

111TH CONGRESS  
2D SESSION

# H. R. 5387

To amend the Consumer Credit Protection Act to provide for regulation of debt settlement services, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2010

Mr. GUTIERREZ (for himself, Ms. MOORE of Wisconsin, and Mr. ELLISON) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the Consumer Credit Protection Act to provide for regulation of debt settlement services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Debt Settlement Con-  
5 sumer Protection Act of 2010”.

6 **SEC. 2. REGULATION OF DEBT SETTLEMENT SERVICES.**

7 (a) IN GENERAL.—The Consumer Credit Protection  
8 Act (15 U.S.C. 1601 et seq.) is amended by adding at  
9 the end the following:

# 1    **“TITLE X—DEBT SETTLEMENT** 2                                   **SERVICES**

“Sec. 1001. Definitions.

“Sec. 1002. Required acts.

“Sec. 1003. Prohibited acts.

“Sec. 1004. Fees.

“Sec. 1005. Consumer settlement accounts.

“Sec. 1006. Cancellation of contract.

“Sec. 1007. Obligation of good faith.

“Sec. 1008. Invalidation of contracts.

“Sec. 1009. Advertising, marketing, and communication practices.

“Sec. 1010. Rulemaking by Federal Trade Commission.

“Sec. 1011. Civil liability.

“Sec. 1012. Enforcement by Federal Trade Commission.

“Sec. 1013. Action by States.

“Sec. 1014. Statute of limitations.

“Sec. 1015. Relation to State law.

## 3    **“SEC. 1001. DEFINITIONS.**

4            “In this title:

5                    “(1) ATTORNEY GENERAL OF A STATE.—The  
 6            term ‘attorney general of a State’ means the attor-  
 7            ney general or other chief law enforcement officer of  
 8            a State.

9                    “(2) COMMISSION.—The term ‘Commission’  
 10           means the Federal Trade Commission.

11                   “(3) CONSUMER.—The term ‘consumer’ means  
 12           any person.

13                   “(4) CONSUMER SETTLEMENT ACCOUNT.—The  
 14           term ‘consumer settlement account’ means any ac-  
 15           count or other means or device in which payments,  
 16           deposits, or other transfers from a consumer are  
 17           held or transferred to a debt settlement provider for  
 18           the accumulation of the consumer’s funds in antici-

1       pation of proffering an adjustment or settlement of  
2       a debt or obligation of the consumer to a creditor on  
3       behalf of the consumer.

4               “(5) DEBT SETTLEMENT PROGRAM.—The term  
5       ‘debt settlement program’ means the actions and ac-  
6       tivities undertaken by a debt settlement provider and  
7       a consumer in connection with the provision of debt  
8       settlement service.

9               “(6) DEBT SETTLEMENT PROVIDER.—

10              “(A) IN GENERAL.—Except as provided in  
11       subparagraph (B), the term ‘debt settlement  
12       provider’ means any person or entity engaging  
13       in, or holding itself out as engaging in, the  
14       business of providing debt settlement services in  
15       exchange for a fee or compensation, or any per-  
16       son who solicits for or acts on behalf of any  
17       person or entity engaging in, or holding itself  
18       out as engaging in, the business of providing  
19       debt settlement services in exchange for any fee  
20       or compensation.

21              “(B) EXCEPTION.—The term ‘debt settle-  
22       ment provider’ does not include the following:

23                      “(i) Attorneys when—

24                              “(I) acting in the ordinary prac-  
25                              tice of their professions;

1 “(II) acting through any entity  
2 in the ordinary practice of their pro-  
3 fession;

4 “(III) acting in the States where  
5 they are licensed to practice their pro-  
6 fession; and

7 “(IV) not holding themselves out  
8 as debt settlement providers or pro-  
9 viding debt settlement service.

10 “(ii) Escrow agents, accountants,  
11 broker dealers in securities, or investment  
12 advisors in securities, when acting—

13 “(I) in the ordinary practice of  
14 their professions; and

15 “(II) through any entity in the  
16 ordinary practice of their profession.

17 “(iii) Any bank, agent of a bank,  
18 trust company, savings and loan associa-  
19 tion, savings bank, credit union, crop cred-  
20 it association, development credit corpora-  
21 tion, industrial development corporation,  
22 title insurance company, or insurance com-  
23 pany operating or organized under the  
24 laws of a State or the United States.

1 “(iv) Mortgage servicers (as such  
2 term is defined in section 6(i) of the Real  
3 Estate Settlement Procedures Act of 1974  
4 (12 U.S.C. 2605(i)(2)) carrying out mort-  
5 gage loan modifications.

6 “(v) Any person who performs credit  
7 services for such person’s employer while  
8 receiving a regular salary or wage when  
9 the employer is not engaged in the busi-  
10 ness of offering or providing debt settle-  
11 ment service.

12 “(vi) An organization that is described  
13 in section 501(c)(3) and subject to section  
14 501(q) of the Internal Revenue Code of  
15 1986 and exempt from tax under section  
16 501(a) of such Code.

17 “(vii) Public officers while acting in  
18 their official capacities and persons acting  
19 under court order.

20 “(viii) Any person while performing  
21 services incidental to the dissolution, wind-  
22 ing up, or liquidating of a partnership, cor-  
23 poration, or other business enterprise.

24 “(7) DEBT SETTLEMENT SERVICE.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), the term ‘debt settlement  
3           service’ means—

4                   “(i) offering to provide advice or serv-  
5                   ice, or to act or acting as an intermediary  
6                   between or on behalf of a consumer and  
7                   one or more of a consumer’s creditors,  
8                   where the primary purpose of the advice,  
9                   service, or action is to obtain a settlement,  
10                  adjustment, or satisfaction of the con-  
11                  sumer’s debt to a creditor in an amount  
12                  less than the full amount of the principal  
13                  amount of the debt or in an amount less  
14                  than the current outstanding balance of  
15                  the debt; or

16                  “(ii) offering to provide services re-  
17                  lated to or providing services advising, en-  
18                  couraging, assisting, or counseling a con-  
19                  sumer to accumulate funds for the primary  
20                  purpose of proposing, obtaining, or seeking  
21                  to obtain a settlement, adjustment, or sat-  
22                  isfaction of the consumer’s debt to a cred-  
23                  itor in an amount less than the full  
24                  amount of the principal amount of the debt

1 or in an amount less than the current out-  
2 standing balance of the debt.

3 “(B) EXCEPTION.—The term ‘debt settle-  
4 ment service’ does not include services of an at-  
5 torney in providing information, advice, or legal  
6 representation with respect to filing a case or  
7 proceeding under title 11, United States Code.

8 “(8) ENROLLMENT FEE.—The term ‘enrollment  
9 fee’ means any fee, obligation, or compensation paid  
10 or to be paid by the consumer to a debt settlement  
11 provider in consideration of or in connection with es-  
12 tablishing a contract or other agreement with a con-  
13 sumer related to the provision of debt settlement  
14 service.

15 “(9) MAINTENANCE FEE.—The term ‘mainte-  
16 nance fee’ means any fee, obligation, or compensa-  
17 tion paid or to be paid by a consumer on a periodic  
18 basis to a debt settlement provider in consideration  
19 of maintaining the relationship and services to be  
20 provided by a debt settlement provider in accordance  
21 with a contract with a consumer related to the provi-  
22 sion of debt settlement service.

23 “(10) PRINCIPAL AMOUNT OF THE DEBT.—The  
24 term ‘principal amount of the debt’ means the total  
25 amount or outstanding balance owed by a consumer

1 to one or more creditors for a debt that is included  
2 in a contract for debt settlement service at the time  
3 when the consumer enters into a contract for debt  
4 settlement service pursuant to section 1002(a).

5 “(11) SETTLEMENT FEE.—The term ‘settle-  
6 ment fee’ means any fee, obligation, or compensation  
7 paid or to be paid by a consumer to a debt settle-  
8 ment provider in consideration of or in connection  
9 with an agreement or other arrangement on the part  
10 of a creditor to accept less than the principal  
11 amount of the debt as satisfaction of the creditor’s  
12 claim against the consumer.

13 **“SEC. 1002. REQUIRED ACTS.**

14 “(a) CONTRACT REQUIRED.—

15 “(1) IN GENERAL.—A debt settlement provider  
16 may not provide a debt settlement service to a con-  
17 sumer or receive any fee from a consumer for a debt  
18 settlement service without a written contract de-  
19 scribed in paragraph (2) that is signed by the con-  
20 sumer.

21 “(2) CONTRACT CONTENTS.—A contract de-  
22 scribed in this paragraph is a contract between a  
23 debt settlement provider and a consumer for debt  
24 settlement services that includes the following:



1           “(A) The name and address of the con-  
2           sumer.

3           “(B) The date of execution of the contract.

4           “(C) The legal name of the debt settlement  
5           provider, including any other business names  
6           used by the debt settlement provider.

7           “(D) The corporate address and regular  
8           business address, including a street address, of  
9           the debt settlement provider.

10          “(E) The license or registration number  
11          under which the debt settlement provider is li-  
12          censed or registered if the consumer resides in  
13          a State that requires a debt settlement provider  
14          to obtain a license or registration as a condition  
15          of providing debt settlement service in that  
16          State.

17          “(F) The telephone number at which the  
18          consumer may speak with a representative of  
19          the debt settlement provider during normal  
20          business hours.

21          “(G) A complete list of the consumer’s ac-  
22          counts, debts, and obligations covered under the  
23          debt settlement service covered by the contract,  
24          including the name of each creditor and prin-  
25          cipal amount of each debt.

1           “(H) A description of the services to be  
2           provided by the debt settlement provider, in-  
3           cluding the expected timeframe for settlement  
4           for each account, debt, or obligation included in  
5           subparagraph (G).

6           “(I) A clear and conspicuous itemized list  
7           of all fees, including any enrollment fee and set-  
8           tlement fees to be paid by the consumer to the  
9           debt settlement provider, and the date, approxi-  
10          mate date, or circumstances under which each  
11          fee will become due.

12          “(J) A clear and conspicuous statement of  
13          a good faith estimate of the total amount of all  
14          fees to be collected by the debt settlement pro-  
15          vider from the consumer for the provision of  
16          debt settlement service under the contract.

17          “(K) A clear and conspicuous statement of  
18          the proposed savings goals for the consumer,  
19          stating the amount to be saved per month or  
20          other period, the time period over which the  
21          savings goals extend, and the total amount of  
22          the savings expected to be paid by the consumer  
23          pursuant to the terms of the contract.

24          “(L) A notice to the consumer that unless  
25          the consumer is insolvent, if a creditor settles a

1 debt for an amount less than the consumer's  
2 current outstanding balance at the time of set-  
3 tlement, the consumer may incur a tax liability.

4 “(M) A written notice to the consumer,  
5 which includes a form that the consumer may  
6 use and the address to which the form may be  
7 returned to the debt settlement provider, that  
8 the consumer may cancel the contract pursuant  
9 to the provisions of section 1006.

10 “(N) A clear and conspicuous written no-  
11 tice to the consumer that—

12 “(i) the consumer may cancel the con-  
13 tract—

14 “(I) within 90 days of—

15 “(aa) the execution of the  
16 contract; or

17 “(bb) the provision of the  
18 notice of the right to cancel and  
19 cancellation form; or

20 “(II) at any time in the event of  
21 a violation of this title on the part of  
22 the debt settlement provider; and

23 “(ii) in the case the consumer cancels  
24 the contract as described in clause (i)—

1 “(I) the consumer will be entitled  
2 to a full refund—

3 “(aa) of all fees and com-  
4 pensation paid by the consumer  
5 to the debt settlement provider,  
6 except any settlement fee; and

7 “(bb) of all funds provided  
8 by the consumer to the debt set-  
9 tlement provider for a consumer  
10 settlement account, except for  
11 funds actually paid to a creditor  
12 on behalf of the consumer, under  
13 the terms of the contract for debt  
14 settlement service; and

15 “(II) all powers of attorney  
16 granted to the debt settlement pro-  
17 vider by the consumer will be revoked  
18 and voided.

19 “(b) NOTIFICATION REQUIRED.—A debt settlement  
20 provider shall, before the earlier of the date of entering  
21 into a written contract with a consumer for debt settle-  
22 ment services or rendering debt settlement services to a  
23 consumer, provide to the consumer in writing the fol-  
24 lowing:

1           “(1) An individualized financial analysis of the  
2           consumer, including an assessment of the con-  
3           sumer’s income, expenses, and debts.

4           “(2) A description of the debt settlement serv-  
5           ice being offered to the consumer by the debt settle-  
6           ment provider, including the following:

7                   “(A) A description of the debt settlement  
8                   program being offered as part of the service.

9                   “(B) A list of each of the consumer’s  
10                  debts, creditors, and debt collectors that will be  
11                  covered under the program.

12           “(3) A statement containing the following:

13                   “(A) A good-faith estimate of the length of  
14                   time it will take to achieve settlement of each  
15                   debt covered under the program.

16                   “(B) The specific time by which the debt  
17                   settlement service provider will make a bona  
18                   fide settlement offer to each creditor and debt  
19                   collector covered under the program.

20                   “(C) The total amount of debt owed by the  
21                   consumer to each creditor covered under the  
22                   program.

23                   “(D) An estimate of the total and the  
24                   monthly savings the consumer will be required  
25                   to accumulate to complete the program.

1 “(4) A clear and conspicuous statement that—

2 “(A) the consumer remains legally obli-  
3 gated to make periodic or scheduled payments  
4 to creditors while participating in a debt settle-  
5 ment program; and

6 “(B) the debt settlement provider will not  
7 make any periodic or scheduled payments to  
8 creditors on behalf of the consumer.

9 “(5) A clear and conspicuous notice to the con-  
10 sumer that—

11 “(A) the utilization of debt settlement  
12 service may not be suitable for all consumers;

13 “(B) the utilization of debt settlement  
14 service may adversely impact the consumer’s  
15 credit history and credit score;

16 “(C) the consumer may inquire about  
17 other means of dealing with indebtedness, in-  
18 cluding nonprofit credit counseling and bank-  
19 ruptcy;

20 “(D) the failure to make periodic or sched-  
21 uled payments to a creditor—

22 “(i) is likely to affect adversely the  
23 consumer’s creditworthiness;

24 “(ii) may result in continued collection  
25 activity by creditors or debt collectors;

1                   “(iii) may result in the consumer  
2                   being sued by one or more creditors or  
3                   debt collectors, and in the garnishment of  
4                   the consumer’s wages; and

5                   “(iv) may increase the amount of  
6                   money the consumer owes to one or more  
7                   creditors or debt collectors due to the im-  
8                   position by the creditor of interest charges,  
9                   late fees, and other penalty fees; and

10                  “(E) any savings the consumer realizes  
11                  from use of a debt settlement service may be  
12                  taxable income.

13                  “(c) DETERMINATION OF BENEFIT TO CONSUMERS  
14                  REQUIRED.—A debt settlement provider may not enter  
15                  into a written contract with a consumer unless the debt  
16                  settlement provider makes written determinations, sup-  
17                  ported by the financial analysis, that—

18                  “(1) the consumer can reasonably meet the re-  
19                  quirements of the proposed debt settlement program  
20                  included in the debt settlement service offered to the  
21                  consumer, including the fees and the periodic sav-  
22                  ings amounts set forth in the savings goals under  
23                  the program;

1           “(2) there is a net tangible financial benefit to  
2           the consumer of entering into the proposed debt set-  
3           tlement program; and

4           “(3) the debt settlement program is suitable for  
5           the consumer at the time the contract is to be  
6           signed.

7           “(d) CHOICE OF LANGUAGE.—If a debt settlement  
8           provider communicates with a consumer primarily in a  
9           language other than English, the debt settlement provider  
10          shall furnish to the consumer a translation of the disclo-  
11          sures and documents required by this title in that other  
12          language.

13          “(e) MONTHLY STATEMENTS REQUIRED.—A debt  
14          settlement provider shall, not less frequently than month-  
15          ly, provide each consumer with which it has a contract  
16          for the provision of debt settlement service a statement  
17          of account balances, fees paid, settlements completed, re-  
18          maining debts, and any other term considered appropriate  
19          by the Commission.

20          **“SEC. 1003. PROHIBITED ACTS.**

21          “(a) LOANS.—A debt settlement provider may not  
22          make loans or offer credit or solicit or accept any note,  
23          mortgage, or negotiable instrument other than a check  
24          signed by the consumer and dated no later than the date  
25          of signature.



1       “(b) CONFESSION OF JUDGMENT.—A debt settle-  
2       ment provider may not take any confession of judgment  
3       or power of attorney to confess judgment against the con-  
4       sumer or appear as the consumer or on behalf of the con-  
5       sumer in any judicial or non-judicial proceedings.

6       “(c) RELEASE OR WAIVER OF OBLIGATION.—A debt  
7       settlement provider may not take any release or waiver  
8       of any obligation to be performed on the part of the debt  
9       settlement provider or any right of the consumer.

10       “(d) RECEIPT OF THIRD-PARTY COMPENSATION.—  
11       A debt settlement provider may not receive any cash, fee,  
12       gift, bonus, premium, reward, or other compensation from  
13       any person other than the consumer explicitly for the pro-  
14       vision of debt settlement service to that consumer, without  
15       prior disclosure of such to the consumer.

16       “(e) CONFIDENTIALITY.—A debt settlement provider  
17       may not (without prior written consent of the consumer)  
18       disclose to anyone the name or any personal information  
19       of a consumer for whom the debt settlement provider has  
20       provided or is providing debt settlement service other than  
21       to a consumer’s own creditors or the debt settlement pro-  
22       vider’s agents, affiliates, or contractors for the purpose of  
23       providing debt or settlement service.

24       “(f) MISREPRESENTATION, OMISSION, AND FALSE  
25       PROMISES.—A debt settlement provider may not mis-

1 represent, directly or by implication, any material fact,  
2 make a material omission, or make a false promise di-  
3 rected to one or more consumers in connection with the  
4 solicitation, offering, contracting or provision of debt set-  
5 tlement service, including the following:

6           “(1) The total costs to purchase, receive, or use  
7           the services, or the nature of the services to be pro-  
8           vided.

9           “(2) Any material restriction, limitation, or con-  
10          dition to receive the offered debt settlement service.

11          “(3) Any material aspect of the performance,  
12          efficacy, nature, or central characteristics of the of-  
13          fered debt settlement service.

14          “(4) Any material aspect of the nature of terms  
15          of the seller’s cancellation policies.

16          “(5) Any claim of affiliation with, or endorse-  
17          ment or sponsorship by, any person or government  
18          entity.

19          “(6) Any material aspect of any debt settlement  
20          service, including the following:

21               “(A) The amount of time necessary to  
22               achieve settlement of all debt.

23               “(B) The amount of money or the percent-  
24               age of the debt amount that the consumer must  
25               accumulate before the provider will initiate at-

1           tempts with the consumer’s creditors or debt  
2           collectors to settle the debt.

3           “(C) The effect of the service on a con-  
4           sumer’s creditworthiness.

5           “(D) Whether the provider is a nonprofit  
6           or a for-profit entity.

7           “(g) PURCHASING OF DEBTS.—A debt settlement  
8           provider may not purchase debts or engage in the practice  
9           or business of debt collection.

10          “(h) SECURED DEBT.—A debt settlement provider  
11          may not include in a debt settlement agreement any se-  
12          cured debt.

13          “(i) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—  
14          A debt settlement provider may not employ any unfair,  
15          unconscionable, or deceptive act or practice, including the  
16          knowing omission of any material information.

17          “(j) LIMITATION ON COMMUNICATION.—A debt set-  
18          tlement provider may not—

19                 “(1) obtain a power of attorney or other au-  
20                 thorization from a consumer that prohibits or limits  
21                 the consumer or any creditor from communication  
22                 directly with one another; or

23                 “(2) represent, expressly or by implication, that  
24                 a consumer cannot or should not contact or commu-  
25                 nicate with any creditor.

1   **“SEC. 1004. FEES.**

2           “(a) TYPES OF FEES PERMITTED.—The types of fees  
3 that a debt settlement provider may charge a consumer  
4 are the following:

5               “(1) Enrollment fees.

6               “(2) Settlement fees.

7           “(b) TYPES OF FEES PROHIBITED.—All fee types  
8 not included under subsection (a) are prohibited, including  
9 maintenance fees.

10          “(c) ENROLLMENT FEE AMOUNTS.—The amount of  
11 an enrollment fee charged by a debt settlement provider  
12 shall not exceed the lesser of—

13               “(1) the amount that is reasonable and com-  
14 mensurate to the debt settlement service provided to  
15 a consumer; and

16               “(2) \$50.

17          “(d) DEBT SETTLEMENT FEE AMOUNTS.—The  
18 amount of a settlement fee charged by a debt settlement  
19 provider shall not exceed the lesser of—

20               “(1) the amount that is reasonable and com-  
21 mensurate to the debt settlement service provided to  
22 a consumer; and

23               “(2) the amount that is 5 percent of the dif-  
24 ference between—

25                       “(A) the principal amount of that debt;  
26                       and

1 “(B) the amount—

2 “(i) paid by the debt settlement pro-  
3 vider to the creditor pursuant to a settle-  
4 ment negotiated by the debt settlement  
5 provider on behalf of the consumer as full  
6 and complete satisfaction of the creditor’s  
7 claim with regard to that debt; or

8 “(ii) negotiated by the debt settlement  
9 provider and paid by the consumer to the  
10 creditor pursuant to a settlement nego-  
11 tiated by the debt settlement provider on  
12 behalf of the consumer as full and com-  
13 plete satisfaction of the creditor’s claim  
14 with regard to that debt.

15 “(e) TIMING OF DEBT SETTLEMENT FEES.—A debt  
16 settlement provider shall not collect any debt settlement  
17 fee from a consumer until—

18 “(1) a creditor enters into a legally enforceable  
19 agreement with the consumer to accept funds in a  
20 specific dollar amount as full and complete satisfac-  
21 tion of the creditor’s claim with regard to that debt;  
22 and

23 “(2) those funds are provided—

24 “(A) by the debt settlement provider on  
25 behalf of the consumer; or

1                   “(B) directly by the consumer to the cred-  
2                   itor pursuant to a settlement negotiated by the  
3                   debt settlement provider.

4   **“SEC. 1005. CONSUMER SETTLEMENT ACCOUNTS.**

5           “(a) TRUST ACCOUNT REQUIRED.—A debt settle-  
6   ment provider who receives funds from a consumer shall  
7   hold all funds received for a consumer settlement account  
8   in a properly designated trust account in a federally in-  
9   sured depository institution. Such funds shall remain the  
10   property of the consumer until the debt settlement pro-  
11   vider disburses the funds to a creditor on behalf of the  
12   consumer as full or partial satisfaction of the consumer’s  
13   debt to the creditor or the creditor’s claim against the con-  
14   sumer.

15          “(b) INDEPENDENT ADMINISTRATION OF AC-  
16   COUNT.—A debt settlement provider may not hold funds  
17   received for a consumer settlement account under sub-  
18   section (a) in an account administered by an entity that—

19               “(1) is owned by, controlled by, or in any way  
20               affiliated with the debt settlement service provider;  
21               or

22               “(2) gives or accepts any money or other com-  
23               pensation in exchange for referrals of business in-  
24               volving the debt settlement service provider.

1       “(c) LIMITATIONS.—A debt settlement service pro-  
2 vider shall not—

3               “(1) be named on a consumer’s bank account;

4               “(2) take a power of attorney in a consumer’s  
5 bank account;

6               “(3) create a demand draft on a consumer’s  
7 bank account;

8               “(4) exercise any control over any bank account  
9 held by or on behalf of the consumer; or

10              “(5) obtain any information about a consumer’s  
11 bank account from any person other than the con-  
12 sumer.

13 **“SEC. 1006. CANCELLATION OF CONTRACT.**

14       “(a) IN GENERAL.—A consumer may cancel a con-  
15 tract with a debt settlement provider at any time.

16       “(b) REFUNDS.—

17               “(1) CANCELLATION WITHIN 90 DAYS OR UPON  
18 VIOLATION OF THIS TITLE.—If a consumer cancels  
19 a contract with a debt settlement provider not later  
20 than 90 days after the date of the execution of the  
21 contract or at any time upon a violation of a provi-  
22 sion of this title by the debt settlement provider, the  
23 debt settlement provider shall refund to the con-  
24 sumer all—

1           “(A) fees paid to the debt settlement pro-  
2           vider by the consumer, with the exception of  
3           any earned settlement fee; and

4           “(B) funds paid by the consumer to the  
5           debt settlement provider that—

6                   “(i) have accumulated in a consumer  
7                   settlement account; and

8                   “(ii) the debt settlement provider has  
9                   not disbursed to creditors.

10           “(2) CANCELLATIONS AFTER 90 DAYS.—If a  
11           consumer cancels a contract with a debt settlement  
12           provider later than 90 days after the date of the exe-  
13           cution of the contract and for any reason other than  
14           for a violation of a provision of this title by the debt  
15           settlement provider, the debt settlement provider  
16           shall refund to the consumer—

17                   “(A) half of all of the fees collected from  
18                   the consumer, with the exception of any earned  
19                   settlement fees; and

20                   “(B) all funds paid by the consumer to the  
21                   debt settlement provider that have accumulated  
22                   in a consumer settlement account and which the  
23                   debt service provider has not disbursed to credi-  
24                   tors.



1           “(3) TIMING OF REFUNDS.—A debt settlement  
2           provider shall make any refund required under this  
3           subsection not later than 5 business days after a no-  
4           tice of cancellation is made on behalf of the con-  
5           sumer under subsection (d).

6           “(4) STATEMENT OF ACCOUNT.—A debt settle-  
7           ment provider making a refund to a consumer under  
8           this subsection shall include with such refund a full  
9           statement of account showing the following:

10                   “(A) The fees received by the debt settle-  
11                   ment provider from the consumer.

12                   “(B) The fees refunded to the consumer by  
13                   the debt settlement provider.

14                   “(C) The savings of the consumer held by  
15                   the debt settlement provider.

16                   “(D) The payments made by the debt set-  
17                   tlement provider to creditors on behalf of the  
18                   consumer.

19                   “(E) The settlement fees earned, if any, by  
20                   the debt settlement provider by settling debt on  
21                   behalf of the consumer.

22                   “(F) The savings of the consumer re-  
23                   funded to the consumer by the debt settlement  
24                   provider.

1       “(c) REVOCATION OF POWERS OF ATTORNEY AND  
2 DIRECT DEBIT AUTHORIZATIONS.—Upon cancellation of  
3 a contract by a consumer—

4               “(1) all powers of attorney and direct debit au-  
5 thorizations granted to the debt settlement provider  
6 by the consumer are revoked and voided; and

7               “(2) the debt settlement provider shall imme-  
8 diately take any action necessary to reflect cancella-  
9 tion of the contract, including notifying the recipient  
10 of any direct debit authorization.

11       “(d) NOTICE OF CANCELLATION TO CREDITORS.—  
12 Upon the cancellation of a contract under this section of  
13 the Act, the debt settlement provider shall provide timely  
14 notice of the cancellation of such contract to each of the  
15 creditors with whom the debt settlement provider has had  
16 any prior communication on behalf of the consumer in  
17 connection with the provision of any debt settlement serv-  
18 ice.

19 **“SEC. 1007. OBLIGATION OF GOOD FAITH.**

20       “A debt settlement provider shall act in good faith  
21 in all matters under this title.

22 **“SEC. 1008. INVALIDATION OF CONTRACTS.**

23       “(a) CONSUMER WAIVERS INVALID.—A waiver by a  
24 consumer of any protection provided or any right of the  
25 consumer under this title—

1 “(1) is void; and

2 “(2) may not be enforced by any other person.

3 “(b) ATTEMPT TO OBTAIN WAIVER.—Any attempt  
4 by any person to obtain a waiver from any consumer of  
5 any protection provided by or any right or protection of  
6 the consumer or any obligation or requirement of the debt  
7 settlement provider under this title shall be considered a  
8 violation of a provision of this title.

9 “(c) CONTRACTS NOT IN COMPLIANCE.—Any con-  
10 tract for a debt settlement service that does not comply  
11 with the provisions of this title—

12 “(1) shall be treated as void;

13 “(2) may not be enforced by any other person;

14 and

15 “(3) upon notice of a void contract, a refund by  
16 the debt settlement provider to the consumer shall  
17 be made as if the contract had been cancelled as  
18 provided in section 1006(b)(1) of this title.

19 **“SEC. 1009. ADVERTISING, MARKETING, AND COMMUNICA-**  
20 **TION PRACTICES.**

21 “A debt settlement provider shall not state or imply  
22 claims, results, or outcomes in any advertising, marketing,  
23 or other communication with consumers that represent or  
24 reflect results or outcomes, including about the percentage  
25 or dollar amount by which debt may be reduced or the

1 amount a consumer may save or the historical experience  
 2 of its customers with respect to debt reduction, that—

3 “(1) are materially different from the actual av-  
 4 erage result or outcome achieved by that debt settle-  
 5 ment provider on all of the debt of consumers who  
 6 enter the program; or

7 “(2) are not verified by an independent audit  
 8 that documents that the described result or outcome  
 9 was achieved for all debt enrolled in the program by  
 10 at least 80 percent of the customers who began the  
 11 service in the most recent 2 calendar year period.

12 **“SEC. 1010. RULEMAKING BY FEDERAL TRADE COMMIS-**  
 13 **SION.**

14 “(a) IN GENERAL.—The Commission may prescribe  
 15 rules with respect to advertising and marketing practices,  
 16 record retention, provision of accountings to consumers,  
 17 and such other matters as the Commission considers nec-  
 18 essary to improve the consumer experience with debt set-  
 19 tlement providers.

20 “(b) DEBT RELIEF SERVICE RULES.—

21 “(1) IN GENERAL.—Except as provided in para-  
 22 graph (2), the Commission may prescribe rules with  
 23 respect to the providers of debt relief service not  
 24 otherwise covered by this title.

1           “(2) EXCEPTION.—Any rule prescribed under  
2           paragraph (1) shall not be applicable to or otherwise  
3           include services provided by those persons or entities  
4           identified in section 1001(6)(B) or section  
5           1001(7)(B).

6           “(3) DEBT RELIEF SERVICE DEFINED.—In this  
7           subsection, the term ‘debt relief service’ means any  
8           service represented, directly or by implication, to re-  
9           negotiate, or in any way alter the terms of payment  
10          or other terms of the debt between a consumer and  
11          one or more unsecured creditors or debt collectors,  
12          including a reduction in the balance, interest rate, or  
13          fees owed by a consumer to an unsecured creditor or  
14          debt collector.

15          “(c) PROCEDURE.—All rulemaking under this title  
16          shall be conducted in accordance with section 553 of title  
17          5, United States Code, and shall not be subject to other  
18          procedures set forth in section 18 of the Federal Trade  
19          Commission Act (15 U.S.C. 57a).

20       **“SEC. 1011. CIVIL LIABILITY.**

21          “(a) LIABILITY ESTABLISHED.—Any debt settlement  
22          provider who fails to comply with any provision of this  
23          title with respect to any consumer shall be liable to such  
24          consumer in an amount equal to the sum of the amounts  
25          determined under each of the following:

1 “(1) ACTUAL DAMAGES.—The greater of—

2 “(A) the amount of any actual damage  
3 sustained by such consumer as a result of such  
4 failure; or

5 “(B) any amount paid by the consumer to  
6 the debt settlement provider.

7 “(2) STATUTORY DAMAGES.—An amount deter-  
8 mined by the court of not less than \$1,000 nor more  
9 than \$5,000 per violation.

10 “(3) PUNITIVE DAMAGES.—

11 “(A) INDIVIDUAL ACTIONS.—In the case of  
12 any action by an individual, such additional  
13 amount as the court may allow.

14 “(B) CLASS ACTIONS.—In the case of a  
15 class action, the sum of—

16 “(i) the aggregate of the amount  
17 which the court may allow for each named  
18 plaintiff; and

19 “(ii) the aggregate of the amount  
20 which the court may allow for each other  
21 class member, without regard to any min-  
22 imum individual recovery.

23 “(4) ATTORNEYS’ FEES.—In the case of any  
24 successful action to enforce any liability under para-

1 graph (1), (2), or (3), the costs of the action, to-  
2 gether with reasonable attorneys' fees.

3 “(b) FACTORS TO BE CONSIDERED IN AWARDING  
4 PUNITIVE DAMAGES.—In determining the amount of any  
5 liability of any debt settlement provider under subsection  
6 (a)(2), the court shall consider, among other relevant fac-  
7 tors—

8 “(1) the frequency and persistence of non-  
9 compliance by the debt settlement provider;

10 “(2) the nature of the noncompliance;

11 “(3) the extent to which such noncompliance  
12 was intentional; and

13 “(4) in the case of any class action, the number  
14 of consumers adversely affected.

15 **“SEC. 1012. ENFORCEMENT BY FEDERAL TRADE COMMIS-**  
16 **SION.**

17 “(a) IN GENERAL.—The Commission shall enforce  
18 the provisions of this title in the same manner, by the  
19 same means, and with the same jurisdiction, powers, and  
20 duties as though all applicable terms and provisions of the  
21 Federal Trade Commission Act (15 U.S.C. 41 et seq.)  
22 were incorporated into and made part of this title.

23 “(b) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—  
24 A failure to comply with a provision of this title or a viola-  
25 tion of a rule prescribed under section 1010 shall be treat-

1 ed as a violation of a rule defining an unfair or deceptive  
 2 act or practice prescribed under section 18(a)(1)(B) of the  
 3 Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

4 **“SEC. 1013. ACTION BY STATES.**

5       “(a) IN GENERAL.—In any case in which the attor-  
 6 ney general of a State has reason to believe that an inter-  
 7 est of the residents of the State has been or is threatened  
 8 or adversely affected by the engagement of any person  
 9 subject to a provision of this title or a rule prescribed  
 10 under section 1010 in a practice that violates such provi-  
 11 sion or rule, the State may, as *parens patriae*, bring a  
 12 civil action on behalf of the residents of the State in an  
 13 appropriate district court of the United States or other  
 14 court of competent jurisdiction—

15               “(1) to enjoin that practice;

16               “(2) to enforce compliance with the provision or  
 17 rule; or

18               “(3) to obtain damages under section 1011 on  
 19 behalf of residents of the State.

20       “(b) ATTORNEYS’ FEES.—In the case of any success-  
 21 ful action under paragraph (1), (2), or (3) of subsection  
 22 (a), the attorney general of the State bringing the action  
 23 shall be awarded the costs of the action and reasonable  
 24 attorneys’ fees as determined by the court.

25       “(c) RIGHTS OF FEDERAL TRADE COMMISSION.—



1           “(1) NOTICE TO FEDERAL TRADE COMMIS-  
2       SION.—

3           “(A) IN GENERAL.—Except as provided in  
4       subparagraph (C), the attorney general of a  
5       State shall notify the Federal Trade Commis-  
6       sion in writing of any civil action under sub-  
7       section (a), prior to initiating such civil action.

8           “(B) CONTENTS.—The notice required by  
9       subparagraph (A) shall include a copy of the  
10      complaint to be filed to initiate such civil ac-  
11      tion.

12          “(C) EXCEPTION.—If it is not feasible for  
13      the attorney general of a State to provide the  
14      notice required by subparagraph (A), the State  
15      shall provide notice immediately upon insti-  
16      tuting a civil action under subsection (a).

17          “(2) INTERVENTION BY FEDERAL TRADE COM-  
18      MISSION.—Upon receiving notice required by para-  
19      graph (1) with respect to a civil action, the Commis-  
20      sion may—

21           “(A) intervene in such action; and

22           “(B) upon intervening—

23               “(i) be heard on all matters arising in  
24           such civil action;

1                   “(ii) remove the action to the appro-  
2                   priate district court of the United States;  
3                   and

4                   “(iii) file petitions for appeal of a de-  
5                   cision in such action.

6           “(d) INVESTIGATORY POWERS.—Nothing in this sec-  
7   tion may be construed to prevent the attorney general of  
8   a State from exercising the powers conferred on such at-  
9   torney general by the laws of such State to conduct inves-  
10   tigations or to administer oaths or affirmations or to com-  
11   pel the attendance of witnesses or the production of docu-  
12   mentary and other evidence.

13          “(e) EFFECT OF ACTION BY FEDERAL TRADE COM-  
14   MISSION.—If the Federal Trade Commission institutes a  
15   civil action or an administrative action to enforce a viola-  
16   tion of a provision of this title or a rule prescribed under  
17   section 1010, no State may, during the pendency of such  
18   action, bring a civil action under subsection (a) against  
19   any defendant named in the complaint of the Commission  
20   for violation of a provision of this title or rule prescribed  
21   under section 1010 that is alleged in such complaint.

22          “(f) ACTIONS BY OTHER STATE OFFICIALS.—

23                  “(1) IN GENERAL.—In addition to actions  
24                  brought by an attorney general of a State under

1 subsection (a), an action may be brought by officials  
2 in a State who are so authorized.

3 “(2) SAVINGS PROVISION.—Nothing contained  
4 in this section may be construed to prohibit an au-  
5 thorized official of a State from proceeding in a  
6 court of such State on the basis of an alleged viola-  
7 tion of any civil or criminal statute of such State.

8 **“SEC. 1014. STATUTE OF LIMITATIONS.**

9 “Any action to enforce any liability under section  
10 1011 may be brought before the later of—

11 “(1) the end of the 5-year period beginning on  
12 the date of the occurrence of the violation involved;  
13 or

14 “(2) in any case in which any debt settlement  
15 provider has materially and willfully misrepresented  
16 any information that the debt settlement provider is  
17 required, by any provision of this title, to disclose to  
18 any consumer and that is material to the establish-  
19 ment of the debt settlement provider’s liability to the  
20 consumer under this title, the end of the 5-year pe-  
21 riod beginning on the date of the discovery by the  
22 consumer of the violation.

23 **“SEC. 1015. RELATION TO STATE LAW.**

24 “This title shall not annul, alter, affect, or exempt  
25 any person subject to the provisions of this title from com-

1 plying with the law of any State except to the extent that  
 2 such law is inconsistent with any provision of this title,  
 3 and then only to the extent of the inconsistency. For pur-  
 4 poses of this section, a State statute, regulation, order,  
 5 or interpretation is not inconsistent with the provisions of  
 6 this title if the protection such statute, regulation, order,  
 7 or interpretation affords any person is greater than the  
 8 protection provided under this title and any subsequent  
 9 amendments. Nothing in this title shall limit or prohibit  
 10 a State from prohibiting or otherwise restricting the provi-  
 11 sion of debt settlement services, or imposing and admin-  
 12 istering a system of additional requirements, prohibitions,  
 13 registration, or licensure.”.

14 (b) INITIAL REGULATIONS.—

15 (1) IN GENERAL.—Not later than 60 days after  
 16 the date of the enactment of this Act, the Federal  
 17 Trade Commission shall commence a rulemaking to  
 18 prescribe the following:

19 (A) The form of the written notices re-  
 20 quired under subparagraphs (M) and (N) of  
 21 subsection (a)(2) and subsection (b)(5) of sec-  
 22 tion 1002 of the Consumer Credit Protection  
 23 Act, as added by subsection (a) of this section.

24 (B) The form of the statement required  
 25 under subsection (e) of such section 1002.

1           (2) DEADLINE.—The Federal Trade Commis-  
2           sion shall complete the rulemaking required by para-  
3           graph (1) not later than 1 year after the date of the  
4           enactment of this Act.

5           (3) PROCEDURE.—All rulemaking under para-  
6           graph (1) shall be conducted in accordance with sec-  
7           tion 553 of title 5, United States Code, and shall  
8           not be subject to other procedures set forth in sec-  
9           tion 18 of the Federal Trade Commission Act (15  
10          U.S.C. 57a).

11          (c) EFFECTIVE DATE.—Title X of the Consumer  
12          Credit Protection Act, as added by subsection (a) of this  
13          section, shall take effect on the date that is 60 days after  
14          the date of the enactment of this Act.

○