

CHAMBER ACTION

1 The Commerce Council 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 a
14 limitation on creditor contributions; providing an
15 effective date.

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

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

21 817.801 Definitions.--As used in this part:

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

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

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

32 ~~(4)-(2)~~ "Debt management services" means services provided
33 to a debtor by a credit counseling organization for a fee to:

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

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

38 ~~(5)-(3)~~ "Person" means any individual, corporation,
39 partnership, trust, association, or other legal entity.

40 Section 2. Section 817.802, Florida Statutes, is amended
41 to read:

42 817.802 Unlawful fees and costs.--

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

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

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

59 Section 3. Paragraph (a) of subsection (1) of section
60 817.804, Florida Statutes, is amended to read:

61 817.804 Requirements; disclosure and financial
62 reporting.--

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

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

71 Section 4. Section 817.805, Florida Statutes, is amended
72 to read:

73 817.805 Disbursement of funds.--Any person engaged in debt
74 management or credit counseling services shall disburse to the
75 appropriate creditors all funds received from a debtor, less any
76 fees permitted by s. 817.802 and any creditor contributions,
77 within 30 days after receipt of such funds. However, a creditor

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78 | contribution may not reduce any sums to be credited to the
79 | account of a debtor making a payment to the credit counseling
80 | agency for further payment to the creditor. Further, any person
81 | engaged in such services shall maintain a separate trust account
82 | for the receipt of any funds from debtors ~~each debtor~~ and the
83 | disbursement of such funds on behalf of such debtors ~~debtor~~.

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