

By Senator Fasano

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1 A bill to be entitled
2 An act relating to credit counseling services;
3 amending s. 817.801, F.S.; defining and redefining
4 terms; creating s. 817.8015, F.S.; requiring credit
5 counseling organizations to annually register with the
6 Office of Financial Regulation; providing registration
7 requirements; providing grounds for denying
8 registration; providing for a registration fee;
9 authorizing the office to adopt rules; amending s.
10 817.802, F.S.; prohibiting a credit counseling
11 organization from engaging in certain additional
12 specified acts; deleting a provision that allows the
13 organization to collect a fee for insufficient fund
14 transactions; amending s. 817.803, F.S.; revising
15 provisions relating to an exception provided to
16 attorneys providing representation to clients;
17 amending s. 817.804, F.S.; requiring a credit
18 counseling organization to obtain a surety bond;
19 authorizing the office to adopt rules; creating s.
20 817.8045, F.S.; providing for service contracts;
21 requiring certain provisions to be included in such
22 contracts; requiring the credit counseling
23 organization to provide the consumer with copies of
24 all signed documents; amending ss. 817.805 and
25 817.806, F.S.; conforming terms to changes made by the
26 act; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 817.801, Florida Statutes, is amended to
31 read:

32 817.801 Definitions.—As used in this part, the term:

33 (1) "Control person" means any person who possesses the
34 power, directly or indirectly, to affect the management or
35 policies of a credit counseling organization, including, but not
36 limited to, the organization's owners if the organization is a
37 partnership or sole proprietorship, and the organization's
38 corporate officers, corporate directors, resident agents, and
39 trustees.

40 (2)~~(1)~~ "Credit counseling organization ~~agency~~" means any
41 person ~~organization~~ providing debt management services or credit
42 counseling services.

43 (3)~~(2)~~ "Credit counseling services" means ~~confidential~~
44 money management, debt reduction, and financial educational
45 services. The term does not include foreclosure-related rescue
46 services as defined in s. 501.1377.

47 (4)~~(3)~~ "Creditor contribution" means any sum that a
48 creditor agrees to contribute to a credit counseling
49 organization ~~agency~~, whether directly or by setoff against
50 amounts otherwise payable to the creditor on behalf of a
51 consumer ~~debtors~~.

52 (5)~~(4)~~ "Debt management services" means services provided
53 to a consumer ~~debtor~~ by a credit counseling organization for a
54 fee to:

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

58 (b) Receive from the consumer ~~debtor~~ and disburse to a

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59 creditor any money or other thing of value.

60 (6) "Office" means the Office of Financial Regulation.

61 (7)-(5) "Person" has the same meaning as in s. 1.01 ~~means~~
62 ~~any individual, corporation, partnership, trust, association, or~~
63 ~~other legal entity.~~

64 Section 2. Section 817.8015, Florida Statutes, is created
65 to read:

66 817.8015 Registration.—Each credit counseling organization
67 doing business in this state must register and annually renew
68 such registration with the office in accordance with this
69 section.

70 (1) To register or renew registration, a credit counseling
71 organization shall provide the following to the office:

72 (a) The organization's business or trade name, current
73 mailing address, the address of each location or branch at which
74 the organization conducts business and a designation of which
75 location constitutes its principal place of business, and a list
76 of each county in which the organization plans to do business
77 during the next calendar year.

78 (b) The full names, current addresses, current telephone
79 numbers, social security numbers, and federal identification
80 numbers for each control person of the organization.

81 (c) A statement as to whether the organization is a
82 domestic or foreign corporation and, if so, the state and date
83 of incorporation, the charter number of the corporation, or, if
84 a foreign corporation, the date the corporation first registered
85 to do business in this state.

86 (d) A statement indicating whether the organization or any
87 control person holds a current telemarketing license from the

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88 Department of Agriculture and Consumer Services or, if not, an
89 explanation as to why a telemarketing license has not been
90 obtained.

91 (e) A statement listing the names of any other businesses
92 or entities through which a control person is currently
93 operating or did business as a credit counseling organization
94 within the 5 calendar years immediately preceding registration
95 or registration renewal, and whether the control person was the
96 subject of any state action, including suspension or revocation.

97 (f) A statement identifying and explaining any ongoing or
98 prior state or federal investigation or any civil, criminal, or
99 administrative action taken against the organization or control
100 persons, including a withholding of adjudication or conviction
101 of any crime involving fraud, moral turpitude, or dishonest
102 dealing.

103 (g) A copy of all service contracts offered to consumers.

104 (h) Pursuant to s. 817.804, a copy of the organization's
105 annual audit and insurance policy, and the surety bond and
106 related documentation required to be filed with the office.

107 (2) A credit counseling organization changing its
108 registered name, location, or agent for service of process at
109 any time other than at the time of renewing its registration
110 must notify the office of such change. The office must be
111 notified in writing in advance of any change in the
112 organization's business location. A registration is not valid
113 for any organization that transacts business at a location other
114 than those designated in its registration.

115 (3) A registration issued under this section is not
116 assignable or transferable.

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117 (4) The office may deny or refuse to renew the registration
118 of any credit counseling organization based upon a determination
119 that the organization or any of its control persons has:

120 (a) Failed to meet the requirements for initial
121 registration or renewal as provided in this section;

122 (b) Been convicted of a crime involving fraud, moral
123 turpitude, or dishonest dealing;

124 (c) Not satisfied any fine or penalty arising out of any
125 administrative or civil enforcement action brought by a
126 governmental agency or individual and based upon conduct
127 involving fraud, moral turpitude, dishonest dealing, or any
128 violation of this part; or

129 (d) Had a judgment entered against the credit counseling
130 organization or the control persons in any action brought under
131 the Florida Deceptive and Unfair Trade Practices Act or any
132 action brought under this part.

133 (5) The credit counseling organization shall pay a
134 registration fee of \$500 per year to the office. All moneys
135 collected by the office shall be deposited into the office's
136 Regulatory Trust Fund and used to administer this part.

137 (6) The office may adopt rules to administer this section.

138 Section 3. Section 817.802, Florida Statutes, is amended to
139 read:

140 817.802 Prohibited acts ~~Unlawful fees and costs.~~ A credit
141 counseling organization may not:

142 ~~(1) It is unlawful for any person, while engaging in debt~~
143 ~~management services or credit counseling services, to Charge or~~
144 ~~accept from a consumer debtor residing in this state, directly~~
145 ~~or indirectly, any payment for services before the execution of~~

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146 a written service contract, or charge or accept from a consumer
147 a fee or contribution greater than \$50 for the initial setup or
148 initial consultation. Subsequently, the organization person may
149 not charge or accept a fee or contribution from a consumer
150 ~~debtor residing in this state~~ greater than \$120 per year for
151 additional consultations; however or, alternatively, if debt
152 management services ~~as defined in s. 817.801(4)(b)~~ are provided,
153 the organization person may charge ~~the greater of~~ 7.5 percent of
154 the amount paid monthly by the consumer debtor to the
155 organization person or \$35 per month, whichever is greater.

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

159 (3) Make or use any false or misleading representations or
160 omit any material fact in the offer or sale of services offered,
161 or engage, directly or indirectly, in any fraudulent, false,
162 misleading, unconscionable, unfair, or deceptive act or practice
163 in connection with the offer or sale of any of the services of a
164 credit counseling organization.

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

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

170 (6) Fail to perform any of the terms, conditions, and
171 obligations provided in the service contract with the consumer.

172 (7) Fail to obtain the annual audit, insurance coverage,
173 and surety bond or fail to make such audit and coverage
174 information available for public inspection as required by s.

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175 817.804.

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

180 Section 4. Section 817.803, Florida Statutes, is amended to
181 read:

182 817.803 Exceptions. ~~Nothing in~~ This part does not apply
183 ~~applies~~ to:

184 (1) A person licensed to practice law in this state who is
185 providing legal representation to a client with respect to
186 credit counseling services or debt management and who does not
187 engage in the business of providing credit counseling or debt
188 management services on a continuing basis. ~~Any Debt management~~
189 ~~or credit counseling services provided in the practice of law in~~
190 ~~this state;~~

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

193 (3) The following entities or their subsidiaries:

194 (a) The Federal National Mortgage Association;

195 (b) The Federal Home Loan Mortgage Corporation;

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

198 (d) A bank, bank holding company, trust company, savings
199 and loan association, credit union, credit card bank, or savings
200 bank that is regulated and supervised by the Office of the
201 Comptroller of the Currency, the Office of Thrift Supervision,
202 the Federal Reserve, the Federal Deposit Insurance Corporation,
203 the National Credit Union Administration, the Office of

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204 Financial Regulation of the Department of Financial Services, or
205 any state banking regulator;

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

209 (f) Any subsidiary or affiliate of a bank holding company,
210 its employees and its exclusive agents acting under written
211 agreement.

212 Section 5. Section 817.804, Florida Statutes, is amended to
213 read:

214 817.804 Financial requirements; disclosure ~~and financial~~
215 ~~reporting.~~-

216 (1) A credit counseling organization must ~~Any person~~
217 ~~engaged in debt management services or credit counseling~~
218 ~~services shall:~~

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

225 (b) Obtain and maintain at all times insurance coverage for
226 employee dishonesty, depositor's forgery, and computer fraud.
227 ~~The insurance coverage must be~~ in an amount not less than the
228 greater of \$100,000 or 10 percent of the monthly average of the
229 aggregate amount of all deposits made by consumers to the
230 organization for distribution to creditors ~~with such person by~~
231 ~~all debtors~~ for the 6 months immediately preceding the date of
232 initial application for or renewal of the insurance. The

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233 deductible on such coverage may ~~shall~~ not exceed 10 percent of
234 the face amount of the policy coverage.

235 (c) Obtain and maintain a surety bond in the amount of
236 \$100,000, valid upon registration, by a surety company
237 authorized to do business in this state. The bond must be filed
238 with the office and must designate the office as its sole
239 beneficiary. The bond shall be in favor of the state for the use
240 and benefit of any consumer who suffers or sustains any loss or
241 damage by reason of any violation of the provisions of this
242 part. The organization shall provide the office with
243 documentation that the premiums have been paid in full and that
244 the bond issued by the surety meets the requirements of this
245 part. The aggregate liability of the surety to all persons may
246 not exceed the amount of the bond.

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

253 (3) The office may adopt rules to administer this section.

254 Section 6. Section 817.8045, Florida Statutes, is created
255 to read:

256 817.8045 Service contracts.-

257 (1) The service contract between the credit counseling
258 organization and the consumer must be signed and dated by the
259 consumer and include all of the following:

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

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262
263 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR
264 CREDITORS BEFORE SIGNING THIS CONTRACT. YOUR CREDITORS
265 MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR A
266 RESTRUCTURING OF YOUR DEBT FREE OF CHARGE.

267
268 YOUR FAILURE TO DIRECTLY CONTACT YOUR CREDITORS MAY
269 RESULT IN LATE FEES, ADDITIONAL DEBTS, AND AN ADVERSE
270 CREDIT RATING.

271
272 (b) A full and detailed description of the services to be
273 performed by the credit counseling organization for the
274 consumer, including all guarantees and all promises of full or
275 partial refunds, and the estimated date or length of time by
276 which the services are to be performed.

277 (c) All terms and conditions of payment, including the
278 total of all payments to be made by the consumer and the
279 specific amount of any payments to be made to the credit
280 counseling organization or to any other person.

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

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

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

294
295 NOTICE OF RIGHT TO CANCEL
296

297 YOU MAY CANCEL ANY CONTRACT FOR DEBT MANAGEMENT OR
298 CREDIT COUNSELING SERVICES WITHIN 5 BUSINESS DAYS
299 AFTER THE DATE THE CONTRACT IS SIGNED BY YOU WITHOUT
300 INCURRING ANY PENALTY OR OBLIGATION.

301
302 YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10
303 BUSINESS DAYS AFTER RECEIPT OF YOUR CANCELLATION
304 NOTICE.

305
306 TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND
307 DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER
308 WRITTEN NOTICE CLEARLY INDICATING YOUR DESIRE TO
309 CANCEL YOUR CONTRACT.

310
311 TO: ...(name of credit counseling organization)...

312 AT: ...(address).....
313

314 BY SIGNING AND DATING THIS NOTICE, I HEREBY
315 CANCEL MY SERVICE CONTRACT, EXECUTED ON: ...(date
316 service contract signed)...

317
318 ...(Signature of Consumer)...

319 ...(Date).....

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320 ... (Address).....
321 ... (Phone Number).....

322
323 (2) The credit counseling organization must provide the
324 consumer, at the time the documents are signed, with a copy of
325 the completed service contract and all other documents the
326 credit counseling organization requires the consumer to sign.

327 Section 7. Section 817.805, Florida Statutes, is amended to
328 read:

329 817.805 Disbursement of funds.—A credit counseling
330 organization must ~~Any person engaged in debt management or~~
331 ~~credit counseling services shall~~ disburse to the appropriate
332 creditors all funds received from a consumer debtor, less any
333 fees permitted by s. 817.802 and any creditor contributions,
334 within 30 days after receipt of such funds. However, a creditor
335 contribution may not reduce any sums ~~to be~~ credited to the
336 account of a consumer debtor making a payment to the
337 organization ~~credit counseling agency~~ for further payment to the
338 creditor. Further, a credit counseling organization must ~~any~~
339 ~~person engaged in such services shall~~ maintain a separate trust
340 account for the receipt of any funds from consumers debtors and
341 the disbursement of such funds on behalf of such consumers
342 ~~debtors~~.

343 Section 8. Section 817.806, Florida Statutes, is amended to
344 read:

345 817.806 Violations.—

346 (1) Any person who violates any provision of this part
347 commits an unfair or deceptive trade practice as defined in part
348 II of chapter 501. Violators are ~~shall be~~ subject to the

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349 penalties and remedies provided therein. Further, any consumer
350 injured by a violation of this part may bring an action for
351 recovery of damages. Judgment shall be entered for actual
352 damages, but in no case less than the amount paid by the
353 consumer to the credit counseling organization ~~agency~~, plus
354 reasonable attorney's fees and costs.

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

358 Section 9. This act shall take effect July 1, 2009.