



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4094

by Rep. John A. Fritchey

SYNOPSIS AS INTRODUCED:

New Act

Creates the Debt Settlement Act. Provides that no person shall engage in the business of debt settlement in the State without a license. Provides that an applicant for a license to engage in the business of debt settlement shall file an application with the Director of Financial Institutions that contains specified provisions. Contains provisions concerning the renewal of licenses. Requires a licensee to create, maintain, and preserve accurate and complete books relating to the licensee's business. Contains provisions concerning contract fees. Provides for debt settlement contract requirements. Specifies the functions required to be performed and acts that are prohibited by a debt settlement provider. Provides that without limiting the generality of the Act and other applicable laws, the debt settlement provider, manager, or an employee of the debt settlement provider (except a licensed attorney who provides legal services in an attorney-client relationship or who is otherwise authorized to practice law in the State) shall not perform specified actions. Provides that the Attorney General or the prosecuting attorney of any county within the State may bring an action in the name of the State against any person to restrain and prevent any violation of the Act and specifies penalties for violations of the Act.

LRB095 12071 MJR 35847 b

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 1. Short title. This Act may be cited as the Debt
5 Settlement Act.

6 Section 5. Definitions. In this Act:

7 "Director" means the Director of Financial Institutions.

8 "Debt settlement provider" means any person or entity
9 engaging in or holding itself out as engaging in the business
10 of debt settlement for compensation. The term shall not include
11 any of the following:

12 (1) Attorneys-at-law, escrow agents, accountants,
13 broker dealers in securities, or investment advisors in
14 securities, while performing services during the course of
15 the practice of their professions.

16 (2) Any person, partnership, association, or
17 corporation doing business under, and as permitted by, any
18 law of this State or any federal law relating to banks,
19 consumer finance businesses, consumer loan companies,
20 trust companies, mutual savings banks, savings and loan
21 associations, building and loan associations, credit
22 unions, crop credit associations, development credit
23 corporations, industrial development corporations, title

1 insurance companies, or insurance companies.

2 (3) Persons who, as employees on a regular salary or
3 wage of an employer not engaged in the business of debt
4 settlement, perform credit services for their employer.

5 (4) Public officers while acting in their official
6 capacities and persons acting under court order.

7 (5) Any person while performing services incidental to
8 the dissolution, winding up, or liquidating of a
9 partnership, corporation, or other business enterprise.

10 "Debt settlement service" means the negotiation,
11 adjustment, or settlement of a consumer's debt with the
12 consumer's creditor without holding or receiving the debtor's
13 funds or property and without paying the debtor's funds to, or
14 distributing the debtor's property among, creditors.

15 Section 10. License required.

16 (a) No person shall engage in the business of debt
17 settlement in this State without a license. An applicant for a
18 license to engage in the business of debt settlement shall file
19 an application with the Director in writing and under oath that
20 includes all of the following:

21 (1) The name and exact address of the applicant and the
22 name and address of each of the following, as applicable:

23 (A) If the applicant is a corporation, its officers
24 and directors.

25 (B) If the applicant is an association, its

1 officers and directors.

2 (C) If the applicant is a partnership, its
3 partners.

4 (D) If the applicant is a limited liability
5 company, its manager or managers.

6 (E) If the applicant is any other legal entity, its
7 manager or other person designated to control the
8 operation of that legal entity.

9 (2) A copy of a certificate of an assumed name, if
10 applicable.

11 (3) One or more of the following, as applicable:

12 (A) If the applicant is a corporation, a copy of
13 the articles of incorporation.

14 (B) If the applicant is an association, a copy of
15 the organizational documents of the association.

16 (C) If the applicant is a partnership, a copy of
17 the partnership agreement.

18 (D) If the applicant is a limited liability
19 company, a copy of the articles of organization.

20 (4) The telephone number, email address, and website
21 URL of the applicant.

22 (5) The address of each office in this State, if any,
23 where the applicant will provide debt settlement services.

24 (6) A description or sample forms of the applicant's
25 budget analysis and initial budget plan, including any form
26 or electronic model, that are used to evaluate the

1 financial condition of the debtors.

2 (7) A copy of the agreement form that the applicant
3 will use with the debtor.

4 (b) When filing the application, the applicant shall do all
5 of the following:

6 (1) Pay to the Director an initial license fee of \$100.

7 (2) Provide evidence of insurance in the amount of
8 \$250,000 against the risks of dishonesty, fraud, theft, and
9 other misconduct on the part of the applicant or a
10 director, employee, or agent of the applicant. The
11 insurance shall be issued by an insurance company
12 authorized to do business in this State and rated at least
13 by a nationally recognized rating organization. The
14 insurance shall have no greater than a \$10,000 deductible
15 and shall cover claims filed by the applicant, the
16 individuals who have agreements with the applicant, and
17 this State. The insurance shall not be subject to
18 cancellation by the applicant without a replacement policy
19 in place.

20 (c) Unless surrendered, revoked, or suspended, a license
21 issued under this Act expires on December 31 of the year for
22 which it is issued. A licensee may renew a license before the
23 expiration date as provided in this Act.

24 (d) A licensee shall create, maintain, and preserve
25 accurate and complete books and records relating to the
26 licensee's business. A licensee shall maintain the books and

1 records according to generally accepted accounting principles.
2 A licensee or an applicant shall notify the Director in writing
3 of the address where the books and records are kept. If a
4 licensee changes the location of the books and records, the
5 licensee shall notify the Director in writing within 10
6 business days after the change. The Director may prescribe by
7 rule or order the form and contents of books and records
8 relating to a licensee's business.

9 (e) An applicant shall file a financial statement with an
10 application for a debt settlement license. The Director may
11 require an audit or review of the financial statement by an
12 independent certified public accountant.

13 (f) If a licensee has a board of directors or the
14 equivalent, the Director shall not require that the licensee
15 provide information concerning a member of the board of
16 directors or the equivalent if that member does not receive a
17 salary, stock dividend, or other financial benefit from that
18 corporation other than reimbursement of the actual expenses
19 incurred in carrying out the duties of a director of that
20 corporation.

21 (g) Upon receiving the application and determining that the
22 applicant has complied with subsection (b) of this Section, the
23 Director shall investigate the applicant's responsibility,
24 experience, character, and general fitness. If after
25 investigation the Director believes that the business will be
26 operated fairly and honestly within the provisions of this Act,

1 the Director shall issue a license to the applicant. The
2 investigation of the applicant shall at least include
3 investigation of the following, as applicable:

4 (1) If the applicant is a corporation, its officers and
5 directors.

6 (2) If the applicant is a partnership, its partners.

7 (3) If the applicant is an association, its officers.

8 (4) If the applicant is a limited liability company,
9 its manager or managers.

10 (5) If the applicant is any other legal entity, its
11 manager or other person designated to control the operation
12 of that legal entity.

13 (h) A license shall not be issued if the investigation
14 reveals one or more of the following:

15 (1) That an individual investigated did any of the
16 following:

17 (A) Was ever convicted of a crime involving moral
18 turpitude, including forgery, embezzlement, obtaining
19 money under false pretenses, larceny, extortion,
20 conspiracy to defraud, or any other similar offense.

21 (B) Violated or failed to comply with this Article
22 or a rule adopted pursuant to this Act.

23 (C) Had a license to engage in the business of debt
24 settlement revoked or suspended for any reason other
25 than failure to pay licensing fees in this State or
26 another state.

1 (D) Defaulted in the payment of money collected for
2 others, including the discharge of debts through
3 bankruptcy proceedings. The Director may, at the
4 Director's discretion, waive this restriction if
5 provided with evidence of justifiable cause for the
6 bankruptcy, plus convincing evidence of the fitness of
7 the bankrupt party to carry out that party's duties and
8 responsibilities pursuant to this Act.

9 (2) An individual applicant is not at least 18 years of
10 age and a citizen of the United States.

11 (3) An applicant that is a partnership, corporation,
12 limited liability company, association, or other legal
13 entity required by law to obtain authority to do business
14 in this State has not been granted authority to do business
15 in this State.

16 (i) If the applicant holds a license or certificate of
17 registration in another state authorizing it to provide debt
18 settlement services, the provider may submit a copy of that
19 license or certificate in place of the application prescribed
20 in this Act. The Director shall accept the license or
21 certificate from the other state if the application process in
22 the other state contains information substantially similar to
23 or more comprehensive than that required in an application
24 submitted in this State.

25 Section 15. Contract fees. By contract, a debt settlement

1 provider shall not charge fees in an aggregate amount exceeding
2 20% of the principal amount of the debt. In the event of
3 cancellation of the contract by the debtor prior to its
4 successful completion, the debt settlement provider shall
5 refund 50% of any collected fees associated with the amount of
6 debt remaining unsettled at the time of the termination of the
7 contract.

8 Section 20. Debt settlement contract requirements. Every
9 contract between a debt settlement provider and a debtor shall:

10 (1) List every debt to be handled with the creditor's
11 name and disclose the approximate total of all known debts.

12 (2) Provide fees charged by the debt settlement
13 provider for services.

14 (3) Disclose the approximate number and amount of
15 savings required to pay the debts in full.

16 (4) Disclose the name and address of the debt
17 settlement provider and of the debtor.

18 (5) State that the debt settlement provider shall
19 notify the debtor, in writing, within five days of
20 notification to the debt settlement provider by a creditor
21 that the creditor refuses to negotiate with the debt
22 settlement provider pursuant to the contract.

23 (6) Contain the following notice within the contract or
24 agreement to engage the services of the debt settlement
25 provider in a form substantially similar to the following:

1 "NOTICE TO DEBTOR:

2 Do not sign this contract before you read it.

3 Do not sign this contract if any spaces intended for
4 the agreed terms are left blank.

5 You are entitled to a copy of this contract at the time
6 you sign it.

7 You may cancel this contract within three days of
8 signing the contract by sending notice of cancellation by
9 certified mail, return receipt requested, to the debt
10 settlement provider at his or her address shown on the
11 contract, which notice shall be posted not later than
12 midnight of the third day (excluding Sundays and the
13 holidays) or by fax following your signing of the
14 contract."

15 (7) Contain any other provision or disclosure that is
16 necessary for the protection of the debtor and the proper
17 conduct of business by the debt settlement provider.

18 Section 25. Debt settlement provider; functions required
19 to be performed. Every debt settlement provider shall perform
20 the following functions:

21 (1) Make a permanent record of all payments by debtors.
22 The record may be in an electronic format. No person shall
23 intentionally make any false entry in any record or
24 intentionally mutilate, destroy, or otherwise dispose of
25 any record. Records shall at all times be open for

1 inspection by the Attorney General or the Attorney
2 General's authorized agent and shall be preserved (i) as
3 original records, (ii) in an electronic format, or (iii) in
4 a form of duplication, for at least 6 years after making
5 the final entry therein.

6 (2) Sign and deliver a completed copy of the contract
7 between the debt settlement provider and a debtor to the
8 debtor immediately after the debtor executes the contract.

9 (3) Notify the debtor of any offer of settlement made
10 by the creditor no later than 5 days of receiving the
11 offer.

12 Section 30. Debt settlement provider; prohibited acts. A
13 debt settlement provider shall not do any of the following:

14 (1) Take any contract or other instrument which has any
15 blank spaces when signed by the debtor.

16 (2) Receive or charge any fee in the form of a
17 promissory note or other promise to pay.

18 (3) Receive or accept any mortgage or other security
19 for any fee, whether as to real or personal property.

20 (4) Lend money or credit.

21 (5) Take any confession of the judgment or power of
22 attorney to confess judgment against the debtor or appear
23 as the debtor in any judicial proceeding.

24 (6) Take, concurrent with the signing of the contract
25 or as a part of the contract or the application for the

1 contract, a release of any obligation to be performed on
2 the part of the debt settlement provider.

3 (7) Advertise, display, distribute, broadcast, or
4 televise services or permit services to be displayed,
5 advertised, distributed, broadcasted, or televised in any
6 manner in which a false, misleading, or deceptive statement
7 or representation is made with regard to either (i) the
8 services to be performed by the debt settlement provider or
9 (ii) the fees to be charged by the debt settlement
10 provider.

11 (8) Receive any cash, fee, gift, bonus, premium,
12 reward, or other compensation from any person other than
13 the debtor or a person in the debtor's behalf in connection
14 with that person's activities as a debt settlement
15 provider.

16 (9) Disclose to anyone the debtors who have contracted
17 with the debt settlement provider other than a debtor's own
18 creditors or the provider's agents. The debt settlement
19 provider shall not disclose the creditors of a debtor to
20 anyone other than the debtor or another creditor of the
21 debtor and then only to the extent necessary to secure the
22 cooperation of the creditor in a debt settlement plan.

23 Section 35. Legal services; prohibited actions.

24 (a) Without limiting the generality of this Act and other
25 applicable laws, the debt settlement provider, manager, or an

1 employee of the debt settlement provider shall not do any of
2 the following:

3 (1) Prepare, advise, or sign a release of attachment or
4 garnishment, stipulation, affidavit for exemption,
5 compromise agreement, or other legal or court document, nor
6 furnish legal advice or perform legal services of any kind.

7 (2) Represent that the debt settlement provider is
8 authorized or competent to furnish legal advice or perform
9 legal services.

10 (3) Communicate with the debtor or creditor or any
11 other person in the name of any attorney or upon the
12 stationery of any attorney or prepare any form or
13 instrument which only attorneys are authorized to prepare.

14 (b) This Section does not apply to a licensed attorney who
15 provides legal services in an attorney-client relationship or
16 who is otherwise authorized to practice law in this State.

17 Section 40. Violations and sanctions.

18 (a) Notwithstanding any other actions which may be brought
19 under the laws of this State, the Attorney General or the
20 prosecuting attorney of any county within the State may bring
21 an action in the name of the State against any person to
22 restrain and prevent any violation of this Act.

23 (b) The Attorney General may accept an assurance of
24 discontinuance of any act or practice deemed in violation of
25 this Article in the enforcement thereof from any person

1 engaging in, or who has engaged in, the act or practice. The
2 assurance shall be in writing and be filed with and subject to
3 the approval of the superior court of the county in which the
4 alleged violator resides or has a principal place of business
5 or, in the alternative, in Cook County.

6 (c) Any person who violates an injunction issued pursuant
7 to this Act shall forfeit and pay a civil penalty of not more
8 than five thousand dollars \$5,000. The clear proceeds of civil
9 penalties assessed pursuant to this subsection (c) shall be
10 credited to the General Professions Dedicated Fund.

11 Section 45. Saving prior contracts. The provisions of this
12 Act shall not invalidate or make unlawful contracts between
13 debt settlement providers and debtors executed lawfully prior
14 to the effective date of this Act.