

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Debt Settlement Consumer Protection Act is  
5 amended by changing Sections 10, 105, 115, 125, and 145 as  
6 follows:

7 (225 ILCS 429/10)

8 Sec. 10. Definitions. As used in this Act:

9 "Consumer" means any person who purchases or contracts for  
10 the purchase of debt settlement services or a student loan  
11 borrower.

12 "Consumer settlement account" means any account or other  
13 means or device in which payments, deposits, or other  
14 transfers from a consumer are arranged, held, or transferred  
15 by or to a debt settlement provider for the accumulation of the  
16 consumer's funds in anticipation of proffering an adjustment  
17 or settlement of a debt or obligation of the consumer to a  
18 creditor on behalf of the consumer.

19 "Debt settlement provider" means: (1) any person or entity  
20 engaging in, or holding itself out as engaging in, the  
21 business of providing debt settlement service in exchange for  
22 any fee or compensation; (2), ~~or~~ any person who solicits for or  
23 acts on behalf of any person or entity engaging in, or holding

1     itself out as engaging in, the business of providing debt  
2     settlement service in exchange for any fee or compensation;  
3     (3) any person or entity engaging in, or holding itself out as  
4     engaging in the business of student loan debt relief services  
5     in exchange for any fee or compensation assessed against or  
6     charged to a consumer; or (4) any person who solicits for or  
7     acts on behalf of such person or entity engaging in or holding  
8     itself out as engaging in, the business of student loan debt  
9     relief services in exchange for any fee or compensation  
10    assessed against or charged to a consumer. "Debt settlement  
11    provider" does not include:

12           (1) attorneys licensed, or otherwise authorized, to  
13           practice in Illinois who are engaged in the practice of  
14           law;

15           (2) escrow agents, accountants, broker dealers in  
16           securities, or investment advisors in securities, when  
17           acting in the ordinary practice of their professions and  
18           through the entity used in the ordinary practice of their  
19           profession;

20           (3) any bank, agent of a bank, operating subsidiary of  
21           a bank, affiliate of a bank, trust company, savings and  
22           loan association, savings bank, credit union, crop credit  
23           association, development credit corporation, industrial  
24           development corporation, title insurance company, title  
25           insurance agent, independent escrowee or insurance company  
26           operating or organized under the laws of a state or the

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

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

8 (5) a collection agency licensed pursuant to the  
9 Collection Agency Act that is collecting a debt on its own  
10 behalf or on behalf of a third party;

11 (6) an organization that is described in Section  
12 501(c)(3) and subject to Section 501(q) of Title 26 of the  
13 United States Code and exempt from tax under Section  
14 501(a) of Title 26 of the United States Code and governed  
15 by the Debt Management Service Act;

16 (7) public officers while acting in their official  
17 capacities and persons acting under court order;

18 (8) any person while performing services incidental to  
19 the dissolution, winding up, or liquidating of a  
20 partnership, corporation, or other business enterprise; ~~or~~

21 (9) persons licensed under the Real Estate License Act  
22 of 2000 when acting in the ordinary practice of their  
23 profession and not holding themselves out as debt  
24 settlement providers; or-

25 (10) any institution of higher education as defined in  
26 the Higher Education Act of 1965, 20 U.S.C. 1001.

1 "Debt settlement service" means:

2 (1) offering to provide advice or service, or acting  
3 as an intermediary between or on behalf of a consumer and  
4 one or more of a consumer's creditors, where the primary  
5 purpose of the advice, service, or action is to obtain a  
6 settlement, adjustment, or satisfaction of the consumer's  
7 unsecured debt to a creditor in an amount less than the  
8 full amount of the principal amount of the debt or in an  
9 amount less than the current outstanding balance of the  
10 debt; ~~or~~

11 (2) offering to provide services related to or  
12 providing services advising, encouraging, assisting, or  
13 counseling a consumer to accumulate funds for the primary  
14 purpose of proposing or obtaining or seeking to obtain a  
15 settlement, adjustment, or satisfaction of the consumer's  
16 unsecured debt to a creditor in an amount less than the  
17 full amount of the principal amount of the debt or in an  
18 amount less than the current outstanding balance of the  
19 debt; or.

20 (3) student loan debt relief.

21 "Debt settlement service" does not include (A) the  
22 services of attorneys licensed, or otherwise authorized, to  
23 practice in Illinois who are engaged in the practice of law, ~~or~~  
24 (B) debt management service as defined in the Debt Management  
25 Service Act, (C) the services of a student loan servicer, as  
26 defined in the Student Loan Servicing Rights Act, or (D) the

1 services of any other originator, guarantor, or servicer of  
2 federal education loans or private education loans.

3 "Enrollment or set up fee" means any fee, obligation, or  
4 compensation paid or to be paid by the consumer to a debt  
5 settlement provider in consideration of or in connection with  
6 establishing a contract or other agreement with a consumer  
7 related to the provision of debt settlement service.

8 "Federal education loan" means any loan made, guaranteed,  
9 or insured under Title IV of the federal Higher Education Act  
10 of 1965.

11 "Maintenance fee" means any fee, obligation, or  
12 compensation paid or to be paid by the consumer on a periodic  
13 basis to a debt settlement provider in consideration of  
14 maintaining the relationship and services to be provided by a  
15 debt settlement provider in accordance with a contract with a  
16 consumer related to the provision of debt settlement service.

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

22 "Savings" means the difference between the principal  
23 amount of the debt and the amount paid by the debt settlement  
24 provider to the creditor or negotiated by the debt settlement  
25 provider and paid by the consumer to the creditor pursuant to a  
26 settlement negotiated by the debt settlement provider on

1 behalf of the consumer as full and complete satisfaction of  
2 the creditor's claim with regard to that debt.

3 "Secretary" means the Secretary of Financial and  
4 Professional Regulation.

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

11 "Student loan borrower" means a person who has received or  
12 agreed to pay a student loan for his or her own educational  
13 expenses; a parent, grandparent, or other family member who  
14 has received or agreed to pay a student loan for a family  
15 member receiving the education; or any co-signer who has  
16 agreed to share responsibility for repaying a student loan  
17 with the person receiving the education.

18 "Student loan debt relief" means, in exchange for any fee  
19 or compensation assessed against or charged to a student loan  
20 borrower, offering to provide advice or service, or acting as  
21 an intermediary between or on behalf of a consumer and the  
22 United States Department of Education or any other originator  
23 or guarantor of federal education loans or one or more of the  
24 servicers of a student loan borrower's federal education loan,  
25 where the primary purpose of the advice, service, or action is  
26 to (1) negotiate, arrange, or obtain a settlement, adjustment,

1 discharge, or satisfaction of the student loan borrower's  
2 federal education loan debt in an amount less than the full  
3 amount of the principal amount of the debt, a reduction or  
4 alteration to the interest rate, a reduction or alteration in  
5 the amount of monthly payment or fees owed, or in an amount  
6 less than the current outstanding balance of the debt, (2)  
7 enroll the student loan borrower in a repayment plan,  
8 forbearance, or deferment of his or her federal education loan  
9 debt, (3) apply for consolidation or consolidate the student  
10 loan borrower's federal education loans, or (4) offer to  
11 provide any other services related to altering the terms of a  
12 student loan borrower's federal education loan debt,  
13 including, but not limited to, a reduction in the amount of  
14 interest, the principal balance, or the amount of monthly  
15 payment or fees owed.

16 (Source: P.A. 96-1420, eff. 8-3-10.)

17 (225 ILCS 429/105)

18 Sec. 105. Advertising and marketing practices.

19 (a) A debt settlement provider shall not represent,  
20 expressly or by implication, any results or outcomes of its  
21 debt settlement services in any advertising, marketing, or  
22 other communication to consumers unless the debt settlement  
23 provider possesses substantiation for such representation at  
24 the time such representation is made.

25 (b) A debt settlement provider shall not, expressly or by

1 implication, make any unfair or deceptive representations, or  
2 any omissions of material facts, in any of its advertising or  
3 marketing communications concerning debt settlement services.

4 (c) All advertising and marketing communications  
5 concerning debt settlement services shall disclose the  
6 following material information clearly and conspicuously:

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

13 (d) All advertising and marketing communications  
14 concerning student loan debt relief services shall disclose  
15 the following material information clearly and conspicuously,  
16 along with the legally registered name of the company:

17 "[Name of company] is a private company, and is not  
18 affiliated with the Department of Education or any other  
19 academic entity or governmental agency. [Name of company]  
20 is not a lender, guarantor, or servicer of federal student  
21 loans. You can apply for consolidation and other repayment  
22 plans without paid assistance through the United States  
23 Department of Education. More information is available  
24 through the Department's website or your federal student  
25 loan servicer. You can find out who your servicer is  
26 through the Department of Education."



1 (Source: P.A. 96-1420, eff. 8-3-10.)

2 (225 ILCS 429/115)

3 Sec. 115. Required pre-sale consumer disclosures and  
4 warnings.

5 (a) Before the consumer signs a contract, the debt  
6 settlement provider shall provide an oral and written notice  
7 to the consumer that clearly and conspicuously discloses all  
8 of the following:

9 (1) Debt settlement services may not be suitable for  
10 all consumers.

11 (2) Using a debt settlement service likely will harm  
12 the consumer's credit history and credit score.

13 (3) Using a debt settlement service does not stop  
14 creditor collection activity, including creditor lawsuits  
15 and garnishments.

16 (4) Not all creditors will accept a reduction in the  
17 balance, interest rate, or fees a consumer owes.

18 (5) The consumer should inquire about other means of  
19 dealing with debt, including, but not limited to,  
20 nonprofit credit counseling and bankruptcy.

21 (6) The consumer remains obligated to make periodic or  
22 scheduled payments to creditors while participating in a  
23 debt settlement plan, and that the debt settlement  
24 provider will not make any periodic or scheduled payments  
25 to creditors on behalf of the consumer.

1 (7) The failure to make periodic or scheduled payments  
2 to a creditor is likely to:

3 (A) harm the consumer's credit history, credit  
4 rating, or credit score;

5 (B) lead the creditor to increase lawful  
6 collection activity, including litigation, garnishment  
7 of the consumer's wages, and judgment liens on the  
8 consumer's property; and

9 (C) lead to the imposition by the creditor of  
10 interest charges, late fees, and other penalty fees,  
11 increasing the principal amount of the debt.

12 (8) The amount of time estimated to be necessary to  
13 achieve the represented results.

14 (9) The estimated amount of money or the percentage of  
15 debt the consumer must accumulate before a settlement  
16 offer will be made to each of the consumer's creditors.

17 (10) For student loan debt relief services, before the  
18 student loan borrower signs a contract, the provider shall  
19 provide an oral and written notice to the student loan  
20 borrower that clearly and conspicuously discloses the  
21 following:

22 "[Name of company] is a private company, and is  
23 not affiliated with the Department of Education or any  
24 other academic entity or governmental agency. [Name of  
25 company] is not a lender, guarantor, or servicer of  
26 federal student loans. You can apply for consolidation

1           and other repayment plans without paid assistance  
2           through the United States Department of Education.  
3           More information is available through the Department's  
4           website or your federal student loan servicer. You can  
5           find out who your servicer is through the Department  
6           of Education.".

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

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

23           (c) Except as provided in subsection (d), the ~~The~~  
24 requirements of this Section are satisfied if the provider  
25 provides the following warning verbatim, both orally and in  
26 writing, with the caption "CONSUMER NOTICE AND RIGHTS FORM" in

1 at least 28-point font and the remaining portion in at least  
2 14-point font, to a consumer before the consumer signs a  
3 contract for the debt settlement provider's services:

4 "CONSUMER NOTICE AND RIGHTS FORM

5 CAUTION

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

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

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

1   YOUR RIGHT TO CANCEL

2           If you sign a contract with a Debt Settlement Provider,  
3 you have the right to cancel at any time and receive a full  
4 refund of all unearned fees you have paid to the provider and  
5 all funds placed in your settlement fund that have not been  
6 paid to any creditors.

7   IF YOU ARE DISSATISFIED

8   OR YOU HAVE QUESTIONS

9           If you are dissatisfied with a debt settlement provider or  
10 have any questions, please bring it to the attention of the  
11 Illinois Attorney General's Office and the Department of  
12 Financial and Professional Regulation.

13 Attorney General Toll-Free Numbers:

14           Carbondale (800) 243-0607

15           Springfield (800) 243-0618

16           Chicago (800) 386-5438

17           Website for Department of Financial and Professional  
18 Regulation: [www.idfpr.com](http://www.idfpr.com)

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

21           (d) All providers of student loan debt relief services  
22 shall include the following disclosure:

23                                   "[NAME OF COMPANY] IS A PRIVATE COMPANY, AND IS NOT  
24 AFFILIATED WITH THE DEPARTMENT OF EDUCATION OR ANY OTHER  
25 ACADEMIC ENTITY OR GOVERNMENTAL AGENCY. [NAME OF COMPANY]

1       IS NOT A LENDER, GUARANTOR, OR SERVICER OF FEDERAL STUDENT  
2       LOANS. YOU CAN APPLY FOR CONSOLIDATION AND OTHER REPAYMENT  
3       PLANS WITHOUT PAID ASSISTANCE THROUGH THE UNITED STATES  
4       DEPARTMENT OF EDUCATION. MORE INFORMATION IS AVAILABLE  
5       THROUGH THE DEPARTMENT'S WEBSITE OR YOUR FEDERAL STUDENT  
6       LOAN SERVICER. YOU CAN FIND OUT WHO YOUR SERVICER IS  
7       THROUGH THE DEPARTMENT OF EDUCATION."

8       (Source: P.A. 96-1420, eff. 8-3-10.)

9       (225 ILCS 429/125)

10       Sec. 125. Fees.

11       (a) A debt settlement provider shall not charge fees of  
12       any type or receive compensation from a consumer in a type,  
13       amount, or timing other than fees or compensation permitted in  
14       this Section.

15       (b) A debt settlement provider shall not charge or receive  
16       from a consumer any enrollment fee, set up fee, up front fee of  
17       any kind, or any maintenance fee, except for a one-time  
18       enrollment fee of no more than \$50.

19       (c) A debt settlement provider may charge a settlement  
20       fee, which shall not exceed an amount greater than 15% of the  
21       savings. If the amount paid by the debt settlement provider to  
22       the creditor or negotiated by the debt settlement provider and  
23       paid by the consumer to the creditor pursuant to a settlement  
24       negotiated by the debt settlement provider on behalf of the  
25       consumer as full and complete satisfaction of the creditor's

1 claim with regard to that debt is greater than the principal  
2 amount of the debt, then the debt settlement provider shall  
3 not be entitled to any settlement fee.

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

13 (e) Any fees charged to a student loan borrower in  
14 exchange for student loan debt relief shall comply with this  
15 Section.

16 (Source: P.A. 96-1420, eff. 8-3-10; 97-333, eff. 8-12-11.)

17 (225 ILCS 429/145)

18 Sec. 145. Prohibited practices. A debt settlement provider  
19 shall not do any of the following:

20 (1) Charge or collect from a consumer any fee not  
21 permitted by, in an amount in excess of the maximum amount  
22 permitted by, or at a time earlier than permitted by  
23 Section 125 of this Act.

24 (2) Advise or represent, expressly or by implication,  
25 that consumers should stop making payments to their

1        creditors, lenders, loan servicers, or loan guarantors or  
2        government entities.

3            (3) Advise or represent, expressly or by implication,  
4        that consumers should stop communicating with their  
5        creditors, lenders, loan servicers, loan guarantors, or  
6        attorneys or government entities.

7            (4) Change the mailing address on any of a consumer's  
8        creditor's statements.

9            (5) Make loans or offer credit or solicit or accept  
10       any note, mortgage, or negotiable instrument other than a  
11       check signed by the consumer and dated no later than the  
12       date of signature.

13           (6) Take any confession of judgment or power of  
14       attorney to confess judgment against the consumer or  
15       appear as the consumer or on behalf of the consumer in any  
16       judicial proceedings.

17           (7) Take any release or waiver of any obligation to be  
18       performed on the part of the debt settlement provider or  
19       any right of the consumer.

20           (8) Advertise, display, distribute, broadcast, or  
21       televise services or permit services to be displayed,  
22       advertised, distributed, broadcasted, or televised, in any  
23       manner whatsoever, that contains any false, misleading, or  
24       deceptive statements or representations with regard to any  
25       matter, including services to be performed, the fees to be  
26       charged by the debt settlement provider, or the effect



1 those services will have on a consumer's credit rating or  
2 on creditor collection efforts.

3 (9) Receive any cash, fee, gift, bonus, premium,  
4 reward, or other compensation from any person other than  
5 the consumer explicitly for the provision of debt  
6 settlement service to that consumer.

7 (10) Offer or provide gifts or bonuses to consumers  
8 for signing a debt settlement service contract or for  
9 referring another potential customer or customer.

10 (11) Disclose to anyone the name or any personal  
11 information of a consumer for whom the debt settlement  
12 provider has provided or is providing debt settlement  
13 service other than to a consumer's own creditors or the  
14 debt settlement provider's agents, affiliates, or  
15 contractors for the purpose of providing debt settlement  
16 service without the prior consent of the consumer.

17 (12) Enter into a contract with a consumer without  
18 first providing the disclosures and financial analysis and  
19 making the determinations required by this Section.

20 (13) Misrepresent any material fact, make a material  
21 omission, or make a false promise directed to one or more  
22 consumers in connection with the solicitation, offering,  
23 contracting, or provision of debt settlement service.

24 (14) Violate the provisions of applicable do not call  
25 statutes.

26 (15) Purchase debts or engage in the practice or

1 business of debt collection.

2 (16) Include in a debt settlement agreement any  
3 secured debt.

4 (17) Employ an unfair, unconscionable, or deceptive  
5 act or practice, including the knowing omission of any  
6 material information.

7 (18) Engage in any practice that prohibits or limits  
8 the consumer or any creditor from communication directly  
9 with one another.

10 (19) Represent or imply to a person participating in  
11 or considering debt settlement that purchase of any  
12 ancillary goods or services is required.

13 (20) Access or obtain a consumer's or student loan  
14 borrower's federal student aid information in violation of  
15 federal law.

16 (Source: P.A. 96-1420, eff. 8-3-10.)

17 Section 99. Effective date. This Act takes effect upon  
18 becoming law.