

1 A bill to be entitled
 2 An act relating to credit counseling services; creating
 3 pt. IV, ch. 817, F.S.; providing definitions; prohibiting
 4 certain persons from accepting certain fees or costs from
 5 debtors under certain circumstances; providing exceptions;
 6 providing disclosure and financial reporting requirements
 7 for debt management or credit counseling services;
 8 providing disbursement of funds requirements; providing
 9 civil penalties; providing for awards of attorney's fees
 10 and costs; providing for criminal penalties; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:
 14

15 Section 1. Part IV of chapter 817, Florida Statutes,
 16 consisting of sections 817.801, 817.802, 817.803, 817.804,
 17 817.805, and 817.806, Florida Statutes, is created to read:
 18

19 PART IV

20 CREDIT COUNSELING SERVICES

- 21 817.801 Definitions.--As used in this part:
 22 (1) "Credit counseling services" means confidential money
 23 management, debt reduction, and financial educational services.
 24 (2) "Debt management services" means services provided to
 25 a debtor by a credit counseling organization for a fee to:
 26 (a) Effect the adjustment, compromise, or discharge of any
 27 unsecured account, note, or other indebtedness of the debtor; or

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

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

32 (4) "Credit counseling agency" means any organization
 33 providing debt management services or credit counseling
 34 services.

35 817.802 Unlawful fees and costs.--

36 (1) It is unlawful for any person, while engaging in debt
 37 management services or credit counseling services, to charge or
 38 accept from a debtor, directly or indirectly, a fee or
 39 contribution greater than \$50 for the initial setup or initial
 40 consultation. Subsequently, the person may not charge or accept
 41 a fee or contribution from a debtor greater than \$120 per year
 42 for additional consultations or, alternatively, if debt
 43 management services as defined in s. 817.801(2)(b) are provided,
 44 the person may charge the greater of 7.5 percent of the amount
 45 paid monthly by the debtor to the person or \$35 per month.

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

50 817.803 Exceptions.--Nothing in this part applies to:

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

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

55 (3) The following entities or their subsidiaries:

- 56 | (a) The Federal National Mortgage Association;
- 57 | (b) The Federal Home Loan Mortgage Corporation;
- 58 | (c) The Florida Housing Finance Corporation, a public
- 59 | corporation created in s. 420.504;
- 60 | (d) A bank, bank holding company, trust company, savings
- 61 | and loan association, credit union, credit card bank, or savings
- 62 | bank that is regulated and supervised by the Office of the
- 63 | Comptroller of the Currency, the Office of Thrift Supervision,
- 64 | the Federal Reserve, the Federal Deposit Insurance Corporation,
- 65 | the National Credit Union Administration, the Office of
- 66 | Financial Regulation of the Department of Financial Services, or
- 67 | any state banking regulator;
- 68 | (e) A consumer reporting agency as defined in the Federal
- 69 | Fair Credit Reporting Act, 15 U.S.C. ss. 1681-1681y, as it
- 70 | existed on April 5, 2004; or
- 71 | (f) Any subsidiary or affiliate of a bank holding company,
- 72 | its employees, and its exclusive agents acting under written
- 73 | agreement.
- 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 | under s. 473.308 an annual audit of all accounts of such person
- 80 | in which the funds of debtors are deposited and from which
- 81 | 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

84 fraud. The insurance coverage must be in an amount not less than
85 the greater of \$100,000 or 10 percent of the monthly average of
86 the aggregate amount of all deposits made for distribution to
87 creditors with such person by all debtors for the 6 months
88 immediately preceding the date of initial application for or
89 renewal of the insurance. The deductible on such coverage shall
90 not exceed 10 percent of the face amount of the policy coverage.

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

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

104 817.806 Violations.--

105 (1) Any person who violates any provision of this part
106 commits an unfair or deceptive trade practice as defined in part
107 II of chapter 501. Violators shall be subject to the penalties
108 and remedies provided therein. Further, any consumer injured by
109 a violation of this part may bring an action for recovery of
110 damages. Judgment shall be entered for actual damages, but in no

111 | case less than the amount paid by the consumer to the credit
112 | counseling agency, plus reasonable attorney's fees and costs.

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

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