

CHAMBER ACTION

1 The Committee on Judiciary 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 requiring an annual audit; requiring a fidelity bond;
13 providing public inspection requirements; providing
14 disbursement of funds requirements; requiring maintenance
15 of a separate trust account under certain circumstances;
16 specifying certain violations as unfair or deceptive trade
17 practices; providing for penalties and damages; providing
18 for actions for damages; providing a criminal penalty;
19 providing for awards of attorney's fees and costs;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:
23

24 Section 1. Part IV of chapter 817, Florida Statutes,
25 consisting of sections 817.801, 817.802, 817.803, 817.804, and
26 817.805, Florida Statutes, is created to read:

27 PART IV

28 CREDIT COUNSELING SERVICES

29 817.801 Definitions.--As used in this part:

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

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

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

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

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

40 (4) "Credit counseling agency" means any organization
41 providing credit counseling services.

42 817.802 Unlawful fees and costs.--

43 (1) It is unlawful for any person, while engaging in debt
44 management services or credit counseling services, to charge or
45 accept from a debtor, directly or indirectly, a fee or
46 contribution greater than \$50 for the initial setup or initial
47 consultation. Subsequently, such person may not charge or accept
48 a fee or contribution greater than \$120 per year for additional
49 consultations or, if debt management services as defined in s.
50 817.801(2)(b) are provided, such person may charge the greater

51 | of 7.5 percent of the amount paid monthly by such debtor to such
 52 | person or \$35 per month.

53 | (2) No provision of this part prohibits any person, while
 54 | engaging in debt management services or credit counseling
 55 | services, from imposing upon and receiving from a debtor a
 56 | reasonable and separate charge or fee for insufficient funds
 57 | transactions.

58 | 817.803 Exceptions.--Nothing in this part applies to any
 59 | debt management services or credit counseling services provided
 60 | in the practice of law in this state. Nothing in this part
 61 | applies to any person or entity who engages in debt adjustment
 62 | to adjust the indebtedness owed to such person or entity.
 63 | Nothing in this part applies to the following entities or their
 64 | subsidiaries: the Federal National Mortgage Association; the
 65 | Federal Home Loan Mortgage Corporation; the Florida Housing
 66 | Finance Corporation, a public corporation created in s. 420.504,
 67 | or a bank, bank holding company, trust company, savings and loan
 68 | association, credit union, credit card bank, or savings bank
 69 | that is regulated and supervised by the Office of the
 70 | Comptroller of the Currency, the Office of Thrift Supervision,
 71 | the Federal Reserve, the Federal Deposit Insurance Corporation,
 72 | the National Credit Union Administration, or the Department of
 73 | Financial Services.

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

76 | (1) Any person engaged in debt management services or
 77 | credit counseling services 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 a fidelity bond in an
 83 amount not less than the greater of \$100,000 or 10 percent of
 84 the monthly average for the immediately preceding 6 months of
 85 the aggregate amount of all deposits made with such person by
 86 all debtors, provided the amount of such bond is not required to
 87 exceed \$500,000. The deductible on such coverage shall not
 88 exceed 10 percent of the face amount of the policy coverage.
 89 Such policy shall be issued by a company rated at least "A-" or
 90 its equivalent by a nationally recognized rating organization
 91 and 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 services or
 100 credit counseling services shall disburse to the appropriate
 101 creditors all funds received from a debtor, less any fees
 102 permitted by s. 817.802, within 30 days after receipt of such
 103 funds. Further, any person engaged in such services shall
 104 maintain a separate trust account for the receipt of any funds

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105 | from each debtor and the disbursement of such funds on behalf of
 106 | such debtor.

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

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

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