

1 A bill to be entitled
2 An act relating to debt relief services; providing a
3 directive to the Division of Statutory Revision; creating
4 s. 559.101, F.S.; providing a short title; transferring,
5 renumbering, and amending s. 817.801, F.S.; revising
6 definitions relating to debt relief services; creating s.
7 559.103, F.S.; providing the powers of the Office of
8 Financial Regulation; creating s. 559.104, F.S.;
9 authorizing the Financial Services Commission to adopt
10 rules; transferring, renumbering, and amending s. 817.803,
11 F.S.; revising provisions relating to who is not subject
12 to the Debt Relief Services Act; providing an exception
13 for attorneys representing clients; creating s. 559.106,
14 F.S.; requiring debt relief organizations to be registered
15 with the office; providing a registration fee; requiring
16 background screening of applicants and control persons;
17 providing grounds for registration issuance or denial;
18 requiring annual renewal; creating s. 559.107, F.S.;
19 requiring registration renewal; transferring, renumbering,
20 and amending s. 817.804, F.S.; requiring a debt relief
21 organization to obtain a surety bond and to provide proof
22 of such bond to the office; creating s. 559.109, F.S.;
23 requiring a debt relief organization to maintain records;
24 creating s. 559.111, F.S.; requiring a debt relief
25 organization to prepare a financial analysis for the
26 debtor; providing for service contracts; requiring certain
27 provisions to be included in such contracts; requiring the
28 debt relief organization to provide the debtor with copies

29 of all signed documents; transferring, renumbering, and
 30 amending s. 817.805, F.S.; conforming terms to changes
 31 made by the act; transferring, renumbering, and amending
 32 s. 817.802, F.S.; prohibiting a debt relief organization
 33 from engaging in certain additional specified acts;
 34 deleting a provision that allows the organization to
 35 collect a fee for insufficient fund transactions; creating
 36 s. 559.114, F.S.; providing for debtor complaints to the
 37 office; providing procedures and office duties, including
 38 administrative penalties; creating s. 559.115, F.S.;
 39 providing for the issuance of subpoenas by the office;
 40 creating s. 559.116, F.S.; authorizing the office to issue
 41 cease and desist orders; transferring, renumbering, and
 42 amending s. 817.806, F.S.; conforming terms to changes
 43 made by the act; providing administrative penalties;
 44 specifying violations that result in criminal penalties;
 45 repealing ss. 559.10, 559.11, 559.12, and 559.13, F.S.,
 46 relating to obsolete provisions concerning budget
 47 planning; amending s. 516.07, F.S.; conforming a cross-
 48 reference; providing effective dates.

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. The Division of Statutory Revision is directed
 53 to redesignate the title of part II of chapter 559, Florida
 54 Statutes, consisting of ss. 559.101-559.117, as "Debt Relief
 55 Services."

56 Section 2. Section 559.101, Florida Statutes, is created

57 | to read:

58 | 559.101 Short title.—This part may be cited as the "Debt
 59 | Relief Services Act."

60 | Section 3. Section 817.801, Florida Statutes, is
 61 | transferred, renumbered as 559.102, Florida Statutes, and
 62 | amended to read:

63 | 559.102 ~~817.801~~ Definitions.—As used in this part:

64 | (1) "Commission" means the Financial Services Commission.

65 | (2) "Control person" means an individual, partnership,
 66 | corporation, trust, or other organization that possesses the
 67 | power, directly or indirectly, to direct the management or
 68 | policies of a company, whether through ownership of securities,
 69 | by contract, or otherwise. The term includes, but is not limited
 70 | to:

71 | (a) A company's executive officers, including the
 72 | president, chief executive officer, chief financial officer,
 73 | chief operations officer, chief legal officer, chief compliance
 74 | officer, director, or other individuals having similar status or
 75 | functions.

76 | (b) For a corporation, each shareholder who, directly or
 77 | indirectly, owns 10 percent or more, or who has the power to
 78 | vote 10 percent or more, of a class of voting securities, unless
 79 | the applicant is a publicly traded company.

80 | (c) For a partnership, all general partners and limited or
 81 | special partners who have contributed 10 percent or more, or who
 82 | have the right to receive upon dissolution 10 percent or more,
 83 | of the partnership's capital.

84 | (d) For a trust, each trustee.

85 (e) For a limited liability company, all managing members
 86 and those members who have contributed 10 percent or more, or
 87 who have the right to receive upon dissolution 10 percent or
 88 more, of the partnership's capital.

89 (3)-(2) "Credit counseling services" means confidential
 90 money management, debt reduction, financial analysis, and
 91 financial educational services provided to a debtor. The term
 92 does not include foreclosure-related rescue services.

93 (4)-(3) "Creditor contribution" means any sum that a
 94 creditor agrees to contribute to a debt relief organization
 95 credit counseling agency, whether directly or by setoff against
 96 amounts otherwise payable to the creditor on behalf of debtors.

97 (5)-(4) "Debt management services" means services, other
 98 than foreclosure-related rescue services, provided to a debtor
 99 by a debt relief credit counseling organization for a fee to:

100 (a) Effect the adjustment, compromise, interest rate
 101 reduction, modification of terms, negotiation, or discharge of
 102 any unsecured account, note, or other indebtedness of the
 103 debtor; or

104 (b) Receive funds periodically from the debtor and
 105 disburse to a creditor any money or other thing of value with
 106 the expectation that the debtor will repay the creditor the
 107 entire principal owed.

108 (6)-(1) "Debt relief organization Credit counseling agency"
 109 means a person offering to provide or any organization providing
 110 debt management services, debt settlement services, or credit
 111 counseling services for compensation.

112 (7) "Debt settlement services" means services, other than

113 foreclosure-related rescue services, provided to a debtor with
114 the expectation of obtaining the creditor's agreement to accept
115 less than the principal amount of a debt in full satisfaction of
116 the debt.

117 (8) "Debtor" means an individual who obtains credit, seeks
118 a credit agreement with a creditor, or owes money to a creditor.

119 (9) "Enrolled debt" means the amount of debt at the time
120 the contract for debt management services is entered but does
121 not include any increases in the amount of debt or additional
122 fees or penalties applied to the debt after services included in
123 the contract are initiated.

124 (10) "Financial analysis" means the review of an
125 individual's budget, income, expenses, and debt by the debt
126 relief organization in order to determine the individual's
127 suitability for additional credit counseling, debt management,
128 or debt settlement services provided by the organization.

129 (11) "Financial audit report" means a report prepared in
130 connection with a financial audit that is conducted in
131 accordance with generally accepted auditing standards prescribed
132 by the American Institute of Certified Public Accountants by a
133 certified public accountant licensed to do business in the
134 United States, which includes:

135 (a) Financial statements, including notes related to the
136 financial statements and required supplementary information,
137 prepared in conformity with United States generally accepted
138 accounting principles.

139 (b) An expression of opinion whether the financial
140 statements are presented in conformity with United States

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141 generally accepted accounting principles, or an assertion that
 142 such an opinion cannot be expressed and the reasons for such
 143 assertion.

144 (12) "Office" means the Office of Financial Regulation of
 145 the Financial Services Commission.

146 (13)-(5) "Person" has the same meaning as in s. 1.01 means
 147 any individual, corporation, partnership, trust, association, or
 148 other legal entity.

149 (14) "Service contract" means the agreement for services
 150 between a debt relief organization and a debtor.

151 Section 4. Section 559.103, Florida Statutes, is created
 152 to read:

153 559.103 Powers and duties of the Office of Financial
 154 Regulation; fees.—

155 (1) The office is responsible for the administration and
 156 enforcement of this part.

157 (2) The office may conduct an investigation of any person
 158 if the office has reason to believe, upon complaint or
 159 otherwise, that any violation of this part may have been
 160 committed or is about to be committed.

161 (3) All fees, charges, and fines collected pursuant to
 162 this part shall be deposited in the State Treasury to the credit
 163 of the Regulatory Trust Fund under the office.

164 Section 5. Section 559.104, Florida Statutes, is created
 165 to read:

166 559.104 Rules.—The commission may adopt rules to
 167 administer this part, including rules that:

168 (1) Require electronic submission of any forms, documents,

169 or fees required under this part.

170 (2) Establish time periods during which an applicant for
171 registration is barred from registration or a registered debt
172 relief organization is barred from renewal due to prior criminal
173 convictions of, or guilty or nolo contendere pleas by, any of
174 the applicant's or registrant's control persons, regardless of
175 adjudication.

176 (a) The rules must provide:

177 1. Permanent bars for felonies involving money laundering,
178 breach of trust, dishonesty, embezzlement, fraud, fraudulent
179 conversion, misappropriation of property, racketeering, or
180 theft;

181 2. A 15-year disqualifying period for felonies involving
182 moral turpitude;

183 3. A 7-year disqualifying period for all other felonies;
184 and

185 4. A 5-year disqualifying period for misdemeanors
186 involving fraud, dishonesty, or any other act of moral
187 turpitude.

188 (b) The rules may provide for an additional waiting period
189 due to dates of imprisonment or community supervision, the
190 commitment of multiple crimes, and other factors reasonably
191 related to the applicant's criminal history.

192 (c) The rules may provide for mitigating factors for
193 crimes identified in subparagraph (a)2. However, the mitigation
194 may not result in a period of disqualification less than 7
195 years. The rule may not mitigate the disqualifying periods in
196 subparagraphs (a)1., (a)3., and (a)4.

197 (d) An applicant is not eligible for registration until
 198 the expiration of the disqualifying period set by rule.

199 (e) Section 112.011 is not applicable to eligibility for
 200 registration under this part.

201 Section 6. Section 817.803, Florida Statutes, is
 202 transferred, renumbered as section 559.105, Florida Statutes,
 203 and amended to read:

204 559.105 ~~817.803~~ Exceptions. ~~Nothing in~~ This part does not
 205 apply ~~applies~~ to:

206 (1) A person licensed to practice law in this state who is
 207 providing credit counseling, debt management, or debt settlement
 208 services as an ancillary matter to her or his representation of
 209 the debtor as a client. ~~Any Debt management or credit counseling~~
 210 ~~services provided in the practice of law in this state;~~

211 (2) A ~~Any~~ person who engages in credit counseling, debt
 212 management, or debt settlement services ~~adjustment~~ to adjust the
 213 indebtedness owed to such person. ~~;~~ ~~or~~

214 (3) The following entities or their subsidiaries:

215 (a) The Federal National Mortgage Association;

216 (b) The Federal Home Loan Mortgage Corporation;

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

219 (d) Any financial institution as defined under s.
 220 655.005(1)(h) ~~A bank, bank holding company, trust company,~~
 221 ~~savings and loan association, credit union, credit card bank, or~~
 222 ~~savings bank that is regulated and supervised by the Office of~~
 223 ~~the Comptroller of the Currency, the Office of Thrift~~
 224 ~~Supervision, the Federal Reserve, the Federal Deposit Insurance~~

225 ~~Corporation, the National Credit Union Administration, the~~
 226 ~~Office of Financial Regulation of the Department of Financial~~
 227 ~~Services, or any state banking regulator; or~~

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

231 ~~(f) Any subsidiary or affiliate of a bank holding company,~~
 232 ~~its employees and its exclusive agents acting under written~~
 233 ~~agreement.~~

234 Section 7. Section 559.106, Florida Statutes, is created
 235 to read:

236 559.106 Registration of debt relief organization.—

237 (1) Effective April 1, 2011, each person who acts as a
 238 debt relief organization in this state must be registered in
 239 accordance with this section. This applies to debt relief
 240 organizations operating in this state or from another state,
 241 regardless of whether such organization is registered, licensed,
 242 or the equivalent in accordance with the laws of another state.

243 (2) In order to apply for registration, an applicant must
 244 submit:

245 (a) A completed registration application form as
 246 prescribed by commission rule which includes the name and
 247 principal business address and e-mail address of the debt relief
 248 organization.

249 (b) A registration fee of \$1,000. The registration fee is
 250 nonrefundable and may not be prorated for a partial year of
 251 registration.

252 (c) Fingerprints for the applicant and each of the

253 applicant's control persons in accordance with rules adopted by
254 the commission.

255 1. The fingerprints may be submitted to the office or a
256 vendor acting on behalf of the office.

257 2. The office may contract with a third-party vendor to
258 provide live-scan fingerprinting in lieu of a paper fingerprint
259 card.

260 3. A state criminal history background check must be
261 conducted through the Department of Law Enforcement, and a
262 federal criminal history background check must be conducted
263 through the Federal Bureau of Investigation.

264 4. All fingerprints submitted to the Department of Law
265 Enforcement must be submitted electronically and entered into
266 the statewide automated fingerprint identification system
267 established in s. 943.05(2)(b) and available for use in
268 accordance with s. 943.05(2)(g) and (h). The office shall pay an
269 annual fee to the department to participate in the system and
270 inform the department of any person whose fingerprints are no
271 longer required to be retained.

272 5. The costs of fingerprint processing, including the cost
273 of retaining the fingerprints, shall be borne by the person
274 subject to the background check.

275 6. The office is responsible for reviewing the results of
276 the state and federal criminal history checks and determining
277 whether the applicant meets registration requirements.

278 (d) Submit documentation demonstrating that the surety
279 bond requirements specified in s. 559.108 have been satisfied.

280 (e) Submit additional information or documentation

281 requested by the office and required by rule concerning the
282 applicant or a control person of the applicant. Additional
283 information may include documentation of pending and prior
284 disciplinary and criminal history events, including arrest
285 reports and certified copies of charging documents, plea
286 agreements, judgments and sentencing documents, documents
287 relating to pretrial intervention, orders terminating probation
288 or supervised release, final administrative agency orders, or
289 other comparable documents that may provide the office with the
290 appropriate information to determine eligibility for
291 registration.

292 (3) An application is considered received for the purposes
293 of s. 120.60 upon the office's receipt of the completed
294 application form, all required documentation, criminal history
295 information, the application fee, and all applicable
296 fingerprinting processing fees.

297 (4) The office shall issue a debt relief organization
298 registration to each applicant who is not otherwise ineligible
299 and who meets the requirements of this section. However, it is a
300 ground for denial of registration if the applicant or one of the
301 applicant's control persons:

302 (a) Has been found guilty of, regardless of adjudication,
303 or has entered a plea of nolo contendere or guilty to, any
304 felony, any crime involving racketeering, fraud, theft,
305 embezzlement, fraudulent conversion, breach of trust,
306 misappropriation of property, dishonesty, or moral turpitude;

307 (b) Has committed any violation specified in s. 559.113;

308 (c) Is the subject of a pending felony criminal

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309 prosecution or a prosecution or an administrative enforcement
310 action, in any jurisdiction, which involves fraud, racketeering,
311 embezzlement, fraudulent conversion, misappropriation of
312 property, theft, dishonesty, breach of trust, or any other act
313 of moral turpitude;

314 (d) Pays the office any fee, fine, or other amount with a
315 check or electronic transmission of funds which fails to clear
316 the applicant's financial institution;

317 (e) Makes a material misstatement on any application,
318 document, or record required to be submitted under this part or
319 the rules of the commission; or

320 (f) Has been the subject of any decision, finding,
321 injunction, suspension, prohibition, revocation, denial,
322 judgment, or other adverse action by any state or federal
323 agency.

324 (5) A registration issued under this section expires
325 annually on March 31, unless canceled, suspended, revoked, or
326 otherwise terminated, and must be renewed as provided under s.
327 559.107.

328 Section 8. Effective April 1, 2011, section 559.107,
329 Florida Statutes, is created to read:

330 559.107 Registration renewal.—

331 (1) In order to renew a debt relief organization
332 registration, a debt relief organization must submit:

333 (a) A completed registration renewal form as prescribed by
334 commission rule.

335 (b) Fingerprints, in accordance with s. 559.106, for any
336 new control persons who have not been screened.

337 (c) Any additional information or documentation requested
338 by the office and required by rule concerning the registrant or
339 control person of the registrant. Additional information may
340 include documentation of any pending and prior disciplinary and
341 criminal history events, including arrest reports and certified
342 copies of charging documents, plea agreements, judgments and
343 sentencing documents, documents relating to pretrial
344 intervention, orders terminating probation or supervised
345 release, final administrative agency orders, or other comparable
346 documents that may provide the office with the appropriate
347 information to determine eligibility for renewal of
348 registration.

349 (d) A nonrefundable renewal fee of \$750 and nonrefundable
350 fees to cover the cost of further fingerprint processing and
351 retention as set forth in commission rule.

352 (2) The office may not renew a debt relief organization
353 registration unless the registrant continues to meet the minimum
354 requirements for initial registration pursuant to s. 559.106 and
355 adopted rule.

356 Section 9. Section 817.804, Florida Statutes, is
357 transferred, renumbered as section 559.108, Florida Statutes,
358 and amended to read:

359 559.108 ~~817.804~~ Financial requirements; surety bond;
360 disclosure and financial reporting.—

361 (1) A debt relief organization must ~~Any person engaged in~~
362 ~~debt management services or credit counseling services shall:~~

363 (a) Obtain from a licensed certified public accountant an
364 annual independent financial audit report ~~in accordance with~~

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365 ~~generally accepted auditing standards~~ that includes ~~shall~~
366 ~~include all~~ accounts ~~of such person~~ in which the funds of
367 debtors are deposited and from which payments are made to
368 creditors on behalf of debtors. A debt relief organization must
369 submit a copy of the report to the office within 120 days after
370 the end of the registrant's fiscal year. The commission may
371 establish by rule the manner for filing a financial audit
372 report.

373 (b) Obtain and maintain at all times insurance coverage
374 for employee dishonesty, depositor's forgery, and computer
375 fraud. ~~The insurance coverage must be~~ in an amount not less than
376 the greater of \$100,000 or 10 percent of the monthly average of
377 the aggregate ~~amount~~ of all deposits made by debtors to the
378 organization for distribution to creditors ~~with such person by~~
379 ~~all debtors~~ for the 6 months immediately preceding the date of
380 initial application for or renewal of the insurance. The
381 deductible on such coverage may ~~shall~~ not exceed 10 percent of
382 the face amount of the policy coverage.

383 (c) Obtain and maintain a surety bond from a surety
384 company authorized to do business in this state. The amount and
385 form of the bond shall be specified by rule and must be at least
386 \$100,000 but may not exceed \$1 million. The rule must provide
387 allowances for business volume. The bond shall be in favor of
388 the state for the use and benefit of any debtor who suffers or
389 sustains any loss or damage by reason of any violation of this
390 part. Pursuant to initial registration and renewal, each
391 applicant shall furnish to the office:

392 1. The original executed surety bond issued by a surety

393 company authorized to do business in this state.

394 2. A statement from the surety company that the premium
 395 for the bond has been paid in full by the applicant.

396 3. A statement from the surety company that the bond
 397 issued by the surety company meets the requirements of this
 398 part. The liability of the surety company under any bond issued
 399 pursuant to this section may not, in the aggregate, exceed the
 400 amount of the bond regardless of the number or amount of any
 401 claims filed or which might be asserted against the surety on
 402 such bond. If multiple claims are filed which collectively
 403 exceed the amount of the bond, the surety may pay the full
 404 amount of the bond to the office and is not further liable under
 405 the bond. The office shall hold such funds for distribution to
 406 claimants and administratively determine and pay to each
 407 claimant a pro rata share of each valid claim made within 6
 408 months after the date the first claim is filed against the
 409 surety.

410 (2) A copy of the annual financial audit report and
 411 insurance policies required by this section must ~~shall~~ be
 412 available for public inspection at each branch location of the
 413 organization. Copies shall be provided, upon written request, to
 414 any party requesting a copy for a charge that does not ~~to~~ exceed
 415 the cost of copying the ~~reproduction~~ of documents.

416 Section 10. Section 559.109, Florida Statutes, is created
 417 to read:

418 559.109 Maintenance of records.-

419 (1) Each registered debt relief organization shall
 420 maintain, at the principal place of business designated on the

421 registration, all books, accounts, records, and documents
 422 necessary to determine the registrant's compliance with this
 423 part.

424 (2) The office may authorize the maintenance of records at
 425 a location other than a principal place of business. The office
 426 may require books, accounts, and records to be produced and
 427 available at a reasonable and convenient location in this state.

428 (3) The commission may prescribe by rule the minimum
 429 information to be shown in the books, accounts, records, and
 430 documents of registrants so that such records enable the office
 431 to determine the registrant's compliance with this part.

432 (4) All books, accounts, records, documents, and receipts
 433 of any payment transaction must be preserved and kept available
 434 for inspection by the office for at least 5 years after the date
 435 the transaction is completed. The commission may prescribe by
 436 rule requirements for the destruction of books, accounts,
 437 records, and documents retained by the registrant after the
 438 completion of the required 5-year period.

439 Section 11. Section 559.111, Florida Statutes, is created
 440 to read:

441 559.111 Financial analysis; service contracts.-

442 (1) Before a debtor signs a service contract, the debt
 443 relief organization shall prepare, retain a copy of, and provide
 444 to the debtor a written financial analysis specific to the
 445 debtor which includes an evaluation of the debtor's income,
 446 expenses, and all debts. An additional fee may not be charged
 447 for the financial analysis.

448 (2) Based on the completed financial analysis, the debt

449 relief organization shall provide to the debtor, and retain a
450 copy of, a written determination of the debtor's suitability for
451 debt management or debt settlement services and whether the
452 debtor can reasonably meet the requirements of the service
453 contract, including the debtor's ability to save the amount
454 estimated to be needed to fund the settlement of the debt.

455 (3) The service contract between the debt relief
456 organization and the debtor must be signed and dated by the
457 debtor and include all of the following:

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

460
461 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR
462 CREDITORS BEFORE SIGNING THIS CONTRACT. YOUR CREDITORS
463 MAY BE WILLING TO DIRECTLY NEGOTIATE A SETTLEMENT,
464 INTEREST RATE REDUCTION, MODIFICATION, PAYMENT PLAN,
465 OR RESTRUCTURING OF YOUR DEBT FREE OF CHARGE.

466
467 YOUR USE OF DEBT MANAGEMENT OR DEBT SETTLEMENT
468 SERVICES MAY RESULT IN LATE FEES, ADDITIONAL DEBTS,
469 AND AN ADVERSE CREDIT RATING. YOU SHOULD CONTACT YOUR
470 CREDITOR FOR MORE INFORMATION.

471
472 (b) A full and detailed description of the services to be
473 performed by the debt relief organization for the debtor,
474 including the financial analysis determining the suitability of
475 the debtor for debt management or debt settlement services, all
476 guarantees and all promises of full or partial refunds, the

477 estimated date or length of time by which the services are to be
 478 performed, and a copy of the Florida Debt Relief Services Act.

479 (c) All terms and conditions of payment, including the
 480 anticipated total of all payments to be made by the debtor and
 481 the estimated amount of any payments to be made to the debt
 482 relief organization or to any other person.

483 (d) The debt relief organization's principal business
 484 address and the name and address of its agent in the state
 485 authorized to receive service of process.

486 (e) A clear and conspicuous statement in boldface type, in
 487 immediate proximity to the space reserved for the debtor's
 488 signature, which states: "You, the debtor, may cancel this
 489 service contract at any time before midnight of the 5th business
 490 day after the date of signing this contract. (See the attached
 491 notice of right to cancel for further explanation of this
 492 right.)"

493 (f) A notice of right to cancel attached to the contract,
 494 in duplicate and easily detachable, which contains the following
 495 statement in at least 12-point uppercase type:

496
 497 NOTICE OF RIGHT TO CANCEL

498
 499 YOU MAY CANCEL ANY CONTRACT FOR CREDIT COUNSELING,
 500 DEBT MANAGEMENT, OR DEBT SETTLEMENT SERVICES WITHIN 5
 501 BUSINESS DAYS AFTER THE DATE THE CONTRACT IS SIGNED BY
 502 YOU WITHOUT INCURRING ANY PENALTY OR OBLIGATION.

503
 504 YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10

505 BUSINESS DAYS AFTER RECEIPT OF YOUR CANCELLATION
 506 NOTICE.

507
 508 TO CANCEL THIS CONTRACT, YOU MUST MAIL OR DELIVER A
 509 SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR
 510 ANY OTHER WRITTEN NOTICE CLEARLY INDICATING YOUR
 511 DESIRE TO CANCEL YOUR CONTRACT.

512
 513 TO: ... (name of debt relief organization)...
 514 AT: ... (address)...

515
 516 BY SIGNING AND DATING THIS NOTICE, I HEREBY CANCEL MY
 517 SERVICE CONTRACT, EXECUTED ON: ... (date service
 518 contract signed)...

519
 520 ... (Signature of Debtor)...

521 ... (Date)...

522 ... (Address)...

523 ... (Phone Number)...

524
 525 (4) The debt relief organization must provide the debtor,
 526 at the time the documents are signed, with a copy of the
 527 completed service contract as described in subsection (3) and
 528 all other documents the organization requires the debtor to
 529 sign.

530 Section 12. Section 817.805, Florida Statutes, is
 531 transferred, renumbered as section 559.112, Florida Statutes,
 532 and amended to read:

533 559.112 ~~817.805~~ Disbursement of funds.—A debt relief
 534 organization offering debt management services that include
 535 disbursement to a creditor must ~~Any person engaged in debt~~
 536 ~~management or credit counseling services shall~~ disburse to the
 537 appropriate creditors all funds received from a debtor, less any
 538 fees permitted by s. 559.113 ~~817.802~~ and any creditor
 539 contributions, within 30 days after receipt of such funds.
 540 However, a creditor contribution may not reduce any sums ~~to be~~
 541 credited to the account of a debtor making a payment to the
 542 organization ~~credit counseling agency~~ for further payment to the
 543 creditor. Further, a debt relief organization offering debt
 544 settlement services or debt management services must ~~any person~~
 545 ~~engaged in such services shall~~ maintain a separate trust account
 546 for the receipt of any funds from debtors and the disbursement
 547 of such funds on behalf of such debtors.

548 Section 13. Section 817.802, Florida Statutes, is
 549 transferred, renumbered as section 559.113, Florida Statutes,
 550 and amended to read:

551 559.113 ~~817.802~~ Prohibited acts ~~Unlawful fees and costs.—~~

552 (1) A debt relief organization may not, directly or
 553 indirectly, charge or accept from a debtor:

554 (a) Any payment for services before the execution of a
 555 written service contract. It is unlawful for any person, while
 556 ~~engaging in debt management services or credit counseling~~
 557 ~~services, to charge or accept from a debtor residing in this~~
 558 ~~state, directly or indirectly,~~

559 (b) A fee or contribution greater than \$50 for the initial
 560 setup or initial consultation. Subsequently, the person may not

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561 ~~charge or accept~~

562 (c) A fee or contribution from a debtor residing in this
563 state greater than \$120 per year for credit counseling services
564 provided in addition to the initial consultation under paragraph
565 (b). additional consultations or, alternatively, if

566 (d) A fee or contribution for debt management services
567 which exceeds as defined in s. 817.801(4)(b) are provided, the
568 person may charge the greater of 7.5 percent of the amount paid
569 monthly by the debtor to the organization for disbursement to a
570 creditor person or \$35 per month, whichever is greater, or 7.5
571 percent of the enrolled debt.

572 (e) A fee or contribution for debt settlement services
573 which exceeds 40 percent of the savings realized, which is
574 defined to be the difference between the amount of enrolled debt
575 and the amount paid to the creditor in discharge of the enrolled
576 debt, less any fees collected pursuant to paragraphs (b) and
577 (c). However, such fees collected for debt settlement services,
578 in the aggregate, may not exceed 20 percent of the enrolled
579 debt. For service contracts requiring fees to be paid on a
580 monthly basis, the payment of such fees must be spread uniformly
581 over at least 18 months or 50 percent of the term of the
582 contract, whichever is greater.

583 (f) A fee or contribution unless the debt management
584 services or debt settlement services result in a settlement,
585 discharge, or modification of the debt on terms more favorable
586 to the debtor than the terms of the original agreement between
587 the debtor and creditor.

588 (g) Any fee or contribution for debt management, unless no

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589 other payment has been received, directly or indirectly, from
590 the debtor for such services. Fees authorized under this
591 subsection may not be a part of or included in the calculation
592 of total enrolled debt.

593 (2) A debt relief organization may not:

594 (a) Advise any debtor, directly or indirectly, against
595 contacting or communicating with her or his creditors before or
596 during the service contract period.

597 (b) Make or use any false or misleading representations or
598 omit any material fact in connection with the offer, sale, or
599 provision of services, or engage, directly or indirectly, in any
600 fraudulent, false, misleading, unconscionable, unfair, or
601 deceptive act or practice in connection with the offer or sale
602 of any of the services of a debt relief organization.

603 (c) Provide services to a debtor without executing a
604 service contract that complies with s. 559.111.

605 (d) Fail to provide copies of the financial analysis, all
606 service contracts, and any other documents the debtor is
607 required to sign as provided under s. 559.111.

608 (e) Fail to perform any of the terms, conditions, and
609 obligations provided in the service contract with the debtor.

610 (f) Fail to disclose on any offer or sale of services,
611 including any Internet website, the debt relief organization's
612 name, business address, telephone number, and e-mail address, if
613 any.

614 (g) Fail to provide the debtor with a 5-business-day right
615 of cancellation without the debtor incurring any penalty or
616 obligation.

617 (h) Fail to obtain an annual financial audit report and
 618 surety bond.

619 (i) Fail to submit an annual financial audit report to the
 620 office.

621 (j) Fail to report on a form prescribed by commission rule
 622 any change to information contained in an initial application
 623 form or any amendment to the application within 30 days after
 624 the change is effective.

625 (k) Fail to comply with any of the provisions of this
 626 part.

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

631 Section 14. Section 559.114, Florida Statutes, is created
 632 to read:

633 559.114 Debtor complaints; administrative duties.—

634 (1) The office shall receive and maintain records of
 635 correspondence and complaints from debtors concerning any person
 636 who provides credit counseling, debt management, or debt
 637 settlement services, including any debt relief organization.

638 (2) The office shall inform and furnish relevant
 639 information to the appropriate regulatory body if a debt relief
 640 organization exempt from registration under this part has been
 641 named in consumer complaints alleging violations of this part.

642 (3) The office shall investigate complaints and record the
 643 resolution of such complaints.

644 (4) A debt relief organization that provides or attempts

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645 to provide debt management or debt settlement services without
646 first registering in accordance with this part is subject to a
647 penalty of up to \$25,000 in addition to the other remedies
648 provided in this part and under part II of chapter 501. The
649 office shall advise the appropriate state attorney, or the
650 Attorney General, of any determination by the office of a
651 violation of this part by any debt relief organization that is
652 not registered as required by this part. The office shall
653 furnish the state attorney or Attorney General with the office's
654 information concerning the alleged violations of such
655 requirements. The enforcing authority is entitled to reasonable
656 attorney's fees and costs in any action brought to enforce this
657 part against an unregistered debt relief organization.

658 (5) A registered debt relief organization must provide a
659 written response to the office within 20 days after receipt of a
660 written request from the office for information concerning a
661 consumer complaint. The response must address the issues and
662 allegations raised in the complaint. The office may impose an
663 administrative fine of up to \$2,500 per request per day upon any
664 registrant that fails to comply with this subsection.

665 Section 15. Section 559.115, Florida Statutes, is created
666 to read:

667 559.115 Subpoenas.—

668 (1) The office may:

669 (a) Issue and serve subpoenas and subpoenas duces tecum to
670 compel the attendance of witnesses and the production of all
671 books, accounts, records, and other documents and materials
672 relevant to an investigation conducted by the office. The

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673 office, or its authorized representative, may administer oaths
674 and affirmations to any person.

675 (b) Seek subpoenas or subpoenas duces tecum from any court
676 to command the appearance of witnesses and the production of
677 books, accounts, records, and other documents or materials at a
678 time and place named in the subpoenas, and an authorized
679 representative of the office may serve such subpoenas.

680 (2) If there is substantial noncompliance with a subpoena
681 or subpoena duces tecum issued by the office, the office may
682 petition the court in the county where the person subpoenaed
683 resides or has her or his principal place of business for an
684 order requiring the person to appear, testify, or produce such
685 books, accounts, records, and other documents as are specified
686 in the subpoena or subpoena duces tecum.

687 (3) The office is entitled to the summary procedure
688 provided in s. 51.011, and the court shall advance such cause on
689 its calendar. Attorney's fees and any other costs incurred by
690 the office to obtain an order granting, in whole or in part, a
691 petition for enforcement of a subpoena or subpoena duces tecum
692 shall be taxed against the subpoenaed person, and failure to
693 comply with such order is a contempt of court.

694 (4) To aid in the enforcement of this part, the office may
695 require or permit a person to file a statement in writing, under
696 oath or otherwise as the office determines, as to all the facts
697 and circumstances concerning the matter to be investigated.

698 Section 16. Section 559.116, Florida Statutes, is created
699 to read:

700 559.116 Cease and desist orders.—The office may issue and

701 serve upon any person an order to cease and desist and to take
 702 corrective action if it has reason to believe the person is
 703 violating, has violated, or is about to violate any provision of
 704 this part, any rule or order issued under this part, or any
 705 written agreement between the person and the office. All
 706 procedural matters relating to issuance and enforcement of such
 707 order are governed by the Administrative Procedure Act.

708 Section 17. Section 817.806, Florida Statutes, is
 709 transferred, renumbered as section 559.117, Florida Statutes,
 710 and amended to read:

711 559.117 ~~817.806~~ Violations; penalties.-

712 (1) Any person who violates any provision of this part
 713 commits an unfair or deceptive trade practice as defined in part
 714 II of chapter 501, ~~and~~ violators are also ~~shall be~~ subject to
 715 the penalties, ~~and~~ remedies, and enforcement actions provided
 716 therein. Further, any debtor consumer injured by a violation of
 717 this part may bring an action for recovery of damages. Judgment
 718 shall be entered for actual damages, but in no case less than
 719 the amount paid by the debtor consumer to the debt relief
 720 organization ~~credit counseling agency~~, plus reasonable
 721 attorney's fees and costs.

722 (2) The office may impose an administrative fine on, or
 723 revoke or suspend the registration of a registrant who has
 724 committed a violation of this part. Final action to fine,
 725 suspend, or revoke the registration of a registrant is subject
 726 to review in accordance with chapter 120.

727 (a) The office may impose suspension rather than
 728 revocation of a registration if circumstances warrant that one

729 or the other should be imposed and the registrant demonstrates
 730 that the registrant has taken affirmative steps that can be
 731 expected to effectively eliminate the violations and that the
 732 registrant's registration has never been previously suspended.

733 (b) In addition to, or in lieu of suspension or revocation
 734 of a registration, the office may impose an administrative fine
 735 of up to \$25,000 per violation. The office shall adopt rules
 736 establishing guidelines for imposing administrative penalties.

737 (3)-(2) It is Any person who violates any provision of this
 738 part commits a felony of the third degree, punishable as
 739 provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084 for any
 740 person to provide debt management or debt settlement services in
 741 this state without first registering with the office, or to
 742 register or attempt to register by means of fraud,
 743 misrepresentation, or concealment.

744 Section 18. Sections 559.10, 559.11, 559.12, and 559.13,
 745 Florida Statutes, are repealed.

746 Section 19. Paragraph (g) of subsection (1) of section
 747 516.07, Florida Statutes, is amended to read:

748 516.07 Grounds for denial of license or for disciplinary
 749 action.—

750 (1) The following acts are violations of this chapter and
 751 constitute grounds for denial of an application for a license to
 752 make consumer finance loans and grounds for any of the
 753 disciplinary actions specified in subsection (2):

754 (g) Any violation of part III of chapter 817 ~~or part II of~~
 755 ~~chapter 559 or of any rule adopted under part II of chapter 559.~~

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756 Section 20. Except as otherwise expressly provided in this
757 act, this act shall take effect January 1, 2011.