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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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05/03/2011 03:50 PM

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Senator Richter moved the following:

**Senate Amendment (with title amendment)**

Between lines 33 and 34

insert:

Section 2. Section 817.801, Florida Statutes, is amended to read:

817.801 Definitions.—As used in this part:

(1) "Credit counseling agency" means any organization providing debt management services, debt settlement services, or credit counseling services for compensation.

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

(3) "Creditor contribution" means any sum that a creditor



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14 agrees to contribute to a credit counseling agency, whether  
15 directly or by setoff against amounts otherwise payable to the  
16 creditor on behalf of debtors.

17 (4) "Debt management plan" means a written agreement or  
18 contract between a credit counseling agency and a debtor whereby  
19 the credit counseling agency, in return for a direct or indirect  
20 payment by the debtor of fees not exceeding those set forth in  
21 s. 817.802, will provide credit counseling services or debt  
22 management services that contemplate that creditors will reduce  
23 finance charges or fees for late payment, default, or  
24 delinquency.

25 (5) ~~(4)~~ "Debt management services" means services provided  
26 to a debtor by a credit counseling organization for a fee to:

27 (a) Effect the adjustment, compromise, reduction of  
28 interest rate or fees, modification of terms, or negotiation or  
29 discharge of any unsecured account, note, or other indebtedness  
30 of the debtor; or

31 (b) Receive from the debtor and disburse to a creditor any  
32 money or other thing of value with the expectation that the  
33 debtor will repay the entire principal amount owed to the  
34 creditor.

35 (6) "Debt settlement services" means services provided to a  
36 debtor with the expectation of obtaining the creditor's  
37 agreement to accept less than the principal amount of debt in  
38 full satisfaction of the debt.

39 (7) "Debt settlement plan" means a written agreement or  
40 contract between a credit counseling agency and a debtor whereby  
41 the credit counseling agency, in return for payment by the  
42 debtor, will provide debt settlement services that contemplate



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43 that creditors will settle debts for less than the principal  
44 amount of the debt.

45 (8)(5) "Person" means any individual, corporation,  
46 partnership, trust, association, or other legal entity.

47 Section 3. Subsection (1) of section 817.802, Florida  
48 Statutes, is amended to read:

49 817.802 Unlawful fees and costs.—

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

61 Section 4. Section 817.8035, Florida Statutes, is created  
62 to read:

63 817.8035 Debt settlement plans; disclosures to debtor;  
64 payments; refunds.—

65 (1) Debt settlement services or credit counseling services  
66 provided to a debtor residing in this state may be provided only  
67 pursuant to a debt settlement plan that complies with this part.

68 (2) Before a debtor consents to payment for debt settlement  
69 services, the credit counseling agency must disclose truthfully,  
70 in a clear and conspicuous manner, all of the following material  
71 information:



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72       (a) The amount of time necessary to achieve the represented  
73 results, and, to the extent that the debt settlement service may  
74 include a settlement offer to any of the debtor's creditors or  
75 debt collectors, the anticipated time by which the credit  
76 counseling agency will make a bona fide settlement offer to each  
77 of them.

78       (b) To the extent that the debt settlement service may  
79 include a settlement offer to any of the debtor's creditors or  
80 debt collectors, the amount of money or the percentage of each  
81 outstanding debt which the debtor must accumulate before the  
82 credit counseling agency will make a bona fide settlement offer  
83 to each of them.

84       (c) To the extent that any aspect of the debt settlement  
85 service relies upon or results in the debtor's failure to make  
86 timely payments to creditors or debt collectors, that the use of  
87 the debt settlement service will likely adversely affect the  
88 debtor's creditworthiness, may result in the debtor being  
89 subject to collection actions or sued by creditors or debt  
90 collectors, and may increase the amount of money the debtor owes  
91 due to the accrual of fees and interest.

92       (d) To the extent that the credit counseling agency  
93 requests or requires the debtor to place funds in an account at  
94 an insured financial institution, that the debtor owns the funds  
95 held in the account, the debtor may withdraw such funds from the  
96 debt settlement service at any time without penalty, and, if the  
97 debtor requests to withdraw such funds, the debtor must receive  
98 all funds in the account, other than funds earned by the credit  
99 counseling agency, within 7 business days after the debtor's  
100 request.



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101       (3) The credit counseling agency shall provide the debtor  
102 with a copy of the disclosures required under subsection (2)  
103 within 7 days after consenting to pay the credit counseling  
104 agency for debt settlement services.

105       (4) A credit counseling agency may not misrepresent,  
106 directly or by implication, any material aspect of any debt  
107 management service, including, but not limited to, the amount of  
108 money or the percentage of the debt amount which a debtor may  
109 save by using such service; the amount of time necessary to  
110 achieve the represented results; the amount of money or the  
111 percentage of each outstanding debt that the debtor must  
112 accumulate before the credit counseling agency will initiate  
113 attempts or make a bona fide offer to negotiate, settle, or  
114 modify the terms of the debtor's debt with the debtor's  
115 creditors or debt collectors; the effect of the service on a  
116 debtor's creditworthiness; the effect of the service on the  
117 collection efforts of the debtor's creditors or debt collectors;  
118 the percentage or number of debtors who attain the represented  
119 results; and whether a debt settlement service is offered or  
120 provided by a nonprofit entity.

121       (5) A credit counseling agency may not receive payment of  
122 any fee or consideration for any debt settlement service until:

123       (a) The credit counseling agency has renegotiated, settled,  
124 reduced, or otherwise altered the terms of at least one debt  
125 pursuant to a debt settlement plan;

126       (b) The debtor has made at least one payment pursuant to  
127 that debt settlement plan; and

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



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130           1. Bears the same proportional relationship to the total  
131 fee for settling the entire debt balance as the individual debt  
132 amount bears to the entire debt amount. The individual debt  
133 amount and the entire debt amount are those owed at the time the  
134 debt was enrolled in the debt management service; or

135           2. Is a percentage of the amount saved as a result of the  
136 settlement. The percentage charged may not change from one  
137 individual debt to another and may not exceed 30 percent of the  
138 amount saved. The amount saved is the difference between the  
139 amount owed at the time the debt was enrolled in the debt  
140 settlement service and the amount actually paid to satisfy the  
141 debt.

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

148           (a) The funds are held in an account at an insured  
149 financial institution;

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

152           (c) If the credit counseling agency does not administer the  
153 account, the entity administering the account is not owned or  
154 controlled by, or in any way affiliated with, the credit  
155 counseling agency; and

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



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

164           Section 5. Section 817.805, Florida Statutes, is amended to  
165 read:

166           817.805 Disbursement of funds.—Any person engaged in debt  
167 management, debt settlement, or credit counseling services shall  
168 disburse to the appropriate creditors all funds received from a  
169 debtor, less any fees permitted by s. 817.802 and any creditor  
170 contributions, within 30 days after receipt of such funds,  
171 unless the reasonable payment of one or more of the debtor's  
172 obligations requires that the funds be held for a longer period  
173 in order to accumulate. However, a creditor contribution may not  
174 reduce any sums to be credited to the account of a debtor making  
175 a payment to the credit counseling agency for further payment to  
176 the creditor. Further, any person engaged in such services shall  
177 maintain a separate trust account for the receipt of any funds  
178 from debtors and the disbursement of such funds on behalf of  
179 such debtors.

180  
181 ===== T I T L E   A M E N D M E N T =====

182 And the title is amended as follows:

183  
184           Delete line 10

185 and insert:

186           unlawful use does not commit a violation of the act;  
187           amending s. 817.801, F.S.; defining the terms "debt



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188 management plan," "debt settlement services," and  
189 "debt settlement plan"; amending s. 817.802, F.S.;  
190 conforming a cross-reference; creating s. 817.8035,  
191 F.S.; requiring that debt management and credit  
192 counseling services be provided pursuant to a debt  
193 management or debt settlement plan; requiring the  
194 credit counseling agency to make certain disclosures  
195 to the debtor before the debtor consents to payment;  
196 prohibiting the agency from making certain  
197 misrepresentations to the debtor; providing certain  
198 conditions that the agency must meet before receiving  
199 payment; providing that the debtor may withdraw any  
200 account funds placed with the agency at any time  
201 without penalty; amending s. 817.805, F.S.;  
202 authorizing the agency to hold funds in order to allow  
203 the funds to accumulate;