

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 an appropriation and authorizing  
 49 additional positions; providing effective dates.

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

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

57 Section 2. Section 559.101, Florida Statutes, is created  
 58 to read:

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

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

64 559.102 ~~817.801~~ Definitions.—As used in this part:

65 (1) "Commission" means the Financial Services Commission.

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

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

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

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

85           (d) For a trust, each trustee.

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

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

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

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

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

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

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

113        (7) "Debt settlement services" means services, other than  
114 foreclosure-related rescue services, provided to a debtor with  
115 the expectation of obtaining the creditor's agreement to accept  
116 less than the principal amount of a debt in full satisfaction of  
117 the debt.

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

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

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

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

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

140        (b) An expression of opinion whether the financial

141 statements are presented in conformity with United States  
 142 generally accepted accounting principles, or an assertion that  
 143 such an opinion cannot be expressed and the reasons for such  
 144 assertion.

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

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

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

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

154 559.103 Powers and duties of the Office of Financial  
 155 Regulation; fees.-

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

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

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

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

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

169       (1) Require electronic submission of any forms, documents,  
170 or fees required under this part.

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

177       (a) The rules must provide:

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

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

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

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

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

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

197 subparagraphs (a)1., (a)3., and (a)4.

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

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

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

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

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

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

215 (3) The following entities or their subsidiaries:

216 (a) The Federal National Mortgage Association;

217 (b) The Federal Home Loan Mortgage Corporation;

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

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



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225 ~~Supervision, the Federal Reserve, the Federal Deposit Insurance~~  
 226 ~~Corporation, the National Credit Union Administration, the~~  
 227 ~~Office of Financial Regulation of the Department of Financial~~  
 228 ~~Services, or any state banking regulator; or~~

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

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

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

237 559.106 Registration of debt relief organization.—

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

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

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

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

253 (c) Fingerprints for the applicant and each of the  
254 applicant's control persons in accordance with rules adopted by  
255 the commission.

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

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

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

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

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

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

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

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

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

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

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

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

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309        (c) Is the subject of a pending felony criminal  
310 prosecution or a prosecution or an administrative enforcement  
311 action, in any jurisdiction, which involves fraud, racketeering,  
312 embezzlement, fraudulent conversion, misappropriation of  
313 property, theft, dishonesty, breach of trust, or any other act  
314 of moral turpitude;

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

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

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

325        (5) A registration issued under this section expires  
326 annually on March 31, unless canceled, suspended, revoked, or  
327 otherwise terminated, and must be renewed as provided under s.  
328 559.107.

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

331        559.107 Registration renewal.—

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

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

336        (b) Fingerprints, in accordance with s. 559.106, for any

337 new control persons who have not been screened.

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

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

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

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

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

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

364 (a) Obtain from a licensed certified public accountant an

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

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

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

393 1. The original executed surety bond issued by a surety  
394 company authorized to do business in this state.

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

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

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

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

419 559.109 Maintenance of records.—

420 (1) Each registered debt relief organization shall

421 maintain, at the principal place of business designated on the  
422 registration, all books, accounts, records, and documents  
423 necessary to determine the registrant's compliance with this  
424 part.

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

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

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

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

442 559.111 Financial analysis; service contracts.—

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



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

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

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

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

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

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

477 guarantees and all promises of full or partial refunds, the  
 478 estimated date or length of time by which the services are to be  
 479 performed, and a copy of the Florida Debt Relief Services Act.

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

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

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

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

497  
 498 NOTICE OF RIGHT TO CANCEL

499  
 500 YOU MAY CANCEL ANY CONTRACT FOR CREDIT COUNSELING,  
 501 DEBT MANAGEMENT, OR DEBT SETTLEMENT SERVICES WITHIN 5  
 502 BUSINESS DAYS AFTER THE DATE THE CONTRACT IS SIGNED BY  
 503 YOU WITHOUT INCURRING ANY PENALTY OR OBLIGATION.  
 504

505 YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10  
 506 BUSINESS DAYS AFTER RECEIPT OF YOUR CANCELLATION  
 507 NOTICE.

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

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

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

520  
 521 ...(Signature of Debtor)...  
 522 ...(Date)...  
 523 ...(Address)...  
 524 ...(Phone Number)...

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

531 Section 12. Section 817.805, Florida Statutes, is  
 532 transferred, renumbered as section 559.112, Florida Statutes,

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533 and amended to read:

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

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

552 559.113 ~~817.802~~ Prohibited acts ~~Unlawful fees and costs.~~—

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

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

560 (b) A fee or contribution greater than \$50 for the initial

561 setup or initial consultation. ~~Subsequently, the person may not~~  
562 ~~charge or accept~~

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

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

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

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

589        (g) Any fee or contribution for debt management, unless no  
590 other payment has been received, directly or indirectly, from  
591 the debtor for such services. Fees authorized under this  
592 subsection may not be a part of or included in the calculation  
593 of total enrolled debt.

594        (2) A debt relief organization may not:

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

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

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

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

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

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

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

617 obligation.

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

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

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

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

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

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

634 559.114 Debtor complaints; administrative duties.—

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

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

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

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

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

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

668       559.115 Subpoenas.—

669       (1) The office may:

670       (a) Issue and serve subpoenas and subpoenas duces tecum to  
671 compel the attendance of witnesses and the production of all  
672 books, accounts, records, and other documents and materials



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673 relevant to an investigation conducted by the office. The  
674 office, or its authorized representative, may administer oaths  
675 and affirmations to any person.

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

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

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

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

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

701 559.116 Cease and desist orders.—The office may issue and  
 702 serve upon any person an order to cease and desist and to take  
 703 corrective action if it has reason to believe the person is  
 704 violating, has violated, or is about to violate any provision of  
 705 this part, any rule or order issued under this part, or any  
 706 written agreement between the person and the office. All  
 707 procedural matters relating to issuance and enforcement of such  
 708 order are governed by the Administrative Procedure Act.

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

712 559.117 ~~817.806~~ Violations; penalties.—

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

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

728 (a) The office may impose suspension rather than

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

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

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

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

747 Section 19. Paragraph (g) of subsection (1) of section  
 748 516.07, Florida Statutes, is amended to read:

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

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

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

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757           Section 20. Effective July 1, 2010, the sums of \$261,938  
758 in recurring funds and \$213,767 in nonrecurring funds are  
759 appropriated from the Regulatory Trust Fund of the Department of  
760 Financial Services to the Office of Financial Regulation, and  
761 four full-time equivalent positions with the associated salary  
762 rate of 187,707 are authorized, for the purpose of administering  
763 this act during the 2010-2011 fiscal year.

764           Section 21. Except as otherwise expressly provided in this  
765 act and except for this section, which shall take effect upon  
766 this act becoming a law, this act shall take effect January 1,  
767 2011.