

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

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.