

By Senator Richter

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

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

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

24 817.801 Definitions.—As used in this part:

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

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

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

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

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

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

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

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

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

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

58 817.802 Unlawful fees and costs.-

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

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

72 817.8035 Debt plans; disclosures to debtor; payments;
73 refunds.-

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

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

82 (a) The amount of time necessary to achieve the represented
83 results, and, to the extent that the debt management service may
84 include a settlement offer to any of the debtor's creditors or
85 debt collectors, the time by which the credit counseling agency
86 will make a bona fide settlement offer to each of them.

87 (b) To the extent that the debt management service may

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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
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

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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, settled,
129 reduced, or otherwise altered the terms of at least one debt
130 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
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.

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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 the
157 account, the entity administering the account is not owned or
158 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 to
169 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

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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.