

1 A bill to be entitled
2 An act relating to debt settlement services; creating part
3 V of ch. 817, F.S.; providing a short title; defining
4 terms; providing exemptions from the application of the
5 part; requiring that a person be licensed if he or she
6 provides or offers to provide debt settlement services to
7 a client who resides in this state; providing for a
8 license application and requiring a fee and proof of an
9 insurance policy or surety bond; requiring the
10 fingerprinting and background screening of licensees and
11 certain personnel of the licensees' businesses; requiring
12 certain persons to pay the costs of fingerprint
13 processing; requiring an applicant or licensee to notify
14 the Office of Financial Regulation of any change of the
15 application information within a specified time; requiring
16 the office to publicize certain information on its
17 website; providing procedures for the approval or denial
18 of initial applications for debt settlement advisor
19 licenses; setting forth grounds for which the office may
20 deny an application; authorizing an administrative
21 proceeding upon denial of an application; requiring an
22 annual license period; providing for expiration of
23 licenses; specifying procedures for renewal of debt
24 settlement advisor licenses; authorizing an administrative
25 proceeding upon denial of a license renewal; authorizing
26 certain licensed activity pending the outcome of an
27 administrative proceeding; requiring debt settlement
28 advisors to act in good faith and provide certain customer

29 | services; requiring debt settlement advisors to provide
30 | certain documents to prospective clients before signing
31 | debt settlement services agreements; authorizing debt
32 | settlement advisors to provide certain communications by
33 | electronic means in compliance with federal law;
34 | specifying requirements for the format and contents of
35 | debt settlement services agreements; authorizing clients
36 | to cancel such agreements within a specified period;
37 | specifying the contents of the cancellation form;
38 | requiring debt settlement providers to furnish certain
39 | documents in English and provide translations under
40 | certain circumstances; limiting the fees that debt
41 | settlement advisors may charge; prohibiting debt
42 | settlement advisors from soliciting voluntary
43 | contributions; authorizing clients to void debt settlement
44 | services agreements and recover fees under certain
45 | circumstances; authorizing debt settlement advisors to
46 | terminate such agreements under certain circumstances;
47 | requiring debt settlement advisors to provide clients with
48 | reports containing specified information under certain
49 | circumstances and keep such records for a specified
50 | period; prohibiting debt settlement advisors from engaging
51 | in certain acts and practices; prohibiting deceptive
52 | advertisements; requiring debt settlement advisors to
53 | establish internal complaint processes; specifying the
54 | powers of the Office of Financial Regulation to administer
55 | the part; authorizing the office to issue subpoenas;
56 | requiring licensees to keep certain records for a

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57 | specified period and submit such records for examination
58 | by the office; authorizing the office to impose certain
59 | fees and charges; authorizing the Financial Services
60 | Commission to adopt rules; providing administrative
61 | remedies for violations of the part; authorizing the
62 | office to impose fines and civil penalties; authorizing
63 | the suspension, revocation, or nonrenewal of debt
64 | settlement advisor licenses under certain circumstances;
65 | authorizing an administrative proceeding upon the
66 | suspension, revocation, or nonrenewal of a license;
67 | authorizing civil actions for enforcement of the part;
68 | providing for the award of attorney's fees; declaring that
69 | violations of the part are deceptive and unfair trade
70 | practices; specifying that the part does not preempt other
71 | consumer protection laws; providing time limitations for
72 | commencing civil actions; providing for the part's
73 | application in relation to the Electronic Signatures in
74 | Global and National Commerce Act; providing for
75 | severability; providing an effective date.

76 |
77 | Be It Enacted by the Legislature of the State of Florida:

78 |
79 | Section 1. Part V of chapter 817, Florida Statutes,
80 | consisting of sections 817.901, 817.903, 817.905, 817.907,
81 | 817.909, 817.911, 817.913, 817.915, 817.917, 817.919, 817.921,
82 | 817.923, 817.925, 817.927, 817.929, 817.931, 817.933, 817.935,
83 | 817.937, 817.939, 817.941, 817.943, 817.945, 817.947, 817.949,
84 | 817.951, 817.953, and 817.955, is created to read:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0311-00

PART V

DEBT SETTLEMENT SERVICES

817.901 Short title.--This part may be cited as the "Debt Settlement Services Act."

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

(1) "Agreement" means an agreement between a debt settlement advisor and a client for the performance of debt settlement services.

(2) "Bank" means a financial institution, including, but not limited to, a commercial bank, savings bank, savings and loan association, credit union, mortgage bank, or trust company, which is engaged in the business of banking, chartered under federal or state law, and regulated by a federal or state banking regulatory authority.

(3) "Client" means a person who enters into an agreement with a debt settlement advisor for debt settlement services.

(4) "Commission" means the Financial Services Commission.

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

(6) "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 debt settlement advisor's business, whether through ownership of securities, by contract, or otherwise. A person is presumed to control a debt settlement advisor's business if the person:

(a) Is a director, general partner, or officer exercising

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113 executive responsibility or having similar status or functions;

114 (b) Directly or indirectly may vote 10 percent or more of
115 a class of voting securities or sell or direct the sale of 10
116 percent or more of a class of voting securities; or

117 (c) In the case of a partnership, may receive upon
118 dissolution or has contributed 10 percent or more of the
119 capital.

120 (7) "Debt settlement advisor" or "licensee" means a person
121 licensed under this part to provide debt settlement services to
122 a client. The term includes an employee or agent of a debt
123 settlement advisor.

124 (8) "Debt settlement services" means services provided by
125 a debt settlement advisor who acts as an intermediary between a
126 client and one or more unsecured creditors of the client for
127 purposes of obtaining favorable concessions for the client. The
128 term does not include the receipt of money from a client with
129 the intent of distributing the money to the client's creditors.
130 The term also does not include:

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

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

136 (c) Financial planning services provided by a member of a
137 financial planning profession.

138 (9) "Federal act" means the federal Electronic Signatures
139 in Global and National Commerce Act, 15 U.S.C. ss. 7001 et seq.,
140 as amended.

141 (10) "Good faith" means honesty in fact and the observance
 142 of reasonable standards of fair dealing.

143 (11) "Insolvent" means:

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

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

148 (c) Being insolvent within the meaning of the federal
 149 bankruptcy law, 11 U.S.C. ss. 101 et seq., as amended.

150 (12) "Office" means the Office of Financial Regulation.

151 (13) "Principal amount of a debt" means the amount of debt
 152 possessed by the client at the time he or she executes an
 153 agreement with a debt settlement advisor and before concessions
 154 are made by the client's creditors.

155 (14) "Program" or "debt settlement program" means a
 156 process whereby a debt settlement advisor furnishes a crafted
 157 debt settlement plan to a client and negotiates on behalf of the
 158 client and, after an agreement, the client makes payments
 159 directly to his or her creditors.

160 (15) "Record" means information that is inscribed on a
 161 tangible medium or stored in an electronic format or other
 162 medium and is retrievable in perceivable form.

163 817.905 Exemptions.--This part does not apply to:

164 (1) A person who provides debt settlement services to a
 165 client but does not receive compensation for such services.

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

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169 (3) A bank or its agent.

170 (4) A title insurer, escrow company, or other entity that
171 provides bill-paying services if the debt settlement services
172 are incidental to the bill-paying services.

173 817.907 Debt settlement advisor license.--

174 (1) (a) A person must be licensed under this part if he or
175 she provides or offers to provide debt settlement services to a
176 client who resides in this state.

177 (b) A person seeking a debt settlement advisor license
178 must apply to the office in the format prescribed by commission
179 rule. An application must include:

180 1. The applicant's name, principal business address and
181 telephone number, and every e-mail address and Internet website
182 address used by the applicant.

183 2. The name under which the applicant will conduct
184 business.

185 3. The address of each location in this state, other than
186 the applicant's principal business address, at which the
187 applicant will provide debt settlement services, or a statement
188 that the applicant will provide debt settlement services only at
189 the principal business address.

190 4. If the applicant is a business entity, the name and
191 home address of each officer, director, and other control person
192 of the business entity.

193 5. A statement describing, to the extent it is known or
194 should be known by the applicant, any civil or criminal
195 judgments related to financial fraud or misuse, and any
196 administrative or enforcement actions relating to financial

197 fraud or misuse, by a governmental agency in any jurisdiction
 198 against the applicant or an officer, director, owner, or other
 199 control person, or an employee or agent, of the applicant's
 200 business.

201 6. A copy of each debt settlement services agreement form
 202 that the applicant will use in providing services to clients.

203 7. The schedule of fees and charges that the applicant
 204 intends to charge a client for debt settlement services
 205 rendered.

206 8. A copy of the financial analysis or budget form that
 207 the applicant intends to use for reviewing a client's financial
 208 condition.

209 9. A description of any ownership interest of 10 percent
 210 or more by a director, owner, or other control person, or by an
 211 employee, of the applicant's business in:

212 a. Any entity that provides products or services to the
 213 applicant or any client of the applicant's debt settlement
 214 services; or

215 b. Another control person of the applicant's business.

216 10. Evidence that the applicant has a registered agent in
 217 this state of record with the Department of State.

218 11. Any other information that the office reasonably
 219 requires to perform the duties of the office under s. 817.909.

220 (c) An application must contain a statement informing the
 221 applicant that a false or dishonest answer to any question in
 222 the application may be grounds for denial or subsequent
 223 suspension or revocation of the applicant's license.

224 (2) An applicant for a debt settlement advisor license

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225 must remit to the office a nonrefundable license fee established
 226 by commission rule not to exceed \$350 and submit proof that:

227 (a) The applicant is covered by a minimum insurance policy
 228 in an amount specified by commission rule; or

229 (b) In lieu of an aggregate umbrella insurance policy, the
 230 applicant filed a surety bond with the office, in a form
 231 approved by commission rule, for a term of not less than the
 232 expiration date of the license. The bond must be in an amount of
 233 at least \$10,000. However, the office may demand that an
 234 applicant file a bond of a larger amount if the office
 235 determines that the financial condition and business experience
 236 of the debt settlement advisor, the history of the debt
 237 settlement advisor in performing debt settlement services, and
 238 the risk to clients justify a larger surety bond. The office may
 239 not require a surety bond greater than \$50,000. The surety bond
 240 must be in favor of the office for the benefit of any clients in
 241 this state who suffer loss arising out of debt settlement
 242 services from the debt settlement advisor.

243 (3) Each applicant and control person of the applicant's
 244 business must submit fingerprints in accordance with commission
 245 rule.

246 (a) The office may require that fingerprints be submitted
 247 to the office or a vendor acting on behalf of the office.

248 (b) A state criminal history background screening must be
 249 conducted through the Department of Law Enforcement and a
 250 federal criminal history background screening must be conducted
 251 through the Federal Bureau of Investigation. The office is
 252 responsible for reviewing the results of the state and federal

253 criminal history checks and determining whether the applicant
 254 meets licensure requirements.

255 (c) The office may contract with third-party vendors that
 256 provide live scan fingerprinting in lieu of a paper fingerprint
 257 card.

258 (d) All fingerprints submitted to the Department of Law
 259 Enforcement shall be submitted electronically and shall be
 260 entered into the statewide automated fingerprint identification
 261 system established in s. 943.05(2) (b) and shall be available for
 262 use in accordance with s. 943.05(2) (g) and (h). The office shall
 263 participate in this process by payment of an annual fee to the
 264 Department of Law Enforcement and by informing the Department of
 265 Law Enforcement of any person whose fingerprints should no
 266 longer be retained.

267 (e) The costs of fingerprint processing, including the
 268 costs of retaining fingerprints, shall be borne by the person
 269 subject to the background screening.

270 (4) An applicant or licensed debt settlement advisor shall
 271 notify the office whenever there is a change of the information
 272 specified in this section or s. 817.911 within 30 days after the
 273 change.

274 (5) The office shall maintain and publicize on its
 275 Internet website the names and addresses of all licensed debt
 276 settlement advisors in this state.

277 817.909 Issuance or denial of licenses.--

278 (1) An application is considered received for purposes of
 279 s. 120.60 upon receipt of a completed application as prescribed
 280 by commission rule, the nonrefundable license fee established

281 pursuant to s. 817.907(2), and any other fee prescribed by law.

282 (2) The office shall issue an initial license to a debt
 283 settlement advisor who complies with s. 817.907. The office may
 284 deny an application for an initial debt settlement advisor
 285 license if:

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

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

292 (c) The application is not accompanied by the required
 293 fees established by the office; or

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

297 (3) Upon denial of an initial application for a debt
 298 settlement advisor license, the applicant may request an
 299 administrative proceeding on the denial pursuant to chapter 120.

300 (4) The commission shall establish by rule an annual
 301 license period. A debt settlement advisor license expires at the
 302 end of the license period for which the license is issued.

303 817.911 License renewal.--

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

306 (2) A person seeking licensure as a debt settlement
 307 advisor must apply to the office in the format prescribed by
 308 commission rule. A renewal application must:

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309 (a) Be filed at least 30 days, but no more than 60 days,
310 before the current license expires.

311 (b) Be accompanied by a nonrefundable renewal fee
312 established by commission rule not to exceed the initial license
313 fee established pursuant to s. 817.907(2) and the annual costs
314 of fingerprint processing pursuant to s. 817.907(3)(d) and (e).

315 (c) Disclose any changes in the information contained in
316 the applicant's initial application for a license or in its
317 immediately previous license renewal application, as
318 appropriate.

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

321 (3) The office shall renew the license of a debt
322 settlement advisor who complies with this section. The office
323 may deny a renewal application for any reason authorized in s.
324 817.909(2) for denial of an initial application.

325 (4) If a debt settlement advisor timely files a complete
326 application for renewal of his or her license, the license
327 remains in effect until the office notifies the applicant, in
328 writing, whether the application is approved or denied. If the
329 office denies a renewal application, the written notice to the
330 debt settlement advisor must describe the reasons for the
331 denial.

332 (5) (a) Upon denial of an application to renew a debt
333 settlement advisor license, the licensee may request an
334 administrative proceeding on the denial pursuant to chapter 120.

335 (b) If the office denies a renewal application and the
336 applicant requests an administrative proceeding under chapter

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337 120, the debt settlement advisor may continue to provide debt
338 settlement services to a client with whom the advisor has an
339 agreement. If the denial of the license is affirmed, the debt
340 settlement advisor must discontinue providing debt settlement
341 services to clients and transfer the clients' agreements to
342 other licensed debt settlement advisors.

343 817.913 Requirement of good faith.--A debt settlement
344 advisor must act in good faith in all matters under this part.

345 817.915 Customer service.--A debt settlement advisor shall
346 maintain a toll-free telephone service, staffed at a level that
347 reasonably permits a client to speak to a customer service
348 representative during ordinary business hours.

349 817.917 Prerequisites for providing debt settlement
350 services.--

351 (1) Before a debt settlement advisor may provide debt
352 settlement services to a potential client, the debt settlement
353 advisor must give the potential client an itemized list of goods
354 and services available from the debt settlement advisor and the
355 charges for each service rendered. The list and charges must be
356 clear and conspicuous.

357 (2) A debt settlement advisor may not furnish debt
358 settlement services unless he or she prepares a financial
359 analysis for the potential client.

360 (3) Before signing an agreement with a potential client, a
361 debt settlement advisor must:

362 (a) Provide the potential client with a copy of the
363 financial analysis and a written notice that identifies the debt
364 settlement advisor and acknowledges that a potential client may

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365 keep the financial analysis even if he or she chooses not to
366 become a client of the debt settlement advisor.

367 (b) Inform the potential client of the availability, at
368 his or her option, of assistance by a toll-free telephone
369 service or in person to discuss the financial analysis required
370 in subsection (2).

371 (c) Inform the potential client that:

372 1. Not all debt settlement programs are suitable for all
373 clients.

374 2. Participation in a debt settlement program may
375 adversely affect a client's credit rating or credit scores.

376 3. Nonpayment of debt may lead creditors to increase
377 finance and other charges or undertake collection activity,
378 including litigation.

379 4. Unless a client is insolvent and a creditor settles for
380 less than the full amount of the debt, participation in the
381 program may result in the creation of taxable income to the
382 client, even though the client does not receive any money.

383 5. Specific results cannot be predicted or guaranteed and
384 the debt settlement advisor cannot force negotiations or
385 settlements with creditors who do not wish to participate in
386 negotiations, but will nevertheless advocate on behalf of the
387 client.

388 6. The debt settlement program requires that a client meet
389 a certain savings goal in order to maximize settlement results.

390 7. The debt settlement advisor may provide accounting or
391 legal advice to a client only if the debt settlement advisor is
392 licensed to practice law in this state.

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393 8. The debt settlement advisor is a client's advocate and
394 may not receive compensation from creditors, banks, or third-
395 party collection agencies.

396 9. The debt settlement advisor may not make monthly
397 payments to a client's creditors.

398 817.919 Communication by electronic or other means.--

399 (1) A debt settlement advisor may satisfy the requirements
400 of s. 817.917, s. 817.923, or s. 817.935 through the Internet or
401 other electronic means if the debt settlement advisor obtains
402 the client's consent in the manner provided by s. 101(c)(1) of
403 the federal act.

404 (2) The disclosures and materials required by ss. 817.917,
405 817.923, and 817.935 shall be presented in a format that can be
406 accurately reproduced for later reference.

407 (3) For disclosure through an Internet website, disclosure
408 of the information required by s. 817.917 must appear on one or
409 more screens that contain only the information required, and the
410 client must be able to see the information on the screens before
411 agreeing to participate in the program.

412 (4) At the time of providing the materials or agreement
413 required in s. 817.917, s. 817.923, or s. 817.935, a debt
414 settlement advisor shall inform the client that upon electronic,
415 telephonic, or written request, the advisor shall send the
416 client a written copy of the materials and shall comply with a
417 request as provided in subsection (7).

418 (5) If a debt settlement advisor is requested, within 90
419 days after a program is completed or terminated, to send a
420 written copy of the materials required by s. 817.917, s.

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421 817.923, or s. 817.935, the debt settlement advisor shall send
422 the materials at no charge within 3 business days after receipt
423 of the request. However, the debt settlement advisor need not
424 comply with a request more than once per calendar month or
425 comply with a request that the advisor reasonably believes is
426 made for purposes of harassment. If a request is made more than
427 90 days after a program is completed or terminated, the debt
428 settlement advisor shall send a written copy of the materials
429 requested within 30 days.

430 (6) If a debt settlement advisor maintains an Internet
431 website, the debt settlement advisor shall disclose on the home
432 page of the website or on a page that is clearly and
433 conspicuously connected to the home page by a link that clearly
434 reveals its contents:

435 (a) The name or names under which the debt settlement
436 advisor does business.

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

439 (7) If a client who previously consents to electronic
440 communication in the manner provided by s. 101(c)(1) of the
441 federal act withdraws the consent as provided in the federal
442 act, a debt settlement advisor may terminate the agreement with
443 the client. If the debt settlement advisor wishes to terminate
444 the agreement, he or she shall notify the client and, unless the
445 client consents to electronic communication in the manner
446 provided in s. 101(c)(1) of the federal act within 30 days after
447 receiving the notice, the agreement is terminated.

448 817.921 Form and contents of a debt settlement services

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449 agreement.--

450 (1) A debt settlement services agreement must be in
451 writing, dated and signed by the client and the debt settlement
452 advisor, and delivered to the client immediately upon signing
453 the agreement. The agreement must include:

454 (a) The name and home address of the client.

455 (b) The name, business address, and telephone number of
456 the debt settlement advisor.

457 (c) The debt settlement services to be provided.

458 (d) The amount, or method of determining the amount, of
459 all fees, individually itemized, to be paid by the client.

460 (e) The process by which the debt settlement advisor will
461 comply with his or her obligations under s. 817.935.

462 (f) A statement that the client may cancel the agreement
463 as provided in s. 817.923.

464 (g) A disclosure that the client may contact the office
465 with any questions or complaints regarding the debt settlement
466 advisor.

467 (h) The address, telephone number, and Internet address or
468 website of the office.

469 (2) For the purposes of subsection (1), delivery of an
470 electronic record occurs when it is made available in a format
471 that the client may retrieve, save, and print, and when the
472 client is notified that the record is available.

473 (3) If the office supplies the debt settlement advisor
474 with any information required under paragraph (1)(h), the debt
475 settlement advisor may comply with paragraph (1)(h) by
476 disclosing the information supplied by the office.

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477 (4) An agreement must state that the client has a right to
478 terminate the agreement at any time by giving the debt
479 settlement advisor written or electronic notice, in which event
480 all powers of attorney granted by the client to the debt
481 settlement advisor are revoked and void.

482 (5) An agreement may confer on a debt settlement advisor a
483 power of attorney to settle a client's debt for no more than 50
484 percent of the outstanding amount of the debt and may confer a
485 power of attorney to negotiate with the client's creditors on
486 behalf of the client. The debt settlement advisor must obtain
487 the consent of the client before accepting a concession
488 settlement of more than 50 percent of the outstanding amount of
489 the debt.

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

491 (a) Apply to the agreement any law of any jurisdiction
492 other than the United States and this state.

493 (b) Except as permitted by the Federal Arbitration Act, 9
494 U.S.C. s. 2, as amended, or the Florida Arbitration Code in
495 chapter 682, contain any modifications or limitations to
496 otherwise available forums or procedural rights, including the
497 right to trial by jury, which are generally available to the
498 client under law and under this part;

499 (c) Contain restrictions on a client's remedies under this
500 part or any other law.

501 (d) Contain any provision that:

502 1. Limits or releases the liability of any person for not
503 performing the agreement or for violating this part.

504 2. Indemnifies any person for liability arising under the

505 agreement or this part.

506 817.923 Cancellation of an agreement; waiver.--

507 (1) A client may cancel an agreement before midnight of
 508 the 3rd business day after the client executes the agreement.
 509 However, if a debt settlement services agreement does not comply
 510 with subsection (2), s. 817.921, or s. 817.937, the client may
 511 cancel the agreement within 30 days after the client executes
 512 the agreement. To exercise the right of cancellation, the client
 513 must give notice in a record to the debt settlement advisor.
 514 Notice by mail is given when mailed.

515 (2) An agreement must be accompanied by a form that
 516 contains a notice of right of cancellation heading in bold-faced
 517 type underlined by bold black lines. The notice must be in
 518 substantially the following form:

519
 520 NOTICE OF RIGHT OF CANCELLATION

521
 522 You may cancel this agreement, without any penalty or
 523 obligation, at any time before midnight of the 3rd business
 524 day after the day you sign the agreement or otherwise agree
 525 to it by electronic communication.

526
 527 To cancel this agreement during this period, send an e-
 528 mail to ...(e-mail address of debt settlement advisor)...
 529 or mail or deliver a signed, dated copy of this notice, or
 530 any other written notice to ...(name of debt settlement
 531 advisor)... at ...(address of debt settlement advisor)...
 532 before midnight of the 3rd business day after you executed

533 | the agreement.

534 |
535 | If you cancel this agreement within the 3-day period, we
536 | will refund all money you have already paid us.

537 |
538 | I cancel this agreement.

539 |
540 |

541 | Print your name

542 |

543 | Signature

544 |

545 | Date

546 |
547 | 817.925 Required language; rules.--Unless provided
548 | otherwise by commission rule, the disclosures and documents
549 | required by this part must be in English. If a debt settlement
550 | advisor communicates with a client primarily in a language other
551 | than English, the debt settlement advisor must furnish a
552 | translation of the disclosures and documents required by this
553 | part.

554 | 817.927 Fees and other charges.--

555 | (1) A debt settlement advisor may not impose, directly or
556 | indirectly, a fee or other charge on a client or receive money
557 | from or on behalf of a client for debt settlement services
558 | except as permitted by this section.

559 | (2) The total aggregate fees charged by a debt settlement
560 | advisor may not exceed 20 percent of the principal amount of the

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561 debt.

562 (3) In addition to the fees authorized in subsection (2),
563 if a client's payment to a debt settlement advisor is not
564 honored, the debt settlement advisor may impose a service fee
565 not to exceed the service fees authorized under s. 832.08(5) or
566 5 percent of the face amount of the check, draft, or order,
567 whichever is greater, for collection of the dishonored check,
568 draft, or other order for the payment of money.

569 (4) A debt settlement advisor may not impose charges or
570 receive payment for debt settlement services until the debt
571 settlement advisor and the client sign a debt settlement
572 services agreement.

573 817.929 Voluntary contributions.--A debt settlement
574 advisor may not solicit a voluntary contribution from a client
575 for any debt settlement services provided to the client.

576 817.931 Voidable agreements.--

577 (1) If a debt settlement advisor imposes a fee or other
578 charge or receives money or other payments not authorized by s.
579 817.927, the client may void the agreement and recover the fees
580 or charges as provided in s. 817.949.

581 (2) If a debt settlement advisor is not licensed under
582 this part at the time a client approves the debt settlement
583 services agreement, the agreement is voidable by the client.

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

587 817.933 Termination of agreements.--If a client fails to
588 make payments required by the agreement for 60 days, a debt

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589 settlement advisor may terminate the agreement.

590 817.935 Periodic reports; retention of records.--

591 (1) A debt settlement advisor shall provide the accounting
592 required by subsection (2) in the following cases:

593 (a) After each settlement of a debt with a creditor on
594 behalf of a client.

595 (b) Within 5 business days after receiving a request by a
596 client. However, the debt settlement advisor need not comply
597 with more than one request from the client in any calendar
598 month.

599 (c) Upon cancelling or terminating an agreement.

600 (2) If a creditor agrees to accept as payment in full an
601 amount less than the principal amount of the debt owed by the
602 client, the debt settlement advisor shall document, in a record,
603 an accounting of all of the following:

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

606 (b) The amount of the debt that the creditor accepts as
607 settlement in full.

608 (c) Any other terms of the settlement.

609 (d) For a debt settlement advisor who uses a fee agreement
610 that calculates any portion of the fee based on a percentage of
611 savings that the client realizes from a settled debt, the
612 calculation of the fee.

613 (3) A debt settlement advisor must maintain records for
614 each client for whom the advisor provides debt settlement
615 services for 4 years after the most recent date that the advisor
616 received payment from the client. The debt settlement advisor

617 shall produce a copy of the records for the client within a
 618 reasonable time after a request is received. The debt settlement
 619 advisor may use electronic or other means for storing records.

620 817.937 Prohibited acts and practices of debt settlement
 621 advisors.--

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

624 (a) Settle a debt on behalf of a client for more than 50
 625 percent of the amount of the debt owed to a creditor, unless the
 626 client explicitly consents to the settlement after the creditor
 627 agrees to the settlement.

628 (b) Hold a power of attorney that authorizes a debt
 629 settlement advisor to settle a debt, unless the power of
 630 attorney expressly limits the debt settlement advisor's
 631 authority to settle debts for not more than 50 percent of the
 632 amount of the debt owed to a creditor.

633 (c) Exercise or attempt to exercise a power of attorney
 634 after a client terminates an agreement.

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

- 637 1. A return of money to the client;
- 638 2. Before termination of an agreement, payment of a fee
 639 properly authorized by the agreement and this part;
- 640 3. A payment to a creditor to fund a negotiated settlement
 641 authorized by this part; or
- 642 4. A payment to a creditor to fund a negotiated settlement
 643 of which both the settlement and transfer of money are
 644 authorized by the client.

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645 (e) Structure a settlement that results in a negative
646 amortization of any of the client's debts.

647 (f) Settle a debt or lead a client to believe that a
648 payment to a creditor is in settlement of a debt to the creditor
649 unless, at the time of settlement, the client receives a
650 certification or confirmation by the creditor that the payment
651 is in full settlement of the debt or is part of a payment plan
652 that is in full settlement of the debt.

653 (g) Make a representation that:

654 1. The debt settlement advisor will furnish money to pay
655 bills or prevent attachments;

656 2. Payment of a certain amount of money guarantees
657 satisfaction of a certain amount or range of indebtedness;

658 3. Participation in a program may prevent litigation,
659 garnishment, attachment, repossession, foreclosure, eviction, or
660 loss of employment;

661 4. The debt settlement advisor is authorized or competent
662 to furnish legal advice or perform legal services, unless such
663 advice or services are provided by a licensed attorney working
664 with the debt settlement advisor; or

665 5. The debt settlement advisor is a not-for-profit entity,
666 unless the debt settlement advisor is organized and properly
667 operating as a corporation not for profit under chapter 617.

668 (h) Employ deceptive and unfair trade practices, including
669 the knowing omission of any material information.

670 (2) If a debt settlement advisor furnishes debt settlement
671 services to a client, the debt settlement advisor may not,
672 directly or indirectly, engage in any of the following

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673 practices:

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

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

676 1. A promissory note or other negotiable instrument other
677 than a check or a demand draft; or

678 2. A postdated check or demand draft.

679 (c) Lend money or provide credit to the client, except as
680 a deferral of a fee payment at no additional expense to the
681 client.

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

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

687 1. The office, upon proper demand;

688 2. A creditor of the client, to the extent necessary to
689 secure the cooperation of the creditor in a debt settlement
690 program; or

691 3. The extent necessary to administer the debt settlement
692 program.

693 (f) Except as otherwise provided in s. 817.927, provide
694 the client less than the full benefit of a compromise of a debt
695 arranged by the debt settlement advisor.

696 (g) Furnish legal advice or perform legal services, unless
697 the person furnishing the advice to, or performing the services
698 for, the client is licensed to practice law.

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

701 817.939 Advertising.--A debt settlement advisor that
 702 advertises debt settlement services may not make statements that
 703 are misleading or deceptive, and the advertisements may not
 704 conflict with the information specified in s. 817.917.

705 817.941 Internal complaint policy.--Each debt settlement
 706 advisor shall establish a formal internal complaint policy that
 707 creates a process for the debt settlement advisor to receive,
 708 review, and address or resolve formal complaints internally. The
 709 availability of this process shall be communicated in writing to
 710 clients enrolled in the debt settlement advisor's debt
 711 settlement program. This policy must include a provision that
 712 all clients who file a formal complaint will receive a response
 713 from the debt settlement advisor within 30 days after the debt
 714 settlement advisor's receipt of the complaint. The debt
 715 settlement advisor shall maintain a file that documents each
 716 formal complaint and the handling and resolution of each
 717 complaint, and the debt settlement advisor shall disclose the
 718 file to the office upon request.

719 817.943 Powers of administration; rules.--

720 (1) The office may act on its own initiative or in
 721 response to a complaint. The office may seek voluntary
 722 compliance with this part or initiate enforcement actions as
 723 provided in this part.

724 (2) The office may investigate and examine, by subpoena or
 725 otherwise, the activities, books, accounts, and records of a
 726 debt settlement advisor or any person to whom a debt settlement
 727 advisor delegates his or her obligations under an agreement or
 728 this part, in order to determine compliance with this part.

729 (3) Each licensee and control person of the licensee's
730 business must maintain all books, accounts, documents, files,
731 and information necessary for determining compliance with this
732 part and commission rules adopted under this part for 5 years.

733 (a) The records required under this part may be maintained
734 by the licensee at any location identified in its license
735 application or by amendment to the application. The licensee
736 must make such records available to the office for examination
737 and investigation in this state within 10 days after receipt of
738 a written request.

739 (b) The original of any record of a licensee includes a
740 record stored or transmitted by electronic, computerized,
741 mechanized, or other information storage or retrieval or
742 transmission system or device that can generate, regenerate, or
743 transmit the precise data or other information comprising the
744 record. An original also includes the visible data or other
745 information so generated, regenerated, or transmitted if it is
746 legible or can be made legible by enlargement or other process.

747 (4) In support of its enforcement powers, the office may:

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

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

753 (c) Enter into a cooperative arrangement with any federal
754 or state agency having authority over debt settlement advisors
755 and exchange with any of those agencies information about a debt
756 settlement advisor, including information obtained during an

757 examination of the debt settlement advisor.

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

761 (5) The commission may adopt rules to administer this
 762 part.

763 817.945 Administrative remedies.--

764 (1) The office may enforce this part by:

765 (a) Ordering a debt settlement advisor, director, officer,
 766 or other control person of the debt settlement advisor's
 767 business, or an agent thereof, to cease and desist from any
 768 violations of this part.

769 (b) Ordering a debt settlement advisor who violates this
 770 part to correct the violation, including making restitution to
 771 the person aggrieved by the violation.

772 (c) Imposing on a debt settlement advisor a civil penalty
 773 not to exceed \$1,000 per violation.

774 (d) Intervening in an action brought under s. 817.949.

775 (e) Initiating an enforcement action in circuit court to
 776 enforce an order or to obtain restitution, an injunction, or
 777 another equitable relief.

778 (2) The office may impose a fine not to exceed \$1,000 per
 779 day for each day that a person engages in debt settlement
 780 services without a license.

781 (3) If a person knowingly and willfully violates, or
 782 authorizes, directs, or aids another to violate, a final order
 783 issued under subsection (1), the office may impose an additional
 784 civil penalty not to exceed \$1,000 per violation.

785 (4) The office may recover the reasonable costs of
 786 enforcing this part, including reasonable attorney's fees.

787 (5) In determining the amount of a civil penalty to be
 788 imposed under subsection (1) or subsection (2), the office shall
 789 consider the seriousness of the violation, the good faith of the
 790 violator, any previous violations by the violator, the
 791 deleterious effect of the violation on the public, and any other
 792 fact relevant to the determination of the civil penalty.

793 817.947 Suspension, revocation, or nonrenewal of
 794 license.--

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

797 (a) A fact or condition exists that, if it existed when
 798 the debt settlement advisor applied for a debt settlement
 799 advisor license, the fact or condition would be a reason for
 800 denying the license.

801 (b) The debt settlement advisor commits a material
 802 violation of this part, a commission rule adopted under this
 803 part, or an order of the office issued under this part.

804 (c) The debt settlement advisor is insolvent.

805 (d) The debt settlement advisor or a control person of the
 806 debt settlement advisor's business refuses to permit the office
 807 to make an examination authorized by this part, failed to comply
 808 with s. 817.943(4) (b) within 30 days after request, or made a
 809 material misrepresentation or omission in complying with s.
 810 817.943(4) (b) .

811 (e) The debt settlement advisor does not respond within a
 812 reasonable time or in an appropriate manner to communications

813 from the office.

814 (2) A licensee must maintain the insurance coverage or
 815 bond at all times in the amount required under s. 817.907(2). If
 816 the office determines that the insurance coverage is insecure,
 817 deficient in amount, or exhausted in whole or in part, the
 818 office may suspend the licensee's debt settlement advisor
 819 license, unless or until the licensee presents satisfactory
 820 evidence to the office that the coverage or bond is replaced.

821 (3) Upon the suspension, revocation, or nonrenewal of a
 822 debt settlement advisor license, the licensee may request an
 823 administrative proceeding on the suspension, revocation, or
 824 nonrenewal pursuant to chapter 120.

825 817.949 Private enforcement.--

826 (1) If a client voids an agreement pursuant to s. 817.931,
 827 the client may recover in a civil action all money paid by or on
 828 behalf of the client pursuant to the agreement, in addition to
 829 the recovery of reasonable attorney's fees and costs.

830 (2) A client for whom a debt settlement advisor violates
 831 this part may recover in a civil action from the debt settlement
 832 advisor and any person that caused the violation:

833 (a) Compensatory damages for economic injury caused by the
 834 violation.

835 (b) Except as otherwise provided in subsection (3), the
 836 amount recoverable under subsection (1) or \$1,000, whichever is
 837 greater.

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

839 (3) In addition to the remedy available under subsection
 840 (2), if a debt settlement advisor violates a client's rights

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841 under s. 817.927, the client may recover in a civil action all
842 money paid by or on behalf of the client pursuant to the
843 agreement, except for the amounts paid to the creditors.

844 (4) A debt settlement advisor is not liable for violating
845 this part if he or she proves that the violation was not
846 intentional and resulted from a good faith error notwithstanding
847 the maintenance of procedures reasonably adapted to avoid the
848 error. If, in connection with a violation, the debt settlement
849 advisor receives more money than authorized by an agreement or
850 this part, the defense provided by this subsection is not
851 available unless the debt settlement advisor refunds the excess
852 money within 3 business days after learning of the violation.

853 817.951 Deceptive and unfair trade practices; effect on
854 other remedies.--

855 (1) A violation of this part is a deceptive and unfair
856 trade practice and constitutes a violation of part II of chapter
857 501.

858 (2) This part is supplemental to, and makes no attempt to
859 preempt, other consumer protection laws that are not
860 inconsistent with this part.

861 817.953 Statute of limitations.--

862 (1) Any enforcement action must be commenced within 4
863 years after the violation occurs.

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

866 (a) The client's last transmission of money to the debt
867 settlement advisor;

868 (b) The date on which the client discovered or reasonably

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869 should have discovered the facts upon which the client's claim
870 is based; or

871 (c) Termination of actions or proceedings by the office
872 for a violation of this part.

873 (3) Any limitation period prescribed in this section is
874 tolled during any period in which the debt settlement advisor
875 materially and willfully misrepresents information required to
876 be disclosed to the client or the office by this part.

877 817.955 Relation to the Electronic Signatures in Global
878 and National Commerce Act.--This part modifies, limits, and
879 supersedes the federal Electronic Signatures in Global and
880 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not
881 modify, limit, or supersede s. 101(c) of the act, 15 U.S.C. s.
882 7001(c), or authorize electronic delivery of any of the notices
883 described in s. 103(b) of the act, 15 U.S.C. s. 7003(b).

884 Section 2. If any provision of this act or the application
885 thereof to any person or circumstance is held invalid, the
886 invalidity does not affect other provisions or applications of
887 the act which can be given effect without the invalid provision
888 or application, and to this end the provisions of this act are
889 declared severable.

890 Section 3. This act shall take effect July 1, 2010.