

111TH CONGRESS  
2D SESSION

# S. 3264

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 SENATE OF THE UNITED STATES

APRIL 27, 2010

Mr. SCHUMER (for himself and Mrs. McCASKILL) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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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**

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-  
19            pation of proffering an adjustment or settlement of  
20            a debt or obligation of the consumer to a creditor on  
21            behalf of the consumer.

22                    “(5) DEBT SETTLEMENT PROGRAM.—The term  
23            ‘debt settlement program’ means the actions and ac-  
24            tivities undertaken by a debt settlement provider and

1 a consumer in connection with the provision of debt  
2 settlement service.

3 “(6) DEBT SETTLEMENT PROVIDER.—

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

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

17 “(i) Attorneys when—

18 “(I) acting in the ordinary prac-  
19 tice of their professions;

20 “(II) acting through any entity  
21 in the ordinary practice of their pro-  
22 fession;

23 “(III) acting in the States where  
24 they are licensed to practice their pro-  
25 fession; and

1                   “(IV) not holding themselves out  
2                   as debt settlement providers or pro-  
3                   viding debt settlement service.

4                   “(ii) Escrow agents, accountants,  
5                   broker dealers in securities, or investment  
6                   advisors in securities, when acting—

7                   “(I) in the ordinary practice of  
8                   their professions; and

9                   “(II) through any entity in the  
10                  ordinary practice of their profession.

11                  “(iii) Any bank, agent of a bank,  
12                  trust company, savings and loan associa-  
13                  tion, savings bank, credit union, crop cred-  
14                  it association, development credit corpora-  
15                  tion, industrial development corporation,  
16                  title insurance company, or insurance com-  
17                  pany operating or organized under the  
18                  laws of a State or the United States.

19                  “(iv) Mortgage servicers (as such  
20                  term is defined in section 6(i) of the Real  
21                  Estate Settlement Procedures Act of 1974  
22                  (12 U.S.C. 2605(i)(2)) carrying out mort-  
23                  gage loan modifications.

24                  “(v) Any person who performs credit  
25                  services for such person’s employer while

1 receiving a regular salary or wage when  
2 the employer is not engaged in the busi-  
3 ness of offering or providing debt settle-  
4 ment service.

5 “(vi) An organization that is described  
6 in section 501(c)(3) and subject to section  
7 501(q) of the Internal Revenue Code of  
8 1986 and exempt from tax under section  
9 501(a) of such Code.

10 “(vii) Public officers while acting in  
11 their official capacities and persons acting  
12 under court order.

13 “(viii) Any person while performing  
14 services incidental to the dissolution, wind-  
15 ing up, or liquidating of a partnership, cor-  
16 poration, or other business enterprise.

17 “(7) DEBT SETTLEMENT SERVICE.—

18 “(A) IN GENERAL.—Except as provided in  
19 subparagraph (B), the term ‘debt settlement  
20 service’ means—

21 “(i) offering to provide advice or serv-  
22 ice, or to act or acting as an intermediary  
23 between or on behalf of a consumer and  
24 one or more of a consumer’s creditors,  
25 where the primary purpose of the advice,

1 service, or action is to obtain a settlement,  
2 adjustment, or satisfaction of the con-  
3 sumer's debt to a creditor in an amount  
4 less than the full amount of the principal  
5 amount of the debt or in an amount less  
6 than the current outstanding balance of  
7 the debt; or

8 “(ii) offering to provide services re-  
9 lated to or providing services advising, en-  
10 couraging, assisting, or counseling a con-  
11 sumer to accumulate funds for the primary  
12 purpose of proposing, obtaining, or seeking  
13 to obtain a settlement, adjustment, or sat-  
14 isfaction of the consumer's debt to a cred-  
15 itor in an amount less than the full  
16 amount of the principal amount of the debt  
17 or in an amount less than the current out-  
18 standing balance of the debt.

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

24 “(8) ENROLLMENT FEE.—The term ‘enrollment  
25 fee’ means any fee, obligation, or compensation paid

1 or to be paid by the consumer to a debt settlement  
2 provider in consideration of or in connection with es-  
3 tablishing a contract or other agreement with a con-  
4 sumer related to the provision of debt settlement  
5 service.

6 “(9) MAINTENANCE FEE.—The term ‘mainte-  
7 nance fee’ means any fee, obligation, or compensa-  
8 tion paid or to be paid by a consumer on a periodic  
9 basis to a debt settlement provider in consideration  
10 of maintaining the relationship and services to be  
11 provided by a debt settlement provider in accordance  
12 with a contract with a consumer related to the provi-  
13 sion of debt settlement service.

14 “(10) PRINCIPAL AMOUNT OF THE DEBT.—The  
15 term ‘principal amount of the debt’ means the total  
16 amount or outstanding balance owed by a consumer  
17 to one or more creditors for a debt that is included  
18 in a contract for debt settlement service at the time  
19 when the consumer enters into a contract for debt  
20 settlement service pursuant to section 1002(a).

21 “(11) SETTLEMENT FEE.—The term ‘settle-  
22 ment fee’ means any fee, obligation, or compensation  
23 paid or to be paid by a consumer to a debt settle-  
24 ment provider in consideration of or in connection  
25 with an agreement or other arrangement on the part

1 of a creditor to accept less than the principal  
2 amount of the debt as satisfaction of the creditor's  
3 claim against the consumer.

4 **“SEC. 1002. REQUIRED ACTS.**

5 “(a) CONTRACT REQUIRED.—

6 “(1) IN GENERAL.—A debt settlement provider  
7 may not provide a debt settlement service to a con-  
8 sumer or receive any fee from a consumer for a debt  
9 settlement service without a written contract de-  
10 scribed in paragraph (2) that is signed by the con-  
11 sumer.

12 “(2) CONTRACT CONTENTS.—A contract de-  
13 scribed in this paragraph is a contract between a  
14 debt settlement provider and a consumer for debt  
15 settlement services that includes the following:

16 “(A) The name and address of the con-  
17 sumer.

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

19 “(C) The legal name of the debt settlement  
20 provider, including any other business names  
21 used by the debt settlement provider.

22 “(D) The corporate address and regular  
23 business address, including a street address, of  
24 the debt settlement provider.



1           “(E) The license or registration number  
2           under which the debt settlement provider is li-  
3           censed or registered if the consumer resides in  
4           a State that requires a debt settlement provider  
5           to obtain a license or registration as a condition  
6           of providing debt settlement service in that  
7           State.

8           “(F) The telephone number at which the  
9           consumer may speak with a representative of  
10          the debt settlement provider during normal  
11          business hours.

12          “(G) A complete list of the consumer’s ac-  
13          counts, debts, and obligations covered under the  
14          debt settlement service covered by the contract,  
15          including the name of each creditor and prin-  
16          cipal amount of each debt.

17          “(H) A description of the services to be  
18          provided by the debt settlement provider, in-  
19          cluding the expected timeframe for settlement  
20          for each account, debt, or obligation included in  
21          subparagraph (G).

22          “(I) A clear and conspicuous itemized list  
23          of all fees, including any enrollment fee and set-  
24          tlement fees to be paid by the consumer to the  
25          debt settlement provider, and the date, approxi-

1           mate date, or circumstances under which each  
2           fee will become due.

3           “(J) A clear and conspicuous statement of  
4           a good faith estimate of the total amount of all  
5           fees to be collected by the debt settlement pro-  
6           vider from the consumer for the provision of  
7           debt settlement service under the contract.

8           “(K) A clear and conspicuous statement of  
9           the proposed savings goals for the consumer,  
10          stating the amount to be saved per month or  
11          other period, the time period over which the  
12          savings goals extend, and the total amount of  
13          the savings expected to be paid by the consumer  
14          pursuant to the terms of the contract.

15          “(L) A notice to the consumer that unless  
16          the consumer is insolvent, if a creditor settles a  
17          debt for an amount less than the consumer’s  
18          current outstanding balance at the time of set-  
19          tlement, the consumer may incur a tax liability.

20          “(M) A written notice to the consumer,  
21          which includes a form that the consumer may  
22          use and the address to which the form may be  
23          returned to the debt settlement provider, that  
24          the consumer may cancel the contract pursuant  
25          to the provisions of section 1006.

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

3                   “(i) the consumer may cancel the con-  
4           tract—

5                           “(I) within 90 days of—

6                                   “(aa) the execution of the  
7                                   contract; or

8                                   “(bb) the provision of the  
9                                   notice of the right to cancel and  
10                                  cancellation form; or

11                                  “(II) at any time in the event of  
12                                  a violation of this title on the part of  
13                                  the debt settlement provider; and

14                                  “(ii) in the case the consumer cancels  
15           the contract as described in clause (i)—

16                                  “(I) the consumer will be entitled  
17           to a full refund—

18                                   “(aa) of all fees and com-  
19                                   pensation paid by the consumer  
20                                   to the debt settlement provider,  
21                                   except any settlement fee; and

22                                   “(bb) of all funds provided  
23                                   by the consumer to the debt set-  
24                                   tlement provider for a consumer  
25                                   settlement account, except for

1 funds actually paid to a creditor  
2 on behalf of the consumer, under  
3 the terms of the contract for debt  
4 settlement service; and

5 “(II) all powers of attorney  
6 granted to the debt settlement pro-  
7 vider by the consumer will be revoked  
8 and voided.

9 “(b) NOTIFICATION REQUIRED.—A debt settlement  
10 provider shall, before the earlier of the date of entering  
11 into a written contract with a consumer for debt settle-  
12 ment services or rendering debt settlement services to a  
13 consumer, provide to the consumer in writing the fol-  
14 lowing:

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

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

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

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

1           “(3) A statement containing the following:

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

5                   “(B) The specific time by which the debt  
6 settlement service provider will make a bona  
7 fide settlement offer to each creditor and debt  
8 collector covered under the program.

9                   “(C) The total amount of debt owed by the  
10 consumer to each creditor covered under the  
11 program.

12                   “(D) An estimate of the total and the  
13 monthly savings the consumer will be required  
14 to accumulate to complete the program.

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

16                   “(A) the consumer remains legally obli-  
17 gated to make periodic or scheduled payments  
18 to creditors while participating in a debt settle-  
19 ment program; and

20                   “(B) the debt settlement provider will not  
21 make any periodic or scheduled payments to  
22 creditors on behalf of the consumer.

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

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

3           “(B) the utilization of debt settlement  
4 service may adversely impact the consumer’s  
5 credit history and credit score;

6           “(C) the consumer may inquire about  
7 other means of dealing with indebtedness, in-  
8 cluding nonprofit credit counseling and bank-  
9 ruptcy;

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

12           “(i) is likely to affect adversely the  
13 consumer’s creditworthiness;

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

16           “(iii) may result in the consumer  
17 being sued by one or more creditors or  
18 debt collectors, and in the garnishment of  
19 the consumer’s wages; and

20           “(iv) may increase the amount of  
21 money the consumer owes to one or more  
22 creditors or debt collectors due to the im-  
23 position by the creditor of interest charges,  
24 late fees, and other penalty fees; and

1           “(E) any savings the consumer realizes  
2           from use of a debt settlement service may be  
3           taxable income.

4           “(c) DETERMINATION OF BENEFIT TO CONSUMERS  
5   REQUIRED.—A debt settlement provider may not enter  
6   into a written contract with a consumer unless the debt  
7   settlement provider makes written determinations, sup-  
8   ported by the financial analysis, that—

9           “(1) the consumer can reasonably meet the re-  
10          quirements of the proposed debt settlement program  
11          included in the debt settlement service offered to the  
12          consumer, including the fees and the periodic sav-  
13          ings amounts set forth in the savings goals under  
14          the program;

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

18          “(3) the debt settlement program is suitable for  
19          the consumer at the time the contract is to be  
20          signed.

21          “(d) CHOICE OF LANGUAGE.—If a debt settlement  
22          provider communicates with a consumer primarily in a  
23          language other than English, the debt settlement provider  
24          shall furnish to the consumer a translation of the dislo-

1 sures and documents required by this title in that other  
2 language.

3 “(e) MONTHLY STATEMENTS REQUIRED.—A debt  
4 settlement provider shall, not less frequently than month-  
5 ly, provide each consumer with which it has a contract  
6 for the provision of debt settlement service a statement  
7 of account balances, fees paid, settlements completed, re-  
8 maining debts, and any other term considered appropriate  
9 by the Commission.

10 **“SEC. 1003. PROHIBITED ACTS.**

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

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

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



1       “(d) RECEIPT OF THIRD-PARTY COMPENSATION.—  
2 A debt settlement provider may not receive any cash, fee,  
3 gift, bonus, premium, reward, or other compensation from  
4 any person other than the consumer explicitly for the pro-  
5 vision of debt settlement service to that consumer, without  
6 prior disclosure of such to the consumer.

7       “(e) CONFIDENTIALITY.—A debt settlement provider  
8 may not (without prior written consent of the consumer)  
9 disclose to anyone the name or any personal information  
10 of a consumer for whom the debt settlement provider has  
11 provided or is providing debt settlement service other than  
12 to a consumer’s own creditors or the debt settlement pro-  
13 vider’s agents, affiliates, or contractors for the purpose of  
14 providing debt or settlement service.

15       “(f) MISREPRESENTATION, OMISSION, AND FALSE  
16 PROMISES.—A debt settlement provider may not mis-  
17 represent, directly or by implication, any material fact,  
18 make a material omission, or make a false promise di-  
19 rected to one or more consumers in connection with the  
20 solicitation, offering, contracting or provision of debt set-  
21 tlement service, including the following:

22               “(1) The total costs to purchase, receive, or use  
23 the services, or the nature of the services to be pro-  
24 vided.

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

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

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

8           “(5) Any claim of affiliation with, or endorse-  
9           ment or sponsorship by, any person or government  
10          entity.

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

13               “(A) The amount of time necessary to  
14               achieve settlement of all debt.

15               “(B) The amount of money or the percent-  
16               age of the debt amount that the consumer must  
17               accumulate before the provider will initiate at-  
18               tempts with the consumer’s creditors or debt  
19               collectors to settle the debt.

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

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

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

4       “(h) SECURED DEBT.—A debt settlement provider  
5 may not include in a debt settlement agreement any se-  
6 cured debt.

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

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

13               “(1) obtain a power of attorney or other au-  
14 thorization from a consumer that prohibits or limits  
15 the consumer or any creditor from communication  
16 directly with one another; or

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

20 **“SEC. 1004. FEES.**

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

24               “(1) Enrollment fees.

25               “(2) Settlement fees.

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

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

7           “(1) the amount that is reasonable and com-  
8 mensurate to the debt settlement service provided to  
9 a consumer; and

10          “(2) \$50.

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

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

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

19           “(A) the principal amount of that debt;  
20 and

21           “(B) the amount—

22           “(i) paid by the debt settlement pro-  
23 vider to the creditor pursuant to a settle-  
24 ment negotiated by the debt settlement  
25 provider on behalf of the consumer as full

1 and complete satisfaction of the creditor's  
2 claim with regard to that debt; or

3 “(ii) negotiated by the debt settlement  
4 provider and paid by the consumer to the  
5 creditor pursuant to a settlement nego-  
6 tiated by the debt settlement provider on  
7 behalf of the consumer as full and com-  
8 plete satisfaction of the creditor's claim  
9 with regard to that debt.

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

13 “(1) a creditor enters into a legally enforceable  
14 agreement with the consumer to accept funds in a  
15 specific dollar amount as full and complete satisfac-  
16 tion of the creditor's claim with regard to that debt;  
17 and

18 “(2) those funds are provided—

19 “(A) by the debt settlement provider on  
20 behalf of the consumer; or

21 “(B) directly by the consumer to the cred-  
22 itor pursuant to a settlement negotiated by the  
23 debt settlement provider.

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

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

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

16               “(1) is owned by, controlled by, or in any way  
 17               affiliated with the debt settlement service provider;  
 18               or

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

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

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

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

1           “(3) create a demand draft on a consumer’s  
2 bank account;

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

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

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

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

11          “(b) REFUNDS.—

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

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

23           “(B) funds paid by the consumer to the  
24 debt settlement provider that—

1                   “(i) have accumulated in a consumer  
2                   settlement account; and

3                   “(ii) the debt settlement provider has  
4                   not disbursed to creditors.

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

12                  “(A) half of all of the fees collected from  
13                  the consumer, with the exception of any earned  
14                  settlement fees; and

15                  “(B) all funds paid by the consumer to the  
16                  debt settlement provider that have accumulated  
17                  in a consumer settlement account and which the  
18                  debt service provider has not disbursed to credi-  
19                  tors.

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



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

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

7                   “(B) The fees refunded to the consumer by  
8                   the debt settlement provider.

9                   “(C) The savings of the consumer held by  
10                  the debt settlement provider.

11                  “(D) The payments made by the debt set-  
12                  tlement provider to creditors on behalf of the  
13                  consumer.

14                  “(E) The settlement fees earned, if any, by  
15                  the debt settlement provider by settling debt on  
16                  behalf of the consumer.

17                  “(F) The savings of the consumer re-  
18                  funded to the consumer by the debt settlement  
19                  provider.

20           “(c) REVOCATION OF POWERS OF ATTORNEY AND  
21           DIRECT DEBIT AUTHORIZATIONS.—Upon cancellation of  
22           a contract by a consumer—

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

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

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

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

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

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

17          “(a) CONSUMER WAIVERS INVALID.—A waiver by a  
18          consumer of any protection provided or any right of the  
19          consumer under this title—

20                  “(1) is void; and

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

22          “(b) ATTEMPT TO OBTAIN WAIVER.—Any attempt  
23          by any person to obtain a waiver from any consumer of  
24          any protection provided by or any right or protection of  
25          the consumer or any obligation or requirement of the debt

1 settlement provider under this title shall be considered a  
2 violation of a provision of this title.

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

6 “(1) shall be treated as void;

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

8 and

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

13 **“SEC. 1009. ADVERTISING, MARKETING, AND COMMUNICA-**  
14 **TION PRACTICES.**

15 “A debt settlement provider shall not state or imply  
16 claims, results, or outcomes in any advertising, marketing,  
17 or other communication with consumers that represent or  
18 reflect results or outcomes, including about the percentage  
19 or dollar amount by which debt may be reduced or the  
20 amount a consumer may save or the historical experience  
21 of its customers with respect to debt reduction, that—

22 “(1) are materially different from the actual av-  
23 erage result or outcome achieved by that debt settle-  
24 ment provider on all of the debt of consumers who  
25 enter the program; or

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

6   **“SEC. 1010. RULEMAKING BY FEDERAL TRADE COMMIS-**  
 7                                   **SION.**

8           “(a) IN GENERAL.—The Commission may prescribe  
 9           rules with respect to advertising and marketing practices,  
 10          record retention, provision of accountings to consumers,  
 11          and such other matters as the Commission considers nec-  
 12          essary to improve the consumer experience with debt set-  
 13          tlement providers.

14          “(b) DEBT RELIEF SERVICE RULES.—

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

19                 “(2) EXCEPTION.—Any rule prescribed under  
 20          paragraph (1) shall not be applicable to or otherwise  
 21          include services provided by those persons or entities  
 22          identified in section 1001(6)(B) or section  
 23          1001(7)(B).

24                 “(3) DEBT RELIEF SERVICE DEFINED.—In this  
 25          subsection, the term ‘debt relief service’ means any

1 service represented, directly or by implication, to re-  
2 negotiate, or in any way alter the terms of payment  
3 or other terms of the debt between a consumer and  
4 one or more unsecured creditors or debt collectors,  
5 including a reduction in the balance, interest rate, or  
6 fees owed by a consumer to an unsecured creditor or  
7 debt collector.

8 “(c) PROCEDURE.—All rulemaking under this title  
9 shall be conducted in accordance with section 553 of title  
10 5, United States Code, and shall not be subject to other  
11 procedures set forth in section 18 of the Federal Trade  
12 Commission Act (15 U.S.C. 57a).

13 **“SEC. 1011. CIVIL LIABILITY.**

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

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

20 “(A) the amount of any actual damage  
21 sustained by such consumer as a result of such  
22 failure; or

23 “(B) any amount paid by the consumer to  
24 the debt settlement provider.

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

4           “(3) PUNITIVE DAMAGES.—

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

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

10           “(i) the aggregate of the amount  
11           which the court may allow for each named  
12           plaintiff; and

13           “(ii) the aggregate of the amount  
14           which the court may allow for each other  
15           class member, without regard to any min-  
16           imum individual recovery.

17           “(4) ATTORNEYS’ FEES.—In the case of any  
18           successful action to enforce any liability under para-  
19           graph (1), (2), or (3), the costs of the action, to-  
20           gether with reasonable attorneys’ fees.

21           “(b) FACTORS TO BE CONSIDERED IN AWARDING  
22           PUNITIVE DAMAGES.—In determining the amount of any  
23           liability of any debt settlement provider under subsection  
24           (a)(2), the court shall consider, among other relevant fac-  
25           tors—

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

3           “(2) the nature of the noncompliance;

4           “(3) the extent to which such noncompliance  
5 was intentional; and

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

8 **“SEC. 1012. ENFORCEMENT BY FEDERAL TRADE COMMIS-**  
9 **SION.**

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

16          “(b) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—  
17 A failure to comply with a provision of this title or a viola-  
18 tion of a rule prescribed under section 1010 shall be treat-  
19 ed as a violation of a rule defining an unfair or deceptive  
20 act or practice prescribed under section 18(a)(1)(B) of the  
21 Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

22 **“SEC. 1013. ACTION BY STATES.**

23          “(a) IN GENERAL.—In any case in which the attor-  
24 ney general of a State has reason to believe that an inter-  
25 est of the residents of the State has been or is threatened

1 or adversely affected by the engagement of any person  
2 subject to a provision of this title or a rule prescribed  
3 under section 1010 in a practice that violates such provi-  
4 sion or rule, the State may, as *parens patriae*, bring a  
5 civil action on behalf of the residents of the State in an  
6 appropriate district court of the United States or other  
7 court of competent jurisdiction—

8           “(1) to enjoin that practice;

9           “(2) to enforce compliance with the provision or  
10 rule; or

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

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

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

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

21           “(A) IN GENERAL.—Except as provided in  
22 subparagraph (C), the attorney general of a  
23 State shall notify the Federal Trade Commis-  
24 sion in writing of any civil action under sub-  
25 section (a), prior to initiating such civil action.



1           “(B) CONTENTS.—The notice required by  
2           subparagraph (A) shall include a copy of the  
3           complaint to be filed to initiate such civil ac-  
4           tion.

5           “(C) EXCEPTION.—If it is not feasible for  
6           the attorney general of a State to provide the  
7           notice required by subparagraph (A), the State  
8           shall provide notice immediately upon insti-  
9           tuting a civil action under subsection (a).

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

14                 “(A) intervene in such action; and

15                 “(B) upon intervening—

16                         “(i) be heard on all matters arising in  
17                         such civil action;

18                         “(ii) remove the action to the appro-  
19                         priate district court of the United States;  
20                         and

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

23          “(d) INVESTIGATORY POWERS.—Nothing in this sec-  
24          tion may be construed to prevent the attorney general of  
25          a State from exercising the powers conferred on such at-

1 torney general by the laws of such State to conduct inves-  
2 tigations or to administer oaths or affirmations or to com-  
3 pel the attendance of witnesses or the production of docu-  
4 mentary and other evidence.

5       “(e) EFFECT OF ACTION BY FEDERAL TRADE COM-  
6 MISSION.—If the Federal Trade Commission institutes a  
7 civil action or an administrative action to enforce a viola-  
8 tion of a provision of this title or a rule prescribed under  
9 section 1010, no State may, during the pendency of such  
10 action, bring a civil action under subsection (a) against  
11 any defendant named in the complaint of the Commission  
12 for violation of a provision of this title or rule prescribed  
13 under section 1010 that is alleged in such complaint.

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

15               “(1) IN GENERAL.—In addition to actions  
16 brought by an attorney general of a State under  
17 subsection (a), an action may be brought by officials  
18 in a State who are so authorized.

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

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

2 “Any action to enforce any liability under section  
3 1011 may be brought before the later of—

4 “(1) the end of the 5-year period beginning on  
5 the date of the occurrence of the violation involved;  
6 or

7 “(2) in any case in which any debt settlement  
8 provider has materially and willfully misrepresented  
9 any information that the debt settlement provider is  
10 required, by any provision of this title, to disclose to  
11 any consumer and that is material to the establish-  
12 ment of the debt settlement provider’s liability to the  
13 consumer under this title, the end of the 5-year pe-  
14 riod beginning on the date of the discovery by the  
15 consumer of the violation.

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

17 “This title shall not annul, alter, affect, or exempt  
18 any person subject to the provisions of this title from com-  
19 plying with the law of any State except to the extent that  
20 such law is inconsistent with any provision of this title,  
21 and then only to the extent of the inconsistency. For pur-  
22 poses of this section, a State statute, regulation, order,  
23 or interpretation is not inconsistent with the provisions of  
24 this title if the protection such statute, regulation, order,  
25 or interpretation affords any person is greater than the  
26 protection provided under this title and any subsequent

1 amendments. Nothing in this title shall limit or prohibit  
2 a State from prohibiting or otherwise restricting the provi-  
3 sion of debt settlement services, or imposing and admin-  
4 istering a system of additional requirements, prohibitions,  
5 registration, or licensure.”.

6 (b) INITIAL REGULATIONS.—

7 (1) IN GENERAL.—Not later than 60 days after  
8 the date of the enactment of this Act, the Federal  
9 Trade Commission shall commence a rulemaking to  
10 prescribe the following:

11 (A) The form of the written notices re-  
12 quired under subparagraphs (M) and (N) of  
13 subsection (a)(2) and subsection (b)(5) of sec-  
14 tion 1002 of the Consumer Credit Protection  
15 Act, as added by subsection (a) of this section.

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

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

22 (3) PROCEDURE.—All rulemaking under para-  
23 graph (1) shall be conducted in accordance with sec-  
24 tion 553 of title 5, United States Code, and shall  
25 not be subject to other procedures set forth in sec-

1       tion 18 of the Federal Trade Commission Act (15  
2       U.S.C. 57a).

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

○