

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: CS/SB 628

INTRODUCER: Banking and Insurance Committee and Senator Grall

SUBJECT: Debt Management Services

DATE: April 3, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
3.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

Debt management services laws regulate the fees credit counseling organizations may charge debtors for debt management services and credit counseling services. Non-profit credit counseling agencies work with debtors' creditors, educate debtors about credit practices, and enroll qualifying debtors in debt management plans tailored to their specific situation and budget.

The bill revises the fee chargeable by a credit counseling agency to a debtor for receiving from the debtor, and subsequently disbursing to a creditor, money or anything of value. The maximum fee will now be up to the lesser of 15 percent of the monthly payment or \$75 monthly. Under current law, the maximum fee is the greater of 7.5 percent of the monthly payment or \$35 monthly.

This bill will not have a fiscal impact on state and local governments but will have both positive and negative fiscal impacts on the private sector.

The bill provides an effective date of July 1, 2023.

## II. Present Situation:

### Credit Counseling Organizations

Debtors seeking to manage and reduce their debts often engage credit counseling organizations who provide debt management services and credit counseling services.<sup>1</sup> Non-profit credit counseling agencies assist debtors with managing and reducing their debt by offering free counseling on credit practices, enrolling qualifying debtors in debt management plans, and providing community education to individuals and families on money management skills.<sup>2</sup>

Floridians are among the many individuals who can be expected to use services from non-profit credit counseling organizations. According to Experian, the average Floridian carried \$84,926 in debt in 2021,<sup>3</sup> and the average mortgage was \$208,536.<sup>4</sup> Credit card debt, student loans, and auto loans accounted for the other main sources of debt for Floridians, with a state average of \$5,620, \$41,300, and \$21,341, respectively.<sup>5</sup> In 2022, the average Floridian carried \$89,195 in debt, a 5% increase from 2021.<sup>6</sup>

### Debt Management Services

Debt management services is defined by Florida statute as services provided for a fee to “effect the adjustment, compromise, or discharge of any unsecured note, account, or other indebtedness of the debtor; or receive from the debtor and disburse to a creditor any money or other item of value.”<sup>7</sup>

Credit counseling agencies and creditors may classify individuals who find it particularly difficult to manage their debt, whether due to their health or other specific situation, as “vulnerable.”<sup>8</sup> Credit counseling agencies encourage creditors to take, and do take, extra measures to ensure an individual who is vulnerable receives the same services as others.<sup>9</sup>

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<sup>1</sup> Consumer Financial Protection Bureau, *What is credit counseling?*, available at <https://www.consumerfinance.gov/ask-cfpb/what-is-credit-counseling-en-1451/> (last visited April 3, 2023).

<sup>2</sup> See Financial Counseling Association of America, available at <https://fcaa.org/> (last visited April 3, 2023).

<sup>3</sup> Experian, *Average Consumer Debt Levels Increase in 2022*, available at <https://www.experian.com/blogs/ask-experian/research/consumer-debt-study/> (hereinafter cited as “Experian’s Article on Average Consumer Debt Levels”) (last visited April 3, 2023).

<sup>4</sup> Horymski, C., *Total Mortgage Debt Increases to \$10.3 Trillion in 2021*, Experian, Jun. 4, 2022, available at [Total Mortgage Debt Increases to \\$10.3 Trillion in 2021 - Experian](#) (last visited April, 2023).

<sup>5</sup> Horymski, C., *Credit Card Debt in 2021: Balances Slightly Decline*, Experian, Jun. 23, 2022, available at [Credit Card Debt in 2021: Balances Slightly Decline - Experian](#) (last visited April 3, 2023); Horymski, C., *Student Loan Balances Barely Budge in 2021*, Experian, Aug. 23, 2022, available at [Student Loan Debt Increases Slightly in 2021 - Experian](#) (last visited April 3, 2023); Horymski, C., *Auto Loan Debt Reaches a Record-High \$1.43 Trillion*, Experian, Jul. 29, 2022, available at [Auto Loan Debt Reaches a Record-High \\$1.43 Trillion - Experian](#) (last visited April 3, 2023).

<sup>6</sup> Experian’s Article on Average Consumer Debt Levels.

<sup>7</sup> Section 817.801(4), F.S.

<sup>8</sup> See Step Change: Debt Charity, *Dealing with the debts of a vulnerable person*, available at <https://www.stepchange.org/debt-info/dealing-with-the-debts-of-vulnerable-people.aspx> (last visited April 3, 2023).

<sup>9</sup> *Id.*

Unlike for-profit debt settlement companies,<sup>10</sup> credit counseling agencies are non-profit organizations whose fees are regulated and vary across jurisdiction.<sup>11</sup> According to Cambridge Credit Counseling Corp., many states set maximum rates regulating the initial fee a credit counseling agency may impose on a consumer, and of the states who have set a maximum rate, the rates range between \$25 and \$100.<sup>12</sup> Other states generally also allow credit counseling agencies to charge a monthly fee up to a certain amount which is usually a flat rate or a percentage of the monthly amount paid by the debtor to repay the debt, or both.<sup>13</sup> The lowest rate cap is \$25 per month and the highest rate cap is \$75 per month.<sup>14</sup>

### **Florida's Limitations on Fees for Debt Management Services**

In 2004, the Legislature recognized the importance of easy access to debt management services, while also acknowledging the vulnerability of debtors, by prescribing the maximum fees a person or entity could charge a debtor for debt management services.<sup>15</sup>

Specifically, the 2004 legislation made it unlawful for any entity or individual engaging in debt management services or credit counseling services, to charge a debtor:

- A fee greater than \$50 for an initial consultation;<sup>16</sup> and
- A fee greater than \$120 per year for additional consultations or, alternatively, in the case of receiving debt payments from the debtor and disbursing to a creditor any money or other item of value, the greater of 7.5% of the amount paid monthly by the debtor or \$35 per month.<sup>17</sup>

No state agency directly regulates credit counseling organizations. Regulation is self-executing by means of private civil actions under part II of ch. 501, F.S., including possible action by the Attorney General or local prosecutors.<sup>18</sup> Any person in violation of the debt services statute “commits an unfair or deceptive trade practice.”<sup>19</sup> A violation results in criminal and civil penalties. Namely, a violation is a third-degree felony,<sup>20</sup> and an individual injured by a violation can bring an action for damages, where judgement is entered for actual damages no less than the amount paid by the aggrieved individual to the credit counseling organization.<sup>21</sup>

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<sup>10</sup> Consumer Financial Protection Bureau, *What are Debt Settlement/Debt Relief Services and Should I Use Them?*, Aug. 24, 2022, available at [What are debt settlement/debt relief services and should I use them? | Consumer Financial Protection Bureau \(consumerfinance.gov\)](https://www.consumerfinance.gov/what-are-debt-settlement-debt-relief-services-and-should-i-use-them/) (last visited April 3, 2023) (defining debt settlement companies as “companies that say they can renegotiate, settle, or in some way change the terms of a person’s debt to a creditor or debt collector, and noting that dealing with debt settlement companies can be risky and often charge expensive fees.)

<sup>11</sup> Email from Kelly Mallette, Ronald L. Book, P.A., to Jacqueline Moody, Florida Senate Committee on Banking and Insurance, *State Based Fees*, Mar. 17, 2023 (on file with Senate Committee on Banking and Insurance)

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Chapter 2004-351, Laws of Florida, created s. 817.802, F.S.

<sup>16</sup> Section 817.802(1), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Chapter 501, part II, F.S., relating to the protection of consumers from unfair trade practices, and remedies for violations thereof, similar to federal policies relating to consumer protection.

<sup>19</sup> Section 817.806, F.S.

<sup>20</sup> A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

<sup>21</sup> Section 817.806, F.S.

Although a 2006 amendment narrowed the scope of debtors protected to those debtors specifically residing in the state of Florida,<sup>22</sup> the limitation on fees for debt management services has not been increased since its enactment in 2004.

### III. Effect of Proposed Changes:

**Section 1** changes the fee a person or entity may charge for the debt management services described in s. 817.802(4)(b), F.S., (namely, receiving from the debtor and disbursing to a creditor any money or item of value) up to the lesser of 15 percent of the amount paid monthly by the debtor or \$75 per month, rather than the greater of 7.5 percent of the amount paid or \$35 per month. The following table illustrates the current and proposed fees.

Monthly Payment	Current			SB 628			Result of Current vs. SB 628
	Greater of 7.5% of monthly      \$35		Monthly Fee Allowed	Lesser of 15% of monthly      \$75		Monthly Fee Allowed	
\$100	\$ 7.50	\$ 35.00	\$ 35.00	\$ 15.00	\$ 75.00	\$ 15.00	Reduction
\$500	\$ 37.50	\$ 35.00	\$ 37.50	\$ 75.00	\$ 75.00	\$ 75.00	Increase
\$1,000	\$ 75.00	\$ 35.00	\$ 75.00	\$ 150.00	\$ 75.00	\$ 75.00	No Change
\$1,500	\$ 112.50	\$ 35.00	\$ 112.50	\$ 225.00	\$ 75.00	\$ 75.00	Reduction

**Section 2** provides an effective date of July 1, 2023.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

None.

#### E. Other Constitutional Issues:

None identified.

<sup>22</sup> Chapter 2006-136, Laws of Florida, amended s. 817.802, F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Credit counseling organizations and debtors residing in Florida would experience a fiscal impact from this bill. Specifically, the change in fees to the lesser of 15% of the amount paid monthly by the debtor or \$75 per month would likely result in an increase in some revenue for credit counseling organizations. On the other hand, the increase in the maximum chargeable amount might have a negative fiscal impact on debtors residing in Florida.<sup>23</sup> The bill results in increased maximum fees for payment amounts greater than \$233.33 but less than \$1,000.00; maximum fees are reduced for payment amounts less than \$233.33 or greater than \$1,000.00.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 817.802 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance Committee on March 22, 2023:**

- Clarifies that the fee a person or entity may charge for the debt management services is “up to” the lesser of 15 percent of the amount paid monthly by the debtor or \$75 per month.

**B. Amendments:**

None.

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<sup>23</sup> Florida Office of Financial Regulations, *2023 Agency Legislative Bill Analysis for HB 599*, p. 3, Mar. 3, 2023 (on file with Senate Committee on Banking and Insurance).

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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