

By the Committee on Banking and Insurance; and 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; amending s. 817.802, F.S.; prohibiting a credit
5 counseling organization from engaging in certain
6 additional specified acts; deleting a provision that
7 allows the organization to collect a fee for
8 insufficient fund transactions; amending s. 817.803,
9 F.S.; revising provisions relating to an exception
10 provided to attorneys providing representation to
11 clients; amending s. 817.804, F.S.; requiring a credit
12 counseling organization to obtain a surety bond;
13 creating s. 817.8045, F.S.; providing for service
14 contracts; requiring certain provisions to be included
15 in such contracts; requiring the credit counseling
16 organization to provide the consumer with copies of
17 all signed documents; amending ss. 817.805 and
18 817.806, F.S.; conforming terms to changes made by the
19 act; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 817.801, Florida Statutes, is amended to
24 read:

25 817.801 Definitions.—As used in this part, the term:

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

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30 partnership or sole proprietorship, and the organization's
31 corporate officers, corporate directors, resident agents, and
32 trustees.

33 (2)~~(1)~~ "Credit counseling organization ~~agency~~" means any
34 person ~~organization~~ providing debt management services or credit
35 counseling services.

36 (3)~~(2)~~ "Credit counseling services" means ~~confidential~~
37 money management, debt reduction, and financial educational
38 services. The term does not include foreclosure-related rescue
39 services as defined in s. 501.1377.

40 (4)~~(3)~~ "Creditor contribution" means any sum that a
41 creditor agrees to contribute to a credit counseling
42 organization ~~agency~~, whether directly or by setoff against
43 amounts otherwise payable to the creditor on behalf of a
44 consumer ~~debtors~~.

45 (5)~~(4)~~ "Debt management services" means services provided
46 to a consumer ~~debtor~~ by a credit counseling organization for a
47 fee to:

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

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

53 (6)~~(5)~~ "Person" has the same meaning as in s. 1.01 ~~means~~
54 ~~any individual, corporation, partnership, trust, association, or~~
55 ~~other legal entity.~~

56 Section 2. Section 817.802, Florida Statutes, is amended to
57 read:

58 817.802 Prohibited acts ~~Unlawful fees and costs.~~ A credit

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59 counseling organization may not:

60 ~~(1) It is unlawful for any person, while engaging in debt~~
61 ~~management services or credit counseling services, to Charge or~~
62 ~~accept from a consumer debtor residing in this state, directly~~
63 ~~or indirectly, any payment for services before the execution of~~
64 ~~a written service contract, or charge or accept from a consumer~~
65 ~~a fee or contribution greater than \$50 for the initial setup or~~
66 ~~initial consultation. Subsequently, the organization person may~~
67 ~~not charge or accept a fee or contribution from a consumer~~
68 ~~debtor residing in this state greater than \$120 per year for~~
69 ~~additional consultations; however ~~or~~, alternatively, if debt~~
70 ~~management services as defined in s. 817.801(4)(b) are provided,~~
71 ~~the organization person may charge the greater of 7.5 percent of~~
72 ~~the amount paid monthly by the consumer debtor to the~~
73 ~~organization person or \$35 per month, whichever is greater.~~

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

77 (3) Make or use any false or misleading representations or
78 omit any material fact in the offer or sale of services offered,
79 or engage, directly or indirectly, in any fraudulent, false,
80 misleading, unconscionable, unfair, or deceptive act or practice
81 in connection with the offer or sale of any of the services of a
82 credit counseling organization.

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

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

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

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

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

95 Section 3. Section 817.803, Florida Statutes, is amended to
96 read:

97 817.803 Exceptions. ~~Nothing in~~ This part does not apply
98 applies to:

99 (1) A person licensed to practice law in this state who is
100 providing legal representation to a client with respect to
101 credit counseling services or debt management and who does not
102 engage in the business of providing credit counseling or debt
103 management services on a continuing basis. ~~Any Debt management~~
104 ~~or credit counseling services provided in the practice of law in~~
105 ~~this state;~~

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

108 (3) The following entities or their subsidiaries:

109 (a) The Federal National Mortgage Association;

110 (b) The Federal Home Loan Mortgage Corporation;

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

113 (d) A bank, bank holding company, trust company, savings
114 and loan association, credit union, credit card bank, or savings
115 bank that is regulated and supervised by the Office of the
116 Comptroller of the Currency, the Office of Thrift Supervision,

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117 the Federal Reserve, the Federal Deposit Insurance Corporation,
118 the National Credit Union Administration, the Office of
119 Financial Regulation of the Department of Financial Services, or
120 any state banking regulator;

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

124 (f) Any subsidiary or affiliate of a bank holding company,
125 its employees and its exclusive agents acting under written
126 agreement.

127 Section 4. Section 817.804, Florida Statutes, is amended to
128 read:

129 817.804 Financial requirements; disclosure ~~and financial~~
130 ~~reporting~~.—

131 (1) A credit counseling organization must ~~Any person~~
132 ~~engaged in debt management services or credit counseling~~
133 ~~services shall~~:

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

140 (b) Obtain and maintain at all times insurance coverage for
141 employee dishonesty, depositor's forgery, and computer fraud.
142 ~~The insurance coverage must be~~ in an amount not less than the
143 greater of \$100,000 or 10 percent of the monthly average of the
144 aggregate amount of all deposits made by consumers to the
145 organization for distribution to creditors ~~with such person by~~

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146 ~~all debtors~~ for the 6 months immediately preceding the date of
147 initial application for or renewal of the insurance. The
148 deductible on such coverage may ~~shall~~ not exceed 10 percent of
149 the face amount of the policy coverage.

150 (c) Obtain and maintain a surety bond in the amount of
151 \$100,000 from a surety company authorized to do business in this
152 state. The bond shall be in favor of the state for the use and
153 benefit of any consumer who suffers or sustains any loss or
154 damage by reason of any violation of the provisions of this
155 part.

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

162 Section 5. Section 817.8045, Florida Statutes, is created
163 to read:

164 817.8045 Service contracts.-

165 (1) The service contract between the credit counseling
166 organization and the consumer must be signed and dated by the
167 consumer and include all of the following:

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

171 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR
172 CREDITORS BEFORE SIGNING THIS CONTRACT. YOUR CREDITORS
173 MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR A
174 RESTRUCTURING OF YOUR DEBT FREE OF CHARGE.

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175
176 YOUR FAILURE TO DIRECTLY CONTACT YOUR CREDITORS MAY
177 RESULT IN LATE FEES, ADDITIONAL DEBTS, AND AN ADVERSE
178 CREDIT RATING.

179
180 (b) A full and detailed description of the services to be
181 performed by the credit counseling organization for the
182 consumer, including all guarantees and all promises of full or
183 partial refunds, and the estimated date or length of time by
184 which the services are to be performed.

185 (c) All terms and conditions of payment, including the
186 total of all payments to be made by the consumer and the
187 specific amount of any payments to be made to the credit
188 counseling organization or to any other person.

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

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

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

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203 NOTICE OF RIGHT TO CANCEL

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

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

TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND
DATED COPY OF THIS CANCELATION NOTICE OR ANY OTHER
WRITTEN NOTICE CLEARLY INDICATING YOUR DESIRE TO
CANCEL YOUR CONTRACT.

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

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

... (Signature of Consumer) ...
... (Date)
... (Address)
... (Phone Number)

(2) The credit counseling organization must provide the
consumer, at the time the documents are signed, with a copy of

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233 the completed service contract and all other documents the
234 credit counseling organization requires the consumer to sign.

235 Section 6. Section 817.805, Florida Statutes, is amended to
236 read:

237 817.805 Disbursement of funds.—A credit counseling
238 organization must ~~Any person engaged in debt management or~~
239 ~~credit counseling services shall~~ disburse to the appropriate
240 creditors all funds received from a consumer debtor, less any
241 fees permitted by s. 817.802 and any creditor contributions,
242 within 30 days after receipt of such funds. However, a creditor
243 contribution may not reduce any sums ~~to be~~ credited to the
244 account of a consumer debtor making a payment to the
245 organization ~~credit counseling agency~~ for further payment to the
246 creditor. Further, a credit counseling organization must ~~any~~
247 ~~person engaged in such services shall~~ maintain a separate trust
248 account for the receipt of any funds from consumers debtors and
249 the disbursement of such funds on behalf of such consumers
250 ~~debtors~~.

251 Section 7. Section 817.806, Florida Statutes, is amended to
252 read:

253 817.806 Violations.—

254 (1) Any person who violates any provision of this part
255 commits an unfair or deceptive trade practice as defined in part
256 II of chapter 501. Violators are ~~shall be~~ subject to the
257 penalties and remedies provided therein. Further, any consumer
258 injured by a violation of this part may bring an action for
259 recovery of damages. Judgment shall be entered for actual
260 damages, but in no case less than the amount paid by the
261 consumer to the credit counseling organization ~~agency~~, plus

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262 reasonable attorney's fees and costs.

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

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