

Sixty-second
Legislative Assembly
of North Dakota

Introduced by

1 A BILL for an Act to create and enact chapter 13-XX of the North Dakota Century Code,
2 relating to the regulation of debt settlement providers; to amend and reenact section 6-
3 01-01.1 of the North Dakota Century Code, relating to the financial institutions
4 regulatory fund; and to provide an effective date.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** Chapter 13-XX of the North Dakota Century Code is created and
7 enacted as follows:

8 **13-XX-01. Definitions.** For the purposes of this chapter:

9 1) "Affiliate":

10 a) with respect to an individual, means:

- 11 1. the spouse of the individual;
- 12 2. a sibling of the individual or the spouse of a sibling;
- 13 3. an individual or the spouse of an individual who is a lineal
14 ancestor or lineal descendant of the individual or the
15 individual's spouse;
- 16 4. an aunt, uncle, great aunt, great uncle, first cousin, niece,
17 nephew, grandniece, or grandnephew, whether related by
18 the whole or the half blood or adoption, or the spouse of any
19 of them; or
- 20 5. any other individual occupying the residence of the
21 individual; and

b) with respect to an entity, means:

1. a person that directly or indirectly controls, is controlled by, or is under common control with the entity;
2. an officer of, or an individual performing similar functions with respect to, the entity;
3. a director of, or an individual performing similar functions with respect to, the entity;
4. subject to adjustment of the dollar amount pursuant to Section 32(f), a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year or a person that owns more than 10 percent of, or an individual who is employed by or is a director of, a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year;
5. an officer or director of, or an individual performing similar functions with respect to, a person described in subparagraph (i);
6. the spouse of, or an individual occupying the residence of, an individual described in subparagraphs (i) through (v); or
7. an individual who has the relationship specified in subparagraph (A)(iv) to an individual or the spouse of an individual described in subparagraphs (i) through (v).

2) "Commissioner" means the commissioner of the department of financial institutions.

1 3) "Consumer" means any person who purchases or contracts for the purchase
2 of debt settlement services.

3 4) "Consumer settlement account" means any account or other means or device
4 in which payments, deposits, or other transfers from a consumer are
5 arranged, held, or transferred by or to a debt settlement provider for the
6 accumulation of the consumer's funds in anticipation of proffering an
7 adjustment or settlement of a debt or obligation of the consumer to a creditor
8 on behalf of the consumer.

9 5) "Contract" means a contract or other legally binding agreement between a
10 provider and an individual for the performance of debt-management services.

11 6) "Debt settlement provider" means any person engaging in, or holding itself out
12 as engaging in, the business of providing debt settlement service in exchange
13 for any fee or compensation, or any person who solicits for or acts on behalf
14 of any person engaging in, or holding itself out as engaging in, the business
15 of providing debt settlement service in exchange for any fee or compensation.

16 "Debt settlement provider" does not include:

17 a) attorneys licensed, or otherwise authorized, to practice in North Dakota
18 who are engaged in the practice of law;

19 b) escrow agents, accountants, broker dealers in securities, or investment
20 advisors in securities, when acting in the ordinary practice of their
21 professions and through the entity used in the ordinary practice of their
22 profession;

23 c) any bank, agent of a bank, operating subsidiary of a bank, affiliate of a
24 bank, trust company, savings and loan association, savings bank, credit
25 union, crop credit association, development credit corporation, industrial
26 development corporation, title insurance company, title insurance agent,
27 independent escrowee or insurance company operating or organized

under the laws of a state or the United States, or any other person
authorized to make loans under State law while acting in the ordinary
practice of that business;

d) any person who performs credit services for his or her employer while
receiving a regular salary or wage when the employer is not engaged in
the business of offering or providing debt settlement service;

e) a collection agency licensed pursuant to section 13-05 that is collecting a
debt on its own behalf or on behalf of a third party;

f) public officers while acting in their official capacities and persons acting
under court order;

g) any person while performing services incidental to the dissolution, winding
up, or liquidating of a partnership, corporation, or other business
enterprise; or

h) persons licensed chapter 13-10 when acting in the ordinary practice of
their profession and not holding themselves out as debt settlement
providers.

7) "Debt settlement service" means:

a) offering to provide advice or service, or acting as an
intermediary between or on behalf of a consumer and one or more of a
consumer's creditors, where the primary purpose of the advice, service, or
action is to obtain a settlement, adjustment, or satisfaction of the
consumer's unsecured debt to a creditor in an amount less than the full
amount of the principal amount of the debt or in an amount less than the
current outstanding balance of the debt; or

b) offering to provide services related to or providing
services advising, encouraging, assisting, or counseling a consumer to
accumulate funds for the primary purpose of proposing or obtaining or

1 seeking to obtain a settlement, adjustment, or satisfaction of the
2 consumer's unsecured debt to a creditor in an amount less than the full
3 amount of the principal amount of the debt or in an amount less than the
4 current outstanding balance of the debt.

5 8) "Debt settlement service" does not include:

- 6 a) legal services provided in an attorney-client relationship by an
7 attorney licensed or otherwise authorized to practice law in this
8 state;
- 9 b) accounting services provided in an accountant-client relationship by
10 a certified public accountant licensed to provide accounting
11 services in this state; or
- 12 c) financial-planning services provided in a financial planner-client
13 relationship by a member of a financial-planning profession whose
14 members the Commissioner, by rule, determines are
- 15 1. licensed by this state;
 - 16 2. subject to a disciplinary mechanism;
 - 17 3. subject to a code of professional responsibility; and
 - 18 4. subject to a continuing-education requirement.

19 9) "Enrollment or set up fee" means any fee, obligation, or compensation paid or
20 to be paid by the consumer to a debt settlement provider in consideration of
21 or in connection with establishing a contract or other agreement with a
22 consumer related to the provision of debt settlement service.

23 10) "Maintenance fee" means any fee, obligation, or compensation paid or to be
24 paid by the consumer on a periodic basis to a debt settlement provider in
25 consideration of maintaining the relationship and services to be provided by a
26 debt settlement provider in accordance with a contract with a consumer

related to the provision of debt settlement service.

11) "Person" means an individual, corporation, business trust, estate, trust,
~~partnership, limited liability company, association, joint venture, or any other~~
legal or commercial entity. The term does not include a public corporation,
government, or governmental subdivision, agency, or instrumentality.

12) "Principal amount of the debt" means the total amount or outstanding balance
owed by a consumer to one or more creditors for a debt that is included in a
contract for debt settlement service at the time when the consumer enters into
a contract for debt settlement service.

13) "Record" means information that is inscribed on a tangible medium or that is
stored in an electronic or other medium and is retrievable in perceivable form.

14) "Savings" means the difference between the principal amount of the debt and
the amount paid by the debt settlement provider to the creditor or negotiated
by the debt settlement provider and paid by the consumer to the creditor
pursuant to a settlement negotiated by the debt settlement provider on behalf
of the consumer as full and complete satisfaction of the creditor's claim with
regard to that debt.

15) "Settlement fee" means any fee, obligation, or compensation paid or to be
paid by the consumer to a debt settlement provider in consideration of or in
connection with a completed agreement or other arrangement on the part of a
creditor to accept less than the principal amount of the debt as satisfaction of
the creditor's claim against the consumer.

16) Under this chapter, a person engages in conduct "willfully" if the person acted
intentionally in the sense that the person was aware of what the person was
doing.

1 **13-XX-02. License required.** It shall be unlawful for any person to act as a debt
2 settlement provider except as authorized by this Act and without first having obtained a
3 ~~license under this Act. A person engages in debt settlement in North Dakota if the~~
4 debtor resides in North Dakota.

5
6 **13-XX-03. Application for license.** Every application for a debt settlement
7 provider license, or for a renewal thereof, must be made upon forms designed and
8 furnished by the Commissioner and must contain any information which the
9 Commissioner shall deem necessary and proper. The Commissioner may further
10 require any application to provide additional information which is not requested on the
11 application form. The applicant must register with the North Dakota secretary of state if
12 so required.

13
14 **13-XX-04. Fee and bond to accompany application for debt settlement**
15 **license.** The application for license must be in writing, under oath, and in the form
16 prescribed by the Commissioner. The application must give the location where the
17 business is to be conducted and must contain any further information the Commissioner
18 requires, including the names and addresses of the partners, officers, directors,
19 trustees, and the principal owners or members, as will provide the basis for the
20 investigation and findings contemplated by section 13-XX-03. At the time of making
21 such application, the applicant shall include payment in the sum of four hundred dollars,
22 which is not subject to refund, as a fee for investigating the application, and the sum of
23 four hundred dollars for the annual license fee, and provide a surety bond in the sum of
24 fifty thousand dollars or an additional amount as required by the Commissioner by rule.
25 In addition, the applicant shall pay a fifty dollar annual fee for each branch location.
26 Fees must be deposited in the financial institutions regulatory fund.
27

1 **13-XX-05. Qualifications for license.** Upon the filing of the application and the
2 approval of the bond and the payment of the specified fees, the Commissioner may
3 issue a license if he or she finds all of the following:

- 4
- 5 (1) The financial responsibility, experience, character, and general fitness of
6 the applicant, managers, partners, officers and directors, are such as to
7 command the confidence of the community and to warrant belief that the
8 business will be operated fairly, honestly, and efficiently within the
9 purposes of this Act.
- 10 (2) The applicant, managers, partners, officers and directors, have not been
11 convicted of a felony or a misdemeanor or disciplined with respect to a
12 license or are not currently the subject of a license disciplinary proceeding
13 concerning allegations involving dishonesty or untrustworthiness.
- 14 (3) The applicant, managers, partners, officers and directors, have not had a
15 record of having defaulted in the payment of money collected for others,
16 including the discharge of those debts through bankruptcy proceedings.
- 17 (4) The applicant, or any managers, partners, officers and directors have not
18 previously violated any provision of this Act or any rule lawfully made by
19 the Commissioner.
- 20 (5) The applicant has not made any false statement or representation to the
21 Commissioner in applying for a license under this Section.
- 22

23 The Commissioner shall deliver a license to the applicant to operate as a debt
24 settlement provider in accordance with the provisions of this Act at the location specified
25 in the application. The license shall remain in full force and effect until it is surrendered
26 by the debt settlement provider or revoked by the Commissioner as provided in this Act;
27 provided, however, that each license shall expire by its terms on December thirty-first

1 next following its issuance unless it is renewed as provided in this Act. A license,
2 however, may not be surrendered without the approval of the Commissioner.

3
4 **13-XX-06. Expiration and renewal of license.** All licenses required herein
5 expire on December thirty-first of each year and may be renewed. Renewals are
6 effective the succeeding January first. Applications for renewal must be submitted at
7 least thirty days before the expiration of the license and must be accompanied by the
8 required annual fees, which are not subject to refund. The form and content of renewal
9 applications must be determined by the Commissioner, and a renewal application may
10 be denied upon the same grounds as would justify denial of an initial application. When
11 a licensee has been delinquent in renewing the licensee's license, the Commissioner
12 may charge an additional fee of fifty dollars for the renewal of such license. A debt
13 settlement provider license is not transferable. If the Commissioner determines that an
14 ownership change has occurred in a sole proprietorship, partnership, limited liability
15 partnership, corporation, or limited liability corporation that was previously granted a
16 debt settlement provider license, the Commissioner may require a new application from
17 the purchaser. The application must be filed at least thirty days prior to the date on
18 which the change of ownership is consummated.

19
20 **13-XX-07. Application for license: obligation to update information.** An
21 applicant or registered provider shall notify the Commissioner within 10 days after a
22 change in the information provided within the any application.

23
24 **13-XX-08. Records – Annual reports – Biennial report.**

- 25 1. Every licensee shall maintain records in conformity with generally
26 accepted accounting principles and practices in a manner that will enable
27 the Commissioner to determine whether the licensee is complying with

1 this chapter. The records of a licensee may be maintained electronically
2 provided all records can be reproduced upon request of the Commissioner
3 and within the required statutory timeframe outlined in this section.

- 4 2. On or before July thirty-first each year, the parent company of each
5 licensee shall file with the Commissioner a composite annual report in the
6 form prescribed by the Commissioner relating to services provided by
7 licensees.

8
9 **13-XX-09. Approval or denial of a license.** Any complete application for a
10 license shall be approved or denied within 60 days after the filing of the complete
11 application with the Commissioner.

12
13 **13-XX-10. Revocation of license - Suspension of license - Surrender of**
14 **license.**

- 15 1. The Commissioner may, if the Commissioner has reason to believe that
16 grounds for revocation of a license exist, send by registered or certified
17 mail to the licensee, a notice of hearing stating the contemplated action
18 and in general the grounds thereof and setting the time and place for a
19 hearing thereon. Such hearing must be held in accordance with chapter
20 28-32 as must any appeal therefrom. Grounds for revocation of a license
21 shall include the following:

- 22 a) any debt settlement provider has failed to pay the annual license
23 fee or to maintain in effect the bond required under the provisions
24 of this Act;
25 b) the debt settlement provider has violated any provisions of this Act
26 or any rule lawfully made by the Commissioner under the authority
27 of this Act;

1 c) any fact or condition exists that, if it had existed at the time of the
2 original application for a license, would have warranted the
3 Commissioner in refusing its issuance; or

4 d) any applicant has made any false statement or representation to
5 the Commissioner in applying for a license under this Act.
6

7 2. If the Commissioner finds that probable cause for revocation of any
8 license exists and that enforcement of the chapter requires immediate
9 suspension of such license pending investigation, the Commissioner may,
10 upon written notice, enter an order suspending such license for a period
11 not exceeding thirty days, pending the holding of a hearing as prescribed
12 in this chapter.

13 3. Any licensee may surrender the licensee's license by delivering it to the
14 Commissioner with written notice of its surrender, but such surrender does
15 not affect the licensee's civil or criminal liability for acts committed prior
16 thereto.
17

18 **13-XX-11. Suspension and removal of debt settlement provider officers**
19 **and employees.**

20 1. The Commissioner may issue and serve upon a debt settlement provider
21 officer or employee, and upon the licensee involved, a complaint stating
22 the basis for the Commissioner's belief that the officer or employee is
23 willfully engaging or has willfully engaged in any of the following conduct:

24 a. Violating a law, rule, order, or written agreement with the
25 Commissioner;

26 b. Engaging in harassment or abuse, the making of false or
27 misleading representations, engaging in unfair practices involving

debt settlement, or engaging in prohibited acts and practices under
section 13-XX-23; or

c. Performing an act of commission or omission or practice which is a
breach of trust or a breach of fiduciary duty.

2. The complaint must contain a notice of opportunity for hearing pursuant to
chapter 28-32.

3. If a hearing is not requested within twenty days of the date the complaint
is served upon the officer or employee, or if a hearing is held and the
Commissioner finds that the record so warrants, the Commissioner may
enter an order suspending or temporarily removing the employee or officer
from office for a period not exceeding three years from the effective date
of the suspension or temporary removal.

4. A contested or default suspension or temporary removal order is effective
immediately upon service of the order on the officer or employee and upon
the licensee. A consent order is effective as agreed. An officer or
employee suspended or temporarily removed from office pursuant to this
section is not eligible, while under suspension, for reinstatement to a
position with a debt settlement provider.

5. When an officer or employee, or other person participating in the conduct
of the affairs of a licensee is charged with a felony in state or federal court
which involves dishonesty or breach of trust, the Commissioner may
immediately suspend the person from office or prohibit the person from
further participation in the affairs of the debt settlement provider, or both.
The order is effective immediately upon service of the order on the
licensee and the person charged and remains in effect until the criminal
charge is finally disposed of or until modified by the Commissioner. If a
judgment of conviction, federal pretrial diversion, or similar state order or

1 judgment is entered, the Commissioner may order that the suspension or
2 prohibition be made permanent. A finding of not guilty or other disposition
3 of the charge does not preclude the Commissioner from pursuing
4 administrative or civil remedies.

5
6 **13-XX-12. Advertising and marketing practices.**

7 1) A debt settlement provider shall not represent, expressly or by implication,
8 any results or outcomes of its debt settlement services in any advertising,
9 marketing, or other communication to consumers unless the debt settlement
10 provider possesses substantiation for such representation at the time such
11 representation is made.

12 2) A debt settlement provider shall not, expressly or by implication, make any
13 unfair or deceptive representations, or any omissions of material facts, in any
14 of its advertising or marketing communications concerning debt settlement
15 services.

16 3) All advertising and marketing communications concerning debt settlement
17 services shall disclose the following material information clearly and
18 conspicuously:

19 "Debt settlement services are not appropriate for everyone. Failure to pay
20 your monthly bills in a timely manner will result in increased balances and
21 will harm your credit rating. Not all creditors will agree to reduce principal
22 balance, and they may pursue collection, including lawsuits."

23
24 **13-XX-13. Contracts, books and records.** Each debt settlement provider
25 shall furnish to the Commissioner, when requested, a copy of the contract entered
26 into between the debt settlement provider and the debtor. The debt settlement
27 provider shall furnish the debtor with a copy of the written contract at the time of

1 execution, which shall set forth the charges, if any, agreed upon for the services of
2 the debt settlement provider.

3
4 Each debt settlement provider shall maintain records and accounts that will
5 enable any debtor contracting with the debt settlement provider, at any reasonable
6 time, to ascertain the status of all the debtor's accounts with the debt settlement
7 service provider, including, but not limited to, the amount of any fees paid by the
8 debtor, amount held in trust (if applicable), settlement offers made and received on
9 each of the debtor's accounts, and legally enforceable settlements reached with the
10 debtor's creditors. A statement showing the total amount received and the total
11 disbursements to each creditor shall be furnished by the debt settlement provider to
12 any individual within 7 days after a request therefor by the said debtor. Each debt
13 settlement provider shall issue a receipt for each payment made by the debtor at a
14 debt settlement provider office. Each debt settlement provider shall prepare and retain
15 in the file of each debtor a written analysis of the debtor's income and expenses to
16 substantiate that the plan of payment is feasible and practical.

17
18 **13-XX-14. Trust funds; requirements and restrictions.**

- 19 1) All funds received by a debt settlement provider or his agent from and for the
20 purpose of paying bills, invoices, or accounts of a debtor shall constitute trust
21 funds owned by and belonging to the debtor from whom they were received. All
22 such funds received by the debt settlement provider shall be separated from the
23 funds of the debt settlement provider not later than the end of the business day
24 following receipt by the debt settlement provider. All such funds shall be kept
25 separate and apart at all times from funds belonging to the debt settlement
26 provider or any of its officers, employees, or agents and may be used for no
27 purpose other than paying bills, invoices, or accounts of the debtor. All such trust

1 funds received at the main or branch offices of a debt settlement provider shall
2 be deposited in a bank in an account in the name of the debt settlement
3 provider—designated trust account, or by some other appropriate name
4 indicating that the funds are not the funds of the debt settlement provider or its
5 officers, employees, or agents, on or before the close of the business day
6 following receipt.

7 2) Such funds are not subject to attachment, lien, levy of execution, or
8 sequestration by order of court except by a debtor for whom a debt settlement
9 provider is acting as an agent in paying bills, invoices, or accounts.

10 3) At least once every month, the debt settlement provider shall render an
11 accounting to the debtor that shall itemize the total amount received from the
12 debtor, the total amount paid each creditor, the amount of charges deducted, and
13 any amount held in reserve, if applicable, and the status of each of the debtors'
14 enrolled accounts. A debt settlement provider shall, in addition, provide such an
15 accounting to a debtor within 7 days after written demand, but not more than 3
16 times per 6-month period.

17 4) Nothing in this Act requires the establishment of a trust account if no consumer
18 funds other than earned settlement fees are held or controlled by a debt
19 settlement provider.

20
21 **13-XX-15. Requirement of good faith.** A provider shall act in good faith in all
22 matters under this chapter.

23
24 **13-XX-16. Customer service.** A provider that is required to be registered under
25 this chapter shall maintain a toll-free communication system, staffed at a level that
26 reasonably permits an individual to speak to a certified counselor or customer-service
27 representative, as appropriate, during ordinary business hours.

13-XX-17. Required pre-sale consumer disclosures and warnings.

- 1) ~~Before the consumer signs a contract, the debt settlement provider shall~~
provide an oral and written notice to the consumer that clearly and
conspicuously discloses all of the following:
- a) Debt settlement services may not be suitable for all consumers.
 - b) Using a debt settlement service likely will harm the consumer's credit history and credit score.
 - c) Using a debt settlement service does not stop creditor collection activity, including creditor lawsuits and garnishments.
 - d) Not all creditors will accept a reduction in the balance, interest rate, or fees a consumer owes.
 - e) The consumer should inquire about other means of dealing with debt, including, but not limited to, nonprofit credit counseling and bankruptcy.
 - f) The consumer remains obligated to make periodic or scheduled payments to creditors while participating in a debt settlement plan, and that the debt settlement provider will not make any periodic or scheduled payments to creditors on behalf of the consumer.
 - g) The failure to make periodic or scheduled payments to a creditor is likely to:
 - 1. harm the consumer's credit history, credit rating, or credit score;
 - 2. lead the creditor to increase lawful collection activity, including litigation, garnishment of the consumer's wages, and judgment liens on the consumer's property; and
 - 3. lead to the imposition by the creditor of interest charges, late fees, and other penalty fees, increasing the principal amount of the debt.
 - h) The amount of time estimated to be necessary to achieve the represented

1 results.

2 i) The estimated amount of money or the percentage of debt the consumer
3 must accumulate before a settlement offer will be made to each of the
4 consumer's creditors.

5 j) A statement indicating that debt settlement providers are licensed and
6 regulated by the North Dakota Department of Financial Institutions and
7 any complaints regarding the services of a debt settlement provider should
8 be directed to the North Dakota Department of Financial Institutions at
9 2000 Schafer Street, Suite G, Bismarck, North Dakota 58501-1204.

10
11 2) The consumer shall sign and date an acknowledgment form entitled
12 "Consumer Notice and Rights Form" that states: "I, the debtor, have received
13 from the debt settlement provider a copy of the form entitled "Consumer
14 Notice and Rights Form"." The debt settlement provider or its representative
15 shall also sign and date the acknowledgment form, which includes the name
16 and address of the debt settlement services provider. The acknowledgment
17 form shall be in duplicate and incorporated into the "Consumer Notice and
18 Rights Form". The original acknowledgment form shall be retained by the debt
19 settlement provider, and the duplicate copy shall be retained within the form
20 by the consumer.

21 If the acknowledgment form is in electronic form, then it shall contain the
22 consumer disclosures required by Section 101(c) of the federal Electronic
23 Signatures in Global and National Commerce Act.

24 3) The requirements of this Section are satisfied if the provider provides the
25 following warning verbatim, both orally and in writing, with the caption
26 "CONSUMER NOTICE AND RIGHTS FORM" in at least 28—point font and
27 the remaining portion in at least 14—point font, to a consumer before the

consumer signs a contract for the debt settlement provider's services:

~~"CONSUMER NOTICE AND RIGHTS FORM"~~

CAUTION

We CANNOT GUARANTEE that you successfully will reduce or eliminate your debt.

If you stop paying your creditors, there is a strong likelihood some or all of the following may happen:

- CREDITORS MAY STILL CONTACT YOU AND TRY TO COLLECT.
- CREDITORS MAY STILL SUE YOU FOR THE MONEY YOU OWE.
- YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.
- YOUR CREDIT RATING AND CREDIT SCORE LIKELY WILL BE HARMED.
- NOT ALL CREDITORS WILL AGREE TO ACCEPT A BALANCE REDUCTION.
- YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR ADDRESSING YOUR DEBT, SUCH AS CREDIT COUNSELING AND BANKRUPTCY FILING.
- THE AMOUNT OF MONEY YOU OWE MAY INCREASE DUE TO CREDITOR IMPOSITION OF INTEREST CHARGES, LATE FEES, AND OTHER PENALTY FEES.
- EVEN IF WE DO SETTLE YOUR DEBT, YOU MAY STILL BE REQUIRED TO PAY TAXES ON THE AMOUNT FORGIVEN.

YOUR RIGHT TO CANCEL

If you sign a contract with a Debt Settlement Provider, you have the right to

cancel at any time and receive a full refund of all unearned fees you have paid to the provider and all funds placed in your settlement fund that have not been paid to any creditors.

IF YOU ARE DISSATISFIED
OR YOU HAVE QUESTIONS

If you are dissatisfied with a debt settlement provider or have any questions, please bring it to the attention of the North Dakota Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota 58501-1204.

I, the debtor, have received from the debt settlement provider a copy of the form entitled Consumer Notice and Rights Form.

Signed: _____

Printed name: _____"

13-XX-18. Individualized financial analysis.

1) Prior to entering into a written contract with a consumer, a debt settlement provider shall prepare and provide to the consumer in writing and retain a copy of:

- a) an individualized financial analysis, including the individual's income, expenses, and debts; and
- b) a statement containing a good faith estimate of the length of time it will take to complete the debt settlement program, the total amount of debt owed to each creditor included in the debt settlement program, the total savings estimated to be necessary to complete the debt settlement program, and the monthly targeted savings amount estimated to be

1 necessary to complete the debt settlement program.

2 2) A debt settlement provider shall not enter into a written contract with a
3 consumer unless it makes written determinations, supported by the financial
4 analysis, that:

5 a) the consumer can reasonably meet the requirements of the proposed
6 debt settlement program, including the fees and the periodic savings
7 amounts set forth in the savings goals; and

8 b) the debt settlement program is suitable for the consumer at the time the
9 contract is to be signed.

10
11 **13-XX-19. Debt settlement contract.**

12 1) A debt settlement provider shall not provide debt settlement service to a
13 consumer without a written contract signed and dated by both the consumer
14 and the debt settlement provider.

15 2) Any contract for the provision of debt settlement service entered into in
16 violation of the provisions of this Section is void.

17 3) A contract between a debt settlement provider and a consumer for the
18 provision of debt settlement service shall disclose all of the following clearly
19 and conspicuously:

20 a) The name and address of the consumer.

21 b) The date of execution of the contract.

22 c) The legal name of the debt settlement provider, including any other
23 business names used by the debt settlement provider.

24 d) The corporate address and regular business address, including a street
25 address, of the debt settlement provider.

26 e) The telephone number at which the consumer may speak with a
27 representative of the debt settlement provider during normal business

- 1 hours.
- 2 f) A complete list of the consumer's accounts, debts, and obligations to be
- 3 ~~included in the provision of debt settlement service, including the name of~~
- 4 each creditor and principal amount of each debt.
- 5 g) A description of the services to be provided by the debt settlement
- 6 provider, including the expected time frame for settlement for each
- 7 account, debt, or obligation included in item (f) of this subsection (3).
- 8 h) An itemized list of all fees to be paid by the consumer to the debt
- 9 settlement provider, and the date, approximate date, or circumstances
- 10 under which each fee will become due.
- 11 i) A good faith estimate of the total amount of all fees and compensation, not
- 12 to exceed the amounts specified in section 13-XX-21 of this Act, to be
- 13 collected by the debt settlement provider from the consumer for the
- 14 provision of debt settlement service contemplated by the contract.
- 15 j) A statement of the proposed savings goals for the consumer, stating the
- 16 amount to be saved per month or other period, time period over which
- 17 savings goal extends, and the total amount of the savings expected to be
- 18 paid by the consumer pursuant to the terms of the contract.
- 19 k) The amount of money or the percentage of debt the consumer must
- 20 accumulate before a settlement offer will be made to each of the
- 21 consumer's creditors.
- 22 l) The written individualized financial analysis required by section 13-XX-18
- 23 of this Act.
- 24 m) The contents of the "Consumer Notice and Rights Form" provided in
- 25 section 13-XX-17.
- 26 n) A written notice to the consumer that the consumer may cancel the
- 27 contract at any time until after the debt settlement provider has fully

performed each service the debt settlement provider contracted to perform or represented he or she would perform, and upon that event:

~~1. the consumer shall be entitled to a full refund of all unearned fees and compensation paid by the consumer to the debt settlement provider, and a full refund of all funds provided by the consumer to the debt settlement provider for a consumer settlement account, except for funds actually paid to a creditor on behalf of the consumer, under the terms of the contract for debt settlement service; and~~

2. all powers of attorney granted to the debt settlement provider by the consumer shall be considered revoked and voided.

o) A form the consumer may use to cancel the contract pursuant to the provisions of section 13-XX-20 of this Act. The form shall include the name and mailing address of the debt settlement provider and shall disclose clearly and conspicuously how the consumer can cancel the contract, including applicable addresses, telephone numbers, facsimile numbers, and electronic mail addresses the consumer can use to cancel the contract.

4) If a debt settlement provider communicates with a consumer primarily in a language other than English, then the debt settlement provider shall furnish to the consumer a translation of all the disclosures and documents required by this Act in that other language.

13-XX-20. Cancellation of contract and right to fee and settlement fund refunds.

1) A consumer may cancel a contract with a debt settlement provider at any time before the debt settlement provider has fully performed each service the debt settlement provider contracted to perform or represented it would perform.

- 1 2) If a consumer cancels a contract with a debt settlement provider, or at any
2 time upon a material violation of this Act on the part of the debt settlement
3 provider, then the debt settlement provider shall refund all fees and
4 compensation, with the exception of the application fee and any earned
5 settlement fee, as well as all funds paid by the consumer to the debt
6 settlement provider that have accumulated in a consumer settlement account
7 and that the debt settlement provider has not disbursed to creditors. Upon
8 cancellation, all powers of attorney and direct debit authorizations granted to
9 the debt settlement provider by the consumer shall be considered revoked
10 and voided.
- 11 3) A debt settlement provider shall make any refund required under this Section
12 within 7 days after the notice of cancellation, and shall include with the refund
13 a full statement of account showing fees received, fees refunded, savings
14 held, payments to creditors, settlement fees earned if any, and savings
15 refunded.
- 16 4) Upon the cancellation of a contract under this Section, the debt settlement
17 provider shall provide timely notice of the cancellation of the contract to each
18 of the creditors with whom the debt settlement provider has had any prior
19 communication on behalf of the consumer in connection with the provision of
20 any debt settlement service.

21
22 **13-XX-21. Fees.**

- 23 1) A debt settlement provider shall not charge fees of any type or receive
24 compensation from a consumer in a type, amount, or timing other than fees or
25 compensation permitted in this Section.
- 26 2) A debt settlement provider shall not charge or receive from a consumer any
27 enrollment fee, set up fee, up front fee of any kind, or any maintenance fee,

except for a one—time enrollment fee of no more than \$100.

3) A debt settlement provider may charge a settlement fee, which shall not exceed an amount greater than 15% of the savings. If the amount paid by the debt settlement provider to the creditor or negotiated by the debt settlement provider and paid by the consumer to the creditor pursuant to a settlement negotiated by the debt settlement provider on behalf of the consumer as full and complete satisfaction of the creditor's claim with regard to that debt is greater than the principal amount of the debt, then the debt settlement provider shall not be entitled to any settlement fee.

4) A debt settlement provider shall not collect any settlement fee from a consumer until a creditor enters into a legally enforceable agreement to accept funds in a specific dollar amount as full and complete satisfaction of the creditor's claim with regard to that debt and those funds are provided by the debt settlement provider on behalf of the consumer or are provided directly by the consumer to the creditor pursuant to a settlement negotiated by the debt settlement provider.

13-XX-22. Voluntary contributions. A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until 30 days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under section 13-XX-21.

13-XX-23. Prohibited acts and practices.

1. A provider may not, directly or indirectly:
 - a. misappropriate or misapply money held in trust;

- 1 b. settle a debt on behalf of an individual for more than 50 percent of
2 the principal amount of the debt owed a creditor, unless the
3 individual assents to the settlement after the creditor has assented;
- 4 c. take a power of attorney that authorizes it to settle a debt, unless
5 the power of attorney expressly limits the provider's authority to
6 settle debts for not more than 50 percent of the principal amount of
7 the debt owed a creditor;
- 8 d. exercise or attempt to exercise a power of attorney after an
9 individual has terminated a contract;
- 10 e. initiate a transfer from an individual's account at a bank or with
11 another person unless the transfer is:
- 12 (1) a return of money to the individual; or
13 (2) before termination of an contract, properly authorized by the
14 contract and this chapter, and for:
- 15 (a) payment to one or more creditors pursuant to a plan;
16 or
17 (b) payment of a fee;
- 18 f. offer a gift or bonus, premium, reward, or other compensation to an
19 individual for executing an contract;
- 20 g. offer, pay, or give a gift or bonus, premium, reward, or other
21 compensation to a person for referring a prospective customer, if
22 the person making the referral has a financial interest in the
23 outcome of debt-management services provided to the customer,
24 unless neither the provider nor the person making the referral

- 1 communicates to the prospective customer the identity of the
2 source of the referral;
- 3 h. receive a bonus, commission, or other benefit for referring an
4 individual to a person;
- 5 i. structure a plan in a manner that would result in a negative
6 amortization of any of an individual's debts, unless a creditor that is
7 owed a negatively amortizing debt agrees to refund or waive the
8 finance charge upon payment of the principal amount of the debt;
- 9 j. compensate its employees on the basis of a formula that
10 incorporates the number of individuals the employee induces to
11 enter into contracts;
- 12 k. settle a debt or lead an individual to believe that a payment to a
13 creditor is in settlement of a debt to the creditor unless, at the time
14 of settlement, the individual receives a certification by the creditor
15 that the payment is in full settlement of the debt;
- 16 l. make a representation that:
- 17 (1) the provider will furnish money to pay bills or prevent
18 attachments;
- 19 (2) payment of a certain amount will permit satisfaction of a
20 certain amount or range of indebtedness; or
- 21 (3) participation in a plan will or may prevent litigation,
22 garnishment, attachment, repossession, foreclosure,
23 eviction, or loss of employment;

- 1 m. misrepresent that it is authorized or competent to furnish legal
2 advice or perform legal services;
- 3 n. represent that it is a not-for-profit entity unless it is organized and
4 properly operating as a not-for-profit under the law of the state in
5 which it was formed or that it is a tax-exempt entity unless it has
6 received certification of tax-exempt status from the Internal
7 Revenue Service;
- 8 o. take a confession of judgment or power of attorney to confess
9 judgment against an individual; or
- 10 p. employ an unfair, unconscionable, or deceptive act or practice,
11 including the knowing omission of any material information.
- 12 2. If a provider furnishes debt-management services to an individual, the
13 provider may not, directly or indirectly:
- 14 a. purchase a debt or obligation of the individual;
- 15 b. receive from or on behalf of the individual:
- 16 (1) a promissory note or other negotiable instrument other than
17 a check or a demand draft; or
- 18 (2) a post-dated check or demand draft;
- 19 c. lend money or provide credit to the individual, except as a deferral
20 of a settlement fee at no additional expense to the individual;
- 21 d. obtain a mortgage or other security interest from any person in
22 connection with the services provided to the individual;

- 1 e. except as permitted by federal law, disclose the identity or
2 identifying information of the individual or the identity of the
3 individual's creditors, except to:
- 4 (1) the Commissioner, upon proper demand;
5 (2) a creditor of the individual, to the extent necessary to secure
6 the cooperation of the creditor in a plan; or
7 (3) the extent necessary to administer the plan;
- 8 f. except as otherwise provided in 13-XX-21, provide the individual
9 less than the full benefit of a compromise of a debt arranged by the
10 provider;
- 11 g. charge the individual for or provide credit or other insurance,
12 coupons for goods or services, membership in a club, access to
13 computers or the Internet, or any other matter not directly related to
14 debt-management services or educational services concerning
15 personal finance; or
- 16 h. furnish legal advice or perform legal services, unless the person
17 furnishing that advice to or performing those services for the
18 individual is licensed to practice law.
- 19 3. This chapter does not authorize any person to engage in the practice of
20 law.
- 21 4. A provider may not receive a gift or bonus, premium, reward, or other
22 compensation, directly or indirectly, for advising, arranging, or assisting an
23 individual in connection with obtaining, an extension of credit or other
24 service from a lender or service provider, except for educational or

1 counseling services required in connection with a government-sponsored
2 program.

3 5. Unless a person supplies goods, services, or facilities generally and
4 supplies them to the provider at a cost no greater than the cost the person
5 generally charges to others, a provider may not purchase goods, services,
6 or facilities from the person if an employee or a person that the provider
7 should reasonably know is an affiliate of the provider:

- 8 a. owns more than 10 percent of the person; or
9 b. is an employee or affiliate of the person.

10
11 **13-XX-24. Notice of litigation.** No later than 30 days after a provider has been
12 served with notice of a civil action for violation of this chapter by or on behalf of an
13 individual who resides in this state at either the time of a contract or the time the notice
14 is served, the provider shall notify the Commissioner in a record that it has been sued.

15
16 **13-XX-25. Liability for the conduct of other persons.** If a provider delegates
17 any of its duties or obligations under a contract or this chapter to another person,
18 including an independent contractor, the provider is liable for conduct of the person
19 which, if done by the provider, would violate the contract or this chapter.

20
21 **13-XX-26. Powers of the Commissioner.** Insofar as consistent with other
22 provisions of law, the Commissioner has the power to:

- 23 1. Determine the qualifications of all applicants based on financial
24 responsibility, financial condition, business experience, character, and
25 general fitness which must reasonably warrant the belief that the

1 applicant's business will be conducted lawfully and fairly. In determining
2 whether this qualification is met, and for the purpose of investigating
3 compliance with this chapter, the commissioner may review and consider
4 the relevant business records and capital adequacy of the applicant and
5 the competence, experience, integrity, and financial ability of a person
6 who is a member, partner, director, officer, or twenty-five percent or more
7 shareholder of the applicant.

8 2. Conduct investigations and make an examination of any person, whether
9 licensed or not, who is engaged in the debt settlement services business,
10 including all records of such business, and to subpoena witnesses
11 anytime it has reason to believe such is necessary. The licensee shall pay
12 an examination or visitation fee and must be charged by the
13 Commissioner at an hourly rate to be set by the Commissioner, sufficient
14 to cover all reasonable expenses of the department associated with the
15 examination or visitation provided for by this section. Fees must be
16 deposited in the financial institutions regulatory fund.

17 3. Adopt any and all rules and regulations necessary to carry out the purpose
18 of this chapter.

19 4. Issue and serve upon any person or licensed debt settlement provider an
20 order to cease and desist to take corrective action when the
21 Commissioner has reason to believe the person or agency is violating, has
22 violated, or is about to violate the provisions of this chapter. An interested
23 party may appeal issuance of a cease and desist order under the
24 provisions of chapter 28-32 by filing written notice of appeal within twenty
25 days after service of the order.

1 5. Deny, suspend, revoke, condition, or decline to renew a license for a
2 violation of this chapter, rules or regulations issued under this chapter or
3 order or directive entered under this chapter.

4 6. Deny, suspend, revoke, condition, or decline to renew a license if an
5 applicant or licensee withholds information or makes a material
6 misstatement in an application for a license or renewal of a license.

7
8 **13-XX-27. Enforcement authorities, violations, and penalties.**

9 1. Any person violating any of the provisions of this chapter or any rule or order
10 of the Commissioner made pursuant to the provisions of this chapter or who
11 engages in any act, practice, or transaction declared by any provision of this
12 chapter to be unlawful is guilty of a class C felony.

13 2. The Commissioner may impose a civil money penalty not to exceed five
14 thousand dollars per violation upon a person or agency who willfully violates a
15 law, rule, written agreement, or order under this chapter. An interested party
16 may appeal the assessment of a civil money penalty under the provisions of
17 chapter 28-32 by filing a written notice of appeal within twenty days after
18 service of the assessment of civil money penalties. A civil money penalty
19 collected under this section must be paid to the state treasurer and deposited
20 in the financial institutions regulatory fund.

21 3. The attorney general may also enforce this chapter. The attorney general, in
22 enforcing this chapter, has all the powers provided in this chapter or chapter
23 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation
24 of this chapter is deemed a violation of chapter 51-15. The remedies, duties,
25 prohibitions, and penalties of this chapter are not exclusive and are in addition
26 to all other causes of action, remedies, and penalties under chapter 51-15, or
27 otherwise provided by law.

13-XX-28. Voidable contracts.

1. If a provider imposes a fee or other charge or receives money or other payments not authorized by sections 13-XX-21 and 13-XX-22, the individual may void the contract and recover as provided in section 13-XX-20.

2. If a provider is not licensed as required by this chapter when an individual assents to a contract, the contract is voidable by the individual.

3. If an individual voids a contract under subsection (2), the provider does not have a claim against the individual for breach of contract or for restitution.

13-XX-29. Private enforcement. Any person who is aggrieved by a violation of this chapter may bring an action to enjoin such violation, or for restitution, or both. The court may award the plaintiff the plaintiff's actual restitution or a sum up to two thousand dollars, whichever is greater. The court may award the plaintiff costs, expenses and reasonable attorney's fees. This section shall not limit any other claims the person may have against the debt settlement provider or such other third party subject to this chapter.

SECTION 2. AMENDMENT. Subsection 1 of section 6-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. There is hereby created a special fund designated as the financial institutions regulatory fund. The amounts received under the following chapters, and any other moneys received by the department of financial

1 institutions, must be deposited into this fund: chapters 6-01, 6-03, 6-05, 6-
2 06, 6-10, 13-04.1, 13-05, 13-08, 13-09, and 13-10 and 13-XX.

3
4 **SECTION 3. EFFECTIVE DATE.** This Act becomes effective on ____ 1, 20__.