

A bill to be entitled

An act relating to credit counseling services; creating pt. IV, ch. 817, F.S.; providing definitions; prohibiting certain persons from accepting certain fees or costs from debtors under certain circumstances; providing exceptions; providing disclosure and financial reporting requirements for debt management or credit counseling services; providing disbursement of funds requirements; providing civil penalties; providing for awards of attorney's fees and costs; providing for deposit of certain funds into the General Revenue Fund; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Part IV of chapter 817, Florida Statutes, consisting of sections 817.801, 817.802, 817.803, 817.804, 817.805, and 817.806, Florida Statutes, is created to read:

PART IV

CREDIT COUNSELING SERVICES

817.801 Definitions.--

(1) "Credit counseling services" means confidential money management, debt reduction, and financial educational services.

(2) "Debt management services" means services provided to a debtor by a credit counseling organization for a fee to:

(a) Effect the adjustment, compromise, or discharge of any unsecured account, note, or other indebtedness of the debtor; or

(b) Receive from the debtor and disburse to a creditor any money or other thing of value.

(3) "Person" means any individual, corporation,

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30 partnership, trust, association, or other legal entity.

31 (4) "Credit counseling agency" means a not-for-profit  
 32 organization providing credit counseling services.

33 817.802 Unlawful fees and costs.--It is unlawful for any  
 34 person, while engaging in debt management and credit counseling  
 35 services, to impose upon or accept from a debtor who resides in  
 36 this state, directly or indirectly, any charge, fee,  
 37 contribution, or combination thereof in an amount in excess of  
 38 \$50 for an initial set up or initial consultation or \$120 per  
 39 year for additional consultations. It is also unlawful for any  
 40 person to impose upon or accept from a debtor who resides in  
 41 this state, directly or indirectly, any additional charge, fee,  
 42 contribution, or combination thereof in an amount in excess of  
 43 7.5 percent of the amount paid monthly by such debtor to such  
 44 person or \$25, whichever is greater, for distribution to  
 45 creditors of such debtor, provided no provision of this part  
 46 prohibits any person, while engaging in debt management and  
 47 credit counseling services, from imposing upon and receiving  
 48 from a debtor who resides in this state a reasonable and  
 49 separate charge or fee for insufficient funds transactions.

50 817.803 Exceptions.--Nothing in this part applies to any  
 51 debt management and credit counseling services provided in the  
 52 practice of law in this state. Nothing in this part applies to  
 53 any person or entity who incidentally engages in debt adjustment  
 54 to adjust the indebtedness owed to such person or entity.  
 55 Nothing in this part applies to the following entities or their  
 56 subsidiaries: the Federal National Mortgage Association; the  
 57 Federal Home Loan Mortgage Corporation; or a bank, bank holding  
 58 company, trust company, savings and loan association, credit

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59 union, credit card bank, or savings bank that is regulated and  
60 supervised by the Office of the Comptroller of the Currency, the  
61 Office of Thrift Supervision, the Federal Reserve, the Federal  
62 Deposit Insurance Corporation, the National Credit Union  
63 Administration, or the Department of Financial Services.

64 817.804 Requirements; disclosure and financial  
65 reporting.-- (1) Any person engaged in debt management or  
66 credit counseling services for debtors residing in this state  
67 shall:

68 (a) Obtain from a certified public accountant an annual  
69 audit of all accounts of such person in which the funds of  
70 debtors are deposited and from which payments are made to  
71 creditors on behalf of debtors. A copy of the summary results of  
72 such annual audit shall be made available upon written request  
73 to any party requesting a copy for a charge not to exceed the  
74 cost of the reproduction of the annual audit.

75 (b) Obtain and maintain at all times insurance coverage  
76 for employee dishonesty, depositor's forgery, and computer fraud  
77 in an amount not less than the greater of \$100,000 or 10 percent  
78 of the monthly average for the immediately preceding 6 months of  
79 the aggregate amount of all deposits made with such person by  
80 all debtors. The deductible on such coverage shall not exceed 10  
81 percent of the face amount of the policy coverage. Such policy  
82 shall be issued by a company rated at least "A-" or its  
83 equivalent by a nationally recognized rating organization and  
84 such policy shall provide for 30 days' advance written notice of  
85 termination of the policy to be provided to the Office of  
86 Financial Regulation.

87 (2) A copy of the annual audit and insurance policies

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88 required by this section shall be filed annually with the Office  
 89 of Financial Regulation.

90 (3) The Office of Financial Regulation shall act as a  
 91 repository for the audits, insurance, and termination notices  
 92 furnished to the office pursuant to this section. No oversight  
 93 responsibility shall be imposed upon the office by virtue of  
 94 receipt of such documents.

95 817.805 Disbursement of funds.--Any person engaged in debt  
 96 management or credit counseling services shall disburse to the  
 97 appropriate creditors all funds received from a debtor, less any  
 98 fees permitted by s. 817.802, within 30 days after receipt of  
 99 such funds. Further, any person engaged in such services shall  
 100 maintain a separate trust account for the receipt of any funds  
 101 from each debtor and the disbursement of such funds on behalf of  
 102 such debtor.

103 817.806 Civil penalties.--The Attorney General and the  
 104 Office of Financial Regulation may prosecute any case arising  
 105 under this part. Any person, or any agent or employee of a  
 106 person, who willfully uses, or has willfully used, a method,  
 107 act, or practice declared unlawful under s. 817.802, s. 817.803,  
 108 s. 817.804, or s. 817.805 is liable for a civil penalty of up to  
 109 \$10,000 for each such violation. This civil penalty may be  
 110 recovered in any action brought under this part by the enforcing  
 111 authority or the enforcing authority may terminate any  
 112 investigation or action upon agreement by the person, or agent  
 113 or employee of the person, to pay a stipulated civil penalty.  
 114 The department or the court may waive any such civil penalty if  
 115 the person, or agent or employee of the person, has previously  
 116 made full restitution or reimbursement or has paid actual

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117 damages to the consumers or governmental entities who have been  
118 injured by the unlawful act or practice or rule violation. If  
119 civil penalties are assessed in any litigation, the enforcing  
120 authority is entitled to reasonable attorney's fees and costs. A  
121 civil penalty collected shall accrue to the state and shall be  
122 deposited as received into the General Revenue Fund unallocated.

123 Section 2. This act shall take effect upon becoming a law.