

CHAMBER ACTION

1 The Committee on Commerce recommends the following:

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3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to credit counseling services; creating
7 pt. IV, ch. 817, F.S.; providing definitions; prohibiting
8 certain persons from accepting certain fees or costs from
9 debtors under certain circumstances; providing exceptions;
10 providing disclosure and financial reporting requirements
11 for debt management or credit counseling services;
12 providing disbursement of funds requirements; requiring
13 maintenance of a separate trust account under certain
14 circumstances; specifying certain violations as unfair or
15 deceptive trade practices; providing for penalties and
16 damages; providing for actions for damages; providing a
17 criminal penalty; providing for awards of attorney's fees
18 and costs; providing an effective date.

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

22 Section 1. Part IV of chapter 817, Florida Statutes,
23 consisting of sections 817.801, 817.802, 817.803, 817.804, and
24 817.805, Florida Statutes, is created to read:

25 PART IV

26 CREDIT COUNSELING SERVICES

27 817.801 Definitions.--

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

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

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

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

36 (3) "Person" means any individual, corporation,
37 partnership, trust, association, or other legal entity.

38 (4) "Credit counseling agency" means any organization
39 providing credit counseling services.

40 817.802 Unlawful fees and costs.--It is unlawful for any
41 person, while engaging in debt management and credit counseling
42 services, to impose upon or accept from a debtor, directly or
43 indirectly, any charge, fee, contribution, or combination
44 thereof in an amount in excess of \$50 for an initial setup or
45 initial consultation or \$120 per year for additional
46 consultations. It is also unlawful for any person to impose upon
47 or accept from a debtor who resides in this state, directly or
48 indirectly, any additional charge, fee, contribution, or
49 combination thereof in an amount in excess of 7.5 percent of the

50 amount paid monthly by such debtor to such person or \$25,
 51 whichever is greater, for distribution to creditors of such
 52 debtor, provided no provision of this part prohibits any person,
 53 while engaging in debt management and credit counseling
 54 services, from imposing upon and receiving from a debtor a
 55 reasonable and separate charge or fee for insufficient funds
 56 transactions. Nothing in this section shall be construed to
 57 preclude a credit counseling agency from waiving any or all
 58 fees.

59 817.803 Exceptions.--Nothing in this part applies to any
 60 debt management and credit counseling services provided in the
 61 practice of law in this state. Nothing in this part applies to
 62 any person or entity who engages in debt adjustment to adjust
 63 the indebtedness owed to such person or entity. Nothing in this
 64 part applies to the following entities or their subsidiaries:
 65 the Federal National Mortgage Association; the Federal Home Loan
 66 Mortgage Corporation; the Florida Housing Finance Corporation, a
 67 public corporation, created in s. 420.504; or a bank, bank
 68 holding company, trust company, savings and loan association,
 69 credit union, credit card bank, or savings bank that is
 70 regulated and supervised by the Office of the Comptroller of the
 71 Currency, the Office of Thrift Supervision, the Federal Reserve,
 72 the Federal Deposit Insurance Corporation, the National Credit
 73 Union Administration, or the Department of Financial Services.

74 817.804 Requirements; disclosure and financial
 75 reporting.--

76 (1) Any person engaged in debt management or credit
 77 counseling services for debtors residing in this state shall:

78 (a) Obtain from a certified public accountant licensed
 79 pursuant to s. 473.308 an annual audit of all accounts of such
 80 person in which the funds of debtors are deposited and from
 81 which payments are made to creditors on behalf of debtors.

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

93 (2) A copy of the annual audit and insurance policies
 94 required by this section shall be available for public
 95 inspection at each branch location. Copies shall be made upon
 96 written request to any party requesting a copy for a charge not
 97 to exceed the cost of the reproduction of documents.

98 817.805 Disbursement of funds.--

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

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106 (2) Any violation of this part by a person, agent, or
107 employee of a person is an unfair or deceptive trade practice as
108 defined in part II of chapter 501. Violators shall be subject to
109 the penalties and remedies provided in such part. Further, any
110 consumer injured by a violation of this part may bring an action
111 for recovery of damages. Judgment shall be entered for actual
112 damages, but in no case less than the amount paid by the buyer
113 to the credit counseling organization, plus reasonable
114 attorney's fees and costs.

115 (3) Any person convicted of violating any of the
116 provisions of this section commits a felony of the third degree,
117 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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