

By the Committee on Banking and Insurance; and Senator Aronberg

597-2215-06

1 A bill to be entitled
2 An act relating to credit counseling services;
3 amending s. 817.801, F.S.; providing a
4 definition; amending s. 817.802, F.S., relating
5 to unlawful fees and costs; limiting
6 application to certain debtors; amending s.
7 817.804, F.S.; revising annual audit
8 requirements; amending s. 817.805, F.S.;
9 including creditor contributions within an
10 authorized deduction from requirements for
11 disbursement of funds; providing an effective
12 date.

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

16 Section 1. Section 817.801, Florida Statutes, is
17 amended to read:

18 817.801 Definitions.--As used in this part:

19 ~~(1)(4)~~ "Credit counseling agency" means any
20 organization providing debt management services or credit
21 counseling services.

22 ~~(2)(1)~~ "Credit counseling services" means confidential
23 money management, debt reduction, and financial educational
24 services.

25 (3) "Creditor contribution" means any sum that a
26 creditor agrees to contribute to a credit counseling agency,
27 whether directly or by setoff against amounts otherwise
28 payable to the creditor on behalf of debtors.

29 ~~(4)(2)~~ "Debt management services" means services
30 provided to a debtor by a credit counseling organization for a
31 fee to:

1 (a) Effect the adjustment, compromise, or discharge of
2 any unsecured account, note, or other indebtedness of the
3 debtor; or

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

6 ~~(5)(3)~~ "Person" means any individual, corporation,
7 partnership, trust, association, or other legal entity.

8 Section 2. Section 817.802, Florida Statutes, is
9 amended to read:

10 817.802 Unlawful fees and costs.--

11 (1) It is unlawful for any person, while engaging in
12 debt management services or credit counseling services, to
13 charge or accept from a debtor residing in this state,
14 directly or indirectly, a fee or contribution greater than \$50
15 for the initial setup or initial consultation. Subsequently,
16 the person may not charge or accept a fee or contribution from
17 a debtor residing in this state greater than \$120 per year for
18 additional consultations or, alternatively, if debt management
19 services as defined in s. 817.801~~(4)(2)~~ (b) are provided, the
20 person may charge the greater of 7.5 percent of the amount
21 paid monthly by the debtor to the person or \$35 per month.

22 (2) ~~No provision of~~ This section does not prohibit
23 ~~prohibits~~ any person, while engaging in debt management or
24 credit counseling services, from imposing upon and receiving
25 from a debtor a reasonable and separate charge or fee for
26 insufficient funds transactions.

27 Section 3. Paragraph (a) of subsection (1) of section
28 817.804, Florida Statutes, is amended to read:

29 817.804 Requirements; disclosure and financial
30 reporting.--

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1 (1) Any person engaged in debt management services or
2 credit counseling services shall:

3 (a) Obtain from a licensed certified public accountant
4 ~~licensed under s. 473.308~~ an annual audit conducted in
5 accordance with generally accepted auditing standards which
6 shall include ~~of~~ all accounts of such person in which the
7 funds of debtors are deposited and from which payments are
8 made to creditors on behalf of debtors.

9 Section 4. Section 817.805, Florida Statutes, is
10 amended to read:

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 and any creditor
15 contributions, within 30 days after receipt of such funds.
16 However, a creditor contribution may not reduce any sums to be
17 credited to the account of a debtor making a payment to the
18 credit counseling agency for further payment to the creditor.
19 Further, any person engaged in such services shall maintain a
20 separate trust account for the receipt of any funds from
21 ~~debtors each debtor~~ and the disbursement of such funds on
22 behalf of such debtors ~~debtor~~.

23 Section 5. This act shall take effect July 1, 2006.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1954

1. Clarifies that, a debt management or credit counseling service is required to deduct and retain the creditor's contribution from the debtor's payment, less any fees authorized under s. 817.802, F.S., and any such creditor's contributions cannot reduce any amounts to be credited to the account of the debtor for further payment to the creditor. As a result, the debtor's account with the creditor would be credited for the amount remitted by the debtor, less any fees authorized by law and the credit counseling or debt management service would receive its creditor's contribution at the time of the debtor's payment.
2. Allows any licensed CPA, regardless of the state of licensure, to conduct an annual audit as long as such audits are conducted in accordance with generally accepted auditing standards.