

1 A bill to be entitled
 2 An act relating to debt negotiation services; amending s.
 3 817.801, F.S.; providing additional definitions relating
 4 to debt negotiation services; amending s. 817.802, F.S.,
 5 conforming a cross-reference; amending s. 817.803, F.S.;
 6 providing that an attorney providing legal representation
 7 is exempt from debt negotiation organization requirements;
 8 creating s. 817.8071, F.S.; prohibiting certain acts by a
 9 debt negotiation organization; providing penalties;
 10 creating s. 817.8072, F.S.; providing insurance
 11 requirements for a debt negotiation organization; creating
 12 s. 817.8073, F.S.; providing requirements for debt
 13 negotiation service contracts; providing an effective
 14 date.

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 16 Be It Enacted by the Legislature of the State of Florida:

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 18 Section 1. Section 817.801, Florida Statutes, is amended
 19 to read:

20 817.801 Definitions.—As used in this part:

21 (1) "Concession" means assent to repayment of an unsecured
 22 debt for terms more favorable to a debtor than the terms of the
 23 original contract between the debtor and a creditor.

24 (2)~~(1)~~ "Credit counseling agency" means any organization,
 25 other than a debt negotiation organization, providing debt
 26 management services or credit counseling services.

27 (3)~~(2)~~ "Credit counseling services" means confidential
 28 money management, debt reduction, and financial educational

29 services provided to a debtor by a credit counseling agency.

30 (4)-(3) "Creditor contribution" means a ~~any~~ sum that a
 31 creditor agrees to contribute to a credit counseling agency,
 32 whether directly or by setoff against amounts otherwise payable
 33 to the creditor on behalf of debtors.

34 (5)-(4) "Debt management services" means services provided
 35 to a debtor by a credit counseling agency ~~organization~~ for a fee
 36 to:

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

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

41 (6) "Debt negotiation organization" means any person
 42 providing debt negotiation services in accordance with s.
 43 817.8071.

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

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

54 (9)-(5) "Person" means an ~~any~~ individual, corporation,
 55 partnership, trust, association, or other legal entity, but does
 56 not include a governmental organization or subdivision thereof.

57 (10) "Plan" means a program or strategy in which a debt
 58 negotiation organization furnishes debt negotiation services to
 59 a debtor in contemplation that during the course of the plan the
 60 debtor's creditors will settle debts for less than the full
 61 amount of the debts owed.

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

64 817.802 Unlawful fees and costs.—

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

76 Section 3. Section 817.803, Florida Statutes, is amended
 77 to read:

78 817.803 Exceptions. ~~Nothing in This part~~ does not apply
 79 ~~applies~~ to:

80 (1) A person licensed to practice law in this state who is
 81 providing legal representation to a client with respect to Any
 82 debt management, or credit counseling, or debt negotiation
 83 services. ~~provided in the practice of law in this state;~~

84 (2) A ~~Any~~ person who engages in debt adjustment to adjust

85 the indebtedness owed to such person.~~;~~ ~~or~~

86 (3) The following entities or their subsidiaries:

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

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

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

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

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

102 (f) Any subsidiary or affiliate of a bank holding company,
 103 its employees and its exclusive agents acting under written
 104 agreement.

105 Section 4. Section 817.8071, Florida Statutes, is created
 106 to read:

107 817.8071 Debt negotiation organization; prohibited acts.-

108 (1) A debt negotiation organization may not:

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

112 (b) Impose charges or receive payment for debt negotiation

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113 services before the debt negotiation organization and the debtor
114 have signed a service contract that complies with s. 817.8073.

115 (c) Make or use any false or misleading representations or
116 omit any material fact in the offer or sale of debt negotiation
117 services offered, or engage, directly or indirectly, in any
118 fraudulent, false, misleading, unconscionable, unfair, or
119 deceptive act or practice in connection with the offer or sale
120 of any of such services.

121 (d) Provide services to a debtor without executing a
122 service contract that complies with s. 817.8073.

123 (e) Fail to provide to the debtor copies of all service
124 contracts and other documents that the debtor is required to
125 sign.

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

128 (2) If a debtor assents to a plan that contemplates that a
129 creditor will settle a debt for less than the principal amount
130 of the debt, the debt negotiation organization may charge as the
131 total amount of settlement fees only an amount that does not
132 exceed one-half of the difference between the debt principal and
133 the concession agreed upon with the debtor's creditor on a
134 specific account. A debt negotiation organization may not
135 collect any fees other than settlement fees and may collect
136 settlement fees only after a settlement of an account with the
137 debtor's creditor is agreed upon and documentation memorializing
138 such settlement is executed.

139 Section 5. Section 817.8072, Florida Statutes, is created
140 to read:

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141 817.8072 Insurance requirements for debt negotiation
142 services.—

143 (1) A debt negotiation organization must obtain and
144 maintain insurance coverage of at least \$100,000 at all times
145 for employee dishonesty, depositor's forgery, and computer
146 fraud. The deductible on such coverage may not exceed 10 percent
147 of the face amount of the policy coverage.

148 (2) Upon written request, a debt negotiation organization
149 must provide a copy of the insurance coverage required under
150 this section to any individual requesting a copy for a charge
151 that does not exceed the cost of copying.

152 Section 6. Section 817.8073, Florida Statutes, is created
153 to read:

154 817.8073 Debt negotiation service contract.—

155 (1) The service contract between the debt negotiation
156 organization and the debtor must be signed and dated by the
157 debtor and include all of the following:

158 (a) A full and detailed description of the debt
159 negotiation services to be performed for the debtor by the
160 organization and the estimated date or length of time for
161 performing the services.

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

164 (c) The organization's principal business address and the
165 name and address of its registered agent authorized to receive
166 service of process in this state.

167 (d) A clear and conspicuous statement, in boldface type in
168 the immediate proximity to the space reserved for the debtor's

169 signature, which states: "You, the debtor, may cancel this
 170 service contract at any time before midnight of the 5th business
 171 day after the date of signing this contract. [See the attached
 172 Notice of Right to Cancel for further explanation of this
 173 right.]"

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

177 NOTICE OF RIGHT TO CANCEL

179 YOU MAY CANCEL A CONTRACT FOR DEBT NEGOTIATION SERVICES
 180 WITHIN 5 BUSINESS DAYS AFTER THE DATE THE CONTRACT IS SIGNED BY
 181 YOU WITHOUT INCURRING A PENALTY OR OBLIGATION. TO CANCEL THIS
 182 CONTRACT, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS
 183 CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE CLEARLY
 184 INDICATING YOUR DESIRE TO CANCEL YOUR CONTRACT.

186 TO:...(name of debt negotiation organization)...
 187 AT:...(address of debt negotiation organization)...

189 BY SIGNING AND DATING THIS NOTICE, I HEREBY CANCEL MY
 190 SERVICE CONTRACT, EXECUTED ON:...(date service contract
 191 signed)...

193 ...(Signature of Debtor)...
 194 ...(Date Cancellation Signed)...
 195 ...(Address of Debtor)...
 196 ...(Phone Number of Debtor)...

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198 (2) At the time the documents are signed, the debt
199 negotiation organization must provide the debtor with a copy of
200 the completed service contract and all other documents that the
201 organization requires the debtor to sign.

202

Section 7. This act shall take effect July 1, 2010.