

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Hasner offered the following:

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3 **Amendment (with directory and title amendments)**

4 Remove lines 41 through 119, and insert:

5 providing debt management services or credit counseling
6 services.

7 817.802 Unlawful fees and costs.--

8 (1) It is unlawful for any person, while engaging in debt
9 management services or credit counseling services, to charge or
10 accept from a debtor, directly or indirectly, a fee or
11 contribution greater than \$50 for the initial setup or initial
12 consultation. Subsequently, the person may not charge or accept
13 a fee or contribution from a debtor greater than \$120 per year
14 for additional consultations or, alternatively, if debt
15 management services as defined in s. 817.801(2)(b) are provided,

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16 the person may charge the greater of 7.5 percent of the amount
17 paid monthly by the debtor to the person or \$35 per month.

18 (2) No provision of this section prohibits any person,
19 while engaging in debt management or credit counseling services,
20 from imposing upon and receiving from a debtor a reasonable and
21 separate charge or fee for insufficient funds transactions.

22 817.803 Exceptions.--Nothing in this part applies to:

23 (1) Any debt management or credit counseling services
24 provided in the practice of law in this state;

25 (2) Any person who engages in debt adjustment to adjust
26 the indebtedness owed to such person; or

27 (3) The following entities or their subsidiaries:

28 (a) The Federal National Mortgage Association;

29 (b) The Federal Home Loan Mortgage Corporation;

30 (c) The Florida Housing Finance Corporation, a public
31 corporation created in s. 420.504; or

32 (d) A bank, bank holding company, trust company, savings
33 and loan association, credit union, credit card bank, or savings
34 bank that is regulated and supervised by the Office of the
35 Comptroller of the Currency, the Office of Thrift Supervision,
36 the Federal Reserve, the Federal Deposit Insurance Corporation,
37 the National Credit Union Administration, the Office of
38 Financial Regulation of the Department of Financial Services, a
39 consumer reporting agency as defined in the Federal Fair Credit
40 Reporting Act, 15 U.S.C. ss. 1681-1681y, any state banking
41 regulator, or any subsidiary or affiliate of a bank holding
42 company, its employees, and its exclusive agents acting under
43 written agreement.

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44 817.804 Requirements; disclosure and financial
45 reporting.--

46 (1) Any person engaged in debt management services or
47 credit counseling services shall:

48 (a) Obtain from a certified public accountant licensed
49 under s. 473.308 an annual audit of all accounts of such person
50 in which the funds of debtors are deposited and from which
51 payments are made to creditors on behalf of debtors.

52 (b) Obtain and maintain at all times insurance coverage
53 for employee dishonesty, depositor's forgery, and computer
54 fraud. The insurance coverage must be in an amount not less than
55 the greater of \$100,000 or 10 percent of the monthly average of
56 the aggregate amount of all deposits made for distribution to
57 creditors with such person by all debtors for the 6 months
58 immediately preceding the date of initial application for or
59 renewal of the insurance. The deductible on such coverage shall
60 not exceed 10 percent of the face amount of the policy coverage.

61 (2) A copy of the annual audit and insurance policies
62 required by this section shall be available for public
63 inspection at each branch location. Copies shall be provided,
64 upon written request, to any party requesting a copy for a
65 charge not to exceed the cost of the reproduction of documents.

66 817.805 Disbursement of funds.--Any person engaged in debt
67 management or credit counseling services shall disburse to the
68 appropriate creditors all funds received from a debtor, less any
69 fees permitted by s. 817.802, within 30 days after receipt of
70 such funds. Further, any person engaged in such services shall
71 maintain a separate trust account for the receipt of any funds

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72 | from each debtor and the disbursement of such funds on behalf of
73 | such debtor.

74 | 817.806 Violations.--

75 | (1) Any person who violates any provision of this part
76 | commits an unfair or deceptive trade practice as defined in part
77 | II of chapter 501. Violators shall be subject to the penalties
78 | and remedies provided therein. Further, any consumer injured by
79 | a violation of this part may bring an action for recovery of
80 | damages. Judgment shall be entered for actual damages, but in no
81 | case less than the amount paid by the consumer to the credit
82 | counseling agency, plus reasonable attorney's fees and costs.

83 | (2) Any person who violates any provision of this part
84 | commits a felony of the third degree, punishable as provided in
85 | s. 775.082 or s. 775.083.

86 | Section 2. This act shall take effect July 1, 2004.

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89 | ===== D I R E C T O R Y A M E N D M E N T =====

90 | Remove line(s) 25 and 26, and insert:
91 | consisting of sections 817.801, 817.802, 817.803, 817.804,
92 | 817.805, and 817.806, Florida Statutes, is created to read:

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94 | ===== T I T L E A M E N D M E N T =====

95 | Remove lines 12-19, and insert:
96 | providing disbursement of funds requirements; providing
97 | civil penalties; providing for awards of attorney's fees
98 | and costs; providing for criminal penalties;