

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 311 Debt Settlement Services  
**SPONSOR(S):** Insurance, Business & Financial Affairs Policy Committee, Hudson  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1702

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Insurance, Business & Financial Affairs Policy Committee	12 Y, 0 N, As CS	Barnum	Cooper
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

Florida Statutes do not provide for the registration or licensure of credit counseling agencies. Part IV of Chapter 817, F.S., titled "Consumer Counseling Services," governs the regulation of credit counseling agencies. It specifies fees, financial reporting, insurance requirements, and penalties for noncompliance.

Under current statutes, credit counseling agencies are organizations providing credit counseling services or debt management services. "Credit counseling services" involve money management, debt reduction, and financial educational services, while "debt management services" involve adjustment or discharge of indebtedness for a fee.

CS/HB 311 creates an act entitled the "Debt Relief Services Act". It requires that each person who acts as a debt relief organization register with the Office of Financial Regulation (OFR) annually. The requirement applies to debt relief organizations operating in Florida or from another state, regardless of whether such organization is registered or licensed in accordance with the laws of another state. A "debt relief organization" is defined as a person offering to provide credit counseling services, debt management services, or debt settlement services for compensation.

The bill requires debt relief organizations to register and renew annually with the OFR in accordance with specified requirements.

- A \$1000 initial registration fee and \$750 annual renewal fee.
- The submission of fingerprints for each applicant and each of the applicant's control persons. (Cost of processing and retention to be born by the applicant.)
- A state and federal criminal background check for each applicant and control person.
- A minimum of \$1,000,000 insurance coverage for employee dishonesty, depositor's forgery, and computer fraud.
- A surety bond in the amount of at least \$100,000.

The bill establishes: grounds for denying registration; prohibited acts; limitations on fees; disclosure requirements; and, standards for service contracts.

The bill provides for enforcement by the OFR through disciplinary proceedings, rulemaking authority, and investigation authority.

The bill will result in an estimated \$111,000 negative fiscal impact for the first year, followed by minimal positive fiscal impact in subsequent years.

It provides for a January 1, 2011 effective date.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background:**

The debt relief industry is comprised of businesses providing products and services, including credit counseling, credit repair, debt management, and debt settlement. Many federal laws have been enacted to protect consumers from deceptive and fraudulent practices related to debt relief services. The Federal Trade Commission (FTC) has jurisdiction to enforce certain federal consumer protection laws through the Federal Trade Commission Act,<sup>1</sup> the Telemarketing and Consumer Fraud Act,<sup>2</sup> and the Credit Repair Organizations Act.<sup>3</sup>

The Telemarketing and Consumer Fraud and Abuse Prevention Act requires the FTC to adopt regulations (1) defining and prohibiting deceptive telemarketing acts or practices; (2) restricting the hours when unsolicited telephone calls may be made to consumers; and (3) requiring disclosure of the nature of the call at the start of an unsolicited call made to sell goods or services.<sup>4</sup>

The Florida Deceptive and Unfair Trade Practices Act,<sup>5</sup> provides remedies and penalties for "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce".<sup>6</sup> Violations include any violation of the act and rules adopted pursuant to the FTC Act, which would include the standards of unfairness and deception set forth and interpreted by the FTC or the federal courts. Willful violations of the act occur when the person knew or should have known that the conduct was unfair, deceptive, or prohibited by rule. Remedies for practices prohibited by the act may include an action to enjoin a person from committing such acts,<sup>7</sup> an action to recover actual damages caused by the violation, as well as the imposition of a civil penalty of generally not more than \$10,000 for each willful violation. Actions can be brought by a state attorney, the Department of Legal Affairs,<sup>8</sup> or by a consumer.<sup>9</sup> Recently, the Office of the Attorney General filed two lawsuits against five debt settlement related companies.<sup>10</sup>

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<sup>1</sup> 15 U.S.C. ss. 41-58.

<sup>2</sup> 15 U.S.C ss. 6101-6108.

<sup>3</sup> 15 U.S.C. s. 1679.

<sup>4</sup> 16 C.F.R. Part 310.

<sup>5</sup> Part II of ch. 501, F.S.

<sup>6</sup> s. 501.204, F.S.

<sup>7</sup> s. 501.207(1)(b), F.S.

<sup>8</sup> s. 501.203(2), F.S.

<sup>9</sup> s. 501.211(1), F.S.

<sup>10</sup> Attorney General News Release dated October 19, 2009 on file with the Insurance, Business & Financial Affairs Policy Committee.

In Florida, credit counseling organizations provide credit counseling and debt management services.<sup>11</sup> The term “credit counseling services” means money management, debt reduction, and financial educational services. “Debt management services” generally means services provided for a fee to adjust or discharge the indebtedness of the debtor.<sup>12</sup>

A credit counseling organization (CCO) provides counseling to debtors on developing budgets, managing money, using credit, and building a savings plan. They also negotiate with creditors and debtors to set up debt management plans. A debt management plan (DMP) allows a debtor to reduce debt through monthly deposits to the credit counseling organization, which then distributes those funds to creditors. The CCO uses the money to pay unsecured loans and other debts in accordance with a payment schedule that has been agreed upon with the consumer and creditor. Depending on a consumer’s debt and financial resources, a DMP may not be suitable for every consumer.

Some CCOs are established as nonprofit, tax-exempt charitable, educational, or social welfare organizations under the Internal Revenue Code.<sup>13</sup> A non-profit CCO cannot refuse to provide counseling services due to a consumer’s inability to pay or the ineligibility or unwillingness of a consumer to establish a debt management plan. Moreover, a non-profit agency must charge reasonable fees.<sup>14</sup> Non-profit credit counseling organizations use various methods for producing income for the organization. Many creditors, particularly credit card issuers or financial institutions, make voluntary contributions or “fair share” payments to non-profit credit counseling organizations for providing an alternative means of debt collection. Since credit card issuers limit their fair-share payments to non-profit agencies, the majority of these credit counseling agencies are organized as non-profits.

Debt settlement companies act on behalf of client debtors to help them resolve their debts.<sup>15</sup> They do this by entering into direct negotiations with creditors in order to facilitate the repayment of debts, reducing the client’s outstanding balance, including principle. In return for their services, debt settlement companies are generally paid a fee based upon the total amount of the debt handled and the amount saved by the client debtor. Debt settlement companies do not escrow, handle, manage, or otherwise control client money. Normally, the client sets up a separate bank account or uses an escrow company in making the new payments with the creditor. This is a distinguishing factor between debt settlement companies and other debt management business models, including the non-profit consumer credit counseling companies.

According to the FTC, some debt negotiation programs can be very risky and have long-term adverse impact on a consumer’s credit report.<sup>16</sup> Some companies will direct their customers to cease making payments to their creditors, and instead send payments to the debt negotiation company or to a bank account established for the consumer. A debt relief company may require the consumer to provide the company with a power of attorney, which authorizes the company to negotiate with debtors and initiate transfers from a bank account. According to the FTC, the goal of debt settlement is to save enough cash, while not paying creditors, so that the creditors will offer a fraction of the balance owed as settlement in lieu of the full debt.<sup>17</sup> However, if a consumer stops making monthly payments on a credit card, late fees and interest generally continue to accrue on the account. The credit card company is required to report nonpayments to the credit reporting agencies, resulting in adverse information on the consumer’s credit report. There is no guarantee that a creditor will accept partial payment and settlement of the debt, and the creditor may initiate litigation to recover the debt.

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<sup>11</sup> Part IV, ch.817, F.S.

<sup>12</sup> s. 817.801, F.S.

<sup>13</sup> ss. 501(c)(3) and 501(c)(4) of the Internal Revenue Code.

<sup>14</sup> s. 501(q) of the Internal Revenue Code.

<sup>15</sup> The Association of Settlement Companies (TASC) letter dated October 26, 2009 to the Federal Trade Commission regarding the proposal to amend the Telemarketing Sales Rule, 16 C.F.R. Part 310 on file with the Insurance, Business & Financial Affairs Policy Committee.

<sup>16</sup> *Knee Deep In Debt*, FTC Facts For Consumers, December 2005 on file with the Insurance, Business & Financial Affairs Policy Committee.

<sup>17</sup> Federal Trade Commission, *Consumer Credit and Debt: The Role of the Federal Trade Commission in Protecting the Public* (March 24, 2009) on file with the Insurance, Business & Financial Affairs Policy Committee.

## Current Situation:

Florida Statutes do not currently provide for the registration or licensure of credit counseling agencies. Part IV of ch. 817, F.S., titled "Consumer Counseling Services," governs the regulation of credit counseling agencies. It specifies fees, financial reporting, insurance requirements, and penalties for noncompliance.

In Florida, credit counseling agencies are organizations providing credit counseling services or debt management services.<sup>18</sup> The term, "credit counseling services," means confidential money management, debt reduction, and financial educational services.<sup>19</sup> Debt management services generally means services for a fee to adjust or discharge the indebtedness of the debtor.<sup>20</sup> Persons engaged in credit counseling or debt management services are prohibited from charging any client or debtor residing in Florida a fee greater than \$50 for the initial consultation. Subsequently, the person may not charge or accept a fee greater than \$120 per year for additional consultations or, alternatively, if debt management services are provided, the person may charge 7.5 percent of the amount paid monthly by the debtor or \$35 per month, whichever is greater.<sup>21</sup> Each person providing credit counseling or debt management services must obtain an annual financial audit<sup>22</sup> and maintain insurance coverage for employee dishonesty, depositor's forgery, and computer fraud.<sup>23</sup>

Under Florida law, no state agency is specifically charged with enforcing the laws regulating credit counseling agencies or debt settlement services. However, a violation of any provision of Part IV of ch. 817, F.S., is an unfair or deceptive trade practice under the Florida Deceptive and Unfair Trade Practices Act.<sup>24</sup> The Department of Legal Affairs and the Office of the Attorney General may enforce the act against companies engaging in unfair and deceptive trade practices.<sup>25</sup> A client harmed by a violation of this act may bring an action for recovery of damages, costs and attorney's fees.<sup>26</sup> A person who violates any provision of the act commits a third degree felony,<sup>27</sup> punishable by not more than 5 years in prison,<sup>28</sup> and a fine of up to \$5,000.<sup>29</sup>

## Effect of Proposed Change:

CS/HB 311 creates an act entitled the "Debt Relief Services Act," which requires each person who acts as a debt relief organization to register with the Office of Financial Regulation (OFR). The requirement applies to debt relief organizations operating in Florida or from another state, regardless of whether such organization is registered, licensed, or the equivalent in accordance with the laws of another state. A "debt relief organization" is defined as a person<sup>30</sup> offering to provide credit counseling services, debt management services, or debt settlement services for compensation. By definition:

- "Credit counseling services" involve money management, debt reduction, financial analysis, and financial educational services provided to a debtor.<sup>31</sup>
- "Debt management services" involve either effecting the adjustment, compromise, settlement, interest rate reduction, modification of terms, negotiation, or discharge of any unsecured debt; or, receiving funds periodically from the debtor and disbursing them to a creditor with the expectation that the debtor will repay the creditor the entire principal owed.
- "Debt settlement services" involve services provided to a debtor with the expectation of obtaining the creditor's agreement to accept less than the principal amount of a debt in full satisfaction of the debt.

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<sup>18</sup> s. 817.801(1), F.S.

<sup>19</sup> s. 817.801(2), F.S.

<sup>20</sup> s. 817.801(4), F.S.

<sup>21</sup> s. 817.802(1), F.S.

<sup>22</sup> s. 817.804(1)(a), F.S.

<sup>23</sup> s. 817.804(1)(b), F.S.

<sup>24</sup> ch. 501 part II, F.S.

<sup>25</sup> s. 817.806(1), F.S.

<sup>26</sup> Id.

<sup>27</sup> s. 817.806(2), F.S.

<sup>28</sup> s. 775.082(3)(d), F.S.

<sup>29</sup> s. 775.083(1)(c), F.S.

<sup>30</sup> s. 1.01(3), F.S. The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

<sup>31</sup> A debtor is defined as an individual who obtains credit, seeks a credit agreement with a creditor, or owes money to a creditor.

None of these services include foreclosure-related rescue services.

Initial debt relief organization registration requirements include:

- A nonrefundable \$1000 registration fee.
- Submission of fingerprints for each applicant and each of the applicant's control persons.<sup>32</sup> (The cost of fingerprinting processing and retention shall be born by the applicant.)
- State and federal criminal background checks for an applicant and each of the applicant's control persons.
- A minimum of \$1,000,000 insurance coverage for employee dishonesty, depositor's forgery, and computer fraud.
- A surety bond in the amount of at least \$100,000.

The annual registration renewal requirements include:

- A nonrefundable \$750 renewal fee.
- Submission of fingerprints for any new control persons who have not been screened.
- Nonrefundable fees for further fingerprint processing and retention.
- Proof of maintenance of the insurance coverage.
- Proof of maintenance of the surety bond.

The bill authorizes the adoption of rules to establish the following time periods during which an applicant is barred from initial registration or renewal:

- A permanent bar from registration for felonies involving money laundering, breach of trust, dishonesty, embezzlement, fraud, fraudulent conversion, misappropriation of property, racketeering, or theft.
- A 15-year disqualifying period for felonies involving moral turpitude.
- A 7-year disqualifying period for all other felonies.
- A 5-year disqualifying period for misdemeanors involving fraud, dishonesty, or any other act of moral turpitude.

The rules may also provide for an additional waiting period due to dates of imprisonment or community supervision, the commitment of multiple crimes, and other factors related to the applicant's criminal history.

The bill provides for denial of registration under specified circumstances. These include:

- An applicant or control person has been found guilty of or has entered a plea of nolo contendere or guilty to, any felony, any crime involving racketeering, fraud, theft, embezzlement, fraudulent conversion, breach of trust, misappropriation of property, dishonesty, or moral turpitude.
- An applicant or control person is the subject of certain pending felony criminal prosecutions or administrative enforcement actions.
- An applicant or control person makes a material misstatement on any application, document, or record required to be submitted.
- An applicant or control person has been the subject of an adverse action by any state or federal agency.

The bill requires that, prior to signing a service contract, the debt relief organization is required to:

- Prepare and provide to the debtor a written financial analysis specific to the debtor which includes an analysis of the debtor's income, expenses, and all debts.
- Provide the debtor with a copy of the written determination of the debtor's suitability for the debt management or debt settlement services and whether the debtor can reasonably meet the requirements of the service contract, including the debtor's ability to save the amount estimated to be needed to fund the settlement of the debt.

The bill establishes minimum disclosures that must be contained in a written service contract between a debt relief organization and a debtor. The required disclosures and statements include:

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<sup>32</sup> Control person" means an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.

- A statement advising the debtor:
  - That he or she should contact his or her creditors before signing the contract.
  - That the creditors may be willing to negotiate a payment plan or a restructuring of the consumer's debt.
  - That failure to contact the creditors may result in late fees, additional debts, and an adverse credit rating.
- A detailed description of the services to be performed, including all guarantees and promises of full or partial refunds, and the estimated date or length of time required to perform all services.
- The terms and conditions of payment, including the payments made by the debtor to the organization or other person.
- A written disclosure that the debtor has a right to cancel the contract at any time prior to midnight of the 5<sup>th</sup> business day after the date contract is signed.

The debt relief organization is required to provide the debtor with a copy of the completed service contract and all other documents the organization requires the debtor to sign at the time the documents are signed.

The bill revises the fees for debt management services and makes them applicable to nonresidents, as well as residents. It specifies that no fee may be collected unless the debt management services or debt settlement services result in a settlement, discharge, or modification of the debt on terms more favorable to the debtor than the terms of the original agreement between the debtor and creditor. In addition, no payment for services may be received before the execution of a written service contract.

Permissible fees for services provided by a debt relief organization are:

- Up to and including \$50 for the initial setup or initial consultation.
- Up to and including \$120 per year for credit counseling services provided in addition to the initial consultation.
- Up to and including 7.5 percent of the amount paid monthly by the debtor to the organization for disbursement to a creditor or \$35 per month, whichever is greater, or 7.5 percent of the enrolled debt.
- A fee or contribution for debt settlement services up to and including 40 percent of the savings realized which is defined to be the difference between the amount of enrolled debt and the amount paid to the creditor in discharge of the enrolled debt, less any fees collected as specified above. However, such fees collected for debt settlement services, in the aggregate, may not exceed 20 percent of the enrolled debt. For service contracts requiring fees to be paid on a monthly basis, the payment of such fees must be spread uniformly over at least 18 months or 50 percent of the term of the contract, whichever is greater.

The bill provides the following regulatory and enforcement powers:

- Authorizes the OFR to investigate any person the OFR believes has violated any provision of Part II of ch. 559, F.S.
- Requires registrants to maintain specified books and records for 5 years and allows the OFR to access the books and records.
- Authorizes administrative fines of up to \$25,000 for a violation of the act.
- Authorizes the OFR to issue subpoenas and issue cease and desist orders.
- Authorizes the OFR to revoke or suspend the registration of a registrant for violating the prohibited acts provisions.
- Provides that, in addition to any remedies provided under this part, violators are subject to the penalties and remedies and enforcement actions provided in Part II of ch. 501, F.S.
- Provides that it is a felony of the third degree for any person to provide credit counseling or debt management services without first registering with the OFR or to register or attempt to register by means of fraud or misrepresentation.

The list of prohibited acts is expanded to include:

- Receiving payment for services before the execution of a written service contract.
- Making false or misleading representations.
- Advising a consumer not to communicate with his or her creditor.

- Providing services without the execution of a written contract.
- Failing to maintain the surety bond.
- Failing to comply with any provision of the act.

Those to whom the Debt Relief Services Act does not apply include:

- A person licensed to practice law in this state who is providing credit counseling, debt management, or debt settlement services as an ancillary matter to her or his representation of the debtor as a client.
- The following entities or their subsidiaries:
  - The Federal National Mortgage Association.
  - The Federal Home Loan Mortgage Corporation.
  - The Florida Housing Finance Corporation, created in s. 420.504, F.S.
  - Any financial institution, as defined under s. 655.005(1)(h), F.S.
  - A consumer reporting agency as defined in the Federal Fair Credit Reporting Act.

## B. SECTION DIRECTORY:

- Section 1. Requests the Division of Statutory Revision rename Part II of Chapter 559, Florida Statutes, as “Debt Relief Services”.
- Section 2. Creates s. 559.101, F.S., providing the short title of “Debt Relief Services Act”.
- Section 3. Transfers and renumbers s. 817.801, F.S., as s. 559.102, F.S. Reorders and amends definitions.
- Section 4. Creates s. 559.103, F.S., specifying subpoena powers and duties.
- Section 5. Creates s. 559.104, F.S., providing for rules.
- Section 6. Transfers and renumbers s. 817.803, F.S., as s. 559.105, F.S. Amends exceptions.
- Section 7. Creates s. 559.106, F.S., providing for registration of debt relief organizations.
- Section 8. Creates s. 559.107, F.S., effective April 1, 2011, providing for registration renewal.
- Section 9. Transfers and renumbers s. 817.804, F.S., as s. 559.108, F.S. Amends financial requirements.
- Section 10. Creates s. 559.109, F.S., providing for maintenance of records.
- Section 11. Creates s. 559.111, F.S., providing for disclosures.
- Section 12. Transfers and renumbers s. 817.805, F.S., as s. 559.112, F.S. Amends disbursement of funds.
- Section 13. Transfers and renumbers s. 817.802, F.S., as s. 559.113, F.S. Amends prohibited acts.
- Section 14. Creates s. 559.114, F.S., providing for debtor complaints.
- Section 15. Creates s. 559.115, F.S., providing for subpoenas.
- Section 16. Creates s. 559.116, F.S., providing for cease and desist orders.
- Section 17. Transfers and renumbers s. 817.802, F.S., as s. 559.113, F.S. Amends penalties.
- Section 18. Repeals ss. 559.10, 559.11, 559.12, and 559.13 Florida Statutes.

Section 19. Amends s. 516.07(1)(g), F.S., by conforming violations.

Section 20. Provides for an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT: <sup>33, 34, 35</sup>

	(FY 10-11)	(FY 11-12)	(FY 12-13)
1. Revenues:			
<u>OFR Recurring</u>			
Application fees (\$1000)	\$ 500,000	\$ 100,000	\$ 100,000
Renewal fees (\$750)		\$ 300,000	\$ 300,000
<u>FDLE Recurring</u>			
Criminal history record checks <sup>36</sup>	\$ 24,000	\$ 24,000	\$ 24,000
Fingerprint retention fee (\$6)		\$ 6,000	\$ 12,000
<u>Non-Recurring</u>	\$ 0	\$ 0	\$ 0
<u>Total Revenues</u>	\$ 524,000	\$ 430,000	\$ 436,000
2. Expenditures: <sup>37</sup>			
<u>Recurring – 5 FTE</u>			
Salary and Benefits	\$ 302,680	\$ 302,680	\$ 302,680
Expense	\$ 47,540	\$ 47,540	\$ 47,540
Transfer to DMS	\$ 1,995	\$ 1,995	\$ 1,995
Service Charge to General Revenue (8%)	\$ 40,000	\$ 32,000	\$ 32,000
<u>Total Recurring</u>	\$ 392,215	\$ 384,215	\$ 384,215
<u>Non-Recurring</u>			
Expense	\$ 19,385		
OCO	\$ 6,500		
OPS	\$ 30,000		
Contract Services <sup>38</sup>	\$ 163,259		
<u>Total Non-Recurring</u>	\$ 219,144		
<u>Total Expenditures</u>	\$ 635,359	\$ 422,215	\$ 428,215

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

<sup>33</sup> Office of Financial Regulation Estimated Fiscal Impact for PCS for HB 311 dated March 25, 2010 on file with the Insurance, Business & Financial Affairs Policy Committee.

<sup>34</sup> Data was not readily available regarding the number of credit counseling agencies operating in Florida. Therefore, those entities are not reflected in the fiscal analysis.

<sup>35</sup> Florida Department of Law Enforcement Bill Analysis for PCS for HB 311 dated March 23, 2010 on file with the Insurance, Business & Financial Affairs Policy Committee.

<sup>36</sup> Each request is \$43.25. \$24 goes into the Florida Department of Law Enforcement Operating Trust Fund and \$19.25 is forwarded to the FBI.

<sup>37</sup> All expenditures associated with OFR.

<sup>38</sup> Changes to the Regulatory and Licensing (REAL) System.



2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Effective April 1, 2011, each person who acts as a debt relief organizations will be required to apply for registration with the OFR. This will involve an initial registration fee of \$1,000, and submission of fingerprints for each applicant and control person for the purpose of permitting state and federal criminal background checks. Current costs for a state and federal criminal history check are \$43.25. In addition, there is a cost of \$6 per year for retaining the fingerprints in the Florida Department of Law Enforcement's Automated Fingerprint Identification System. Following the initial registration, an annual registration renewal fee of \$750 will apply.

D. FISCAL COMMENTS:

In addition to licensure fees, applicants and their control persons will be subject fingerprinting costs. The number of persons who will be subject to fingerprinting is unknown. The OFR will not recognize any revenue from these fees as they are simply collected and passed on to the FDLE to cover the cost of processing.

Due to non-recurring expenses primarily associated with changes to the Regulatory and Licensing System, there will be a negative fiscal impact the first year. Based upon the OFR's analysis, there will be minimal fiscal impact in subsequent years.<sup>39</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rule-making authority is granted to the Financial Services Commission for administration of the Debt Relief Services Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In August 2009, the FTC proposed rules<sup>40</sup> to combat deceptive and abusive telemarketing of debt relief services—services that purportedly can reduce consumers' credit card and other unsecured debt. The proposed regulations would:

- Prohibit companies from charging fees until they provided the debt relief services;
- Require disclosures about the debt relief services being offered, including how long it will take to obtain promised debt relief and how much the services will cost;
- Prohibit specific misrepresentations about material aspects of debt relief services, including success rates and whether a debt relief company is nonprofit; and

<sup>39</sup> Office of Financial Regulation Estimated Fiscal Impact for PCS for HB 311 dated March 25, 2010 on file with the Insurance, Business & Financial Affairs Policy Committee.

<sup>40</sup> Federal Register / Vol. 74, No. 159 / Wednesday, August 19, 2009 / Proposed Rule on file with the Insurance, Business & Financial Affairs Policy Committee.

- Define the term, “debt relief service,” to cover any service to renegotiate, settle, or in any manner alter the payment terms or other terms of the debt between a consumer and one or more unsecured creditors or debt collectors, including a reduction in the balance, interest rate, or fees owed.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

At the March 25, 2010 meeting of the Insurance, Business and Financial Affairs Policy Committee one amendment was proposed and adopted.

Amendment 1 corrected the effective date to read January 1, 2011.

The analysis is drafted to the committee substitute.