



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5320

by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

225 ILCS 429/10
225 ILCS 429/105
225 ILCS 429/115
225 ILCS 429/125

Amends the Debt Settlement Consumer Protection Act. Adds student loan borrowers to the definition of "consumer". Adds to the definition of "debt settlement provider" any person or entity engaging in, or holding itself out as engaging in, or 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. Excludes institutions of higher education from the definition of "debt settlement provider". Defines other terms. Requires a specified notice and disclosure to student loan borrowers to be included in advertising and marketing communications concerning student loan debt relief services. Requires providers of student loan debt relief services to provide a specified notice and disclosure before a student loan borrower signs a contract. Provides that any fees charged to a student loan borrower in exchange for student loan debt relief shall comply with a provision concerning fees. Makes other changes. Effective immediately.

LRB101 17384 SPS 66789 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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, and 125 as follows:

6 (225 ILCS 429/10)

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

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

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

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

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

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

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

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

1 under State law while acting in the ordinary practice of
2 that business;

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

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

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

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

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

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

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

26 "Debt settlement service" means:

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

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

19 (3) student loan debt relief.

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

1 education loans.

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

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

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

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

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

1 creditor's claim with regard to that debt.

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

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

10 "Student loan borrower" means a person who has received or
11 agreed to pay a student loan for his or her own educational
12 expenses.

13 "Student loan debt relief" means, in exchange for any fee
14 or compensation assessed against or charged to a student loan
15 borrower, offering to provide advice or service, or acting as
16 an intermediary between or on behalf of a consumer and the
17 United States Department of Education or any other originator
18 or guarantor of federal education loans or one or more of the
19 servicers of a student loan borrowers' federal education loan,
20 where the primary purpose of the advice, service, or action is
21 to (1) negotiate, arrange, or obtain a settlement, adjustment,
22 discharge, or satisfaction of the student loan borrower's
23 federal education loan debt in an amount less than the full
24 amount of the principal amount of the debt, a reduction or
25 alteration to the interest rate, a reduction or alteration in
26 the amount of monthly payment or fees owed, or in an amount

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

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

12 (225 ILCS 429/105)

13 Sec. 105. Advertising and marketing practices.

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

20 (b) A debt settlement provider shall not, expressly or by
21 implication, make any unfair or deceptive representations, or
22 any omissions of material facts, in any of its advertising or
23 marketing communications concerning debt settlement services.

24 (c) All advertising and marketing communications
25 concerning debt settlement services shall disclose the

1 following material information clearly and conspicuously:

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

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

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

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

23 (225 ILCS 429/115)

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

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

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

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

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

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

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

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

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

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

26 (B) lead the creditor to increase lawful

1 collection activity, including litigation, garnishment
2 of the consumer's wages, and judgment liens on the
3 consumer's property; and

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

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

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

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

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

1 CAUTION

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

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

6 - CREDITORS MAY STILL CONTACT YOU AND TRY TO COLLECT.

7 - CREDITORS MAY STILL SUE YOU FOR THE MONEY YOU OWE.

8 - YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.

9 - YOUR CREDIT RATING AND CREDIT SCORE LIKELY WILL BE
10 HARMED.

11 - NOT ALL CREDITORS WILL AGREE TO ACCEPT A BALANCE
12 REDUCTION.

13 - YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR ADDRESSING YOUR
14 DEBT, SUCH AS CREDIT COUNSELING AND BANKRUPTCY FILING.

15 - THE AMOUNT OF MONEY YOU OWE MAY INCREASE DUE TO CREDITOR
16 IMPOSITION OF INTEREST CHARGES, LATE FEES, AND OTHER PENALTY
17 FEES.

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

20 YOUR RIGHT TO CANCEL

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

1 any creditors.

2 IF YOU ARE DISSATISFIED

3 OR YOU HAVE QUESTIONS

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

8 Attorney General Toll-Free Numbers:

9 Carbondale (800) 243-0607

10 Springfield (800) 243-0618

11 Chicago (800) 386-5438

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

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

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

18 "[NAME OF COMPANY] IS A PRIVATE COMPANY, AND IS NOT
19 AFFILIATED WITH THE DEPARTMENT OF EDUCATION OR ANY OTHER
20 ACADEMIC ENTITY OR GOVERNMENTAL AGENCY. [NAME OF COMPANY]
21 IS NOT A LENDER, GUARANTOR, OR SERVICER OF FEDERAL STUDENT
22 LOANS. YOU CAN APPLY FOR CONSOLIDATION AND OTHER REPAYMENT
23 PLANS WITHOUT PAID ASSISTANCE THROUGH THE UNITED STATES
24 DEPARTMENT OF EDUCATION. MORE INFORMATION IS AVAILABLE
25 THROUGH THE DEPARTMENT'S WEBSITE OR YOUR FEDERAL STUDENT

1 LOAN SERVICER. YOU CAN FIND OUT WHO YOUR SERVICER IS
2 THROUGH THE DEPARTMENT OF EDUCATION."

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

4 (225 ILCS 429/125)

5 Sec. 125. Fees.

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

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

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

24 (d) A debt settlement provider shall not collect any
25 settlement fee from a consumer until a creditor enters into a

1 legally enforceable agreement to accept funds in a specific
2 dollar amount as full and complete satisfaction of the
3 creditor's claim with regard to that debt and those funds are
4 provided by the debt settlement provider on behalf of the
5 consumer or are provided directly by the consumer to the
6 creditor pursuant to a settlement negotiated by the debt
7 settlement provider.

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

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

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