STATE OF NEW YORK

5309

2017-2018 Regular Sessions

IN ASSEMBLY

February 7, 2017

Introduced by M. of A. DINOWITZ, BENEDETTO -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law and the banking law, in relation to providing for budget planning and debt settlement services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 455 of the general business law, as amended by chapter 629 of the laws of 2002, subdivision 1 as amended by chapter 456 of the laws of 2006, and subdivision 4 as amended by chapter 549 of the laws of 2013, is amended to read as follows:

§ 455. Definitions. 1. Budget planning, as used in this article, means the making of a contract between a person or entity engaged in the business of budget planning with a particular debtor whereby:

(i) the debtor agrees to pay a sum or sums of money in any manner or form and the person or entity engaged in the business of budget planning distributes, or supervises, coordinates or controls the distribution of, or has a contractual relationship with another person or entity that distributes, or supervises, coordinates or controls such distribution of, the same among certain specified creditors in accordance with a **periodic payment** plan agreed upon; and

(ii) the debtor agrees to pay to such person or entity, or such other person or entity that distributes, or supervises, coordinates or controls such distribution of, a sum or sums of money, any valuable consideration for such services or for any other services rendered in connection therewith**; provided, however, that "budget planning" does not include "debt settlement services" as defined in section five hundred eighty-eight-a of the banking law**. For the purposes of this article, a person or entity shall be considered as engaged in the business of budget planning in New York, and subject to this article and the licensing and other requirements of article twelve-C of the banking law, if such person or entity solicits budget planning business within this state

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

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

2. Person, as used in this article, shall not include a person admitted to practice law in this state.

3. Entity, as used in this article, shall not include a firm, partnership, professional corporation, or other organization, all of the members or principals of which are admitted to practice law in this state.

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

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

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

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

(c) pay creditors from such account; and

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

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

§ 457. [~~Penalty~~] Penalties for violation of this article; criminal and civil. (a) Whoever either individually or as officer, director or employee of any person, firm, association or corporation, violates any of the provisions of the preceding section shall be guilty of a class A misdemeanor [~~for each such violation~~] punishable as provided in articles seventy and eighty of the penal law.

(b) Whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Whenever the court shall determine that a violation of section four hundred fifty-six of this article has occurred, the court may impose a civil penalty of not more than five hundred dollars per contract made in violation of such section, not to exceed one hundred thousand dollars.

§ 3. Section 579 of the banking law, as amended by chapter 549 of the laws of 2013, is amended to read as follows:

§ 579. Doing business without license prohibited. [~~Only a charitable corporation as defined in paragraph (a) of section one hundred two (Definitions) of the not-for-profit corporation law of this state, or an entity incorporated in another state and having a similar not-for-profit status,~~] No person or entity shall engage in the business of budget planning as defined in subdivision one of section four hundred fifty-five of the general business law [~~of this state~~] except as authorized by

this article and without first obtaining a license from the superintendent.

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

2. the total fees agreed to for such services, including any adjustments for estimated available rebates from creditors, provided that nothing in this subdivision shall require a licensee to share rebates with its clients **and provided that any fees or charges imposed must be fair, reasonable and easily understood**;

§ 5. Section 584-b of the banking law is amended by adding a new subdivision 4-a to read as follows:

4-a. No licensee shall impose any fee or charge whatsoever that is not fair, reasonable and able to be easily understood.

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

§ 585. Superintendent authorized to examine. For the purpose of discovering violations of this article or securing information lawfully required by him or her hereunder, the superintendent may at any time, and as often as he or she may determine, either personally or by a person duly designated by him or her, investigate the business and examine the books, accounts, records, and files used therein of every licensee hereunder. For that purpose the superintendent and his or her duly designated representative shall have free access to the offices and place of business, books, accounts, papers, records, files, safes and vaults of all such licensees. The superintendent and any person duly designated by him or her shall have authority to require the attendance of and to examine under oath all persons whose testimony he or she may require relative to such business. The expenses incurred in making any examination pursuant to this section shall be assessed against and paid by the licensee so examined, except that traveling and subsistence expenses so incurred shall be charged against and paid by licensees in such proportions as the superintendent shall deem just and reasonable, and such proportionate charges shall be added to the assessment of the other expenses incurred upon each examination. Upon written notice by the superintendent of the total amount of such assessment, the licensee shall become liable for and shall pay such assessment to the superintendent. If, upon review, the superintendent shall determine that the fees or service charges set by the licensee are **unfair,** unreasonable **or unclear**, he or she shall direct the licensee to make adjustments in said fees and service charges in accordance with his or her findings, which shall set forth a detailed factual basis and reasoning supporting such finding.

§ 7. Subdivision 10 of section 36 of the banking law, as amended by chapter 182 of the laws of 2011, is amended to read as follows:

10. All reports of examinations and investigations, correspondence and memoranda concerning or arising out of such examination and investigations, including any duly authenticated copy or copies thereof in the possession of any banking organization, bank holding company or any subsidiary thereof (as such terms "bank holding company" and "subsidiary" are defined in article three-A of this chapter), any corporation or any other entity affiliated with a banking organization within the meaning of subdivision six of this section and any non-banking subsidiary of a corporation or any other entity which is an affiliate of a banking organization within the meaning of subdivision six-a of this section, foreign banking corporation, licensed lender, licensed casher of checks, licensed mortgage banker, registered mortgage broker,

licensed mortgage loan originator, licensed sales finance company, registered mortgage loan servicer, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, **licensed debt settlement company,** any other person or entity subject to supervision under this chapter, or the department, shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the superintendent, the ends of justice and the public advantage will be subserved by the publication thereof, in which event the superintendent may publish or authorize the publication of a copy of any such report or any part thereof in such manner as may be deemed proper or unless such laws specifically authorize such disclosure. For the purposes of this subdivision, "reports of examinations and investigations, and any correspondence and memoranda concerning or arising out of such examinations and investigations", includes any such materials of a bank, insurance or securities regulatory agency or any unit of the federal government or that of this state any other state or that of any foreign government which are considered confidential by such agency or unit and which are in the possession of the department or which are otherwise confidential materials that have been shared by the department with any such agency or unit and are in the possession of such agency or unit.

§ 8. Subdivisions 1, 2, 3 and 5 of section 39 of the banking law, subdivisions 1, 2 and 5 as amended by chapter 123 of the laws of 2009 and subdivision 3 as amended by chapter 155 of the laws of 2012, are amended to read as follows:

1. To appear and explain an apparent violation. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, **licensed debt settlement company,** out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation licensed by the superintendent to do business or maintain a representative office in this state has violated any law or regulation, he or she may, in his or her discretion, issue an order describing such apparent violation and requiring such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, **licensed debt settlement company,** out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation to appear before him or her, at a time and place fixed in said order, to present an explanation of such apparent violation.

2. To discontinue unauthorized or unsafe and unsound practices. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, **licensed debt settlement company,** out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corpo-

ration licensed by the superintendent to do business in this state is conducting business in an unauthorized or unsafe and unsound manner, he or she may, in his or her discretion, issue an order directing the discontinuance of such unauthorized or unsafe and unsound practices, and fixing a time and place at which such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, **licensed debt settlement company,** out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation may voluntarily appear before him or her to present any explanation in defense of the practices directed in said order to be discontinued.

3. To make good impairment of capital or to ensure compliance with financial requirements. Whenever it shall appear to the superintendent that the capital or capital stock of any banking organization, bank holding company or any subsidiary thereof which is organized, licensed or registered pursuant to this chapter, is impaired, or the financial requirements imposed by subdivision one of section two hundred two-b of this chapter or any regulation of the superintendent on any branch or agency of a foreign banking corporation or the financial requirements imposed by this chapter or any regulation of the superintendent on any licensed lender, registered mortgage broker, licensed mortgage banker, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner**, licensed debt settlement company** or private banker are not satisfied, the superintendent may, in the superintendent's discretion, issue an order directing that such banking organization, bank holding company, branch or agency of a foreign banking corporation, registered mortgage broker, licensed mortgage banker, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, **licensed debt settlement company** or private banker make good such deficiency forthwith or within a time specified in such order.

5. To keep books and accounts as prescribed. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, **licensed debt settlement company,** agency or branch of a foreign banking corporation licensed by the superintendent to do business in this state, does not keep its books and accounts in such manner as to enable him or her to readily ascertain its true condition, he or she may, in his or her discretion, issue an order requiring such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, **licensed debt settlement company,** or foreign banking corporation, or the officers or agents thereof, or any of them, to open and keep such books or accounts as he or she may, in his or her discretion,

determine and prescribe for the purpose of keeping accurate and convenient records of its transactions and accounts.

§ 9. Paragraph (a) of subdivision 1 of section 44 of the banking law, as amended by chapter 155 of the laws of 2012, is amended to read as follows:

(a) Without limiting any power granted to the superintendent under any other provision of this chapter, the superintendent may, in a proceeding after notice and a hearing, require any safe deposit company, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed mortgage banker, registered mortgage broker, licensed mortgage loan originator, registered mortgage loan servicer [~~or~~], licensed budget planner **or licensed debt settlement company** to pay to the people of this state a penalty for any violation of this chapter, any regulation promulgated thereunder, any final or temporary order issued pursuant to section thirty-nine of this article, any condition imposed in writing by the superintendent in connection with the grant of any application or request, or any written agreement entered into with the superintendent.

§ 10. The banking law is amended by adding a new article 12-CC to read as follows:

ARTICLE XII-CC
DEBT SETTLEMENT COMPANIES

Section 588-a. Definitions.
588-b. Doing business without license prohibited.
588-c. Application for license.
588-d. Conditions for issuance of a license; procedure where application denied.
588-e. License provisions.
588-f. Changes in officers or directors of licensee.
588-g. Changes in control.
588-h. Grounds for suspension, revocation, or termination of license; procedure.
588-i. Advertising and marketing practices.
588-j. Individualized financial analysis; statement.
588-k. Required pre-agreement disclosures and warnings.
588-l. Debt settlement services agreements.
588-m. Fees.
588-n. Debtor settlement accounts; monthly accounting.
588-o. Cancellation of debt settlement services agreement; right to refunds.
588-p. Obligation of good faith.
588-q. Prohibited activities.
588-r. Superintendent authorized to examine.
588-s. Licensee's books and records; reports.
588-t. Penalties; noncompliance.
588-u. Authority of superintendent.
588-v. Severability.

§ 588-a. Definitions. As used in this article: 1. "Affiliate" means any person that directly or indirectly controls, is controlled by, or is under common control with another person.

2. "Clearly and conspicuously" means that a statement, representation, term, or disclosure is so presented as to be readily apparent and understood by the person to whom it is being addressed. Factors to be considered for this purpose include but are not limited to size, placement, color contrast, length, crawl time, and audibility.

3. "Debtor" means any individual who has incurred indebtedness or owes a debt.

4. "Debtor settlement account" means any account or other means or device in which payments, deposits, or other transfers from a debtor are arranged, held, or transferred by or to a debt settlement company for the accumulation of the debtor's funds in anticipation of proffering an adjustment or settlement of a debt or obligation of the debtor.

5. "Debt settlement company" means any person:

(a) engaging in, or holding himself, herself, or itself out as engaging in, the business of providing debt settlement services in exchange for or in expectation of any compensation or gain; or

(b) soliciting for or acting on behalf of any person engaging in, or holding himself, herself, or itself out as engaging in, the business of providing debt settlement services in exchange for or in expectation of any compensation or gain; provided, however, that "debt settlement company" shall not include:

(i) the following exempt persons:

(A) any attorney licensed to practice law in this state when acting in the ordinary practice of law and through the entity used by the attorney in the ordinary practice of law, and not holding himself or herself out as a debt settlement company, and not providing debt settlement services, except as incidental to legal representation;

(B) any public officer while acting in an official capacity and any person acting under court order; or

(C) any person while performing services incidental to the dissolution, winding up, or liquidation of a partnership, corporation, or other business enterprise; or

(D) any bank, trust company, savings bank, savings and loan association, or credit union, whether incorporated, chartered, or organized under the laws of this state or any other state or the United States, or any operating subsidiary of any such bank, trust company, savings bank, savings and loan association, or credit union.

(ii) such other persons as may be specifically exempted by the superintendent in his or her sole discretion and consistent with the purposes of this article and the rules and regulations promulgated hereunder.

6. "Debt settlement services" means:

(a) offering to provide or providing advice or services, or offering to act or acting as an intermediary between or on behalf of a debtor and one or more of the debtor's creditors, where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the debtor's unsecured debt to a creditor in an amount less than the principal amount of the debt or in an amount less than the current outstanding balance of the debt; or

(b) offering to provide services related to or providing services advising, encouraging, assisting, or counseling a debtor to accumulate funds for the primary purpose of proposing, obtaining, or seeking to obtain a settlement, adjustment, or satisfaction of the debtor's unsecured debt to a creditor in an amount less than the principal amount of the debt or in an amount less than the current outstanding balance of the debt; provided, however, that debt settlement services shall not include:

(i) "budget planning" as defined in section four hundred fifty-five of the general business law; or

(ii) the services of an attorney in providing information, advice, or legal representation with respect to filing a case or proceeding under Title 11 of the United States Code.

7. "Debt settlement services agreement" means a contract or other agreement with a debtor related to the provision of debt settlement services.

8. "Enrollment fee" means any fee, obligation, or compensation paid or to be paid by the debtor to a debt settlement company in consideration of or in connection with establishing a debt settlement services agreement.

9. "Maintenance fee" means any fee, obligation, or compensation paid or to be paid by a debtor to a debt settlement company in consideration of or in connection with maintaining the relationship and services provided by a debt settlement company in accordance with a debt settlement services agreement.

10. "Person" means an individual, partnership, limited liability company, corporation, association, or any other legal entity.

11. "Principal amount of the debt" means the total amount owed by a debtor to one or more creditors for a debt that is included in a debt settlement services agreement at the time when the debtor enters into such agreement.

12. "Settlement fee" means any fee, obligation, or compensation paid or to be paid by a debtor to a debt settlement company in consideration of or in connection with an agreement or other arrangement on the part of a creditor to accept less than the principal amount of the debt as satisfaction of the creditor's claim against the debtor.

§ 588-b. Doing business without license prohibited. 1. Except as provided in subdivision three of this section, no person shall engage in the business of a debt settlement company in this state without first obtaining a license from the superintendent in accordance with the licensing procedure provided in this article and such rules and regulations as may be promulgated hereunder.

2. The business of a debt settlement company is conducted in this state if the debt settlement company, its employees, or its agents are located in this state or if the debt settlement company advertises, solicits, offers, or contracts to provide debt settlement services to debtors then resident in this state.

3. If a debt settlement company is licensed under this article, subdivision one of this section does not apply to any employee of such licensee.

§ 588-c. Application for license. 1. Application for a license required under this article shall be in writing, under oath, and in the form prescribed by the superintendent, and shall contain the following:

(a) the exact name and complete street address of the applicant and, if applicable, its date of incorporation or organization;

(b) the name and complete business and residential address and occupation of each officer and director of the applicant and each person that owns at least ten percent of the shares or other ownership interests of the applicant;

(c) the complete street address of the principal office from which the business is to be conducted;

(d) if the applicant has one or more branches, subsidiaries, or affiliates located in this state, soliciting business in this state, or doing business with residents of this state, the complete address of each such place of business; and

(e) such other pertinent information as the superintendent may require, including but not limited to evidence indicating that the applicant, or an officer, director, or manager of such applicant has at

least one year of experience in financial services or related fields applicable to debt settlement services.

2. An applicant shall file a master application for its principal office and supplemental applications for each branch office that will conduct the business of a debt settlement company in this state.

3. Upon original application for a license or licenses, the applicant shall pay an investigation fee in an aggregate amount as prescribed pursuant to section eighteen-a of this chapter. No additional investigation fee shall be required for any subsequent application for a license unless such application is subsequent to a denial of a license or to a revocation, suspension, surrender, or termination of a license; provided, however, that an application to establish a branch office of the licensee shall be accompanied by the fee prescribed in section eighteen-a of this chapter.

4. As a condition for the issuance and retention of a license, and subject to such regulations as the superintendent shall prescribe, applicants for a license shall file with the superintendent a surety bond in favor or the superintendent, issued by a bonding company or insurance company authorized to do business in this state, and in a form satisfactory to the superintendent.

(a) In lieu of the surety bond required by this subdivision, an applicant may pledge to the superintendent and maintain in a pledge account with such banks, savings banks, savings and loan associations, trust companies, national banks, federal savings banks, or federal savings and loan associations in the state as such licensee may designate and the superintendent may approve:

(i) interest-bearing bills, notes, bonds, debentures, or other obligations issued or guaranteed by the United States or any state or other local governmental entity or any instrumentality thereof, bearing a rating of one of the three highest grades by a nationally recognized statistical rating organization that has been engaged in rating state and municipal issues for a period of not less than five years;

(ii) dollar deposits; or

(iii) such other assets or letters of credit as the superintendent shall by rule or regulation permit.

(b) Except as provided hereunder, the principal amount of such surety bond or deposit shall be two hundred fifty thousand dollars. The superintendent may:

(i) require a larger bond or deposit if he or she determines, in his or her sole discretion, that a licensee has engaged in a pattern of conduct resulting in bona fide debtor complaints of misconduct and that such increased bond or deposit is necessary for the protection of debtors; or

(ii) increase or decrease the amount of such bond or deposit based upon the applicant's or licensee's financial condition, business plan, business experience, or any other factor the superintendent considers appropriate.

(c) The proceeds of such surety bond or deposit shall constitute a trust fund to be used exclusively:

(A) to reimburse fees that have been improperly charged to or collected from debtors with respect to the business of a debt settlement company in this state, as such business is described in section five hundred eighty-eight-b of this article;

(B) to reimburse amounts that have not been properly distributed to creditors or properly returned to debtors with respect to the business

of a debt settlement company in this state, as such business is described in section five hundred eighty-eight-b of this article; and

(C) to pay outstanding banking department examination costs and assessments.

§ 588-d. Conditions for issuance of a license; procedure where application denied. Upon the filing of an application for a license, if the superintendent shall find that the financial responsibility, experience, character, and general fitness of the applicant, and of the control persons, officers, and directors thereof are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this article, he or she shall thereupon issue a license in duplicate to engage in debt settlement services in accordance with the provisions of this article. The superintendent shall transmit one copy of such license to the applicant and file the other in the office of the department. Such license shall remain in full force and effect until it is surrendered by the licensee or revoked, suspended, or terminated as hereinafter provided. If the superintendent shall not so find, he or she shall not issue such license and he or she shall notify the applicant of the denial.

§ 588-e. License provisions. Each license issued under this article shall state the principal office address and, if applicable, the address of the branch office for which it was issued. Such license shall state fully the name of the licensee and, if applicable, the date and place of its incorporation or organization. A copy of such license shall be prominently posted in the principal office and, if applicable, such branch office. Such license shall not be transferable or assignable. In the event the location at which the business is to be conducted shall be changed, the licensee shall forthwith notify the superintendent who shall thereupon without charge attach to the license a rider setting forth such changed location.

§ 588-f. Changes in officers or directors of licensee. In the event that there shall be any change among the officers or directors of any licensee, the licensee shall promptly notify the superintendent of the name, address, and occupation of each new officer or director and provide such other information as the superintendent may require.

§ 588-g. Changes in control. 1. It shall be unlawful except with the prior approval of the superintendent for any action to be taken which results in a change of control of the business of a licensee. Prior to any change of control, the person desirous of acquiring control of the business of a licensee shall make written application to the superintendent and pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter to the superintendent. The application shall contain such information as the superintendent may prescribe as necessary or appropriate for the purpose of making the determination required by subdivision two of this section.

2. The superintendent shall approve or disapprove the proposed change of control of a licensee in accordance with the provisions of section five hundred eighty-eight-d of this article.

3. As used in this section, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of such licensee, the ownership of voting stock of any person which possesses such power or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls or holds with power to vote ten percent or more of the voting stock of

any licensee or of any person which owns, controls or holds with power to vote ten percent or more of the voting stock of any licensee, but no person shall be deemed to control a licensee solely by reason of being an officer or director of such licensee or person. The superintendent may in his or her discretion, upon the application of a licensee or any person who, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such licensee, determine whether or not the ownership, control or holding of such voting stock constitutes or would constitute control of such licensee for purposes of this section.

§ 588-h. Grounds for suspension, revocation, or termination of license; procedure. 1. In addition to the authority set forth in subdivision two of this section, the superintendent may suspend or revoke any license issued under this article if, after notice and a hearing, he or she shall find that:

(a) the licensee has violated any provisions of this article, or of any rule or regulation made by the superintendent under and within the authority of this article;

(b) any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the superintendent in refusing originally to issue such license; or

(c) the licensee or an officer, director, or control person of the licensee has been convicted of a crime against the laws of this state or any other state or of the United States involving moral turpitude or fraudulent or dishonest actions, or a final judgment in a court of competent jurisdiction has been entered against the licensee or an officer, director, or control person of the licensee in a civil action arising from fraud, misrepresentation, or deceit.

2. (a) The superintendent may, for good cause, without notice or a hearing, issue an order suspending any license issued pursuant to this article for a period not exceeding ninety days, pending investigation. "Good cause", as used in this subdivision, shall exist only when the licensee has defaulted or is likely to default in performing its financial engagements or engages or has engaged in dishonest or inequitable practices which may cause substantial harm to the persons afforded the protection of this article.

(b) The superintendent may, in his or her sole discretion, without notice or a hearing, issue an order suspending any license issued pursuant to the authority of this article upon the failure of such licensee to make any payments as required by this chapter.

(c) The superintendent may, in his or her sole discretion, without notice or a hearing, issue an order suspending any license issued pursuant to the authority of this article:

(i) thirty days after the date the licensee fails to file any report required under this article to be filed by it with the superintendent;

(ii) immediately upon the licensee filing a petition in bankruptcy;

(iii) at least thirty days after the licensee has had filed against it a petition in bankruptcy; or

(iv) immediately upon the receipt by the superintendent of notice that the surety bond required pursuant to section five hundred eighty-eight-c of this article is no longer in effect or that the value of assets in the pledge account is less than the required amount.

3. If the superintendent has issued an order suspending a license issued pursuant to the authority of this article pursuant to paragraph (a) of subdivision two of this section, such license may be reinstated if the superintendent determines, in his or her sole discretion after

investigation, that good cause therefor did not exist or no longer exists. If the superintendent has issued an order suspending a license issued pursuant to paragraph (b) or (c) of subdivision two of this section, such license may be reinstated, if the superintendent determines, in his or her sole discretion, that the licensee has cured all deficiencies set forth in such order by the close of business ninety days after the date of such suspension order, including, without limitation, making any overdue payment, having any such bankruptcy petition dismissed, or having such bond reinstated or depositing all required additional assets. Otherwise, in the case of a suspension pursuant to paragraph (b) or (c) of subdivision two of this section, unless the superintendent has, in his or her sole discretion, extended such suspension, all licenses of such licensee shall be deemed to be automatically terminated by operation of law at the close of business on such nineteenth day.

4. Except as provided for in subdivision two of this section, no license shall be revoked or suspended except after notice and a hearing thereon.

5. With the prior consent of the superintendent, any licensee may surrender any license by delivering to the superintendent written notice that it thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender or its obligations to the superintendent for assessments, fees, or administrative actions with respect to the periods before such surrender.

6. No revocation, suspension, termination, or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any person.

7. Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, suspended, or terminated in accordance with the provisions of this article, but the superintendent shall have authority to reinstate a suspended license or to issue a new license to a licensee whose license shall have been revoked if no fact or condition then exists which would have warranted the superintendent in refusing originally to issue such license under this article.

8. Whenever the superintendent shall revoke or suspend a license issued pursuant to this article, he or she shall forthwith execute in duplicate a written order to that effect. The superintendent shall file one copy of such order in the office of the department and shall forthwith serve the other copy upon the licensee. Any such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules. Such application for review as authorized by this section must be made within thirty days from the date of such order of suspension or revocation.

9. Whenever a license shall have terminated in accordance with this article, the superintendent shall notify the licensee that the license has terminated and that the licensee may not engage in the business of a debt settlement company in this state.

§ 588-i. Advertising and marketing practices. 1. A debt settlement company shall not, expressly or by implication, make any unfair or deceptive representations, or any omissions of material facts, in any of its advertising or marketing communications concerning debt settlement services.

2. All advertising and marketing communications concerning debt settlement services shall disclose the following information clearly and

conspicuously: "Debt settlement services are not appropriate for everyone. Failure to pay your monthly bills in a timely manner will result in increased balances and will harm your credit rating. Not all creditors will agree to reduce the amount you owe, and they may pursue collection, including lawsuits."

3. All advertising and marketing communications of a licensed debt settlement company concerning debt settlement services shall indicate that the debt settlement company is licensed by the department and shall contain the name and office address of such debt settlement company, which shall conform to a name and address on record with the department.

§ 588-j. Individualized financial analysis; statement. 1. Prior to entering into a debt settlement services agreement, a debt settlement company shall prepare and provide to the debtor in writing and retain a copy of:

(a) an individualized financial analysis, including a listing of the debtor's income, expenses, and debts; and

(b) a statement containing:

(i) a description of the services to be provided under the proposed debt settlement services agreement;

(ii) a good faith estimate of the time it will take to complete all steps necessary for a settlement of each debt included under the proposed debt settlement services agreement;

(iii) the total amount of debt owed to each creditor included under the proposed debt settlement services agreement;

(iv) the total amount of money estimated to be necessary to complete all steps necessary for a settlement of each debt included under the proposed debt settlement services agreement; and

(v) the monthly targeted amount of money necessary to complete all steps necessary for a settlement of each debt included under the proposed debt settlement services agreement.

2. A debt settlement company shall not enter into a debt settlement services agreement unless it makes written determinations, supported by the financial analysis, that:

(a) the debtor can reasonably meet the requirements of such proposed debt settlement services agreement, including the fees and the savings goals; and

(b) such proposed debt settlement services agreement will be suitable for the debtor at the time it is to be signed.

§ 588-k. Required pre-agreement disclosures and warnings. 1. Before the debtor signs a debt settlement services agreement, the debt settlement company shall provide an oral and written notice to the debtor that clearly and conspicuously discloses all of the following:

(a) debt settlement services may not be suitable for all debtors;

(b) using debt settlement services likely will harm the debtor's credit history, credit rating, and credit score;

(c) using debt settlement services does not stop creditor collection activity, including creditor lawsuits and garnishments;

(d) not all creditors will accept a reduction in the balance, interest rate, or fees a debtor owes;

(e) the debtor should inquire about other means of dealing with debt, including but not limited to budget planning and bankruptcy;

(f) the debtor remains obligated to make periodic or scheduled payments to creditors while participating in a debt settlement program;

(g) the failure to make periodic or scheduled payments to a creditor is likely to:

(i) harm the debtor's credit history, credit rating, and/or credit score;

(ii) lead the creditor to increase lawful collection activity, including litigation, garnishment of the debtor's wages, and judgment liens on the debtor's property; and

(iii) lead to the imposition by the creditor of interest charges, late fees, and other penalty fees, increasing the amount owed by the debtor; and

(h) the debtor may be required to pay taxes on any amount of debt that is forgiven.

2. The written notice required by subdivision one of this section shall be entitled "Debtor Notice and Rights Form".

3. Prior to signing a debt settlement services agreement, the debtor shall sign and date an acknowledgment form at the end of the Debtor Notice and Rights Form. The acknowledgment form shall state: "I, the debtor, have received from the debt settlement company a copy of the form entitled Debtor Notice and Rights Form." The debt settlement company or its representative shall also sign and date the acknowledgment form, which shall include the name and address of the debt settlement company. The acknowledgment form shall be in duplicate and incorporated into the Debtor Notice and Rights Form. The original acknowledgment form shall be retained by the debt settlement company, and the duplicate copy shall be given to the debtor.

4. The requirements of this section are satisfied if the debt settlement company gives the debtor the following warning verbatim, both orally and in writing, with the caption "DEBTOR NOTICE AND RIGHTS FORM" in at least twenty-eight-point font and the remaining portion in at least fourteen-point font, before the debtor signs a debt settlement services agreement:

"DEBTOR NOTICE AND RIGHTS FORM

CAUTION

Using debt settlement services will LIKELY HARM your credit history, credit rating, and credit score.

We CANNOT GUARANTEE that you will successfully reduce or eliminate your debt.

YOU REMAIN OBLIGATED TO MAKE PAYMENTS TO YOUR CREDITORS. If you stop paying your creditors, there is a strong likelihood some or all of the following may happen:

- CREDITORS MAY STILL CONTACT YOU AND TRY TO COLLECT.
- CREDITORS MAY STILL SUE YOU FOR THE MONEY YOU OWE.
- YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.
- LIENS MAY STILL BE PLACED ON YOUR PROPERTY.
- YOUR CREDIT HISTORY, CREDIT RATING, AND/OR CREDIT SCORE LIKELY WILL BE HARMED.
- THE AMOUNT OF MONEY YOU OWE MAY INCREASE DUE TO CREDITOR IMPOSITION OF INTEREST CHARGES, LATE FEES, AND OTHER PENALTY FEES.
- NOT ALL CREDITORS WILL AGREE TO ACCEPT A BALANCE REDUCTION.

IF WE DO SETTLE YOUR DEBT, YOU MAY BE REQUIRED TO PAY TAXES ON THE AMOUNT FORGIVEN.

DEBT SETTLEMENT SERVICES ARE NOT RIGHT FOR EVERYONE. YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR ADDRESSING YOUR DEBT, SUCH AS BUDGET PLANNING OR A BANKRUPTCY FILING.

YOUR RIGHT TO CANCEL

If you sign a debt settlement services agreement, you have the right to cancel at any time and receive a full refund of all unearned fees you

have paid to the debt settlement company and all funds placed in your debtor settlement account that have not been paid to any creditors. If you cancel within ninety days of signing the debt settlement services agreement you also have the right to receive a full refund of any enrollment fees you have paid.

ACKNOWLEDGMENT BY DEBTOR

I, the debtor, have received from the debt settlement company a copy of the form entitled Debtor Notice and Rights Form."

§ 588-l. Debt settlement services agreements. 1. A debt settlement company shall not provide debt settlement services to a debtor without a written debt settlement services agreement signed and dated by both the debtor and the debt settlement company.

2. Any debt settlement services agreement entered into in violation of the provisions of this section is void.

3. Each debt settlement company shall submit to the banking department any form of debt settlement services agreement it intends to use.

4. A debt settlement services agreement shall disclose all of the following clearly and conspicuously:

(a) the name and address of the debtor;

(b) the date of execution of the debt settlement services agreement;

(c) the legal name of the debt settlement company, including any other business names used in this state by the debt settlement company;

(d) the complete street address of the debt settlement company, which shall conform to an address on record with the department;

(e) the license number of the principal office and, if applicable, of the branch office under which the debt settlement company is licensed in this state;

(f) a toll-free telephone number at which the debtor may speak with a representative of the debt settlement company during normal business hours;

(g) a complete list of the debtor's accounts, debts, and obligations covered by the debt settlement services agreement, including the name of each creditor and the principal amount of each debt;

(h) a description of the services to be provided by the debt settlement company, including the expected time frame for settlement for each account, debt, or obligation included in paragraph (g) of this subdivision;

(i) an itemized list of all fees, including any enrollment fee and settlement fees to be paid by the debtor to the debt settlement company, and the date, approximate date, or circumstances under which each fee will become due;

(j) a good faith estimate of the total amount of all fees to be collected by the debt settlement company from the debtor for the provision of debt settlement services under the debt settlement services agreement;

(k) a statement of the proposed savings goals for the debtor, stating:

(i) the amount to be saved per month;

(ii) the time period over which the savings goals extend;

(iii) the amount of money the debtor must save before a settlement offer will be made to each of the debtor's creditors; and

(iv) the total amount of the savings expected to be paid by the debtor pursuant to the terms of the debt settlement services agreement;

(l) the written individualized financial analysis required by section five hundred eighty-eight-j of this article;

(m) a written notice to the debtor stating:

(i) that the debtor may cancel the debt settlement services agreement at any time; and

(ii) that upon such cancellation:

(A) all powers of attorney granted to the debt settlement company by the debtor shall be considered revoked and voided; and

(B) the debtor may be entitled to a refund. The terms of such refund shall also be stated and shall be consistent with the requirements of section five hundred eighty-eight-o of this article.

(n) a form the debtor may use to cancel the debt settlement services agreement pursuant to the provisions of section five hundred eighty-eight-o of this article. The form shall disclose clearly and conspicuously how the debtor can cancel the debt settlement services agreement, including applicable addresses, telephone numbers, facsimile numbers, and electronic mail addresses the debtor can use to cancel the debt settlement services agreement;

(o) a clear and conspicuous notice to the debtor that the debtor may contact the department with any questions or complaints regarding the debt settlement company along with the address, telephone number and internet website of the department.

5. (a) A debt settlement services agreement may confer on a debt settlement company a power of attorney to settle the debtor's debt for no more than fifty percent of the principal amount of the debt. An agreement may not confer a power of attorney to settle a debt for more than fifty percent of that amount, but may confer a power of attorney to negotiate with creditors of the debtor on behalf of the debtor. A debt settlement services agreement must provide that the debt settlement company will obtain the assent of the debtor after a creditor has assented to a settlement for more than fifty percent of the principal amount of the debt.

(b) A debt settlement services agreement may not provide for application of the law of any jurisdiction other than the United States and this state.

6. If a debt settlement company communicates with a debtor primarily in a language other than English, then the debt settlement company shall furnish to the debtor a written translation in that other language of all the disclosures and documents required by this article.

§ 588-m. Fees. 1. The types of fees that a debt settlement company may charge a debtor are the following:

(a) enrollment fees; and

(b) settlement fees.

2. All fee types not included under subdivision one of this section are prohibited, including maintenance fees.

3. The amount of an enrollment fee charged by a debt settlement company shall not exceed fifty dollars or such other amount as set by the superintendent.

4. The amount of the settlement fee charged by a debt settlement company with respect to each debt covered by a debt settlement services agreement shall not exceed the lesser of:

(a) the amount that is reasonable and commensurate to the debt settlement services provided to the debtor; and

(b) the amount that is twenty percent of the difference between:

(i) the principal amount of the debt; and

(ii) the amount:

(A) paid by the debt settlement company to the creditor pursuant to the settlement negotiated by the debt settlement company on behalf of

the debtor as full and complete satisfaction of the creditor's claim with regard to that debt; or

(B) negotiated by the debt settlement company and paid by the debtor to the creditor pursuant to a settlement negotiated by the debt settlement company on behalf of the debtor as full and complete satisfaction of the creditor's claim with regard to that debt.

5. A debt settlement company shall not collect any settlement fee from a debtor until:

(a) the creditor enters into a legally enforceable agreement with the debtor to accept funds in a specific dollar amount as full and complete satisfaction of the creditor's claim with regard to that debt; and

(b) those funds are provided to the creditor:

(i) by the debt settlement company on behalf of the debtor; or

(ii) directly by the debtor pursuant to a settlement negotiated by the debt settlement company.

6. It shall be unlawful to split or divide the provision of debt settlement services to a debtor into separate debt settlement services agreements for the purpose of collecting additional fees from such debtor.

§ 588-n. Debtor settlement accounts; monthly accounting. 1. A debt settlement company that receives funds from a debtor shall hold all funds received for a debtor settlement account in a properly designated bank account in a federally insured depository institution.

(a) Such funds shall:

(i) constitute trust funds owned by the debtor from whom they were received;

(ii) remain the property of such debtor until the debt settlement company disburses the funds to a creditor on behalf of such debtor;

(iii) be kept separate and apart at all times from funds belonging to the debt settlement company or any of its officers, employees, or agents; and

(iv) be deposited in such bank account not later than the end of the business day following receipt by the debt settlement company or its agent.

(b) A debt settlement company or its agent that maintains one or more debtor settlement accounts shall obtain and preserve a written agreement from each bank in which any such account is maintained. Such written agreement shall expressly provide that the funds in such debtor settlement account shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of such bank or any person claiming through such bank.

(c) Any interest earned on a debtor settlement account shall be credited to the debtor. If the funds of multiple debtors are kept in a single interest earning bank account, then the interest earned shall be deposited pro rata among the debtors whose funds are in the account.

(d) A debt settlement company may not hold funds received for a debtor settlement account in an account administered by a person that gives or accepts any money or other compensation in exchange for referrals of business involving the debt settlement company.

2. A debt settlement company shall, no less than monthly, provide each debtor with which it has a debt settlement services agreement a statement of fees paid, settlements completed, remaining debts and, if funds are held in a bank account pursuant to subdivision one of this section, account balances.

3. Nothing in this article requires the establishment of a debtor settlement account if no debtor funds other than enrollment fees or

earned settlement fees are held or controlled by a debt settlement company.

§ 588-o. Cancellation of debt settlement services agreement; right to refunds. 1. A debtor may cancel a debt settlement services agreement at any time until after the debt settlement company has fully performed each service the debt settlement company contracted to perform or represented that it would perform.

2. If a debtor cancels a debt settlement services agreement not later than ninety days after the date of the execution of the debt settlement services agreement or at any time upon a violation of a provision of this article by the debt settlement company, the debt settlement company shall refund to the debtor:

(a) all fees paid to the debt settlement company by the debtor, with the exception of any earned settlement fee; and

(b) all funds provided by the debtor to the debt settlement company that:

(i) have accumulated in a debtor settlement account; and

(ii) the debt settlement company has not disbursed to creditors.

3. If a debtor cancels a debt settlement services agreement later than ninety days after the date of the execution of the debt settlement services agreement and for any reason other than for a violation of a provision of this article by the debt settlement company, the debt settlement company shall refund to the debtor:

(a) all fees paid to the debt settlement company by the debtor, with the exception of any earned settlement fee and any enrollment fee; and

(b) all funds provided by the debtor to the debt settlement company that:

(i) have accumulated in a debtor settlement account; and

(ii) the debt settlement company has not disbursed to creditors.

4. A debt settlement company shall make any refund required under this section within five business days after receipt of written notice of cancellation, and shall include with such refund a full statement of account showing:

(a) the fees received by the debt settlement company from the debtor;

(b) the fees refunded to the debtor by the debt settlement company;

(c) the payments made by the debt settlement company to creditors on behalf of the debtor;

(d) the settlement fees earned, if any, by the debt settlement company by settling debt on behalf of the debtor;

(e) the savings of the debtor held by the debt settlement company immediately prior to such refund; and

(f) the savings of the debtor refunded to the debtor by the debt settlement company.

5. Upon cancellation of a debt settlement services agreement by the debtor:

(a) all powers of attorney and direct debit authorizations granted to the debt settlement company by the debtor shall be considered revoked and voided; and

(b) the debt settlement company shall immediately take any action necessary to reflect cancellation of the debt settlement services agreement, including but not limited to notifying the recipient of any direct debit authorization.

6. Upon the cancellation of a debt settlement services agreement, the debt settlement company shall provide timely written notice of the cancellation of such agreement to each of the creditors with whom the

debt settlement company has had any prior communication on behalf of the debtor in connection with the provision of any debt settlement services.

§ 588-p. Obligation of good faith. A debt settlement company shall act in good faith in all matters under this article.

§ 588-q. Prohibited activities. 1. No person, except a licensee, may make any representation, directly or indirectly, orally or in writing that he, she, or it is licensed under this article.

2. No person, other than a licensee or a person exempt from the licensing requirements of this article, shall use the title "debt settlement company" or the terms "debt settlement" or "debt settlement services" in any advertising, marketing communication, business card, or letterhead.

3. A debt settlement company shall not do any of the following:

(a) charge or collect from a debtor any fee not permitted by, in an amount in excess of the maximum amount permitted by, or at a time earlier than permitted by section five hundred eighty-eight-m of this article;

(b) include in a debt settlement services agreement any secured debt;

(c) advise or represent, expressly or by implication, that debtors should stop making payments to their creditors;

(d) advise or represent, expressly or by implication, that debtors should stop communicating with their creditors;

(e) engage in any practice that prohibits or limits the debtor or any creditor from communication directly with one another;

(f) change the mailing address on any of a debtor's statements from a creditor;

(g) make loans or offer credit or solicit or accept any note, mortgage, or negotiable instrument other than a check signed by the debtor and dated no later than the date of signature;

(h) take any confession of judgment or power of attorney to confess judgment against the debtor or appear as the debtor or on behalf of the debtor in any judicial, administrative, or other action or proceeding;

(i) take any release or waiver of any obligation to be performed on the part of the debt settlement company or any right of the debtor;

(j) advertise, display, distribute, broadcast, or televise services or permit services to be advertised, displayed, distributed, broadcasted, or televised, in any manner whatsoever, that contains any false, misleading, or deceptive statements or representations with regard to any matter involving the business of debt settlement services, including but not limited to the fees to be charged, the services to be performed, the results or outcomes of those services, or the effect those services will have on a debtor's credit rating or on creditor collection efforts;

(k) receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the debtor explicitly for the provision of debt settlement services to that debtor;

(l) offer or provide gifts or bonuses to debtors for signing a debt settlement services agreement or for referring another potential customer or customers;

(m) except with the prior consent of the debtor, disclose to anyone the name or any personal information of a debtor for whom the debt settlement company has provided or is providing debt settlement services other than to a debtor's own creditors or the debt settlement company's agents or affiliates for the purpose of providing debt settlement services. "Personal information of a debtor" as used herein shall include but not be limited to a debtor's name, photograph, address, telephone number, social security number, date of birth, driver's iden-

tification number, credit card number, bank account number, mother's maiden name, medical or disability information, if any, as well as any other identification number which a licensee may possess;

(n) enter into a debt settlement services agreement with a debtor without first providing the disclosures and financial analysis and making the determinations required by this article;

(o) misrepresent any material fact, make a material omission, or make a false promise directed to one or more debtors in connection with the solicitation, offering, contracting, or provision of debt settlement services;

(p) violate the provisions of applicable do-not-call statutes;

(q) purchase debts or engage in the practice or business of debt collection;

(r) represent or imply to a person participating in or considering debt settlement services that the purchase of any ancillary goods or services is required;

(s) use a communication which simulates in any manner a legal or judicial process, or which gives the false appearance of being authorized, issued, or approved by a government, governmental agency, or attorney-at-law; or

(t) make a representation that the debt settlement company will furnish money to pay bills or prevent attachment.

§ 588-r. Superintendent authorized to examine. For the purpose of discovering violations of this article or securing information lawfully required by him or her hereunder, the superintendent may at any time, and as often as he or she may determine, either personally or by a person duly designated by him or her, investigate the business and examine the books, accounts, records, and files used therein of every licensee hereunder. For that purpose the superintendent and his or her duly designated representative shall have free access to the offices and place of business, books, accounts, papers, records, files, safes and vaults of all such licensees. The superintendent and any person duly designated by him or her shall have authority to require the attendance of and to examine under oath all persons whose testimony he or she may require relative to such business. The expenses incurred in making any examination pursuant to this section shall be assessed against and paid by the licensee so examined, except that traveling and subsistence expenses so incurred shall be charged against and paid by licensees in such proportions as the superintendent shall deem just and reasonable, and such proportionate charges shall be added to the assessment of the other expenses incurred upon each examination. Upon written notice by the superintendent of the total amount of such assessment, the licensee shall become liable for and shall pay such assessment to the superintendent.

§ 588-s. Licensee's books and records; reports. 1. The licensee shall create and use in its business such books, accounts, and records as will enable the superintendent to determine whether such licensee is complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent hereunder. Every licensee shall preserve such books, accounts, and records for at least six years by any manner permitted by this chapter.

2. Each licensee shall annually, on or before the first day of February, file a report with the superintendent giving such information as the superintendent may require concerning the business and operations during the preceding calendar year of such licensee under authority of this article. Such report shall be subscribed and affirmed as true by

the licensee under the penalties of perjury and shall be in the form prescribed by the superintendent. In addition to annual reports, the superintendent may require such additional regular or special reports as he or she may deem necessary to the proper supervision of licensees under this article. Such additional reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

3. Each licensee, within one hundred twenty days of the close of the licensee's fiscal year, shall submit an independently audited financial statement to the superintendent.

§ 588-t. Penalties; noncompliance. 1. Any person who violates any provision of the licensing requirements of section five hundred eighty-eight-b of this article shall be guilty of a class A misdemeanor, punishable as provided in articles seventy and eighty of the penal law.

2. Any debt settlement services agreement that does not comply with the provisions of this article is void.

3. Any waiver by a debtor of any protection provided by or any right of the debtor under this article is void.

4. Any attempt by any person to obtain a waiver from any debtor of any protection provided by or any right or protection of the debtor or any obligation or requirement of the debt settlement company under this article shall be a violation of this article.

5. Upon proper notice of a void debt settlement services agreement, the debt settlement company shall make a refund to the debtor as if the debt settlement services agreement had been cancelled as provided in subdivision two of section five hundred eighty-eight-o of this article.

6. In addition to such penalties as may otherwise be applicable by law, the superintendent may, after notice and hearing as provided elsewhere in this article, require any person found violating the provisions of this article or the rules or regulations promulgated hereunder to pay to the people of this state an additional penalty for each violation of the article or any regulation or policy promulgated hereunder a sum not to exceed an amount as determined pursuant to section forty-four of this chapter for each such violation.

7. Nothing in this article shall create a private right of action on behalf of a debtor against a debt settlement company for violations of this article.

8. Nothing in this article shall limit any statutory or common-law right of any person to bring any action in any court for any act, or the right of the state to punish any person for any violation of any law.

§ 588-u. Authority of superintendent. The superintendent is hereby authorized and empowered to make, in addition hereto and not inconsistent herewith, such general rules and regulations, and such specific rulings, demands, and findings as he or she may deem necessary for the proper conduct of the business authorized and licensed hereunder and for the enforcement of this article.

§ 588-v. Severability. If any word, phrase, clause, sentence, paragraph, subdivision, section, or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof which can be given effect without the invalid provision, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, subdivision, section, or part of this article directly involved in the controversy in which the judgment shall have been rendered.

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

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