

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 criminal penalties; providing an effective
14 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.--As used in this part:

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 debt management services or credit counseling
7 services.

8 817.802 Unlawful fees and costs.--

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

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

25 817.803 Exceptions.--Nothing in this part applies to:

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

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

30 (3) The following entities or their subsidiaries:

31 (a) The Federal National Mortgage Association;

- 1 (b) The Federal Home Loan Mortgage Corporation;
2 (c) The Florida Housing Finance Corporation, a public
3 corporation created in s. 420.504;
4 (d) A bank, bank holding company, trust company,
5 savings and loan association, credit union, credit card bank,
6 or savings bank that is regulated and supervised by the Office
7 of the Comptroller of the Currency, the Office of Thrift
8 Supervision, the Federal Reserve, the Federal Deposit
9 Insurance Corporation, the National Credit Union
10 Administration, the Office of Financial Regulation of the
11 Department of Financial Services, or any state banking
12 regulator;
13 (e) A consumer reporting agency as defined in the
14 Federal Fair Credit Reporting Act, 15 U.S.C. ss. 1681-1681y,
15 as it existed on April 5, 2004; or
16 (f) Any subsidiary or affiliate of a bank holding
17 company, its employees and its exclusive agents acting under
18 written agreement.
19 817.804 Requirements; disclosure and financial
20 reporting.--
21 (1) Any person engaged in debt management services or
22 credit counseling services shall:
23 (a) Obtain from a certified public accountant licensed
24 under s. 473.308 an annual audit of all accounts of such
25 person in which the funds of debtors are deposited and from
26 which payments are made to creditors on behalf of debtors.
27 (b) Obtain and maintain at all times insurance
28 coverage for employee dishonesty, depositor's forgery, and
29 computer fraud. The insurance coverage must be in an amount
30 not less than the greater of \$100,000 or 10 percent of the
31 monthly average of the aggregate amount of all deposits made

1 for distribution to creditors with such person by all debtors
2 for the 6 months immediately preceding the date of initial
3 application for or renewal of the insurance. The deductible
4 on such coverage shall not exceed 10 percent of the face
5 amount of the policy coverage.

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

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

20 817.806 Violations.--

21 (1) Any person who violates any provision of this part
22 commits an unfair or deceptive trade practice as defined in
23 part II of chapter 501. Violators shall be subject to the
24 penalties and remedies provided therein. Further, any consumer
25 injured by a violation of this part may bring an action for
26 recovery of damages. Judgment shall be entered for actual
27 damages, but in no case less than the amount paid by the
28 consumer to the credit counseling agency, plus reasonable
29 attorney's fees and costs.

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

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