

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

24  
 25   Be It Enacted by the Legislature of the State of Florida:

26  
 27           Section 1.   Section 817.801, Florida Statutes, is amended  
 28   to read:

29 817.801 Definitions.--As used in this part, the term:

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

37 (2) ~~(1)~~ "Credit counseling organization agency" means any  
 38 person organization providing debt management services or credit  
 39 counseling services.

40 (3) ~~(2)~~ "Credit counseling services" means confidential  
 41 money management, debt reduction, and financial educational  
 42 services. The term does not include foreclosure-related rescue  
 43 services as defined in s. 501.1377.

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

49 (5) ~~(4)~~ "Debt management services" means services provided  
 50 to a consumer debtor by a credit counseling organization for a  
 51 fee to:

52 (a) Effect the adjustment, compromise, or discharge of any  
 53 unsecured account, note, or other indebtedness of the consumer,  
 54 except for residential mortgage loan obligations debtor; or

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

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

58 (7)-(5) "Person" has the same meaning as in s. 1.01 means  
 59 any individual, corporation, partnership, trust, association, or  
 60 other legal entity.

61 Section 2. Section 817.8015, Florida Statutes, is created  
 62 to read:

63 817.8015 Registration.--Each credit counseling  
 64 organization doing business in this state must register and  
 65 annually renew such registration with the office in accordance  
 66 with this section.

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

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

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

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

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

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85 Department of Agriculture and Consumer Services or, if not, an  
86 explanation as to why a telemarketing license has not been  
87 obtained.

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

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

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

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

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

112 (3) A registration issued under this section is not

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113 assignable or transferable.

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

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

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

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

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

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

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

136 Section 3. Section 817.802, Florida Statutes, is amended  
137 to read:

138 817.802 Prohibited acts ~~Unlawful fees and costs.~~ --A credit  
139 counseling organization may not:

140 ~~(1) It is unlawful for any person, while engaging in debt~~

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

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

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

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

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

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

169 obligations provided in the service contract with the consumer.

170 (7) Fail to obtain the annual audit, insurance coverage,  
 171 and surety bond or fail to make such audit and coverage  
 172 information available for public inspection as required by s.  
 173 817.804.

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

178 Section 4. Section 817.803, Florida Statutes, is amended  
 179 to read:

180 817.803 Exceptions.--~~Nothing in~~ This part does not apply  
 181 applies to:

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

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

191 (3) The following entities or their subsidiaries:

192 (a) The Federal National Mortgage Association;

193 (b) The Federal Home Loan Mortgage Corporation;

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

196 (d) A bank, bank holding company, trust company, savings

197 and loan association, credit union, credit card bank, or savings  
 198 bank that is regulated and supervised by the Office of the  
 199 Comptroller of the Currency, the Office of Thrift Supervision,  
 200 the Federal Reserve, the Federal Deposit Insurance Corporation,  
 201 the National Credit Union Administration, the Office of  
 202 Financial Regulation of the Department of Financial Services, or  
 203 any state banking regulator;

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

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

210 Section 5. Section 817.804, Florida Statutes, is amended  
 211 to read:

212 817.804 Financial requirements; disclosure ~~and financial~~  
 213 ~~reporting~~.--

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

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

223 (b) Obtain and maintain at all times insurance coverage  
 224 for employee dishonesty, depositor's forgery, and computer



225 fraud. ~~The insurance coverage must be~~ in an amount not less than  
 226 the greater of \$100,000 or 10 percent of the monthly average of  
 227 the aggregate amount of all deposits made by consumers to the  
 228 organization for distribution to creditors ~~with such person by~~  
 229 ~~all debtors~~ for the 6 months immediately preceding the date of  
 230 initial application for or renewal of the insurance. The  
 231 deductible on such coverage may ~~shall~~ not exceed 10 percent of  
 232 the face amount of the policy coverage.

233 (c) Obtain and maintain a surety bond in the amount of  
 234 \$100,000, valid upon registration, by a surety company  
 235 authorized to do business in this state. The bond must be filed  
 236 with the office and must designate the office as its sole  
 237 beneficiary. The bond shall be in favor of the state for the use  
 238 and benefit of any consumer who suffers or sustains any loss or  
 239 damage by reason of any violation of the provisions of this  
 240 part. The organization shall provide the office with  
 241 documentation that the premiums have been paid in full and that  
 242 the bond issued by the surety meets the requirements of this  
 243 part. The aggregate liability of the surety to all persons may  
 244 not exceed the amount of the bond.

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

251 (3) The office may adopt rules to administer this section.  
 252 Section 6. Section 817.8045, Florida Statutes, is created

253 to read:

254 817.8045 Service contracts.--

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

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

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

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

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

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

279 (d) The organization's principal business address and the  
 280 name and address of its agent in the state authorized to receive

281 service of process.

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

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

292  
 293 NOTICE OF RIGHT TO CANCEL

294  
 295 YOU MAY CANCEL ANY CONTRACT FOR DEBT MANAGEMENT OR  
 296 CREDIT COUNSELING SERVICES WITHIN 5 BUSINESS DAYS  
 297 AFTER THE DATE THE CONTRACT IS SIGNED BY YOU WITHOUT  
 298 INCURRING ANY PENALTY OR OBLIGATION.

299  
 300 YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10  
 301 BUSINESS DAYS AFTER RECEIPT OF YOUR CANCELLATION  
 302 NOTICE.

303  
 304 TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND  
 305 DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER  
 306 WRITTEN NOTICE CLEARLY INDICATING YOUR DESIRE TO  
 307 CANCEL YOUR CONTRACT.

308

309 TO: ...(name of credit counseling organization)...

310 AT: ...(address).....

311

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

315

316 ...(Signature of Consumer)...

317 ...(Date).....

318 ...(Address).....

319 ...(Phone Number).....

320

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

325 Section 7. Section 817.805, Florida Statutes, is amended  
 326 to read:

327 817.805 Disbursement of funds.--A credit counseling  
 328 organization must ~~Any person engaged in debt management or~~  
 329 ~~credit counseling services shall~~ disburse to the appropriate  
 330 creditors all funds received from a consumer debtor, less any  
 331 fees permitted by s. 817.802 and any creditor contributions,  
 332 within 30 days after receipt of such funds. However, a creditor  
 333 contribution may not reduce any sums ~~to be~~ credited to the  
 334 account of a consumer debtor making a payment to the  
 335 organization ~~credit counseling agency~~ for further payment to the  
 336 creditor. Further, a credit counseling organization must ~~any~~

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337 ~~person engaged in such services shall~~ maintain a separate trust  
 338 account for the receipt of any funds from consumers ~~debtors~~ and  
 339 the disbursement of such funds on behalf of such consumers  
 340 ~~debtors~~.

341 Section 8. Section 817.806, Florida Statutes, is amended  
 342 to read:

343 817.806 Violations.--

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

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

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