



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB2244

Introduced 2/20/2009, by Sen. Chris Lauzen

#### 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 the Division of Financial Institutions of the Department of Financial and Professional Regulation 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.

LRB096 06016 MJR 16097 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 the Division of Financial  
8 Institutions of the Department of Financial and Professional  
9 Regulation.

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

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

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

1 unions, crop credit associations, development credit  
2 corporations, industrial development corporations, title  
3 insurance companies, or insurance companies.

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

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

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

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

17 Section 10. License required.

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

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

25 (A) If the applicant is a corporation, its officers

1 and directors.

2 (B) If the applicant is an association, its  
3 officers and directors.

4 (C) If the applicant is a partnership, its  
5 partners.

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

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

11 (2) A copy of a certificate of an assumed name, if  
12 applicable.

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

14 (A) If the applicant is a corporation, a copy of  
15 the articles of incorporation.

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

18 (C) If the applicant is a partnership, a copy of  
19 the partnership agreement.

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

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

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

26 (6) A description or sample forms of the applicant's

1 budget analysis and initial budget plan, including any form  
2 or electronic model, that are used to evaluate the  
3 financial condition of the debtors.

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

6 (b) When filing the application, the applicant shall do all  
7 of the following:

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

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

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

26 (d) A licensee shall create, maintain, and preserve

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

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

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

23 (g) Upon receiving the application and determining that the  
24 applicant has complied with subsection (b) of this Section, the  
25 Director shall investigate the applicant's responsibility,  
26 experience, character, and general fitness. If after

1 investigation the Director believes that the business will be  
2 operated fairly and honestly within the provisions of this Act,  
3 the Director shall issue a license to the applicant. The  
4 investigation of the applicant shall at least include  
5 investigation of the following, as applicable:

6 (1) If the applicant is a corporation, its officers and  
7 directors.

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

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

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

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

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

17 (1) That an individual investigated did any of the  
18 following:

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

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

25 (C) Had a license to engage in the business of debt  
26 settlement revoked or suspended for any reason other

1 than failure to pay licensing fees in this State or  
2 another state.

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

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

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

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



1           Section 15. Contract fees. By contract, a debt settlement  
2 provider shall not charge fees in an aggregate amount exceeding  
3 20% of the principal amount of the debt. In the event of  
4 cancellation of the contract by the debtor prior to its  
5 successful completion, the debt settlement provider shall  
6 refund 50% of any collected fees associated with the amount of  
7 debt remaining unsettled at the time of the termination of the  
8 contract.

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

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

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

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

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

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

24           (6) Contain the following notice within the contract or

1 agreement to engage the services of the debt settlement  
2 provider in a form substantially similar to the following:

3 "NOTICE TO DEBTOR:

4 Do not sign this contract before you read it.

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

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

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

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

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

23 (1) Make a permanent record of all payments by debtors.  
24 The record may be in an electronic format. No person shall  
25 intentionally make any false entry in any record or

1 intentionally mutilate, destroy, or otherwise dispose of  
2 any record. Records shall at all times be open for  
3 inspection by the Attorney General or the Attorney  
4 General's authorized agent and shall be preserved (i) as  
5 original records, (ii) in an electronic format, or (iii) in  
6 a form of duplication, for at least 6 years after making  
7 the final entry therein.

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

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

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

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

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

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

22 (4) Lend money or credit.

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

1           (6) Take, concurrent with the signing of the contract  
2           or as a part of the contract or the application for the  
3           contract, a release of any obligation to be performed on  
4           the part of the debt settlement provider.

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

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

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

25          Section 35. Legal services; prohibited actions.

1 (a) Without limiting the generality of this Act and other  
2 applicable laws, the debt settlement provider, manager, or an  
3 employee of the debt settlement provider shall not do any of  
4 the following:

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

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

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

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

19 Section 40. Violations and sanctions.

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

25 (b) The Attorney General may accept an assurance of

1 discontinuance of any act or practice deemed in violation of  
2 this Article in the enforcement thereof from any person  
3 engaging in, or who has engaged in, the act or practice. The  
4 assurance shall be in writing and be filed with and subject to  
5 the approval of the superior court of the county in which the  
6 alleged violator resides or has a principal place of business  
7 or, in the alternative, in Cook County.

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

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