or a contribution to cover the
24 cost of administering a debt management plan not to exceed forty
25 dollars (\$40.00) for origination or setup of the debt management plan
26 and ten percent (10%) of the monthly payment disbursed under the
27 debt management plan, not to exceed forty dollars (\$40.00) per month.

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

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

31 **"§ 14-425. Enjoining practice of debt adjusting; appointment of receiver for**
32 **money and property employed.**

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

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