

1 A bill to be entitled
 2 An act relating to credit counseling services; amending s.
 3 817.801, F.S.; defining the terms "debt management plan"
 4 and "debt settlement plan"; amending s. 817.802, F.S.;
 5 conforming a cross-reference; creating s. 817.8035, F.S.;
 6 requiring that debt management and credit counseling
 7 services be provided pursuant to a debt management or debt
 8 settlement plan; requiring the credit counseling agency to
 9 make certain disclosures to the debtor before the debtor
 10 consents to payment; prohibiting the agency from making
 11 certain misrepresentations to the debtor; providing
 12 certain conditions that the agency must meet before
 13 receiving payment; providing that the debtor may withdraw
 14 any account funds placed with the agency at any time
 15 without penalty; amending s. 817.805, F.S.; authorizing
 16 the agency to hold funds in order to allow the funds to
 17 accumulate; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Section 817.801, Florida Statutes, is amended
 22 to read:

23 817.801 Definitions.—As used in this part:

24 (1) "Credit counseling agency" means any organization
 25 providing debt management services or credit counseling
 26 services.

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

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

33 (4) "Debt management plan" or "DMP" means a written
34 agreement or contract between a credit counseling agency and a
35 debtor whereby the credit counseling agency, in return for a
36 direct or indirect payment by the debtor of fees not exceeding
37 those set forth in s. 817.802, will provide credit counseling
38 services or debt management services that contemplate that
39 creditors will reduce finance charges or fees for late payment,
40 default, or delinquency.

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

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

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

47 (6) "Debt settlement plan" or "DSP" means a written
48 agreement or contract between a credit counseling agency and a
49 debtor whereby the credit counseling agency, in return for
50 payment by the debtor, will provide debt management services
51 that contemplate that creditors will settle debts for less than
52 the principal amount of the debt.

53 ~~(7)-(5)~~ "Person" means any individual, corporation,
54 partnership, trust, association, or other legal entity.

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

57 817.802 Unlawful fees and costs.—

58 (1) It is unlawful for any person, while engaging in debt
 59 management services or credit counseling services, to charge or
 60 accept from a debtor residing in this state, directly or
 61 indirectly, a fee or contribution greater than \$50 for the
 62 initial setup or initial consultation. Subsequently, the person
 63 may not charge or accept a fee or contribution ~~from a debtor~~
 64 ~~residing in this state~~ greater than \$120 per year for additional
 65 consultations or, alternatively, if debt management services as
 66 defined in s. 817.801(5)(b) ~~817.801(4)(b)~~ are provided, the
 67 person may charge the greater of 7.5 percent of the amount paid
 68 monthly by the debtor ~~to the person~~ or \$35 per month.

69 Section 3. Section 817.8035, Florida Statutes, is created
 70 to read:

71 817.8035 Debt plans; disclosures to debtor; payments;
 72 refunds.—

73 (1) Debt management services or credit counseling services
 74 provided to a debtor residing in this state may be provided only
 75 pursuant to a debt management plan or debt settlement plan that
 76 complies with this part.

77 (2) Before a debtor consents to payment for debt
 78 management services, the credit counseling agency must disclose
 79 truthfully, in a clear and conspicuous manner, all of the
 80 following material information:

81 (a) The amount of time necessary to achieve the
 82 represented results, and, to the extent that the debt management
 83 service may include a settlement offer to any of the debtor's
 84 creditors or debt collectors, the time by which the credit

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85 counseling agency will make a bona fide settlement offer to each
86 of them.

87 (b) To the extent that the debt management service may
88 include a settlement offer to any of the debtor's creditors or
89 debt collectors, the amount of money or the percentage of each
90 outstanding debt which the debtor must accumulate before the
91 credit counseling agency will make a bona fide settlement offer
92 to each of them.

93 (c) To the extent that any aspect of the debt management
94 service relies upon or results in the debtor's failure to make
95 timely payments to creditors or debt collectors, that the use of
96 the debt management service will likely adversely affect the
97 debtor's creditworthiness, may result in the debtor being
98 subject to collection actions or sued by creditors or debt
99 collectors, and may increase the amount of money the debtor owes
100 due to the accrual of fees and interest.

101 (d) To the extent that the credit counseling agency
102 requests or requires the debtor to place funds in an account at
103 an insured financial institution, that the debtor owns the funds
104 held in the account, the debtor may withdraw such funds from the
105 debt management service at any time without penalty, and, if the
106 debtor requests to withdraw such funds, the debtor must receive
107 all funds in the account, other than funds earned by the credit
108 counseling agency, within 7 business days after the debtor's
109 request.

110 (3) A credit counseling agency may not misrepresent,
111 directly or by implication, any material aspect of any debt
112 management service, including, but not limited to, the amount of

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113 money or the percentage of the debt amount which a debtor may
114 save by using such service; the amount of time necessary to
115 achieve the represented results; the amount of money or the
116 percentage of each outstanding debt which the debtor must
117 accumulate before the credit counseling agency will initiate
118 attempts or make a bona fide offer to negotiate, settle, or
119 modify the terms of the debtor's debt with the debtor's
120 creditors or debt collectors; the effect of the service on a
121 debtor's creditworthiness; the effect of the service on the
122 collection efforts of the debtor's creditors or debt collectors;
123 the percentage or number of debtors who attain the represented
124 results; and whether a debt management service is offered or
125 provided by a nonprofit entity.

126 (4) A credit counseling agency may not receive payment of
127 any fee or consideration for any debt management service until:

128 (a) The credit counseling agency has renegotiated,
129 settled, reduced, or otherwise altered the terms of at least one
130 debt pursuant to a debt settlement plan or debt management plan;

131 (b) The debtor has made at least one payment pursuant to
132 that debt settlement plan or debt management plan; and

133 (c) The fee or consideration for settling each individual
134 debt enrolled in a debt settlement plan:

135 1. Bears the same proportional relationship to the total
136 fee for settling the entire debt balance as the individual debt
137 amount bears to the entire debt amount. The individual debt
138 amount and the entire debt amount are those owed at the time the
139 debt was enrolled in the debt management service; or

140 2. Is a percentage of the amount saved as a result of the

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141 settlement. The percentage charged may not change from one
142 individual debt to another. The amount saved is the difference
143 between the amount owed at the time the debt was enrolled in the
144 debt management service and the amount actually paid to satisfy
145 the debt.

146 (5) This section does not prohibit a credit counseling
147 agency from requesting or requiring the debtor to place funds in
148 an account to be used for the credit counseling agency's fees
149 and for payments to creditors or debt collectors in connection
150 with a renegotiation, settlement, reduction, or other alteration
151 of the terms of payment or other terms of a debt if:

152 (a) The funds are held in an account at an insured
153 financial institution;

154 (b) The debtor owns the funds held in the account and is
155 paid accrued interest on the account, if any;

156 (c) If the credit counseling agency does not administer
157 the account, the entity administering the account is not owned
158 or controlled by, or in any way affiliated with, the credit
159 counseling agency; and

160 (d) The entity administering the account does not give or
161 accept any money or other compensation in exchange for referrals
162 of business by the credit counseling agency.

163 (6) The debtor may withdraw from the debt management
164 service at any time without penalty, and must receive all funds
165 held in the account, other than funds earned by the credit
166 counseling agency in compliance with this part, within 7
167 business days after the debtor's request.

168 Section 4. Section 817.805, Florida Statutes, is amended

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169 to read:

170 817.805 Disbursement of funds.—Any person engaged in debt
171 management or credit counseling services shall disburse to the
172 appropriate creditors all funds received from a debtor, less any
173 fees permitted by s. 817.802 and any creditor contributions,
174 within 30 days after receipt of such funds, unless the
175 reasonable payment of one or more of the debtor's obligations
176 requires that the funds be held for a longer period in order to
177 accumulate. However, a creditor contribution may not reduce any
178 sums to be credited to the account of a debtor making a payment
179 to the credit counseling agency for further payment to the
180 creditor. Further, any person engaged in such services shall
181 maintain a separate trust account for the receipt of any funds
182 from debtors and the disbursement of such funds on behalf of
183 such debtors.

184 Section 5. This act shall take effect July 1, 2011.