



Sen. Omar Aquino

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10200SB0669sam002

LRB102 15407 SPS 24612 a

1 AMENDMENT TO SENATE BILL 669

2 AMENDMENT NO. _____. Amend Senate Bill 669 by replacing
3 everything after the enacting clause with the following:

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

1 or settlement of a debt or obligation of the consumer to a
2 creditor on behalf of the consumer.

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

19 (1) attorneys licensed, or otherwise authorized, to
20 practice in Illinois who are engaged in the practice of
21 law;

22 (2) escrow agents, accountants, broker dealers in
23 securities, or investment advisors in securities, when
24 acting in the ordinary practice of their professions and
25 through the entity used in the ordinary practice of their
26 profession;

1 (3) any bank, agent of a bank, operating subsidiary of
2 a bank, affiliate of a bank, trust company, savings and
3 loan association, savings bank, credit union, crop credit
4 association, development credit corporation, industrial
5 development corporation, title insurance company, title
6 insurance agent, independent escrowee or insurance company
7 operating or organized under the laws of a state or the
8 United States, or any other person authorized to make
9 loans under State law while acting in the ordinary
10 practice of that business;

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

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

18 (6) an organization that is described in Section
19 501(c)(3) and subject to Section 501(q) of Title 26 of the
20 United States Code and exempt from tax under Section
21 501(a) of Title 26 of the United States Code and governed
22 by the Debt Management Service Act;

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

25 (8) any person while performing services incidental to
26 the dissolution, winding up, or liquidating of a

1 partnership, corporation, or other business enterprise; ~~or~~

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

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

8 "Debt settlement service" means:

9 (1) offering to provide advice or service, or acting
10 as an intermediary between or on behalf of a consumer and
11 one or more of a consumer's creditors, where the primary
12 purpose of the advice, service, or action is to obtain a
13 settlement, adjustment, or satisfaction of the consumer's
14 unsecured debt to a creditor in an amount less than the
15 full amount of the principal amount of the debt or in an
16 amount less than the current outstanding balance of the
17 debt; ~~or~~

18 (2) offering to provide services related to or
19 providing services advising, encouraging, assisting, or
20 counseling a consumer to accumulate funds for the primary
21 purpose of proposing or obtaining or seeking to obtain a
22 settlement, adjustment, or satisfaction of the consumer's
23 unsecured debt to a creditor in an amount less than the
24 full amount of the principal amount of the debt or in an
25 amount less than the current outstanding balance of the
26 debt; or-

1 (3) student loan debt relief.

2 "Debt settlement service" does not include (A) the
3 services of attorneys licensed, or otherwise authorized, to
4 practice in Illinois who are engaged in the practice of law, ~~or~~
5 (B) debt management service as defined in the Debt Management
6 Service Act, (C) the services of a student loan servicer, as
7 defined in the Student Loan Servicing Rights Act, or (D) the
8 services of any other originator, guarantor, or servicer of
9 federal education loans or private education loans.

10 "Enrollment or set up fee" means any fee, obligation, or
11 compensation paid or to be paid by the consumer to a debt
12 settlement provider in consideration of or in connection with
13 establishing a contract or other agreement with a consumer
14 related to the provision of debt settlement service.

15 "Federal education loan" means any loan made, guaranteed,
16 or insured under Title IV of the federal Higher Education Act
17 of 1965.

18 "Maintenance fee" means any fee, obligation, or
19 compensation paid or to be paid by the consumer on a periodic
20 basis to a debt settlement provider in consideration of
21 maintaining the relationship and services to be provided by a
22 debt settlement provider in accordance with a contract with a
23 consumer related to the provision of debt settlement service.

24 "Principal amount of the debt" means the total amount or
25 outstanding balance owed by a consumer to one or more
26 creditors for a debt that is included in a contract for debt

1 settlement service at the time when the consumer enters into a
2 contract for debt settlement service.

3 "Savings" means the difference between the principal
4 amount of the debt and the amount paid by the debt settlement
5 provider to the creditor or negotiated by the debt settlement
6 provider and paid by the consumer to the creditor pursuant to a
7 settlement negotiated by the debt settlement provider on
8 behalf of the consumer as full and complete satisfaction of
9 the creditor's claim with regard to that debt.

10 "Secretary" means the Secretary of Financial and
11 Professional Regulation.

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

18 "Student loan borrower" means a person who has received or
19 agreed to pay a student loan for his or her own educational
20 expenses; a parent, grandparent, or other family member who
21 has received or agreed to pay a student loan for a family
22 member receiving the education; or any co-signer who has
23 agreed to share responsibility for repaying a student loan
24 with the person receiving the education.

25 "Student loan debt relief" means, in exchange for any fee
26 or compensation assessed against or charged to a student loan

1 borrower, offering to provide advice or service, or acting as
2 an intermediary between or on behalf of a consumer and the
3 United States Department of Education or any other originator
4 or guarantor of federal education loans or one or more of the
5 servicers of a student loan borrowers' federal education loan,
6 where the primary purpose of the advice, service, or action is
7 to (1) negotiate, arrange, or obtain a settlement, adjustment,
8 discharge, or satisfaction of the student loan borrower's
9 federal education loan debt in an amount less than the full
10 amount of the principal amount of the debt, a reduction or
11 alteration to the interest rate, a reduction or alteration in
12 the amount of monthly payment or fees owed, or in an amount
13 less than the current outstanding balance of the debt, (2)
14 enroll the student loan borrower in a repayment plan,
15 forbearance, or deferment of his or her federal education loan
16 debt, (3) apply for consolidation or consolidate the student
17 loan borrower's federal education loans, or (4) offer to
18 provide any other services related to altering the terms of a
19 student loan borrower's federal education loan debt,
20 including, but not limited to, a reduction in the amount of
21 interest, the principal balance, or the amount of monthly
22 payment or fees owed.

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

24 (225 ILCS 429/105)

25 Sec. 105. Advertising and marketing practices.

1 (a) A debt settlement provider shall not represent,
2 expressly or by implication, any results or outcomes of its
3 debt settlement services in any advertising, marketing, or
4 other communication to consumers unless the debt settlement
5 provider possesses substantiation for such representation at
6 the time such representation is made.

7 (b) A debt settlement provider shall not, expressly or by
8 implication, make any unfair or deceptive representations, or
9 any omissions of material facts, in any of its advertising or
10 marketing communications concerning debt settlement services.

11 (c) All advertising and marketing communications
12 concerning debt settlement services shall disclose the
13 following material information clearly and conspicuously:

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

20 (d) All advertising and marketing communications
21 concerning student loan debt relief services shall disclose
22 the following material information clearly and conspicuously,
23 along with the legally registered name of the company:

24 "[Name of company] is a private company, and is not
25 affiliated with the Department of Education or any other
26 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 429/115)

10 Sec. 115. Required pre-sale consumer disclosures and
11 warnings.

12 (a) Before the consumer signs a contract, the debt
13 settlement provider shall provide an oral and written notice
14 to the consumer that clearly and conspicuously discloses all
15 of the following:

16 (1) Debt settlement services may not be suitable for
17 all consumers.

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

20 (3) Using a debt settlement service does not stop
21 creditor collection activity, including creditor lawsuits
22 and garnishments.

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

25 (5) The consumer should inquire about other means of

1 dealing with debt, including, but not limited to,
2 nonprofit credit counseling and bankruptcy.

3 (6) The consumer remains obligated to make periodic or
4 scheduled payments to creditors while participating in a
5 debt settlement plan, and that the debt settlement
6 provider will not make any periodic or scheduled payments
7 to creditors on behalf of the consumer.

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

10 (A) harm the consumer's credit history, credit
11 rating, or credit score;

12 (B) lead the creditor to increase lawful
13 collection activity, including litigation, garnishment
14 of the consumer's wages, and judgment liens on the
15 consumer's property; and

16 (C) lead to the imposition by the creditor of
17 interest charges, late fees, and other penalty fees,
18 increasing the principal amount of the debt.

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

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

24 (10) For student loan debt relief services, before the
25 student loan borrower signs a contract, the provider shall
26 provide an oral and written notice to the student loan

1 borrower that clearly and conspicuously discloses the
2 following:

3 "[Name of company] is a private company, and is
4 not affiliated with the Department of Education or any
5 other academic entity or governmental agency. [Name of
6 company] is not a lender, guarantor, or servicer of
7 federal student loans. You can apply for consolidation
8 and other repayment plans without paid assistance
9 through the United States Department of Education.
10 More information is available through the Department's
11 website or your federal student loan servicer. You can
12 find out who your servicer is through the Department
13 of Education.".

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

26 If the acknowledgment form is in electronic form, then it

1 shall contain the consumer disclosures required by Section
2 101(c) of the federal Electronic Signatures in Global and
3 National Commerce Act.

4 (c) Except as provided in subsection (d), the ~~The~~
5 requirements of this Section are satisfied if the provider
6 provides the following warning verbatim, both orally and in
7 writing, with the caption "CONSUMER NOTICE AND RIGHTS FORM" in
8 at least 28-point font and the remaining portion in at least
9 14-point font, to a consumer before the consumer signs a
10 contract for the debt settlement provider's services:

11 "CONSUMER NOTICE AND RIGHTS FORM

12 CAUTION

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

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

- 17 - CREDITORS MAY STILL CONTACT YOU AND TRY TO COLLECT.
- 18 - CREDITORS MAY STILL SUE YOU FOR THE MONEY YOU OWE.
- 19 - YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.
- 20 - YOUR CREDIT RATING AND CREDIT SCORE LIKELY WILL BE
21 HARMED.
- 22 - NOT ALL CREDITORS WILL AGREE TO ACCEPT A BALANCE
23 REDUCTION.
- 24 - YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR ADDRESSING YOUR

1 DEBT, SUCH AS CREDIT COUNSELING AND BANKRUPTCY FILING.

2 - THE AMOUNT OF MONEY YOU OWE MAY INCREASE DUE TO CREDITOR
3 IMPOSITION OF INTEREST CHARGES, LATE FEES, AND OTHER PENALTY
4 FEES.

5 - EVEN IF WE DO SETTLE YOUR DEBT, YOU MAY STILL BE REQUIRED
6 TO PAY TAXES ON THE AMOUNT FORGIVEN.

7 YOUR RIGHT TO CANCEL

8 If you sign a contract with a Debt Settlement Provider,
9 you have the right to cancel at any time and receive a full
10 refund of all unearned fees you have paid to the provider and
11 all funds placed in your settlement fund that have not been
12 paid to any creditors.

13 IF YOU ARE DISSATISFIED

14 OR YOU HAVE QUESTIONS

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

19 Attorney General Toll-Free Numbers:

20 Carbondale (800) 243-0607

21 Springfield (800) 243-0618

22 Chicago (800) 386-5438

23 Website for Department of Financial and Professional
24 Regulation: www.idfpr.com

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

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

5 "[NAME OF COMPANY] IS A PRIVATE COMPANY, AND IS NOT
6 AFFILIATED WITH THE DEPARTMENT OF EDUCATION OR ANY OTHER
7 ACADEMIC ENTITY OR GOVERNMENTAL AGENCY. [NAME OF COMPANY]
8 IS NOT A LENDER, GUARANTOR, OR SERVICER OF FEDERAL STUDENT
9 LOANS. YOU CAN APPLY FOR CONSOLIDATION AND OTHER REPAYMENT
10 PLANS WITHOUT PAID ASSISTANCE THROUGH THE UNITED STATES
11 DEPARTMENT OF EDUCATION. MORE INFORMATION IS AVAILABLE
12 THROUGH THE DEPARTMENT'S WEBSITE OR YOUR FEDERAL STUDENT
13 LOAN SERVICER. YOU CAN FIND OUT WHO YOUR SERVICER IS
14 THROUGH THE DEPARTMENT OF EDUCATION.".

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

16 (225 ILCS 429/125)

17 Sec. 125. Fees.

18 (a) A debt settlement provider shall not charge fees of
19 any type or receive compensation from a consumer in a type,
20 amount, or timing other than fees or compensation permitted in
21 this Section.

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

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

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

20 (e) Any fees charged to a student loan borrower in
21 exchange for student loan debt relief shall comply with this
22 Section.

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

24 (225 ILCS 429/145)

25 Sec. 145. Prohibited practices. A debt settlement provider

1 shall not do any of the following:

2 (1) Charge or collect from a consumer any fee not
3 permitted by, in an amount in excess of the maximum amount
4 permitted by, or at a time earlier than permitted by
5 Section 125 of this Act.

6 (2) Advise or represent, expressly or by implication,
7 that consumers should stop making payments to their
8 creditors, lenders, loan servicers, or loan guarantors or
9 government entities.

10 (3) Advise or represent, expressly or by implication,
11 that consumers should stop communicating with their
12 creditors, lenders, loan servicers, loan guarantors, or
13 attorneys or government entities.

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

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

20 (6) Take any confession of judgment or power of
21 attorney to confess judgment against the consumer or
22 appear as the consumer or on behalf of the consumer in any
23 judicial proceedings.

24 (7) Take any release or waiver of any obligation to be
25 performed on the part of the debt settlement provider or
26 any right of the consumer.

1 (8) Advertise, display, distribute, broadcast, or
2 televise services or permit services to be displayed,
3 advertised, distributed, broadcasted, or televised, in any
4 manner whatsoever, that contains any false, misleading, or
5 deceptive statements or representations with regard to any
6 matter, including services to be performed, the fees to be
7 charged by the debt settlement provider, or the effect
8 those services will have on a consumer's credit rating or
9 on creditor collection efforts.

10 (9) Receive any cash, fee, gift, bonus, premium,
11 reward, or other compensation from any person other than
12 the consumer explicitly for the provision of debt
13 settlement service to that consumer.

14 (10) Offer or provide gifts or bonuses to consumers
15 for signing a debt settlement service contract or for
16 referring another potential customer or customer.

17 (11) Disclose to anyone the name or any personal
18 information of a consumer for whom the debt settlement
19 provider has provided or is providing debt settlement
20 service other than to a consumer's own creditors or the
21 debt settlement provider's agents, affiliates, or
22 contractors for the purpose of providing debt settlement
23 service without the prior consent of the consumer.

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

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

5 (14) Violate the provisions of applicable do not call
6 statutes.

7 (15) Purchase debts or engage in the practice or
8 business of debt collection.

9 (16) Include in a debt settlement agreement any
10 secured debt.

11 (17) Employ an unfair, unconscionable, or deceptive
12 act or practice, including the knowing omission of any
13 material information.

14 (18) Engage in any practice that prohibits or limits
15 the consumer or any creditor from communication directly
16 with one another.

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

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

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

24 Section 99. Effective date. This Act takes effect upon
25 becoming law."