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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2012	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(1) "Credit counseling agency" means an ~~any~~ organization
providing debt management services or credit counseling
services.

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



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13 (3) "Creditor contribution" means any sum that a creditor
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 a debtor ~~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 specified in
21 s. 817.802, will provide credit counseling services or debt
22 management services that contemplate that the debtor's creditors
23 will reduce finance charges or fees incurred by the debtor for
24 late payment, default, or delinquency.

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

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

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

36
37 Debt management services do not include debt settlement
38 services.

39 (6) "Debt settlement plan" means a written agreement or
40 contract between a debt settlement provider and a debtor whereby
41 the provider, in return for payment by the debtor, will provide



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42 debt settlement services that contemplate that creditors of the
43 debtor will settle debts for less than the principal amount of
44 the debt.

45 (7) "Debt settlement provider" means any person providing
46 debt settlement services.

47 (8) "Debt settlement services" means services provided to a
48 debtor with the expectation of obtaining the agreement of the
49 debtor's creditors to accept less than the principal amount of
50 the debtor's unsecured debt in full satisfaction of the debt.
51 Debt settlement services do not include debt management
52 services.

53 (9)~~(5)~~ "Person" means any individual, corporation,
54 partnership, trust, association, or other legal entity.

55 (10) "Principal amount of the debt" means the total
56 outstanding balance of each unsecured debt included in a debt
57 management plan or debt settlement plan, including accumulated
58 interest and penalties that are not subject to an initial
59 concession by a creditor pursuant to the debt management plan,
60 and which are calculated individually and in the aggregate as of
61 the date the plan is executed.

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

64 817.802 Unlawful fees and costs.—

65 (1) It is unlawful for any person, while engaging in debt
66 management services or credit counseling services, to charge or
67 accept from a debtor residing in this state, directly or
68 indirectly, a fee or contribution greater than \$50 for the
69 initial setup or initial consultation. Subsequently, the person
70 may not charge or accept a fee or contribution from a debtor



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71 residing in this state greater than \$120 per year for additional
72 consultations or, alternatively, if debt management services as
73 defined in s. 817.801(5)(b) ~~817.801(4)(b)~~ are provided, the
74 person may charge the greater of 7.5 percent of the amount paid
75 monthly by the debtor ~~to the person~~ or \$35 per month.

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

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

80 (1) An attorney licensed to practice law in this state who
81 negotiates, settles, litigates, or appeals financial disputes
82 and who is acting in compliance with the Florida Rules of
83 Professional Conduct in a full attorney-client relationship with
84 a debtor in this state, and if debt management, credit
85 counseling, or debt settlement services are provided in the
86 course of his or her general practice of law and under the
87 attorney's ultimate responsibility. ~~Any debt management or~~
88 ~~credit counseling services provided in the practice of law in~~
89 ~~this state;~~

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

92 (3) The following entities or their subsidiaries:

93 (a) The Federal National Mortgage Association;

94 (b) The Federal Home Loan Mortgage Corporation;

95 (c) The Florida Housing Finance Corporation, a public
96 corporation created in s. 420.504;

97 (d) A bank, bank holding company, trust company, savings
98 and loan association, credit union, credit card bank, or savings
99 bank that is regulated and supervised by the Office of the



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100 Comptroller of the Currency, the Office of Thrift Supervision,
101 the Federal Reserve, the Federal Deposit Insurance Corporation,
102 the National Credit Union Administration, the Office of
103 Financial Regulation of the Department of Financial Services, or
104 any state banking regulator;

105 (e) A consumer reporting agency as defined in the Federal
106 Fair Credit Reporting Act, 15 U.S.C. ss. 1681-1681y, as it
107 existed on April 5, 2004; or

108 (f) Any subsidiary or affiliate of a bank holding company,
109 its employees and its exclusive agents acting under written
110 agreement.

111 Section 4. Section 817.8035, Florida Statutes, is created
112 to read:

113 817.8035 Debt settlement plans; disclosures to debtor;
114 payments; refunds.—

115 (1) Debt settlement services provided to a debtor residing
116 in this state may be provided only pursuant to a debt settlement
117 plan that complies with this part.

118 (2) Before a debtor consents to payment for debt settlement
119 services, the debt settlement provider must disclose, in writing
120 and in a clear and conspicuous manner, all of the following
121 material information:

122 (a) The amount of time necessary to achieve the represented
123 results and, to the extent that the debt settlement service may
124 include a settlement offer to any of the debtor's creditors or
125 debt collectors, the anticipated time by which the debt
126 settlement provider will make a bona fide settlement offer to
127 each of them.

128 (b) To the extent that the debt settlement service may



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129 include a settlement offer to any of the debtor's creditors or
130 debt collectors, the amount of money or the percentage of each
131 outstanding debt that the debtor must accumulate before the debt
132 settlement provider will make a bona fide settlement offer to
133 each of them.

134 (c) To the extent that any aspect of the debt settlement
135 service relies upon or results in the debtor's failure to make
136 timely payments to creditors or debt collectors, that the use of
137 the debt settlement service will likely adversely affect the
138 debtor's creditworthiness, may result in the debtor being
139 subject to collection actions or sued by creditors or debt
140 collectors, and may increase the amount of money the debtor owes
141 due to the accrual of fees and interest.

142 (d) To the extent that the debt settlement provider
143 requests or requires the debtor to place funds in an account at
144 a state or federal financial institution insured by the Federal
145 Deposit Insurance Corporation or the National Credit Union Share
146 Insurance Fund, that the debtor owns the funds held in the
147 account, the debtor may withdraw such funds from the debt
148 settlement service at any time without penalty, and, if the
149 debtor requests to withdraw such funds, the debtor must receive
150 all funds in the account, other than funds earned by the debt
151 settlement provider, within 7 business days after the debtor's
152 request.

153 (3) A debt settlement provider may not misrepresent,
154 directly or by implication, any material aspect of any debt
155 settlement service, including, but not limited to, the amount of
156 money or the percentage of the debt amount which a debtor may
157 save by using such service; the amount of time necessary to



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158 achieve the represented results; the amount of money or the
159 percentage of each outstanding debt the debtor must accumulate
160 before the debt settlement provider will initiate attempts or
161 make a bona fide offer to negotiate, settle, or modify the terms
162 of the debtor's debt with the debtor's creditors or debt
163 collectors; the effect of the service on a debtor's
164 creditworthiness; the effect of the service on the collection
165 efforts of the debtor's creditors or debt collectors; the
166 percentage or number of debtors who attain the represented
167 results; and whether a debt settlement service is offered or
168 provided by a nonprofit entity.

169 (4) A debt settlement provider may not receive payment of
170 any fee or consideration for any debt settlement service until:

171 (a) The debt settlement provider has renegotiated, settled,
172 reduced, or otherwise altered the terms of at least one debt
173 pursuant to a debt settlement plan;

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

176 (c) The fee or consideration for settling each individual
177 debt enrolled in a debt settlement plan is a percentage of the
178 amount saved as a result of the settlement. The percentage
179 charged may not change from one individual debt to another and
180 may not exceed 30 percent of the amount saved. The amount saved
181 is the difference between the amount owed at the time the debtor
182 enrolled in the debt settlement plan and the amount actually
183 paid to satisfy the debt.

184 (5) This section does not prohibit a debt settlement
185 provider from requesting or requiring the debtor to place funds
186 in an account to be used for the debt settlement provider's fees



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187 and for payments to creditors or debt collectors in connection
188 with a renegotiation, settlement, reduction, or other alteration
189 of the terms of payment or other terms of a debt if:

190 (a) The funds are held in an account at a state or federal
191 financial institution insured by the Federal Deposit Insurance
192 Corporation or the National Credit Union Share Insurance Fund;

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

195 (c) The entity administering the account is not owned or
196 controlled by, or in any way affiliated with, the debt
197 settlement provider; and

198 (d) The entity administering the account does not give or
199 accept any money or other compensation in exchange for referrals
200 of business by the debt settlement provider.

201 (6) The debtor may withdraw from the debt settlement
202 service at any time without penalty, and must receive all funds
203 held in the account, other than funds earned by the debt
204 settlement provider in compliance with this part, within 7
205 business days after the debtor's request.

206 Section 5. Subsection (1) of section 817.804, Florida
207 Statutes, is amended to read:

208 817.804 Requirements; disclosure and financial reporting.-

209 (1) Any person engaged in debt management services, debt
210 settlement services, or credit counseling services shall:

211 (a) Obtain from a licensed certified public accountant an
212 annual audit in accordance with generally accepted auditing
213 standards which includes ~~that shall include~~ all accounts of such
214 person in which the funds of debtors are deposited and from
215 which payments are made to creditors on behalf of debtors. If



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216 another person administers accounts on behalf of a debtor under
217 agreement with a debt settlement provider, or under the
218 direction or control of that provider, the audit must include
219 all accounts in which the funds of residents of this state are
220 deposited and from which payments are made at the direction or
221 control of the debt settlement provider or its affiliate.

222 (b) Obtain and maintain at all times insurance coverage for
223 employee dishonesty, depositor's forgery, and computer fraud.
224 The insurance coverage must be ~~in an amount~~ not less than the
225 greater of \$100,000 or 10 percent of the monthly average of the
226 aggregate amount of all deposits made for distribution to
227 creditors with such person by all debtors for the 6 months
228 immediately preceding the date of initial application for or
229 renewal of the insurance. The deductible on such coverage may
230 ~~shall~~ not exceed 10 percent of the face amount of the policy
231 coverage.

232 Section 6. Section 817.805, Florida Statutes, is amended to
233 read:

234 817.805 Disbursement of funds.—Any person engaged in debt
235 management, debt settlement, or credit counseling services shall
236 disburse to the appropriate creditors all funds received from a
237 debtor, less any fees permitted by s. 817.802 and any creditor
238 contributions, within 30 days after receipt of such funds,
239 unless, under a debt settlement plan, reasonable payment of one
240 or more of the debtor's obligations requires that the funds be
241 held for a longer period in order to accumulate. However, a
242 creditor contribution may not reduce any sums to be credited to
243 the account of a debtor making a payment to the credit
244 counseling agency for further payment to the creditor. Further,



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245 any person engaged in such services must ~~shall~~ maintain a
246 separate trust account for the receipt of any funds from debtors
247 and the disbursement of such funds on behalf of such debtors.

248 Section 7. The Division of Statutory Revision is requested
249 to rename part IV of chapter 817, Florida Statutes, as "Credit
250 Counseling and Debt Settlement Services."

251 Section 8. This act applies to debt settlement plans
252 executed on or after July 1, 2012.

253 Section 9. This act shall take effect July 1, 2012.

254
255 ===== T I T L E A M E N D M E N T =====

256 And the title is amended as follows:

257 Delete everything before the enacting clause
258 and insert:

259 A bill to be entitled
260 An act relating to debt settlement services; amending
261 s. 817.801, F.S.; defining terms and revising
262 definitions; amending s. 817.802, F.S.; conforming a
263 cross-reference; amending s. 817.803, F.S.; clarifying
264 that an attorney is exempt from regulation under part
265 IV of ch. 817, F.S., under certain circumstances;
266 creating s. 817.8035, F.S.; requiring that debt
267 settlement services be provided pursuant to a debt
268 settlement plan; requiring a debt settlement provider
269 to make certain disclosures to the debtor before a
270 debtor consents to payment; prohibiting a debt
271 settlement provider from making certain
272 misrepresentations to a debtor; providing certain
273 conditions that a debt settlement provider must meet



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274 before receiving payment; providing that a debtor may
275 withdraw any account funds placed with a debt
276 settlement provider at any time without penalty;
277 amending s. 817.804, F.S.; extending auditing and
278 insurance requirements to persons providing debt
279 settlement services; amending s. 817.805, F.S.;
280 authorizing a debt settlement provider to hold funds
281 in order to allow the funds to accumulate; providing a
282 directive to the Division of Statutory Revision;
283 providing for applicability; providing an effective
284 date.