

STATE OF NEW YORK

1427

2025-2026 Regular Sessions

IN ASSEMBLY

January 9, 2025

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:

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. Budget planning, as used in this article, means
6 the making of a contract between a person or entity engaged in the busi-
7 ness of budget planning with a particular debtor whereby:

8 (i) the debtor agrees to pay a sum or sums of money in any manner or
9 form and the person or entity engaged in the business of budget planning
10 distributes, or supervises, coordinates or controls the distribution of,
11 or has a contractual relationship with another person or entity that
12 distributes, or supervises, coordinates or controls such distribution
13 of, the same among certain specified creditors in accordance with a
14 periodic payment plan agreed upon; 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; provided, however, that "budget planning" does not
20 include "debt settlement services" as defined in section five hundred
21 eighty-eight-a of the banking law. For the purposes of this article, a
22 person or entity shall be considered as engaged in the business of budg-
23 et planning in New York, and subject to this article and the licensing
24 and other requirements of article twelve-C of the banking law, if such
25 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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1 and, in connection with such solicitation, 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.

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 char-
10 itable corporation as defined in paragraph (a) of section one hundred
11 two (Definitions) of the not for profit corporation law of this state,
12 or an entity incorporated in another state and having a similar not for
13 profit status, licensed by the superintendent, to engage in the business
14 of budget 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 § 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 § 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 § 3. Section 579 of the banking law, as amended by chapter 549 of the
49 laws of 2013, is amended to read as follows:

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

1 this article and without first obtaining a license from the superinten-
2 dent.

3 § 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 § 5. Section 584-b of the banking law is amended by adding a new
11 subdivision 4-a 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 § 6. Section 585 of the banking law, as amended by chapter 629 of the
15 laws of 2002, is amended to read as follows:

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

44 § 7. Subdivision 10 of section 36 of the banking law, as amended by
45 section 2 of part L of chapter 58 of the laws of 2019, is amended to
46 read as follows:

47 10. All reports of examinations and investigations, correspondence and
48 memoranda concerning or arising out of such examination and investi-
49 gations, including any duly authenticated copy or copies thereof in the
50 possession of any banking organization, bank holding company or any
51 subsidiary thereof (as such terms "bank holding company" and "subsidi-
52 ary" are defined in article three-A of this chapter), any corporation
53 or any other entity affiliated with a banking organization within the
54 meaning of subdivision six of this section and any non-banking subsid-
55 iary of a corporation or any other entity which is an affiliate of a
56 banking organization within the meaning of subdivision six-a of this

1 section, foreign banking corporation, licensed lender, licensed cashier
2 of checks, licensed mortgage banker, registered mortgage broker,
3 licensed mortgage loan originator, licensed sales finance company,
4 registered mortgage loan servicer, licensed student loan servicer,
5 licensed insurance premium finance agency, licensed transmitter of
6 money, licensed budget planner, licensed debt settlement company, any
7 other person or entity subject to supervision under this chapter, or the
8 department, shall be confidential communications, shall not be subject
9 to subpoena and shall not be made public unless, in the judgment of the
10 superintendent, the ends of justice and the public advantage will be
11 subserved by the publication thereof, in which event the superintendent
12 may publish or authorize the publication of a copy of any such report or
13 any part thereof in such manner as may be deemed proper or unless such
14 laws specifically authorize such disclosure. For the purposes of this
15 subdivision, "reports of examinations and investigations, and any corre-
16 spondence and memoranda concerning or arising out of such examinations
17 and investigations", includes any such materials of a bank, insurance or
18 securities regulatory agency or any unit of the federal government or
19 that of this state, any other state or that of any foreign government
20 which are considered confidential by such agency or unit and which are
21 in the possession of the department or which are otherwise confidential
22 materials that have been shared by the department with any such agency
23 or unit and are in the possession of such agency or unit.

24 § 8. Subdivisions 1, 2, 3 and 5 of section 39 of the banking law, as
25 amended by section 3 of part L of chapter 58 of the laws of 2019, are
26 amended to read as follows:

27 1. To appear and explain an apparent violation. Whenever it shall
28 appear to the superintendent that any banking organization, bank holding
29 company, registered mortgage broker, licensed mortgage banker, licensed
30 student loan servicer, registered mortgage loan servicer, licensed mort-
31 gage loan originator, licensed lender, licensed cashier of checks,
32 licensed sales finance company, licensed insurance premium finance agen-
33 cy, licensed transmitter of money, licensed budget planner, licensed
34 debt settlement company, out-of-state state bank that maintains a branch
35 or branches or representative or other offices in this state, or foreign
36 banking corporation licensed by the superintendent to do business or
37 maintain a representative office in this state has violated any law or
38 regulation, [~~he or she~~] the superintendent may, in [~~his or her~~] their
39 discretion, issue an order describing such apparent violation and
40 requiring such banking organization, bank holding company, registered
41 mortgage broker, licensed mortgage banker, licensed student loan servi-
42 cer, licensed mortgage loan originator, licensed lender, licensed cashier
43 of checks, licensed sales finance company, licensed insurance premium
44 finance agency, licensed transmitter of money, licensed budget planner,
45 licensed debt settlement company, out-of-state state bank that maintains
46 a branch or branches or representative or other offices in this state,
47 or foreign banking corporation to appear before [~~him or her~~] the super-
48 intendent, at a time and place fixed in said order, to present an expla-
49 nation of such apparent violation.

50 2. To discontinue unauthorized or unsafe and unsound practices. When-
51 ever it shall appear to the superintendent that any banking organiza-
52 tion, bank holding company, registered mortgage broker, licensed mort-
53 gage banker, licensed student loan servicer, registered mortgage loan
54 servicer, licensed mortgage loan originator, licensed lender, licensed
55 cashier of checks, licensed sales finance company, licensed insurance
56 premium finance agency, licensed transmitter of money, licensed budget

1 planner, licensed debt settlement company, out-of-state state bank that
2 maintains a branch or branches or representative or other offices in
3 this state, or foreign banking corporation licensed by the superinten-
4 dent to do business in this state is conducting business in an unauthor-
5 ized or unsafe and unsound manner, [~~he or she~~] the superintendent may,
6 in [~~his or her~~] their discretion, issue an order directing the discon-
7 tinuance of such unauthorized or unsafe and unsound practices, and
8 fixing a time and place at which such banking organization, bank holding
9 company, registered mortgage broker, licensed mortgage banker, licensed
10 student loan servicer, registered mortgage loan servicer, licensed mort-
11 gage loan originator, licensed lender, licensed cashier of checks,
12 licensed sales finance company, licensed insurance premium finance agen-
13 cy, licensed transmitter of money, licensed budget planner, licensed
14 debt settlement company, out-of-state state bank that maintains a branch
15 or branches or representative or other offices in this state, or foreign
16 banking corporation may voluntarily appear before [~~him or her~~] the
17 superintendent to present any explanation in defense of the practices
18 directed in said order to be discontinued.

19 3. To make good impairment of capital or to ensure compliance with
20 financial requirements. Whenever it shall appear to the superintendent
21 that the capital or capital stock of any banking organization, bank
22 holding company or any subsidiary thereof which is organized, licensed
23 or registered pursuant to this chapter, is impaired, or the financial
24 requirements imposed by subdivision one of section two hundred two-b of
25 this chapter or any regulation of the superintendent on any branch or
26 agency of a foreign banking corporation or the financial requirements
27 imposed by this chapter or any regulation of the superintendent on any
28 licensed lender, registered mortgage broker, licensed mortgage banker,
29 licensed student loan servicer, licensed cashier of checks, licensed
30 sales finance company, licensed insurance premium finance agency,
31 licensed transmitter of money, licensed budget planner, licensed debt
32 settlement company, or private banker are not satisfied, the superinten-
33 dent may, in the superintendent's discretion, issue an order directing
34 that such banking organization, bank holding company, branch or agency
35 of a foreign banking corporation, registered mortgage broker, licensed
36 mortgage banker, licensed student loan servicer, licensed lender,
37 licensed cashier of checks, licensed sales finance company, licensed
38 insurance premium finance agency, licensed transmitter of money,
39 licensed budget planner, licensed debt settlement company, or private
40 banker make good such deficiency forthwith or within a time specified in
41 such order.

42 5. To keep books and accounts as prescribed. Whenever it shall appear
43 to the superintendent that any banking organization, bank holding compa-
44 ny, registered mortgage broker, licensed mortgage banker, licensed
45 student loan servicer, registered mortgage loan servicer, licensed mort-
46 gage loan originator, licensed lender, licensed cashier of checks,
47 licensed sales finance company, licensed insurance premium finance agen-
48 cy, licensed transmitter of money, licensed budget planner, licensed
49 debt settlement company, agency or branch of a foreign banking corpo-
50 ration licensed by the superintendent to do business in this state, does
51 not keep its books and accounts in such manner as to enable [~~him or her~~]
52 the superintendent to readily ascertain its true condition, [~~he or she~~]
53 the superintendent may, in [~~his or her~~] their discretion, issue an order
54 requiring such banking organization, bank holding company, registered
55 mortgage broker, licensed mortgage banker, licensed student loan servi-
56 cer, registered mortgage loan servicer, licensed mortgage loan origina-

1 tor, licensed lender, licensed casher of checks, licensed sales finance
 2 company, licensed insurance premium finance agency, licensed transmitter
 3 of money, licensed budget planner, licensed debt settlement company, or
 4 foreign banking corporation, or the officers or agents thereof, or any
 5 of them, to open and keep such books or accounts as [~~he or she~~] the
 6 superintendent may, in [~~his or her~~] their discretion, determine and
 7 prescribe for the purpose of keeping accurate and convenient records of
 8 its transactions and accounts.

9 § 9. Paragraph (a) of subdivision 1 of section 44 of the banking law,
 10 as amended by section 4 of part L of chapter 58 of the laws of 2019, is
 11 amended to read as follows:

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

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

ARTICLE XII-CC

DEBT SETTLEMENT COMPANIES

Section 588-a. Definitions.

31 588-b. Doing business without license prohibited.

32 588-c. Application for license.

33 588-d. Conditions for issuance of a license; procedure where
 34 application denied.

35 588-e. License provisions.

36 588-f. Changes in officers or directors of licensee.

37 588-g. Changes in control.

38 588-h. Grounds for suspension, revocation, or termination of
 39 license; procedure.

40 588-i. Advertising and marketing practices.

41 588-j. Individualized financial analysis; statement.

42 588-k. Required pre-agreement disclosures and warnings.

43 588-l. Debt settlement services agreements.

44 588-m. Fees.

45 588-n. Debtor settlement accounts; monthly accounting.

46 588-o. Cancellation of debt settlement services agreement; right
 47 to refunds.

48 588-p. Obligation of good faith.

49 588-q. Prohibited activities.

50 588-r. Superintendent authorized to examine.

51 588-s. Licensee's books and records; reports.

52 588-t. Penalties; noncompliance.

53 588-u. Authority of superintendent.

54 588-v. Severability.

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

4 2. "Clearly and conspicuously" means that a statement, representation,
5 term, or disclosure is so presented as to be readily apparent and under-
6 stood by the person to whom it is being addressed. Factors to be consid-
7 ered for this purpose include but are not limited to size, placement,
8 color contrast, length, crawl time, and audibility.

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

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

16 5. "Debt settlement company" means any person:

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

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

25 (i) the following exempt persons:

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

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

33 (C) any person while performing services incidental to the dissol-
34 ution, winding up, or liquidation of a partnership, corporation, or
35 other business enterprise; or

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

41 (ii) such other persons as may be specifically exempted by the super-
42 intendent in their sole discretion and consistent with the purposes of
43 this article and the rules and regulations promulgated hereunder.

44 6. "Debt settlement services" means:

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

52 (b) offering to provide services related to or providing services
53 advising, encouraging, assisting, or counseling a debtor to accumulate
54 funds for the primary purpose of proposing, obtaining, or seeking to
55 obtain a settlement, adjustment, or satisfaction of the debtor's unse-
56 cured debt to a creditor in an amount less than the principal amount of

1 the debt or in an amount less than the current outstanding balance of
2 the debt; provided, however, that debt settlement services shall not
3 include:

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

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

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

12 8. "Enrollment fee" means any fee, obligation, or compensation paid or
13 to be paid by the debtor to a debt settlement company in consideration
14 of or in connection with establishing a debt settlement services agree-
15 ment.

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

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

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

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

32 § 588-b. Doing business without license prohibited. 1. Except as
33 provided in subdivision three of this section, no person shall engage in
34 the business of a debt settlement company in this state without first
35 obtaining a license from the superintendent in accordance with the
36 licensing procedure provided in this article and such rules and regu-
37 lations as may be promulgated hereunder.

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

43 3. If a debt settlement company is licensed under this article, subdi-
44 vision one of this section does not apply to any employee of such licen-
45 see.

46 § 588-c. Application for license. 1. Application for a license
47 required under this article shall be in writing, under oath, and in the
48 form prescribed by the superintendent, and shall contain the following:

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

51 (b) the name and complete business and residential address and occupa-
52 tion of each officer and director of the applicant and each person that
53 owns at least ten percent of the shares or other ownership interests of
54 the applicant;

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

1 (d) if the applicant has one or more branches, subsidiaries, or affil-
2 iates located in this state, soliciting business in this state, or doing
3 business with residents of this state, the complete address of each such
4 place of business; and

5 (e) such other pertinent information as the superintendent may
6 require, including but not limited to evidence indicating that the
7 applicant, or an officer, director, or manager of such applicant has at
8 least one year of experience in financial services or related fields
9 applicable to debt settlement services.

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

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

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

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

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

40 (ii) dollar deposits; or

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

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

46 (i) require a larger bond or deposit if the superintendent determines,
47 in their sole discretion, that a licensee has engaged in a pattern of
48 conduct resulting in bona fide debtor complaints of misconduct and that
49 such increased bond or deposit is necessary for the protection of
50 debtors; or

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

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

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

5 (ii) to reimburse amounts that have not been properly distributed to
6 creditors or properly returned to debtors with respect to the business
7 of a debt settlement company in this state, as such business is
8 described in section five hundred eighty-eight-b of this article; and

9 (iii) to pay outstanding banking department examination costs and
10 assessments.

11 § 588-d. Conditions for issuance of a license; procedure where appli-
12 cation denied. Upon the filing of an application for a license, if the
13 superintendent shall find that the financial responsibility, experience,
14 character, and general fitness of the applicant, and of the control
15 persons, officers, and directors thereof are such as to command the
16 confidence of the community and to warrant belief that the business will
17 be operated honestly, fairly, and efficiently within the purposes of
18 this article, the superintendent shall thereupon issue a license in
19 duplicate to engage in debt settlement services in accordance with the
20 provisions of this article. The superintendent shall transmit one copy
21 of such license to the applicant and file the other in the office of the
22 department. Such license shall remain in full force and effect until it
23 is surrendered by the licensee or revoked, suspended, or terminated as
24 hereinafter provided. If the superintendent shall not so find, they
25 shall not issue such license and shall notify the applicant of the
26 denial.

27 § 588-e. License provisions. Each license issued under this article
28 shall state the principal office address and, if applicable, the address
29 of the branch office for which it was issued. Such license shall state
30 fully the name of the licensee and, if applicable, the date and place of
31 its incorporation or organization. A copy of such license shall be prom-
32 inently posted in the principal office and, if applicable, such branch
33 office. Such license shall not be transferable or assignable. In the
34 event the location at which the business is to be conducted shall be
35 changed, the licensee shall forthwith notify the superintendent who
36 shall thereupon without charge attach to the license a rider setting
37 forth such changed location.

38 § 588-f. Changes in officers or directors of licensee. In the event
39 that there shall be any change among the officers or directors of any
40 licensee, the licensee shall promptly notify the superintendent of the
41 name, address, and occupation of each new officer or director and
42 provide such other information as the superintendent may require.

43 § 588-g. Changes in control. 1. It shall be unlawful except with the
44 prior approval of the superintendent for any action to be taken which
45 results in a change of control of the business of a licensee. Prior to
46 any change of control, the person desirous of acquiring control of the
47 business of a licensee shall make written application to the superinten-
48 dent and pay an investigation fee as prescribed pursuant to section
49 eighteen-a of this chapter to the superintendent. The application shall
50 contain such information as the superintendent may prescribe as neces-
51 sary or appropriate for the purpose of making the determination required
52 by subdivision two of this section.

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

1 3. As used in this section, the term "control" means the possession,
2 directly or indirectly, of the power to direct or cause the direction of
3 the management and policies of a licensee, whether through the ownership
4 of voting stock of such licensee, the ownership of voting stock of any
5 person which possesses such power or otherwise. Control shall be
6 presumed to exist if any person, directly or indirectly, owns, controls
7 or holds with power to vote ten percent or more of the voting stock of
8 any licensee or of any person which owns, controls or holds with power
9 to vote ten percent or more of the voting stock of any licensee, but no
10 person shall be deemed to control a licensee solely by reason of being
11 an officer or director of such licensee or person. The superintendent
12 may in their discretion, upon the application of a licensee or any
13 person who, directly or indirectly, owns, controls or holds with power
14 to vote or seeks to own, control or hold with power to vote any voting
15 stock of such licensee, determine whether or not the ownership, control
16 or holding of such voting stock constitutes or would constitute control
17 of such licensee for purposes of this section.

18 § 588-h. Grounds for suspension, revocation, or termination of
19 license; procedure. 1. In addition to the authority set forth in subdi-
20 vision two of this section, the superintendent may suspend or revoke any
21 license issued under this article if, after notice and a hearing, the
22 superintendent shall find that:

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

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

29 (c) the licensee or an officer, director, or control person of the
30 licensee has been convicted of a crime against the laws of this state or
31 any other state or of the United States involving moral turpitude or
32 fraudulent or dishonest actions, or a final judgment in a court of
33 competent jurisdiction has been entered against the licensee or an offi-
34 cer, director, or control person of the licensee in a civil action aris-
35 ing from fraud, misrepresentation, or deceit.

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

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

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

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

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

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

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

5 3. If the superintendent has issued an order suspending a license
6 issued pursuant to the authority of this article pursuant to paragraph
7 (a) of subdivision two of this section, such license may be reinstated
8 if the superintendent determines, in their sole discretion after inves-
9 tigation, that good cause therefor did not exist or no longer exists. If
10 the superintendent has issued an order suspending a license issued
11 pursuant to paragraph (b) or (c) of subdivision two of this section,
12 such license may be reinstated, if the superintendent determines, in
13 their sole discretion, that the licensee has cured all deficiencies set
14 forth in such order by the close of business ninety days after the date
15 of such suspension order, including, without limitation, making any
16 overdue payment, having any such bankruptcy petition dismissed, or
17 having such bond reinstated or depositing all required additional
18 assets. Otherwise, in the case of a suspension pursuant to paragraph (b)
19 or (c) of subdivision two of this section, unless the superintendent
20 has, in their sole discretion, extended such suspension, all licenses of
21 such licensee shall be deemed to be automatically terminated by opera-
22 tion of law at the close of business on such ninetieth day.

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

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

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

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

44 8. Whenever the superintendent shall revoke or suspend a license
45 issued pursuant to this article, they shall forthwith execute in dupli-
46 cate a written order to that effect. The superintendent shall file one
47 copy of such order in the office of the department and shall forthwith
48 serve the other copy upon the licensee. Any such order may be reviewed
49 in the manner provided by article seventy-eight of the civil practice
50 law and rules. Such application for review as authorized by this section
51 must be made within thirty days from the date of such order of suspen-
52 sion or revocation.

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

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

6 2. All advertising and marketing communications concerning debt
7 settlement services shall disclose the following information clearly and
8 conspicuously: "Debt settlement services are not appropriate for every-
9 one. Failure to pay your monthly bills in a timely manner will result in
10 increased balances and will harm your credit rating. Not all creditors
11 will agree to reduce the amount you owe, and they may pursue collection,
12 including lawsuits."

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

18 § 588-j. Individualized financial analysis; statement. 1. Prior to
19 entering into a debt settlement services agreement, a debt settlement
20 company shall prepare and provide to the debtor in writing and retain a
21 copy of:

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

24 (b) a statement containing:

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

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

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

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

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

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

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

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

46 § 588-k. Required pre-agreement disclosures and warnings. 1. Before
47 the debtor signs a debt settlement services agreement, the debt settle-
48 ment company shall provide an oral and written notice to the debtor that
49 clearly and conspicuously discloses all of the following:

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

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

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

55 (d) not all creditors will accept a reduction in the balance, interest
56 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.

1 DEBT SETTLEMENT SERVICES ARE NOT RIGHT FOR EVERYONE. YOU SHOULD
2 CONSIDER ALL YOUR OPTIONS FOR ADDRESSING YOUR DEBT, SUCH AS BUDGET PLAN-
3 NING OR A BANKRUPTCY FILING.

4 YOUR RIGHT TO CANCEL

5 If you sign a debt settlement services agreement, you have the right
6 to cancel at any time and receive a full refund of all unearned fees you
7 have paid to the debt settlement company and all funds placed in your
8 debtor settlement account that have not been paid to any creditors. If
9 you cancel within ninety days of signing the debt settlement services
10 agreement you also have the right to receive a full refund of any
11 enrollment fees you have paid.

12 ACKNOWLEDGMENT BY DEBTOR

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

15 § 588-1. Debt settlement services agreements. 1. A debt settlement
16 company shall not provide debt settlement services to a debtor without a
17 written debt settlement services agreement signed and dated by both the
18 debtor and the debt settlement company.

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

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

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

25 (a) the name and address of the debtor;

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

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

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

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

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

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

40 (h) a description of the services to be provided by the debt settle-
41 ment company, including the expected time frame for settlement for each
42 account, debt, or obligation included in paragraph (g) of this subdivi-
43 sion;

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

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

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

53 (i) the amount to be saved per month;

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

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

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

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

5 (m) a written notice to the debtor stating:

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

8 (ii) that upon such cancellation:

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

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

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

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

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

35 (b) A debt settlement services agreement may not provide for applica-
36 tion of the law of any jurisdiction other than the United States and
37 this state.

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

42 § 588-m. Fees. 1. The types of fees that a debt settlement company may
43 charge a debtor are the following:

44 (a) enrollment fees; and

45 (b) settlement fees.

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

48 3. The amount of an enrollment fee charged by a debt settlement compa-
49 ny shall not exceed fifty dollars or such other amount as set by the
50 superintendent.

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

54 (a) the amount that is reasonable and commensurate to the debt settle-
55 ment services provided to the debtor; and

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

1 (i) the principal amount of the debt; and

2 (ii) the amount:

3 (A) paid by the debt settlement company to the creditor pursuant to
4 the settlement negotiated by the debt settlement company on behalf of
5 the debtor as full and complete satisfaction of the creditor's claim
6 with regard to that debt; or

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

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

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

16 (b) those funds are provided to the creditor:

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

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

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

24 § 588-n. Debtor settlement accounts; monthly accounting. 1. A debt
25 settlement company that receives funds from a debtor shall hold all
26 funds received for a debtor settlement account in a properly designated
27 bank account in a federally insured depository institution.

28 (a) Such funds shall:

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

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

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

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

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

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

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

54 2. A debt settlement company shall, no less than monthly, provide each
55 debtor with which it has a debt settlement services agreement a state-
56 ment of fees paid, settlements completed, remaining debts and, if funds

1 are held in a bank account pursuant to subdivision one of this section,
2 account balances.

3 3. Nothing in this article requires the establishment of a debtor
4 settlement account if no debtor funds other than enrollment fees or
5 earned settlement fees are held or controlled by a debt settlement
6 company.

7 § 588-o. Cancellation of debt settlement services agreement; right to
8 refunds. 1. A debtor may cancel a debt settlement services agreement at
9 any time until after the debt settlement company has fully performed
10 each service the debt settlement company contracted to perform or
11 represented that it would perform.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (b) the debt settlement company shall immediately take any action
54 necessary to reflect cancellation of the debt settlement services agree-
55 ment, including but not limited to notifying the recipient of any direct
56 debit authorization.

1 6. Upon the cancellation of a debt settlement services agreement, the
2 debt settlement company shall provide timely written notice of the
3 cancellation of such agreement to each of the creditors with whom the
4 debt settlement company has had any prior communication on behalf of the
5 debtor in connection with the provision of any debt settlement services.

6 § 588-p. Obligation of good faith. A debt settlement company shall act
7 in good faith in all matters under this article.

8 § 588-q. Prohibited activities. 1. No person, except a licensee, may
9 make any representation, directly or indirectly, orally or in writing
10 that they, or it is licensed under this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

49 (l) offer or provide gifts or bonuses to debtors for signing a debt
50 settlement services agreement or for referring another potential custom-
51 er or customers;

52 (m) except with the prior consent of the debtor, disclose to anyone
53 the name or any personal information of a debtor for whom the debt
54 settlement company has provided or is providing debt settlement services
55 other than to a debtor's own creditors or the debt settlement company's
56 agents or affiliates for the purpose of providing debt settlement

1 services. "Personal information of a debtor" as used herein shall
2 include but not be limited to a debtor's name, photograph, address,
3 telephone number, social security number, date of birth, driver's iden-
4 tification number, credit card number, bank account number, mother's
5 maiden name, medical or disability information, if any, as well as any
6 other identification number which a licensee may possess;

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

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

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

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

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

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

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

26 § 588-r. Superintendent authorized to examine. For the purpose of
27 discovering violations of this article or securing information lawfully
28 required by the superintendent hereunder, the superintendent may at any
29 time, and as often as they may determine, either personally or by a
30 person duly designated by them, investigate the business and examine the
31 books, accounts, records, and files used therein of every licensee here-
32 under. For that purpose the superintendent and their duly designated
33 representative shall have free access to the offices and place of busi-
34 ness, books, accounts, papers, records, files, safes and vaults of all
35 such licensees. The superintendent and any person duly designated by
36 them shall have authority to require the attendance of and to examine
37 under oath all persons whose testimony the superintendent may require
38 relative to such business. The expenses incurred in making any examina-
39 tion pursuant to this section shall be assessed against and paid by the
40 licensee so examined, except that traveling and subsistence expenses so
41 incurred shall be charged against and paid by licensees in such
42 proportions as the superintendent shall deem just and reasonable, and
43 such proportionate charges shall be added to the assessment of the other
44 expenses incurred upon each examination. Upon written notice by the
45 superintendent of the total amount of such assessment, the licensee
46 shall become liable for and shall pay such assessment to the superinten-
47 dent.

48 § 588-s. Licensee's books and records; reports. 1. The licensee shall
49 create and use in its business such books, accounts, and records as will
50 enable the superintendent to determine whether such licensee is comply-
51 ing with the provisions of this article and with the rules and regula-
52 tions lawfully made by the superintendent hereunder. Every licensee
53 shall preserve such books, accounts, and records for at least six years
54 by any manner permitted by this chapter.

55 2. Each licensee shall annually, on or before the first day of Febru-
56 ary, file a report with the superintendent giving such information as

1 the superintendent may require concerning the business and operations
2 during the preceding calendar year of such licensee under authority of
3 this article. Such report shall be subscribed and affirmed as true by
4 the licensee under the penalties of perjury and shall be in the form
5 prescribed by the superintendent. In addition to annual reports, the
6 superintendent may require such additional regular or special reports as
7 they may deem necessary to the proper supervision of licensees under
8 this article. Such additional reports shall be in the form prescribed by
9 the superintendent and shall be subscribed and affirmed as true under
10 the penalties of perjury.

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

14 § 588-t. Penalties; noncompliance. 1. Any person who violates any
15 provision of the licensing requirements of section five hundred eighty-
16 eight-b of this article shall be guilty of a class A misdemeanor,
17 punishable as provided in articles seventy and eighty of the penal law.

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

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

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

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

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

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

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

44 § 588-u. Authority of superintendent. The superintendent is hereby
45 authorized and empowered to make, in addition hereto and not inconsist-
46 ent herewith, such general rules and regulations, and such specific
47 rulings, demands, and findings as he or she may deem necessary for the
48 proper conduct of the business authorized and licensed hereunder and for
49 the enforcement of this article.

50 § 588-v. Severability. If any word, phrase, clause, sentence, para-
51 graph, subdivision, section, or part of this article shall be adjudged
52 by any court of competent jurisdiction to be invalid, such judgment
53 shall not affect, impair, or invalidate the remainder thereof which can
54 be given effect without the invalid provision, but shall be confined in
55 its operation to the word, phrase, clause, sentence, paragraph, subdivi-

1 sion, section, or part of this article directly involved in the contro-
2 versy in which the judgment shall have been rendered.

3 § 11. This act shall take effect on the one hundred eightieth day
4 after it shall have become a law and shall apply to all debt settlement
5 services agreements entered into or offered on or after such date;
6 provided, however, that effective immediately, the superintendent of
7 financial services shall add, amend, and/or repeal any rule or regu-
8 lation the superintendent deems necessary or desirable for implementa-
9 tion of this act.