

By Senator Fasano

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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., conforming a cross-reference; amending  
6           s. 817.803, F.S.; providing that an attorney providing  
7           legal representation is exempt from debt negotiation  
8           organization requirements; creating s. 817.8071, F.S.;  
9           specifying acts prohibited by a debt negotiation  
10          organization; creating s. 817.8072, F.S.; providing  
11          insurance requirements for a debt negotiation  
12          organization; creating s. 817.8073, F.S.; providing  
13          requirements for debt negotiation service contracts;  
14          providing an effective date.

15  
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 to  
19           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.

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

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

53        ~~(9)(5)~~ "Person" means an any individual, corporation,  
54 partnership, trust, association, or other legal entity, but does  
55 not include a governmental organization or subdivision thereof.

56        (10) "Plan" means a program or strategy in which a debt  
57 negotiation organization furnishes debt negotiation services to  
58 a debtor in contemplation that during the course of the plan the

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59 debtor's creditors will settle debts for less than the full  
60 amount of the debts owed.

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

63 817.802 Unlawful fees and costs.—

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

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

77 817.803 Exceptions. ~~Nothing in~~ This part does not apply  
78 ~~applies~~ to:

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

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

85 (3) The following entities or their subsidiaries:

86 (a) The Federal National Mortgage Association. ~~or~~

87 (b) The Federal Home Loan Mortgage Corporation. ~~or~~

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

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

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

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

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

106 817.8071 Debt negotiation organization.-

107 (1) A debt negotiation organization may not:

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

111 (b) Impose charges or receive payment for debt negotiation  
112 services before the debt negotiation organization and the debtor  
113 have signed a service contract that complies with s. 817.8073.

114 (c) Make or use any false or misleading representations or  
115 omit any material fact in the offer or sale of debt negotiation  
116 services offered, or engage, directly or indirectly, in any

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117 fraudulent, false, misleading, unconscionable, unfair, or  
118 deceptive act or practice in connection with the offer or sale  
119 of any of such services.

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

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

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

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

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

140 817.8072 Insurance requirements for debt negotiation  
141 service.—

142 (1) A debt negotiation organization must obtain and  
143 maintain insurance coverage at all times for employee  
144 dishonesty, depositor's forgery, and computer fraud in an amount  
145 not less than \$100,000. The deductible on such coverage may not

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146 exceed 10 percent of the face amount of the policy coverage.

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

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

153 817.8073 Debt negotiation service contract.-

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

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

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

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

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

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

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NOTICE OF RIGHT TO CANCEL

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

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

AT:...(address of debt negotiation organization)...

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

...(Signature of Debtor)...

...(Date Cancellation Signed)...

...(Address of Debtor)...

...(Phone Number of Debtor)...

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

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