

CHAMBER ACTION

1 The Finance & Tax Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to credit counseling services; amending s.
7 817.801, F.S.; revising and providing definitions;
8 amending s. 817.802, F.S., relating to unlawful fees and
9 costs; limiting application to certain debtors; amending
10 s. 817.804, F.S.; revising annual audit requirements;
11 amending s. 817.805, F.S.; including creditor
12 contributions within an authorized deduction from
13 requirements for disbursement of funds; providing an
14 effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

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

20 817.801 Definitions.--As used in this part:

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

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

27 (3) "Creditor contribution" means any sum that a creditor
28 agrees to contribute to a credit counseling agency, whether
29 directly or by setoff against amounts otherwise payable to the
30 creditor on behalf of debtors. However, a creditor contribution
31 may not reduce any sums to be credited to the account of a
32 debtor making a payment to the credit counseling agency for
33 further payment to the creditor.

34 (4)~~(2)~~ "Debt management services" means services provided
35 to a debtor by a credit counseling organization for a fee to:

36 (a) Effect the adjustment, compromise, or discharge of any
37 unsecured account, note, or other indebtedness of the debtor; or

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

40 (5)~~(3)~~ "Person" means any individual, corporation,
41 partnership, trust, association, or other legal entity.

42 Section 2. Section 817.802, Florida Statutes, is amended
43 to read:

44 817.802 Unlawful fees and costs.--

45 (1) It is unlawful for any person, while engaging in debt
46 management services or credit counseling services, to charge or
47 accept from a debtor residing in this state, directly or
48 indirectly, a fee or contribution greater than \$50 for the
49 initial setup or initial consultation. Subsequently, the person
50 may not charge or accept a fee or contribution from a debtor
51 residing in this state greater than \$120 per year for additional

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52 consultations or, alternatively, if debt management services as
53 defined in s. 817.801(4)~~(2)~~(b) are provided, the person may
54 charge the greater of 7.5 percent of the amount paid monthly by
55 the debtor to the person or \$35 per month.

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

61 Section 3. Paragraph (a) of subsection (1) of section
62 817.804, Florida Statutes, is amended to read:

63 817.804 Requirements; disclosure and financial
64 reporting.--

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

67 (a) Obtain from a licensed certified public accountant
68 ~~licensed under s. 473.308~~ an annual audit in accordance with
69 generally accepted auditing standards that shall include ~~of~~ all
70 accounts of such person in which the funds of debtors are
71 deposited and from which payments are made to creditors on
72 behalf of debtors.

73 Section 4. Section 817.805, Florida Statutes, is amended
74 to read:

75 817.805 Disbursement of funds.--Any person engaged in debt
76 management or credit counseling services shall disburse to the
77 appropriate creditors all funds received from a debtor, less any
78 fees permitted by s. 817.802 and any creditor contributions,
79 within 30 days after receipt of such funds. Further, any person

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80 | engaged in such services shall maintain a separate trust account
81 | for the receipt of any funds from debtors ~~each debtor~~ and the
82 | disbursement of such funds on behalf of such debtors ~~debtor~~.

83 | Section 5. This act shall take effect July 1, 2006.