

5215--C

2011-2012 Regular Sessions

I N   S E N A T E

May 3, 2011

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Introduced by Sens. GRIFFO, ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee and committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 busi-  
6 ness of budget planning with a particular debtor whereby:  
7     (i) the debtor agrees to pay a sum or sums of money in any manner or  
8 form and the person or entity engaged in the business of budget planning  
9 distributes, or supervises, coordinates or controls the distribution of,  
10 or has a contractual relationship with another person or entity that  
11 distributes, or supervises, coordinates or controls such distribution  
12 of, the same among certain specified creditors in accordance with a  
13 PERIODIC PAYMENT plan agreed upon BY THE DEBTOR'S CREDITORS AT OR NEAR  
14 THE TIME THE CONTRACT IS ENTERED; and

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

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1 (ii) the debtor agrees to pay to such person or entity, or such other  
2 person or entity that distributes, or supervises, coordinates or  
3 controls such distribution of, a sum or sums of money, any valuable  
4 consideration for such services or for any other services rendered in  
5 connection therewith. For the purposes of this article, a person or  
6 entity shall be considered as engaged in the business of budget planning  
7 in New York, and subject to this article and the licensing and other  
8 requirements of article twelve-C of the banking law, if such person or  
9 entity solicits budget planning business within this state and, in  
10 connection with such solicitation, enters into a contract for budget  
11 planning with an individual then resident in this state.

12 2. Person, as used in this article, shall not include a person admit-  
13 ted to practice law in this state.

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

18 4. [Person or entity as used in this article shall not include a type  
19 B not-for-profit corporation as defined in section two hundred one of  
20 the not-for-profit corporation law of this state, or an entity incorpo-  
21 rated in another state and having a similar not-for-profit status,  
22 licensed by the superintendent, to engage in the business of budget  
23 planning as defined in this section.

24 5.] Any attorney licensed to practice law in this state who is engaged  
25 in budget planning shall:

26 (a) negotiate directly with creditors on behalf of the client;

27 (b) ensure that all moneys received from the client are deposited in  
28 the attorney's account maintained for client funds;

29 (c) pay creditors from such account; and

30 (d) offer budget planning services through the same legal entity that  
31 the attorney uses to practice law.

32 S 2. Section 457 of the general business law, as amended by chapter  
33 629 of the laws of 2002, is amended to read as follows:

34 S 457. [Penalty] PENALTIES FOR VIOLATION OF THIS ARTICLE; CRIMINAL AND  
35 CIVIL. (A) Whoever either individually or as officer, director or  
36 employee of any person, firm, association or corporation, violates any  
37 of the provisions of the preceding section shall be guilty of a CLASS A  
38 misdemeanor [for each such violation] PUNISHABLE AS PROVIDED IN ARTICLES  
39 SEVENTY AND EIGHTY OF THE PENAL LAW.

40 (B) WHENEVER THERE SHALL BE A VIOLATION OF THIS ARTICLE, APPLICATION  
41 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE  
42 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL  
43 PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF  
44 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH  
45 VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR  
46 JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS ARTICLE, AN  
47 INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND  
48 RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY  
49 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN CONNECTION WITH  
50 ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO  
51 TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE  
52 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES. WHENEVER  
53 THE COURT SHALL DETERMINE THAT A VIOLATION OF SECTION FOUR HUNDRED  
54 FIFTY-SIX OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL  
55 PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS PER CONTRACT MADE IN  
56 VIOLATION OF SUCH SECTION, NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS.

1 S 3. Section 579 of the banking law, as amended by chapter 629 of the  
2 laws of 2002, is amended to read as follows:

3 S 579. Doing business without license prohibited. [Only a type B not-  
4 for-profit corporation as defined in section two hundred one of the  
5 not-for-profit corporation law of this state, or an entity incorporated  
6 in another state and having a similar not-for-profit status,] NO PERSON  
7 OR ENTITY shall engage in the business of budget planning as defined in  
8 subdivision one of section four hundred fifty-five of the general busi-  
9 ness law [of this state] except as authorized by this article and with-  
10 out first obtaining a license from the superintendent.

11 S 4. Subdivision 2 of section 584-a of the banking law, as added by  
12 chapter 629 of the laws of 2002, is amended to read as follows:

13 2. the total fees agreed to for such services, including any adjust-  
14 ments for estimated available rebates from creditors, provided that  
15 nothing in this subdivision shall require a licensee to share rebates  
16 with its clients AND PROVIDED THAT ANY FEES OR CHARGES IMPOSED MUST BE  
17 FAIR, REASONABLE AND EASILY UNDERSTOOD;

18 S 5. Section 584-b of the banking law is amended by adding two new  
19 subdivisions 4-a and 14 to read as follows:

20 4-A. NO LICENSEE SHALL IMPOSE ANY FEE OR CHARGE WHATSOEVER THAT IS  
21 NOT FAIR, REASONABLE AND ABLE TO BE EASILY UNDERSTOOD.

22 14. NO LICENSEE SHALL CHARGE THE DEBTOR FOR OR PROVIDE CREDIT OR OTHER  
23 INSURANCE, COUPONS FOR GOODS OR SERVICES, MEMBERSHIP IN A CLUB, ACCESS  
24 TO COMPUTERS OR THE INTERNET, OR ANY OTHER MATTER NOT DIRECTLY RELATED  
25 TO BUDGET PLANNING SERVICES UNLESS PRE-APPROVED BY THE SUPERINTENDENT.

26 S 6. Section 585 of the banking law, as amended by chapter 629 of the  
27 laws of 2002, is amended to read as follows:

28 S 585. Superintendent authorized to examine. For the purpose of  
29 discovering violations of this article or securing information lawfully  
30 required by him or her hereunder, the superintendent may at any time,  
31 and as often as he or she may determine, either personally or by a  
32 person duly designated by him or her, investigate the business and exam-  
33 ine the books, accounts, records, and files used therein of every licen-  
34 see hereunder. For that purpose the superintendent and his or her duly  
35 designated representative shall have free access to the offices and  
36 place of business, books, accounts, papers, records, files, safes and  
37 vaults of all such licensees. The superintendent and any person duly  
38 designated by him or her shall have authority to require the attendance  
39 of and to examine under oath all persons whose testimony he or she may  
40 require relative to such business. The expenses incurred in making any  
41 examination pursuant to this section shall be assessed against and paid  
42 by the licensee so examined, except that traveling and subsistence  
43 expenses so incurred shall be charged against and paid by licensees in  
44 such proportions as the superintendent shall deem just and reasonable,  
45 and such proportionate charges shall be added to the assessment of the  
46 other expenses incurred upon each examination. Upon written notice by  
47 the superintendent of the total amount of such assessment, the licensee  
48 shall become liable for and shall pay such assessment to the superinten-  
49 dent. If, upon review, the superintendent shall determine that the fees  
50 or service charges set by the licensee are UNFAIR, unreasonable OR  
51 UNCLEAR, he or she shall direct the licensee to make adjustments in said  
52 fees and service charges in accordance with his or her findings, which  
53 shall set forth a detailed factual basis and reasoning supporting such  
54 finding.

55 S 7. This act shall take effect on the one hundred eightieth day after  
56 it shall have become a law and shall apply to all debt settlement

1 services agreements entered into or offered on or after such date;  
2 provided, however, that effective immediately, the superintendent of  
3 financial services shall add, amend, and/or repeal any rule or regu-  
4 lation he or she deems necessary or desirable for implementation of this  
5 act.