

By Senators Aronberg and Atwater

27-1067-04

See HB 1245

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

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

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18           Section 1. Part IV of chapter 817, Florida Statutes,  
19 consisting of sections 817.801, 817.802, 817.803, 817.804,  
20 817.805, and 817.806, Florida Statutes, is created to read:

21                                   PART IV

22                                   CREDIT COUNSELING SERVICES

23                   817.801 Definitions.--

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

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

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

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

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

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

7           817.802 Unlawful fees and costs.--It is unlawful for  
8 any person, while engaging in debt management and credit  
9 counseling services, to impose upon or accept from a debtor  
10 who resides in this state, directly or indirectly, any charge,  
11 fee, contribution, or combination thereof in an amount in  
12 excess of \$50 for an initial set up or initial consultation or  
13 \$120 per year for additional consultations. It is also  
14 unlawful for any person to impose upon or accept from a debtor  
15 who resides in this state, directly or indirectly, any  
16 additional charge, fee, contribution, or combination thereof  
17 in an amount in excess of 7.5 percent of the amount paid  
18 monthly by such debtor to such person or \$25, whichever is  
19 greater, for distribution to creditors of such debtor,  
20 provided no provision of this part prohibits any person, while  
21 engaging in debt management and credit counseling services,  
22 from imposing upon and receiving from a debtor who resides in  
23 this state a reasonable and separate charge or fee for  
24 insufficient funds transactions.

25           817.803 Exceptions.--Nothing in this part applies to  
26 any debt management and credit counseling services provided in  
27 the practice of law in this state. Nothing in this part  
28 applies to any person or entity that incidentally engages in  
29 debt adjustment to adjust the indebtedness owed to such person  
30 or entity. Nothing in this part applies to the following  
31 entities or their subsidiaries: the Federal National Mortgage

1 Association; the Federal Home Loan Mortgage Corporation; or a  
2 bank, bank holding company, trust company, savings and loan  
3 association, credit union, credit card bank, or savings bank  
4 that is regulated and supervised by the Office of the  
5 Comptroller of the Currency, the Office of Thrift Supervision,  
6 the Federal Reserve, the Federal Deposit Insurance  
7 Corporation, the National Credit Union Administration, or the  
8 Department of Financial Services.

9 817.804 Requirements; disclosure and financial  
10 reporting.--

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

13 (a) Obtain from a certified public accountant an  
14 annual audit of all accounts of such person in which the funds  
15 of debtors are deposited and from which payments are made to  
16 creditors on behalf of debtors. A copy of the summary results  
17 of such annual audit shall be made available upon written  
18 request to any party requesting a copy for a charge not to  
19 exceed the cost of the reproduction of the annual audit.

20 (b) Obtain and maintain at all times insurance  
21 coverage for employee dishonesty, depositor's forgery, and  
22 computer fraud in an amount not less than the greater of  
23 \$100,000 or 10 percent of the monthly average for the  
24 immediately preceding 6 months of the aggregate amount of all  
25 deposits made with such person by all debtors. The deductible  
26 on such coverage shall not exceed 10 percent of the face  
27 amount of the policy coverage. Such policy shall be issued by  
28 a company rated at least "A-" or its equivalent by a  
29 nationally recognized rating organization, and such policy  
30 shall provide for 30 days' advance written notice of

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1 termination of the policy to be provided to the Office of  
2 Financial Regulation.

3 (2) A copy of the annual audit and insurance policies  
4 required by this section shall be filed annually with the  
5 Office of Financial Regulation.

6 (3) The Office of Financial Regulation shall act as a  
7 repository for the audits, insurance, and termination notices  
8 furnished to the office pursuant to this section. No oversight  
9 responsibility shall be imposed upon the office by virtue of  
10 receipt of such documents.

11 817.805 Disbursement of funds.--Any person engaged in  
12 debt management or credit counseling services shall disburse  
13 to the appropriate creditors all funds received from a debtor,  
14 less any fees permitted by s. 817.802, within 30 days after  
15 receipt of such funds. Further, any person engaged in such  
16 services shall maintain a separate trust account for the  
17 receipt of any funds from each debtor and the disbursement of  
18 such funds on behalf of such debtor.

19 817.806 Civil penalties.--The Attorney General and the  
20 Office of Financial Regulation may prosecute any case arising  
21 under this part. Any person, or any agent or employee of a  
22 person, who willfully uses, or has willfully used, a method,  
23 act, or practice declared unlawful under s. 817.802, s.  
24 817.803, s. 817.804, or s. 817.805 is liable for a civil  
25 penalty of up to \$10,000 for each such violation. This civil  
26 penalty may be recovered in any action brought under this part  
27 by the enforcing authority or the enforcing authority may  
28 terminate any investigation or action upon agreement by the  
29 person, or agent or employee of the person, to pay a  
30 stipulated civil penalty. The department or the court may  
31 waive any such civil penalty if the person, or agent or

1 employee of the person, has previously made full restitution  
2 or reimbursement or has paid actual damages to the consumers  
3 or governmental entities that have been injured by the  
4 unlawful act or practice or rule violation. If civil penalties  
5 are assessed in any litigation, the enforcing authority is  
6 entitled to reasonable attorney's fees and costs. A civil  
7 penalty collected shall accrue to the state and shall be  
8 deposited as received into the General Revenue Fund  
9 unallocated.

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