

1 A bill to be entitled
2 An act relating to debt settlement; creating the "Debt
3 Settlement Services Act"; defining terms; providing
4 exceptions to the application of the act; requiring that a
5 person be licensed if he or she intends to provide or
6 offers to provide debt settlement services to a client who
7 resides in this state; requiring that the Office of
8 Financial Regulation maintain and publicize on its website
9 certain information; providing for an application form and
10 requiring a fee and proof of an insurance policy or a
11 surety bond; detailing the information that must be in a
12 completed application; requiring that an applicant sign
13 the completed application form acknowledging the accuracy
14 and truth of each answer and statement made in the
15 application; requiring an applicant for licensure or a
16 licensed debt settlement advisor to notify the office of
17 any change within a prescribed time; requiring that the
18 office make available to the public the information
19 contained in an initial application and a renewal
20 application for a debt settlement advisor license;
21 providing procedures for the acceptance and rejection of
22 an initial application for a debt settlement advisor
23 license; setting forth the grounds by which the office may
24 reject an application; authorizing an appeal under ch.
25 120, F.S., if the applicant is denied a license or if the
26 office does not act on the initial application within a
27 prescribed time; detailing the procedures to follow to
28 renew a license for a debt settlement advisor; authorizing

29 a debt settlement advisor who is renewing his or her
30 license, or who is appealing a denial of a license
31 renewal, to provide debt settlement services under certain
32 circumstances; requiring the office to consider documents
33 from other states as an application to become a debt
34 settlement advisor in this state; requiring each debt
35 settlement advisor to act in good faith; requiring each
36 licensed debt settlement advisor to maintain a toll-free
37 telephone service, staffed at a level that reasonably
38 permits a client to speak to a customer service
39 representative; requiring the debt settlement advisor to
40 provide certain documents to a prospective client before
41 signing a debt settlement services agreement; providing
42 that a debt settlement advisor may communicate by
43 electronic means in compliance with federal law; setting
44 forth the elements of a debt settlement services
45 agreement; authorizing a client to cancel the debt
46 settlement services agreement within a specified time;
47 providing the cancellation form; requiring the disclosures
48 and documents in a debt settlement services agreement to
49 be in English unless the office provides otherwise;
50 requiring a debt settlement advisor to furnish a
51 translation of the documents in the primary language of
52 the client under specified circumstances; detailing the
53 fees and other charges the debt settlement advisor may
54 impose; prohibiting a debt settlement advisor from
55 soliciting contributions from or on behalf of a client;
56 specifying agreements that are voidable; authorizing a

57 | debt settlement advisor to terminate the debt settlement
58 | services agreement if the client does not pay for debt
59 | settlement services within a specified time; requiring the
60 | debt settlement advisor to prepare periodic reports;
61 | prohibiting a debt settlement advisor from engaging in
62 | certain acts and practices; requiring that advertisements
63 | for debt settlement services be honest and free of certain
64 | conflicts; requiring each debt settlement advisor to
65 | establish an internal formal complaint process for the
66 | advisor to receive, review, and address or resolve formal
67 | complaints; requiring a debt settlement advisor to keep a
68 | file of all formal complaints and to disclose it to the
69 | office upon request; describing the powers of the Office
70 | of Financial Regulation; authorizing the office to adopt
71 | rules; providing for administrative remedies for
72 | violations of the act; authorizing the office to levy a
73 | civil penalty; authorizing the office to suspend, revoke,
74 | or deny renewal of a license to a debt settlement advisor
75 | under certain circumstances; authorizing an advisor to
76 | appeal a suspension or revocation of a license under ch.
77 | 120, F.S.; providing for private enforcement of the act;
78 | providing for an award of attorney's fees; providing that
79 | a violation of the act is a deceptive and unfair trade
80 | practice; providing that this act is supplemental to and
81 | does not preempt other consumer protection laws; providing
82 | time limitations for commencing a civil proceeding;
83 | providing for the act's relation to the Electronic
84 | Signatures in Global and National Commerce Act; providing

85 for severability; providing an effective date.

86

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

88

89 Section 1. Short title.--This act may be cited as the
 90 "Debt Settlement Services Act."

91 Section 2. Definitions.--As used in this act, the term:

92 (1) "Affiliate" means:

93 (a) A person who directly controls, is controlled by, or
 94 is under common control with the licensee;

95 (b) An officer of, or a client performing similar
 96 functions with respect to, the licensee;

97 (c) A director of, or a client performing similar
 98 functions with respect to, the licensee; or

99 (d) An officer or director of, or a client performing
 100 similar functions with respect to, a person described in
 101 paragraph (a).

102 (2) "Agreement" means the agreement between a debt
 103 settlement advisor and a client for the performance of debt
 104 settlement services.

105 (3) "Bank" means a financial institution, including a
 106 commercial bank, savings bank, savings and loan association,
 107 credit union, mortgage bank, and trust company, which is engaged
 108 in the business of banking, chartered under federal or state
 109 law, and regulated by a federal or state banking regulatory
 110 authority.

111 (4) "Client" means a person who has entered into an
 112 agreement with a debt settlement advisor for debt settlement

113 services.

114 (5) "Concession" means consent to repay a debt on terms
 115 more favorable to a client than the terms of the original
 116 contract between a client and a creditor.

117 (6) "Debt settlement advisor" means a person licensed
 118 under this act to provide debt settlement services to a client.
 119 The term includes an employee or agent of the debt settlement
 120 advisor.

121 (7) "Debt settlement services" means services provided by
 122 a debt settlement advisor who acts as an intermediary between a
 123 client and one or more unsecured creditors of the client for the
 124 purpose of obtaining favorable concessions for the client. A
 125 debt settlement advisor does not receive money from the client
 126 with the intent to distribute money to the client's creditors.
 127 The term does not include:

128 (a) Legal services provided by an attorney licensed to
 129 practice law in this state;

130 (b) Accounting services provided by a certified public
 131 accountant licensed to provide accounting services in this
 132 state; or

133 (c) Financial planning services provided by a member of a
 134 financial planning profession.

135 (8) "Federal act" means the federal Electronic Signatures
 136 in Global and National Commerce Act, 15 U.S.C. ss. 7001 et seq.,
 137 as amended.

138 (9) "Good faith" means honesty in fact and the observance
 139 of reasonable standards of fair dealing.

140 (10) "Insolvent" means:

141 (a) Having generally ceased to pay debts in the ordinary
 142 course of business other than as a result of a good faith
 143 dispute;

144 (b) Being unable to pay debts as they become due; or

145 (c) Being insolvent within the meaning of the federal
 146 bankruptcy law, 11 U.S.C. ss. 101 et seq., as amended.

147 (11) "Office" means the Office of Financial Regulation of
 148 the Financial Services Commission.

149 (12) "Principal amount of the debt" means the amount of
 150 debt possessed by the client at the time he or she executes a
 151 debt settlement services agreement with a debt settlement
 152 advisor and before concessions are made by the client's
 153 creditors.

154 (13) "Program" or "debt settlement program" means a
 155 process whereby a debt settlement advisor furnishes a crafted
 156 debt settlement plan to a client and negotiates on behalf of the
 157 client, and after an agreement, the client makes payments
 158 directly to his or her creditors.

159 (14) "Record" means information that is inscribed on a
 160 tangible medium such as paper or that is stored in an electronic
 161 format or other medium and is retrievable in perceivable form.

162 Section 3. Exemptions.--This act does not apply to:

163 (1) A debt settlement advisor who receives no compensation
 164 for providing debt settlement services to a client.

165 (2) A judicial officer, a person acting under an order of
 166 a court or an administrative agency, or an assignee for the
 167 benefit of creditors.

168 (3) A bank.

169 (4) A title insurer, escrow company, or other entity that
 170 provides bill-paying services if the debt settlement services
 171 are incidental to the bill-paying services.

172 Section 4. Licensure required; publication of licenses.--

173 (1) A person must be licensed under this act if he or she
 174 intends to provide or offers to provide debt settlement services
 175 to a client who resides in this state.

176 (2) The office shall maintain and publicize on its website
 177 the names and addresses of all persons licensed to provide debt
 178 settlement services in this state.

179 Section 5. License application form, fee, and accompanying
 180 documents.--

181 (1) The application for a license to provide debt
 182 settlement services must be on a form prepared and distributed
 183 by the office.

184 (2) An applicant for a debt settlement advisor license
 185 must file with the office the application form, a fee
 186 established by the office, which may not exceed \$350, and proof
 187 that:

188 (a) The applicant is covered by a minimum insurance policy
 189 in an amount specified by the office; or

190 (b) In lieu of an aggregate umbrella insurance policy, the
 191 applicant has filed a surety bond with the office, in a form
 192 approved by the office, for a term not less than the expiration
 193 date of the license. The bond must be in an amount of at least
 194 \$10,000. However, the office may demand that an applicant file a
 195 bond of a larger amount if the office determines that the
 196 financial condition and business experience of the debt

197 settlement advisor, the history of the debt settlement advisor
198 in performing debt settlement services, and the risk to clients
199 justify a larger surety bond. The office may not require a
200 surety bond greater than \$50,000. The surety bond must be to the
201 office and in favor of any clients in this state who suffer loss
202 arising out of debt settlement services from a debt settlement
203 advisor.

204 Section 6. Application for licensure; required
205 information.--

206 (1) A completed application form must include:

207 (a) The applicant's name, principal business address and
208 telephone number, and every e-mail address and Internet website
209 address used by the applicant.

210 (b) The name under which the applicant will conduct
211 business.

212 (c) The address of each location in this state, other than
213 the applicant's principal business address, at which the
214 applicant will provide debt settlement services, or a statement
215 that the applicant will provide debt settlement services only at
216 the principal business address.

217 (d) If the applicant is a business entity, the name and
218 home address of each officer and director of the applicant and
219 of each person who owns a 10 percent or greater interest in the
220 applicant.

221 (e) A statement describing, to the extent it is known or
222 should be known by the applicant, any civil or criminal
223 judgments related to financial fraud or misuse, and any
224 administrative or enforcement actions relating to financial

225 fraud or misuse, by a governmental agency in any jurisdiction
 226 against the applicant or an officer, director, owner, employee,
 227 or agent of the applicant's business.

228 (f) A copy of each debt settlement services agreement form
 229 that the applicant will use in providing services to clients.

230 (g) The schedule of fees and charges that the applicant
 231 intends to use in charging a client for debt settlement services
 232 rendered.

233 (h) A copy of the financial analysis or budget form that
 234 the applicant intends to use when reviewing a client's financial
 235 condition.

236 (i) A description of any ownership interest of 10 percent
 237 or greater by a director, owner, or employee of the applicant
 238 in:

- 239 1. Any affiliate of the applicant; or
 240 2. Any entity that provides products or services to the
 241 applicant or any client related to the applicant's debt
 242 settlement services.

243 (j) The identity of each director who is an affiliate of
 244 the applicant.

245 (k) Evidence that the applicant has a registered agent in
 246 this state of record with the Department of State.

247 (1) Any other information that the office reasonably
 248 requires to perform the duties of the office under section 9.

249 (2) The application form must contain a statement
 250 informing the applicant that a false or dishonest answer to any
 251 question in the application may be grounds for denial or
 252 subsequent suspension or revocation of the applicant's license.

253 A completed application form must be signed by the applicant
 254 acknowledging the accuracy and truth of each answer and
 255 statement made in the application.

256 Section 7. Application for licensure; obligation to update
 257 information.--An applicant or licensed debt settlement advisor
 258 shall notify the office whenever there is a change of the
 259 information specified in section 5 or section 6 no later than 30
 260 days after the change.

261 Section 8. Application for licensure; public
 262 information.--The office shall make the information contained in
 263 an initial application for a debt settlement advisor license and
 264 in a renewal application for a debt settlement advisor license
 265 available to the public.

266 Section 9. Licensure; issuance or denial.--

267 (1) The office shall approve or deny an initial
 268 application for a debt settlement advisor license within 60 days
 269 after the applicant files the completed application with the
 270 office. If the office requests additional information from the
 271 applicant, it may extend the 60-day period for no more than 45
 272 additional days. If the office denies the application, it must
 273 inform the applicant in writing of the reasons for the denial.

274 (2) The office shall issue an initial license to a debt
 275 settlement advisor who complies with sections 5 and 6. A license
 276 is valid for 1 year after the date the license is granted.

277 (3) The office may deny an application for an initial debt
 278 settlement advisor license if:

279 (a) The application contains information that is
 280 materially erroneous or incomplete;

281 (b) An officer, director, or owner of the applicant's
282 business has been convicted of a crime or has had a civil
283 judgment entered against him or her involving dishonesty or the
284 violation of state or federal securities laws;

285 (c) The application is not accompanied by the fee
286 established by the office; or

287 (d) There is reasonable evidence that the applicant will
288 not operate as a debt settlement advisor in a lawful, honest,
289 and fair manner.

290 (4) If the office denies the application or does not act
291 on the application within the prescribed time, the applicant may
292 appeal and request a hearing pursuant to chapter 120, Florida
293 Statutes.

294 Section 10. License renewal.--

295 (1) A debt settlement advisor must annually renew his or
296 her license to provide debt settlement services.

297 (2) An application to renew a license as a debt settlement
298 advisor must be in a form prepared and distributed by the office
299 and:

300 (a) Be filed at least 30 days, but no more than 60 days,
301 before the current license expires;

302 (b) Be accompanied by the fee established by the office,
303 which may not exceed the cost of processing the renewal;

304 (c) Disclose any changes in the information contained in
305 the applicant's initial application for a license or in its
306 immediately previous application for a renewal of the license,
307 as appropriate; and

308 (d) Provide any other information that the office

309 reasonably requires to perform its duties under this section.

310 (3) If a debt settlement advisor files a timely and
311 complete application for renewal of a license, the debt
312 settlement services license remains in effect until the office
313 notifies the applicant, in writing, whether the application was
314 approved or denied. If the office denies the renewal
315 application, the written notice to the debt settlement advisor
316 must describe the reasons for the denial.

317 (4) If the office denies an application to renew a debt
318 settlement license, the debt settlement advisor may appeal the
319 denial and request a hearing pursuant to chapter 120, Florida
320 Statutes, within 30 days after receiving the notice of the
321 denial.

322 (5) If an appeal proceeding is commenced, the debt
323 settlement advisor may continue to provide debt settlement
324 services to a client with whom the advisor has an agreement. If
325 the denial of the renewal license is affirmed, the debt
326 settlement advisor shall discontinue providing debt settlement
327 services to clients and transfer the clients' agreements to
328 other licensed debt settlement advisors.

329 Section 11. Licensure in another state.--If a debt
330 settlement advisor holds a license or certificate of licensure
331 in another state authorizing him or her to provide debt
332 settlement services in that state, the debt settlement advisor
333 may submit a copy of that license or certificate and the
334 application used to file for a license in another state to the
335 office. The office shall accept the application and the license
336 or certificate from the other state as an application for a debt

337 settlement advisor license or for a renewal of a debt settlement
338 license, as appropriate, in this state if:

339 (1) The application from the other state requests
340 information from the advisor which is substantially similar to
341 or more comprehensive than that requested in the application
342 submitted in this state;

343 (2) The applicant provides the information required by
344 sections 5 and 6; and

345 (3) The applicant, under penalty of false statement,
346 certifies that the information contained in the application is
347 current or, to the extent it is not current, supplements the
348 application to make the information current.

349 Section 12. Requirement of good faith.--A debt settlement
350 advisor shall act in good faith in all matters under this act.

351 Section 13. Customer service.--Each licensed debt
352 settlement advisor shall maintain a toll-free telephone service,
353 staffed at a level that reasonably permits a client to speak to
354 a customer service representative during ordinary business
355 hours.

356 Section 14. Prerequisites for providing debt settlement
357 services.--

358 (1) Before a licensed debt settlement advisor provides
359 debt settlement services to a client, he or she must give a
360 potential client an itemized list of goods and services
361 available from the debt settlement advisor and the charges for
362 each service rendered. The list and charges must be clear and
363 conspicuous.

364 (2) A debt settlement advisor may not furnish debt

365 settlement services unless the debt settlement advisor has
366 prepared a financial analysis for the potential client.

367 (3) A debt settlement advisor, before signing an agreement
368 with an individual to become a potential client of the debt
369 settlement advisor, shall:

370 (a) Provide the individual with a copy of the financial
371 analysis and, in writing, a notice that identifies the debt
372 settlement advisor and acknowledges that the client may keep the
373 financial analysis even if the individual chooses not to become
374 a client of the debt settlement advisor;

375 (b) Inform the individual of the availability, at the
376 individual's option, of assistance by a toll-free telephone
377 service or in person to discuss the financial analysis required
378 in subsection (2); and

379 (c) Inform the individual that:

380 1. Not all debt settlement programs are suitable for all
381 clients;

382 2. Participation in a debt settlement program may
383 adversely affect a client's credit rating or credit scores;

384 3. Nonpayment of debt may lead creditors to increase
385 finance and other charges or undertake collection activity,
386 including litigation;

387 4. Unless the client is insolvent and a creditor settles
388 for less than the full amount of the debt, participation in the
389 program may result in the creation of taxable income to the
390 client, even though the client does not receive any money;

391 5. Specific results cannot be predicted or guaranteed and
392 the debt settlement advisor cannot force negotiations or

393 settlements with creditors who do not wish to participate in
 394 negotiations, but will nevertheless advocate on behalf of the
 395 client;

396 6. The debt settlement program requires that the client
 397 meet a certain savings goal in order to maximize settlement
 398 results;

399 7. The debt settlement advisor does not provide accounting
 400 or legal advice to the client, unless the debt settlement
 401 advisor is licensed to practice law in this state;

402 8. The debt settlement advisor is the client's advocate
 403 and does not receive compensation from creditors, banks, or
 404 third-party collection agencies; and

405 9. The debt settlement advisor does not make monthly
 406 payments to the client's creditors.

407 Section 15. Communication by electronic or other means.--

408 (1) A debt settlement advisor may satisfy the requirements
 409 of sections 14, 17, and 23 by means of the Internet or other
 410 electronic means if the debt settlement advisor obtains a
 411 consumer's consent in the manner provided by s. 101(c)(1) of the
 412 federal act.

413 (2) The disclosures and materials required by sections 14,
 414 17, and 23 shall be presented in a form that can be accurately
 415 reproduced for later reference.

416 (3) With respect to disclosure by means of an Internet
 417 website, the disclosure of the information required by section
 418 14 must appear on one or more screens that contain only the
 419 information required, and the client must be able to see the
 420 information on the screens before agreeing to participate in the

421 program.

422 (4) At the time of providing the materials and agreement
423 required in sections 14, 17, and 23, a debt settlement advisor
424 shall inform the client that upon electronic, telephonic, or
425 written request, the advisor shall send the client a written
426 copy of the materials and shall comply with a request as
427 provided in subsection (7).

428 (5) If a debt settlement advisor is requested, before the
429 expiration of 90 days after a program is completed or
430 terminated, to send a written copy of the materials required by
431 sections 14, 17, and 23, the debt settlement advisor shall send
432 them at no charge within 3 business days after receipt of the
433 request. However, the debt settlement advisor need not comply
434 with a request more than once per calendar month or if the
435 advisor reasonably believes that the request is made for
436 purposes of harassment. If a request is made more than 90 days
437 after a program is completed or terminated, the debt settlement
438 advisor shall send within a reasonable time a written copy of
439 the materials requested.

440 (6) If a debt settlement advisor maintains an Internet
441 website, the debt settlement advisor shall disclose on the home
442 page of the website or on a page that is clearly and
443 conspicuously connected to the home page by a link that clearly
444 reveals its contents:

445 (a) The name or names under which the debt settlement
446 advisor does business; and

447 (b) The principal business address, telephone number, and
448 e-mail address, if any.

449 (7) If a client who has previously consented to electronic
450 communication in the manner provided by s. 101(c)(1) of the
451 federal act withdraws consent as provided in the federal act, a
452 debt settlement advisor may terminate the agreement with the
453 client. If the debt settlement advisor wishes to terminate the
454 agreement, he or she shall notify the client and, unless the
455 client consents to electronic communication in the manner
456 provided in s. 101(c)(1) of the federal act within 30 days after
457 receiving the notification, the agreement is terminated.

458 Section 16. Form and contents of a debt settlement
459 agreement.--

460 (1) A debt settlement services agreement must be in
461 writing, dated and signed by the client and the debt settlement
462 advisor, and delivered to the client immediately upon the
463 signing of the agreement. The agreement must include:

464 (a) The name and home address of the client.

465 (b) The name, business address, and telephone number of
466 the debt settlement advisor.

467 (c) The debt settlement services to be provided.

468 (d) The amount, or method of determining the amount, of
469 all fees, individually itemized, to be paid by the client.

470 (e) The process whereby the debt settlement advisor will
471 comply with his or her obligations under section 23.

472 (f) The statement that the client may cancel the agreement
473 as provided in section 17.

474 (g) The disclosure that the client may contact the office
475 with any questions or complaints regarding the debt settlement
476 advisor.

477 (h) The address, telephone number, and Internet address or
478 website of the office.

479 (2) For the purposes of subsection (1), delivery of an
480 electronic record occurs when it is made available in a format
481 that the client may retrieve, save, and print, and when the
482 client is notified that the record is available.

483 (3) If the office supplies the debt settlement advisor
484 with any information required under paragraph (1)(h), the debt
485 settlement advisor may comply with that requirement by
486 disclosing only the information supplied by the office.

487 (4) An agreement must state that the client has a right to
488 terminate the agreement at any time by giving the debt
489 settlement advisor written or electronic notice, in which event
490 all powers of attorney granted by the client to the debt
491 settlement advisor are revoked and void.

492 (5) An agreement may confer on a debt settlement advisor a
493 power of attorney to settle a client's debt for no more than 50
494 percent of the principal amount of the debt and may confer a
495 power of attorney to negotiate with creditors of the client on
496 behalf of the client. The debt settlement advisor must obtain
497 the consent of the client before accepting a concession
498 settlement of more than 50 percent of the principal amount of
499 the debt.

500 (6) A debt settlement services agreement may not:

501 (a) Apply to the agreement any law of any jurisdiction
502 other than the United States and this state;

503 (b) Except as permitted by the Federal Arbitration Act, 9
504 U.S.C. s. 2, as amended, or the Uniform Arbitration Act, contain

505 any modifications or limitations to otherwise available forums
 506 or procedural rights, including the right to trial by jury,
 507 which are generally available to the client under law and under
 508 this act;

509 (c) Contain restrictions on a client's remedies under this
 510 act or any other law; or

511 (d) Contain a provision that:

512 1. Limits or releases the liability of any person for not
 513 performing the agreement or for violating this act; or

514 2. Indemnifies any person for liability arising under the
 515 agreement or this act.

516 Section 17. Cancellation of an agreement; waiver.--

517 (1) A client may cancel an agreement before midnight of
 518 the 3rd business day after the client executes the agreement.
 519 However, if a debt settlement services agreement does not comply
 520 with subsection (2), section 17, or section 23, the client may
 521 cancel the agreement within 30 days after the client executes
 522 the agreement. To exercise the right of cancellation, the client
 523 must give notice in a record to the debt settlement advisor.
 524 Notice by mail is given when mailed.

525 (2) An agreement must be accompanied by a form that
 526 contains a notice of right of cancellation heading in bold-faced
 527 type underlined by bold black lines. The notice must be in
 528 substantially the following form:

530 NOTICE OF RIGHT OF CANCELLATION

531
 532 You may cancel this agreement, without any penalty or

533 obligation, at any time before midnight of the 3rd
 534 business day that begins the day after you agree to it by
 535 electronic communication or by signing it.

536
 537 To cancel this agreement during this period, send an e-
 538 mail to ...(e-mail address of debt settlement advisor)...
 539 or mail or deliver a signed, dated copy of this notice, or
 540 any other written notice to ...(name of debt settlement
 541 advisor)... at ...(address of debt settlement advisor)...
 542 before midnight on ...(date)....

543
 544 If you cancel this agreement within the 3-day period, we
 545 will refund all money you have already paid us.

546
 547 I cancel this agreement.

548
 549

550 Print your name

551

552 Signature

553

554 Date

555
 556 Section 18. Required language; rules.--Unless the office
 557 provides otherwise, the disclosures and documents required by
 558 this act must be in English. If a debt settlement advisor
 559 communicates with a client primarily in a language other than
 560 English, the debt settlement advisor must furnish a translation

561 into the other language of the disclosures and documents
562 required by this act.

563 Section 19. Fees and other charges.--

564 (1) A debt settlement advisor may not impose, directly or
565 indirectly, a fee or other charge on a client or receive money
566 from or on behalf of a client for debt settlement services
567 except as permitted by this section.

568 (2) The total aggregate fees charged by a debt settlement
569 advisor may not exceed 20 percent of the principal amount of the
570 debt.

571 (3) A debt settlement advisor may not impose charges or
572 receive payment for debt settlement services until the debt
573 settlement advisor and the client have signed a debt settlement
574 services agreement.

575 (4) If a client's payment to a debt settlement advisor is
576 dishonored, a debt settlement advisor may impose a reasonable
577 charge to the client, not to exceed the amount permitted by law.

578 Section 20. Voluntary contributions.--A debt settlement
579 advisor may not solicit a voluntary contribution from a client
580 or an affiliate of the client for any debt settlement services
581 provided to the client.

582 Section 21. Voidable agreements.--

583 (1) If a debt settlement advisor imposes a fee or other
584 charge or receives money or other payments not authorized by
585 section 19, the client may void the agreement and recover the
586 fees or charges as provided in section 30.

587 (2) If a debt settlement advisor is not licensed under
588 this act at the time a client approves the debt settlement

589 services agreement, the agreement is voidable by the client.

590 (3) If a client voids an agreement pursuant to this
591 section, the debt settlement advisor does not have a claim
592 against the client for breach of contract or for restitution.

593 Section 22. Termination of agreements.--If a client fails
594 to make payments required by the agreement for 60 days, a debt
595 settlement advisor may terminate the agreement.

596 Section 23. Periodic reports; retention of records.--

597 (1) A debt settlement advisor shall provide the accounting
598 required by subsection (2), in the following cases:

599 (a) After each settlement of a debt with a creditor on
600 behalf of a client.

601 (b) Within 5 business days after receiving a request by a
602 client. However, the debt settlement advisor need not comply
603 with more than one request in any calendar month.

604 (c) Upon cancellation or termination of an agreement.

605 (2) If a creditor has agreed to accept as payment in full
606 an amount less than the principal amount of the debt owed by a
607 client, a debt settlement advisor shall document, in a record,
608 an accounting of all of the following:

609 (a) The amount of the client's debt when the creditor
610 agrees to a settlement.

611 (b) The amount of the debt the creditor accepts as
612 settlement in full of the debt.

613 (c) Any other terms of the settlement.

614 (d) For debt settlement advisors using fee agreements that
615 calculate any portion of the fee based on a percentage of
616 savings the client realizes from a settled debt, the calculation

CS/HB 1045

2009

617 of that fee.

618 (3) A debt settlement advisor shall maintain records for
619 each client for whom the advisor provides debt settlement
620 services for 4 years after the date the final payment is made by
621 the client. The advisor shall produce a copy of the records for
622 the client within a reasonable time after a request is received.
623 The debt settlement advisor may use electronic or other means
624 for storing records.

625 Section 24. Prohibited acts and practices of debt
626 settlement advisors.--

627 (1) A debt settlement advisor may not engage in any of the
628 following practices:

629 (a) Settle a debt on behalf of a client for more than 50
630 percent of the amount of the debt owed a creditor, unless the
631 client explicitly consents to the settlement after the creditor
632 has agreed to the settlement.

633 (b) Hold a power of attorney that authorizes a debt
634 settlement advisor to settle a debt, unless the power of
635 attorney expressly limits the debt settlement advisor's
636 authority to settle debts for not more than 50 percent of the
637 amount of the debt owed a creditor.

638 (c) Exercise or attempt to exercise a power of attorney
639 after a client has terminated an agreement.

640 (d) Initiate a transfer from a client's bank account to
641 another person unless the transfer is:

- 642 1. A return of money to the client;
643 2. Before termination of an agreement, payment of a fee
644 properly authorized by the agreement and this act;

CS/HB 1045

2009

645 3. A payment to a creditor to fund a negotiated settlement
646 authorized by this act; or

647 4. A payment to a creditor to fund a negotiated settlement
648 of which both the settlement and transfer of money have been
649 authorized by the client.

650 (e) Structure a settlement in a manner that would result
651 in a negative amortization of any of the client's debts.

652 (f) Settle a debt or lead a client to believe that a
653 payment to a creditor is in settlement of a debt to the creditor
654 unless, at the time of settlement, the client receives a
655 certification or confirmation by the creditor that the payment
656 is in full settlement of the debt, or is part of a payment plan
657 that is in full settlement of the debt.

658 (g) Make a representation that:

659 1. The debt settlement advisor will furnish money to pay
660 bills or prevent attachments;

661 2. Payment of a certain amount of money will guarantee
662 satisfaction of a certain amount or range of indebtedness;

663 3. Participation in a program will or may prevent
664 litigation, garnishment, attachment, repossession, foreclosure,
665 eviction, or loss of employment;

666 4. The debt settlement advisor is authorized or competent
667 to furnish legal advice or perform legal services, unless such
668 advice or services are provided by a licensed attorney working
669 with the debt settlement advisor; or

670 5. The debt settlement advisor is a not-for-profit entity,
671 unless the debt settlement advisor is organized and properly
672 operating as a not-for-profit entity under the laws of this

673 state.

674 (h) Take a confession of judgment or power of attorney to
675 confess judgment against a client.

676 (i) Employ deceptive and unfair trade practices, including
677 the knowing omission of any material information.

678 (2) If a debt settlement advisor furnishes debt settlement
679 services to a client, the debt settlement advisor may not,
680 directly or indirectly, engage in any of the following
681 practices:

682 (a) Purchase a debt or obligation of the client.

683 (b) Receive from or on behalf of the client:

684 1. A promissory note or other negotiable instrument other
685 than a check or a demand draft; or

686 2. A postdated check or demand draft.

687 (c) Lend money or provide credit to the client, except as
688 a deferral of a fee payment at no additional expense to the
689 client.

690 (d) Obtain a mortgage or other security interest from any
691 person in connection with the services provided to the client.

692 (e) Except as permitted by federal law, disclose the
693 identity or identifying information of the client or the
694 identity of the client's creditors, except to:

695 1. The office, upon proper demand;

696 2. A creditor of the client, to the extent necessary to
697 secure the cooperation of the creditor in a debt settlement
698 program; or

699 3. The extent necessary to administer the debt settlement
700 program.

CS/HB 1045

2009

701 (f) Except as otherwise provided in section 19, provide
702 the client less than the full benefit of a compromise of a debt
703 arranged by the debt settlement advisor.

704 (g) Furnish legal advice or perform legal services, unless
705 the person furnishing that advice to or performing those
706 services for the client is licensed to practice law.

707 (h) Advise clients to stop payment on any of the accounts
708 being handled by the debt settlement advisor.

709 Section 25. Advertising.--A debt settlement advisor that
710 advertises debt settlement services may not make statements that
711 are misleading or deceptive, and the advertisements may not
712 conflict with the information specified in section 14.

713 Section 26. Internal complaint policy.--Each debt
714 settlement advisor shall establish a formal internal complaint
715 policy that creates a process for the debt settlement advisor to
716 receive, review, and address or resolve formal complaints
717 internally. The availability of this process shall be
718 communicated in writing to clients enrolled in the debt
719 settlement advisor's debt settlement program. This policy must
720 include a provision that all clients who file a formal complaint
721 will receive a response from the debt settlement advisor within
722 a reasonable time following the debt settlement advisor's
723 receipt of such complaint. The debt settlement advisor shall
724 maintain a file that documents each formal complaint, the
725 handling and resolution of each complaint, and the debt
726 settlement advisor shall disclose the file to the office upon
727 request.

728 Section 27. Powers of administration; rules.--

729 (1) The office may act on its own initiative or in
730 response to a complaint. The office may seek voluntary
731 compliance with this act or initiate enforcement actions as
732 provided in this act.

733 (2) The office may investigate and examine, by subpoena or
734 otherwise, the activities, books, accounts, and records of a
735 debt settlement advisor or any person to whom a debt settlement
736 advisor has delegated his or her obligations under an agreement
737 or this act, in order to determine compliance with this act.

738 (3) In support of its enforcement powers, the office may:

739 (a) Charge the debt settlement advisor the reasonable
740 expenses necessarily incurred to conduct the examination;

741 (b) Require or permit the debt settlement advisor to file
742 a statement under oath as to all the facts and circumstances of
743 the matter to be investigated;

744 (c) Enter into a cooperative arrangement with any federal
745 or state agency having authority over debt settlement advisors
746 and exchange with any of those agencies information about a debt
747 settlement advisor, including information obtained during an
748 examination of the debt settlement advisor; or

749 (d) Establish reasonable fees to be paid by a debt
750 settlement advisor for the expense of administering this
751 section.

752 (4) The office may adopt rules to administer this act.

753 Section 28. Administrative remedies.--

754 (1) The office may enforce this act by:

755 (a) Ordering a debt settlement advisor, director, officer,
756 or agent of a debt settlement advisor to cease and desist from

757 any violations of this act;

758 (b) Ordering a debt settlement advisor who has violated
 759 this act to correct the violation, including making restitution
 760 to the person aggrieved by the violation;

761 (c) Imposing on a debt settlement advisor a civil penalty
 762 not to exceed \$1,000 for each violation;

763 (d) Intervening in an action brought under section 30; and

764 (e) Initiating an enforcement action in the circuit court
 765 to enforce an order or to obtain a restitution, an injunction,
 766 or another equitable relief.

767 (2) If a person knowingly and willfully violates, or
 768 authorizes, directs, or aids another to violate, a final order
 769 issued under subsection (1), the office may impose an additional
 770 civil penalty not exceeding \$1,000 for each violation.

771 (3) The office may recover reasonable costs of enforcing
 772 this act, including reasonable attorney's fees.

773 (4) In determining the amount of a civil penalty to be
 774 imposed under subsection (1) or subsection (2), the office shall
 775 consider the seriousness of the violation, the good faith of the
 776 violator, any previous violations by the violator, the
 777 deleterious effect of the violation on the public, the net worth
 778 of the violator, and any other fact relevant to the
 779 determination of the civil penalty.

780 Section 29. Suspension, revocation, or nonrenewal of
 781 license.--

782 (1) The office may suspend, revoke, or deny the renewal of
 783 a debt settlement advisor license if:

784 (a) A fact or condition exists that, if it had existed

785 when the debt settlement advisor applied for the debt settlement
786 advisor license, the fact or condition would have been a reason
787 for denying the license;

788 (b) The debt settlement advisor has committed a material
789 violation of this act or a rule or order of the office under
790 this act;

791 (c) The debt settlement advisor is insolvent;

792 (d) The debt settlement advisor or an affiliate of the
793 debt settlement advisor has refused to permit the office to make
794 an examination authorized by this act, failed to comply with
795 section 28 within 30 days after request, or made a material
796 misrepresentation or omission in complying with section 28; or

797 (e) The debt settlement advisor has not responded within a
798 reasonable time and in an appropriate manner to communications
799 from the office.

800 (2) If the office suspends or revokes a debt settlement
801 advisor's license, the debt settlement advisor may appeal and
802 request a hearing pursuant to chapter 120, Florida Statutes.

803 Section 30. Private enforcement.--

804 (1) If a client voids an agreement pursuant to section 21,
805 the client may recover in a civil action all money paid by or on
806 behalf of the client pursuant to the agreement, in addition to
807 the recovery of reasonable attorney's fees and costs.

808 (2) A client with respect to whom a debt settlement
809 advisor violates this act may recover in a civil action from the
810 debt settlement advisor and any person that caused the
811 violation:

812 (a) Compensatory damages for economic injury caused by the

813 violation;

814 (b) Except as otherwise provided in subsection (3), the
 815 greater of the amount recoverable under subsection (1) or
 816 \$1,000; and

817 (c) Reasonable attorney's fees and costs.

818 (3) In addition to the remedy available under subsection
 819 (2), if a debt settlement advisor violates a client's rights
 820 under section 19, the client may recover in a civil action all
 821 money paid by or on behalf of the client pursuant to the
 822 agreement, except for the amounts paid to the creditors.

823 (4) A debt settlement advisor is not liable for violating
 824 this act if the debt settlement advisor proves that the
 825 violation was not intentional and resulted from a good faith
 826 error notwithstanding the maintenance of procedures reasonably
 827 adapted to avoid the error. If, in connection with a violation,
 828 the debt settlement advisor has received more money than
 829 authorized by an agreement or this act, the defense provided by
 830 this subsection is not available unless the debt settlement
 831 advisor refunds the excess money within 3 business days after
 832 learning of the violation.

833 Section 31. Deceptive or unfair trade practices; effect on
 834 other remedies.--

835 (1) A violation of this act is a deceptive and unfair
 836 trade practice.

837 (2) The remedies of this act are in addition to remedies
 838 otherwise available for the same conduct under state law.

839 (3) This act is supplemental to, and makes no attempt to
 840 preempt, other consumer protection laws that are not

841 inconsistent with this act.

842 Section 32. Statute of limitations.--

843 (1) Any enforcement action must be commenced within 4
 844 years after the conduct of the violation occurs.

845 (2) Any private enforcement action must be commenced
 846 within 2 years after the latest of:

847 (a) The client's last transmission of money to a debt
 848 settlement advisor;

849 (b) The date on which the client discovered or reasonably
 850 should have discovered the facts giving rise to the client's
 851 claim; or

852 (c) Termination of actions or proceedings by the office
 853 with respect to a violation of this act.

854 (3) Any limitation period prescribed in this section is
 855 tolled during any period in which the debt settlement advisor
 856 has materially and willfully misrepresented information required
 857 to be disclosed to the client or the office by this act.

858 Section 33. Relation to the Electronic Signatures in
 859 Global and National Commerce Act.--This act modifies, limits,
 860 and supersedes the federal Electronic Signatures in Global and
 861 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not
 862 modify, limit, or supersede s. 101(c) of that act , 15 U.S.C. s.
 863 7001(c), or authorize electronic delivery of any of the notices
 864 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

865 Section 34. If any provision of this act or the
 866 application thereof to any person or circumstance is held
 867 invalid, the invalidity does not affect other provisions or
 868 applications of the act which can be given effect without the

CS/HB 1045

2009

869 invalid provision or application, and to this end the provisions
870 of this act are declared severable.

871 Section 35. This act shall take effect July 1, 2009.