

By the Committee on Banking and Insurance; and Senators Aronberg, Atwater, Lynn and Campbell

311-2322-04

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, and
20 817.805, 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 any organization
6 providing credit counseling services.

7 817.802 Unlawful fees and costs.--

8 (1) It is unlawful for any person, while engaging in
9 debt management services or credit counseling services, to
10 charge or accept from a debtor, directly or indirectly, a fee
11 or contribution greater than \$50 for the initial setup or
12 initial consultation. Subsequently, such person may not charge
13 or accept a fee or contribution from a debtor greater than
14 \$120 per year for additional consultations or, alternatively,
15 if debt management services as defined in s. 817.801(2)(b) are
16 provided, such person may charge the greater of 7.5 percent of
17 the amount paid monthly by such debtor to such person or \$35
18 per month.

19 (2) No provision of this part prohibits any person,
20 while engaging in debt management or credit counseling
21 services, from imposing upon and receiving from a debtor a
22 reasonable and separate charge or fee for insufficient funds
23 transactions.

24 817.803 Exceptions.--Nothing in this part applies to
25 any debt management and credit counseling services provided in
26 the practice of law in this state. Nothing in this part
27 applies to any person or entity who engages in debt adjustment
28 to adjust the indebtedness owed to such person or entity.
29 Nothing in this part applies to the following entities or
30 their subsidiaries: the Federal National Mortgage Association;
31 the Federal Home Loan Mortgage Corporation; the Florida

1 Housing Finance Corporation, a public corporation created in
2 s. 420.504, or a bank, bank holding company, trust company,
3 savings and loan association, credit union, credit card bank,
4 or savings bank that is regulated and supervised by the Office
5 of the Comptroller of the Currency, the Office of Thrift
6 Supervision, the Federal Reserve, the Federal Deposit
7 Insurance Corporation, the National Credit Union
8 Administration, or the 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 licensed
14 pursuant to s. 473.308 an annual audit of all accounts of such
15 person in which the funds of debtors are deposited and from
16 which payments are made to creditors on behalf of debtors.

17 (b) Obtain and maintain at all times a fidelity bond
18 in an amount not less than the greater of \$100,000 or 10
19 percent of the monthly average for the immediately preceding 6
20 months of the aggregate amount of all deposits made with such
21 person by all debtors provided that the amount of such bond is
22 not required to exceed \$500,000. The deductible on such
23 coverage shall not exceed 10 percent of the face amount of the
24 policy coverage. Such policy shall be issued by a company
25 rated at least "A-" or its equivalent by a nationally
26 recognized rating organization, and such policy shall provide
27 for 30 days' advance written notice of termination of the
28 policy.

29 (2) A copy of the annual audit and insurance policies
30 required by this section shall be available for public
31 inspection at each branch location. Copies shall be made upon

1 written request to any party requesting a copy for a charge
2 not to exceed the cost of the reproduction of documents.

3 817.805 Disbursement of funds.--

4 (1) Any person engaged in debt management or credit
5 counseling services shall disburse to the appropriate
6 creditors all funds received from a debtor, less any fees
7 permitted by s. 817.802, within 30 days after receipt of such
8 funds. Further, any person engaged in such services shall
9 maintain a separate trust account for the receipt of any funds
10 from each debtor and the disbursement of such funds on behalf
11 of such debtor.

12 (2) Any violation of this chapter by a person, agent,
13 or employee of a person is an unfair or deceptive trade
14 practice as defined in part II of chapter 501. Violators shall
15 be subject to the penalties and remedies provided therein.
16 Further, any consumer injured by a violation of this part may
17 bring an action for recovery of damages. Judgment shall be
18 entered for actual damages, but in no case less than the
19 amount paid by the buyer to the credit counseling
20 organization, plus reasonable attorney's fees and costs.

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

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

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2682

Makes it unlawful for a debt manager or credit counselor to collect a fee greater than \$50 for an initial setup or consultation. Subsequently, fees cannot exceed more than \$120 per year for additional consultations or, alternatively, for debt management services, the greater of 7.5 of the amount paid monthly by the debtor or \$35 per month. Requires credit counselors and debt managers to maintain a fidelity bond not to exceed \$500,000. A violation of the bill is an unfair or deceptive trade practice. Allows consumers to bring actions for damages. Makes violations of the bill's provisions a third-degree felony. Deletes provisions requiring audit reports and proof of insurance to be filed with the Office of Financial Regulation.