

1 A bill to be entitled
2 An act relating to debt settlement services; amending s.
3 817.801, F.S.; revising terms to exempt debt settlement
4 services from provisions regulating debt management
5 services and credit counseling services; creating part V
6 of ch. 817, F.S.; proving a short title; defining terms;
7 providing exceptions from provisions regulating debt
8 settlement services; requiring that debt settlement
9 providers be licensed by the Office of Financial
10 Regulation; providing application procedures and
11 requirements; providing for issuance, expiration, and
12 renewal of licenses; requiring license fees; authorizing
13 the office to deny licenses under certain circumstances;
14 authorizing debt settlement providers to continue
15 providing services pending an administrative hearing after
16 denial of a license application; requiring debt settlement
17 agreements; requiring specified provisions of such
18 agreements; authorizing a consumer to terminate or void an
19 agreement under certain circumstances; limiting a
20 consumer's grant of a power of attorney to a debt
21 settlement provider; requiring debt settlement providers
22 to maintain certain records; requiring debt settlement
23 providers to act in good faith and maintain certain
24 insurance coverage or surety bond; requiring debt
25 settlement providers to provide certain information,
26 disclosures, and assistance to consumers; limiting the
27 fees that debt settlement providers may charge to
28 consumers; prohibiting certain acts by debt settlement

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29 providers; requiring debt settlement providers to
30 establish an internal complaint process and provide
31 certain information to the office; authorizing consumers
32 to bring civil actions against debt settlement providers
33 for certain violations of the act; providing penalties;
34 limiting a debt settlement provider's liability under
35 certain circumstances; authorizing the office to enforce
36 the act and impose certain penalties; limiting time for
37 bringing civil actions authorized by the act; authorizing
38 the office to suspend, revoke, or deny the license of a
39 debt settlement provider under certain circumstances;
40 providing penalties; authorizing the office to conduct
41 investigations, administer oaths, and impose charges on
42 persons subject to investigation; authoring interagency
43 agreements; requiring the office to adopt rules; providing
44 for legislative review of the act by a specified date;
45 providing an effective date.

46
47 Be It Enacted by the Legislature of the State of Florida:

48
49 Section 1. Subsections (1), (2), and (4) of section
50 817.801, Florida Statutes, are amended to read:

51 817.801 Definitions.--As used in this part:

52 (1) "Credit counseling agency" means any organization
53 providing debt management services or credit counseling
54 services. The term does not include a debt settlement provider
55 as defined in s. 817.903.

56 (2) "Credit counseling services" means confidential money
 57 management, debt reduction, and financial educational services.
 58 The term does not include a debt settlement provider as defined
 59 in s. 817.903.

60 (4) "Debt management services" means services provided to
 61 a debtor by a credit counseling organization for a fee to:

62 (a) Effect the adjustment, compromise, or discharge of any
 63 unsecured account, note, or other indebtedness of the debtor;
 64 and ~~or~~

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

67
 68 The term does not include a debt settlement provider as defined
 69 in s. 817.903.

70 Section 2. Part V of chapter 817, Florida Statutes,
 71 consisting of sections 817.901, 817.903, 817.905, 817.907,
 72 817.909, 817.911, 817.913, 817.915, 817.917, 817.919, 817.921,
 73 817.923, 817.925, and 817.927, is created to read:

74 PART V

75 DEBT SETTLEMENT SERVICES

76 817.901 Short title.--This part may be cited as the "Debt
 77 Settlement Services Act."

78 817.903 Definitions.--As used in this part, the term:

79 (1) "Concession" means a creditor's consent to accept
 80 repayment of a debt from a consumer on terms more favorable to
 81 the consumer than the original contractual terms between the
 82 creditor and the consumer.

83 (2) "Debt settlement provider" means a person required to
84 be licensed under this part who provides, offers to provide, or
85 agrees to provide debt settlement services. The term does not
86 include a credit counseling agency as defined in s. 817.801.

87 (3) "Debt settlement services" means services provided for
88 a consumer by a debt settlement provider for a fee to obtain a
89 concession from the consumer's creditor or otherwise effect the
90 adjustment, compromise, or discharge of any unsecured account,
91 note, or other indebtedness of the consumer without receiving
92 from the consumer and disbursing to the creditor any money or
93 other thing of value. The term does not include debt management
94 services or credit counseling services as defined in s. 817.801.

95 (4) "Financial institution" has the same meaning as in s.
96 655.005.

97 (5) "Office" means the Office of Financial Regulation of
98 the Financial Services Commission.

99 (6) "Person in control" of a debt settlement provider
100 means a person who has authority, directly or indirectly, to
101 affect the management or policies of the provider. The term
102 includes, but is not limited to, an owner, whether a partnership
103 or sole proprietorship, a corporate officer, a director, a
104 resident agent, or a trustee.

105 (7) "Presettlement debt" means the amount of money or
106 other thing of value owed by a consumer to a creditor at the
107 time that the consumer executes a service agreement with a debt
108 settlement provider.

109 817.905 Application of part; exceptions.--This part does
 110 not apply to the following persons or their employees when
 111 engaged in the person's regular course of business:

112 (1) A person who provides debt settlement services for a
 113 consumer and who does not receive compensation for such services
 114 from the consumer or any of the consumer's creditors.

115 (2) An attorney licensed or otherwise authorized to
 116 practice law in this state while providing legal services within
 117 the attorney-client relationship described in s. 90.502.

118 (3) A certified public account licensed under chapter 473
 119 while providing accounting services within the accountant-client
 120 relationship described in s. 90.5055.

121 (4) A judicial officer, a person acting under a court
 122 order or order of an administrative agency, or the assignee of a
 123 creditor.

124 (5) A financial institution or financial institution
 125 holding company, or a subsidiary, agent, or affiliate of a
 126 financial institution or financial institution holding company.

127 (6) A title insurance agent licensed under s. 626.8417, a
 128 title insurance agency licensed under s. 626.8418, a title
 129 insurer authorized to transact business in this state under s.
 130 624.401, an escrow agent, or another person who provides bill
 131 paying services if the debt settlement services are incidental
 132 to the bill paying services.

133 817.907 Licensure of debt settlement providers; fees;
 134 grounds for denial of license.--

135 (1) A person may not provide debt settlement services in
 136 this state unless the person is licensed under this part as a

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137 debt settlement provider. However, an employee or agent of a
138 licensed debt settlement provider is not required to obtain a
139 separate license. The office shall maintain and publicize a list
140 of the licensed debt settlement providers in the state.

141 (2) A person seeking licensure as a debt settlement
142 provider must apply to the office in the format prescribed by
143 the office. An application must include:

144 (a) The corporate or fictitious name and any other name
145 under which the debt settlement provider conducts business in
146 the state.

147 (b) The street address and telephone number of the debt
148 settlement provider's principal place of business in the state
149 and, if applicable, the provider's email address and Internet
150 website.

151 (c) The street address of each location at which the debt
152 settlement provider engages in debt settlement services in the
153 state. A license is valid only for a location listed in the
154 license. A debt settlement provider must notify the office in
155 writing in the format prescribed the office before any change of
156 a licensed location.

157 (d) The full name, street address, telephone number, and
158 social security number or federal employer identification number
159 of each person who has at least a 10-percent ownership interest
160 in the debt settlement provider.

161 (e) A statement as to whether the debt settlement
162 provider, if incorporated, is a domestic or foreign corporation,
163 the state and date of incorporation, the charter number of the
164 corporation, and, if a foreign corporation, the date that the

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165 corporation first registered with the Department of State to
166 transact business in this state.

167 (f) The name and address of the debt settlement provider's
168 registered agent for service of process in the state.

169 (g) A statement identifying and explaining any material
170 civil or criminal judgment relating to financial fraud or misuse
171 and any material administrative or enforcement action relating
172 to financial fraud or misuse by a governmental agency in any
173 jurisdiction against the applicant or any of its officers,
174 directors, owners, or agents.

175 (h) A copy of each form of service agreement that the
176 applicant uses for consumers in the state as provided in s.
177 817.909.

178 (i) Evidence that the debt settlement provider has the
179 insurance coverage or surety bond required under s. 817.911(2)
180 and that the premiums for the insurance or bond are paid in
181 full.

182 (j) The schedule of fees that the applicant charges to
183 consumers in the state as provided in s. 817.909(2).

184 (k) A copy or description of the financial analysis that
185 the debt settlement provider uses to estimate a consumer's
186 monthly income available for repayment or settlement of the debt
187 as provided in s. 817.911(4) (a).

188 (3) (a) The office shall approve or deny a license within
189 60 days after an application is submitted. The office shall
190 issue the license upon determining that the application is
191 complete and accompanied by the license fee.

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192 (b) A license is valid for 1 year after the date of
193 issuance and is not assignable or transferable. A debt
194 settlement provider changing its name, address, registered
195 agent, insurance coverage, or surety bond at any time other than
196 renewal of the license must notify the office in writing within
197 60 days after the change.

198 (4) A debt settlement provider may renew a license by
199 submitting a renewal application to the office on forms
200 prescribed by the office at least 30 days, but not more than 60
201 days, before the license expires. The application must disclose
202 any changes to the information submitted to the office for the
203 initial license or most recent renewal of the license. The
204 office shall renew a license upon determining that the
205 application is complete and accompanied by the license fee.

206 (5) An application for an initial license or renewal of a
207 license must be accompanied by a license fee set by the office
208 by rule. The fee may not exceed \$350 per year and may not exceed
209 the actual cost of administering this part. If a credit
210 counseling agency is required to pay a license or registration
211 fee under part IV of this chapter, the license fee for a debt
212 settlement provider may not exceed the fee paid by the credit
213 counseling agency. The office shall deposit funds collected
214 under this section in the General Inspection Trust Fund to be
215 used for administration of this part.

216 (6) The office may deny an application or refuse to renew
217 the license of a debt settlement provider if the application
218 contains information that is materially erroneous or incomplete

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219 or if the office determines that the provider or any person in
220 control of the provider:

221 (a) Has failed to meet the requirements for initial
222 licensure as provided in this section.

223 (b) Has been found guilty or convicted of, or pled guilty
224 or nolo contendere to, a crime involving fraud, moral turpitude,
225 dishonest dealing, or any violation of this part.

226 (c) Has not satisfied any fine or penalty arising out of
227 an administrative or civil enforcement action brought by any
228 governmental agency or private person that is based upon conduct
229 involving fraud, moral turpitude, dishonest dealing, or any
230 violation of this part.

231 (d) Has had a judgment entered against the debt settlement
232 provider, or any person in control of the provider, in any
233 action brought under the Florida Deceptive and Unfair Trade
234 Practices Act as provided in part II of chapter 501 or any
235 action brought under this part.

236
237 Within 7 days after denying an application or refusing to renew
238 a license under this subsection, the office shall notify the
239 debt settlement provider in writing of the reasons for the
240 denial. Upon submission of an application, a debt settlement
241 provider may continue to provide debt settlement services while
242 the application is pending, but must cease to provide such
243 services if the office denies the application or refuses to
244 renew the license.

245 (7) If the debt settlement provider files a timely
246 petition or request for an administrative hearing under ss.

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247 120.569 and 120.57 after the office denies an application or
248 refuses to renew a license, until the office's decision becomes
249 final agency action, the provider may continue to provide debt
250 settlement services for a consumer with whom the provider has a
251 service agreement executed before the office denied the
252 application or refused to renew the license.

253 817.909 Debt settlement agreement.--

254 (1) A debt settlement provider may engage in debt
255 settlement services only pursuant to a service agreement that is
256 signed and dated by the consumer before the provision of
257 services. A service agreement must include:

258 (a) A full and detailed description of the debt settlement
259 services to be provided and an itemized schedule of the fees to
260 be paid by the consumer for each service.

261 (b) The street address of the debt settlement provider's
262 principal place of business in the state and the name and
263 address of the provider's registered agent for service of
264 process in the state.

265 (c)1. A provision allowing the consumer to cancel the
266 agreement without penalty or obligation within 3 business days
267 after the agreement is executed and a statement printed in all
268 boldface type in immediate proximity to the space provided for
269 the consumer's signature, in substantially the following form:

270
271 You may cancel this agreement before midnight of the 3rd
272 business day after the date you sign the agreement. See
273 the attached Notice of Right to Cancel for details.

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275 2. The agreement must be accompanied by a notice of the
276 consumer's right to cancel the agreement, printed in at least
277 12-point type in substantially the following form:

278
279 NOTICE OF RIGHT TO CANCEL

280
281 You may cancel this agreement for debt settlement services
282 without penalty or obligation within 3 business days after
283 the date you sign the agreement. Your payment must be
284 returned to you within 10 business days after receipt of
285 your written notice of cancellation. To cancel, you must
286 sign, date, and mail or deliver this or any other written
287 notice to: ...(name of debt settlement provider)... at
288 ...(address)... by midnight of ...(date).... If you cancel
289 this agreement within the 3-day period, ...(name of debt
290 settlement provider)... will refund all money you have
291 already paid.

292 I cancel this agreement:

293
294 Name: ...(printed name of consumer)....

295 Signature: ...(signature of consumer)....

296 Date: ...(date)....

297
298 (d) A provision allowing the consumer to terminate the
299 agreement at any time by giving the debt settlement provider
300 written notice, upon which any power of attorney granted by the
301 consumer to the provider is void.

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302 (2) A debt settlement agreement may include a consumer's
303 power of attorney to negotiate with the consumer's creditors on
304 behalf of the consumer and settle the consumer's presettlement
305 debt for no more than 50 percent of the debt. If a debt
306 settlement agreement includes this power of attorney, the
307 agreement must expressly limit the provider's authority to
308 settle the debt for more than 50 percent of the presettlement
309 debt unless the consumer agrees in writing to the settlement.

310 (3) A debt settlement agreement may not provide for
311 application of the law of any jurisdiction other than this
312 state, contain a provision that limits or releases a person from
313 liability for not performing the terms of the service agreement
314 or committing a violation of this part, restrict a consumer's
315 remedies under this part, or, notwithstanding s. 682.02, require
316 the consumer to submit to arbitration.

317 (4) A debt settlement provider must provide the consumer
318 with a copy of the service agreement and each other document
319 signed by the consumer at the time the documents are signed.

320 (5) A consumer may void a debt settlement agreement if the
321 debt settlement provider is not licensed as required in s.
322 817.907 or charges the consumer a fee for debt settlement
323 services that is prohibited under s. 817.913.

324 (6) A debt settlement provider shall maintain records of
325 the debt settlement services that it provide for a consumer for
326 at least 4 years after the consumer's final payment. The debt
327 settlement provider shall give the consumer a copy of the
328 records within a reasonable time upon the consumer's request.

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329 817.911 Debt settlement services; requirements; insurance
330 coverage; surety bond.--

331 (1) A debt settlement provider must act in good faith in
332 all matters under this part.

333 (2) (a) A debt settlement provider must obtain and maintain
334 insurance coverage in an amount determined necessary by the
335 office to protect consumers, which may not exceed the amount of
336 insurance coverage required for a credit counseling agency under
337 s. 817.804.

338 (b) A debt settlement provider, in lieu of maintaining the
339 insurance coverage required under paragraph (a), may obtain and
340 maintain a surety bond in an amount of at least \$10,000, but not
341 more than \$50,000, as determined necessary by the office based
342 on the financial condition and business experience of the debt
343 settlement provider, the provider's history of performing debt
344 settlement services, and the risk to consumers. The bond must be
345 filed with the office and be issued in favor of the office for
346 the use and benefit of any consumer who is injured by a
347 violation of this part. The aggregate liability of the surety to
348 all claimants may not exceed the amount of the bond, regardless
349 of the number or amount of claims. If multiple claims exceed the
350 amount of the bond and the surety pays the bond's full amount to
351 the office, the surety has no further liability. The office
352 shall hold any funds collected from the surety for 6 months
353 after the date of the first claim and immediately thereafter
354 shall pay each claimant the pro rata share of the funds based on
355 the claim's proportion of the aggregate amount of claims.

356 (3) A debt settlement provider shall maintain a toll-free
357 telephone number that allows a consumer to speak with a customer
358 service representative during regular business hours.

359 (4) Before a consumer executes a debt settlement
360 agreement, the debt settlement provider must:

361 (a) Prepare a financial analysis of the consumer's income,
362 expenses, presettlement debt, and credit history which estimates
363 the amount of the consumer's monthly income available for
364 repayment or settlement of the debt. The debt settlement
365 provider must provide the consumer with a copy of the financial
366 analysis free of charge, whether or not the consumer executes a
367 service agreement for debt settlement services.

368 (b) Inform the consumer of the availability of assistance
369 through a toll-free telephone number or in person to discuss the
370 financial analysis required under paragraph (a).

371 (c) Inform the consumer that not all debt settlement
372 services are suitable for all consumers; that debt settlement
373 may adversely affect the consumer's credit rating or credit
374 scores; that nonpayment of debt may lead creditors to increase
375 finance or other charges or undertake collection activities,
376 including litigation; and that debt settlement may result in the
377 consumer's increased tax liability, whether or not the consumer
378 receives any money.

379 (d) Inform the consumer that the debt settlement provider
380 cannot guarantee specific results or compel a creditor to
381 negotiate or settle a debt.

382 (e) Inform the consumer that debt settlement services may
383 require the consumer to meet certain savings goals in order to
384 maximize settlement results.

385 (f) Disclose that the debt settlement provider does not
386 provide accounting or legal advice to consumers unless the
387 provider is professionally licensed to provide such advice; that
388 the provider is the consumer's advocate and does not receive
389 compensation from creditors, financial institutions, or third-
390 party collection agencies; and that the provider does not make
391 payments to the consumer's creditors.

392 (5) A debt settlement provider that maintains an Internet
393 website must disclose on the website's main page, or on a page
394 clearly linked to the main page, the provider's corporate or
395 fictitious name, any other name under which the provider
396 conducts business in the state, the street address and telephone
397 number of the provider's principal place of business in the
398 state, and the provider's email address.

399 817.913 Prohibited fees.--

400 (1) A debt settlement provider may not impose, directly or
401 indirectly, a fee or other charge on a consumer or receive money
402 from or on behalf of a consumer for debt settlement services,
403 except as authorized by this section.

404 (2) A debt settlement provider may not charge or collect
405 fees from a consumer for debt settlement services until the
406 consumer executes a service agreement as provided in s. 817.909.
407 The fees may not exceed 20 percent of the consumer's
408 presettlement debt.

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409 (3) A debt settlement provider may charge a service fee to
410 a consumer that does not exceed the service fees authorized
411 under s. 832.08(5) or 5 percent of the face amount of the check,
412 draft, or order, whichever is greater, for the collection of a
413 dishonored check, draft, or other order for the payment of money
414 to the provider.

415 817.915 Prohibited acts.--A debt settlement provider may
416 not:

417 (1) Engage in debt settlement services at any location
418 other than a location licensed under s. 817.907.

419 (2) Charge or accept from a consumer, directly or
420 indirectly, any fee or charge prohibited under s. 817.913 or
421 solicit a voluntary contribution from a consumer for any service
422 provided for the consumer.

423 (3) Engage in debt settlement services, or charge or
424 accept from a consumer, directly or indirectly, any fee or
425 contribution before the consumer signs a service agreement under
426 s. 817.909.

427 (4) Fail to maintain at all times the insurance coverage
428 or surety bond required under s. 817.911(2).

429 (5) Settle a debt on behalf of a consumer for more than 50
430 percent of the amount of the presettlement debt unless the
431 consumer agrees in writing to the settlement.

432 (6) Accept a power of attorney from a consumer that
433 authorizes the debt settlement provider to settle a debt on
434 behalf of the consumer unless the power of attorney expressly
435 limits the provider's authority to settle the debt for no more

436 than 50 percent of the amount of the presettlement debt unless
437 the consumer agrees in writing to the settlement.

438 (7) Use or attempt to use a consumer's power of attorney
439 after the consumer terminates the service agreement with the
440 debt settlement provider.

441 (8) Structure a settlement that results in a negative
442 amortization schedule for repayment of any of a consumer's
443 debts.

444 (9) Settle a debt, or cause a consumer to believe that
445 payment to a creditor settles a debt, unless the consumer
446 receives before the settlement or payment a certification or
447 confirmation from the creditor that the payment fully settles
448 the debt or is part of a payment plan that, upon completion,
449 fully settles the debt.

450 (10) Initiate a transfer from a consumer's account unless
451 the transfer is for return of money to the consumer, for payment
452 of a fee authorized by a current debt settlement service
453 agreement, for payment of a creditor to fund a negotiated
454 settlement of no more than 50 percent of the presettlement debt,
455 or for payment of a creditor to fund a negotiated settlement of
456 more than 50 percent of the presettlement debt if the consumer
457 agrees to the settlement and the transfer.

458 (11) Purchase any debt or obligation of a consumer; lend
459 money or provide credit to a consumer, except as a deferral of a
460 fee payment at no additional expense to the consumer; obtain a
461 mortgage or other security interest from any person in
462 connection with the debt settlement services provided to the
463 consumer; accept from, or on behalf of, a consumer a promissory

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464 note or other negotiable instrument, other than a check or
465 demand draft; or accept a postdated check or demand draft.

466 (12) Provide the consumer with less than the full benefit
467 of any settlement of a debt negotiated by the debt settlement
468 provider.

469 (13) Advise a consumer to stop payment on any debts.

470 (14) Represent to a consumer that the debt settlement
471 provider is authorized or competent to provide legal or
472 accounting advice, or perform legal or accounting services for a
473 consumer, unless the provider is licensed to provide such advice
474 or services.

475 (15) Represent to a consumer that the debt settlement
476 provider will furnish money to pay a bill or prevent the
477 attachment of an asset; that partial payment of a certain amount
478 will guarantee satisfaction of the full amount of a debt; or
479 that participation in debt settlement services will prevent
480 litigation, garnishment, attachment, repossession, foreclosure,
481 eviction, or loss of employment.

482 (16) Represent that the debt settlement provider is a
483 corporation not for profit unless it is organized under chapter
484 617 or is exempt from federal income taxation and has a
485 certificate issued by the Internal Revenue Service recognizing
486 the provider's exemption.

487 (17) Make or use any false or misleading representation,
488 omit any material fact in the offer or sale of services, or
489 engage directly or indirectly in any fraudulent, false,
490 misleading, unconscionable, unfair, or deceptive act or practice

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491 in connection with the offer or sale of any services of a debt
492 settlement provider.

493 (18) Violate any other provision of this part.

494 817.917 Complaints; civil remedies.--

495 (1) A debt settlement provider shall establish an internal
496 complaint process that allows the provider to receive, review,
497 and address or resolve a consumer's complaint internally. The
498 debt settlement provider shall notify each consumer in writing
499 of the complaint process. A complaint process must specify a
500 reasonable period after a consumer submits a complaint for the
501 debt settlement provider to respond to the complaint. A debt
502 settlement provider shall maintain records of each consumer
503 complaint, its processing, and its resolution and shall disclose
504 the records to the office upon request.

505 (2) (a) A consumer who is injured by a debt settlement
506 provider's violation of this part may bring an action in circuit
507 court against the provider and any person who caused the
508 violation for compensatory damages for the economic injury
509 caused by the violation, or \$1,000, whichever is greater, and
510 reasonable attorney's fees and costs. The \$1,000 minimum amount
511 of compensatory damages per consumer does not apply to a class
512 action.

513 (b) In addition to the compensatory damages authorized
514 under paragraph (a), if a debt settlement provider violates a
515 consumer's rights under s. 817.909, the consumer may recover in
516 a civil action all money paid by or on behalf of the consumer
517 under the service agreement, except for amounts paid to
518 creditors.

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519 (c) In addition to the compensatory damages authorized in
520 paragraph (a), a consumer who voids a service agreement under s.
521 817.909(5) may recover in a civil action all money paid by or on
522 behalf of the consumer under the agreement.

523 (d) A debt settlement provider is not liable under this
524 section for a violation of this part if the provider proves that
525 the violation is not intentional and resulted from a good faith
526 error to comply with this part, despite the provider's use of
527 procedures reasonably adapted to avoid the error. If, in
528 connection with a violation, the debt settlement provider
529 receives more money than authorized by the service agreement or
530 this part, the defense provided in this paragraph is not
531 available unless the provider refunds the excess moneys within 3
532 business days after learning of the violation.

533 817.919 Administrative remedies; penalties.--

534 (1) The office may enforce this part and rules adopted
535 under this part by taking one or more of the following actions:

536 (a) Ordering a debt settlement provider, a person in
537 control of the provider, or the provider's employee or agent to
538 cease and desist from any violations.

539 (b) Ordering a debt settlement provider or a person
540 causing a violation to correct the violation, including making
541 restitution of money or property to the person aggrieved by the
542 violation.

543 (c) Imposing on a debt settlement provider, or a person
544 causing a violation, a civil penalty not to exceed \$1,000 for
545 each violation.

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546 (d) Prosecuting a civil action to enforce an order; to
547 obtain restitution, an injunction or other equitable relief, or
548 both; or to intervene in an action brought by a consumer under
549 s. 817.917(2).

550 (2) If a person violates or knowingly authorizes, directs,
551 or aids another person to violate a final order issued under
552 subsection (1), the office may impose an additional civil
553 penalty not to exceed \$1,000 for each violation.

554 (3) In determining the amount of a civil penalty to impose
555 under subsection (1) or subsection (2), the office shall
556 consider the seriousness of the violation, the good faith of the
557 violator, any previous violations by the violator, the harm or
558 potential harm of the violation to the public, and the net worth
559 of the violator.

560 (4) (a) The office may bring an action to enforce this part
561 in any county.

562 (b) The office may recover the reasonable costs of
563 enforcing this part under this section, including attorney's
564 fees based on the hours reasonably expended and the hourly rates
565 for attorneys of comparable experience in the community.

566 817.921 Limitations of actions.--

567 (1) An action brought under s. 817.917(2) must be
568 commenced within 2 years after the latest of:

569 (a) The consumer's final payment of money to the debt
570 settlement provider.

571 (b) The date on which the consumer discovered or
572 reasonably should have discovered the facts giving rise to the
573 consumer's claim.

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574 (c) Termination of an action or proceeding by the office
575 for a violation of this part.

576 (2) An action or proceeding brought under s. 817.919 must
577 be commenced within 4 years after the conduct that is the basis
578 of the office's complaint.

579 817.923 Disciplinary proceedings; penalties.--The office
580 may suspend, revoke, or deny the renewal of a debt settlement
581 provider's license, if:

582 (1) A fact or condition exists that, if it existed when
583 the debt settlement provider applied for a license, would be a
584 reason for denying the license.

585 (2) The debt settlement provider materially violates this
586 part or a rule adopted under this part.

587 (3) The debt settlement provider becomes insolvent. As
588 used in this subsection, the term "insolvent" means:

589 (a) Generally ceasing to pay debts in the ordinary course
590 of business other than due to a good faith dispute.

591 (b) Being unable to pay debts as they become due.

592 (c) Being insolvent as defined in the federal Bankruptcy
593 Code, 11 U.S.C. s. 101, as amended.

594 (4) The debt settlement provider, or the provider's
595 employee or agent, refuses to disclose records to the office as
596 required in s. 817.917(1), fails to comply with s. 817.925(2)
597 within 30 days after the request, or makes a material
598 misrepresentation or omission in complying with s. 817.925(2).

599 (5) The debt settlement provider does not respond within a
600 reasonable time and in an appropriate manner to communications
601 from the office.

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602 817.925 Powers of Office of Financial Regulation;
603 rulemaking.--

604 (1) The Office of Financial Regulation may act on its own
605 initiative, may act on a consumer complaint received by the
606 office, may take action to obtain voluntary compliance with this
607 part, and may seek or impose the administrative and disciplinary
608 remedies authorized in this part.

609 (2) The office may investigate and examine, in this state
610 or any other jurisdiction, the activities, books, accounts, and
611 records of a person who provides or offers to provide debt
612 settlement services in the state. In connection with an
613 investigation, the office may:

614 (a) Charge the person the reasonable expenses necessarily
615 incurred to conduct the examination.

616 (b) Require or permit a person to file a statement under
617 oath as to all the facts and circumstances of the matter under
618 investigation.

619 (3) The office may enter into cooperative arrangements
620 with any other federal or state agency having authority over
621 debt settlement providers and may exchange with any such agency
622 information about a debt settlement provider, including
623 information obtained during an examination of the provider.

624 (4) The office shall adopt rules under ss. 120.536(1) and
625 120.54 to administer this part.

626 817.927 Sunset review.--This part shall be reviewed by the
627 Legislature before June 30, 2015, but does not expire and is not
628 repealed if the Legislature does not take action before that
629 date.

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Section 3. This act shall take effect July 1, 2009.