

5215

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law and the banking law, in relation to defining terms related to budget planning and regulating the activities of budget planners

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 455 of the general business law, as amended by
2 chapter 629 of the laws of 2002, subdivisions 1 and 4 as amended by
3 chapter 456 of the laws of 2006, is amended to read as follows:
4 S 455. Definitions. 1. Budget planning, as used in this article, means
5 the making of a contract between a person [or entity] engaged in the
6 business of budget planning with a particular debtor whereby THE DEBTOR
7 AGREES TO PAY TO SUCH PERSON ANY VALUABLE CONSIDERATION AND (i) the
8 debtor agrees to pay a sum or sums of money in any manner or form and
9 the person [or entity] engaged in the business of budget planning
10 distributes, or supervises, coordinates or controls the distribution of,
11 or has a contractual relationship with another person [or entity] that
12 distributes, or supervises, coordinates or controls such distribution
13 of, the same among certain specified creditors in accordance with a plan
14 agreed upon [and]; OR (ii) the [debtor agrees to pay to such person or
15 entity, or such other person or entity that distributes, or supervises,
16 coordinates or controls such distribution of, a sum or sums of money,
17 any valuable consideration for such services or for any other services
18 rendered in connection therewith.] PERSON ENGAGED IN THE BUSINESS OF
19 BUDGET PLANNING PROVIDES ADVICE OR SERVICES, OR ACTS AS AN INTERMEDIARY
20 BETWEEN OR ON BEHALF OF A DEBTOR AND ONE OR MORE OF THE DEBTOR'S CREDI-
21 TORS, WHERE THE PRIMARY PURPOSE OF THE ADVICE, SERVICE, OR ACTION IS TO
22 OBTAIN A SETTLEMENT, ADJUSTMENT, OR SATISFACTION OF THE DEBTOR'S UNSE-
23 CURED DEBT TO A CREDITOR IN AN AMOUNT LESS THAN THE PRINCIPAL AMOUNT OF
24 THE DEBT OR IN AN AMOUNT LESS THAN THE CURRENT OUTSTANDING BALANCE OF

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD11381-01-1

1 THE DEBT; OR (III) THE PERSON ENGAGED IN THE BUSINESS OF BUDGET PLANNING
2 PROVIDES SERVICES RELATED TO, OR PROVIDES SERVICES ADVISING, ENCOURAG-
3 ING, ASSISTING, OR COUNSELING A DEBTOR TO, ACCUMULATE FUNDS FOR THE
4 PRIMARY PURPOSE OF PROPOSING, OBTAINING, OR SEEKING TO OBTAIN A SETTLE-
5 MENT, ADJUSTMENT, OR SATISFACTION OF THE DEBTOR'S UNSECURED DEBT TO A
6 CREDITOR IN AN AMOUNT LESS THAN THE PRINCIPAL AMOUNT OF THE DEBT OR IN
7 AN AMOUNT LESS THAN THE CURRENT OUTSTANDING BALANCE OF THE DEBT TO PAY
8 TO SUCH PERSON. For the purposes of this article, a person [or entity]
9 shall be considered as engaged in the business of budget planning in New
10 York, and subject to this article and the licensing and other require-
11 ments of article twelve-C of the banking law, if such person [or entity]
12 solicits budget planning business within this state and, in connection
13 with such solicitation, enters into a contract for budget planning with
14 an individual then resident in this state.

15 2. PERSON, AS USED IN THIS ARTICLE, MEANS AN INDIVIDUAL, LIMITED
16 LIABILITY COMPANY, CORPORATION, ASSOCIATION, OR ANY OTHER LEGAL ENTITY.

17 3. Person, as used in this article, shall not include a person [admit-
18 ted to practice law in this state.

19 3. Entity, as used in this article, shall not include a firm, partner-
20 ship, professional corporation, or other organization, all of the
21 members or principals of which are admitted to practice law in this
22 state.

23 4. Person or entity as used in this article shall not include a type B
24 not-for-profit corporation as defined in section two hundred one of the
25 not-for-profit corporation law of this state, or an entity incorporated
26 in another state and having a similar not-for-profit status,] licensed
27 by the superintendent[,] to engage in the business of budget planning
28 [as defined in this section] OR EXEMPT FROM LICENSURE AS A BUDGET PLAN-
29 NER UNDER ARTICLE TWELVE-C OF THE BANKING LAW.

30 [5. Any attorney licensed to practice law in this state who is engaged
31 in budget planning shall (a) negotiate directly with creditors on behalf
32 of the client; (b) ensure that all moneys received from the client are
33 deposited in the attorney's account maintained for client funds; (c) pay
34 creditors from such account; and (d) offer budget planning services
35 through the same legal entity that the attorney uses to practice law.]

36 S 2. Section 456 of the general business law, as amended by chapter
37 456 of the laws of 2006, is amended to read as follows:

38 S 456. Budget planning prohibited. No person [or entity] shall engage
39 in the business of budget planning as defined in section four hundred
40 fifty-five of this article, except as authorized in article twelve-C of
41 the banking law.

42 S 3. Section 457 of the general business law, as amended by chapter
43 629 of the laws of 2002, is amended to read as follows:

44 S 457. Penalty. Whoever either individually or as officer, director or
45 employee of any person[, firm, association or corporation,] violates any
46 of the provisions of [the preceding] section FOUR HUNDRED FIFTY-SIX OF
47 THIS ARTICLE shall be guilty of a misdemeanor for each such violation.

48 S 4. Section 579 of the banking law is renumbered section 579-a and a
49 new section 579 is added to read as follows:

50 S 579. DEFINITIONS. AS USED IN THIS ARTICLE:

51 1. "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPA-
52 NY, CORPORATION, ASSOCIATION, OR ANY OTHER LEGAL ENTITY.

53 2. "PRINCIPAL AMOUNT OF THE DEBT" MEANS THE TOTAL AMOUNT OWED BY A
54 DEBTOR TO ONE OR MORE CREDITORS FOR A DEBT THAT IS INCLUDED IN A DEBT
55 SETTLEMENT PLAN AT THE TIME WHEN THE DEBTOR ENTERS INTO SUCH DSP.

1 3. "DEBT MANAGEMENT PLAN" OR "DMP" MEANS A CONTRACT BETWEEN A PERSON
2 AND A DEBTOR WHEREBY THE PERSON WILL PROVIDE BUDGET PLANNING THAT
3 CONTEMPLATES THAT CREDITORS WILL REDUCE FINANCE CHARGES OR FEES FOR LATE
4 PAYMENT, DEFAULT OR DELINQUENCY.

5 4. "DEBT SETTLEMENT PLAN" OR "DSP" MEANS A CONTRACT BETWEEN A PERSON
6 AND A DEBTOR WHEREBY THE PERSON WILL PROVIDE BUDGET PLANNING THAT
7 CONTEMPLATES THAT CREDITORS WILL SETTLE DEBTS FOR LESS THAN THE PRINCIPAL
8 AMOUNT OF THE DEBT.

9 S 5. Section 579-a of the banking law, as amended by chapter 629 of
10 the laws of 2002 and as renumbered by section four of this act, is
11 amended to read as follows:

12 S 579-a. Doing business without license prohibited. [Only a type B
13 not-for-profit corporation as defined in section two hundred one of the
14 not-for-profit corporation law of this state, or an entity incorporated
15 in another state and having a similar not-for-profit status,] NO PERSON
16 shall engage in the business of budget planning as defined in subdivi-
17 sion one of section four hundred fifty-five of the general business law
18 of this state except as authorized by this article and without first
19 obtaining a license from the superintendent, EXCEPT:

20 1. ANY ATTORNEY LICENSED TO PRACTICE LAW IN THIS STATE WHEN ACTING IN
21 THE ORDINARY PRACTICE OF LAW AND THROUGH THE ENTITY USED BY THE ATTORNEY
22 IN THE ORDINARY PRACTICE OF LAW, AND NOT HOLDING HIMSELF OR HERSELF OUT
23 AS A BUDGET PLANNER, AND NOT PROVIDING BUDGET PLANNING SERVICES, EXCEPT
24 AS INCIDENTAL TO LEGAL REPRESENTATION; OR

25 2. ANY PUBLIC OFFICER WHILE ACTING IN AN OFFICIAL CAPACITY AND ANY
26 PERSON ACTING UNDER COURT ORDER; OR

27 3. ANY PERSON WHILE PERFORMING SERVICES INCIDENTAL TO THE DISSOLUTION,
28 WINDING UP, OR LIQUIDATING OF A PARTNERSHIP, CORPORATION, OR OTHER BUSI-
29 NESS ENTERPRISE; OR

30 4. ANY BANK, TRUST COMPANY, SAVINGS BANK, SAVINGS AND LOAN ASSOCI-
31 ATION, OR CREDIT UNION, WHETHER INCORPORATED, CHARTERED, OR ORGANIZED
32 UNDER THE LAWS OF THIS STATE OR ANY OTHER STATE OR THE UNITED STATES, OR
33 ANY OPERATING SUBSIDIARY OF ANY SUCH BANK, TRUST COMPANY, SAVINGS BANK,
34 SAVINGS AND LOAN ASSOCIATION OR CREDIT UNION; OR

35 5. AN ATTORNEY IN PROVIDING INFORMATION, ADVICE, OR LEGAL REPRESENTATION
36 WITH RESPECT TO FILING A CASE OR PRECEDING UNDER TITLE 11 OF THE
37 UNITED STATES CODE; OR

38 6. SUCH OTHER PERSONS AS MAY BE SPECIFICALLY EXEMPTED BY THE SUPER-
39 INTENDENT IN HIS OR HER SOLE DISCRETION AND CONSISTENT WITH THE PURPOSES
40 OF THIS ARTICLE AND THE RULES AND REGULATIONS PROMULGATED HEREUNDER.

41 S 6. Subdivision 4 of section 583-a of the banking law, as added by
42 chapter 142 of the laws of 1992, is amended to read as follows:

43 4. As used in this section[: (a)], the term ["person" includes an
44 individual, partnership, corporation, association or any other organiza-
45 tion, and (b) the term] "control" means the possession, directly or
46 indirectly, of the power to direct or cause the direction of the manage-
47 ment and policies of a licensee, whether through the ownership of voting
48 stock of such licensee, the ownership of voting stock of any person
49 which possesses such power or otherwise. Control shall be presumed to
50 exist if any person, directly or indirectly, owns, controls or holds
51 with power to vote ten per centum or more of the voting stock of any
52 licensee or of any person which owns, controls or holds with power to
53 vote ten per centum or more of the voting stock of any licensee, but no
54 person shall be deemed to control a licensee solely by reason of being
55 an officer or director of such licensee or person. The superintendent
56 may in his discretion, upon the application of a licensee or any person

1 who, directly or indirectly, owns, controls or holds with power to vote
2 or seeks to own, control or hold with power to vote any voting stock of
3 such licensee, determine whether or not the ownership, control or hold-
4 ing of such voting stock constitutes or would constitute control of such
5 licensee for purposes of this section.

6 S 7. Sections 584-a and 584-b of the banking law are renumbered
7 sections 584-c and 584-d and two new sections 584-a and 584-b are added
8 to read as follows:

9 S 584-A. DISCLOSURES. BEFORE A DEBTOR SIGNS A CONTRACT WITH A LICENSEE
10 FOR BUDGET PLANNING, THE LICENSEE MUST DISCLOSE TRUTHFULLY, IN A CLEAR
11 AND CONSPICUOUS MANNER, THE FOLLOWING MATERIAL INFORMATION:

12 1. THE AMOUNT OF TIME NECESSARY TO ACHIEVE THE REPRESENTED RESULTS,
13 AND TO THE EXTENT THAT THE BUDGET PLANNING MAY INCLUDE A SETTLEMENT
14 OFFER TO ANY OF THE DEBTOR'S CREDITORS OR DEBT COLLECTORS, THE TIME BY
15 WHICH THE LICENSEE WILL MAKE A BONA FIDE SETTLEMENT OFFER TO EACH OF
16 THEM;

17 2. TO THE EXTENT THAT THE BUDGET PLANNING MAY INCLUDE A SETTLEMENT
18 OFFER TO ANY OF THE DEBTOR'S CREDITORS OR DEBT COLLECTORS, THE AMOUNT OF
19 MONEY OR THE PERCENTAGE OF EACH OUTSTANDING DEBT THAT THE DEBTOR MUST
20 ACCUMULATE BEFORE THE LICENSEE WILL MAKE A BONA FIDE SETTLEMENT OFFER TO
21 EACH OF THEM;

22 3. TO THE EXTENT THAT ANY ASPECT OF THE BUDGET PLANNING RELIES UPON OR
23 RESULTS IN THE DEBTOR'S FAILURE TO MAKE TIMELY PAYMENTS TO CREDITORS OR
24 DEBT COLLECTORS, THAT THE USE OF THE BUDGET PLANNING WILL LIKELY
25 ADVERSELY AFFECT THE DEBTOR'S CREDITWORTHINESS, MAY RESULT IN THE DEBTOR
26 BEING SUBJECT TO COLLECTION ACTIONS OR SUED BY CREDITORS OR DEBT COLLEC-
27 TORS, AND MAY INCREASE THE AMOUNT OF MONEY THE DEBTOR OWES DUE TO THE
28 ACCRUAL OF FEES AND INTEREST; AND

29 4. TO THE EXTENT THAT THE LICENSEE REQUESTS OR REQUIRES THE DEBTOR TO
30 PLACE FUNDS IN AN ACCOUNT AT AN INSURED FINANCIAL INSTITUTION, THAT THE
31 DEBTOR OWNS THE FUNDS HELD IN THE ACCOUNT, THE DEBTOR MAY WITHDRAW FROM
32 THE BUDGET PLANNING AT ANY TIME WITHOUT PENALTY, AND, IF THE DEBTOR
33 WITHDRAWS, THE DEBTOR MUST RECEIVE ALL FUNDS IN THE ACCOUNT, OTHER THAN
34 FEES EARNED BY THE LICENSEE, WITHIN SEVEN BUSINESS DAYS OF THE DEBTOR'S
35 REQUEST.

36 S 584-B. FEES. A LICENSEE SHALL NOT RECEIVE PAYMENT OF ANY FEE OR
37 CONSIDERATION FOR ANY BUDGET PLANNING UNTIL AND UNLESS:

38 1. THE LICENSEE HAS RENEGOTIATED, SETTLED, REDUCED, OR OTHERWISE
39 ALTERED THE TERMS OF AT LEAST ONE DEBT PURSUANT TO A DEBT SETTLEMENT
40 PLAN OR DEBT MANAGEMENT PLAN;

41 2. THE DEBTOR HAS MADE AT LEAST ONE PAYMENT PURSUANT TO THAT DEBT
42 SETTLEMENT PLAN OR DEBT MANAGEMENT PLAN; AND

43 3. THE FEE OR CONSIDERATION FOR SETTLING EACH INDIVIDUAL DEBT ENROLLED
44 IN A DEBT SETTLEMENT PLAN SHALL NOT EXCEED TWENTY-FIVE PERCENT OF THE
45 DEBT AT THE TIME IT WAS ENROLLED, AND MUST EITHER:

46 (A) BEAR THE SAME PROPORTIONAL RELATIONSHIP TO THE TOTAL FEE FOR
47 SETTLING THE ENTIRE DEBT BALANCE AS THE INDIVIDUAL DEBT AMOUNT BEARS TO
48 THE ENTIRE DEBT AMOUNT. THE INDIVIDUAL DEBT AMOUNT AND THE ENTIRE DEBT
49 AMOUNT ARE THOSE OWED AT THE TIME THE DEBT WAS ENROLLED IN THE BUDGET
50 PLANNING; OR

51 (B) BE A PERCENTAGE OF THE AMOUNT SAVED AS A RESULT OF THE SETTLEMENT.
52 THE PERCENTAGE CHARGED CANNOT CHANGE FROM ONE INDIVIDUAL DEBT TO ANOTH-
53 ER. THE AMOUNT SAVED IS THE DIFFERENCE BETWEEN THE AMOUNT OWED AT THE
54 TIME THE DEBT WAS ENROLLED IN THE BUDGET PLANNING AND THE AMOUNT ACTUAL-
55 LY PAID TO SATISFY THE DEBT.

1 4. NOTHING IN THIS SECTION PROHIBITS REQUESTING OR REQUIRING THE
2 DEBTOR TO PLACE FUNDS IN AN ACCOUNT TO BE USED FOR THE LICENSEE'S FEES
3 AND FOR PAYMENTS TO CREDITORS OR DEBT COLLECTORS, PROVIDED THAT:

4 (A) THE FUNDS ARE HELD IN AN ACCOUNT AT AN INSURED FINANCIAL INSTITU-
5 TION;

6 (B) THE DEBTOR OWNS THE FUNDS HELD IN THE ACCOUNT AND IS PAID ACCRUED
7 INTEREST ON THE ACCOUNT, IF ANY;

8 (C) IF THE LICENSEE DOES NOT ADMINISTER THE ACCOUNT, THE ENTITY ADMIN-
9 ISTERING THE ACCOUNT IS NOT OWNED OR CONTROLLED BY, OR IN ANY WAY AFFIL-
10 IATED WITH, THE LICENSEE;

11 (D) THE ENTITY ADMINISTERING THE ACCOUNT DOES NOT GIVE OR ACCEPT ANY
12 MONEY OR OTHER COMPENSATION IN EXCHANGE FOR REFERRALS OF BUSINESS BY THE
13 LICENSEE; AND

14 (E) THE DEBTOR MAY WITHDRAW FROM THE BUDGET PLANNING AT ANY TIME WITH-
15 OUT PENALTY, AND MUST RECEIVE ALL FUNDS IN THE ACCOUNT, OTHER THAN FEES
16 EARNED BY THE LICENSEE, WITHIN SEVEN BUSINESS DAYS OF THE DEBTOR'S
17 REQUEST.

18 S 8. Section 584-d of the banking law, as renumbered by section seven
19 of this act, is amended by adding a new subdivision 3-a to read as
20 follows:

21 3-A. NO LICENSEE SHALL MISREPRESENT, DIRECTLY OR BY IMPLICATION, ANY
22 MATERIAL ASPECT OF ANY BUDGET PLANNING, INCLUDING, BUT NOT LIMITED TO,
23 THE AMOUNT OF MONEY OR THE PERCENTAGE OF THE DEBT AMOUNT THAT A DEBTOR
24 MAY SAVE BY USING SUCH SERVICE; THE AMOUNT OF TIME NECESSARY TO ACHIEVE
25 THE REPRESENTED RESULTS; THE AMOUNT OF MONEY OR THE PERCENTAGE OF EACH
26 OUTSTANDING DEBT THAT THE DEBTOR MUST ACCUMULATE BEFORE THE BUDGET PLAN-
27 NER WILL INITIATE ATTEMPTS WITH THE DEBTOR'S CREDITORS OR DEBT COLLEC-
28 TORS OR MAKE A BONA FIDE OFFER TO NEGOTIATE, SETTLE, OR MODIFY THE TERMS
29 OF THE DEBTOR'S DEBT; THE EFFECT OF THE SERVICE ON A DEBTOR'S CREDITWOR-
30 THINESS; THE EFFECT OF THE SERVICE ON COLLECTION EFFORTS OF THE DEBTOR'S
31 CREDITORS OR DEBT COLLECTORS; THE PERCENTAGE OR NUMBER OF DEBTORS WHO
32 ATTAIN THE REPRESENTED RESULTS; AND WHETHER THE BUDGET PLANNING IS
33 OFFERED OR PROVIDED BY A NON-PROFIT ENTITY.

34 S 9. This act shall take effect immediately.