

By Senator Bennett

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1 A bill to be entitled
2 An act relating to debt settlement services; creating
3 part V of ch. 817, F.S.; providing a short title;
4 defining terms; providing exemptions from the
5 application of the part; requiring that a person be
6 licensed if he or she provides or offers to provide
7 debt settlement services to a client who resides in
8 this state; providing for a license application and
9 requiring a fee and proof of an insurance policy or
10 surety bond; requiring the fingerprinting and
11 background screening of licensees and certain
12 personnel of the licensees' businesses; requiring
13 certain persons to pay the costs of fingerprint
14 processing; requiring an applicant or licensee to
15 notify the Office of Financial Regulation of any
16 change of the application information within a
17 specified time; requiring the office to publicize
18 certain information on its website; providing
19 procedures for the approval or denial of initial
20 applications for debt settlement advisor licenses;
21 setting forth grounds for which the office may deny an
22 application; authorizing an administrative proceeding
23 upon denial of an application; requiring an annual
24 license period; providing for expiration of licenses;
25 specifying procedures for renewal of debt settlement
26 advisor licenses; authorizing an administrative
27 proceeding upon denial of a license renewal;
28 authorizing certain licensed activity pending the
29 outcome of an administrative proceeding; requiring

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30 debt settlement advisors to act in good faith and
31 provide certain customer services; requiring debt
32 settlement advisors to provide certain documents to
33 prospective clients before signing debt settlement
34 services agreements; authorizing debt settlement
35 advisors to provide certain communications by
36 electronic means in compliance with federal law;
37 specifying requirements for the format and contents of
38 debt settlement services agreements; authorizing
39 clients to cancel such agreements within a specified
40 period; specifying the contents of the cancellation
41 form; requiring debt settlement providers to furnish
42 certain documents in English and provide translations
43 under certain circumstances; limiting the fees that
44 debt settlement advisors may charge; prohibiting debt
45 settlement advisors from soliciting voluntary
46 contributions; authorizing clients to void debt
47 settlement services agreements and recover fees under
48 certain circumstances; authorizing debt settlement
49 advisors to terminate such agreements under certain
50 circumstances; requiring debt settlement advisors to
51 provide clients with reports containing specified
52 information under certain circumstances and keep such
53 records for a specified period; prohibiting debt
54 settlement advisors from engaging in certain acts and
55 practices; prohibiting deceptive advertisements;
56 requiring debt settlement advisors to establish
57 internal complaint processes; specifying the powers of
58 the Office of Financial Regulation to administer the

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59 part; authorizing the office to issue subpoenas;
60 requiring licensees to keep certain records for a
61 specified period and submit such records for
62 examination by the office; authorizing the office to
63 impose certain fees and charges; authorizing the
64 Financial Services Commission to adopt rules;
65 providing administrative remedies for violations of
66 the part; authorizing the office to impose fines and
67 civil penalties; authorizing the suspension,
68 revocation, or nonrenewal of debt settlement advisor
69 licenses under certain circumstances; authorizing an
70 administrative proceeding upon the suspension,
71 revocation, or nonrenewal of a license; authorizing
72 civil actions for enforcement of the part; providing
73 for the award of attorney's fees; declaring that
74 violations of the part are deceptive and unfair trade
75 practices; specifying that the part does not preempt
76 other consumer protection laws; providing time
77 limitations for commencing civil actions; providing
78 for the part's application in relation to the
79 Electronic Signatures in Global and National Commerce
80 Act; providing for severability; providing an
81 effective date.

82
83 Be It Enacted by the Legislature of the State of Florida:

84
85 Section 1. Part V of chapter 817, Florida Statutes,
86 consisting of sections 817.901, 817.903, 817.905, 817.907,
87 817.909, 817.911, 817.913, 817.915, 817.917, 817.919, 817.921,

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88 817.923, 817.925, 817.927, 817.929, 817.931, 817.933, 817.935,
89 817.937, 817.939, 817.941, 817.943, 817.945, 817.947, 817.949,
90 817.951, 817.953, and 817.955, is created to read:

91 PART V

92 DEBT SETTLEMENT SERVICES

93 817.901 Short title.—This part may be cited as the “Debt
94 Settlement Services Act.”

95 817.903 Definitions.—As used in this part, the term:

96 (1) “Agreement” means an agreement between a debt
97 settlement advisor and a client for the performance of debt
98 settlement services.

99 (2) “Bank” means a financial institution, including, but
100 not limited to, a commercial bank, savings bank, savings and
101 loan association, credit union, mortgage bank, or trust company,
102 which is engaged in the business of banking, chartered under
103 federal or state law, and regulated by a federal or state
104 banking regulatory authority.

105 (3) “Client” means a person who enters into an agreement
106 with a debt settlement advisor for debt settlement services.

107 (4) “Commission” means the Financial Services Commission.

108 (5) “Concession” means consent to repay a debt on terms
109 more favorable to a client than the terms of the original
110 contract between the client and his or her creditor.

111 (6) “Control person” means an individual, partnership,
112 corporation, trust, or other organization that possesses the
113 power, directly or indirectly, to direct the management or
114 policies of a debt settlement advisor’s business, whether
115 through ownership of securities, by contract, or otherwise. A
116 person is presumed to control a debt settlement advisor’s

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117 business if the person:

118 (a) Is a director, general partner, or officer exercising
119 executive responsibility or having similar status or functions;

120 (b) Directly or indirectly may vote 10 percent or more of a
121 class of voting securities or sell or direct the sale of 10
122 percent or more of a class of voting securities; or

123 (c) In the case of a partnership, may receive upon
124 dissolution or has contributed 10 percent or more of the
125 capital.

126 (7) "Debt settlement advisor" or "licensee" means a person
127 licensed under this part to provide debt settlement services to
128 a client. The term includes an employee or agent of a debt
129 settlement advisor.

130 (8) "Debt settlement services" means services provided by a
131 debt settlement advisor who acts as an intermediary between a
132 client and one or more unsecured creditors of the client for
133 purposes of obtaining favorable concessions for the client. The
134 term does not include the receipt of money from a client with
135 the intent of distributing the money to the client's creditors.
136 The term also does not include:

137 (a) Legal services provided by an attorney licensed to
138 practice law in this state;

139 (b) Accounting services provided by a certified public
140 accountant licensed to provide accounting services in this
141 state; or

142 (c) Financial planning services provided by a member of a
143 financial planning profession.

144 (9) "Federal act" means the federal Electronic Signatures
145 in Global and National Commerce Act, 15 U.S.C. ss. 7001 et seq.,

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146 as amended.

147 (10) "Good faith" means honesty in fact and the observance
148 of reasonable standards of fair dealing.

149 (11) "Insolvent" means:

150 (a) Having generally ceased to pay debts in the ordinary
151 course of business other than as a result of a good faith
152 dispute;

153 (b) Being unable to pay debts as they become due; or

154 (c) Being insolvent within the meaning of the federal
155 bankruptcy law, 11 U.S.C. ss. 101 et seq., as amended.

156 (12) "Office" means the Office of Financial Regulation.

157 (13) "Principal amount of a debt" means the amount of debt
158 possessed by the client at the time he or she executes an
159 agreement with a debt settlement advisor and before concessions
160 are made by the client's creditors.

161 (14) "Program" or "debt settlement program" means a process
162 whereby a debt settlement advisor furnishes a crafted debt
163 settlement plan to a client and negotiates on behalf of the
164 client and, after an agreement, the client makes payments
165 directly to his or her creditors.

166 (15) "Record" means information that is inscribed on a
167 tangible medium or stored in an electronic format or other
168 medium and is retrievable in perceivable form.

169 817.905 Exemptions.—This part does not apply to:

170 (1) A person who provides debt settlement services to a
171 client but does not receive compensation for such services.

172 (2) A judicial officer, a person acting under an order of a
173 court or an administrative agency, or an assignee for the
174 benefit of creditors.

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175 (3) A bank or its agent.

176 (4) A title insurer, escrow company, or other entity that
177 provides bill-paying services if the debt settlement services
178 are incidental to the bill-paying services.

179 817.907 Debt settlement advisor license.-

180 (1) (a) A person must be licensed under this part if he or
181 she provides or offers to provide debt settlement services to a
182 client who resides in this state.

183 (b) A person seeking a debt settlement advisor license must
184 apply to the office in the format prescribed by commission rule.

185 An application must include:

186 1. The applicant's name, principal business address and
187 telephone number, and every e-mail address and Internet website
188 address used by the applicant.

189 2. The name under which the applicant will conduct
190 business.

191 3. The address of each location in this state, other than
192 the applicant's principal business address, at which the
193 applicant will provide debt settlement services, or a statement
194 that the applicant will provide debt settlement services only at
195 the principal business address.

196 4. If the applicant is a business entity, the name and home
197 address of each officer, director, and other control person of
198 the business entity.

199 5. A statement describing, to the extent it is known or
200 should be known by the applicant, any civil or criminal
201 judgments related to financial fraud or misuse, and any
202 administrative or enforcement actions relating to financial
203 fraud or misuse, by a governmental agency in any jurisdiction

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204 against the applicant or an officer, director, owner, or other
205 control person, or an employee or agent, of the applicant's
206 business.

207 6. A copy of each debt settlement services agreement form
208 that the applicant will use in providing services to clients.

209 7. The schedule of fees and charges that the applicant
210 intends to charge a client for debt settlement services
211 rendered.

212 8. A copy of the financial analysis or budget form that the
213 applicant intends to use for reviewing a client's financial
214 condition.

215 9. A description of any ownership interest of 10 percent or
216 more by a director, owner, or other control person, or by an
217 employee, of the applicant's business in:

218 a. Any entity that provides products or services to the
219 applicant or any client of the applicant's debt settlement
220 services; or

221 b. Another control person of the applicant's business.

222 10. Evidence that the applicant has a registered agent in
223 this state of record with the Department of State.

224 11. Any other information that the office reasonably
225 requires to perform the duties of the office under s. 817.909.

226 (c) An application must contain a statement informing the
227 applicant that a false or dishonest answer to any question in
228 the application may be grounds for denial or subsequent
229 suspension or revocation of the applicant's license.

230 (2) An applicant for a debt settlement advisor license must
231 remit to the office a nonrefundable license fee established by
232 commission rule not to exceed \$350 and submit proof that:

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233 (a) The applicant is covered by a minimum insurance policy
234 in an amount specified by commission rule; or

235 (b) In lieu of an aggregate umbrella insurance policy, the
236 applicant filed a surety bond with the office, in a form
237 approved by commission rule, for a term of not less than the
238 expiration date of the license. The bond must be in an amount of
239 at least \$10,000. However, the office may demand that an
240 applicant file a bond of a larger amount if the office
241 determines that the financial condition and business experience
242 of the debt settlement advisor, the history of the debt
243 settlement advisor in performing debt settlement services, and
244 the risk to clients justify a larger surety bond. The office may
245 not require a surety bond greater than \$50,000. The surety bond
246 must be in favor of the office for the benefit of any clients in
247 this state who suffer loss arising out of debt settlement
248 services from the debt settlement advisor.

249 (3) Each applicant and control person of the applicant's
250 business must submit fingerprints in accordance with commission
251 rule.

252 (a) The office may require that fingerprints be submitted
253 to the office or a vendor acting on behalf of the office.

254 (b) A state criminal history background screening must be
255 conducted through the Department of Law Enforcement and a
256 federal criminal history background screening must be conducted
257 through the Federal Bureau of Investigation. The office is
258 responsible for reviewing the results of the state and federal
259 criminal history checks and determining whether the applicant
260 meets licensure requirements.

261 (c) The office may contract with third-party vendors that

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262 provide live scan fingerprinting in lieu of a paper fingerprint
263 card.

264 (d) All fingerprints submitted to the Department of Law
265 Enforcement shall be submitted electronically and shall be
266 entered into the statewide automated fingerprint identification
267 system established in s. 943.05(2)(b) and shall be available for
268 use in accordance with s. 943.05(2)(g) and (h). The office shall
269 participate in this process by payment of an annual fee to the
270 Department of Law Enforcement and by informing the Department of
271 Law Enforcement of any person whose fingerprints should no
272 longer be retained.

273 (e) The costs of fingerprint processing, including the
274 costs of retaining fingerprints, shall be borne by the person
275 subject to the background screening.

276 (4) An applicant or licensed debt settlement advisor shall
277 notify the office whenever there is a change of the information
278 specified in this section or s. 817.911 within 30 days after the
279 change.

280 (5) The office shall maintain and publicize on its Internet
281 website the names and addresses of all licensed debt settlement
282 advisors in this state.

283 817.909 Issuance or denial of licenses.—

284 (1) An application is considered received for purposes of
285 s. 120.60 upon receipt of a completed application as prescribed
286 by commission rule, the nonrefundable license fee established
287 pursuant to s. 817.907(2), and any other fee prescribed by law.

288 (2) The office shall issue an initial license to a debt
289 settlement advisor who complies with s. 817.907. The office may
290 deny an application for an initial debt settlement advisor

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291 license if:

292 (a) The application contains information that is materially
293 erroneous or incomplete;

294 (b) An officer, director, owner, or other control person of
295 the applicant's business has been convicted of a crime or has
296 had a civil judgment entered against him or her involving
297 dishonesty or the violation of state or federal securities laws;

298 (c) The application is not accompanied by the required fees
299 established by the office; or

300 (d) There is reasonable evidence that the applicant will
301 not operate as a debt settlement advisor in a lawful, honest,
302 and fair manner.

303 (3) Upon denial of an initial application for a debt
304 settlement advisor license, the applicant may request an
305 administrative proceeding on the denial pursuant to chapter 120.

306 (4) The commission shall establish by rule an annual
307 license period. A debt settlement advisor license expires at the
308 end of the license period for which the license is issued.

309 817.911 License renewal.—

310 (1) A debt settlement advisor must annually renew his or
311 her license to provide debt settlement services.

312 (2) A person seeking licensure as a debt settlement advisor
313 must apply to the office in the format prescribed by commission
314 rule. A renewal application must:

315 (a) Be filed at least 30 days, but no more than 60 days,
316 before the current license expires.

317 (b) Be accompanied by a nonrefundable renewal fee
318 established by commission rule not to exceed the initial license
319 fee established pursuant to s. 817.907(2) and the annual costs

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320 of fingerprint processing pursuant to s. 817.907(3)(d) and (e).

321 (c) Disclose any changes in the information contained in
322 the applicant's initial application for a license or in its
323 immediately previous license renewal application, as
324 appropriate.

325 (d) Provide any other information that the office
326 reasonably requires to perform its duties under this section.

327 (3) The office shall renew the license of a debt settlement
328 advisor who complies with this section. The office may deny a
329 renewal application for any reason authorized in s. 817.909(2)
330 for denial of an initial application.

331 (4) If a debt settlement advisor timely files a complete
332 application for renewal of his or her license, the license
333 remains in effect until the office notifies the applicant, in
334 writing, whether the application is approved or denied. If the
335 office denies a renewal application, the written notice to the
336 debt settlement advisor must describe the reasons for the
337 denial.

338 (5)(a) Upon denial of an application to renew a debt
339 settlement advisor license, the licensee may request an
340 administrative proceeding on the denial pursuant to chapter 120.

341 (b) If the office denies a renewal application and the
342 applicant requests an administrative proceeding under chapter
343 120, the debt settlement advisor may continue to provide debt
344 settlement services to a client with whom the advisor has an
345 agreement. If the denial of the license is affirmed, the debt
346 settlement advisor must discontinue providing debt settlement
347 services to clients and transfer the clients' agreements to
348 other licensed debt settlement advisors.

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349 817.913 Requirement of good faith.—A debt settlement
350 advisor must act in good faith in all matters under this part.

351 817.915 Customer service.—A debt settlement advisor shall
352 maintain a toll-free telephone service, staffed at a level that
353 reasonably permits a client to speak to a customer service
354 representative during ordinary business hours.

355 817.917 Prerequisites for providing debt settlement
356 services.—

357 (1) Before a debt settlement advisor may provide debt
358 settlement services to a potential client, the debt settlement
359 advisor must give the potential client an itemized list of goods
360 and services available from the debt settlement advisor and the
361 charges for each service rendered. The list and charges must be
362 clear and conspicuous.

363 (2) A debt settlement advisor may not furnish debt
364 settlement services unless he or she prepares a financial
365 analysis for the potential client.

366 (3) Before signing an agreement with a potential client, a
367 debt settlement advisor must:

368 (a) Provide the potential client with a copy of the
369 financial analysis and a written notice that identifies the debt
370 settlement advisor and acknowledges that a potential client may
371 keep the financial analysis even if he or she chooses not to
372 become a client of the debt settlement advisor.

373 (b) Inform the potential client of the availability, at his
374 or her option, of assistance by a toll-free telephone service or
375 in person to discuss the financial analysis required in
376 subsection (2).

377 (c) Inform the potential client that:

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- 378 1. Not all debt settlement programs are suitable for all
379 clients.
- 380 2. Participation in a debt settlement program may adversely
381 affect a client's credit rating or credit scores.
- 382 3. Nonpayment of debt may lead creditors to increase
383 finance and other charges or undertake collection activity,
384 including litigation.
- 385 4. Unless a client is insolvent and a creditor settles for
386 less than the full amount of the debt, participation in the
387 program may result in the creation of taxable income to the
388 client, even though the client does not receive any money.
- 389 5. Specific results cannot be predicted or guaranteed and
390 the debt settlement advisor cannot force negotiations or
391 settlements with creditors who do not wish to participate in
392 negotiations, but will nevertheless advocate on behalf of the
393 client.
- 394 6. The debt settlement program requires that a client meet
395 a certain savings goal in order to maximize settlement results.
- 396 7. The debt settlement advisor may provide accounting or
397 legal advice to a client only if the debt settlement advisor is
398 licensed to practice law in this state.
- 399 8. The debt settlement advisor is a client's advocate and
400 may not receive compensation from creditors, banks, or third-
401 party collection agencies.
- 402 9. The debt settlement advisor may not make monthly
403 payments to a client's creditors.
- 404 817.919 Communication by electronic or other means.-
405 (1) A debt settlement advisor may satisfy the requirements
406 of s. 817.917, s. 817.923, or s. 817.935 through the Internet or

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407 other electronic means if the debt settlement advisor obtains
408 the client's consent in the manner provided by s. 101(c)(1) of
409 the federal act.

410 (2) The disclosures and materials required by ss. 817.917,
411 817.923, and 817.935 shall be presented in a format that can be
412 accurately reproduced for later reference.

413 (3) For disclosure through an Internet website, disclosure
414 of the information required by s. 817.917 must appear on one or
415 more screens that contain only the information required, and the
416 client must be able to see the information on the screens before
417 agreeing to participate in the program.

418 (4) At the time of providing the materials or agreement
419 required in s. 817.917, s. 817.923, or s. 817.935, a debt
420 settlement advisor shall inform the client that upon electronic,
421 telephonic, or written request, the advisor shall send the
422 client a written copy of the materials and shall comply with a
423 request as provided in subsection (7).

424 (5) If a debt settlement advisor is requested, within 90
425 days after a program is completed or terminated, to send a
426 written copy of the materials required by s. 817.917, s.
427 817.923, or s. 817.935, the debt settlement advisor shall send
428 the materials at no charge within 3 business days after receipt
429 of the request. However, the debt settlement advisor need not
430 comply with a request more than once per calendar month or
431 comply with a request that the advisor reasonably believes is
432 made for purposes of harassment. If a request is made more than
433 90 days after a program is completed or terminated, the debt
434 settlement advisor shall send a written copy of the materials
435 requested within 30 days.

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436 (6) If a debt settlement advisor maintains an Internet
437 website, the debt settlement advisor shall disclose on the home
438 page of the website or on a page that is clearly and
439 conspicuously connected to the home page by a link that clearly
440 reveals its contents:

441 (a) The name or names under which the debt settlement
442 advisor does business.

443 (b) The principal business address, telephone number, and
444 e-mail address, if any.

445 (7) If a client who previously consents to electronic
446 communication in the manner provided by s. 101(c)(1) of the
447 federal act withdraws the consent as provided in the federal
448 act, a debt settlement advisor may terminate the agreement with
449 the client. If the debt settlement advisor wishes to terminate
450 the agreement, he or she shall notify the client and, unless the
451 client consents to electronic communication in the manner
452 provided in s. 101(c)(1) of the federal act within 30 days after
453 receiving the notice, the agreement is terminated.

454 817.921 Form and contents of a debt settlement services
455 agreement.—

456 (1) A debt settlement services agreement must be in
457 writing, dated and signed by the client and the debt settlement
458 advisor, and delivered to the client immediately upon signing
459 the agreement. The agreement must include:

460 (a) The name and home address of the client.

461 (b) The name, business address, and telephone number of the
462 debt settlement advisor.

463 (c) The debt settlement services to be provided.

464 (d) The amount, or method of determining the amount, of all

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465 fees, individually itemized, to be paid by the client.

466 (e) The process by which the debt settlement advisor will
467 comply with his or her obligations under s. 817.935.

468 (f) A statement that the client may cancel the agreement as
469 provided in s. 817.923.

470 (g) A disclosure that the client may contact the office
471 with any questions or complaints regarding the debt settlement
472 advisor.

473 (h) The address, telephone number, and Internet address or
474 website of the office.

475 (2) For the purposes of subsection (1), delivery of an
476 electronic record occurs when it is made available in a format
477 that the client may retrieve, save, and print, and when the
478 client is notified that the record is available.

479 (3) If the office supplies the debt settlement advisor with
480 any information required under paragraph (1)(h), the debt
481 settlement advisor may comply with paragraph (1)(h) by
482 disclosing the information supplied by the office.

483 (4) An agreement must state that the client has a right to
484 terminate the agreement at any time by giving the debt
485 settlement advisor written or electronic notice, in which event
486 all powers of attorney granted by the client to the debt
487 settlement advisor are revoked and void.

488 (5) An agreement may confer on a debt settlement advisor a
489 power of attorney to settle a client's debt for no more than 50
490 percent of the outstanding amount of the debt and may confer a
491 power of attorney to negotiate with the client's creditors on
492 behalf of the client. The debt settlement advisor must obtain
493 the consent of the client before accepting a concession

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494 settlement of more than 50 percent of the outstanding amount of
495 the debt.

496 (6) A debt settlement services agreement may not:

497 (a) Apply to the agreement any law of any jurisdiction
498 other than the United States and this state.

499 (b) Except as permitted by the Federal Arbitration Act, 9
500 U.S.C. s. 2, as amended, or the Florida Arbitration Code in
501 chapter 682, contain any modifications or limitations to
502 otherwise available forums or procedural rights, including the
503 right to trial by jury, which are generally available to the
504 client under law and under this part;

505 (c) Contain restrictions on a client's remedies under this
506 part or any other law.

507 (d) Contain any provision that:

508 1. Limits or releases the liability of any person for not
509 performing the agreement or for violating this part.

510 2. Indemnifies any person for liability arising under the
511 agreement or this part.

512 817.923 Cancellation of an agreement; waiver.—

513 (1) A client may cancel an agreement before midnight of the
514 3rd business day after the client executes the agreement.

515 However, if a debt settlement services agreement does not comply
516 with subsection (2), s. 817.921, or s. 817.937, the client may
517 cancel the agreement within 30 days after the client executes
518 the agreement. To exercise the right of cancellation, the client
519 must give notice in a record to the debt settlement advisor.

520 Notice by mail is given when mailed.

521 (2) An agreement must be accompanied by a form that
522 contains a notice of right of cancellation heading in bold-faced

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523 type underlined by bold black lines. The notice must be in
524 substantially the following form:

526 NOTICE OF RIGHT OF CANCELLATION

527
528 You may cancel this agreement, without any penalty or
529 obligation, at any time before midnight of the 3rd
530 business day after the day you sign the agreement or
531 otherwise agree to it by electronic communication.

532
533 To cancel this agreement during this period, send an
534 e-mail to ...(e-mail address of debt settlement
535 advisor)... or mail or deliver a signed, dated copy of
536 this notice, or any other written notice to ...(name
537 of debt settlement advisor)... at ...(address of debt
538 settlement advisor)... before midnight of the 3rd
539 business day after you executed the agreement.

540
541 If you cancel this agreement within the 3-day period,
542 we will refund all money you have already paid us.

543
544 I cancel this agreement.

545
546

547 Print your name

548

549 Signature

550

551 Date

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552
553 817.925 Required language; rules.—Unless provided otherwise
554 by commission rule, the disclosures and documents required by
555 this part must be in English. If a debt settlement advisor
556 communicates with a client primarily in a language other than
557 English, the debt settlement advisor must furnish a translation
558 of the disclosures and documents required by this part.

559 817.927 Fees and other charges.—

560 (1) A debt settlement advisor may not impose, directly or
561 indirectly, a fee or other charge on a client or receive money
562 from or on behalf of a client for debt settlement services
563 except as permitted by this section.

564 (2) The total aggregate fees charged by a debt settlement
565 advisor may not exceed 20 percent of the principal amount of the
566 debt.

567 (3) In addition to the fees authorized in subsection (2),
568 if a client's payment to a debt settlement advisor is not
569 honored, the debt settlement advisor may impose a service fee
570 not to exceed the service fees authorized under s. 832.08(5) or
571 5 percent of the face amount of the check, draft, or order,
572 whichever is greater, for collection of the dishonored check,
573 draft, or other order for the payment of money.

574 (4) A debt settlement advisor may not impose charges or
575 receive payment for debt settlement services until the debt
576 settlement advisor and the client sign a debt settlement
577 services agreement.

578 817.929 Voluntary contributions.—A debt settlement advisor
579 may not solicit a voluntary contribution from a client for any
580 debt settlement services provided to the client.

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581 817.931 Voidable agreements.-

582 (1) If a debt settlement advisor imposes a fee or other
583 charge or receives money or other payments not authorized by s.
584 817.927, the client may void the agreement and recover the fees
585 or charges as provided in s. 817.949.

586 (2) If a debt settlement advisor is not licensed under this
587 part at the time a client approves the debt settlement services
588 agreement, the agreement is voidable by the client.

589 (3) If a client voids an agreement pursuant to this
590 section, the debt settlement advisor does not have a claim
591 against the client for breach of contract or for restitution.

592 817.933 Termination of agreements.-If a client fails to
593 make payments required by the agreement for 60 days, a debt
594 settlement advisor may terminate the agreement.

595 817.935 Periodic reports; retention of records.-

596 (1) A debt settlement advisor shall provide the accounting
597 required by subsection (2) in the following cases:

598 (a) After each settlement of a debt with a creditor on
599 behalf of a client.

600 (b) Within 5 business days after receiving a request by a
601 client. However, the debt settlement advisor need not comply
602 with more than one request from the client in any calendar
603 month.

604 (c) Upon cancelling or terminating an agreement.

605 (2) If a creditor agrees to accept as payment in full an
606 amount less than the principal amount of the debt owed by the
607 client, the debt settlement advisor shall document, in a record,
608 an accounting of all of the following:

609 (a) The amount of the client's debt when the creditor

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610 agrees to a settlement.

611 (b) The amount of the debt that the creditor accepts as
612 settlement in full.

613 (c) Any other terms of the settlement.

614 (d) For a debt settlement advisor who uses a fee agreement
615 that calculates any portion of the fee based on a percentage of
616 savings that the client realizes from a settled debt, the
617 calculation of the fee.

618 (3) A debt settlement advisor must maintain records for
619 each client for whom the advisor provides debt settlement
620 services for 4 years after the most recent date that the advisor
621 received payment from the client. The debt settlement advisor
622 shall produce a copy of the records for the client within a
623 reasonable time after a request is received. The debt settlement
624 advisor may use electronic or other means for storing records.

625 817.937 Prohibited acts and practices of debt settlement
626 advisors.—

627 (1) A debt settlement advisor may not engage in any of the
628 following practices:

629 (a) Settle a debt on behalf of a client for more than 50
630 percent of the amount of the debt owed to a creditor, unless the
631 client explicitly consents to the settlement after the creditor
632 agrees to the settlement.

633 (b) Hold a power of attorney that authorizes a debt
634 settlement advisor to settle a debt, unless the power of
635 attorney expressly limits the debt settlement advisor's
636 authority to settle debts for not more than 50 percent of the
637 amount of the debt owed to a creditor.

638 (c) Exercise or attempt to exercise a power of attorney

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639 after a client terminates an agreement.

640 (d) Initiate a transfer from a client's bank account to
641 another person unless the transfer is:

642 1. A return of money to the client;

643 2. Before termination of an agreement, payment of a fee
644 properly authorized by the agreement and this part;

645 3. A payment to a creditor to fund a negotiated settlement
646 authorized by this part; or

647 4. A payment to a creditor to fund a negotiated settlement
648 of which both the settlement and transfer of money are
649 authorized by the client.

650 (e) Structure a settlement that results in a negative
651 amortization of any of the client's debts.

652 (f) Settle a debt or lead a client to believe that a
653 payment to a creditor is in settlement of a debt to the creditor
654 unless, at the time of settlement, the client receives a
655 certification or confirmation by the creditor that the payment
656 is in full settlement of the debt or is part of a payment plan
657 that is in full settlement of the debt.

658 (g) Make a representation that:

659 1. The debt settlement advisor will furnish money to pay
660 bills or prevent attachments;

661 2. Payment of a certain amount of money guarantees
662 satisfaction of a certain amount or range of indebtedness;

663 3. Participation in a program may prevent litigation,
664 garnishment, attachment, repossession, foreclosure, eviction, or
665 loss of employment;

666 4. The debt settlement advisor is authorized or competent
667 to furnish legal advice or perform legal services, unless such

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668 advice or services are provided by a licensed attorney working
669 with the debt settlement advisor; or

670 5. The debt settlement advisor is a not-for-profit entity,
671 unless the debt settlement advisor is organized and properly
672 operating as a corporation not for profit under chapter 617.

673 (h) Employ deceptive and unfair trade practices, including
674 the knowing omission of any material information.

675 (2) If a debt settlement advisor furnishes debt settlement
676 services to a client, the debt settlement advisor may not,
677 directly or indirectly, engage in any of the following
678 practices:

679 (a) Purchase a debt or obligation of the client.

680 (b) Receive from or on behalf of the client:

681 1. A promissory note or other negotiable instrument other
682 than a check or a demand draft; or

683 2. A postdated check or demand draft.

684 (c) Lend money or provide credit to the client, except as a
685 deferral of a fee payment at no additional expense to the
686 client.

687 (d) Obtain a mortgage or other security interest from any
688 person in connection with the services provided to the client.

689 (e) Except as permitted by federal law, disclose the
690 identity or identifying information of the client or the
691 identity of the client's creditors, except to:

692 1. The office, upon proper demand;

693 2. A creditor of the client, to the extent necessary to
694 secure the cooperation of the creditor in a debt settlement
695 program; or

696 3. The extent necessary to administer the debt settlement

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697 program.

698 (f) Except as otherwise provided in s. 817.927, provide the
699 client less than the full benefit of a compromise of a debt
700 arranged by the debt settlement advisor.

701 (g) Furnish legal advice or perform legal services, unless
702 the person furnishing the advice to, or performing the services
703 for, the client is licensed to practice law.

704 (h) Advise clients to stop payment on any of the accounts
705 being handled by the debt settlement advisor.

706 817.939 Advertising.—A debt settlement advisor that
707 advertises debt settlement services may not make statements that
708 are misleading or deceptive, and the advertisements may not
709 conflict with the information specified in s. 817.917.

710 817.941 Internal complaint policy.—Each debt settlement
711 advisor shall establish a formal internal complaint policy that
712 creates a process for the debt settlement advisor to receive,
713 review, and address or resolve formal complaints internally. The
714 availability of this process shall be communicated in writing to
715 clients enrolled in the debt settlement advisor's debt
716 settlement program. This policy must include a provision that
717 all clients who file a formal complaint will receive a response
718 from the debt settlement advisor within 30 days after the debt
719 settlement advisor's receipt of the complaint. The debt
720 settlement advisor shall maintain a file that documents each
721 formal complaint and the handling and resolution of each
722 complaint, and the debt settlement advisor shall disclose the
723 file to the office upon request.

724 817.943 Powers of administration; rules.—

725 (1) The office may act on its own initiative or in response

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726 to a complaint. The office may seek voluntary compliance with
727 this part or initiate enforcement actions as provided in this
728 part.

729 (2) The office may investigate and examine, by subpoena or
730 otherwise, the activities, books, accounts, and records of a
731 debt settlement advisor or any person to whom a debt settlement
732 advisor delegates his or her obligations under an agreement or
733 this part, in order to determine compliance with this part.

734 (3) Each licensee and control person of the licensee's
735 business must maintain all books, accounts, documents, files,
736 and information necessary for determining compliance with this
737 part and commission rules adopted under this part for 5 years.

738 (a) The records required under this part may be maintained
739 by the licensee at any location identified in its license
740 application or by amendment to the application. The licensee
741 must make such records available to the office for examination
742 and investigation in this state within 10 days after receipt of
743 a written request.

744 (b) The original of any record of a licensee includes a
745 record stored or transmitted by electronic, computerized,
746 mechanized, or other information storage or retrieval or
747 transmission system or device that can generate, regenerate, or
748 transmit the precise data or other information comprising the
749 record. An original also includes the visible data or other
750 information so generated, regenerated, or transmitted if it is
751 legible or can be made legible by enlargement or other process.

752 (4) In support of its enforcement powers, the office may:

753 (a) Charge the debt settlement advisor the reasonable
754 expenses necessarily incurred to conduct the examination.

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755 (b) Require or permit the debt settlement advisor to file a
756 statement under oath as to all the facts and circumstances of
757 the matter to be investigated.

758 (c) Enter into a cooperative arrangement with any federal
759 or state agency having authority over debt settlement advisors
760 and exchange with any of those agencies information about a debt
761 settlement advisor, including information obtained during an
762 examination of the debt settlement advisor.

763 (d) Establish reasonable fees to be paid by a debt
764 settlement advisor for the expense of administering this
765 section.

766 (5) The commission may adopt rules to administer this part.
767 817.945 Administrative remedies.-

768 (1) The office may enforce this part by:

769 (a) Ordering a debt settlement advisor, director, officer,
770 or other control person of the debt settlement advisor's
771 business, or an agent thereof, to cease and desist from any
772 violations of this part.

773 (b) Ordering a debt settlement advisor who violates this
774 part to correct the violation, including making restitution to
775 the person aggrieved by the violation.

776 (c) Imposing on a debt settlement advisor a civil penalty
777 not to exceed \$1,000 per violation.

778 (d) Intervening in an action brought under s. 817.949.

779 (e) Initiating an enforcement action in circuit court to
780 enforce an order or to obtain restitution, an injunction, or
781 another equitable relief.

782 (2) The office may impose a fine not to exceed \$1,000 per
783 day for each day that a person engages in debt settlement

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784 services without a license.

785 (3) If a person knowingly and willfully violates, or
786 authorizes, directs, or aids another to violate, a final order
787 issued under subsection (1), the office may impose an additional
788 civil penalty not to exceed \$1,000 per violation.

789 (4) The office may recover the reasonable costs of
790 enforcing this part, including reasonable attorney's fees.

791 (5) In determining the amount of a civil penalty to be
792 imposed under subsection (1) or subsection (2), the office shall
793 consider the seriousness of the violation, the good faith of the
794 violator, any previous violations by the violator, the
795 deleterious effect of the violation on the public, and any other
796 fact relevant to the determination of the civil penalty.

797 817.947 Suspension, revocation, or nonrenewal of license.-

798 (1) The office may suspend, revoke, or deny the renewal of
799 a debt settlement advisor license if:

800 (a) A fact or condition exists that, if it existed when the
801 debt settlement advisor applied for a debt settlement advisor
802 license, the fact or condition would be a reason for denying the
803 license.

804 (b) The debt settlement advisor commits a material
805 violation of this part, a commission rule adopted under this
806 part, or an order of the office issued under this part.

807 (c) The debt settlement advisor is insolvent.

808 (d) The debt settlement advisor or a control person of the
809 debt settlement advisor's business refuses to permit the office
810 to make an examination authorized by this part, failed to comply
811 with s. 817.943(4) (b) within 30 days after request, or made a
812 material misrepresentation or omission in complying with s.

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813 817.943(4)(b).

814 (e) The debt settlement advisor does not respond within a
815 reasonable time or in an appropriate manner to communications
816 from the office.

817 (2) A licensee must maintain the insurance coverage or bond
818 at all times in the amount required under s. 817.907(2). If the
819 office determines that the insurance coverage is insecure,
820 deficient in amount, or exhausted in whole or in part, the
821 office may suspend the licensee's debt settlement advisor
822 license, unless or until the licensee presents satisfactory
823 evidence to the office that the coverage or bond is replaced.

824 (3) Upon the suspension, revocation, or nonrenewal of a
825 debt settlement advisor license, the licensee may request an
826 administrative proceeding on the suspension, revocation, or
827 nonrenewal pursuant to chapter 120.

828 817.949 Private enforcement.—

829 (1) If a client voids an agreement pursuant to s. 817.931,
830 the client may recover in a civil action all money paid by or on
831 behalf of the client pursuant to the agreement, in addition to
832 the recovery of reasonable attorney's fees and costs.

833 (2) A client for whom a debt settlement advisor violates
834 this part may recover in a civil action from the debt settlement
835 advisor and any person that caused the violation:

836 (a) Compensatory damages for economic injury caused by the
837 violation.

838 (b) Except as otherwise provided in subsection (3), the
839 amount recoverable under subsection (1) or \$1,000, whichever is
840 greater.

841 (c) Reasonable attorney's fees and costs.

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842 (3) In addition to the remedy available under subsection
843 (2), if a debt settlement advisor violates a client's rights
844 under s. 817.927, the client may recover in a civil action all
845 money paid by or on behalf of the client pursuant to the
846 agreement, except for the amounts paid to the creditors.

847 (4) A debt settlement advisor is not liable for violating
848 this part if he or she proves that the violation was not
849 intentional and resulted from a good faith error notwithstanding
850 the maintenance of procedures reasonably adapted to avoid the
851 error. If, in connection with a violation, the debt settlement
852 advisor receives more money than authorized by an agreement or
853 this part, the defense provided by this subsection is not
854 available unless the debt settlement advisor refunds the excess
855 money within 3 business days after learning of the violation.

856 817.951 Deceptive and unfair trade practices; effect on
857 other remedies.—

858 (1) A violation of this part is a deceptive and unfair
859 trade practice and constitutes a violation of part II of chapter
860 501.

861 (2) This part is supplemental to, and makes no attempt to
862 preempt, other consumer protection laws that are not
863 inconsistent with this part.

864 817.953 Statute of limitations.—

865 (1) Any enforcement action must be commenced within 4 years
866 after the violation occurs.

867 (2) Any private enforcement action must be commenced within
868 2 years after the latest of:

869 (a) The client's last transmission of money to the debt
870 settlement advisor;

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871 (b) The date on which the client discovered or reasonably
872 should have discovered the facts upon which the client's claim
873 is based; or

874 (c) Termination of actions or proceedings by the office for
875 a violation of this part.

876 (3) Any limitation period prescribed in this section is
877 tolled during any period in which the debt settlement advisor
878 materially and willfully misrepresents information required to
879 be disclosed to the client or the office by this part.

880 817.955 Relation to the Electronic Signatures in Global and
881 National Commerce Act.—This part modifies, limits, and
882 supersedes the federal Electronic Signatures in Global and
883 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not
884 modify, limit, or supersede s. 101(c) of the act, 15 U.S.C. s.
885 7001(c), or authorize electronic delivery of any of the notices
886 described in s. 103(b) of the act, 15 U.S.C. s. 7003(b).

887 Section 2. If any provision of this act or the application
888 thereof to any person or circumstance is held invalid, the
889 invalidity does not affect other provisions or applications of
890 the act which can be given effect without the invalid provision
891 or application, and to this end the provisions of this act are
892 declared severable.

893 Section 3. This act shall take effect July 1, 2010.