



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3936

Introduced 5/26/2010, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

09600HB4781eng, Sec. 20
09600HB4781eng, Sec. 125
09600HB4781eng, Sec. 160 new

Amends the Debt Settlement Consumer Protection Act, if and only if House Bill 4781 of the 96th General Assembly becomes law. Deletes the provision that requires every applicant for a license to operate as a debt settlement provider to submit a bond in the sum of \$100,000 or an additional amount as required by the Secretary of Financial and Professional Regulation. Provides instead that the surety bond must be in the amount of \$50,000 or other larger or smaller amount that the Secretary determines. Sets forth other requirements concerning the surety bond. Provides that instead of the surety bond required under the Act, a provider may deliver to the Secretary, under certain conditions, a certificate of insurance or other instrument with the approval of the Secretary. Deletes the provision prohibiting a debt settlement provider from charging a settlement fee in an amount greater than 15% of the savings. Provides instead that a debt settlement provider may calculate fees on a percentage of debt basis or on a percentage of savings basis. Sets forth provisions concerning the calculation and collection of fees. Provides that the Act is repealed 2 years after its effective date. Makes other changes. Effective immediately or on the effective date of House Bill 4781, whichever is later.

LRB096 22312 RPM 41380 b

1 AN ACT concerning debt settlement.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. If and only if House Bill 4781 of the 96th
5 General Assembly becomes law, the Debt Settlement Consumer
6 Protection Act is amended by changing Sections 20 and 125 and
7 adding Section 160 as follows:

8 (09600HB4781eng, Sec. 20)

9 Sec. 20. Application for license. An application for a
10 license to operate as a debt settlement provider in this State
11 shall be made to the Secretary and shall be in writing, under
12 oath, and in the form prescribed by the Secretary.

13 Each applicant, at the time of making such application,
14 shall pay to the Secretary the required fee as set by rule.

15 Every applicant shall submit to the Secretary, at the time
16 of the application for a license, a bond to be approved by the
17 Secretary in which the applicant shall be the obligor and in
18 which an insurance company, which is duly authorized by the
19 State of Illinois to transact the business of fidelity and
20 surety insurance, shall be a surety. The surety bond must:

21 (i) be in effect during the period of registration and
22 for 2 years after the provider ceases providing
23 debt-management services to individuals in this State;

1 (ii) run to this State for the benefit of this State
2 and of individuals who reside in this State when they agree
3 to receive debt-settlement services from the provider, as
4 their interests may appear; and

5 (iii) be in the amount of \$50,000 or other larger or
6 smaller amount that the Secretary determines is warranted
7 by the financial condition and business experience of the
8 provider, the history of the provider in performing debt
9 settlement services, the risk to individuals, and any other
10 factor that the Secretary considers appropriate. Secretary
11 ~~in which the applicant shall be the obligor, in the sum of~~
12 ~~\$100,000 or an additional amount as required by the~~
13 ~~Secretary, and in which an insurance company, which is duly~~
14 ~~authorized by the State of Illinois to transact the~~
15 ~~business of fidelity and surety insurance, shall be a~~
16 ~~surety.~~

17 The bond shall run to the Secretary for the use of the
18 Department or of any person or persons who may have a cause of
19 action against the obligor in said bond arising out of any
20 violation of this Act or rules by a debt settlement provider.
21 Such bond shall be conditioned that the obligor must faithfully
22 conform to and abide by the provisions of this Act and of all
23 rules, regulations, and directions lawfully made by the
24 Secretary and pay to the Secretary or to any person or persons
25 any and all money that may become due or owing to the State or
26 to such person or persons, from the obligor under and by virtue

1 of the provisions of this Act.

2 Instead of the surety bond required under this Section, a
3 provider may deliver to the Secretary, in the amount required
4 under this Section, payable or available to this State and to
5 individuals who reside in this State when they agree to receive
6 debt-settlement services from the provider, as their interests
7 may appear:

8 (1) a certificate of insurance:

9 (A) issued by an insurance company authorized to do
10 business in this State and rated at least A or
11 equivalent by a nationally recognized rating
12 organization approved by the Secretary; and

13 (B) with no deductible, or if the provider supplies
14 a bond in the amount of \$5,000, a deductible not
15 exceeding \$5,000; or

16 (2) with the approval of the Secretary:

17 (A) an irrevocable letter of credit, issued or
18 confirmed by a bank approved by the Secretary, payable
19 upon presentation of a certificate by the Secretary
20 stating that the provider or its agent has not complied
21 with this Act; or

22 (B) bonds or other obligations of the United States
23 or guaranteed by the United States or bonds or other
24 obligations of this State or a political subdivision of
25 this State, to be deposited and maintained with a bank
26 approved by the Secretary for this purpose.

1 (Source: 09600HB4781eng, Sec. 20.)

2 (09600HB4781eng, Sec. 125)

3 Sec. 125. Fees.

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

8 (b) A debt settlement provider may calculate fees on a
9 percentage of debt basis or on a percentage of savings basis.
10 The fee structure shall be clearly disclosed and explained in
11 the debt settlement services agreement. The debt settlement
12 provider may only charge fees as provided in either paragraph
13 (1) or (2) as follows:

14 (1) Fees calculated as a percentage of debt shall
15 comport with the following provisions:

16 (A) The total amount of the fees claimed, demanded,
17 charged, collected, or received under this paragraph
18 (1) may not exceed 15% of the aggregate debt that a
19 consumer enrolls in a debt settlement program. A debt
20 settlement provider that calculates fees as a
21 percentage of debt may:

22 (i) charge an origination fee or set-up fee,
23 which may be designated by the debt settlement
24 provider as nonrefundable, of:

25 (a) \$200 on aggregate debt of less than

1 \$20,000; or
2 (b) \$400 on aggregate debt of \$20,000 or
3 more;
4 (ii) charge a monthly account service fee of:
5 (a) no greater than \$75 per month on
6 aggregate debt of less than \$40,000; or
7 (b) no greater than \$100 per month on
8 aggregate debt of \$40,000 or more; and
9 (iii) charge a settlement fee for the
10 remainder of the allowable fees, which may be
11 demanded and collected no earlier than upon
12 delivery to the debt settlement provider by a
13 creditor of a bona fide written settlement offer
14 consistent with the terms of the debt settlement
15 services agreement; a settlement fee may be
16 assessed for each debt settled, but the sum total
17 of the origination fee, the monthly fee, and the
18 settlement fee may not exceed 15% of the aggregate
19 debt.

20 (B) The collection of monthly fees shall cease
21 under this paragraph (1) when the total monthly fees
22 and the origination fee together equal 40% of the total
23 fees allowable under this paragraph.

24 (C) In no event may more than 40% of the total
25 amount of fees allowable be claimed, demanded,
26 charged, collected, or received by a debt settlement

1 provider any earlier than upon delivery to the debt
2 settlement provider by a creditor of a bona fide
3 written settlement offer consistent with the terms of
4 the debt settlement services agreement.

5 (2) Fees calculated as a percentage of savings shall
6 comport with the following provisions:

7 (A) The total amount of the fees claimed, demanded,
8 charged, collected, or received under this paragraph
9 (2) may not exceed 30% of the amount a consumer is
10 saved in a debt settlement program. More specifically,
11 a debt settlement provider that calculates fees as a
12 percentage of savings may:

13 (i) charge a fee for consultation, obtaining a
14 credit report, and setting up an account in an
15 amount not exceeding the lesser of \$400 or 4% of
16 the debt in the plan at the inception of the plan
17 or a higher amount set forth by regulation;

18 (ii) charge a monthly service fee, not to
19 exceed \$10 or a higher amount set forth by
20 regulation, multiplied by the number of creditors
21 remaining in the plan at the time the fee is
22 assessed, but not more than \$50 total or a higher
23 amount set forth by regulation, in any month; and

24 (iii) charge a settlement fee not to exceed 30%
25 of the excess of the outstanding amount of each
26 debt over the amount actually paid to the creditor,

1 as calculated at the time of settlement;
2 settlement fees authorized under this paragraph
3 (2) shall become billable only as debts are
4 settled, and the total aggregate amount of fees
5 charged to any individual under this paragraph,
6 including fees charged under items (i) and (ii) of
7 this subparagraph (A), may not exceed 20% of the
8 principal amount of debt included in the agreement
9 at the agreement's inception.

10 (c) No fees, charges, assessments, or any other
11 compensation may be claimed, demanded, charged, collected, or
12 received other than the fees allowed under this Section. Any
13 fees collected in excess of those allowed under this Section
14 must be immediately returned to the debtor.

15 (d) No monthly fees shall be charged or collected by a debt
16 settlement provider unless services are provided to an
17 individual during that calendar month. Services shall be
18 documented by the debt settlement provider and may include, but
19 are not limited to, the following:

20 (1) client qualification;

21 (2) account management;

22 (3) debt program organization;

23 (4) negotiation and settlement discussions with
24 creditors;

25 (5) consumer rights education and counseling;

26 (6) referral to legal assistance; and

1 (7) third-party payment management.

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

6 ~~(c) A debt settlement provider may charge a settlement fee,~~
7 ~~which shall not exceed an amount greater than 15% of the~~
8 ~~savings. If the amount paid by the debt settlement provider to~~
9 ~~the creditor or negotiated by the debt settlement provider and~~
10 ~~paid by the consumer to the creditor pursuant to a settlement~~
11 ~~negotiated by the debt settlement provider on behalf of the~~
12 ~~consumer as full and complete satisfaction of the creditor's~~
13 ~~claim with regard to that debt is greater than the principal~~
14 ~~amount of the debt, then the debt settlement provider shall not~~
15 ~~be entitled to any settlement fee.~~

16 ~~(d) A debt settlement provider shall not collect any~~
17 ~~settlement fee from a consumer until a creditor enters into a~~
18 ~~legally enforceable agreement to accept funds in a specific~~
19 ~~dollar amount as full and complete satisfaction of the~~
20 ~~creditor's claim with regard to that debt and those funds are~~
21 ~~provided by the debt settlement provider on behalf of the~~
22 ~~consumer or are provided directly by the consumer to the~~
23 ~~creditor pursuant to a settlement negotiated by the debt~~
24 ~~settlement provider~~

25 (Source: 09600HB4781eng, Sec. 125.)

1 (09600HB4781eng, Sec. 160 new)

2 Sec. 160. Repeal of Act. This Act is repealed 2 years after
3 its effective date.

4 Section 99. Effective date. This Act takes effect upon
5 becoming law or on the effective date of House Bill 4781 of the
6 96th General Assembly, whichever is later.