

2493

2013-2014 Regular Sessions

I N S E N A T E

January 17, 2013

Introduced by Sens. GRIFFO, ZELDIN -- 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 ASSEM-
BLY, 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
15 (ii) the debtor agrees to pay to such person or entity, or such other
16 person or entity that distributes, or supervises, coordinates or
17 controls such distribution of, a sum or sums of money, any valuable
18 consideration for such services or for any other services rendered in
19 connection therewith. For the purposes of this article, a person or
20 entity shall be considered as engaged in the business of budget planning
21 in New York, and subject to this article and the licensing and other
22 requirements of article twelve-C of the banking law, if such person or
23 entity solicits budget planning business within this state and, in

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

LBD06471-01-3

1 connection with such solicitation, enters into a contract for budget
2 planning with an individual then resident in this state.

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

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

9 4. [Person or entity as used in this article shall not include a type
10 B not-for-profit corporation as defined in section two hundred one of
11 the not-for-profit corporation law of this state, or an entity incorpo-
12 rated in another state and having a similar not-for-profit status,
13 licensed by the superintendent, to engage in the business of budget
14 planning as defined in this section.

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

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

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

20 (c) pay creditors from such account; and

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

23 S 2. Section 457 of the general business law, as amended by chapter
24 629 of the laws of 2002, is amended to read as follows:

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

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

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

50 S 579. Doing business without license prohibited. [Only a type B not-
51 for-profit corporation as defined in section two hundred one of the
52 not-for-profit corporation law of this state, or an entity incorporated
53 in another state and having a similar not-for-profit status,] NO PERSON
54 OR ENTITY shall engage in the business of budget planning as defined in
55 subdivision one of section four hundred fifty-five of the general busi-

1 ness law [of this state] except as authorized by this article and with-
2 out first obtaining a license from the superintendent.

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

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

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

12 4-A. NO LICENSEE SHALL IMPOSE ANY FEE OR CHARGE WHATSOEVER THAT IS
13 NOT FAIR, REASONABLE AND ABLE TO BE EASILY UNDERSTOOD.

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

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

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

47 S 7. This act shall take effect on the one hundred eightieth day after
48 it shall have become a law and shall apply to all debt settlement
49 services agreements entered into or offered on or after such date;
50 provided, however, that effective immediately, the superintendent of
51 financial services shall add, amend, and/or repeal any rule or regu-
52 lation he or she deems necessary or desirable for implementation of this
53 act.