A FALSE LIGHT IN THE DARKNESS: PROTECTING CONSUMERS AND CREDITORS FROM THE DEBT SETTLEMENT INDUSTRY

A debt settlement company is an entity that enters into a contract with someone who has unsecured debt, often for extremely large amounts that the person does not have the means to pay, to negotiate with creditors to settle the debt for a fraction of the amount originally owed. As one can imagine, this industry has potential for abuse. Unscrupulous debt settlement companies who prey on desperate people on the verge of bankruptcy often misrepresent what they can do for the consumer, front-load their fees, and leave the consumer in a worse situation than before enrollment. On August 10, 2010, the Federal Trade Commission published a new rule concerning debt settlement as part of its Telemarketing Sales Rule (TSR), prohibiting debt settlement companies from front-loading their fees, and strictly regulating how these companies may collect fees. This rule will be inadequate to stop unscrupulous debt settlement companies from taking advantage of consumers, and a convoluted North Dakota statute does not reach these companies. Recently, the North Dakota Legislature adopted H.B. 1038, which enacted a heavily modified version Uniform Debt Management Services Act in North Dakota. This bill, if passed, will close the loopholes through which unscrupulous debt settlement companies can subvert the TSR and will afford consumers basic but vital protections against these companies.

I. INTRODUCTION

"Eliminate your debt in as little as 12-36 months!"[1] "Reduce your credit card debt by as much as 60%!"[2] To many of us, these statements may seem like unrealistic claims,[3] but to those deep in debt, these claims can be the only glimmer of light in absolute darkness.[4] Their creditors are calling constantly, their debt balances are continually getting bigger, and they just want it all to stop and for life to go back to normal.[5] In some cases, the companies that make these claims can actually help a person deep in debt settle that debt for much less than she owes.[6] In many cases, though, this glimmer of light only leads the debtor further into the darkness.[7]

The plausibility of the various claims debt settlement companies make is not the only problem.[8] Front-loaded fee structures, instructions to stop making payments on debt, and various other abuses have not only forced debtors further into debt, but they also soak up the last assets creditors may have been able to claim in an eventual, and sometimes inevitable, bankruptcy.[9] These abuses have prompted both the Federal Trade Commission (FTC) and the North Dakota Legislature to act. The FTC acted to prevent abuse by amending the Telemarketing Sales Rule (TSR) to ban many of the abusive practices.[10] The new FTC regulations will not touch every corner of the market, though.[11] Thus, the North Dakota Legislature is currently

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1. TIMELINE DEBT SOLUTIONS (Feb. 1, 2010), http://www.timelinedebt.com. Since publication of this article, this website no longer exists due to FTC regulations.

2. *Id.*

3. *See generally* Telemarketing Sales Rule, 75 Fed. Reg. 48,458, 48,463 (Aug. 10, 2010) (to be codified at 16 C.F.R. pt. 310), (detailing the abusive practices and claims in the debt settlement industry).

4. *See id.* at 48,459 (stating "[d]ebt relief services have proliferated in recent years as the economy has declined and greater numbers of consumers hold debts they cannot pay").

5. FED. TRADE COMM'N, PUBLIC FORUM ON DEBT RELIEF AMENDMENTS TO THE TELEMARKETING SALES RULE 38 (2009), *available at* http://www ftc.gov/bcp/rulemaking/tsr/tsr-debtrelief/transcript.pdf.

6. Telemarketing Sales Rule, 75 Fed. Reg. at 48,471. There is substantial debate on this point, with some commentators saying there is a substantial benefit to be had from a well-regulated industry, and some saying there is no benefit at all. *Compare* FED. TRADE COMM'N, *supra* note 5, at 39-40, *with* RICHARD BRIESCH, ECONOMIC FACTORS AND THE DEBT MANAGEMENT INDUSTRY 2-3 (Aug. 6, 2009), *available at* http://www.debtmanagementguys.com /debtmanagementarticles/briesch-whitepaper.pdf.

7. FED. TRADE COMM'N, *supra* note 5, at 39.

8. *See* Telemarketing Sales Rule, 75 Fed. Reg. at 48,463.

9. *Id.*; FED. TRADE COMM'N, *supra* note 5, at 39.

10. Telemarketing Sales Rule, 16 C.F.R. § 310 (2011).

11. *See infra* Part III.C.

considering a heavily modified version of the Uniform Debt Management Services Act (UDMSA).[12]

This article will argue the FTC regulation is a good start, but the new North Dakota Century Code chapter 13-11, enacted by House Bill 1038, will create a marketplace in North Dakota where honest debt settlement companies can do their work, and where dishonest debt settlement companies will be punished harshly.[13] Part II of this article will give an overview of the debt settlement industry and its abuses.[14] Part III will detail the FTC's amendment to the TSR, which bans many of the abuses of debt settlement companies when an interstate phone call is involved.[15] Part IV will explore the current state of North Dakota law and the proposed version of the UDMSA.[16] Part V will describe the impact of chapter 13-11 in North Dakota and will suggest some changes which will make the landscape safer for consumers and creditors to do their business.[17]

II. THE DEBT SETTLEMENT INDUSTRY

The debt settlement industry has greatly proliferated in the past few years as consumers have faced increasing financial difficulty.[18] It is important to understand how the industry works and what the most common abusive practices are in order to understand how specific regulations affect the industry.[19] First, this section will explore the existence and operation of the debt settlement industry.[20] Next, this section will describe some of the more common abusive practices of the industry.[21]

A. OVERVIEW OF THE DEBT SETTLEMENT INDUSTRY

At their core, debt settlement companies attempt to negotiate with creditors in order to lower the consumer's principal amount owed, which the consumer will pay in one or a few payments.[22] The theory behind this practice is that creditors will benefit from settling for smaller amounts

12. 2011 N.D. Laws 428.
13. *See infra* Part V.A.
14. *See infra* Part II.
15. *See infra* Part III.
16. *See infra* Part VI.
17. *See infra* Part V.
18. Telemarketing Sales Rule, 75 Fed. Reg. 48,458, 48,458 (Aug. 10, 2010) (to be codified at 16 C.F.R. pt. 310).
19. *Id.* at 48,461.
20. *See infra* Part II.A.
21. *See infra* Part II.B.
22. BRIESCH, *supra* note 6, at 12.

because it is more than they will get from other means of collecting.[23] Generally, if a debtor misses enough payments, a creditor will write off the debt and send it to a collection agency or law firm, or it will sell the debt.[24] These collection practices have rather low rates of recovery.[25]

The creditor has several other options, as well, including filing a lawsuit.[26] However, lawsuits cost money for both the creditor and the debtor, and creditors often may be better off through alternative means.[27] Eventually, the debtor may declare either Chapter 7 or Chapter 13 bankruptcy.[28] Bankruptcy does not often lead to large recovery for creditors, though.[29] Thus, debt settlement companies claim that creditors are willing to work with debtors in order to maximize their recovery.[30]

The debt settlement program begins when the consumer contacts the company, and usually gives the company information about his or her debts and financial situation.[31] The settlement company then purportedly evaluates the debtor's financial situation and creates a payment plan by which the consumer amasses savings in an account for eventual settlements and pays the provider's fee.[32] The payments are usually made to a dedicated bank account and are apportioned in various ways between savings for an eventual settlement and payment of the provider's fees.[33] Because the consumer is using all of his or her expendable income on making payments to this account, the consumer no longer makes any payments on his or her debt.[34]

The provider then contacts the consumer's creditors to solicit settlement offers.[35] The company must generally wait several months to solicit offers, though, while the consumer amasses enough money in the dedicated account to actually pay a settlement offer.[36] In the event that

23. ABLE DEBT SETTLEMENT, INC, COMMENTS REGARDING TELEMARKETING SALES RULE 20 (Oct. 2009), *available at* http://www ftc.gov/os/comments/tsrdebtrelief/543670-00181.pdf.

24. BRIESCH, *supra* note 6, at 8.

25. ABLE DEBT SETTLEMENT, *supra* note 23, at 20.

26. BRIESCH, *supra* note 6, at 8-9.

27. *Id.*

28. *Id.* at 9.

29. *Id.*

30. ABLE DEBT SETTLEMENT, *supra* note 23, at 20.

31. Telemarketing Sales Rule, 75 Fed. Reg. 48,458, 48,461 (Aug. 10, 2010) (to be codified at 16 C.F.R. pt. 310).

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 48,462

36. *Id.*

creditors make an offer to settle, the settlement will be paid out of the dedicated account.[37]

The fee structures of the various debt settlement companies vary significantly.[38] Some companies charge a large upfront fee, which has generally become known as a "front-loaded" fee.[39] These fees can be a very large percentage of the total fees the provider will charge.[40] An example of the fee structure can be found in the Minnesota Attorney General's complaint against two providers.[41] In one instance, a company named American Debt Settlement Solutions (ADSS) created a plan for a consumer who enrolled $17,595 of unsecured debt into its service.[42] The plan called for a monthly payment of $328.48 for thirty-six months.[43] For the first four months of the plan, every penny of the payment went to ADSS's administrative and maintenance fees.[44] For the next ten months, $202.96, over sixty percent of the payment, went to ADSS's administrative and maintenance fees, with the remainder going into the consumer's savings for settlements.[45] For the final twenty months, the consumer only paid the fifty-nine dollar monthly maintenance fee.[46] Therefore, the plan required almost thirty percent of the fees in the first four months and almost seventy-five percent of the fees in the first fourteen months.[47]

Another provider, Debt RX USA (DRU), enrolled $43,158 of a consumer's unsecured debt in a program with a similar fee structure.[48] The consumer's first four $494.52 monthly payments in a forty-eight month plan were to go entirely to the provider's fees.[49] Over the next twenty months, $224.78 of her payments would go to the provider's fee.[50] The last twenty-four payments would go entirely to the consumer's savings.[51] Under the plan, the client would pay almost one-third of the total fee of

37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. OFFICE OF THE ATT'Y GEN., STATE OF MINN., COMMENT REGARDING TELEMARKETING SALES RULE—DEBT RELIEF AMENDMENTS 2 (Feb. 23, 2010), *available at* http://www ftc.gov/os/comments/tsrdebtrelief/543670-00330.pdf.
42. *Id.* at 5-6.
43. *Id.* at 6.
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.*

$6473.70 in the first four months, and the entire fee in the first half of the plan.[52]

B. CONSUMER PROTECTION CONCERNS

There are two major categories of consumer protection concerns regarding debt settlement companies.[53] The first concerns the representations and disclosures the companies make to the consumer, and the second concerns the front-loading of fees.[54] As the FTC has noted, there are several common false, misleading, or unsubstantiated representations that debt settlement providers make to consumers, which raise serious consumer protection concerns.[55] Most notable, and most common, are the claims of how much debt can be settled for and how much time the settlement will take.[56] Many consumers are lured into debt settlement by claims that the provider will or is highly likely to obtain large debt reductions for its enrollees.[57]

It does not take much effort to find claims of large settlement possibilities on the websites of various debt settlement providers.[58] Fast Debt Settlements claims on its website that a consumer can reduce his or her debt by "as much as 40% to 60% of the total balance."[59] Fast Debt also claims the reduction can be done with a "low monthly payment."[60] Fast Track Debt Relief shows in a bar graph that you could settle $30,000 of debt for $16,000 to $20,000.[61] This thirty-five to forty-five percent figure may not seem like too outrageous of a claim, but on the same page, Fast Track shows a graph of its "Top Settlements."[62] Every single one of those

52. *Id.*

53. Telemarketing Sales Rule, 75 Fed. Reg. 48,458, 48,463 (Aug. 10, 2010) (to be codified at 16 C.F.R. pt. 310).

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. A Google search done on February 6, 2010 using the term "debt settlement" returned two companies making these claims as the first two "sponsored listings" for the search. It should be noted that because claims of large, untypical settlements are now illegal, the websites have largely removed the claims that they can reduce your debts by shockingly large amounts.

59. FAST DEBT SETTLEMENTS, http://www fastdebtsettlements.com (last visited Feb. 6, 2010).

60. *Id.*

61. FAST TRACK DEBT RELIEF, http://fasttrackdebtrelief.com/debt-settlement-lp.aspx?utm_source=google&utm_medium=cpc&utm_term=debt+settlement&m=PPC&gclid=CNz7vsTx86YCFQjrKgodswnWDQ (last visited Feb. 6, 2010) (accessed as a Google link page). This is a different page than Fast Track's home page, but arguably would have more traffic due to its presence on Google.

62. *Id.*

settlements reduced the debt by more than seventy-five percent,[63] representing to the consumer that this is a common or typical result. The only disclaimer for these figures is the "individual results may vary," which never warns the consumer that these results are nowhere near typical.[64]

In fact, the settlement figures are severely compromised by the low program completion rates debt settlement companies maintain.[65] In their disclaimers, both Fast Track and Fast Debt note the settlement results are contingent on the completion of their program.[66] While most providers declined to give the FTC completion rates of their clients despite repeated requests, The Association of Settlement Companies (TASC), an organization that represents debt settlement providers, responded with the results of a survey of its members.[67] The survey showed that after three years, only 24.6% of debt settlement clients had completed programs, while only 9.6% were still enrolled.[68] These results indicate almost two-thirds of debt settlement consumers did not complete the program.[69]

The TASC survey also had some serious problems.[70] Only twelve companies responded with "sufficient data to determine a three-year dropout rate."[71] In addition, "completion" was defined as having settled at least seventy-five percent of the consumer's overall debt amount.[72] In a survey of 4500 consumers, Dr. Richard Briesch found the cancellation rate was sixty percent over two years.[73] Thus, the odds that a consumer will settle his or her debt for anywhere near what these companies claim are very low.

Despite the fact that those who drop out of the programs will almost certainly not achieve the promised results, settlement companies claim the consumers still benefit because most of them settle at least one account before dropping out of the program.[74] The TASC survey shows only about thirty-five percent of those who dropped out received any settlement at all.[75] Therefore, approximately forty-two percent of all consumers who

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63. *Id.*
64. *Id.*
65. Telemarketing Sales Rule, 75 Fed. Reg. 48,458, 48,471 (Aug. 10, 2010) (to be codified at 16 C.F.R. pt. 310).
66. FAST DEBT SETTLEMENTS, *supra* note 59; FAST TRACK DEBT RELIEF, *supra* note 61.
67. Telemarketing Sales Rule, 75 Fed. Reg. at 48471.
68. *Id.*
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.*
73. BRIESCH, *supra* note 6, at 2.
74. Telemarketing Sales Rule, 75 Fed. Reg. at 48,473.
75. *Id.*

enrolled have received no settlements at all.[76] In addition, it was reported the dropouts received $58.1 million in savings from settlement, but they also paid $55.6 million in fees.[77] These extra fees wipe out almost any benefit the consumer might have seen.[78] Moreover, the debt settlement statistics do not include any data on how much the rest of the consumer's unsecured debt increased due to late fees, interest, etc. from the consumer's nonpayment.[79]

There are several other problems with the claims about specific savings that debt settlement companies make.[80] The FTC found debt settlement companies were exceedingly ready to twist the average savings achieved by consumers.[81] Two of the most common distortions of the numbers regard interest and fees from creditors, and fees from the provider.[82] Fees and interest add to the principal of the debt.[83] The providers take their statistics from the amount settled compared to the amount of the principal at the time of the settlement.[84] Thus, while the settlement may be fifty percent of the principal at the time of the settlement, it may only be thirty to forty percent of the original principal enrolled.[85] In addition, claims of savings would all be calculated without adding in fees from the provider themselves, further reducing the percentage of savings.[86] Finally, there is no guarantee all debts will be settled.[87] Some creditors may not be willing to work with the settlement company, or the consumer may not have enough money to meet some settlement offers.[88] Meanwhile, the principal on the debts continue to increase due to interest and fees.[89] Thus, rather than reducing his or her debt, the consumer has actually acquired more debt.[90]

A closely related pair of abusive practices are also common in the debt settlement industry: the promise that calls and lawsuits from creditors will cease and the failure to disclose how ceasing to pay creditors will affect the

76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.* at 48,474.
80. *Id.*
81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.*
87. *Id.* at 48,475.
88. *Id.* at 48,463.
89. *Id.*
90. *Id.*

consumer.[91] What is abusive about claiming calls and lawsuits will cease is not only the claim itself, but how the companies achieve fruition of the claim.[92] Many debt settlement companies instruct consumers to assign them power of attorney or to change their addresses and phone numbers on file with the creditors to the provider's address and phone number.[93] As a result, any calls, letters, or complaints would be delivered to the provider rather than the consumer.[94] Alternatively, many debt settlement companies simply tell the consumer not to talk to his or her creditors and to direct all creditors to the debt settlement provider.[95]

Additionally, as noted, many debt settlement providers instruct consumers to cease making payments on their debts.[96] Thus, while the consumer becomes delinquent on his or her debts, creditors direct notices of the consumer's delinquency and the charges associated with delinquency to the provider.[97] Meanwhile, the consumer does not realize non-payment will affect his or her credit score and will actually increase the principals of the consumer's debts.[98] Some providers, such as Able Debt Settlement, suggest implicitly that debt settlement will improve a consumer's credit score.[99] Fast Debt Settlement gives the explanation that, essentially, if a consumer has a good credit score before entering debt settlement, the score will be "destroyed," but if the consumer has a really bad score, debt settlement may actually improve the consumer's score.[100]

Finally, what many call "front-loading" fees is a common practice in the industry.[101] Because the fees go to the provider, rather than the consumer's savings, the consumer will take longer to accumulate enough savings to pay any settlement offers that may have come from the program.[102] Therefore, in the first few months of the program, the provider literally cannot provide any benefit to the consumer.[103] Take, for instance,

91. *Id.*
92. *Id.* at 48,482.
93. *Id.*
94. *Id.*
95. *Id.*
96. *Id.* at 48,461.
97. *Id.* at 48,462.
98. *Id.* at 48,463.
99. *Frequently Asked Questions*, ABLE DEBT SETTLEMENT, http://www.abledebtsettlement.com/faq htm (last visited Feb. 6, 2010).
100. *Frequently Asked Questions About Debt Collection & Debt Settlements*, FAST DEBT SETTLEMENTS, http://www fastdebtsettlements.com/FrequentlyAskedDebtSettlementQuestionsandPractices html (last visited Feb. 6, 2010).
101. Telemarketing Sales Rule, 75 Fed. Reg. at 48,463.
102. *Id.*
103. *Id.* at 48,473.

the earlier example from Minnesota.[104] One particular consumer owed over $40,000, and her payments to the debts settlement company were $494.52 per month.[105] Her first four payments, almost $2000, went entirely to the provider's fee.[106] It is not hard to imagine a scenario in which the consumer could have settled at least one of her debts in that four month period if the statistics for settlements these providers give are accurate. Instead, all of that money went to the provider, and the consumer and her creditors had less to resolve their issues with.[107]

An even larger problem with the front-loaded fee model is that it encourages providers to "take all comers" without making an honest effort to evaluate which consumers are appropriate for a provider's plan.[108] Johnson Tyler, an attorney at Southern Brooklyn Legal Services, testified about a client whose only income was $700 a month from SSI and had $30,000 in credit card debt.[109] The client enrolled in a debt settlement program even though she obviously had no possibility of receiving settlements.[110]

Much of the debt settlement industry strongly believes advance fees are necessary for the capitalization of their business.[111] The providers claim they provide valuable services in the first few months, what some of the industry leaders described as "hand-holding."[112] This implicitly implies settlement providers believe they cannot survive if they are required to subsist wholly on a fee after a settlement is made.[113] However, considering the fact that eighty-four percent of debt settlement companies surveyed by the United States Organization for Bankruptcy Alternatives (USOBA) about the effect of a ban on advance fees believed that they would most likely have to close their doors, there is reason to question whether the profits these companies make from the people who drop out after a few months are the key to their successful operation.[114]

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104. *See supra* Part II.A.
105. OFFICE OF THE ATT'Y GEN., STATE OF MINN., *supra* note 41, at 6.
106. *Id.*
107. *Id.*
108. FED. TRADE COMM'N, *supra* note 5, at 39-40.
109. *Id.*
110. *Id.*
111. Telemarketing Sales Rule, 75 Fed. Reg. 48,458, 48,477 (Aug. 10, 2010) (to be codified at 16 C.F.R. pt. 310).
112. *See* FED. TRADE COMM'N, *supra* note 5, at 38.
113. *See* Telemarketing Sales Rule, 75 Fed. Reg. at 48,477.
114. *Id.*; FED. TRADE COMM'N, *supra* note 5, at 39-40.

III. AMENDMENT TO THE TELEMARKETING SALES RULE

An amendment FTC's TSR took effect on October 27, 2010.[115] The TSR acts to significantly bolster regulation of some of the most abusive practices of the debt settlement industry.[116] Part A of this section will detail the advance fee ban promulgated by the regulation.[117] Part B will describe the disclosures debt settlement providers must make to their consumers, as well as the prevention of certain common misrepresentations.[118] Finally, Part C will discuss the limitation of the regulation, particularly in its scope.[119]

A. ADVANCE FEE BAN

The FTC, after much comment from industry, government, and non-profit interests, decided to include in its amendment of the TSR a ban on the most destructive practice of the debt settlement industry: front-loading fees.[120] This is an outright ban.[121] The final rule "[p]rohibits providers from charging or collecting fees until they have provided the debt relief services."[122] Two preliminary conditions must be met before the fee can be charged, and in addition, the fee structure must comply with the TSR's specifications.[123]

The regulation first requires the consumer "execute a debt relief agreement with the creditor."[124] According to the text of the regulation, fees may not be charged until "[t]he seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer."[125] In other words, "hand-holding" is no longer a valid reason to charge fees.[126] The consumer must achieve some amount of success with the program before any fees can be charged.[127] A creditor must have agreed to settle.[128]

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115. Telemarketing Sales Rule, 75 Fed. Reg. at 48,491.
116. *Id.* at 48,469, 48,491.
117. *See infra* Part III.A.
118. *See infra* Part III.B.
119. *See infra* Part III.C.
120. Telemarketing Sales Rule, 75 Fed. Reg. at 48,465.
121. *See id.*
122. *Id.*
123. *Id.*
124. *Id.*
125. Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(5)(i)(A) (2011).
126. *See generally* FED. TRADE COMM'N, *supra* note 5, at 39-40 (stating "hand-holding" is not what debt settlement consumers need).
127. Telemarketing Sales Rule, 75 Fed. Reg. at 48,465.

Secondly, "the consumer must make at least one payment pursuant to that agreement."[129] Thus, the consumer must not only sign a settlement agreement with the creditor, he or she must begin to perform that agreement.[130] The agreement will foreclose any chance debt settlement companies will attempt to rush the consumer into signing agreements that the consumer cannot perform, thus allowing the provider to collect a fee.[131]

Finally, the structure of the fees must also comply with certain requirements.[132] If a provider were allowed to charge its fees in any structure it wanted, the purpose of the advance fee ban could be circumvented because companies could charge all of the fees after the first settlement or could begin a fee structure similar to the current front-loaded structures after the first settlement.[133]

There are two basic fee structures the TSR will now allow: a proportional flat-fee structure or a percentage structure based on the amount saved.[134] First, a per-settlement flat fee may be collected as a proportional relationship to the total fee charged and the amount of the debt enrolled.[135] In other words, the fee for a single settlement must be in the same proportion to the total fee as the proportion of the settled debt to the total debt enrolled.[136] For instance, consider a hypothetical in which a consumer enrolls $10,000 in debt for which the provider will charge a total fee of $1000. If the provider settles twenty-five percent of the debt, or $2500, the provider may only collect twenty-five percent of the fee, or $250. This proportional fee requirement will allow a flat-fee model, but will prevent providers from loading all or a large part of the fee on the first settlement.[137]

Alternatively, providers may charge a percentage of the savings a consumer realizes from each settlement.[138] This percentage must be the same for every settlement throughout the contract.[139] Thus, providers will not be able to front-load fees by charging large percentages for the first settlement and small percentages for the later settlements.[140] The FTC

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128. *Id.*
129. *Id.*; *see also* 16 C.F.R. § 310.4(a)(5)(i)(B).
130. Telemarketing Sales Rule, 75 Fed. Reg. at 48,465.
131. *Id.* at 48,489.
132. *Id.* at 48,490.
133. *Id.*
134. *Id.*
135. Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(5)(i)(C)(1) (2011).
136. Telemarketing Sales Rule, 75 Fed. Reg. at 48,490.
137. *Id.*
138. 16 C.F.R. § 310.4(a)(5)(i)(C)(2).
139. *Id.*
140. Telemarketing Sales Rule, 75 Fed. Reg. at 48,490 & n.436.

expressly refrained from limiting the amount of fees providers can charge, stating "fee-setting is best done by a competitive market."[141]

B. DISCLOSURES AND MISREPRESENTATIONS

Debt settlement telemarketing is particularly ripe for deception because many times consumers do not know how debt settlement works.[142] Pursuant to the amended TSR, debt settlement providers are required to make four separate new types of disclosures.[143] These disclosures are intended to ensure consumers have the basic information necessary to determine whether debt settlement will meet their needs and to ensure consumers understand how debt settlement works.[144] The provider must make these disclosures before the consumer enrolls in the debt settlement program.[145]

The first new required disclosure is timing.[146] The provider must inform the consumer how long it will take to see the results the provider promised.[147] Additionally, the provider must disclose how long it will be until the provider will begin making settlement offers to the consumer's creditors.[148] A second, but related, disclosure is the amount of money the consumer must accumulate before the provider can make a bona fide settlement offer to the consumer's creditors.[149] These disclosures will help to ensure "consumers understand the time and monetary commitment necessary for the plan to succeed."[150] For instance, both of the consumers in the previous examples from Minnesota did not realize that settlement activity would not occur immediately.[151] The new disclosure requirement will prevent this misunderstanding.[152]

The third required disclosure concerns the effect of debt settlement on the consumer's financial well-being.[153] This disclosure is required if the debt settlement program entails the consumer failing to make timely payments to his or her creditors.[154] The provider must inform the consumer

141. *Id.* at 48,488.
142. *Id.* at 48,492.
143. 16 C.F.R. § 310.3(a)(1)(viii).
144. Telemarketing Sales Rule, 75 Fed. Reg. at 48,492.
145. *Id.* at 48,496.
146. *Id.* at 48,492.
147. 16 C.F.R. § 310.3(a)(1)(viii)(A).
148. *Id.*
149. *Id.* § 310.3(a)(1)(viii)(B).
150. Telemarketing Sales Rule, 75 Fed. Reg. at 48,492.
151. OFFICE OF THE ATT'Y GEN., STATE OF MINN., *supra* note 41, at 6; *see supra* Part II.A.
152. Telemarketing Sales Rule, 75 Fed. Reg. at 48,492.
153. *Id.* at 48,493.
154. 16 C.F.R. § 310.3(a)(1)(viii)(C).

of the effect non-payment may have on his or her credit score, that it may result in collection action or lawsuits by creditors, and that non-payment may increase the consumer's principal balance due to fees and interest.[155] Many debt settlement providers tell their clients to cease paying their creditors and dedicate those funds to saving for settlements.[156] Ceasing to pay creditors will, rather obviously, lead to a serious negative impact on the consumer's financial well-being.[157] Many consumers do not understand that enrolling in a debt settlement program does not protect them from these problems.[158]

The final new disclosure required by the TSR regards companies who request or require the consumer deposit funds into a dedicated account.[159] The provider must ensure the consumer knows he or she has the right to withdraw all of the funds currently in the account with no penalty.[160] Thus, if a consumer has a major unexpected bill that absolutely must be paid or decides to leave the program, the consumer knows that he or she will not lose the money already saved.[161]

There are three general disclosures every service regulated by the TSR must comply with.[162] The first is the disclosure of the total cost of the services the provider will render.[163] The notice of the final rule noted that many times what providers represent about the costs of the program is different from what the contract price is.[164] The total cost disclosure would eliminate those false representations.[165] Secondly, providers must disclose any "material restrictions, limitations, or conditions" that apply to the service.[166] Particularly, the FTC pointed to any minimum debt level restrictions a provider might have and whether the service is restricted to unsecured debt.[167] Finally, the seller must disclose if it does not allow refunds, cancellations, exchanges, or repurchases.[168] If the seller makes any

155. *Id.*
156. Telemarketing Sales Rule, 75 Fed. Reg. at 48,493.
157. *Id.*
158. *Id.*
159. 16 C.F.R. § 310.3(a)(1)(viii)(D).
160. *Id.*
161. Telemarketing Sales Rule, 75 Fed. Reg. at 48,494.
162. *Id.* at 48,495.
163. 16 C.F.R. § 310.3(a)(1)(i).
164. Telemarketing Sales Rule, 75 Fed. Reg. at 48,495.
165. *Id.*
166. 16 C.F.R. § 310.3(a)(1)(ii).
167. Telemarketing Sales Rule, 75 Fed. Reg. at 48,496.
168. 16 C.F.R. § 310.3(a)(1)(iii).

representations about refunds, it must disclose the material terms of its refund policy to the consumer.[169]

The amendment to the TSR also prohibits misrepresentations about "[a]ny material aspect of any debt relief service."[170] Included in this rule, and stated as examples, are the most common misrepresentations: how much savings the consumer can achieve and how long the plan will take.[171] Essentially, the amendment to the TSR requires providers not misrepresent the information they are required to provide in their disclosures.[172] Additionally, a provider cannot represent itself as a non-profit agency if it is not, in fact, a non-profit agency.[173]

C. LIMITATIONS

Because the TSR is, as the name implies, limited in its scope, it is important to discuss to what transactions the TSR will apply.[174] First, non-profit entities are exempted from the FTC regulation and, therefore, are not subject to the TSR.[175] However, the FTC notes non-profits must comply with strict laws from the IRS, as well as laws from forty-nine states.[176]

The TSR applies to all telemarketing activity, which is defined as "a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call."[177] There are several exemptions from this definition.[178] Specifically, the TSR exempts inbound phone calls in response to general advertisement.[179]

In the case of debt relief services, though, the TSR specifically includes inbound calls in response to general advertisements.[180] Thus, debt relief services are within the jurisdiction of the TSR if the providers conduct the more traditional outbound interstate telemarketing activity, or if the providers receive an inbound interstate call in response to an advertising medium.[181] As the FTC notes, in their current forms, the broad inclusion of

169. *Id.*
170. *Id.* § 310.3(a)(2)(x).
171. *Id.*
172. *Id.*
173. *Id.*
174. Telemarketing Sales Rule, 75 Fed. Reg. at 48,458.
175. *Id.* at 48,466.
176. *Id.*
177. 16 C.F.R. § 310.2(dd).
178. *Id.* § 310.6(b).
179. *Id.* § 310.6(b)(5)-(6).
180. *Id.*
181. *Id.*

telemarketing calls will most likely cover all known for-profit debt relief agencies.[182]

There are other exemptions, though, that will allow unscrupulous debt settlement companies to avoid these rules, if they so desire.[183] The FTC notes attorneys will, for the most part, not be covered by the regulation because of the "face-to-face" exemption.[184] This exemption provides that the TSR does not apply if the transaction is not completed or payment is not required until after a face-to-face meeting with the provider.[185] At least one provider employs an "independent contractor" method of operation.[186] In order to be exempt, all a provider would need to do is have independent contractors in the state in which it wishes to operate and require clients sign their contracts in the presence of the independent contractor.

In addition, because the TSR requires an interstate phone call, the provider may not even need to have the independent contractor meet the client in person.[187] The provider could, in their advertisements, provide consumers with intrastate phone numbers that connect the client to independent contractors, which would also circumvent the jurisdiction of the TSR. A provider could also attempt to operate all of its initial communications with consumers over the Internet in order to circumvent the TSR's jurisdiction. Because so many of these businesses believe the new regulations will put them out of business,[188] it is likely that at least some will attempt to get around them.

Finally, the TSR includes a broad definition of "debt relief services."[189] The definition includes any service that "represent[s], directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors."[190] The definition works to include not only debt settlement, but also credit counseling and debt negotiation.[191]

182. Telemarketing Sales Rule, 75 Fed. Reg. 48,458, 48,403 (Aug. 10, 2010) (to be codified at 16 C.F.R. pt. 310) (stating each of the approximately 2000 entities which sell debt relief services engages in telemarketing as defined by the TSR).

183. 16 C.F.R. § 310.6(b)(3).

184. Telemarketing Sales Rule, 75 Fed. Reg. at 48,468.

185. 16 C.F.R. § 310.6(b)(3).

186. ABLE DEBT SETTLEMENT, *supra* note 23, at 17.

187. 16 C.F.R. § 310.2(dd).

188. Telemarketing Sales Rule, 75 Fed. Reg. at 48,477.

189. *Id.* at 48,466.

190. 16 C.F.R. § 310.2(m).

191. Telemarketing Sales Rule, 75 Fed. Reg. at 48,466.

IV. THE UNIFORM DEBT MANAGEMENT SERVICES ACT

In the sixty-second legislative session, a version of the UDMSA was signed into law in North Dakota in order to regulate debt settlement companies. This section will discuss the major provisions of the law and will compare it to versions passed in other states. This section will first briefly discuss the former state of the law in North Dakota.[192] Next, it will consider the registration requirements within the UDMSA, followed by the UDMSA's treatment of fees and disclosures.[193] Finally, this section will discuss the enforcement provisions of the UDMSA.[194]

A. FORMER NORTH DAKOTA LAW: CHAPTER 13-06

The former North Dakota law relating to the practice of "debt adjusting" was codified in North Dakota Century Code section 13-06-01. The statute provided that:

> "Debt adjusting" means the making of a contract, express or implied, with a debtor whereby the debtor agrees to pay a certain amount of money or other thing of value periodically to the person engaged in the debt adjusting business who shall, for a consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon. The term includes a debt adjustment, budget counseling, debt management, or debt pooling service or the holding of oneself out, by words of similar import, as providing services to debtors in the management of their debts and contracting with the debtor for a fee to:
>
> a. Effect the adjustment, compromise, or discharge of any account, note, or other indebtedness, of the debtor; or
>
> b. Receive from the debtor and disburse to the debtor's creditors any money or other thing of value.[195]

The next section, 13-06-02, made the practice of "debt adjusting" a class A misdemeanor.[196] The definition of "debt adjusting" was at best internally inconsistent.[197] The first sentence of the statute seemed to suggest only companies that distribute funds to creditors are included in the definition.[198] The second sentence seemed to suggest either distributing

192. *See infra* Part IV.A.
193. *See infra* Parts IV.B-C.
194. *See infra* Part IV.D.
195. N.D. CENT. CODE § 13-06-01 (2009) (repealed 2011).
196. *Id.* § 13-06-02.
197. *In re* Kendall, 440 B.R. 526, 531 (B.A.P. 8th Cir. 2010).
198. *Id.*

funds to creditors or attempting to "[e]ffect the adjustment, compromise, or discharge" will bring a provider under the statute.[199]

Upon examination of similar statutes in other states, it is clear section 13-06-01 is actually a combination of two distinct statutes. For instance, Florida Statute section 559:10 is identical to the first sentence of the North Dakota statutes.[200] On the other hand, Ohio Revised Statutes section 4710.01 is identical to the second sentence of the North Dakota statute.[201] Thus, it is unclear just what the North Dakota Legislature intended to regulate with section 13-06-01.

Section 13-06-01 does not prohibit debt settlement in the State of North Dakota. While the FTC thought otherwise,[202] the Bankruptcy Court for the District of North Dakota interpreted the North Dakota statute to require the provider to collect and distribute funds to run afoul of this law.[203] Most debt settlement companies no longer work this way, preferring to have the consumer control and distribute the funds.[204] Section 13-06-01 is outdated, as the legislature has no doubt acknowledged and has therefore changed.

B. REGISTRATION REQUIREMENTS

North Dakota Century Code section 13-11-02 now requires, as a first step, that all debt settlement providers have a license.[205] Application for the license is made to the Commissioner of the Department of Financial Institutions, which has regulatory power over the companies.[206] The new law does away with the antiquated definition of "debt adjusting" and offers a new definition for "debt-settlement service."[207] The new definition includes services whose primary purpose is to advise or help consumers settle their debt for less than the original principal, as well as services that advise or help consumers accumulate funds in order to settle their debts.[208] The bill exempts attorneys, accountants, family financial planners, and non-profit credit counseling agencies.[209]

199. *Id.*

200. FLA. STAT. ANN. § 559:10 (West Supp. 2011).

201. OHIO REV. CODE ANN. § 4710.01 (West Supp. 2011).

202. Telemarketing Sales Rule, 75 Fed. Reg. 48,458, 48,464 (Aug. 10, 2010) (to be codified at 16 C.F.R. pt. 310).

203. *In re* Kendall, 2010 WL 2787631, at *6 (Bankr. D.N.D. 2010). The North Dakota Supreme Court has never ruled on the issue.

204. *See generally id.* at *2.

205. N.D. CENT. CODE § 13-11-02 (Supp. 2011).

206. *Id.* §§ 13-11-01(2), -03.

207. *Id.* § 13-11-01(6).

208. *Id.*

209. *Id.* § 13-11-01(6)(a)-(h).

In addition to the license application and applicable fees, debt settlement companies seeking to do business with North Dakota consumers must post a $50,000 surety bond, presumably to cover any costs that might arise from potential abuse by that company.[210] Also, the bill requires that the managers and owners of the companies have never been convicted of a felony or misdemeanor in order to get a license.[211] The license may be revoked at any point the provider does not pay its annual fee or does not comply with any section of the statute.[212] These are fairly liberal requirements in comparison to the Colorado version of the UDMSA.[213] Colorado requires evidence of a $1,000,000 insurance policy and that the proprietors, as well as all of their debt specialists, be certified by an independent agency.[214]

C. FEES, DISCLOSURES, AND OTHER RESTRICTIONS

The North Dakota Legislature has chosen to deal with advance fees directly and in a way similar to that of the TSR.[215] Subsection 13-11-21(2) outright bans any type of upfront or setup fees.[216] A provider is only allowed to collect fees from a consumer if (1) the consumer has entered into an agreement with the creditor to settle a debt and (2) the funds for the settlement are provided to the creditor.[217] After these conditions are met, the provider can then collect a fee, but only in an amount, which is less than thirty percent of the total savings the consumer has realized from the settlement.[218] Thus, if a $2000 debt is settled for $1000, resulting in a savings of $1000, the provider can only collect a fee of $300.[219] In addition, a provider cannot settle any of the consumer's debts for more than fifty percent of the principal without the consumer's consent, thus eradicating any possibility the provider might settle as many debts as quickly as possible in order to collect fees.[220] The consumer must see real, tangible results before the provider can take a fee.

210. *Id.* § 13-11-04.
211. *Id.* § 13-11-05(1)(b).
212. *Id.* § 13-11-10.
213. *See* COLO. REV. STAT. §§ 12-14.5-203 to -206 (2011).
214. *Id.* §§ 12-14.5-205(4), 206(8)-(9) (repealed 2011).
215. N.D. CENT. CODE § 13-11-21.
216. *Id.* § 13-11-21(2).
217. *Id.* § 13-11-21(4).
218. *Id.* § 13-11-21(3).
219. *See id.*
220. *Id.* § 13-11-23(1)(b).

In addition, there are several disclosures the provider must make to the consumer before they can enter into a contract.[221] The disclosures are almost identical to the ones the TSR now requires, except for a few additions.[222] The provider must disclose that debt settlement services are not appropriate for all consumers and that debt settlement may harm the consumer's ability to obtain credit.[223] The provider must also inform the consumer they are still obligated to pay their bills while enrolled and some of their creditors may not be willing to settle.[224] The consumer must also be informed that they should look into both non-profit credit counseling and bankruptcy.[225] Furthermore, the provider must disclose how long the program will take, as well as how much savings must be accumulated for the provider to be able to make offers to each of the consumer's creditors.[226] Finally, the provider must perform and disclose to the consumer an individualized financial analysis, which determines the consumer can in good faith complete the program and includes the savings goals and the amount of fees the provider will collect.[227] These disclosures should all work together to provide the consumer with enough information to make an informed decision.

There are several restrictions that will seriously restrain the debt settlement industry, as well. First, as mentioned previously, the provider cannot make settlements without the consumer's consent for more than fifty percent of the original principal.[228] The provider cannot take "a power of attorney that authorizes the provider to settle a debt."[229] Finally, and most restrictively, providers cannot structure a plan that would result in the negative amortization of the consumer's debt.[230] The provision essentially means a provider cannot structure a plan that will require the consumer cease paying his or her debts because the non-payment would allow the interest to become part of the principal.[231] As many of the companies tell

221. *Id.* § 13-11-17.
222. *See supra* Part III.B.
223. N.D. CENT. CODE § 13-11-17(1)(a)-(b).
224. *Id.* § 13-11-17(1)(d), (f).
225. *Id.* § 13-11-17(1)(e).
226. *Id.* § 13-11-17(1)(h)-(i).
227. *Id.* § 13-11-18.
228. *Id.* § 13-11-23(1)(b).
229. *Id.* § 13-11-23(1)(c).
230. *Id.* § 13-11-23(1)(i). "Negative Amortization" means that the principle of the debt gets larger over time, rather than smaller.
231. *Id.*

their consumers, these plans may not work unless the consumer ceases to pay his or her bills.[232]

D. ENFORCEMENT

There are three major enforcement mechanisms present in this bill. First, violation of any provision of the chapter is a class C felony.[233] Thus, if a provider or any of its employees violate the restrictions in the provision, they can be charged with a crime.[234] Secondly, the Commissioner of the Department of Financial Institutions, as well as the Attorney General, have the power to impose a $5000 civil penalty on the provider for any willful violation of the chapter.[235]

Finally, and most importantly, the statute creates a private right of action for any consumer who is harmed by a violation of the chapter.[236] If the consumer wins, the provider can be forced to pay the consumer's damages or $2000, whichever is greater.[237] In addition, if the consumer wins, the court can award costs, fees, and attorney's fees to the consumer as the prevailing party.[238] The private right of action is important for two reasons. First, it gives the consumer the obvious right to redress their grievance with the provider.[239] Additionally, because many of these consumers eventually end up in bankruptcy, the action could allow the bankruptcy trustee or the creditors of the consumer to recover some funds from the provider for the benefit of the bankruptcy estate.[240] Thus, the private right of action not only will help consumers protect themselves, it will also allow creditors to recover more in bankruptcy.

V. IMPACT

Chapter 13-11 will have an immediate and important impact on consumers and providers in the debt settlement industry. This section will first show the positive impact the new regulations, in conjunction with the TSR, will have for consumers and the State of North Dakota, and will urge

232. *See Transcript of Undercover GAO Calls to Debt Settlement Companies*, U.S. SENATE COMM. ON COMMERCE, SCIENCE, & TRANSP., http://commerce.senate.gov/public/?a=Files.Serve&Fileid=09e56976-7770-494d-9471-93290b593da6 (last visited Dec. 13, 2011).

233. N.D. CENT. CODE § 13-11-27(1).

234. *Id.*

235. *Id.* § 13-11-27(2)-(3).

236. *Id.* § 13-11-29.

237. *Id.*

238. *Id.*

239. *Id.*

240. *See generally In re* Kendall, 440 B.R. 526, 532 (B.A.P. 8th Cir. 2010) (stating the statute is "internally inconsistent").

the legislature to pass the bill.[241] This section will also suggest a few important changes that should be made to the bill in order to strengthen its impact.[242]

A. IMPACT ON THE DEBT SETTLEMENT INDUSTRY

Chapter 13-11 and the TSR will work together to ensure enforcement of fee regulations and disclosure requirements in order to protect consumers from unscrupulous debt settlement companies. First and foremost, chapter 13-11 will close the loopholes through which providers could circumvent TSR regulation in North Dakota.[243] The TSR, as mentioned earlier, is limited by interstate phone calls, for-profit statutes, and the face-to-face exemption.[244] Without regulation directly in the State of North Dakota, settlement companies could and probably will try to circumvent the TSR.[245] Chapter 13-11 does not have any of those limitations.[246] It simply regulates those entities that engage in the business of debt settlement with a consumer who resides in North Dakota.[247]

Some commentators have theorized the UDMSA, in the states where it is enacted, will actually act to completely exclude the industry from that state.[248] Additionally, as demonstrated previously, many of the providers in the industry believe the TSR amendments will completely destroy the industry.[249] However, if debt settlement providers cannot maintain their businesses in an ethical and trustworthy way, the value of accommodating the industry is outweighed by the risk it poses to consumers.[250]

Some commentators have also suggested the consumers who would be able to complete debt settlement programs would also be able to complete credit counseling plans, which renegotiate the terms and interest rates of the debts to lower payments, rather than attempting to achieve lump sum settlements for less than the original principal.[251] Before declaring bankruptcy, debtors must already attempt to go through credit counseling with an

241. *See infra* Part V.A.
242. *See infra* Part V.B.
243. *See supra* Part III.C.
244. *See supra* Part III.C.
245. *See supra* Part III.C.
246. *See* N.D. CENT. CODE 13-11-02 (Supp. 2011).
247. *Id.*
248. FED. TRADE COMM'N, CONSUMER PROTECTION AND DEBT SETTLEMENT INDUSTRY 43-44 (Sept. 25, 2008), *available at* http://www ftc.gov/bcp/workshops/debtsettlement/index.shtm.
249. Telemarketing Sales Rule, 75 Fed. Reg. 48,458, 48,477 (Aug. 10, 2010) (to be codified at 16 C.F.R. pt. 310).
250. *Id.* at 48,485-86.
251. FED. TRADE COMM'N, *supra* note 5, at 59-60.

agency approved by the U.S. Trustee.[252] Additionally, a consumer may have the option to declare Chapter 13 Bankruptcy, which lowers payments by using the power of the court to force creditors to lower their principals and agree to a plan that allows the debtor to pay off his or her creditors over time.[253] Thus, if the debt settlement industry is destroyed, consumers still have options to resolve their debt issues.

The North Dakota Legislature has done exactly what was necessary to protect consumers and creditors by enacting chapter 13-11. This measure will help protect some of our most vulnerable citizens: those who have incurred too much debt and are desperate to get out from under the weight of it. In addition, it will help protect creditors from debt settlement companies who would take what is left of the debtor's assets in fees and, therefore, inhibit the debtor's ability to pay his or her creditors. Overall, this bill is necessary to ensure the continual and complete regulation of the debt settlement industry.

B. SUGGESTED CHANGES TO CHAPTER 13-11

Two important changes should be made to chapter 13-11 in order to strengthen its consumer protection goals. First, the legislature should strengthen its enforcement mechanism by allowing consumers to collect treble damages for violations of the provision, which will act as a preventative measure. Providers in the state will avoid breaking the rules at all costs due to the dire consequences of civil enforcement of the law.

In addition, similar to the Colorado UDMSA, chapter 13-11 should require independent accreditation for all employees who sell or provide the services,[254] which will alleviate the "say anything to get the sale" approach that many debt settlement advertising and telemarketing campaigns use. It will ensure the people who are making representations about what they can do for a consumer actually know something about debt settlement and have a reasonable basis for their claims. It will also help ensure better screening of potential clients because agents of the company will have a better understanding of whom their service can help.

VI. CONCLUSION

Debt settlement is an industry that is ripe with abusive practices and unscrupulous companies.[255] It is possible, though, that debt settlement can

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252. Telemarketing Sales Rule, 75 Fed. Reg. at 48,461 & n.47.
253. BRIESCH, *supra* note 6, at 9.
254. *See* COLO. REV. STAT. § 12-14.5-206(8)-(9) (2010) (repealed 2011).
255. *See* discussion *supra* Part II.B.

provide value to consumers in an ethical and honest fashion.[256] Because consumers who are deep in debt are very vulnerable to the deceptive practices of these providers, this industry must be surrounded by careful regulation.[257] The amendment to the FTC's TSR that bans advance fees and requires certain disclosures will help to curtail the abuses of this industry.[258] This rule has jurisdiction limitations, though, and the North Dakota Legislature has stepped in to fill the void.[259] North Dakota Century Code chapter 13-11, which will regulate the debt settlement industry in North Dakota, is a giant leap forward for vulnerable debtors and creditors.[260] While the statute can be strengthened, its passage will ultimately ensure the end of some of the most abusive and deceptive practices promulgated by the debt settlement industry.[261] No longer will debt settlement companies be allowed to offer a false light in the darkness.

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256. *See* discussion *supra* Part II.A.
257. *See* discussion *supra* Part II.B.
258. *See* discussion *supra* Parts III.A-B.
259. *See* discussion *supra* Part III.C.
260. *See* discussion *supra* Part V.A.
261. *See* discussion *supra* Part V.B.

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