

By Senator Fasano

11-00315A-10

2010332__

1 A bill to be entitled
2 An act relating to debt negotiation services; amending
3 s. 817.801, F.S.; providing additional definitions
4 relating to debt negotiation services; amending s.
5 817.802, F.S., relating to unlawful fees and costs;
6 conforming a cross-reference; amending s. 817.803,
7 F.S.; providing that an attorney providing legal
8 representation is exempt from debt negotiation
9 organization requirements; creating s. 817.807, F.S.;
10 requiring a debt negotiation organization to annually
11 register with the Office of Financial Regulation;
12 providing registration requirements; requiring an
13 annual fee; authorizing the office to adopt rules;
14 creating s. 817.8071, F.S.; specifying acts prohibited
15 by a debt negotiation organization; creating s.
16 817.8072, F.S.; providing insurance requirements for a
17 debt negotiation organization; authorizing the office
18 to adopt rules; creating s. 817.8073, F.S.; providing
19 requirements for debt negotiation service contracts;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 817.801, Florida Statutes, is amended to
25 read:

26 817.801 Definitions.—As used in this part:

27 (1) "Concessions" means assent to repayment of an unsecured
28 debt for terms more favorable to a debtor than the terms of the
29 original contract between the debtor and a creditor.

11-00315A-10

2010332__

30 (2)~~(1)~~ "Credit counseling agency" means an ~~any~~ organization
31 providing debt management services or credit counseling
32 services.

33 (3)~~(2)~~ "Credit counseling services" means confidential
34 money management, debt reduction, and financial educational
35 services.

36 (4)~~(3)~~ "Creditor contribution" means a ~~any~~ sum that a
37 creditor agrees to contribute to a credit counseling agency,
38 whether directly or by setoff against amounts otherwise payable
39 to the creditor on behalf of debtors.

40 (5)~~(4)~~ "Debt management services" means services provided
41 to a debtor by a credit counseling organization for a fee to:

42 (a) Effect the adjustment, compromise, or discharge of any
43 unsecured account, note, or other indebtedness of the debtor; or

44 (b) Receive from the debtor and disburse to a creditor ~~any~~
45 money or other thing of value.

46 (6) "Debt negotiation organization" means any person
47 providing debt negotiation services.

48 (7) "Debt negotiation services" means intermediary services
49 provided for a fee by a debt negotiation organization between a
50 debtor and one or more of the debtor's creditors for the purpose
51 of obtaining concessions, but without the paid intermediary
52 holding or disbursing funds to the individual creditors.

53 (8) "Debt principal" means the total amount of original
54 debt, including unpaid interest and fees, owed by the debtor as
55 of the date of initial enrollment in a debt negotiation
56 organization's plan.

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

58 (10)~~(5)~~ "Person" means any individual, corporation,

11-00315A-10

2010332__

59 partnership, trust, association, or other legal entity, but does
60 not include governmental organizations or any subdivision
61 thereof.

62 (11) "Plan" means a program or strategy in which a debt
63 negotiation organization furnishes debt negotiation services to
64 a debtor in contemplation that during the course of the plan the
65 debtor's creditors will settle debts for less than the full
66 amount of the debts owed.

67 Section 2. Subsection (1) of section 817.802, Florida
68 Statutes, is amended to read:

69 817.802 Unlawful fees and costs.—

70 (1) It is unlawful for any person, while engaging in debt
71 management services or credit counseling services, to charge or
72 accept from a debtor residing in this state, directly or
73 indirectly, a fee or contribution greater than \$50 for the
74 initial setup or initial consultation. Subsequently, the person
75 may not charge or accept a fee or contribution from a debtor
76 residing in this state greater than \$120 per year for additional
77 consultations or, alternatively, if debt management services as
78 defined in s. 817.801(5)(b) ~~s. 817.801(4)(b)~~ are provided, the
79 person may charge the greater of 7.5 percent of the amount paid
80 monthly by the debtor to the person or \$35 per month.

81 Section 3. Section 817.803, Florida Statutes, is amended to
82 read:

83 817.803 Exceptions. ~~Nothing in~~ This part does not apply
84 ~~applies~~ to:

85 (1) A person licensed to practice law in this state who is
86 providing legal representation to a client with respect to Any
87 debt management, or credit counseling, or debt negotiation

11-00315A-10

2010332__

88 services. ~~provided in the practice of law in this state;~~

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

91 (3) The following entities or their subsidiaries:

92 (a) The Federal National Mortgage Association. ~~;~~

93 (b) The Federal Home Loan Mortgage Corporation. ~~;~~

94 (c) The Florida Housing Finance Corporation. ~~;~~ ~~a public~~
95 ~~corporation created in s. 420.504;~~

96 (d) A bank, bank holding company, trust company, savings
97 and loan association, credit union, credit card bank, or savings
98 bank that is regulated and supervised by the Office of the
99 Comptroller of the Currency, the Office of Thrift Supervision,
100 the Federal Reserve, the Federal Deposit Insurance Corporation,
101 the National Credit Union Administration, the Office of
102 Financial Regulation ~~of the Department of Financial Services,~~ or
103 any state banking regulator. ~~;~~

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

107 (f) Any subsidiary or affiliate of a bank holding company,
108 its employees and its exclusive agents acting under written
109 agreement.

110 Section 4. Section 817.807, Florida Statutes, is created to
111 read:

112 817.807 Debt negotiation organization; registration.—A debt
113 negotiation organization doing business in this state must
114 register and annually renew such registration with the office in
115 accordance with this section.

116 (1) To register or renew registration, the debt negotiation

11-00315A-10

2010332

117 organization shall provide the following to the office:

118 (a) The organization's business or trade name, the
119 organization's current mailing address, the address of each
120 location or branch at which the organization conducts business,
121 and a designation of which location is its principal place of
122 business.

123 (b) A statement as to whether the organization is a
124 domestic or foreign corporation and, if domestic, the state and
125 date of incorporation and the charter number of the corporation,
126 or, if a foreign corporation, the date the corporation first
127 registered to do business in this state.

128 (c) A statement indicating whether the organization holds a
129 current telemarketing license from the Department of Agriculture
130 and Consumer Services or, if not, an explanation as to why a
131 telemarketing license is not required.

132 (d) A statement listing the names of any other businesses
133 or entities through which the organization is currently
134 operating or did business as a debt negotiation organization
135 within the 5 calendar years immediately preceding the date of
136 registration or registration renewal, and whether the
137 organization was the subject of any state action, including
138 suspension or revocation.

139 (e) A statement identifying and explaining any ongoing or
140 prior state or federal investigation, or any civil, criminal, or
141 administrative action taken against the organization, including
142 a withholding of adjudication or conviction for any crime
143 involving fraud, moral turpitude, or dishonest dealing within
144 the 5 calendar years immediately preceding the date of
145 registration or registration renewal.

11-00315A-10

2010332

146 (f) A copy of all service contracts offered to debtors.

147 (g) Pursuant to s. 817.8072, a copy of the organization's
148 insurance policy and related documentation required to be filed
149 with the office.

150 (h) An annual registration or renewal fee of \$2,500.

151 (2) A debt negotiation organization changing its registered
152 name, location, or agent for service of process at any time
153 other than at the time of renewing its registration must notify
154 the office of such change. The office must be notified in
155 writing before there is a change in the organization's business
156 location. A registration is not valid for an organization that
157 transacts business at a location other than those designated in
158 its registration.

159 (3) A registration issued under this section is not
160 assignable or transferable.

161 (4) The office may deny or refuse to renew the registration
162 of any debt negotiation organization based upon a determination
163 that the organization has:

164 (a) Failed to meet the requirements for registration or
165 renewal as provided in this section;

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

168 (c) Not satisfied a fine or penalty arising out of an
169 administrative or civil enforcement action brought by a
170 governmental agency or individual and based upon conduct
171 involving fraud, moral turpitude, dishonest dealing, or any
172 violation of this part; or

173 (d) Had a judgment entered against the organization in any
174 action brought under the Florida Deceptive and Unfair Trade

11-00315A-10

2010332

175 Practices Act or this part.

176 (5) All moneys collected by the office shall be deposited
177 into the office's Regulatory Trust Fund and used to administer
178 this part.

179 (6) The office may adopt rules to administer this section.
180 Section 5. Section 817.8071, Florida Statutes, is created
181 to read:

182 817.8071 Prohibited acts.—

183 (1) A debt negotiation organization may not:

184 (a) Directly or indirectly, impose a fee or other charge on
185 a debtor or receive money from, or on behalf of, a debtor for
186 debt negotiation services except as provided under this section.

187 (b) Impose charges or receive payment for debt negotiation
188 services before the debt negotiation organization and the debtor
189 have signed an agreement that complies with the provisions of
190 this part.

191 (c) Make or use any false or misleading representations or
192 omit any material fact in the offer or sale of debt negotiation
193 services offered, or engage, directly or indirectly, in any
194 fraudulent, false, misleading, unconscionable, unfair, or
195 deceptive act or practice in connection with the offer or sale
196 of any of such services.

197 (d) Provide services to a debtor without executing a
198 service contract that complies with this part.

199 (e) Fail to provide to the debtor copies of all service
200 contracts and other documents that the debtor is required to
201 sign.

202 (f) Fail to obtain insurance coverage or fail to make such
203 coverage information available for public inspection.

11-00315A-10

2010332

204 (2) If a debtor assents to a plan that contemplates that a
205 creditor will settle debt for less than the principal amount of
206 debt, the debt negotiation organization may charge as the total
207 amount of settlement fees only an amount that does not exceed
208 one half of the difference between the debt principal and the
209 concession agreed upon with the debtor's creditor on a specific
210 account. A debt negotiation organization may not collect any
211 fees other than settlement fees, and may collect settlement fees
212 only after a settlement of an account with the debtor's creditor
213 has been agreed upon and executed.

214 Section 6. Section 817.8072, Florida Statutes, is created
215 to read:

216 817.8072 Insurance requirements.-

217 (1) A debt negotiation organization must obtain and
218 maintain insurance coverage at all times for employee
219 dishonesty, depositor's forgery, and computer fraud in an amount
220 not less than the \$100,000. The deductible on such coverage may
221 not exceed 10 percent of the face amount of the policy coverage.

222 (2) Upon written request, a debt negotiation organization
223 must provide a copy of the insurance policies required under
224 this section to any party requesting a copy for a charge that
225 does not exceed the cost of copying.

226 (3) The office may adopt rules to administer this section.

227 Section 7. Section 817.8073, Florida Statutes, is created
228 to read:

229 817.8073 Service contract.-

230 (1) The service contract between the debt negotiation
231 organization and the debtor must be signed and dated by the
232 debtor and include all of the following:

11-00315A-10

2010332__

233 (a) A full and detailed description of the debt negotiation
 234 services to be performed for the debtor by the organization, and
 235 the estimated date or length of time for performing the
 236 services.

237 (b) All terms and conditions of payment, including the
 238 estimated total of all payments to be made by the debtor.

239 (c) The organization's principal business address and the
 240 name and address of its agent authorized to receive service of
 241 process in this state.

242 (d) A clear and conspicuous statement, in boldface type in
 243 the immediate proximity to the space reserved for the debtor's
 244 signature, which states: "You, the debtor, may cancel this
 245 service contract at any time before midnight of the 5th business
 246 day after the date of signing this contract. [See the attached
 247 Notice of Right to Cancel for further explanation of this
 248 right.]"

249 (e) A Notice of Right to Cancel, which must be
 250 substantially in the following form:

251
 252 NOTICE OF RIGHT TO CANCEL

253
 254 YOU MAY CANCEL A CONTRACT FOR DEBT NEGOTIATION SERVICES
 255 WITHIN 5 BUSINESS DAYS AFTER THE DATE THE CONTRACT IS SIGNED BY
 256 YOU WITHOUT INCURRING A PENALTY OR OBLIGATION. TO CANCEL THIS
 257 CONTRACT, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS
 258 CANCELATION NOTICE OR ANY OTHER WRITTEN NOTICE CLEARLY
 259 INDICATING YOUR DESIRE TO CANCEL YOUR CONTRACT.

260
 261 TO:...(name of debt negotiation organization)...

11-00315A-10

2010332__

262 AT:...(address of debt negotiation organization)...
 263
 264 BY SIGNING AND DATING THIS NOTICE, I HEREBY CANCEL MY
 265 SERVICE CONTRACT, EXECUTED ON:...(date service contract
 266 signed)...
 267
 268 ...(Signature of Debtor)...
 269 ...(Date Cancellation Signed)...
 270 ...(Address of Debtor)...
 271 ...(Phone Number of Debtor)...
 272 (2) At the time the documents are signed, the debt
 273 negotiation organization must provide the debtor with a copy of
 274 the completed service contract and all other documents that the
 275 organization requires the debtor to sign.
 276 Section 8. This act shall take effect July 1, 2010.