

DEBT SETTLEMENT: NEW ILLINOIS LAW PROVIDES SIGNIFICANT CONSUMER RELIEF

*“SLASH YOUR MINIMUM MONTHLY PAYMENTS BY 75%
OR MORE!” “CUT YOUR INTEREST RATES DOWN TO
ZERO!” “BEING DEBT-FREE IN WEEKS IS ONLY ONE
CLICK AWAY!”*

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Introduction

The current financial climate is a breeding ground for companies to take advantage of consumers facing mounting debt. As of late 2010, the total amount of consumer debt in the United States reached \$11.6 trillion.¹ Seizing on desperate consumers' need to get out of debt, debt settlement companies (“DSCs”) plaster enticing ads across television, print media, and buses promising to repair struggling consumers' credit at lightning speed. DSCs often make empty promises to erase debt but, in reality, end up leaving consumers in worse financial situations.²

Prior to August 2010, there was no state regulation of the debt settlement industry in Illinois.³ Moreover, existing federal

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¹ FEDERAL RESERVE BANK OF NEW YORK, QUARTERLY REPORT ON HOUSEHOLD DEBT AND CREDIT (Nov. 2010) *available at* http://www.newyorkfed.org/newsevents/news/regional_outreach/2010/DistrictReport_Q32010.pdf.

² Better Business Bureau, *Complaints to BBB Against Debt Settlement Companies on the Rise*, Apr. 29, 2010, *available at* <http://www.bbb.org/us/article/complaints-to-bbb-against-debt-settlement-companies-on-the-rise-19186> [*hereinafter* Complaints on the Rise].

³ *Debt Settlement Protection Act*, ILLINOIS DEP'T OF FIN. & PROF'L. REGULATION, <http://www.idfpr.com/DFI/DS/debtsettlement.asp> (last visited Jan. 19, 2011).

and industry regulation failed to provide strong oversight of the debt settlement industry. On August 3, 2010, however, Illinois Governor Patrick Quinn signed into law new legislation regulating the debt settlement industry.⁴ The Debt Settlement Consumer Protection Act provides robust protection for Illinois consumers against unscrupulous DSCs.

Part I of this article provides an overview of the debt relief industry, discussing both debt settlement and credit counseling. Part II provides an example of a typical debt settlement transaction between a debt settlement company and a consumer. Part III analyzes the strengths and weaknesses of the federal laws that loosely regulate the industry, while Part IV examines the depth of “industry oversight” provided by The Association of Settlement Companies. Part V briefly examines other state law approaches to addressing the serious problems with debt settlement. Finally, part VI thoroughly examines Illinois’ strict approach to tackling these issues with the new Debt Settlement Consumer Protection Act.

I. What is Debt Settlement and How Does it Differ from Debt Management and Credit Counseling?

There are various types of debt relief agencies that help consumers address debt issues.⁵ Some companies promise to reduce debt to one simple monthly payment while others merely provide financial counseling. Some of these organizations are non-profit and others rake in huge profits at the expense of unwitting (and vulnerable) consumers. Despite the variety of debt agencies, the industry generally falls into two categories: credit counseling agencies and DSCs.⁶ Although both aim to help consumers address debt issues, their methods are wholly distinct.⁷

Credit counseling agencies provide an important service by educating consumers about money management.⁸ Indeed, consumer education is the principal function of such agencies.⁹ Crediting counseling agencies may provide assistance with budgeting, advice for becoming debt free, or advice about filing

⁴ *Id.*

⁵ DEBRA COWEN & DEBRA KAWECKI, INTERNAL REVENUE SERV., CREDIT COUNSELING ORGANIZATIONS (2004), available at <http://www.irs.gov/pub/irs-tege/eotopica04.pdf>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

for bankruptcy when appropriate.¹⁰ They also assist consumers in consolidating debt, and negotiate with creditors to lower interest rates and waive certain fees by establishing, when appropriate, a debt management plan (“DMP”).¹¹

Generally with a DMP, all of a consumer’s qualifying debt is consolidated, and the consumer makes one monthly payment to the credit counseling agency instead of paying his creditors directly.¹² The agency then disburses the funds on a monthly basis to each of the debtor’s creditors.¹³ The agency may also charge a monthly fee for management of the DMP.¹⁴ DMP fees range from hundreds to thousands of dollars depending on the DSC and the total amount of debt owed.¹⁵ As part of the DMP, the credit counseling agency may negotiate lower interest rates and the waiver of certain penalties, which ultimately lowers the amount owed by the debtor.¹⁶ Furthermore, many credit counseling agencies are not-for-profit 501(c)(3)-qualified companies.¹⁷

In contrast, DSCs often promise to restore damaged credit in a short period of time.¹⁸ DSCs function differently from credit counseling agencies; instead of making monthly payments to a consumer’s creditors, DSCs create debt settlement programs (“DSPs”)¹⁹ which aim to reduce the total amount of debt owed by the consumer.²⁰

DSCs, unlike credit counseling agencies, however, often

¹⁰ *Id.*

¹¹ NAT’L CONSUMER LAW CTR., AN INVESTIGATION OF DEBT SETTLEMENT COMPANIES: AN UNSETTLING BUSINESS FOR CONSUMERS (Mar. 2005), *available at* http://www.nclc.org/images/pdf/debt_settlement/report_investigation_debt_settle_co.pdf.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The Ass’n of Settlement Cos., *Downturn Drives Growth in Debt-Settlement Services*, Mar. 18, 2009, *available at* <http://www.tascsite.org/index.cfm?event=IndustryNewsDetail&IndustryNewsID=55>.

¹⁶ NAT’L CONSUMER LAW CTR., *supra* note 11.

¹⁷ COWEN & KAWECKI, *supra* note 5.

¹⁸ *Id.*

¹⁹ NAT’L CONSUMER LAW CTR., *supra* note 11.

²⁰ Press Release, Illinois Attorney General, Madigan Sues Four Debt Settlement Firms to Stop Abusive, Deceptive Practices (Feb. 10, 2010), *available at* http://illinoisattorneygeneral.gov/pressroom/2010_02/20100210.html.

require enrolling customers to pay an upfront fee.²¹ Under a DSP, the DSC collects and holds debtors' monthly payments in a separate account.²² Usually, these accounts are set up and controlled by the DSC²³ but some DSCs allow consumers to set aside money each month in their own accounts.²⁴ Either way, the DSC receives its upfront fee directly from the funds deposited in the account.²⁵

Unlike credit counseling agencies, DSCs do not disburse regular payments to the debtor's creditors, but rather hold the funds until they believe they can settle the consumer's unsecured debts for less than the total amount owed.²⁶ During this time, while the account continues to accumulate money, DSCs often require its customers to stop paying their creditors as a condition for participating in the DSP.²⁷ By not paying their creditors, consumers will demonstrate a hardship condition, making it easier for DSCs to negotiate with the creditors.²⁸

As part of a DSP, customers are required to contribute a fixed amount of money into their DSP account each month.²⁹ It takes many months, and sometimes up to two or three years, before enough money is accumulated in the account to make settlement offers.³⁰ Consumers participating in DSPs often receive past due notices and frequent collection calls from their creditors.³¹ Because the consumer has stopped paying his debts, his creditors add significant late charges, interest, over-limit, and other fees to the existing balance due, increasing the total balance owed and injuring the consumer's credit rating in the process.³²

Moreover, participants are at serious risk of being sued by their creditors for collection of their debts.³³ Until its upfront fee is collected, oftentimes a DSC will not contact its customer's

²¹ *Id.*

²² NAT'L CONSUMER LAW CTR., *supra* note 11.

²³ Where a DSC allows a customer to set up his own account, the DSC will establish direct withdrawal from the customer's account so that it can automatically deduct its fee each month.

²⁴ NAT'L CONSUMER LAW CTR., *supra* note 11.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

creditors.³⁴ This can result in creditors taking legal action against the consumer to recoup the consumer's debts.³⁵ Meanwhile, for those consumers who do successfully settle debts with their creditors, the amount of savings could be considered taxable income.³⁶ Thus, even if the outcome is "successful," the total amount of savings using a DSC is reduced significantly after fees *and* taxes.

For the first months of the program, the DSC applies all, or a majority of, payments made by the consumer to its "initial fee."³⁷ The initial fee is a percentage of the total amount of debt the consumer owes, ranging from 10% to 25% depending on the DSC.³⁸ The DSC may also continue to receive monthly fees to service the DSP account.³⁹

Unlike credit counseling agencies, the majority of DSCs require a minimum amount of debt to qualify for a DSP, ranging from \$5,000 to \$10,000.⁴⁰ Because the initial fee is based on a percentage of the total amount owed, DSCs target more debt-ridden consumers (and thus more susceptible to unscrupulous business tactics) to receive larger initial fees.⁴¹ Moreover, most DSCs are for-profit, while many credit counseling agencies are non-profit.⁴² Because DSCs are for-profit, they are subject to certain consumer protection laws that specifically exempt non-profits.⁴³

II. The Typical Ineffective DSP Transaction

Many credit repair horror stories involve DSCs. The typical transaction goes as follows: husband and wife, John and Jane Doe, become overloaded with credit card and medical

³⁴ *Id.*

³⁵ *Id.*

³⁶ Fed. Trade Comm'n, *Debt Relief Services and the Telemarketing Sales Rule: A Guide for Businesses*, Jan. 19, 2011, available at <http://www2.ftc.gov/bcp/edu/pubs/business/marketing/bus72.pdf> [*hereinafter* FTC Guide for Businesses].

³⁷ NAT'L CONSUMER LAW CTR., *supra* note 11.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Editorial, *Our Opinion: Put curbs on debt settlement companies*, THE ST. J.-REG., Apr. 18, 2010, available at <http://cdn2.getoutofdebt.org/wp-content/uploads/www.sj-r.com-opinions-x1042538933-Our-Opinion-Put-curbs-on-debt-settlement-companies.pdf>.

⁴² COWEN & KAWECKI, *supra* note 5.

⁴³ *Id.*

debt.⁴⁴ John and Jane owe nearly \$50,000 and are barely able to make minimum monthly payments.⁴⁵ They regularly take cash advances on one credit card to pay the minimum on another.⁴⁶ After seeing a television advertisement by X Company promising to reduce John and Jane's debt by half, they decide to call the 1-800 telephone number for more information.

A credit repair specialist – employed by X Company not surprisingly – then tells John and Jane that at their current rate, it will take them more than twenty years to pay off their debt.⁴⁷ But X Company can negotiate a settlement for pennies on the dollar with their creditors.⁴⁸ X Company requires a 10% down payment and advises John and Jane to stop paying their creditors so that X Company will have leverage to negotiate lower payments.⁴⁹ John and Jane agree to have X Company negotiate their debt and stop making monthly payments. After several months of missing payments, John and Jane raise the \$5,000 down payment required by X Company.⁵⁰ In the meantime, their creditors are calling with increasing frequency and John and Jane begin receiving collection notices.⁵¹ A few creditors even initiate collection proceedings.⁵²

After several months, John and Jane call X Company to inquire about their debt payment plan only to find out that the helpful representative who first assisted them no longer works there.⁵³ Moreover, none of their creditors have been paid in months and X Company has not even contacted the creditors to provide notice that John and Jane are working to reduce their debt.⁵⁴ John and Jane are now desperate, having essentially lost \$5,000 to X Company.⁵⁵ Indeed, the upfront fee was non-refundable and there is little money accumulated apart from the \$5,000 to use for settlement offers. Due to late fees and rising interest, their debt has increased while their credit rating has

⁴⁴ ROBERT MASSI, PEOPLE GET SCREWED ALL OF THE TIME: HOW TO PROTECT YOURSELF IN A SERIOUSLY FLAWED SYSTEM 141 (2007).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 143.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

been destroyed.

Although John and Jane's plight is an extreme example, it is all too common. Since the start of the recession in 2007, the Better Business Bureau has received over 3,500 complaints against credit repair organizations across the nation.⁵⁶ Over the past few years, state and federal agencies have taken notice of the growing volume of complaints. Most recently, on December 2, 2010, the Federal Trade Commission ("FTC") filed a lawsuit against three DSCs: Financial Freedom Processing, Debt Consultants of America, and Debt Professionals of America.⁵⁷ In its complaint, the FTC alleges that the three DSCs lied to customers and engaged in unscrupulous business practices.⁵⁸

Because the industry is questionable at best and fraudulent at worst, there is little data compiled regarding the efficacy of DSCs.⁵⁹ The minimal data that is available suggests DSCs are ineffective, and oftentimes do more harm than good.⁶⁰ The Association of Settlement Companies ("TASC"), a pro-DSC organization, has produced the most positive, and accordingly questionable, industry data. According to a 2007 TASC report, only 45-50% of consumers participating in DSPs complete the plans.⁶¹ In a later report, TASC found that only 34% of consumers participating in a DSP settle *some* of their debts.⁶² More concerning, though, is the percentage of consumers that are sued by their debtors while participating in DSPs. TASC reported that between 6% to 10% of consumers participating in

⁵⁶ Complaints on the Rise, *supra* note 2.

⁵⁷ Better Business Bureau, *Three Debt Relief Companies Charged by FTC with Deceptive Claims*, Dec. 3, 2010, available at <http://www.dallas.bbb.org/article/three-debt-relief-companies-charged-by-ftc-with-deceptive-claims-23995>.

⁵⁸ *Id.*

⁵⁹ Steve Rhode, *The Truth About the Failure Rates and Completion Rates of Credit Counseling, Debt Settlement, and Bankruptcy*, HOW TO GET OUT OF DEBT, June 17, 2009, at <http://getoutofdebt.org/7233/the-truth-about-the-failure-rates-and-completion-rates-of-credit-counseling-debt-settlement-and-bankruptcy> [hereinafter *Failure Rates*].

⁶⁰ *Id.*

⁶¹ THE ASS'N OF SETTLEMENT COS., STUDY ON THE DEBT SETTLEMENT INDUSTRY (2007), available at <http://www.ftc.gov/os/comments/debtsettlementworkshop/536796-00014.pdf>.

⁶² Chris Rickert, *Beware of Offers to Help Settle Debt*, WIS. ST. J., Mar. 6, 2010, available at http://cdn2.getoutofdebt.org/wp-content/uploads/host.madison.com-wsj-news-local-article_3761d8be-2984-11df-bce8-001cc4c002e0.html.pdf. TASC does not give statistics on how many participants settle *all* of their debts. This would likely be much less than 34%.

DSPs are sued by their creditors while participating in the DSP.⁶³

The aforementioned statistics published by TASC should be viewed with suspicion for several reasons.⁶⁴ First, without strong regulation, accountability, and transparency, it is nearly impossible to tell just how many people are being hindered or helped by DSCs. Second, as a debt settlement industry group, TASC has an incentive to publish more favorable findings about DSCs' efficacy. For example, based on statistics compiled in a receiver's report on one DSC, the National Consumer Council ("NCC"), only 1.4% of consumers who entered into a DSP offered by the NCC completed it, in stark contrast to the 45-50% industry average cited by TASC.⁶⁵

It is true that some DSCs do settle debt, but the vast majority do not.⁶⁶ For example, according to the Illinois Attorney General, 65% of consumers who initially enroll in DSPs drop out before any communication is even initiated by the DSC with their creditors.⁶⁷ Moreover, these consumers do not receive refunds for initial and ongoing fees paid to the DSC under the DSP, and some may even owe the DSC additional fees after dropping out of the program based on the terms of their contract.⁶⁸ Even more disturbing, between 30% and 40% of consumers who enroll in DSPs ultimately file for bankruptcy.⁶⁹

Illinois is not alone in acknowledging the problems with DSCs. A recent report by the Colorado Attorney General indicated many of the same problems that Illinois' Attorney General noted.⁷⁰ The 2009 report, based on data collected from

⁶³ Rhode, *Failure Rates*, *supra* note 59.

⁶⁴ As described later, settlement companies organized TASC with the aim of promoting debt settlement-friendly legislation.

⁶⁵ NAT'L CONSUMER LAW CTR., *supra* note 11. The FTC filed a complaint against NCC for deceptive business practices in 2004. *See also* Better Business Bureau, *National Consumer Council Shows Its Dark Side*, July 1, 2004, available at <http://www.la.bbb.org/GIReport.aspx?NewsID=76> [*hereinafter* NCC Shows Its Dark Side].

⁶⁶ Steve Rhode, *Former Bank VP of Recovery Operations Says TASC and Most Debt Settlement Companies, Suck!*, HOW TO GET OUT OF DEBT, Mar. 19, 2010, available at <http://getoutofdebt.org/17645/former-vp-of-recovery-operations-says-tasc-and-most-debt-settlement-companies-suck#> [*hereinafter* *Former Bank VP*].

⁶⁷ Editorial, *supra* note 41.

⁶⁸ *Id.*; *see also* Rickert, *supra* note 62.

⁶⁹ Editorial, *supra* note 41.

⁷⁰ STATE OF COLORADO DEP'T OF LAW, 2009 ANNUAL REPORT – COLORADO DEBT MANAGEMENT SERVICES PROVIDERS (2009), available at <http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/uccc/2009>

DSCs and credit counseling agencies, found that only 1.1% of consumers completed DSPs with Colorado DSCs in 2009.⁷¹ Furthermore, over 42% of consumers terminated DSPs prior to completion.⁷²

Representatives from creditors echo these findings of DSC failures. Take, for example, the observations of Jeff Meek, former Vice President of Recovery Operations for Washington Mutual Card Services.⁷³ Meek reviewed the debt settlement industry for Washington Mutual from 2006 through 2009. In a recent letter published on a debt settlement blog, Meek indicated that during his study of the industry, numerous DSCs admitted directly to him that they had no intention of actually settling debt.⁷⁴ The main purpose of DSCs, he found, was to enroll as many consumers in DSPs as possible, collect initial and service fees, and provide such poor customer service and results that the majority of consumers voluntarily drop from the DSP, leaving the DSC with its non-refundable fees.⁷⁵

The immense DSC failure rate reflects its target market: a vulnerable group of people who are not likely to benefit from DSPs. DSCs target insolvent consumers, and those suffering from a hardship, who cannot afford to make minimum monthly payments to all of their creditors.⁷⁶ An insolvent consumer is the least likely to be able to save the significant amounts of money required by DSPs to settle his debts. Thus, it is highly unlikely that these consumers will benefit from DSCs at all. And, even for those who successfully complete the DSPs, upwards of 30% of the money they pay to the DSP goes directly to the DSC, in the form of fees, rather than to their creditors.⁷⁷ Because of the serious risk of DSCs taking advantage of vulnerable consumers, it is vital that there be strong federal and state regulations over the industry.

%20Annual%20Report.pdf.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Rhode, *Former Bank VP*, *supra* note 66.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ NAT'L CONSUMER LAW CTR., *supra* note 11.

⁷⁷ *Id.*

III. Existing Regulations on, and Oversight of, Debt Settlement Companies

Currently, few laws exist regulating the debt settlement industry, and most existing laws are ineffective; DSCs are simply able to avoid regulation through various loopholes. Moreover, there is a lack of self-regulation within the industry. Of those the existing laws, the federal Credit Repair Organizations Act (“CROA”) and FTC regulations provide the most comprehensive regulation of the debt settlement industry at the federal level.

A. Credit Repair Organizations Act

The CROA regulates for-profit credit repair organizations.⁷⁸ The purpose of the CROA is to ensure that consumers are informed regarding debt management plans and DSPs, and to protect consumers from unfair and deceptive business practices by companies engaged in credit repair.⁷⁹ It provides robust consumer protection measures against unscrupulous companies offering “credit repair services.”⁸⁰ The CROA defines credit repair services broadly to include any person who performs any service, advice, or assistance to improve a consumer’s credit record, history, or rating.⁸¹ It broadly exempts all 501(c)(3) non-profit organizations.⁸² Since they are for-profit, and given the liberal definition of credit repair services, DSCs are not exempt; however, as noted above, many find loopholes to circumvent the CROA regulations.⁸³

The CROA requires those engaging in credit repair services to provide a written disclosure of the “Consumer Credit File Rights Under State and Federal Law.”⁸⁴ This disclosure details the consumer’s rights under the CROA and his right to dispute information contained on his credit report without the help of a DSC.⁸⁵ Furthermore, the contract between the repair organization and the consumer must be in writing and the

⁷⁸ Credit Repair Organizations Act, 15 U.S.C. § 1679 (2010).

⁷⁹ *Id.*

⁸⁰ NAT’L CONSUMER LAW CTR., *supra* note 11.

⁸¹ Credit Repair Organizations Act, 15 U.S.C. § 1679a(3)(A) (2010).

⁸² *Id.* § 1679a(3)(B)(i).

⁸³ NAT’L CONSUMER LAW CTR., *supra* note 11.

⁸⁴ Credit Repair Organizations Act, 15 U.S.C. § 1679c (2010).

⁸⁵ *Id.* The exact text of the disclosure which must be used verbatim is set forth fully in the statute.

organization must allow a three-day cancellation period.⁸⁶ Credit repair organizations may not receive payment before any promised service is “fully performed,” and may not make any untrue or misleading promises to consumers about the services provided.⁸⁷ The CROA provides strong remedies to consumers hurt by credit repair organizations in violation of the Act, including actual damages, punitive damages, and attorney’s fees.⁸⁸

Although the CROA provides significant protection for consumers, DSCs avoid the mandates of the CROA in a number of ways. DSCs may make no claims that they help repair a consumer’s credit, thereby not technically qualifying as a “credit repair organization” under the Act.⁸⁹ Another way DSCs often avoid the CROA is to form as non-profits so that they qualify under the CROA’s non-profit exemption.⁹⁰ DSCs may also shield themselves by farming out the settlement and credit repair aspects of their services to affiliated companies while collecting large fees.⁹¹

For example, in 2007, the FTC filed a lawsuit against Express Consolidation and its principals, a credit counseling company engaging in debt management and settlement that claimed non-profit status.⁹² Express Consolidation charged exorbitant fees and allegedly violated the FTC Telemarketing Sales Rule (described in detail below).⁹³ The defendants, including one attorney, settled by paying \$2 million in fines and agreed not to violate applicable federal laws.⁹⁴

Although the FTC has successfully pursued some debt repair organizations that circumvent the CROA, there appear to be many more that go undetected given the high number of consumer complaints. Because of the loopholes that exist, many

⁸⁶ *Id.* § 1679d.

⁸⁷ *Id.* § 1679b(b).

⁸⁸ *Id.* § 1679g.

⁸⁹ NAT’L CONSUMER LAW CTR., *supra* note 11.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Press Release, Fed. Trade Comm’n, National Debt Consolidation Scheme Misleads Consumers About Costs, Benefits, and Nonprofit Status, FTC Says (Jan. 8, 2007), *available at* <http://www.ftc.gov/opa/2007/01/expresscon.shtm>.

⁹³ *Id.*

⁹⁴ Press Release, Fed. Trade Comm’n, ‘Express Consolidation’ Telemarketers Settle FTC Charges (May 8, 2008), *available at* <http://www.ftc.gov/opa/2008/05/express.shtm>.

DSCs have been able to avoid regulation under the CROA entirely.

B. Federal Trade Commission Act and Regulations

Providing more general protection than the CROA, the Federal Trade Commission Act (“FTCA”) prohibits all unfair or deceptive acts and practices that affect commerce.⁹⁵ In recent years, the FTC has cracked down on deceptive practices by filing lawsuits against DSCs.⁹⁶ However, given the growing number of DSCs, it is impossible to investigate every unscrupulous DSC in operation in the United States.

The FTC recently expanded the Telemarketing Sales Rule (“TSR”) to include DSCs.⁹⁷ The new TSR now defines “debt relief services” to include programs that directly or indirectly claim to settle, negotiate, or change a person’s unsecured debt.⁹⁸ Prior to the amendment, the TSR only applied to for-profit debt relief companies that telemarket or use telemarketing companies to contact potential clients.⁹⁹ The new rule now covers debt relief companies that receive business through both outbound and *incoming* calls, meaning calls a consumer makes to the DSC in response to an advertisement or solicitation.¹⁰⁰ This means that virtually all for-profit DSCs are now covered by the TSR.

The TSR prevents DSCs from receiving any fees from consumers prior to settling their debts.¹⁰¹ As the DSC settles one of many debts for a given consumer, it may collect fees for such settlement.¹⁰² But fees collected cannot be frontloaded, meaning that the first several payments a consumer makes into his DSP account will be applied directly to settle his debts instead of covering the DSC fees.¹⁰³ To collect a fee, the DSC must have reached a successful settlement with at least one of the customer’s creditors, the customer must agree to the settlement, and the customer must have made at least one payment toward the

⁹⁵ Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (2010).

⁹⁶ NCC Shows Its Dark Side, *supra* note 65.

⁹⁷ FTC Telemarketing Sales Rule, 16 C.F.R. § 310.2 (2010).

⁹⁸ *Id.* Unsecured debt includes credit card and medical debts, but does not include secured debts such as mortgages.

⁹⁹ FTC Guide for Businesses, *supra* note 36.

¹⁰⁰ FTC Telemarketing Sales Rule, 16 C.F.R. § 310.2 (2010).

¹⁰¹ *Id.* § 310.3.

¹⁰² *Id.*

¹⁰³ *Id.*

settlement.¹⁰⁴

Certain disclosures must also be made by DSCs to consumers, including cost of services (both percentage and estimated dollar amount), all material restrictions and limitations, and refund policies.¹⁰⁵ Moreover, DSCs must also disclose the estimated time it will take the customer to achieve the claimed results and a good faith estimate regarding how much the customer must save before the DSC can make an offer to each creditor.¹⁰⁶ For example, the DSC must disclose its knowledge that a specific creditor will only settle for \$8,000 on a \$10,000 debt.¹⁰⁷ To further transparency, the DSC must subtract its fee when calculating the total projected savings and advise consumers of the potential negative consequences of failing to make timely payments to their debtors, such as damage to their credit and the accumulation of additional interest and fees.¹⁰⁸

The TSR also places restrictions on the amount of control the DSC can exercise over DSP accounts. The accounts must be held at an insured financial institution, not an institution owned or controlled by the DSC.¹⁰⁹ Furthermore, DSCs must advise customers that they own the funds in the account, that they can withdraw the funds from the DSP at any time without penalty, and that upon termination of the DSP, the customer will receive all of the funds accumulated in the DSP account, minus fees earned by the DSC pursuant to the TSR.¹¹⁰

The TSR also requires DSCs to make truthful and substantiated claims about the results that can be achieved.¹¹¹ DSCs subject to the TSR can no longer claim to “settle your debt for 40% to 60%” unless they have statistical data to back up such claims.¹¹² If they do not have a proven success rate of settling debt for 40% to 60%, then such claims are patently deceptive under the TSR.¹¹³ Furthermore, DSCs are required to include all customers who sign up for DSPs in its statistics.¹¹⁴

Of course, it is up to each individual DSC to compile and

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ FTC Guide for Businesses, *supra* note 36.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² FTC Telemarketing Sales Rule, 16 C.F.R. § 310.5 (2010).

¹¹³ *Id.*

¹¹⁴ *Id.*

maintain its records.¹¹⁵ Therefore, it may be easier for them to create certain statistics through careful sampling and statistical manipulation in order to back-up such claims. At a minimum, the new rule should create more, if not complete, transparency for agencies covered under the TSR.

IV. State Regulation of Debt Settlement Companies

In addition to the CROA, FTCA, and TSR, all states have enacted statutes generally prohibiting unfair, deceptive, and illegal business practices.¹¹⁶ Most apply these laws to both non-profit and for-profit organizations.¹¹⁷ Furthermore, over the past ten years, most states have passed legislation aimed at addressing credit counseling agencies in particular, some of which encompass DSCs.¹¹⁸

Some states recognize that although the CROA provides robust protection for consumers, DSCs have largely been able to avoid it. In order to extend CROA-type coverage to include consumers, certain states have amended their debt management legislation to include DSCs. For example, Indiana's Credit Services Organizations Act closely resembles the CROA.¹¹⁹ Unlike the CROA, however, it expressly includes DSCs in its definition of a credit repair organization.¹²⁰ The Act allows a consumer to recover two times the amount of actual damages and attorney fees, but does not authorize additional punitive damages in a potential lawsuit against a DSC.¹²¹ Although the damages allowable under the Indiana Credit Services Organizations Act are less than that under the CROA, Indiana has nevertheless taken an important step to include DSCs under legislation regulating the credit repair industry.

In an effort to provide greater oversight of the industry, other states require DSCs to register with state agencies. Minnesota's Debt Settlement Act, for instance, requires mandatory registration of DSCs with the commissioner, and provides explicit language regarding what DSCs can claim when

¹¹⁵ *Id.*

¹¹⁶ NAT'L CONSUMER LAW CTR., *supra* note 11.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ IND. CODE § 24-5-15 (2010).

¹²⁰ *Id.* § 24-5-15-2-5.

¹²¹ *Id.* § 24-5-15-9.

soliciting and servicing consumers.¹²² It also allows for a ten-day cancellation period.¹²³

Most states that regulate DSCs address the permissible amount of fees that DSCs can charge for various services. Montana, for example, limits upfront fees charged by DSCs to 5% and overall fees to 20% of the total amount of indebtedness.¹²⁴ Montana also requires that DSCs return 50% of collected service fees upon cancellation of a DSP.¹²⁵ Minnesota, meanwhile, allows DSCs to choose between various types of fee structures, including a generous fee of up to 30% of the total amount of debt forgiven through settlement.¹²⁶ However, the Minnesota law allows consumers to rescind the contract if the DSC violates any provision of the Act, and in such circumstance, the consumer will be entitled to a full refund of all fees paid to the DSC.¹²⁷ The Act also allows actual and statutory damages of up to \$5,000.¹²⁸ Certain states also require that DSCs maintain insurance coverage and/or a bond.¹²⁹

Some states have strong requirements even for non-profit DSCs.¹³⁰ As an example, California's debt settlement law directly addresses the issue of DSCs forming as non-profits to avoid regulation. The law caps certain fees for counseling services to \$50, and prohibits DSCs from collecting more than 15% of the total amount of debt forgiven through settlement.¹³¹ The law makes no distinction between for-profit and non-profit DSCs, maintaining that *any* DSC that exceeds these fees will be subject to further requirements.¹³²

In addition to states enacting legislation, many state Attorneys General have initiated lawsuits against unscrupulous DSCs. For example, in 2010, Illinois' Attorney General filed four lawsuits against DSCs for violation of the Consumer Fraud

¹²² MINN. STAT. § 332B.12 (2010).

¹²³ *Id.* § 332B.07.

¹²⁴ MONT. CODE. ANN. § 30-14-2103(1)(b) (2010).

¹²⁵ *Id.* § 30-14-2103(2).

¹²⁶ MINN. STAT. § 332B.09(1) (2010).

¹²⁷ *Id.* § 332B.12.

¹²⁸ *Id.* § 332B.13.

¹²⁹ *See, e.g.*, NEV. REV. STAT. § 676A.140 (2010). The Nevada Uniform Debt-Management Services Act, which covers both credit counseling agencies and DSCs, requires DSCs to have insurance in the amount of \$250,000 and furnish a bond.

¹³⁰ *See, e.g.*, CAL. FIN. CODE § 12104 (West 2010).

¹³¹ *Id.*

¹³² *Id.*

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Act.¹³³ In sum, despite the fact that states' responses to DSCs vary in complexity and structure, the existence of legislation and lawsuits demonstrate that states recognize the myriad problems with DSCs.

V. Industry Oversight: TASC

The Association of Settlement Companies bills itself as an organization that monitors the debt settlement industry to ensure honest business practices.¹³⁴ In reality, TASC's main goal is to lobby for lesser regulation of the debt settlement industry.¹³⁵ Indeed, TASC claims to have stopped legislation impacting DSCs in Maryland, Colorado, Iowa, Idaho, Michigan, Missouri, Minnesota, and New Mexico.¹³⁶

TASC has adopted a series of bylaws by which each member of the association must abide.¹³⁷ According to TASC, by adhering to its bylaws, members help improve practices in the debt settlement industry.¹³⁸ Although it does not provide copies of the bylaws on its website, TASC does indicate that members who violate the bylaws are subject to fines and suspension.¹³⁹

Currently, there are only sixty-eight DSC members of TASC.¹⁴⁰ Notably, the organization does allow consumers to file complaints against TASC members.¹⁴¹ However, given the small percentage of DSCs that are members of TASC, it is unlikely that its monitoring activities will make a serious impact on the debt settlement industry.

VI. The Illinois Debt Settlement Consumer Protection Act

On August 3, 2010, Illinois Governor Patrick Quinn

¹³³ Press Release, *supra* note 20.

¹³⁴ *About Us*, THE ASS'N OF SETTLEMENT COS., at <http://www.tascsite.org/index.cfm?event=About-Us> (last visited Jan. 19, 2011) [hereinafter *About Us*].

¹³⁵ *History*, THE ASS'N OF SETTLEMENT COS., at <http://www.tascsite.org/index.cfm?event=history> (last visited Jan. 19, 2011).

¹³⁶ *Id.*

¹³⁷ *About Us*, *supra* note 134.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Members*, THE ASS'N OF SETTLEMENT COS., at <http://www.tascsite.org/index.cfm?event=Members> (last visited Jan. 19, 2010).

¹⁴¹ *File a Complaint*, THE ASS'N OF SETTLEMENT COS., at <http://www.tascsite.org/index.cfm?event=FileComplaint> (last visited Jan. 19, 2011).

signed the Debt Settlement Consumer Protection Act (“DSCPA”) into law.¹⁴² The DSCPA applies to businesses assisting debtors for a fee, where the primary purpose of the assistance is to obtain a settlement, adjustment, or satisfaction of the debtor’s unsecured debt.¹⁴³ It is relatively stringent legislation designed to protect consumers and regulate the debt settlement industry in Illinois.¹⁴⁴ The DSCPA defines a debt service provider (i.e., a DSC) as anyone who engages in, solicits, or holds itself out as engaging in debt settlement services for a fee or compensation.¹⁴⁵ Certain businesses, including non-profits, attorneys licensed to practice in Illinois, and debt management agencies, are exempt from the DSCPA.¹⁴⁶ Debt management agencies are governed by the Illinois Debt Management Services Act.¹⁴⁷

Illinois legislators recognized that it is nearly impossible to regulate DSCs unless there is a central agency to register and monitor them. The DSCPA provides protection and oversight through initial registration and licensing, continuing renewal of licenses, and strict statistical reporting requirements. The DSCPA further requires DSCs to thoroughly examine whether a DSP is appropriate for each potential client. This helps ensure that DSCs do not target the groups most likely to fail under DSPs.

A. DSCPA Licensing and Reporting Requirements

The first level of protection offered by the DSCPA begins with the registration process. All for-profit DSCs must obtain a license from the Illinois Secretary of Financial and Professional Regulation (“Secretary”).¹⁴⁸ But unlike other states that impose the more relaxed standards of registration similar to that of a corporation or limited liability company, the DSCPA requires a detailed application and calls for a thorough examination. Moreover, the application and renewal fees are significantly larger than for corporations and limited liability companies.¹⁴⁹

¹⁴² Debt Settlement Consumer Protection Act, 225 ILL. COMP. STAT. 429/5 (2010).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* § 10.

¹⁴⁶ *Id.*

¹⁴⁷ Illinois Debt Management Services Act, 205 ILL. COMP. STAT. 665 (2010).

¹⁴⁸ Debt Settlement Consumer Protection Act § 15.

¹⁴⁹ Debt Settlement Consumer Protection Act § 25. The annual renewal fee is \$1,000 for a DSC.

First, the DSC must complete a written application and submit a surety bond in the amount of at least \$100,000.¹⁵⁰ The DSC must also qualify for a license by showing that the DSC, and its owners or members, are of satisfactory character so the DSC will be operated honestly and in accordance with the DSCPA.¹⁵¹ In particular, applicants cannot have been convicted of a crime or have been subject to discipline due to dishonesty or untrustworthiness.¹⁵² Furthermore, the applicants must not have made any false statements or representations in applying for the license.¹⁵³ Each license is good for only one year, through January 1, requiring all license-holders to re-apply annually.¹⁵⁴

In addition to carefully selecting the companies that are provided a license, the Secretary monitors DSCs' behavior through annual reporting requirements.¹⁵⁵ Indeed, it was the lack of information on DSCs' performance rates that made it impossible to monitor them, so the legislature imposed a detailed annual reporting mandate governing DSC activity. The report must be filed with the Secretary, and must include specific data for each Illinois resident customer.¹⁵⁶

The DSC must report how many Illinois residents are enrolled in DSPs, the principal amount of debt at the time enrolled, whether the DSPs are active or terminated, and the total percentage of DSPs terminated.¹⁵⁷ In addition, the DSC must disclose how many accounts were settled for each customer, the settling amount, and the difference between the settling amount and the total principal owed.¹⁵⁸ DSCs must also calculate and report the median and mean percentage of savings and fees paid to the DSC by Illinois residents who completed or terminated their DSPs.¹⁵⁹ Finally, DSCs must also disclose how much each customer paid to the DSC and the total amount of fees collected from its customers.¹⁶⁰

Moreover, all DSCs must keep records of each DSP, including the written contract, and must provide the contracts to

¹⁵⁰ Debt Settlement Consumer Protection Act § 20.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Debt Settlement Consumer Protection Act § 33.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

the Secretary for examination upon request.¹⁶¹ This will allow the Secretary to determine whether the statistics provided by the DSCs are accurate and complete.

By requiring DSCs to report such detailed information, Illinois is holding DSCs accountable for their actions in handling DSPs for Illinois residents, as well as their claims of success rates. That is, DSCs can no longer hide behind the absence of reporting standards in order to mask their true success rates. The reports generated will thus be used as a bar to examine a DSC's claim for good faith and honesty. Now, if a DSC advertises that it will reduce a customer's debt by up to 50%, it must have the statistics to back up that claim or risk facing investigation, license revocation, and/or severe penalties.¹⁶²

This new accountability and transparency will also help ensure that DSCs do not target the type of people that are unable to settle debts. If a DSC examines an individual's financial situation and determines that she cannot successfully complete the program, the DSC will likely not enroll that individual in a DSP because that could impact the DSC's success rate. The Secretary can also use the annual report to determine if the DSC's activities are legitimate and actually help people settle debts. This, in turn, can help the Secretary vet out those DSCs that prey on people rather than operate in a legitimate manner.

B. Protections Before Entering Into a DSP: Honest Representations

The DSCPA not only provides for greater accountability through oversight by the Secretary, it forces DSCs to be accountable to individual consumers as well. One of the biggest consumer complaints about DSCs is the lack of disclosure regarding the serious consequences of entering into a DSP.¹⁶³ Like the TSR, the DSCPA requires DSCs to inform consumers of the very real and potentially damaging consequences of entering into a DSP.¹⁶⁴ The DSC must make all disclosures to potential customers both orally and in writing.¹⁶⁵

First, DSCs must advise consumers that entering into a DSP will likely harm their credit history and score, that DSPs are

¹⁶¹ Debt Settlement Consumer Protection Act § 55.

¹⁶² Debt Settlement Consumer Protection Act § 50.

¹⁶³ Debt Settlement Consumer Protection Act § 115(a).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

not suitable for everyone, and that the consumer may have to pay a tax on any debt discharged from settlement.¹⁶⁶ Also, it must disclose that entering into a DSP does not stop creditors' collection calls, garnishments, and lawsuits.¹⁶⁷ The DSC must further disclose the consumer's rights under the DSCPA, including the right to cancel and receive a refund.¹⁶⁸ Furthermore, the DSC must also provide contact information for the Illinois Attorney General's Office and the Department of Financial and Professional Regulation ("Department").¹⁶⁹ Thus, if a customer is dissatisfied with the DSC, he will now have the tools readily available to call and report the DSC to the Department.¹⁷⁰

Moreover, DSCs cannot hide these mandatory disclosures in microscopic fine print.¹⁷¹ They must be made in a standard form set forth in the DSCPA.¹⁷² The title, CONSUMER RIGHTS AND NOTICES FORM, must be spelled in all capital, bold, 28-point font.¹⁷³ The remaining disclosures must be in all capital and 14-point font.¹⁷⁴ In addition, if the DSC is dealing with a consumer in a different language, the DSC must provide the disclosure (as well as everything else required under the DSCPA) in that person's language.¹⁷⁵

Secondly, DSCs are prohibited from explicitly or implicitly suggesting that consumers refrain from making monthly payments to their creditors.¹⁷⁶ In fact, DSCs must explicitly advise consumers that they are required to continue making monthly payments;¹⁷⁷ stopping payment can no longer be a requirement of the DSP.

Third, unlike the TSR, the DSCPA requires DSCs to complete a financial analysis of each potential customer prior to entering into a DSP.¹⁷⁸ The analysis must be in writing, and the DSC must maintain a copy of the analysis in its files.¹⁷⁹ The

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Debt Settlement Consumer Protection Act § 115(c).

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Debt Settlement Consumer Protection Act § 120(d).

¹⁷⁶ Debt Settlement Consumer Protection Act § 115(a).

¹⁷⁷ *Id.*

¹⁷⁸ Debt Settlement Consumer Protection Act § 110(a)(1).

¹⁷⁹ *Id.*

individualized financial analysis includes the debtor's income, debt, expenses, and a good faith estimate regarding the total amount of time and money that it will take to settle his debts.¹⁸⁰ This individualized financial analysis will help the customer determine whether a DSP is a good option, and whether the DSC is staying on track and performing its promises. It will also provide important evidence for the Secretary in the event that the DSC is investigated.¹⁸¹

The various disclosures and financial analysis prior to entering into a DSP help consumers make an educated decision about whether debt settlement is a good option for them. In fact, DSCs must tell consumers that they should look into other means of settling debt, such as credit counseling and bankruptcy.¹⁸² Thus, consumers will now have a more complete picture of how debt settlement will affect them prior to entering into a DSP.

C. Reduced Fees

The DSCPA limits the amount of fees DSCs can charge customers. As discussed previously, DSCs typically charge anywhere from 10% to 25% of the total amount of debt, regardless of the amount of debt actually settled, if settled at all. Furthermore, DSCs charge costly monthly maintenance fees. Under the DSCPA, however, DSCs can only charge one initial enrollment fee of \$50.¹⁸³ DSCs cannot charge any other upfront fees.¹⁸⁴ Moreover, DSCs can only be paid after successful settlement of a debt.¹⁸⁵ In such cases, DSCs may receive up to 15% of the savings from settlement.¹⁸⁶

D. Accountability to Customers and Customer Rights

Under this new law, consumers now have more protection while enrolled in DSPs as well. As evidenced above, DSCs have a poor record of providing information to customers regarding the amount of fees collected and the status of customers' debts. The DSCPA now requires DSCs to keep detailed records of each

¹⁸⁰ Debt Settlement Consumer Protection Act § 110(a)(1)-(2).

¹⁸¹ Debt Settlement Consumer Protection Act § 60(a).

¹⁸² Debt Settlement Consumer Protection Act § 115(a).

¹⁸³ Debt Settlement Consumer Protection Act § 125(b).

¹⁸⁴ Debt Settlement Consumer Protection Act § 125(c).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

customer's creditors, trust balance, fees paid to the DSC, all settlement offers made and received, and enforceable settlement offers accepted.¹⁸⁷ DSCs must maintain this information so that their customers can access it at any reasonable time.¹⁸⁸ Customers may request, and DSCs must provide, statements detailing the total amount received and disbursed within seven days of receipt of a request by the customer.¹⁸⁹

A customer may also now cancel his DSP without penalties, as long as the cancellation occurs prior to full performance of each service the DSC promised, or was contracted to perform on behalf of the customer.¹⁹⁰ This means that the customer can cancel the service for any reason, or no reason at all, at any time before completion of the DSP.

Upon cancellation, the DSC must fully refund all fees, compensation, and money accumulated in the DSP account within five business days.¹⁹¹ A statement of all account activity must accompany the refund.¹⁹² The Act does not allow DSCs to keep any additional fees or charge cancellation penalties. DSCs do not, however, have to refund the initial \$50 application fee or any earned settlement fees.¹⁹³ DSCs are also required to notify the customers' creditors of the cancellation.¹⁹⁴

These protections give consumers a strong upper hand against DSCs with poor customer service or those that fail to produce results. As a consequence, DSC customer service and performance should greatly improve. With no possibility of getting additional money from canceling customers, DSCs will likely improve operations to ensure customer retention.

E. Fees and Available Remedies

Unlike other state and FTC regulations of the debt settlement industry, Illinois aims to hit DSCs where it hurts: in the pocketbook. As such, violations of the DSCPA are met with large fines and penalties.

The penalties for practicing debt settlement without a

¹⁸⁷ Debt Settlement Consumer Protection Act § 55.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Debt Settlement Consumer Protection Act § 135(a).

¹⁹¹ Debt Settlement Consumer Protection Act § 135(b).

¹⁹² *Id.*

¹⁹³ Debt Settlement Consumer Protection Act § 135(c).

¹⁹⁴ Debt Settlement Consumer Protection Act § 135(d).

license are severe.¹⁹⁵ DSCs (or individuals) performing debt settlement services that are not licensed through the state of Illinois or exempt under the DSCPA must pay fines in the amount of \$1,000 or four times the amount of consumer debt enrolled, whichever is greater.¹⁹⁶ Moreover, any person operating as an unlicensed DSC will be guilty of a Class 4 felony and subject to prosecution.¹⁹⁷

The Secretary also has a wide range of discretion to review and monitor DSCs. The Secretary may examine a DSC's books and records, and may question anyone affiliated with the DSC, under oath, to ascertain whether the DSC is complying with the DSCPA.¹⁹⁸ Moreover, the Secretary may fine any licensed or unlicensed DSC up to \$10,000 for failing to comply with the DSCPA.¹⁹⁹ He may also issue cease and desist orders, and revoke licenses of DSCs that violate the DSCPA.²⁰⁰ As a further financial penalty, any DSC under investigation must pay for all costs of the investigation.²⁰¹

The DSCPA also instituted a revolutionary use of the fees collected. All fees collected under the DSCPA will be deposited in the newly created Debt Settlement Consumer Protection Fund.²⁰² The revenues collected in the fund will be used to reimburse victims of DSCs when restitution is ordered by the Secretary.²⁰³ Restitution is ordered at the Secretary's discretion after review of an application from the injured consumer.²⁰⁴ The Secretary can also request that the Attorney General collect restitution from the DSC responsible, and reimburse the fund.²⁰⁵

In addition to pursuing reimbursement from the Secretary, the DSCPA provides injured consumers with other remedies. Violations of the DSCPA constitute unlawful practice under the Consumer Fraud and Deceptive Business Practices Act.²⁰⁶ Thus,

¹⁹⁵ Debt Settlement Consumer Protection Act § 80.

¹⁹⁶ Debt Settlement Consumer Protection Act § 83.

¹⁹⁷ Debt Settlement Consumer Protection Act § 80(a).

¹⁹⁸ Debt Settlement Consumer Protection Act § 60(a).

¹⁹⁹ Debt Settlement Consumer Protection Act § 80(c).

²⁰⁰ Debt Settlement Consumer Protection Act § 155(a). Violations of Sections 105, 110, 115, 120, 125, 130, 135, 140, 145, or 150 of the DSCPA trigger available remedies.

²⁰¹ Debt Settlement Consumer Protection Act § 60(a).

²⁰² Debt Settlement Consumer Protection Act § 103(a).

²⁰³ Debt Settlement Consumer Protection Act § 103(b).

²⁰⁴ *Id.*

²⁰⁵ Debt Settlement Consumer Protection Act § 103(c).

²⁰⁶ Debt Settlement Consumer Protection Act § 135.

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consumers can pursue all remedies afforded by the Act, including actual damages and any other relief the court deems proper, such as punitive damages.²⁰⁷

VII. Conclusion

It is clear that there are many problems with the debt settlement industry. These problems have been exacerbated by the lack of effective regulation and lack of accountability. There is little government oversight aside from the FTC and state Attorneys General. While several states have adopted some rules regulating DSCs, many are not comprehensive in providing strong oversight of the industry.

The DSCPA, on the other hand, serves as excellent model legislation for other states seeking to regulate the debt settlement industry. It provides for strong oversight by the Secretary of State, coupled with significant fines and criminal penalties. Moreover, the DSCPA provides an additional remedy to injured consumers in the form of reimbursement from the Debt Settlement Consumer Protection Fund, funded by fines collected from DSCs that violate the DSCPA. Finally, the law's stringent and detailed reporting requirements ensure that consumers will have an accurate picture of the debt settlement industry's efficacy, helping to ensure that DSCs produce what they promise.

²⁰⁷ Consumer Fraud and Deceptive Business Practices Act, 815 ILL. COMP. STAT. 505/10(a) (2010).