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**REPORT ON LEGISLATION BY THE
CONSUMER AFFAIRS COMMITTEE AND CIVIL COURT COMMITTEE**

A.597 **M. of A. Dinowitz**

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

THIS BILL IS OPPOSED

The Civil Court and Consumer Affairs Committees of the New York City Bar Association submit these comments in opposition to the proposed legislation, A.597. This bill would amend the Budget Planning Law to permit entities other than Type B not-for-profit corporations to offer debt management services and allow such entities to conduct business in New York, subject to licensure, fee limitations, consumer disclosures, and additional conditions. The Committees believe that the bill departs from New York State's longstanding policy of protecting consumers from deceptive and abusive debt relief services by limiting the provision of such services to entities that charge no fee or only a nominal fee. The debt relief sector has a long history of abusive and deceptive practices and is the continuing focus of government enforcement actions. The Committees believe debt relief for more than a nominal fee on behalf of economically distressed consumers is inherently flawed and the available empirical evidence does not point to any efficacy warranting licensure. The Committees oppose this bill.

BACKGROUND

Overview of Debt Relief

The consumer debt relief sector in the United States encompasses a number of business models, including credit counseling, debt management (also sometimes known as debt negotiation), and debt settlement. The Federal Trade Commission (FTC) describes credit counseling agencies as typically nonprofit organizations that negotiate debt management plans between consumers and creditors under renegotiated terms.[1] Debt management operators offer to obtain interest rate reductions or other concessions to lower the amount of consumers' monthly payments, but generally do not renegotiate the principal debt owed.[2] Debt settlement companies purport to negotiate settlement agreements to satisfy outstanding debts on behalf of consumers. Debt settlement companies require consumers to make monthly deposits into special accounts in order to accumulate sufficient funds to settle debts; the companies take their fees

[1] FTC Telemarketing Sales Rule, 75 Fed. Reg. 48,458, 48,459 (Aug. 10, 2010) [hereinafter FTC 2010 TSR Final Rule Amendments].

[2] *Id.* at 48,464.

from these accounts. In the past, debt settlement companies usually instructed consumers to stop making payments to creditors in order to build up funds, and imposed upfront fees before settling accounts, resulting in mounting interest, late, and penalty fees and even more damaged credit reports.[3] By statute, New York State regulates two types of debt relief services and, based on longstanding public policy, generally limits both to type B not-for-profit corporations—credit services and budget planning.[4] Budget planning is most akin to debt management.[5]

The Federal Trade Commission's Telemarketing Sales Rule Amendments

The past decade saw a dramatic rise in fraudulent, abusive, deceptive, and predatory practices in the debt relief industry. To address abuses, the Federal Trade Commission (FTC) responded by amending the Telemarketing Sales Rule (TSR) through the Telemarketing and Consumer Fraud and Abuse Prevention Act.[6] This amendment to the TSR went into effect on October 27, 2010 and addresses many of the most egregious practices of debt relief companies. The TSR applies to outgoing calls by debt relief companies as well as incoming calls by consumers in response to advertising.[7] It imposes limits on some of the most harmful aspects of the debt relief industry, including a ban on upfront fees and replacement of such fees with a so-called "pay as you go" fee model, the requirement of key disclosures to consumers, and the prohibition of misrepresentations to consumers about any material aspect of the debt relief service.[8] As discussed further below, the TSR had a significant impact on debt relief practices, but consumers continue to remain at risk because of some gaps in protection.

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[3] *Id.* at 48,461-64. S*ee also* Deanne Loonin, *An Investigation of Debt Settlement Companies: An Unsettling Business for Consumers*, National Consumer Law Center, 1-2 March 2005, *available at* http://www.uniformlaws.org/shared/docs/debt_management_services/nclcdebtsettlementrpt.pdf (last visited May 20, 2013).

[4] *See* N.Y. Gen. Bus. §§ 455(4), 458-b (2013). New York State defines budget planning as "the making of a contract between a person or entity engaged in the business of budget planning with a particular debtor whereby (i) the debtor agrees to pay a sum or sums of money in any manner or form and the person or entity engaged in the business of budget planning distributes, or supervises, coordinates or controls the distribution of . . . the same among certain specified creditors in accordance with a plan agreed upon and (ii) the debtor agrees to pay to such person or entity . . . a sum or sums of money . . . for such services . . . ." § 455(1). Attorneys are generally exempted. § 455(2), (3), (5). New York State defines credit services business to mean "any person who sells, provides, or performs or represents that he can or will sell, provide or perform, a service for the express or implied purposes of improving a consumer's credit record, history, or rating or providing advice or assistance to a consumer with regard to the consumer's credit record history or rating in return for the payment of a fee." § 458-b(1). The law expressly excludes "[a]ny person admitted to practice law in this state where the person renders services within the course and scope of his or her practice as an attorney at law." § 458-b(1)(b).

[5] The bill's addition to the definition of budget planning of the phrase "periodic payment plan" would align the statute with the debt management model.

[6] 15 U.S.C. §§ 6101-6108; 16 C.R.F. Pt. 310.

[7] *TSR Proposed Rule,* 74 FR 41988, 41998 (Aug. 1 19, 2009) ("The proposed amendments would bring all inbound debt relief calls in response to direct mail or general media advertisements under the Rule. . . .").

[8] 16 C.F.R. §§ 310.3(a)(x) (prohibiting deceptive telemarketing of debt settlement services), 310.4(a)(5) (prohibiting upfront fees for debt settlement and imposing additional protections).

New York City Bar's *White Paper* on Debt Settlement

Beginning in 2009, members of the Committees became increasingly concerned by the number of New Yorkers who were falling victim to deceptive and fraudulent debt relief services. Committee members discovered that, increasing numbers of economically distressed consumers, many of them vulnerable immigrants, persons with disabilities, and seniors, were being scammed by debt settlement and debt management operators. Consumers fell prey to deceptive advertising and hard-sell tactics and enrolled in programs that promised them debt-free futures, but instead encountered substantial upfront fees, ruined credit, and resulted in ballooning debt. The Committees were particularly concerned by abusive debt settlement practices, which had especially devastating consequences for consumers.

On May 11, 2012, the City Bar issued a comprehensive examination of the debt settlement industry entitled *Profiteering from Financial Distress: An Examination of the Debt Settlement Industry.*[9] The White Paper provided an overview of the troubled history of the debt relief sector over time, including debt management, and delved deeply into debt settlement in the past decade.[10] The Committees concluded, after exhaustive review of the publicly available record and extensive stakeholder interviews, that debt settlement for more than a nominal fee—even with the FTC regulatory reforms—is an inherently flawed model that causes consumers "net financial loss and lasting financial harm."[11]

The White Paper examined the legislative history of debt relief regulation in New York State and pointed out that:

> The New York State Legislature adopted legislation banning for-profit "budget planning" in 1956. The record from the legislative history includes this notation:
>
> > The Attorney General reports that debt consultants lure the financially distressed by false and deceptive advertising; that they charge excessive fees; and that they derive the bulk of their revenue from the poorly educated and the people in the lower income groups.

[9] New York City Bar, *Profiteering from Financial Distress: An Examination of the Debt Settlement Industry*, May 2012, *available at* http://www2.nycbar.org/pdf/report/uploads/DebtSettlementWhitePaperCivilCtConsumerAffairsReportFINAL5.11.12.pdf [hereinafter NYCB 2012 White Paper].

[10] *See, e.g., id.* at 11-26 (providing an overview of the history of debt relief operators and the emergence of the modern debt settlement industry).

[11] *Id.* at 1.

The record goes on to include the following observation about debt adjusters: "[i]t appears these practices are too common and widespread in the area affected, that the only feasible way to control them is by prohibiting this type of business . . . ."[12]

As discussed more fully below, the rationale for banning debt relief operators that charge more than a nominal fee is even truer today. This is because specialized government-funded and nonprofit providers provide the services proposed by this bill for free or at most a nominal fee and because, as noted below, of the continued abusive and deceptive practices by the debt relief sector. Today, fraudulent operators reach consumers through the internet and aggressive marketing and advertising in multiple media. Moreover, in the years since the boom in debt relief services, providers cannot point to data or methodologically sound studies demonstrating the situational improvement of economically distressed consumers.

The Debt Relief Sector Post-TSR

The White Paper concluded that the TSR resulted in a constriction of the debt relief sector and a reduction in the most egregious practices, but that vulnerable and economically distressed consumers remained at risk of deceptive and abusive practices.[13] The new regulations have loopholes which, when exploited, harm consumers. For example, the TSR does not apply to in-person or internet-only sales of debt settlement services.[14] Many Committee members observed that consumers routinely sign up for debt settlement programs via the internet and, thus, are not be protected by the amended TSR. Likewise, post-TSR debt settlement companies have recruited enrollees through in-home solicitations and face-to-face meetings in storefronts, which are also not covered by the amended TSR. In addition, the TSR includes an exemption for attorneys, which has been exploited by certain debt settlement companies to the severe detriment of consumers. For example, Legal Helpers Debt Resolution LLC, a nation-wide debt settlement company, circumvented the TSR ban on upfront fees by using attorneys to act as a front for the business. In fact, consumers would never meet with an attorney, and as is typical of debt settlement, the company's services seldom reduced consumers' debt, and most consumers were left in a worsened financial state. For this reason, Legal Helpers was sued by both the Maine and Illinois attorneys general.[15]

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[12] NYCB 2012 REPORT, *supra* note 9, at 13 (citing N.Y. GEN. BUS. LAW §§ 455-57 (2012) and NEW YORK LEGISLATIVE ANNUAL 451-52 (1955) (Governor's Memoranda on Bills Approved, "budget planning prohibited")).

[13] NYCB 2012 White Paper, *supra* note 9, at 105-06.

[14] *See id.* § 310.6(b)(3) (exempting telephone calls in which the sale of goods occurs after a face-to-face sale).

[15] *See* Press Release, Me. Attorney Gen., *Attorney General Schneider and Superintendent Lund Announce Settlements with Debt Management* (Dec. 8, 2012), *available at* http://www.maine.gov/tools/whatsnew/index.php?topic=CCR-PressReleases&id=467823&v=Default; Press Release, Ill. Attorney Gen., *Madigan, IDFPR Settle Lawsuit Over Consumer Debt Scam* (Jul. 9, 2012), *available at* http://www.illinoisattorneygeneral.gov/pressroom/2012_07/20120709.html. Also of note is a declaratory ruling by the Connecticut Department of Banking requiring Persels & Associates, a limited liability company that is associated with Care One Services, Inc., to become licensed pursuant to state's licensure requirements for debt negotiation. *In re Petition of Persels & Assocs.,* Connecticut Department of Banking (Sept. 11, 2012), *available at* http://www.ct.gov/dob/lib/dob/legal_nonhtml/debt_negotiation_declaratory_ruling.pdf (last visited May 20, 2013).

Consumer Complaints and Enforcement Actions Post-TSR

Following the TSR going into effect, the New York State Office of the Attorney General received fewer consumer complaints related to debt relief, which is indicative of the TSR's impact.[16] Nevertheless, federal and state agencies continue to prosecute debt relief operators for engaging in abusive and deceptive practices. For example, on January 28, 2013, the FTC issued a press release announcing that the agency had brought its seventh action in three months against debt relief companies.[17] The FTC has sued both debt settlement[18] and debt management operators.[19] The law enforcement actions against debt management operators are especially

[16] The number of debt relief complaints went down as follows: 235 in 2009; 363 in 2010; 310 in 2011; and 169 in 2012. Email from Jane Azia, Bureau Chief, Consumer Frauds and Protection Bureau, Office of the New York Attorney General to Dora Galacatos, Chair, Civil Court Committee (Apr. 18, 2013, 10:16 a.m. EST) (on file with the New York City Bar Civil Court Committee).

[17] Press Release, Federal Trade Commission, *FTC Brings Seventh Action in Three Months Against Debt Relief Companies: Tampa Telemarketers Alleged to Have Falsely Promised to Save Consumers Thousands on Credit Card Debt* (Jan. 28, 2013), *available at* http://www.ftc.gov/opa/2013/01/innwealth.shtm (last visited May 20, 2013).

[18] Since this TSR going into effect, the FTC brought the following enforcement actions against debt settlement operators (all sites last visited May 20, 2013):

- FTC v. Christopher Mallet et al., Compl. ¶¶ 11-12, 30-38 (Sept. 14, 2011) (detailing defendants' extensive deceptive internet-based debt relief activities, which included claims of 60% to 84% in savings), *available at* http://www.ftc.gov/os/caselist/1123105/110922usdebtcarecmpt.pdf; FTC v. Christopher Mallet, Stip. Final Order 8 (June 14, 2012) (banning the defendant from debt relief activities), *available at* http://www.ftc.gov/os/caselist/1123105/120703usdebtorder.pdf;
- FTC v. FDN Solutions, LLC, Compl. ¶¶ 9-23 (May 22, 2012) (alleging that debt settlement company engaged in deceptive advertising on the internet including claims of 40% to 60% savings), *available at* http://www.ftc.gov/os/caselist/1123078/120606fdncmpt.pdf; FTC v. FDN Solutions, LLC, Stip. Final J. & Order 5, 8-9 (May 25, 2012) (enjoining defendants who engaged in debt settlement from making misrepresentations related to debt relief services, engaging in deceptive telemarketing, and making unsubstantiated claims), *available at* http://www.ftc.gov/os/caselist/1123078/120606fdnstip.pdf;
- FTC v. Nelson Gamble & Assocs. Compl. ¶¶ 13-15 (Sept. 10, 2012), *available at* http://www.ftc.gov/os/caselist/1223030/120918nelsoncmpt.pdf (alleging, among other deceptive and abusive practices, that defendant debt settlement company marketed unsubstantiated claims of 50% to 80% in savings on the internet);
- FTC v. Golembiewski, Compl. ¶¶ 13 (Sept. 27, 2012), *available at* http://www.ftc.gov/os/caselist/1123079/121011legitimatedebtcmpt.pdf (alleging that defendant lead generator engaged in deceptive marketing in violation of the TSR by claiming, among other misrepresentations, savings by debt settlement clients of 60% to 90%); FTC v. Golembiewski, Stip. Final J. & Order 5 (Oct. 4, 2012), *available at* http://www.ftc.gov/os/caselist/1123079/121011legitimatedebtstip.pdf (among other provisions, permanently enjoining defendants from engaging in debt relief services).

[19] Since this TSR going into effect, the FTC brought the following enforcement actions against debt management operators (all sites last visited May 20, 2013):

- FTC v. Credit Restoration Brokers, LLC, Order ¶¶ 4, 5 (Feb. 10, 2012), *available at* http://www.ftc.gov/os/caselist/0823001/120222crborder.pdf (finding that defendants charged upfront fees and engaged in deceptive advertising);
- USA v. Cox, Compl. ¶¶ 28, 31 (alleging that defendants engaged in robo-calling in violation of the TSR for the sale of among other "services" credit card interest rate reduction programs), *available at*

noteworthy. The FTC asserted that one of these companies, National Card Monitor, LLC, cold-called consumers and told them the company could reduce their credit card interest rates to as low as zero percent by obtaining new lower-rate cards on their behalf, onto which they could transfer existing balances. According to the FTC, consumers who accepted the offer were required to pay a fee, typically ranging from $499 to $599, and were told that National offered a 100 percent money-back guarantee. After paying the fee, however, most consumers found out that National failed to deliver on its promise to secure a new credit card on their behalf and that getting a "guaranteed" refund of their payment was very difficult.[20] Attorneys general have also brought enforcement actions against debt management and debt settlement operators.[21] Clearly

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http://www.ftc.gov/os/caselist/0923193/111219roycoxcmpt.pdf; USA v. Cox, Stip. J. & Order 4, 5 (ordering a permanent ban on telemarketing and imposing a civil penalty of $1.12 million), *available at* http://www.ftc.gov/os/caselist/0923193/130219coxstiporder.pdf;

- FTC v. Premier Nationwide Corp., Compl. ¶¶ 11-21 (alleging debt management company engaged in deceptive and abusive practices in violation of the TSR, including by charging upfront fees, making unsubstantiated claims on savings, and refusing refunds), *available at* http://www.ftc.gov/os/caselist/1123164/120118premiercmpt.pdf; FTC v. Premier Nationwide Corp., Stip. Final J. and Order 6, 12 (July 2, 2012), *available at* http://www.ftc.gov/os/caselist/1123164/120703premierorder.pdf (ordering, among other measures, a permanent ban on the marketing of debt relief series and imposing civil judgment of $15 million);
- FTC v. Southeast Trust, LLC, Compl. ¶¶ 11, 13-28 (Dec. 10, 2012), *available at* http://ftc.gov/os/caselist/1223079/121213financialfreedomcmpt.pdf (alleging that debt management company and associates engaged in deceptive internet marketing, robo-calling, and telemarketing, including claims that consumers could get out of debt in 3 to 5 years after reductions on interest rates); and
- FTC v. National Card Monitor LLC, Compl. ¶¶ 9-12 (Nov. 27, 2012), *available at* http://www.ftc.gov/os/caselist/1223200/121212ncmcmpt.pdf (alleging that debt management defendant engaged in deceptive telemarketing and claimed to reduce credit card interest rates to 0% to 7% for consumers and charged upfront fees); FTC .v National Card Monitor LLC, Stip. Prel. Inj., *available at* http://www.ftc.gov/os/caselist/1223200/121212ncmstippi.pdf (enjoining defendants from engaging in violations of the TSR and other consumer protection provisions); FTC v. Innovative Wealth Builders, Inc., Compl. ¶¶ 12, 14-32(Jan. 14. 2013), *available at* http://www.ftc.gov/os/caselist/1223127/130128iwbcmpt.pdf (alleging that debt management defendant charged upfront fees and engaged in deceptive marketing.

[20] Press Release, Federal Trade Commission, *FTC Shuts Down Another Credit Card Interest Rate Reduction Scheme* (December 12, 2012), *available at* http://www.ftc.gov/opa/2012/12/nationalcard.shtm (last visited May 20, 2013).

[21] *See, e.g.,* Press Release, Colorado Department of Law, *Attorney General Settles with Prestige Financial Solutions Over Consumer Abuses* (Feb. 4, 2013), *available at* http://www.coloradoattorneygeneral.gov/sites/default/files/press_releases/2013/02/04/020413_prestige_financial_final.pdf; Consumer Financial Protection Bureau, *A Joint Enforcement Action with States to Stop Illegal Advance Fees* (Dec. 21, 2012), *available at* http://www.consumerfinance.gov/blog/category/payday-loans/ (describing enforcement action with five Attorneys General against a debt settlement operator that charged upfront fees and claimed to specialize in payday loans); Press Release, Illinois Attorney General, *Madrigan, IDFPR Settle Lawsuit Over Consumer Debt Scam: Attorney General: Agreement Provides More than $2 Million Restitution to Illinois Consumers* (July 9, 2012), *available at* http://illinoisattorneygeneral.gov/pressroom/2012_07/20120709.html (announcing settlement and restitution against attorney-fronted debt settlement operator, which among other deceptive and abusive practices charged upfront fees); In re Legal Helpers Debt Resolution, LLC, Cease and Desist Order (June 9, 2011), *available at* http://www.maine.gov/tools/whatsnew/index.php?topic=CCR-LegalDocs&id=266869&v=Default (permanently enjoining attorney-fronted debt relief company from engaging in debt management services with Maine consumers) (last visited May 20, 2013).

while the TSR may have resulted in a reining in of abusive and deceptive debt relief practices, it remains an extremely troubled sector.

Inherently Flawed Models / Lack of Efficacy Evidence

The White Paper also conducted an exhaustive review, pre- and post-TSR, of the available evidence pertaining to debt settlement efficacy.[22] The White Paper concluded that, even with the protections of the TSR, the debt settlement model is inherently flawed and does not provide consumers with a net benefit. The Committees are not aware of any independent and objective study of the efficacy of debt management or debt settlement post-TSR. While only three states require debt relief companies to file reports on completion rates and net financial effects, only reports from Colorado are publicly available.[23] The Colorado 2011 Annual Report, which is the most recent and covers for-fee debt management and debt settlement, indicates that only 0.76% of 5,111 debt management agreements were completed (i.e., all debts settled and paid) and 19.88% were terminated (i.e., consumer dropped out of the program); likewise, for 1,261 debt settlement agreements, only 0.40% were completed and 37.35% were terminated.[24] While this data provides only a glimpse at efficacy, these completion and drop-out rates suggest that significant numbers of Colorado consumers realized that these debt relief models do not deliver on their unrealistic, if not impossible, promises.

Legislative Reforms in Other Jurisdictions

Many states have enacted legislation to prevent debt settlement abuses against consumers. For example, in May 2010, Illinois passed the Debt Settlement Consumer Protection Act,[25] which limits any settlement fee to 15% of the consumer's savings and prohibits such a fee from being charged until after a debt settlement company has negotiated and executed a settlement agreement with the creditor.[26] Maine also passed a law limiting the fee to 15% of the consumer's savings whether debt management or debt settlement.[27] Moreover, the Illinois law requires that an individualized consumer financial analysis be conducted to determine suitability

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[22] NYCB 2012 White Paper, *supra* note 9, at 61-68.

[23] *Id.* at 65-67 (noting that Colorado, Illinois, and Texas have reporting requirements).

[24] State of Colorado, *2011 Annual Report – Colorado Dept-Management Services Providers*, *available at* http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/Annual%20Report%20-%202011.pdf (last visited May 20, 2013). The Report describes credit counseling providers as "work[ing] with consumer's creditors to establish a debt management plan that may include interest rate reductions, lower fees, and lower monthly payments." *Id.*

[25] H.B. 4781, Public Act 096-1420 (effective Aug. 3, 2010), *available at* http://www.ilga.gov/legislation/publicacts/96/PDF/096-1420.pdf (last visited May 20, 2013).

[26] 25 Ill. Comp. Stat. Ann. 429/125 (2013). Illinois also has a Debt Management Services Act. 205 Ill. Comp. Stat. Ann. 665/2 (2013).

[27] *See* Me. Rev. Stat. tit. 32, § 6174-A, *available at* http://www.mainelegislature.org/legis/statutes/32/title32sec6174-A.html (limits on fees and charged)(last visited May 20, 2013); § 6172 (definitions) .

before a consumer is even enrolled in a program.[28] Some states, including Arkansas, Hawaii, Louisiana, New Jersey, North Carolina, and Wyoming, ban for-profit debt relief (debt management and/or debt settlement) altogether.[29]

PROPOSED LEGISLATION[30]

Some features of the proposed legislation are:

1. *Expanding Entities Permitted to Engage in Budget Planning*: The bill departs from longstanding New York State policy and amends section 579 of the Banking Law, which currently restricts licensed budget planning to type B not-for-profit corporations, to permit all entities to become licensed budget planners.

2. *Enrollment Fee, Fee Structure, and Refunds*: The bill limits a debt settlement company to charging an enrollment fee of no more than $50, or such other amount as set by the superintendent. Settlement fees are limited the lesser of (1) an amount that is reasonable and commensurate to the debt settlement services provided, or (2) 20% of the amount of the consumer's savings. The consumer's savings are calculated using the amount of the debt at the time of enrollment in the debt settlement plan; fees can only be collected following payment of the settlement amount.

3. *Debtor Settlement Accounts*: The bill requires that a debt settlement company hold all funds received for a debtor settlement account in a properly designated bank account in an FDIC-insured institution. The funds would be owned by the consumer and remain the consumer's property until they were disbursed to a creditor on the consumer's behalf.

4. *Advertising and Marketing Practices*: The bill would prohibit unfair or deceptive representations or any omissions of material facts concerning the company's debt settlement services and require a consumer warning regarding the risks of debt settlement.

5. *Licensure and Bonding*: A debt settlement company would be required to be licensed, and each applicant for a debt settlement license would file a $250,000 surety bond. Where a company has a history of consumer complaints the superintendent would have the discretion to require the posting of a higher bond.

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[28] 25 Ill. Comp. Stat. Ann. 429/110 (2013).

[29] *See* Ark. Code Ann. § 5-63-301, *et seq.;* Haw. Rev. Stat. § 446-2; La. Rev. Stat. § 14:331; N.J. Stat. Ann. § 17: 16G-2; N.C. Gen. Stat. § 14-424; Wyo. Stat. Ann. § 33-14-101, *et seq.*

[30] The memo and several provisions of the bill refer to the Department of Banking. *See, e.g.,* N.Y. A.597 Memo ("This bill would also prohibit debt settlement providers from conducting business in New York without first obtaining a license from the State Banking Department."); *id.* § 588-C(4)(C); *id.* § 588-L(3). The Banking Department was abolished in 2011 when its functions and authority were transferred to the Department of Financial Services. N.Y.S. Dep't of Fin. Servs. http://www.dfs.ny.gov/about/history.htm (last visited Apr. 20, 2013). Presumably, references to the superintendent in the bill refer to the superintendent of the New York State Department of Financial Services.

6. *Required Pre-Agreement Disclosures and Warnings*: The bill would require that a "Debtor Notice and Rights Form" be provided to a consumer and that specific warnings and disclosures be made orally and in writing prior to the signing of a debt settlement agreement.

7. *Individualized Financial Analysis*: The bill would require a debt settlement company to complete an individualized financial analysis for the consumer.

8. *Penalties & Noncompliance*: The bill makes violation of the licensing requirements a Class A Misdemeanor and makes a contract that does not comply with the law void.

9. *Exemption for Attorneys When Practicing Law*: The bill exempts certain persons including attorneys licensed to practice law in New York State.[31]

10. *No Private Right of Action*: The bill expressly provides that "[n]othing in this article shall create a private right of action on behalf of a debtor against a debt settlement company for violations of this article."

RESERVATIONS

The Committees oppose the legislation. The Committees believe that debt relief models that charge more than a nominal fee are inherently flawed and abusive. These operators invariably target economically distressed consumers least able to throw good money after bad and best served either with available free or very low-cost government and nonprofit services. The debt relief industry has an abysmal record with regard to abusive, deceptive and predatory practices and New York State policy has long recognized the inherent risks of abuse in the sector. Recent federal and state enforcement actions point to continued abuses and a continuing need for consumer protective policy. Finally, after exhaustive review of the public record, the Committees note the lack of data demonstrating the efficacy of debt relief for more than a nominal fee and indeed available evidence points to disturbing rates of drop-outs and completion.

Thank you for the opportunity to comment on this proposed legislation, A.597. Should you have any questions, please do not hesitate to contact us.

Dora Galacatos, *Chair*
Civil Court Committee

Thomas A. Cohn, *Chair*
Consumer Affairs Committee

May 2013

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[31] The exemption applies to attorneys "when acting in the ordinary practice of law and through the entity used by the attorney in the ordinary practice of law, and not holding himself or herself out as a debt settlement company, and not providing debt settlement services, except as incidental to legal representation."