

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 (underscoring) is new; matter in brackets
[-] is old law to be omitted.

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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.