



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB3136

Introduced 2/19/2021, 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.

LRB102 14595 SPS 19948 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  
13 transfers from a consumer are arranged, held, or transferred  
14 by or to a debt settlement provider for the accumulation of the  
15 consumer's funds in anticipation of proffering an adjustment  
16 or settlement of a debt or obligation of the consumer to a  
17 creditor on behalf of the consumer.

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

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

1 loans under State law while acting in the ordinary  
2 practice of 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  
13 501(a) of Title 26 of the United States Code and governed  
14 by the 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  
2 as an intermediary between or on behalf of a consumer and  
3 one 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  
21 services of attorneys licensed, or otherwise authorized, to  
22 practice in Illinois who are engaged in the practice of law, ~~or~~  
23 (B) debt management service as defined in the Debt Management  
24 Service Act, (C) the services of a student loan servicer, as  
25 defined in the Student Loan Servicing Rights Act, or (D) the  
26 services of any other originator, guarantor, or servicer of

1 federal 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  
18 creditors for a debt that is included in a contract for debt  
19 settlement service at the time when the consumer enters into a  
20 contract 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  
26 behalf of the consumer as full and complete satisfaction of

1 the 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  
7 a 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  
5 your 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  
10 the 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  
3 to the consumer that clearly and conspicuously discloses all  
4 of 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,  
16 nonprofit 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  
20 provider will not make any periodic or scheduled payments  
21 to 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  
11 offer 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  
18 not 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



## 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,  
22 you have the right to cancel at any time and receive a full  
23 refund of all unearned fees you have paid to the provider and  
24 all funds placed in your settlement fund that have not been

1 paid to 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](http://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  
7 any type or receive compensation from a consumer in a type,  
8 amount, or timing other than fees or compensation permitted in  
9 this 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  
15 fee, 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  
23 not 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  
9         exchange for student loan debt relief shall comply with this  
10        Section.

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

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