

AN ACT concerning regulation.

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

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

(225 ILCS 429/10)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Debt settlement service" means:

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

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

(3) student loan debt relief.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(225 ILCS 429/105)

Sec. 105. Advertising and marketing practices.

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

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

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

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

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

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

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

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

(225 ILCS 429/115)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"CONSUMER NOTICE AND RIGHTS FORM

CAUTION

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

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

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

YOUR RIGHT TO CANCEL

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

IF YOU ARE DISSATISFIED
OR YOU HAVE QUESTIONS

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

Attorney General Toll-Free Numbers:

Carbondale (800) 243-0607

Springfield (800) 243-0618

Chicago (800) 386-5438

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

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

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

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

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

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

(225 ILCS 429/125)

Sec. 125. Fees.

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

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

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

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

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

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

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

(225 ILCS 429/145)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) Purchase debts or engage in the practice or

business of debt collection.

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

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

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

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

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

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

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