

# STATE OF NEW YORK

9084

## IN SENATE

April 22, 2024

Introduced by Sen. KAVANAGH -- 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, in relation to budget planning

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, subdivision 1 as amended by chapter 456  
3 of the laws of 2006 and subdivision 4 as amended by chapter 549 of the  
4 laws of 2013, is amended to read as follows:

5 § 455. Definitions. 1. (a) Budget planning, as used in this article,  
6 means the making of a contract between a person or entity engaged in the  
7 business of budget planning with a particular debtor whereby (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 distrib-  
10 utes, or supervises, coordinates or controls the distribution of, or has  
11 a contractual relationship with another person or entity that distrib-  
12 utes, or supervises, coordinates or controls such distribution of, the  
13 same among certain specified creditors in accordance with a plan agreed  
14 upon and (ii) the debtor agrees to pay to such person or entity, or such  
15 other person or entity that distributes, or supervises, coordinates or  
16 controls such distribution of, a sum or sums of money, any valuable  
17 consideration for such services or for any other services rendered in  
18 connection therewith. A person or entity may be engaged in budget plan-  
19 ning regardless of whether they directly handle or supervise debtor  
20 funds for disbursement. Use of a third-party to hold and disburse  
21 debtor funds shall not exempt a person or entity from qualifying as a  
22 budget planner. Debt relief and debt settlement shall qualify as budget  
23 planning.

24 (b) For the purposes of this article, a person or entity shall be  
25 considered as engaged in the business of budget planning in New York,  
26 and subject to this article and the licensing and other requirements of  
27 article twelve-C of the banking law, if such person or entity [~~solicits~~  
28 ~~budget planning business within this state and, in connection with such~~

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

LBD11886-01-3

1 ~~solicitation,~~ is located in New York or enters into a contract for  
2 budget 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, unless a principal purpose of such  
5 person's business is budget planning.

6 3. Entity, as used in this article, shall not include a firm, partner-  
7 ship, professional corporation, or other organization, all of the  
8 members or principals of which are admitted to practice law in this  
9 state, unless a principal purpose of such entity's business is budget  
10 planning.

11 4. Person or entity as used in this article shall not include a chari-  
12 table corporation as defined in paragraph (a) of section one hundred two  
13 (Definitions) of the not-for-profit corporation law of this state, or an  
14 entity incorporated in another state and having a similar not-for-profit  
15 status, licensed by the superintendent, to engage in the business of  
16 budget planning as defined in this section.

17 5. Any attorney licensed to practice law in this state who is engaged  
18 in budget planning as a principal purpose of their practice shall (a)  
19 negotiate directly with creditors on behalf of the client; (b) ensure  
20 that all moneys received from the client are deposited in the attorney's  
21 account maintained for client funds; (c) pay creditors from such  
22 account; and (d) offer budget planning services through the same legal  
23 entity that the attorney uses to practice law.

24 6. Budget planning shall not include the provision of legal advice by  
25 a licensed attorney in connection with a case under the United States  
26 Bankruptcy Code.

27 § 2. Section 457 of the general business law, as amended by chapter  
28 629 of the laws of 2002, is amended to read as follows:

29 § 457. Penalty. 1. Whoever either individually or as officer, director  
30 or employee of any person, firm, association or corporation, violates  
31 any of the provisions of the preceding section shall be guilty of a  
32 misdemeanor for each such violation.

33 2. Where a violation of this section is alleged to have occurred, the  
34 attorney general may apply in the name of the people of the state of New  
35 York to a court of competent jurisdiction by action or special proceed-  
36 ing for an order enjoining or restraining commission or continuance of  
37 the alleged unlawful acts. In any such proceeding against a person or  
38 entity who has engaged in budget planning without a license under arti-  
39 cle twelve-C of the banking law or in violation of the requirements of  
40 that article, the court shall impose a civil penalty in an amount not to  
41 exceed ten thousand dollars per each debtor enrolled or three times the  
42 amount of debt enrolled for budget planning, whichever is greater and,  
43 where appropriate, order restitution to aggrieved parties, including a  
44 refund of all fees paid by a debtor to an unlicensed budget planner.

45 § 3. This act shall take effect on the ninetieth day after it shall  
46 have become a law.