

108TH CONGRESS
1ST SESSION

H. R. 3331

To amend the Consumer Credit Protection Act to protect consumers from unfair and deceptive practices by organizations providing debt counseling, debt consolidation, or debt settlement services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 17, 2003

Ms. CARSON of Indiana (for herself, Mr. OWENS, Mr. LIPINSKI, Mrs. NAPOLITANO, Mrs. JONES of Ohio, Mr. RYAN of Ohio, Mr. DAVIS of Illinois, Mr. HINCHEY, Mr. THOMPSON of Mississippi, Ms. LEE, and Mr. SANDERS) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Consumer Credit Protection Act to protect consumers from unfair and deceptive practices by organizations providing debt counseling, debt consolidation, or 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 Counseling, Debt
5 Consolidation, and Debt Settlement Practices Improve-
6 ment Act of 2003”.

1 **SEC. 2. DEBT COUNSELING, DEBT CONSOLIDATION, AND**
 2 **DEBT SETTLEMENT PRACTICES.**

3 The Consumer Credit Protection Act (15 U.S.C.
 4 1601 et seq.) is amended by adding at the end the fol-
 5 lowing new title:

6 **“TITLE X—DEBT COUNSELING,**
 7 **DEBT CONSOLIDATION, AND**
 8 **DEBT SETTLEMENT PRAC-**
 9 **TICES**

10 **“SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.**

11 “(a) SHORT TITLE.—This title may be cited as the
 12 “Debt Counseling, Debt Consolidation, and Debt Settle-
 13 ment Practices Act”.

14 “(b) TABLE OF CONTENTS.—The table of contents
 15 for this title is as follows:

“TITLE X—DEBT COUNSELING, DEBT CONSOLIDATION, AND
 DEBT SETTLEMENT PRACTICES

“Sec. 1001. Short title; table of contents.

“Sec. 1002. Definitions.

“Sec. 1003. Prohibited practices.

“Sec. 1004. Debt counseling, debt consolidation, or debt settlement organi-
 zation contracts.

“Sec. 1005. Right to cancel contract.

“Sec. 1006. Noncompliance with this title.

“Sec. 1007. Registration of organization.

“Sec. 1008. Civil liability.

“Sec. 1009. Administrative enforcement.

“Sec. 1010. Statute of limitations.

“Sec. 1011. Relation to State law.

“Sec. 1012. Effective date.

16 **“SEC. 1002. DEFINITIONS.**

17 “For purposes of this title, the following definitions
 18 shall apply:

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

3 “(2) CONSUMER.—The term ‘consumer’ means
4 an individual.

5 “(3) CREDITOR.—The term ‘creditor’ has the
6 same meaning as in section 103.

7 “(4) DEBT CONSOLIDATION.—The term ‘debt
8 consolidation’ means a transaction involving a loan
9 or other extension of credit to a consumer for a pur-
10 pose that at least includes the repayment in full of
11 2 or more existing loans or extensions of credit to
12 the consumer, without regard to whether any of such
13 existing loans or extensions of credit is in troubled
14 condition.

15 “(5) DEBT CONSOLIDATION ORGANIZATION.—
16 The term ‘debt consolidation organization’—

17 “(A) means any person who uses any in-
18 strumentality of interstate commerce or the
19 mails to sell, provide, or perform (or represent
20 that such person can or will sell, provide, or
21 perform) any service, in return for the payment
22 of money or other valuable consideration, for
23 the express or implied purpose of—

24 “(i) engaging in a debt consolidation
25 transaction with a consumer; or

1 “(ii) providing any advice or assist-
2 ance to any consumer with regard to any
3 activity or service which results in or may
4 result in a debt consolidation transaction;

5 “(B) includes any nonprofit organization
6 which is exempt from taxation under section
7 501(c)(3) of the Internal Revenue Code of 1986
8 other than an organization described in sub-
9 paragraph (C); and

10 “(C) does not include—

11 “(i) any creditor, with respect to any
12 consumer, to the extent the creditor is as-
13 sisting the consumer to restructure any
14 debt owed by the consumer to the creditor;

15 “(ii) any depository institution (as
16 that term is defined in section 3 of the
17 Federal Deposit Insurance Act) or any
18 Federal or State credit union (as those
19 terms are defined in section 101 of the
20 Federal Credit Union Act), or any affiliate
21 or subsidiary of such a depository institu-
22 tion or credit union;

23 “(iii) any government-sponsored en-
24 terprise (as defined in section 1404(e)(1)

1 of the Financial Institutions Reform, Re-
2 covery, and Enforcement Act of 1989);

3 “(iv) any attorney at law, if providing
4 debt counseling, debt consolidation, or debt
5 settlement services are incidental to, and
6 not the principal business of, the practice
7 of such attorney;

8 “(v) any certified public accountant, if
9 providing debt counseling, debt consolida-
10 tion, or debt settlement services are inci-
11 dental to, and not the principal business
12 of, the accounting practice of such ac-
13 countant;

14 “(vi) any title insurer or abstract
15 company, while doing escrow business; or

16 “(vii) a judicial officer or person act-
17 ing under court order.

18 “(6) DEBT COUNSELING ORGANIZATION.—The
19 term ‘debt counseling organization’ means any per-
20 son who—

21 “(A) uses any instrumentality of interstate
22 commerce or the mails to provide education,
23 counseling to individuals or groups, or debt
24 management services to help consumers manage
25 money and credit; and

1 “(B) is not a debt consolidation organiza-
2 tion or a debt settlement organization.

3 “(7) DEBT SETTLEMENT.—The term ‘debt set-
4 tlement’ means any action or negotiation initiated or
5 taken by or on behalf of any consumer with any
6 creditor of the consumer for the purpose of obtain-
7 ing debt forgiveness of a portion of the credit ex-
8 tended by the creditor to the consumer, or troubled
9 debt restructuring on terms that are more favorable
10 to the consumer.

11 “(8) DEBT SETTLEMENT ORGANIZATION.—The
12 term ‘debt settlement organization’—

13 “(A) means any person who uses any in-
14 strumentality of interstate commerce or the
15 mails to sell, provide, or perform (or represent
16 that such person can or will sell, provide, or
17 perform) any service, in return for the payment
18 of money or other valuable consideration, for
19 the express or implied purpose of—

20 “(i) providing any debt settlement
21 service to, for, or on behalf of a consumer;
22 or

23 “(ii) providing any advice or assist-
24 ance to any consumer with regard to any
25 activity or service described in clause (i);

1 “(B) includes any nonprofit organization
2 which is exempt from taxation under section
3 501(c)(3) of the Internal Revenue Code of 1986
4 other than an organization described in sub-
5 paragraph (C); and

6 “(C) does not include—

7 “(ii) any creditor, with respect to any
8 consumer, to the extent the creditor is as-
9 sisting the consumer to restructure any
10 debt owed by the consumer to the creditor;

11 “(iii) any depository institution (as
12 that term is defined in section 3 of the
13 Federal Deposit Insurance Act) or any
14 Federal or State credit union (as those
15 terms are defined in section 101 of the
16 Federal Credit Union Act), or any affiliate
17 or subsidiary of such a depository institu-
18 tion or credit union;

19 “(iv) any attorney at law, if providing
20 debt counseling, debt consolidation, or debt
21 settlement services are incidental to, and
22 not the principal business of, the practice
23 of such attorney;

24 “(v) any certified public accountant, if
25 providing debt counseling, debt consolida-

1 tion, or debt settlement services are inci-
 2 dental to, and not the principal business
 3 of, the accounting practice of such ac-
 4 countant;

5 “(vi) any title insurer or abstract
 6 company, while doing escrow business; or

7 “(vii) a judicial officer or person act-
 8 ing under court order.

9 **“SEC. 1003. PROHIBITED PRACTICES.**

10 “(a) IN GENERAL.—A debt counseling organization,
 11 a debt consolidation organization and a debt settlement
 12 organization may not—

13 “(1) unreasonably disclose information to third
 14 parties regarding amounts owed by any consumer;

15 “(2) make any fraudulent, deceptive, or mis-
 16 leading representation to obtain information about
 17 any consumer, to solicit business with any consumer,
 18 or in connection with providing services for or on be-
 19 half of any consumer;

20 “(3) use any unconscionable means to obtain a
 21 contract with any consumer collect or attempt to col-
 22 lect a debt owed to the seller;

23 “(4) advertise, announce, solicit, or otherwise
 24 represent as free or available without charge (includ-
 25 ing by use of other words of similar meaning) any

1 debt counseling, debt consolidation, or debt settle-
2 ment service for which the organization charges the
3 consumer or receives consideration from a third
4 party (including a related party); or

5 “(5) engage in any unfair or deceptive act or
6 practice in connection with any debt counseling, debt
7 consolidation, or debt settlement service provided to
8 any consumer, in offering or establishing any term
9 or condition in any contract with a consumer for
10 providing any such service, or any advertisement or
11 solicitation relating to any such service.

12 “(b) UNDISCLOSED RELATIONSHIP BETWEEN A
13 DEBT COUNSELING ORGANIZATION AND A DEBT CON-
14 SOLIDATION OR DEBT SETTLEMENT ORGANIZATION.—No
15 debt counseling organization may offer any service to any
16 consumer, or provide any advice or referral to any con-
17 sumer, with respect to any debt consolidation organization
18 or any debt settlement organization of which the debt
19 counseling organization is an affiliate, for which it is an
20 agent, or with which the debt counseling organization has
21 an on-going business relationship or any reciprocal refer-
22 ral agreement, unless the debt counseling organization—

23 “(1) fully discloses, orally and in writing, the
24 existence of the affiliation, agency, or business rela-

1 tionship or reciprocal referral agreement to the con-
2 sumer;

3 “(2) fully discloses, orally and in writing, the
4 detail of the financial relationship between the debt
5 counseling organization and the debt consolidation
6 or debt settlement organization, including the extent
7 to which the debt counseling organization benefits fi-
8 nancially from any services or advice provided by the
9 counseling organization to the consumer that results
10 in any debt consolidation or debt settlement con-
11 tract, agreement, or transaction between the con-
12 sumer and the debt consolidation or debt settlement
13 organization; and

14 “(3) such other information as the Commission
15 may require in regulations.

16 “(c) DIVERSION OF PERIODIC PAYMENTS FROM
17 CREDITOR TO DEBT SETTLEMENT ORGANIZATION.—

18 “(1) OFFER OR ADVICE TO CONSUMER.—No
19 debt counseling organization, debt consolidation or-
20 ganization, or debt settlement organization may sug-
21 gest or advise any consumer to stop making any
22 payment or any portion of any payment, whether
23 periodic or otherwise, due from the consumer to any
24 creditor under the terms of a loan or extension of
25 credit from the creditor to the consumer for the pur-

1 pose of facilitating debt settlement negotiations with
2 such creditor by or on behalf of the consumer, unless
3 the organization provides full written disclosure to
4 the consumer, and obtains a signed statement from
5 the consumer that the consumer has read and un-
6 derstood the disclosure, that—

7 “(A) such action is or may be a violation
8 of the terms of the agreement between the con-
9 sumer and the creditor if the creditor has not
10 agreed in writing to a new payment arrange-
11 ment;

12 “(B) the failure to make timely payments
13 on any loan or extension of credit in accordance
14 with the terms of the contract—

15 “(i) will be, or is likely to be, reported
16 as a late payment or a nonpayment to a
17 consumer reporting agency;

18 “(ii) will, or is likely to have, an ad-
19 verse effect on the creditworthiness of the
20 consumer such that the consumer may
21 have difficulty obtaining credit; and

22 “(C) if the consumer has not missed or
23 failed to make payments to the creditor, such
24 action may not be necessary in order for the

1 consumer to obtain debt settlement from the
2 creditor.

3 “(2) ACCEPTANCE OF PAYMENTS DIVERTED
4 FROM A CREDITOR.—No debt settlement organiza-
5 tion may accept or hold any payments from a con-
6 sumer intended for a creditor after a settlement has
7 been reached between the creditor and the debt set-
8 tlement organization beyond a reasonable amount of
9 time necessary solely for payment-processing pur-
10 poses.

11 “(d) PAYMENT IN ADVANCE.—

12 “(1) IN GENERAL.—No debt counseling organi-
13 zation, debt consolidation organization, or debt set-
14 tlement organization may collect any payment from
15 a consumer prior to the payment being earned as
16 specifically defined in the contract between the par-
17 ties.

18 “(2) FULL OR FINAL PAYMENT.—No debt
19 counseling organization, debt consolidation organiza-
20 tion, or debt settlement organization may charge or
21 receive full or final payment for the performance of
22 any service which such organization has agreed to
23 perform for any consumer before such service is fully
24 performed by both parties in accordance with the
25 contract between the parties.

1 **“SEC. 1004. DEBT COUNSELING, DEBT CONSOLIDATION, OR**
2 **DEBT SETTLEMENT ORGANIZATION CON-**
3 **TRACTS.**

4 “(a) WRITTEN CONTRACTS REQUIRED.—No services
5 that require any payment, voluntary donation, fee, or
6 other consideration may be provided by any debt coun-
7 seling organization, debt consolidation organization, or
8 debt settlement organization for any consumer unless a
9 written and dated contract (for the purchase of such serv-
10 ices) which meets the requirements of subsection (b) has
11 been signed by the consumer.

12 “(b) TERMS AND CONDITIONS OF CONTRACT.—No
13 contract referred to in subsection (a) meets the require-
14 ments of this subsection unless such contract includes (in
15 writing)—

16 “(1) the terms and conditions of payment, in-
17 cluding—

18 “(A) a reasonable estimate of all payments
19 and fees to be made by the consumer to the
20 debt counseling organization, debt consolidation
21 organization, or debt settlement organization or
22 to any other person over the term of the con-
23 tract, including a maximum amount; and

24 “(B) the amount of any monthly or other
25 periodic payment required under the contract to
26 any such organization or other person, the

1 number of such monthly or other periodic pay-
2 ments, and the terms applicable with respect to
3 such payments and any late payment of, or de-
4 fault on, any such amount;

5 “(2) a full and detailed description of the serv-
6 ices to be performed by the debt counseling organi-
7 zation, debt consolidation organization, or debt set-
8 tlement organization for the consumer, including—

9 “(A) all guarantees of performance; and

10 “(B) an estimate of—

11 “(i) the date by which the perform-
12 ance of the services (to be performed by
13 the organization or any other person) will
14 be complete; or

15 “(ii) the length of the period nec-
16 essary to perform such services;

17 “(3) the name and principal business address of
18 the debt counseling organization, debt consolidation
19 organization, or debt settlement organization;

20 “(4) a conspicuous statement in bold face type,
21 in immediate proximity to the space reserved for the
22 consumer’s signature on the contract, which reads as
23 follows: “You may cancel this contract without pen-
24 alty or obligation at any time before midnight of the
25 3rd business day after the date on which you signed

1 the contract. See the attached notice of cancellation
2 form for an explanation of this right.”; and

3 “(5) no charges or fees may be imposed by the
4 debt counseling organization, debt consolidation or-
5 ganization, or debt settlement organization for any
6 activities or services undertaken on behalf of the
7 consumer by the organization before the end of the
8 3-business-day period beginning on the date the con-
9 tract is signed, if the consumer exercises the right
10 to cancel the contract before the end of such period.

11 **“SEC. 1005. RIGHT TO CANCEL CONTRACT.**

12 “(a) IN GENERAL.—Any consumer may cancel any
13 contract with any debt counseling organization, debt con-
14 solidation organization, or debt settlement organization
15 without penalty or obligation by notifying the organization
16 of the consumer’s intention to do so at any time before
17 midnight of the 3rd business day which begins after the
18 date on which the contract or agreement between the con-
19 sumer and the organization is executed or would, but for
20 this subsection, become enforceable against the parties.

21 “(b) CANCELLATION FORM AND OTHER INFORMA-
22 TION.—Each contract shall be accompanied by a form, in
23 duplicate, which has the heading ‘Notice of Cancellation’
24 and contains in bold face type the following statement:

1 **‘You may cancel this contract, with-**
 2 **out any penalty or obligation, at any time**
 3 **before midnight of the 3rd day which be-**
 4 **gins after the date the contract is signed**
 5 **by you.**

6 **‘To cancel this contract, mail or de-**
 7 **liver in person a signed, dated copy of**
 8 **this cancellation notice, or any other**
 9 **written notice to [*name of debt coun-***
 10 ***seling organization, debt consolidation***
 11 ***organization, or debt settlement***
 12 ***organization*] at [*address of such***
 13 ***organization*] before midnight on**
 14 **[*date*]**

15 **‘I hereby cancel this transaction,**
 16 **[*date*]**
 17 **[*purchaser’s signature*].’.**

18 “(c) CONSUMER COPY OF CONTRACT REQUIRED.—
 19 Any consumer who enters into any contract with any debt
 20 counseling organization, debt consolidation organization,
 21 or debt settlement organization shall be given, by the orga-
 22 nization—

23 “(1) a copy of the completed contract and the
 24 disclosure statement required under section 1004;
 25 and

1 “(2) a copy of any other document the organi-
2 zation requires the consumer to sign,
3 at the time the contract or the other document is signed.

4 “(d) RETENTION OF CONTRACT RECORDS.—Any
5 debt counseling organization, debt consolidation organiza-
6 tion, and debt settlement organization shall maintain a
7 copy of the contract signed by the consumer for not less
8 than 3 years after the date the services provided under
9 the contract have been fully performed, together with the
10 complete name, address, and phone number of the con-
11 sumer at the time the contract became effective.

12 **“SEC. 1006. NONCOMPLIANCE WITH THIS TITLE.**

13 “(a) CONSUMER WAIVERS INVALID.—Any waiver by
14 any consumer of any protection provided by or any right
15 of the consumer under this title—

16 “(1) shall be treated as void; and

17 “(2) may not be enforced by any Federal or
18 State court or any other person.

19 “(b) ATTEMPT TO OBTAIN WAIVER.—Any attempt
20 by any person to obtain a waiver from any consumer of
21 any protection provided by or any right of the consumer
22 under this title shall be treated as a violation of this title.

23 “(c) CONTRACTS NOT IN COMPLIANCE.—Any con-
24 tract for services which does not comply with the applica-
25 ble provisions of this title—

1 “(1) shall be treated as void; and

2 “(2) may not be enforced by any Federal or
3 State court or any other person.

4 **“SEC. 1007. REGISTRATION OF ORGANIZATION.**

5 “Any person who owns or controls a debt counseling
6 organization, debt consolidation organization, or debt set-
7 tlement organization shall register the organization
8 (whether or not the organization is licensed as a debt
9 counseling organization, debt consolidation organization,
10 or debt settlement organization in any State) with the Sec-
11 retary of the Treasury not later than the end of the 180-
12 day period beginning on the later of—

13 “(A) the date of enactment of the Debt
14 Counseling, Debt Consolidation, and Debt Set-
15 tlement Practices Improvement Act of 2003; or

16 “(B) the date on which the organization is
17 established.

18 “(2) FORM AND MANNER OF REGISTRATION.—

19 Subject to the requirements of subsection (b), the
20 Secretary of the Treasury shall prescribe, by regula-
21 tion, the form and manner for registering a debt
22 counseling organization, debt consolidation organiza-
23 tion, or debt settlement organization pursuant to
24 paragraph (1) which may be consistent with the reg-
25 istration requirements for money transmitting busi-

1 nesses under section 5130 of title 31, United States
2 Code.

3 “(3) ORGANIZATIONS REMAIN SUBJECT TO
4 STATE LAW.—This section shall not be construed as
5 superseding any requirement of State law relating to
6 debt counseling organizations, debt consolidation or-
7 ganizations, or debt settlement organizations oper-
8 ating in such State, except to the extent provided in
9 section 1011.

10 “(4) FALSE AND INCOMPLETE INFORMATION.—
11 The filing of false or materially incomplete informa-
12 tion in connection with the registration of a debt
13 counseling organization, debt consolidation organiza-
14 tion, or debt settlement organization shall be consid-
15 ered as a failure to comply with the requirements of
16 this section.

17 “(b) CONTENTS OF REGISTRATION.—The registra-
18 tion of a debt counseling organization, debt consolidation
19 organization, or debt settlement organization under sub-
20 section (a) shall include the following information:

21 “(1) The name and location of the organization.

22 “(2) The name and address of each person
23 who—

24 “(A) owns or controls the organization;

1 “(B) is a director or officer of the organi-
2 zation; or

3 “(C) otherwise participates in the conduct
4 of the affairs of the organization.

5 “(3) Such other information as the Federal
6 Trade Commission may require.

7 “(c) CIVIL PENALTY FOR FAILURE TO COMPLY
8 WITH REGISTRATION REQUIREMENTS.—

9 “(1) IN GENERAL.—Any person who fails to
10 comply with any requirement of this section or any
11 regulation prescribed under this section shall be lia-
12 ble to the United States for a civil penalty of \$5,000
13 for each such violation.

14 “(2) CONTINUING VIOLATION.—Each day a vio-
15 lation described in paragraph (1) continues shall
16 constitute a separate violation for purposes of such
17 paragraph.

18 “(3) ASSESSMENTS.—Any penalty imposed
19 under this subsection shall be assessed and collected
20 by the Secretary of the Treasury in the manner pro-
21 vided in section 5321 of title 31, United States
22 Code.

23 **“SEC. 1008. CIVIL LIABILITY.**

24 “(a) LIABILITY ESTABLISHED.—Any person who
25 fails to comply with any provision of this title with respect

1 to any other person shall be liable to such person in an
2 amount equal to the sum of the amounts determined
3 under each of the following paragraphs:

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

5 “(A) the amount of any actual damage
6 sustained by such person as a result of such
7 failure; or

8 “(B) any amount paid by the person to the
9 debt counseling organization, debt consolidation
10 organization, or debt settlement organization.

11 “(2) GENERAL DAMAGES.—

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

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

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

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

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

1 graph (1) or (2), the costs of the action, together
2 with reasonable attorneys' fees.

3 “(b) FACTORS TO BE CONSIDERED IN AWARDING
4 GENERAL DAMAGES.—In determining the amount of any
5 liability of any debt counseling organization, debt consoli-
6 dation organization, or debt settlement organization under
7 subsection (a)(2), the court shall consider, among other
8 relevant factors—

9 “(1) the frequency and persistence of non-
10 compliance by the organization;

11 “(2) the nature of the noncompliance;

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

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

16 **“SEC. 1009. ADMINISTRATIVE ENFORCEMENT.**

17 “(a) FEDERAL TRADE COMMISSION.—

18 “(1) IN GENERAL.—Except as provided in sub-
19 section (b), compliance with the requirements im-
20 posed under this title with respect to debt counseling
21 organizations, debt consolidation organizations, and
22 debt settlement organizations shall be enforced
23 under the Federal Trade Commission Act by the
24 Federal Trade Commission.

1 “(2) VIOLATIONS OF THIS TITLE TREATED AS
2 VIOLATIONS OF FEDERAL TRADE COMMISSION
3 ACT.—

4 “(A) IN GENERAL.—For the purpose of
5 the exercise by the Federal Trade Commission
6 of the Commission’s functions and powers
7 under the Federal Trade Commission Act, any
8 violation of any requirement or prohibition im-
9 posed under this title with respect to debt coun-
10 seling organizations, debt consolidation organi-
11 zations, and debt settlement organizations shall
12 constitute an unfair or deceptive act or practice
13 in commerce in violation of section 5(a) of the
14 Federal Trade Commission Act.

15 “(B) ENFORCEMENT AUTHORITY UNDER
16 OTHER LAW.—All functions and powers of the
17 Federal Trade Commission under the Federal
18 Trade Commission Act shall be available to the
19 Commission to enforce compliance with this
20 title by any person subject to enforcement by
21 the Federal Trade Commission pursuant to this
22 subsection, including the power to enforce the
23 provisions of this title in the same manner as
24 if the violation had been a violation of any Fed-
25 eral Trade Commission trade regulation rule,

1 without regard to whether the debt counseling
2 organization, debt consolidation organization, or
3 debt settlement organization—

4 “(i) is engaged in commerce; or

5 “(ii) meets any other jurisdictional
6 tests in the Federal Trade Commission
7 Act.

8 “(b) CIVIL PENALTIES.—

9 “(1) PENALTY AUTHORIZED.—The Federal
10 Trade Commission may impose a civil penalty on
11 any debt counseling organization, debt consolidation
12 organization, or debt settlement organization that
13 violates any provision of this title other than section
14 1007.

15 “(2) MAXIMUM AMOUNT LIMITATION.—The
16 amount of any civil money penalty imposed under
17 paragraph (1) shall not exceed—

18 “(A) in the case of any person who know-
19 ingly or recklessly violates this title, the greater
20 of—

21 “(i) the amount (not to exceed
22 \$100,000) of the debt of the consumer
23 that was subject to debt counseling, debt
24 consolidation, or debt settlement; or

25 “(ii) \$25,000; and

1 “(B) in the case of any person who neg-
2 ligently violates this title, \$2000.

3 “(3) CONTINUING VIOLATIONS.—Each day a
4 violation continues under this title shall be treated
5 as a separate violation.

6 “(4) TIME LIMITATIONS FOR ASSESSMENTS
7 AND COMMENCEMENT OF CIVIL ACTIONS.—

8 “(A) ASSESSMENTS.—The Federal Trade
9 Commission may assess a civil penalty under
10 this subsection at any time before the end of
11 the 6-year period beginning on the date of the
12 violation with respect to which the penalty is
13 assessed.

14 “(B) CIVIL ACTIONS.—The Commission
15 may commence a civil action to recover a civil
16 penalty assessed under this subsection at any
17 time before the end of the 2-year period begin-
18 ning on the date the penalty was assessed in
19 any court with jurisdiction.

20 “(5) CRIMINAL PENALTY NOT EXCLUSIVE OF
21 CIVIL PENALTY.—A civil money penalty may be im-
22 posed under this subsection with respect to any vio-
23 lation of this title (other than section 1007) notwith-
24 standing the fact that a criminal penalty is imposed
25 with respect to the same violation.

1 “(6) PATTERN OF NEGLIGENT ACTIVITY.—If
2 any debt counseling organization, debt consolidation
3 organization, or debt settlement organization en-
4 gages in a pattern of negligent violations of any pro-
5 vision of this title (other than section 1007), or any
6 regulation prescribed under this title, the Federal
7 Trade Commission may, in addition to any penalty
8 imposed under paragraph (2)(B) with respect to any
9 such violation, impose a civil money penalty of not
10 more than \$50,000 on such organization.

11 “(7) PROCEDURAL PROVISIONS.—

12 “(A) AUTHORITY TO MODIFY OR REMIT
13 PENALTY.—The Federal Trade Commission
14 may compromise, modify, or remit any penalty
15 which the Commission may assess or has al-
16 ready assessed under this subsection.

17 “(B) MITIGATING FACTORS.—In deter-
18 mining the amount of any penalty imposed
19 under this subsection, the Commission shall
20 take into account the appropriateness of the
21 penalty with respect to—

22 “(i) the size of financial resources and
23 good faith of the organization charged;

24 “(ii) the gravity of the violation;

1 “(iii) the history of previous viola-
2 tions; and

3 “(iv) such other matters as justice
4 may require.

5 “(C) APPROPRIATENESS OF PENALTY NOT
6 REVIEWABLE.—In any civil action under para-
7 graph (4)(B), the validity and appropriateness
8 of the penalty shall not be subject to review.

9 “(D) DISBURSEMENT.—All penalties col-
10 lected under authority of this paragraph shall
11 be deposited into the Treasury.

12 “(E) REGULATIONS.—The Federal Trade
13 Commission shall prescribe regulations, after
14 notice and opportunity for a hearing under sec-
15 tion 553 of title 5, United States Code, estab-
16 lishing such procedures as may be necessary to
17 carry out this subsection.

18 “(c) STATE ACTION FOR VIOLATIONS.—

19 “(1) AUTHORITY OF STATES.—In addition to
20 such other remedies as are provided under State
21 law, whenever the chief law enforcement officer of a
22 State, or an official or agency designated by a State,
23 has reason to believe that any person has violated or
24 is violating this title, the State—

1 “(A) may bring an action to enjoin such
2 violation;

3 “(B) may bring an action on behalf of its
4 residents to recover damages for which the per-
5 son is liable to such residents under section 409
6 as a result of the violation; and

7 “(C) in the case of any successful action
8 under subparagraph (A) or (B), shall be award-
9 ed the costs of the action and reasonable attor-
10 ney fees as determined by the court.

11 “(2) RIGHTS OF COMMISSION.—

12 “(A) NOTICE TO COMMISSION.—The State
13 shall serve prior written notice of any civil ac-
14 tion under paragraph (1) upon the Federal
15 Trade Commission and provide the Commission
16 with a copy of its complaint, except in any case
17 where such prior notice is not feasible, in which
18 case the State shall serve such notice imme-
19 diately upon instituting such action.

20 “(B) INTERVENTION.—The Commission
21 shall have the right—

22 “(i) to intervene in any action re-
23 ferred to in subparagraph (A);

24 “(ii) upon so intervening, to be heard
25 on all matters arising in the action; and

1 “(iii) to file petitions for appeal.

2 “(3) INVESTIGATORY POWERS.—For purposes
3 of bringing any action under this subsection, nothing
4 in this subsection shall prevent the chief law enforce-
5 ment officer, or an official or agency designated by
6 a State, from exercising the powers conferred on the
7 chief law enforcement officer or such official by the
8 laws of such State to conduct investigations or to
9 administer oaths or affirmations or to compel the at-
10 tendance of witnesses or the production of documen-
11 tary and other evidence.

12 “(4) LIMITATION.—Whenever the Federal
13 Trade Commission has instituted a civil action for
14 violation of this title, no State may, during the pend-
15 ency of such action, bring an action under this sec-
16 tion against any defendant named in the complaint
17 of the Commission for any violation of this title that
18 is alleged in that complaint.

19 **“SEC. 1010. STATUTE OF LIMITATIONS.**

20 “(a) IN GENERAL.—Any action to enforce any liabil-
21 ity under this title may be brought before the end of the
22 5-year period beginning on the date on which the occur-
23 rence of the violation is discovered or reasonably should
24 have been discovered by the exercise of due diligence.

1 “(b) WILLFUL MISREPRESENTATION.—The limita-
 2 tions period prescribed in subsection (a) shall be tolled
 3 during any period during which a defendant has materially
 4 and willfully misrepresented any information required
 5 under this title to be disclosed to an individual, and the
 6 information so misrepresented is material to the establish-
 7 ment of the liability of the defendant to that individual
 8 under this title.”.

9 **“SEC. 1011. RELATION TO STATE LAW.**

10 “No requirement or prohibition may be imposed
 11 under the laws of any State with respect to any subject
 12 matter regulated under this title.

13 **“SEC. 1012. EFFECTIVE DATE.**

14 “This title shall apply after the end of the 6-month
 15 period beginning on the date of the enactment of the Debt
 16 Counseling, Debt Consolidation, and Debt Settlement
 17 Practices Improvement Act of 2003, except with respect
 18 to contracts entered into by a debt counseling organiza-
 19 tion, debt consolidation organization, or debt settlement
 20 organization before the end of such period.”.

21 **SEC. 3. STUDY OF DEBT CONSOLIDATION AND DEBT SET-**
 22 **TLEMENT INDUSTRY.**

23 (a) STUDY REQUIRED.—The Federal Trade Commis-
 24 sion and the Board of Governors of the Federal Reserve
 25 System shall jointly conduct a study of—

1 (1) the benefits and detrimental effects of the
2 activities of debt consolidation organizations and
3 debt settlement organizations for consumers and
4 creditors generally, and the economy, including the
5 extent to which such activities have contributed to a
6 substantial decline in the total amount of household
7 debt and the average amount of debt per household;
8 and

9 (2) the extent to which such organizations are
10 affiliates of creditors, or maintain formal or informal
11 relationships with 1 or more creditors in providing
12 debt consolidation or debt settlement services.

13 (b) REPORT.—Before the end of the 1-year period be-
14 ginning on the date of the enactment of this Act, the Fed-
15 eral Trade Commission and the Board of Governors of the
16 Federal Reserve System shall jointly submit a report to
17 the Congress containing the findings and conclusions of
18 the Commission and the Board pursuant to the study con-
19 ducted pursuant to subsection (a), together with such rec-
20 ommendations for legislative or administrative action as
21 the Commission and the Board may determine to be ap-
22 propriate.

23 (c) DEFINITIONS.—For purposes of this section, the
24 terms “creditor”, “debt consolidation organization”, and

- 1 “debt settlement organization” have the same meaning as
- 2 in the amendment made by section 2.

