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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

817.801 Definitions.—As used in this part, the term:

(1) "Control person" means any person who possesses the power, directly or indirectly, to affect the management or policies of a credit counseling organization, including, but not limited to, the organization's owners if the organization is a partnership or sole proprietorship, and the organization's



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13 corporate officers, corporate directors, resident agents, and
14 trustees.

15 (2)~~(1)~~ "Credit counseling organization ~~agency~~" means any
16 person ~~organization~~ providing debt management services or credit
17 counseling services.

18 (3)~~(2)~~ "Credit counseling services" means ~~confidential~~
19 money management, debt reduction, and financial educational
20 services. The term does not include foreclosure-related rescue
21 services as defined in s. 501.1377.

22 (4)~~(3)~~ "Creditor contribution" means any sum that a
23 creditor agrees to contribute to a credit counseling
24 organization ~~agency~~, whether directly or by setoff against
25 amounts otherwise payable to the creditor on behalf of a
26 consumer ~~debtors~~.

27 (5)~~(4)~~ "Debt management services" means services provided
28 to a consumer ~~debtor~~ by a credit counseling organization for a
29 fee to:

30 (a) Effect the adjustment, compromise, or discharge of any
31 ~~unsecured~~ account, note, or other indebtedness of the consumer,
32 except for residential mortgage loan obligations ~~debtor~~; or

33 (b) Receive from the consumer ~~debtor~~ and disburse to a
34 creditor any money or other thing of value.

35 (6)~~(5)~~ "Person" has the same meaning as in s. 1.01 ~~means~~
36 ~~any individual, corporation, partnership, trust, association, or~~
37 ~~other legal entity.~~

38 Section 2. Section 817.802, Florida Statutes, is amended to
39 read:

40 817.802 Prohibited acts ~~Unlawful fees and costs.~~ A credit
41 counseling organization may not:



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42 (1) ~~It is unlawful for any person, while engaging in debt~~
43 ~~management services or credit counseling services, to~~ Charge or
44 accept from a consumer debtor residing in this state, directly
45 or indirectly, any payment for services before the execution of
46 a written service contract, or charge or accept from a consumer
47 a fee or contribution greater than \$50 for the initial setup or
48 initial consultation. Subsequently, the organization person may
49 not charge or accept a fee or contribution from a consumer
50 ~~debtor residing in this state~~ greater than \$120 per year for
51 additional consultations; however or, alternatively, if debt
52 management services as ~~defined in s. 817.801(4)(b)~~ are provided,
53 the organization person may charge ~~the greater of~~ 7.5 percent of
54 the amount paid monthly by the consumer debtor to the
55 organization person or \$35 per month, whichever is greater.

56 (2) Advise any consumer, directly or indirectly, not to
57 contact or communicate with his or her creditors before or
58 during the service contract period.

59 (3) Make or use any false or misleading representations or
60 omit any material fact in the offer or sale of services offered,
61 or engage, directly or indirectly, in any fraudulent, false,
62 misleading, unconscionable, unfair, or deceptive act or practice
63 in connection with the offer or sale of any of the services of a
64 credit counseling organization.

65 (4) Provide services to a consumer without executing a
66 service contract that complies with s. 817.8045.

67 (5) Fail to provide copies of all service contracts and
68 other documents the consumer is required to sign as provided
69 under s. 817.8045.

70 (6) Fail to perform any of the terms, conditions, and



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71 obligations provided in the service contract with the consumer.

72 (7) Fail to comply with the requirements of s. 817.805.

73 ~~(2) This section does not prohibit any person, while~~
74 ~~engaging in debt management or credit counseling services, from~~
75 ~~imposing upon and receiving from a debtor a reasonable and~~
76 ~~separate charge or fee for insufficient funds transactions.~~

77 Section 3. Section 817.803, Florida Statutes, is amended to
78 read:

79 817.803 Exceptions. ~~Nothing in~~ This part does not apply
80 applies to:

81 (1) A person licensed to practice law in this state who is
82 providing legal representation to a client with respect to
83 credit counseling services or debt management and who does not
84 engage in the business of providing credit counseling or debt
85 management services on a continuing basis. ~~Any Debt management~~
86 ~~or credit counseling services provided in the practice of law in~~
87 ~~this state;~~

88 (2) A ~~Any~~ person who engages in debt adjustment to adjust
89 the indebtedness owed to such person. ~~;~~ ~~or~~

90 (3) The following entities or their subsidiaries:

91 (a) The Federal National Mortgage Association;

92 (b) The Federal Home Loan Mortgage Corporation;

93 (c) The Florida Housing Finance Corporation, ~~a public~~
94 ~~corporation~~ created in s. 420.504;

95 (d) A bank, bank holding company, trust company, savings
96 and loan association, credit union, credit card bank, or savings
97 bank that is regulated and supervised by the Office of the
98 Comptroller of the Currency, the Office of Thrift Supervision,
99 the Federal Reserve, the Federal Deposit Insurance Corporation,



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100 the National Credit Union Administration, the Office of
101 Financial Regulation of the Department of Financial Services, or
102 any state banking regulator;

103 (e) A consumer reporting agency as defined in the Federal
104 Fair Credit Reporting Act, 15 U.S.C. s. 1681a ~~ss. 1681-1681y~~, ~~as~~
105 ~~it existed on April 5, 2004~~; or

106 (f) Any subsidiary or affiliate of a bank holding company,
107 its employees and its exclusive agents acting under written
108 agreement.

109 Section 4. Section 817.804, Florida Statutes, is amended to
110 read:

111 817.804 Financial requirements; disclosure ~~and financial~~
112 ~~reporting~~.-

113 (1) A credit counseling organization must ~~Any person~~
114 ~~engaged in debt management services or credit counseling~~
115 ~~services shall~~:

116 (a) Obtain from a licensed certified public accountant an
117 annual audit that is conducted in accordance with generally
118 accepted auditing standards and that includes ~~shall include~~ all
119 of the organization's accounts ~~of such person~~ in which the funds
120 of consumers ~~debtors~~ are deposited and from which payments are
121 made to creditors on behalf of consumers ~~debtors~~.

122 (b) Obtain and maintain at all times insurance coverage for
123 employee dishonesty, depositor's forgery, and computer fraud-
124 ~~The insurance coverage must be~~ in an amount not less than the
125 greater of \$100,000 or 10 percent of the monthly average of the
126 aggregate amount of all deposits made by consumers to the
127 organization for distribution to creditors ~~with such person by~~
128 ~~all debtors~~ for the 6 months immediately preceding the date of



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129 initial application for or renewal of the insurance. The
130 deductible on such coverage may ~~shall~~ not exceed 10 percent of
131 the face amount of the policy coverage.

132 (c) Obtain and maintain a surety bond in the amount of
133 \$100,000 from a surety company authorized to do business in this
134 state. The bond shall be in favor of the state for the use and
135 benefit of any consumer who suffers or sustains any loss or
136 damage by reason of any violation of the provisions of this
137 part.

138 (2) A copy of the annual audit and insurance policies
139 required by this section must ~~shall~~ be available for public
140 inspection at each branch location of the organization. Copies
141 shall be provided, upon written request, to any party requesting
142 a copy for a charge that does not ~~to~~ exceed the cost of copying
143 ~~the reproduction of~~ documents.

144 Section 5. Section 817.8045, Florida Statutes, is created
145 to read:

146 817.8045 Service contracts.-

147 (1) The service contract between the credit counseling
148 organization and the consumer must be signed and dated by the
149 consumer and include all of the following:

150 (a) The following statement in at least 12-point uppercase
151 type at the top of the service contract:

152
153 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR
154 CREDITORS BEFORE SIGNING THIS CONTRACT. YOUR CREDITORS MAY BE
155 WILLING TO NEGOTIATE A PAYMENT PLAN OR A RESTRUCTURING OF YOUR
156 DEBT FREE OF CHARGE.

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158 YOUR FAILURE TO DIRECTLY CONTACT YOUR CREDITORS MAY RESULT
159 IN LATE FEES, ADDITIONAL DEBTS, AND AN ADVERSE CREDIT RATING.

161 (b) A full and detailed description of the services to be
162 performed by the credit counseling organization for the
163 consumer, including all guarantees and all promises of full or
164 partial refunds, and the estimated date or length of time by
165 which the services are to be performed.

166 (c) All terms and conditions of payment, including the
167 total of all payments to be made by the consumer and the
168 specific amount of any payments to be made to the credit
169 counseling organization or to any other person.

170 (d) The organization's principal business address and the
171 name and address of its agent in the state authorized to receive
172 service of process.

173 (e) A clear and conspicuous statement in boldface type, in
174 the immediate proximity to the space reserved for the consumer's
175 signature, which states: "You, the consumer, may cancel this
176 service contract at any time prior to midnight of the 5th
177 business day after the date of the signing this contract. [See
178 the attached Notice of Right to Cancel for further explanation
179 of this right.]"

180 (f) A Notice of Right to Cancel attached to the contract,
181 in duplicate and easily detachable, which contains the following
182 statement in at least 12-point uppercase type:

184 NOTICE OF RIGHT TO CANCEL

186 YOU MAY CANCEL ANY CONTRACT FOR DEBT MANAGEMENT OR CREDIT



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187 COUNSELING SERVICES WITHIN 5 BUSINESS DAYS AFTER THE DATE THE
188 CONTRACT IS SIGNED BY YOU WITHOUT INCURRING ANY PENALTY OR
189 OBLIGATION.

190
191 YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10 BUSINESS
192 DAYS AFTER RECEIPT OF YOUR CANCELLATION NOTICE.

193
194 TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND DATED
195 COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE
196 CLEARLY INDICATING YOUR DESIRE TO CANCEL YOUR CONTRACT.

197
198 TO: ... (name of credit counseling organization)...
199 AT: ... (address).....

200
201 BY SIGNING AND DATING THIS NOTICE, I HEREBY CANCEL MY
202 SERVICE CONTRACT, EXECUTED ON: ... (date service contract
203 signed)...

204
205 ... (Signature of Consumer)...

206 ... (Date).....

207 ... (Address).....

208 ... (Phone Number).....

209
210 (2) The credit counseling organization must provide the
211 consumer, at the time the documents are signed, with a copy of
212 the completed service contract and all other documents the
213 credit counseling organization requires the consumer to sign.

214 Section 6. Section 817.805, Florida Statutes, is amended to
215 read:



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216 817.805 Disbursement of funds.—A credit counseling
217 organization must ~~Any person engaged in debt management or~~
218 ~~credit counseling services shall~~ disburse to the appropriate
219 creditors all funds received from a consumer debtor, less any
220 fees permitted by s. 817.802 and any creditor contributions,
221 within 30 days after receipt of such funds. However, a creditor
222 contribution may not reduce any sums ~~to be~~ credited to the
223 account of a consumer debtor making a payment to the
224 organization ~~credit counseling agency~~ for further payment to the
225 creditor. Further, a credit counseling organization must ~~any~~
226 ~~person engaged in such services shall~~ maintain a separate trust
227 account for the receipt of any funds from consumers debtors and
228 the disbursement of such funds on behalf of such consumers
229 ~~debtors~~.

230 Section 7. Section 817.806, Florida Statutes, is amended to
231 read:

232 817.806 Violations.—

233 (1) Any person who violates any provision of this part
234 commits an unfair or deceptive trade practice as defined in part
235 II of chapter 501. Violators are ~~shall be~~ subject to the
236 penalties and remedies provided therein. Further, any consumer
237 injured by a violation of this part may bring an action for
238 recovery of damages. Judgment shall be entered for actual
239 damages, but in no case less than the amount paid by the
240 consumer to the credit counseling organization ~~agency~~, plus
241 reasonable attorney's fees and costs.

242 (2) Any person who violates any provision of this part
243 commits a felony of the third degree, punishable as provided in
244 s. 775.082 or s. 775.083.



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245 Section 8. This act shall take effect October 1, 2009.

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247 ===== T I T L E A M E N D M E N T =====

248 And the title is amended as follows:

249 Delete everything before the enacting clause
250 and insert:

251 A bill to be entitled

252 An act relating to credit counseling services;
253 amending s. 817.801, F.S.; defining and redefining
254 terms; amending s. 817.802, F.S.; prohibiting a credit
255 counseling organization from engaging in certain
256 additional specified acts; deleting a provision that
257 allows the organization to collect a fee for
258 insufficient fund transactions; amending s. 817.803,
259 F.S.; revising provisions relating to an exception
260 provided to attorneys providing representation to
261 clients; amending s. 817.804, F.S.; requiring a credit
262 counseling organization to obtain a surety bond;
263 creating s. 817.8045, F.S.; providing for service
264 contracts; requiring certain provisions to be included
265 in such contracts; requiring the credit counseling
266 organization to provide the consumer with copies of
267 all signed documents; amending ss. 817.805 and
268 817.806, F.S.; conforming terms to changes made by the
269 act; providing an effective date.