

By Senator Bennett

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

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

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

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88 commencing a civil proceeding; providing for the act's  
89 relation to the Electronic Signatures in Global and  
90 National Commerce Act; providing for severability;  
91 providing an effective date.  
92

93 Be It Enacted by the Legislature of the State of Florida:  
94

95 Section 1. Short title.—This act may be cited as the “Debt  
96 Settlement Services Act.”

97 Section 2. Definitions.—As used in this act, the term:

98 (1) “Affiliate” means:

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

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

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

105 (d) An officer or director of, or a client performing  
106 similar functions with respect to, a person described in  
107 paragraph (a).

108 (2) “Agreement” means the agreement between a debt  
109 settlement advisor and a client for the performance of debt  
110 settlement services.

111 (3) “Bank” means a financial institution, including a  
112 commercial bank, savings bank, savings and loan association,  
113 credit union, mortgage bank, and trust company, engaged in the  
114 business of banking, chartered under federal or state law, and  
115 regulated by a federal or state banking regulatory authority.

116 (4) “Client” means a person who has entered into an

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117 agreement with a debt settlement advisor for debt settlement  
118 services.

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

122 (6) "Debt settlement advisor" means a person licensed under  
123 this act to provide debt settlement services to a client. The  
124 term includes an employee or agent of the debt settlement  
125 advisor.

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

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

135 (b) Accounting services provided by a certified public  
136 accountant licensed to provide accounting services in this  
137 state; or

138 (c) Financial-planning services provided by a member of a  
139 financial-planning profession.

140 (8) "Federal act" means the federal Electronic Signatures  
141 in Global and National Commerce Act, 15 U.S.C. s. 7001 et seq.,  
142 as amended.

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

145 (10) "Insolvent" means:

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146 (a) Having generally ceased to pay debts in the ordinary  
147 course of business other than as a result of a good-faith  
148 dispute;

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

150 (c) Being insolvent within the meaning of the federal  
151 bankruptcy law, 11 U.S.C. s. 101 et seq., as amended.

152 (11) "Office" means the Office of Financial Regulation of  
153 the Financial Services Commission.

154 (12) "Principal amount of the debt" means the amount of  
155 debt possessed by the client at the time he or she executes a  
156 debt settlement services agreement with a debt settlement  
157 advisor and before concessions are made by the client's  
158 creditors.

159 (13) "Program" or "debt settlement program" means a process  
160 whereby a debt settlement advisor furnishes a crafted debt  
161 settlement plan to a client and negotiates on behalf of the  
162 client, and after an agreement, the client makes payments  
163 directly to his or her creditors.

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

167 Section 3. Exemptions.—This act does not apply to:

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

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

173 (3) A bank.

174 (4) A title insurer, escrow company, or other entity that

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175 provides bill-paying services if the debt settlement services  
176 are incidental to the bill-paying services.

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

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

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

184 Section 5. License application form, fee, and accompanying  
185 documents.-

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

189 (2) An applicant for a debt settlement advisor license must  
190 file with the office the application form, a fee established by  
191 the office, which may not exceed \$150, and proof that:

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

194 (b) In lieu of an aggregate umbrella insurance policy, the  
195 applicant has filed a surety bond with the office, in a form  
196 approved by the office, for a term not less than the expiration  
197 date of the license. The bond must be in an amount of at least  
198 \$10,000. However, the office may demand that an applicant file a  
199 bond of a larger amount if the office determines that the  
200 financial condition and business experience of the debt  
201 settlement advisor, the history of the debt settlement advisor  
202 in performing debt settlement services, and the risk to clients  
203 justify a larger surety bond. The office may not require a

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204 surety bond greater than \$50,000. The surety bond must be to the  
205 office and in favor of any clients in this state who suffer loss  
206 arising out of debt settlement services from a debt settlement  
207 advisor.

208 Section 6. Application for licensure; required  
209 information.-

210 (1) A completed application form must include:

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

214 (b) The name under which the applicant will conduct  
215 business.

216 (c) The address of each location in this state, other than  
217 the applicant's principal business address, at which the  
218 applicant will provide debt settlement services, or a statement  
219 that the applicant will provide debt settlement service at no  
220 location other than the principal business address.

221 (d) If the applicant is a business entity, the name and  
222 home address of each officer and director of the applicant and  
223 of each person who owns a 10 percent or greater interest in the  
224 applicant.

225 (e) A statement describing, to the extent it is known or  
226 should be known by the applicant, any civil or criminal  
227 judgments related to financial fraud or misuse, and any  
228 administrative or enforcement actions relating to financial  
229 fraud or misuse, by a governmental agency in any jurisdiction  
230 against the applicant or an officer, director, owner, employee,  
231 or agent of the applicant's business.

232 (f) A copy of each debt-settlement-services agreement form



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233 that the applicant will use in providing services to clients.

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

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

240 (i) A description of any ownership interest of 10 percent  
241 or greater by a director, owner, or employee of the applicant  
242 in:

243 1. Any affiliate of the applicant; or  
244 2. Any entity that provides products or services to the  
245 applicant or any client related to the applicant's debt  
246 settlement services.

247 (j) The identity of each director who is an affiliate of  
248 the applicant.

249 (k) Evidence that the applicant has a resident agent in  
250 this state of record with the Department of State.

251 (l) Any other information that the office reasonably  
252 requires to perform the duties of the office under section 9 of  
253 this act.

254 (2) The application form must contain a statement informing  
255 the applicant that a false or dishonest answer to any question  
256 in the application may be grounds for denial or subsequent  
257 suspension or revocation of the applicant's license. A completed  
258 application form must be signed by the applicant acknowledging  
259 the accuracy and truth of each answer and statement made in the  
260 application.

261 Section 7. Application for licensure; obligation to update

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262 information.-An applicant or licensed debt settlement advisor  
263 shall notify the office whenever there is a change of the  
264 information specified in section 5 or section 6 of this act no  
265 later than 30 days after the change.

266 Section 8. Application for licensure; public information.-  
267 The office shall make the information contained in an initial  
268 application for a debt settlement advisor license and in a  
269 renewal application for a debt settlement advisor license  
270 available to the public.

271 Section 9. Licensure; issuance or denial.-

272 (1) The office shall approve or deny an initial application  
273 for a debt settlement advisor license within 60 days after the  
274 applicant files the completed application with the office. If  
275 the office requests additional information from the applicant,  
276 it may extend the 60-day period for not more than 45 additional  
277 days. If the office denies the application, it must inform the  
278 applicant in writing of the reasons for the denial.

279 (2) The office shall issue an initial license to a debt  
280 settlement advisor who complies with sections 5 and 6 of this  
281 act. A license is valid for 1 year after the date the license is  
282 granted.

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

285 (a) The application contains information that is materially  
286 erroneous or incomplete;

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

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291 (c) The application is not accompanied by the fee  
292 established by the office; or

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

296 (4) If the office denies the application or does not act on  
297 the application within the prescribed time, the applicant may  
298 appeal and request a hearing pursuant to chapter 120, Florida  
299 Statutes.

300 Section 10. License renewal.—

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

303 (2) An application to renew a license as a debt settlement  
304 advisor must be in a form prepared and distributed by the  
305 office, and:

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

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

310 (c) Disclose any changes in the information contained in  
311 the applicant's initial application for a license or in its  
312 immediately previous application for a renewal of the license,  
313 as appropriate; and

314 (d) Provide any other information that the office  
315 reasonably requires to perform its duties under this section.

316 (3) If a debt settlement advisor files a timely and  
317 complete application for renewal of a license, the debt  
318 settlement services license remains in effect until the office  
319 notifies the applicant, in writing, whether the application was

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320 approved or denied. If the office denies the renewal  
321 application, the written notice to the debt settlement advisor  
322 must include the reasons for the denial.

323 (4) If the office denies an application to renew a debt  
324 settlement license, the debt settlement advisor may appeal the  
325 denial and request a hearing pursuant to chapter 120, Florida  
326 Statutes, within 30 days after receiving the notice of the  
327 denial.

328 (5) If an appeal proceeding is commenced, the debt  
329 settlement advisor may continue to provide debt settlement  
330 services to a client with whom the advisor has an agreement. If  
331 the denial of the renewal license is affirmed, the debt  
332 settlement advisor shall discontinue providing debt settlement  
333 services to clients and transfer the clients' agreements to  
334 other licensed debt settlement advisors.

335 Section 11. Licensure in another state.—If a debt  
336 settlement advisor holds a license or certificate of licensure  
337 in another state authorizing him or her to provide debt  
338 settlement services in that state, the debt settlement advisor  
339 may submit a copy of that license or certificate and the  
340 application used to file for a license in another state to the  
341 office. The office shall accept the application and the license  
342 or certificate from the other state as an application for a debt  
343 settlement advisor license or for a renewal of a debt settlement  
344 license, as appropriate, in this state if:

345 (1) The application from the other state requests  
346 information from the advisor which is substantially similar to  
347 or more comprehensive than that requested in the application  
348 submitted in this state;

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349 (2) The applicant provides the information required by  
350 sections 5 and 6 of this act; and

351 (3) The applicant, under penalty of false statement,  
352 certifies that the information contained in the application is  
353 current or, to the extent it is not current, supplements the  
354 application to make the information current.

355 Section 12. Requirement of good faith.—A debt settlement  
356 advisor shall act in good faith in all matters under this act.

357 Section 13. Customer service.—Each licensed debt settlement  
358 advisor shall maintain a toll-free telephone service, staffed at  
359 a level that reasonably permits a client to speak to a customer-  
360 service representative, as appropriate, during ordinary business  
361 hours.

362 Section 14. Prerequisites for providing debt settlement  
363 services.—

364 (1) Before a licensed debt settlement advisor provides debt  
365 settlement services to a client, he or she must give a potential  
366 client an itemized list of goods and services available from the  
367 debt settlement advisor and the charges for each service  
368 rendered. The list and charges must be clear and conspicuous.

369 (2) A debt settlement advisor may not furnish debt  
370 settlement services unless the debt settlement advisor has  
371 prepared a financial analysis for the potential client.

372 (3) A debt settlement advisor, before signing an agreement  
373 with an individual to become a potential client of the debt  
374 settlement advisor, shall:

375 (a) Provide the individual with a copy of the financial  
376 analysis and, in writing, a notice that identifies the debt  
377 settlement advisor and acknowledges that the client may keep the

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378 financial analysis even if the individual chooses not to become  
379 a client of the debt settlement advisor;

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

384 (c) Inform the individual that:

385 1. Not all debt settlement programs are suitable for all  
386 clients;

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

389 3. Nonpayment of debt may lead creditors to increase  
390 finance and other charges or undertake collection activity,  
391 including litigation;

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

396 5. Specific results cannot be predicted or guaranteed and  
397 the debt settlement advisor cannot force negotiations or  
398 settlements with creditors who do not wish to participate in  
399 negotiations, but will nevertheless advocate on behalf of the  
400 client;

401 6. The debt settlement program requires that the client  
402 meet a certain savings goal in order to maximize settlement  
403 results;

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

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

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

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

413 (1) A debt settlement advisor may satisfy the requirements  
414 of sections 14, 17, and 23 of this act by means of the Internet  
415 or other electronic means if the debt settlement advisor obtains  
416 a consumer's consent in the manner provided by s. 101(c)(1) of  
417 the federal act.

418 (2) The disclosures and materials required by sections 14,  
419 17, and 23 shall be presented in a form that can be accurately  
420 reproduced for later reference.

421 (3) With respect to disclosure by means of an Internet  
422 website, the disclosure of the information required by section  
423 14 must appear on one or more screens that contain no  
424 information other than the information required, and the client  
425 must be able to see the information on the screens before  
426 agreeing to participate in the program.

427 (4) At the time of providing the materials and agreement  
428 required in sections 14, 17, and 23 of this act, a debt  
429 settlement advisor shall inform the client that upon electronic,  
430 telephonic, or written request, the advisor shall send the  
431 client a written copy of the materials and shall comply with a  
432 request as provided in subsection (7).

433 (5) If a debt settlement advisor is requested, before the  
434 expiration of 90 days after a program is completed or  
435 terminated, to send a written copy of the materials required by

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436 sections 14, 17, and 23 of this act, the debt settlement advisor  
437 shall send them at no charge within 3 business days after  
438 receipt of the request. However, the debt settlement advisor  
439 need not comply with a request more than once per calendar month  
440 or if the advisor reasonably believes that the request is made  
441 for purposes of harassment. If a request is made more than 90  
442 days after a program is completed or terminated, the debt  
443 settlement advisor shall send within a reasonable time a written  
444 copy of the materials requested.

445 (6) If a debt settlement advisor maintains an Internet  
446 website, the debt settlement advisor shall disclose on the home  
447 page of the website or on a page that is clearly and  
448 conspicuously connected to the home page by a link that clearly  
449 reveals its contents:

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

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

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

463 Section 16. Form and contents of a debt settlement  
464 agreement.-



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- 465       (1) A debt settlement services agreement must be in  
466 writing, dated and signed by the client and the debt settlement  
467 advisor, and delivered to the client immediately upon the  
468 signing of the agreement. The agreement must include:
- 469           (a) The name and home address of the client.  
470           (b) The name, business address, and telephone number of the  
471 debt settlement advisor.
- 472           (c) The debt settlement services to be provided.  
473           (d) The amount, or method of determining the amount, of all  
474 fees, individually itemized, to be paid by the client.
- 475           (e) The process whereby the debt settlement advisor will  
476 comply with his or her obligations under section 23 of this act.
- 477           (f) The statement that the client may cancel the agreement  
478 as provided in section 17 of this act.
- 479           (g) The disclosure that the client may contact the office  
480 with any questions or complaints regarding the debt settlement  
481 advisor.
- 482           (h) The address, telephone number, and Internet address or  
483 website of the office.
- 484       (2) For the purposes of subsection (1), delivery of an  
485 electronic record occurs when it is made available in a format  
486 that the client may retrieve, save, and print, and when the  
487 client is notified that it is available.
- 488       (3) If the office supplies the debt settlement advisor with  
489 any information required under paragraph (1)(h), the debt  
490 settlement advisor may comply with that requirement by  
491 disclosing only the information supplied by the office.
- 492       (4) An agreement must state that the client has a right to  
493 terminate the agreement at any time by giving the debt

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494 settlement advisor written or electronic notice, in which event  
495 all powers of attorney granted by the client to the debt  
496 settlement advisor are revoked and ineffective.

497 (5) An agreement may confer on a debt settlement advisor  
498 the power of attorney to settle a client's debt for no more than  
499 50 percent of the principal amount of the debt. An agreement may  
500 not confer a power of attorney to settle a debt for more than 50  
501 percent of the principal amount of the debt, but may confer a  
502 power of attorney to negotiate with creditors of the client on  
503 behalf of the client. The debt settlement advisor shall obtain  
504 the consent of the client before accepting a concession  
505 settlement of more than 50 percent of the principal amount of  
506 the debt.

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

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

510 (b) Except as permitted by the Federal Arbitration Act, 9  
511 U.S.C. s. 2, as amended, or the Uniform Arbitration Act, contain  
512 any modifications or limitations to otherwise available forums  
513 or procedural rights, including the right to trial by jury,  
514 which are generally available to the client under law and under  
515 this act;

516 (c) Contain restrictions on a client's remedies under this  
517 act or a law other than this act; or

518 (d) Contain a provision that:

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

521 2. Indemnifies any person for liability arising under the  
522 agreement or this act.

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

524        (1) A client may cancel an agreement before midnight of the  
525 3rd business day after the client executes the agreement.

526 However, if a debt settlement services agreement does not comply  
527 with subsection (2), section 17, or section 23 of this act, the  
528 client may cancel the agreement within 30 days after the client  
529 executes the agreement. To exercise the right of cancellation,  
530 the client must give notice in a record to the debt settlement  
531 advisor. Notice by mail is given when mailed.

532        (2) An agreement must be accompanied by a form that  
533 contains a "Notice of Right of Cancellation" heading in bold-  
534 faced type, underlined by bold black lines. The notice must be  
535 in substantially the following form:

536  
537                    NOTICE OF RIGHT OF CANCELLATION

538  
539        You may cancel this agreement, without any penalty or  
540 obligation, at any time before midnight of the 3rd  
541 business day that begins the day after you agree to it  
542 by electronic communication or by signing it.

543  
544        To cancel this agreement during this period, send an  
545 e-mail to...(e-mail address of debt settlement  
546 advisor)...or mail or deliver a signed, dated copy of  
547 this notice, or any other written notice to...(name of  
548 debt settlement advisor)...at...(address of debt  
549 settlement advisor)...before midnight on...(date)....

550  
551        If you cancel this agreement within the 3-day period,

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552 we will refund all money you have already paid us.

553

554 I cancel this agreement.

555

556 .....

557 Print your name

558 .....

559 Signature

560 .....

561 Date

562

563 Section 18. Required language; rules.-Unless the office  
564 provides otherwise, the disclosures and documents required by  
565 this act must be in English. If a debt settlement advisor  
566 communicates with a client primarily in a language other than  
567 English, the debt settlement advisor must furnish a translation  
568 into the other language of the disclosures and documents  
569 required by this act.

570 Section 19. Fees and other charges.-

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

575 (2) The total aggregate fees charged by a debt settlement  
576 advisor may not exceed 20 percent of the principal amount of the  
577 debt.

578 (3) A debt settlement advisor may not impose charges or  
579 receive payment for debt settlement services until the debt  
580 settlement advisor and the client have signed a debt settlement

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581 services agreement.

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

585 Section 20. Voluntary contributions.—A debt settlement  
586 advisor may not solicit a voluntary contribution from a client  
587 or an affiliate of the client for any debt settlement services  
588 provided to the client.

589 Section 21. Voidable agreements.—

590 (1) If a debt settlement advisor imposes a fee or other  
591 charge or receives money or other payments not authorized by  
592 section 19 of this act, the client may void the agreement and  
593 recover the fees or charges as provided in section 30 of this  
594 act.

595 (2) If a debt settlement advisor is not licensed under this  
596 act at the time a client approves the debt settlement services  
597 agreement, the agreement is voidable by the client.

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

601 Section 22. Termination of agreements.—If a client fails to  
602 make payments required by the agreement for 60 days, a debt  
603 settlement advisor may terminate the agreement.

604 Section 23. Periodic reports; retention of records.—

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

607 (a) After each settlement of a debt with a creditor on  
608 behalf of a client.

609 (b) Within 5 business days after receiving a request by a

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610 client. However, the debt settlement advisor need not comply  
611 with more than one request in any calendar month.

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

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

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

619 (b) The amount of the debt the creditor accepts as  
620 settlement in full of the debt.

621 (c) Any other terms of the settlement.

622 (d) For debt settlement advisors using fee agreements that  
623 calculate any portion of the fee based on a percentage of  
624 savings the client realizes from a settled debt, the calculation  
625 of that fee.

626 (3) A debt settlement advisor shall maintain records for  
627 each client for whom the advisor provides debt settlement  
628 services for 4 years after the date the final payment is made by  
629 the client. The advisor shall produce a copy of the records for  
630 the client within a reasonable time after a request is received.  
631 The debt settlement advisor may use electronic or other means  
632 for storing records.

633 Section 24. Prohibited acts and practices of debt  
634 settlement advisors.-

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

637 (a) Settle a debt on behalf of a client for more than 50  
638 percent of the amount of the debt owed a creditor, unless the

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639 client explicitly consents to the settlement after the creditor  
640 has agreed to the settlement.

641 (b) Hold a power of attorney that authorizes a debt  
642 settlement advisor to settle a debt, unless the power of  
643 attorney expressly limits the debt settlement advisor's  
644 authority to settle debts for not more than 50 percent of the  
645 amount of the debt owed a creditor.

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

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

650 1. A return of money to the client;

651 2. Before termination of an agreement, payment of a fee  
652 properly authorized by the agreement and this act;

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

655 4. A payment to a creditor to fund a negotiated settlement  
656 of which both the settlement and transfer of money have been  
657 authorized by the client.

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

660 (f) Settle a debt or lead a client to believe that a  
661 payment to a creditor is in settlement of a debt to the creditor  
662 unless, at the time of settlement, the client receives a  
663 certification or confirmation by the creditor that the payment  
664 is in full settlement of the debt, or is part of a payment plan  
665 that is in full settlement of the debt.

666 (g) Make a representation that:

667 1. The debt settlement advisor will furnish money to pay

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668 bills or prevent attachments;

669 2. Payment of a certain amount of money will guarantee  
670 satisfaction of a certain amount or range of indebtedness;

671 3. Participation in a program will or may prevent  
672 litigation, garnishment, attachment, repossession, foreclosure,  
673 eviction, or loss of employment;

674 4. The debt settlement advisor is authorized or competent  
675 to furnish legal advice or perform legal services, unless such  
676 advice or services are provided by a licensed attorney working  
677 with the debt settlement advisor; or

678 5. The debt settlement advisor is a not-for-profit entity,  
679 unless the debt settlement advisor is organized and properly  
680 operating as a not-for-profit entity under the laws of this  
681 state.

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

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

686 (2) If a debt settlement advisor furnishes debt settlement  
687 services to a client, the debt settlement advisor may not,  
688 directly or indirectly, engage in any of the following  
689 practices:

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

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

692 1. A promissory note or other negotiable instrument other  
693 than a check or a demand draft; or

694 2. A postdated check or demand draft.

695 (c) Lend money or provide credit to the client, except as a  
696 deferral of a fee payment at no additional expense to the



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697 client.

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

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

703 1. The office, upon proper demand;

704 2. A creditor of the client, to the extent necessary to  
705 secure the cooperation of the creditor in a debt settlement  
706 program; or

707 3. The extent necessary to administer the debt settlement  
708 program.

709 (f) Except as otherwise provided in section 19 of this act,  
710 provide the client less than the full benefit of a compromise of  
711 a debt arranged by the debt settlement advisor.

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

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

717 Section 25. Advertising.—A debt settlement advisor that  
718 advertises debt settlement services may not make statements that  
719 are misleading or deceptive, and the advertisements may not  
720 conflict with the information specified in section 14 of this  
721 act.

722 Section 26. Internal complaint policy.—Each debt settlement  
723 advisor shall establish a formal internal complaint policy that  
724 creates a process for the debt settlement advisor to receive,  
725 review, and address or resolve formal complaints internally. The

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726 availability of this process shall be communicated in writing to  
727 clients enrolled in the debt settlement advisor's debt  
728 settlement program. This policy must include a provision that  
729 all clients who file a formal complaint will receive a response  
730 from the debt settlement advisor within a reasonable time  
731 following the debt settlement advisor's receipt of such  
732 complaint. The debt settlement advisor shall maintain a file  
733 that documents each formal complaint, the handling and  
734 resolution of each complaint, and the debt settlement advisor  
735 shall disclose the file to the office upon request.

736 Section 27. Powers of administration; rules.-

737 (1) The office may act on its own initiative or in response  
738 to a complaint. The office may seek voluntary compliance with  
739 this act or initiate enforcement actions as provided in this  
740 act.

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

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

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

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

752 (c) Enter into a cooperative arrangement with any federal  
753 or state agency having authority over debt settlement advisors  
754 and exchange with any of those agencies information about a debt

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755 settlement advisor, including information obtained during an  
756 examination of the debt settlement advisor; or

757 (d) Establish reasonable fees to be paid by a debt  
758 settlement advisor for the expense of administering this  
759 section.

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

761 Section 28. Administrative remedies.-

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

763 (a) Ordering a debt settlement advisor, director, officer,  
764 or agent of a debt settlement advisor to cease and desist from  
765 any violations of this act;

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

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

771 (d) Intervening in an action brought under section 30 of  
772 this act; and

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

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

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

782 (4) In determining the amount of a civil penalty to be  
783 imposed under subsection (1) or subsection (2), the office shall

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784 consider the seriousness of the violation, the good faith of the  
785 violator, any previous violations by the violator, the  
786 deleterious effect of the violation on the public, the net worth  
787 of the violator, and any other fact relevant to the  
788 determination of the civil penalty.

789 Section 29. Suspension, revocation, or nonrenewal of  
790 license.-

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

793 (a) A fact or condition exists that, if it had existed when  
794 the debt settlement advisor applied for the debt settlement  
795 advisor license, the fact or condition would have been a reason  
796 for denying the license;

797 (b) The debt settlement advisor has committed a material  
798 violation of this act or a rule or order of the office under  
799 this act;

800 (c) The debt settlement advisor is insolvent;

801 (d) The debt settlement advisor or an affiliate of the debt  
802 settlement advisor has refused to permit the office to make an  
803 examination authorized by this act, failed to comply with  
804 section 28 of this act within 30 days after request, or made a  
805 material misrepresentation or omission in complying with section  
806 28; or

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

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

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813           Section 30. Private enforcement.-

814           (1) If a client voids an agreement pursuant to section 21  
815 of this act, the client may recover in a civil action all money  
816 paid by or on behalf of the client pursuant to the agreement, in  
817 addition to the recovery of reasonable attorney's fees and  
818 costs.

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

822           (a) Compensatory damages for economic injury caused by the  
823 violation;

824           (b) Except as otherwise provided in subsection (3), the  
825 greater of the amount recoverable under subsection (1) or  
826 \$1,000; and

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

828           (3) In addition to the remedy available under subsection  
829 (2), if a debt settlement advisor violates a client's rights  
830 under section 19 of this act, the client may recover in a civil  
831 action all money paid by or on behalf of the client pursuant to  
832 the agreement, except for the amounts paid to the creditors.

833           (4) A debt settlement advisor is not liable for violating  
834 this act if the debt settlement advisor proves that the  
835 violation was not intentional and resulted from a good faith  
836 error notwithstanding the maintenance of procedures reasonably  
837 adapted to avoid the error. If, in connection with a violation,  
838 the debt settlement advisor has received more money than  
839 authorized by an agreement or this act, the defense provided by  
840 this subsection is not available unless the debt settlement  
841 advisor refunds the excess money within 3 business days after

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842 learning of the violation.

843 Section 31. Deceptive or unfair trade practices; effect on  
844 other remedies.-

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

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

849 (3) This act is supplemental to, and makes no attempt to  
850 preempt, other consumer protection laws that are not  
851 inconsistent with this act.

852 Section 32. Statute of limitations.-

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

855 (2) Any private enforcement action must be commenced within  
856 2 years after the latest of:

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

859 (b) The date on which the client discovered or reasonably  
860 should have discovered the facts giving rise to the client's  
861 claim; or

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

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

868 Section 33. Relation to the Electronic Signatures in Global  
869 and National Commerce Act.-This act modifies, limits, and  
870 supersedes the federal Electronic Signatures in Global and

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871 National Commerce Act, 15 U.S.C. s. 7001 et seq., but does not  
872 modify, limit, or supersede s. 101(c) of that act , 15 U.S.C. s.  
873 7001(c), or authorize electronic delivery of any of the notices  
874 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

875 Section 34. If any provision of this act or the application  
876 thereof to any person or circumstance is held invalid, the  
877 invalidity does not affect other provisions or applications of  
878 the act which can be given effect without the invalid provision  
879 or application, and to this end the provisions of this act are  
880 declared severable.

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