

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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1074

INTRODUCER: Banking and Insurance Committee and Senator Calatayud

SUBJECT: Debt Relief Services

DATE: February 20, 2024

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Moody</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2. <u>Baird</u>	<u>McKay</u>	<u>CM</u>	Favorable
3. <u>Moody</u>	<u>Twogood</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1074 establishes an exception to the credit counseling services provisions in Part IV of ch. 817, F.S., for any telemarketer or seller who:

- Provides any debt relief service within the scope of specified federal telemarketing laws;
- Is required to comply with such federal regulation; and
- Does not receive from the debtor and disburse to a creditor any money or other thing of value.

The bill defines the terms “telemarketer,” “seller,” and “debt relief service” to have the same meaning as in the Telemarketing Sales Rule, 16 C.F.R. s. 310.2.

The bill has an effective date of July 1, 2024.

II. Present Situation:

Credit counseling agencies operating in Florida may provide services that meet the definition of “debt relief services” under Federal law and also fall within the definition of “debt management services” under Florida law.

Telemarketers who sell debt relief services are regulated under federal law, which defines “debt relief services” as:

[A]ny program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.¹

Under Florida law, “debt management services” are defined as “services provided to a debtor by a credit counseling organization for a fee to:

- Effect the adjustment, compromise, or discharge of any unsecured account, note, or other indebtedness of the debtor; *or*
- Receive from the debtor and disburse to a creditor any money or other thing of value.”²

Providers of services captured by both of the foregoing definitions are therefore subject to Federal law regulating debt relief services and the credit counseling services provisions in ch. 817, F.S. Some providers that sell debt relief services, who comply with compensation requirements under federal law but fail to comply with the compensation requirements under Florida law for credit counseling agencies that provide debt management services, are at risk of being subjected to private causes of action under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA)³ for violating provisions of ch. 817, F.S.⁴

Debt Relief Services in Florida

Consumer Debt Relief Initiative and American Association of Debt Relief report that approximately 180 debt settlement/debt resolution companies currently provide debt relief services to Floridians. Based on data points and general information provided by payment processors and industry leading organizations, there are approximately 325,000 Floridians who are actively enrolled in debt relief services, which is expected to increase in the next couple of years to more than 400,000 Floridians. With respect to debt settlement plans:⁵

- The average debt is approximately \$30,000 spread over 6.7 accounts;
- The average income for enrolled consumers is approximately 10-15% above average household income;
- The average credit score for an enrolled consumer is 590;
- The average length of a plan is approximately 38 months; and
- The average monthly payment deposited into the client’s personal dedicated account is approximately \$465.

Currently, more than \$5.6 billion of Floridians’ unsecured debt is enrolled in debt settlement plans.⁶

¹ 16 C.F.R. s. 310.2(o)

² Section 817.801(4), F.S.

³ Part II of ch. 501, F.S.

⁴ Section 817.806(1), F.S.

⁵ Email from Kelly C. Mallette, Ronald L. Book, P.A., to Jacqueline Moody, Senior Attorney, Florida Senate Committee on Banking and Insurance, *Additional Information [Relating to SB 1074]*, (Jan. 18, 2024) (on file with Senate Committee on Banking and Insurance) (attaching “Debt Relief Services”).

⁶ *Id.*

Federal law

There are no federal laws that require credit counseling agencies to be licensed. As required under federal bankruptcy laws, however, the U.S. Department of Justice publishes a list of credit counseling agencies that are approved pursuant to this law.⁷ According to the Consumer Financial Protection Bureau, credit counseling organizations are nonprofit organizations and provide services relating to:⁸

- Providing guidance on managing money and debts;
- Providing the consumer with a credit report or free educational materials and workshops;
- Assisting with developing a budget; and
- Creating and organizing a debt management plan to reduce the consumer's debt.

A consumer under a debt management plan makes payments to the credit counseling agency each month or pay period and the agency makes monthly payments to each of the consumer's creditors.⁹ Under a debt management plan, a consumer may reduce their debt payment and save more money in interest than the fees required for the credit counseling service.¹⁰

Federal Debt Relief Services Regulation

The Telemarketing and Consumer Fraud and Abuse Prevention Act (the Telemarketing Act), 15 U.S.C. ss. 6101-6108, requires the Federal Trade Commission (FTC) to adopt rules prohibiting deceptive or other abusive telemarketing¹¹ acts or practices. The Telemarketing Act sets out specific provisions that must be contained in the rules, including, but not limited to, a provision that requires any person engaged in telemarketing for the sale of goods or services to promptly and clearly disclose that the purpose of the call is to sell the services, the nature and price of the services, and any other disclosures required by the FTC.¹² The FTC has adopted the required rules in the Telemarketing Sales Rule (TSR). The Telemarketing Act authorizes any state to bring a civil action against any person who has violated the TSR to obtain damages, restitution, or other compensation, to enjoin the telemarketing, to enforce compliance, or to obtain such further relief as the court may deem appropriate.¹³

⁷ The U.S. Department of Justice, *List of Credit Counseling Agencies Approved Pursuant to 11 U.S.C. §111*, available at: [U.S. Trustee Program | List of Credit Counseling Agencies Approved Pursuant to 11 U.S.C. § 111 | United States Department of Justice](#) (last visited February 5, 2024).

⁸ The CFPB, *What is Credit Counseling*, Aug. 2, 2023, available at: [What is credit counseling? | Consumer Financial Protection Bureau \(consumerfinance.gov\)](#) (last visited February 5, 2024).

⁹ *Id.*

¹⁰ Experian, *How Much Can a Debt Management Plan Save You?*, Apr. 3, 2023, available at: [Can a Debt Management Plan \(DMP\) Save You Money? - Experian](#) (last visited February 5, 2024).

¹¹ 15 U.S.C. s. 6106 defines "telemarketing" as "a plan, program, or campaign which is conducted to induce purchases of goods or services, or a charitable contribution, donation, or gift of money or any other thing of value, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog."

¹² 15 U.S.C. s. 6102(a)(3).

¹³ 15 U.S.C. s. 6103(a).

The TSR, amongst other things, prohibits any person, such as a seller¹⁴ or telemarketer,¹⁵ from engaging in deceptive telemarketing acts or practices which include, but are not limited to:¹⁶

- Before a customer consents to the purchase of services, failing to truthfully, clearly, and consciously disclose specified material information, including specific information relating to the sale of any debt relief service;¹⁷
- Misrepresenting in the sale of services any of the specified material information; and
- Causing billing information to be submitted for payment, or collecting or attempting to collect payment for services without express verifiable authorization, except in specified circumstances.

The specified disclosures for debt relief services include, to the extent applicable, information relating to:¹⁸

- The amount of time necessary to achieve the represented results or to make a bona fide settlement offer;
- The amount of money or the percentage of each outstanding debt that the customer must accumulate before the debt relief service provider will make a bona fide settlement offer to each of them;
- The use of the debt relief services that will likely adversely affect the customer's creditworthiness, may result in the customer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the customer owes; and
- The customer's funds held in an account being owned by the customer.

The TSR also prohibits abusive telemarketing acts or practices that restrict when a telemarketer or seller may request or receive payment of any fee or consideration for any debt relief service until or unless:¹⁹

- The telemarketer or seller has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt;
- The customer has made at least one payment pursuant to a specified agreement or plan; and
- The fee:
 - Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount; or
 - Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration.

¹⁴ 16 C.F.R. s. 310.2(dd) defines "seller" as "any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration."

¹⁵ 16 C.F.R. s. 310.2(ff) defines "telemarketer" as "any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor."

¹⁶ 16 C.F.R. s. 310.3.

¹⁷ 16 C.F.R. s. 310.2(o) defines "debt relief service" as "any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector."

¹⁸ 16 C.F.R. s. 310.3(a)(1)(viii).

¹⁹ 16 C.F.R. s. 310.4(a)(5).

Florida law

Credit counseling services are regulated under part IV of ch. 817 of the Florida Statutes. A credit counseling agency may provide credit counseling services or debt management services.²⁰ Credit counseling services may include “confidential money management, debt reduction, and financial education services.”²¹

There are several exceptions for which part IV does not apply, including:²²

- Any debt management or credit counseling services provided in the practice of law;
- Any person²³ who engages in debt adjustment to adjust the indebtedness owed to such person;
- Specified entities or their subsidiaries, including:
 - The Federal National Mortgage Association,
 - The Federal Home Loan Mortgage Corporation,
 - The Florida Housing Finance Corporation,
 - A bank, bank holding company, trust company, savings and loan association, credit union, credit card bank, or savings bank that is regulated and supervised by a specified federal regulator or any state banking regulator,
 - A consumer reporting agency,²⁴ or
 - Any subsidiary or affiliate of a bank holding company, its employees and its exclusive agents acting under written agreement.

It is unlawful for any person to charge or accept more than the regulated fee or contribution²⁵ from a debtor residing in Florida while engaging in debt management services or credit counseling services. Specifically, a fee or contribution:²⁶

- May not be greater than \$50 for the initial setup or consultation;
- May not be greater than \$120 per year for additional consultations; or
- If debt management services are provided, the lesser of 15% of the amount paid monthly by the debtor to the person or \$75 per month.

Any person engaging in debt management services or credit counseling services must disburse to the appropriate creditors all funds received from a debtor, less any permitted fees and credit contributions, within 30 days after receipt of the funds. Such person is required to maintain a separate trust account for the receipt and disbursement of any funds.²⁷

²⁰ Section 817.801(1), F.S.

²¹ Section 817.801(2), F.S.

²² Section 817.803, F.S.

²³ Section 817.801(5), F.S., defines “person” as “any individual, corporation, partnership, trust, association, or other legal entity.”

²⁴ “Consumer reporting agency” means “any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.” 15 U.S.C. s. 1681a(f).

²⁵ Section 817.801(3), F.S., defines creditor contribution as “any sum that a creditor agrees to contribute to a credit counseling agency, whether directly or by setoff against amounts otherwise payable to the creditor on behalf of debtors.”

²⁶ Section 817.802(1), F.S. Florida law does not prohibit any person who is providing debt management or credit counseling services from imposing upon and receiving from a debtor a reasonable and separate charge or fee for insufficient funds transactions. Section 817.802(2), F.S.

²⁷ Section 817.805, F.S.

Any person engaged in debt management services or credit counseling services must comply with the following requirements:²⁸

- Obtain from a licensed certified public accountant an annual audit that must include specified accounts; and
- Obtain and maintain insurance coverage of minimum specified amounts for employee dishonesty, depositor's forgery, and computer fraud.

Any person who violates any provision of the credit counseling services provision under Part IV commits an unfair and deceptive trade practice.²⁹

Florida Deceptive and Unfair Trade Practices

The FDUTPA provides that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.³⁰ This makes sellers and telemarketers subject to the enforcement actions identified in part II of ch. 501, F.S., which include civil actions brought by the Attorney General and criminal prosecution by a State Attorney in the appropriate judicial circuit. Civil actions may also include an injunction, an action seeking damages, or a civil penalty up to \$10,000 per violation.³¹

Florida Telemarketing Act

Although the Florida Telemarketing Act³² (the Act) does not contain explicit provisions on telemarketing debt relief services, telemarketers who sell debt relief services in Florida are nonetheless required to comply with the general provisions of the Act. Unless an exemption applies,³³ a commercial telephone seller or an entity providing substance abuse marketing services must obtain a license from the Department of Agriculture and Consumer Services (DACS) to conduct business in Florida.³⁴ The Act requires the entities that apply for a license to disclose specified information to the DACS.³⁵ The DACS may issue a notice of noncompliance, impose an administrative fine, or issue other orders if any regulated entity, applicant, or certain specified related persons meet certain criteria, such as being convicted of certain crimes or filed for bankruptcy within the previous 7 years.³⁶ The Act provides other protections such as subjecting any person who engages in certain unlawful acts or practices to civil penalties or criminal prosecution.³⁷

²⁸ Section 817.804, F.S.

²⁹ Section 817.806(1), F.S.

³⁰ Section 501.204(1), F.S.

³¹ Section 501.2075, F.S.

³² Part IV of chapter 501, F.S.

³³ Section 501.604, F.S., provides for exemptions relating to, for instance, an isolated transaction, solicitation for religious or charitable purposes, or a licensed securities broker.

³⁴ Section 501.605(1), F.S.

³⁵ Section 501.606, F.S.

³⁶ Section 501.612, F.S.

³⁷ Sections 501.616, 501.619, and 501.623 F.S.

III. Effect of Proposed Changes:

CS/SB 1074 provides that the credit counseling services provisions do not apply to debt relief services, which are regulated under the TSR. **Section 1** of the bill adds an exception to the provisions of credit counseling services for telemarketers and sellers who:

- Provide debt relief services within the scope of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. ss. 6101-6108, and the Telemarketing Sales Rule, 16 C.F.R. part 310;
- Are required to comply with such federal regulation; and
- Do not receive from the debtor or disburse to a creditor any money or other thing of value, in accordance with the second prong of the definition of “debt management services” under s. 817.801(4)(b), F.S.

The terms “telemarketer,”³⁸ “seller,”³⁹ and “debt relief service”⁴⁰ have the same meaning as the definitions in the TSR.

The bill’s amendments to current law will limit the legal actions brought against telemarketers of debt relief services for failing to comply with ch. 817, F.S. However, such sellers would remain subject to causes of action pursuant to 15 U.S.C. s. 6103 for violating the provisions of the TSR. Telemarketers of debt relief services are also subject to causes of action for any violations of the requirements under FDUTPA or any violations of the Florida Telemarketing Act.

Section 2 of the bill provides an effective date of July 1, 2024.

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.

³⁸ *Supra*, note 21.

³⁹ *Supra*, note 20.

⁴⁰ *Supra*, note 23.

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

None.

B. Private Sector Impact:

The Florida Office of Attorney General reports that the bill may subject consumers to higher fees but it is unknown to what extent or with what frequency this may occur.⁴¹

C. Government Sector Impact:

The Florida Office of Attorney General reports that the fiscal impact would be “minimal or indeterminate, and would be absorbed within current resources.”⁴²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 817.803.

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

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

CS by Banking and Insurance on January 22, 2024:

- Expands the list of exceptions that are within the scope of the credit counseling services provisions under ch. 817, F.S., relating to debt relief services;
- Provides certain terms have the same meaning as the TSR.

B. Amendments:

None.

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

⁴¹ Email from Elizabeth Guzzo, Director of Legislative Affairs, the OAG, to Jacqueline Moody, Senior Attorney, Florida Senate Committee on Banking and Insurance, *SB 1074 – Debt Relief Services*, (Jan. 17, 2024) (on file with Senate Committee on Banking and Insurance).

⁴² Email from Elizabeth Guzzo, Director of Legislative Affairs, the OAG, to Jacqueline Moody, Senior Attorney, Florida Senate Committee on Banking and Insurance, *SB 1074 – Debt Relief Services*, (Jan. 19, 2024) (on file with Senate Committee on Banking and Insurance).