



324586

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
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, debt settlement 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, including,
46 but not limited to, a credit counseling agency, providing debt
47 settlement services.

48 (8) "Debt settlement services" means services provided to a
49 debtor with the expectation of obtaining the agreement of the
50 debtor's creditors to accept less than the principal amount of
51 the debtor's unsecured debt in full satisfaction of the debt.

52 Debt settlement services do not include debt management
53 services.

54 (9) ~~(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.-

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 817.803, Florida Statutes, is amended to



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71 read:

72 817.803 Exceptions. ~~Nothing in~~ This part does not apply
73 ~~applies~~ to:

74 (1) An attorney licensed or otherwise authorized to
75 practice law in this state who negotiates, settles, litigates,
76 or appeals financial disputes and who is acting in compliance
77 with the Florida Rules of Professional Conduct that apply to
78 services performed under the attorney's ultimate responsibility.

79 ~~Any debt management or credit counseling services provided in~~
80 ~~the practice of law in this state;~~

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

83 (3) The following entities or their subsidiaries:

84 (a) The Federal National Mortgage Association;

85 (b) The Federal Home Loan Mortgage Corporation;

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

88 (d) A bank, bank holding company, trust company, savings
89 and loan association, credit union, credit card bank, or savings
90 bank that is regulated and supervised by the Office of the
91 Comptroller of the Currency, the Office of Thrift Supervision,
92 the Federal Reserve, the Federal Deposit Insurance Corporation,
93 the National Credit Union Administration, the Office of
94 Financial Regulation of the Department of Financial Services, or
95 any state banking regulator;

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

99 (f) Any subsidiary or affiliate of a bank holding company,



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100 its employees and its exclusive agents acting under written
101 agreement.

102 Section 4. Section 817.8035, Florida Statutes, is created
103 to read:

104 817.8035 Debt settlement plans; disclosures to debtor;
105 payments; refunds.—

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

109 (2) Before a debtor consents to payment for debt settlement
110 services, the debt settlement provider must disclose, in a clear
111 and conspicuous manner, all of the following material
112 information:

113 (a) The amount of time necessary to achieve the represented
114 results and, to the extent that the debt settlement service may
115 include a settlement offer to any of the debtor's creditors or
116 debt collectors, the anticipated time by which the debt
117 settlement provider will make a bona fide settlement offer to
118 each of them.

119 (b) To the extent that the debt settlement service may
120 include a settlement offer to any of the debtor's creditors or
121 debt collectors, the amount of money or the percentage of each
122 outstanding debt that the debtor must accumulate before the debt
123 settlement provider will make a bona fide settlement offer to
124 each of them.

125 (c) To the extent that any aspect of the debt settlement
126 service relies upon or results in the debtor's failure to make
127 timely payments to creditors or debt collectors, that the use of
128 the debt settlement service will likely adversely affect the



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129 debtor's creditworthiness, may result in the debtor being
130 subject to collection actions or sued by creditors or debt
131 collectors, and may increase the amount of money the debtor owes
132 due to the accrual of fees and interest.

133 (d) To the extent that the debt settlement provider
134 requests or requires the debtor to place funds in an account at
135 a state or federal financial institution insured by the Federal
136 Deposit Insurance Corporation or the National Credit Union Share
137 Insurance Fund, that the debtor owns the funds held in the
138 account, the debtor may withdraw such funds from the debt
139 settlement service at any time without penalty, and, if the
140 debtor requests to withdraw such funds, the debtor must receive
141 all funds in the account, other than funds earned by the debt
142 settlement provider, within 7 business days after the debtor's
143 request.

144 (3) The debt settlement provider shall provide the debtor
145 with a copy of the disclosures required under subsection (2)
146 within 7 days after the debtor consents to pay the debt
147 settlement provider for debt settlement services.

148 (4) A debt settlement provider may not misrepresent,
149 directly or by implication, any material aspect of any debt
150 settlement service, including, but not limited to, the amount of
151 money or the percentage of the debt amount which a debtor may
152 save by using such service; the amount of time necessary to
153 achieve the represented results; the amount of money or the
154 percentage of each outstanding debt the debtor must accumulate
155 before the debt settlement provider will initiate attempts or
156 make a bona fide offer to negotiate, settle, or modify the terms
157 of the debtor's debt with the debtor's creditors or debt



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158 collectors; the effect of the service on a debtor's
159 creditworthiness; the effect of the service on the collection
160 efforts of the debtor's creditors or debt collectors; the
161 percentage or number of debtors who attain the represented
162 results; and whether a debt settlement service is offered or
163 provided by a nonprofit entity.

164 (5) A debt settlement provider may not receive payment of
165 any fee or consideration for any debt settlement service until:

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

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

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

179 (6) This section does not prohibit a debt settlement
180 provider from requesting or requiring the debtor to place funds
181 in an account to be used for the debt settlement provider's fees
182 and for payments to creditors or debt collectors in connection
183 with a renegotiation, settlement, reduction, or other alteration
184 of the terms of payment or other terms of a debt if:

185 (a) The funds are held in an account at a state or federal
186 financial institution insured by the Federal Deposit Insurance



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187 Corporation or the National Credit Union Share Insurance Fund;

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

190 (c) The entity administering the account, if the debt
191 settlement provider does not administer the account, is not
192 owned or controlled by, or in any way affiliated with, the debt
193 settlement provider; and

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

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

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

204 817.804 Requirements; disclosure and financial reporting.-

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

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

212 (b) Obtain and maintain at all times insurance coverage for
213 employee dishonesty, depositor's forgery, and computer fraud.
214 The insurance coverage must be ~~in an amount~~ not less than the
215 greater of \$100,000 or 10 percent of the monthly average of the



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216 aggregate amount of all deposits made for distribution to
217 creditors with such person by all debtors for the 6 months
218 immediately preceding the date of initial application for or
219 renewal of the insurance. The deductible on such coverage may
220 ~~shall~~ not exceed 10 percent of the face amount of the policy
221 coverage.

222 Section 6. Section 817.805, Florida Statutes, is amended to
223 read:

224 817.805 Disbursement of funds.—Any person engaged in debt
225 management, debt settlement, or credit counseling services shall
226 disburse to the appropriate creditors all funds received from a
227 debtor, less any fees permitted by s. 817.802 and any creditor
228 contributions, within 30 days after receipt of such funds,
229 unless the reasonable payment of one or more of the debtor's
230 obligations requires that the funds be held for a longer period
231 in order to accumulate. However, a creditor contribution may not
232 reduce any sums to be credited to the account of a debtor making
233 a payment to the credit counseling agency for further payment to
234 the creditor. Further, any person engaged in such services must
235 ~~shall~~ maintain a separate trust account for the receipt of any
236 funds from debtors and the disbursement of such funds on behalf
237 of such debtors.

238 Section 7. This act applies to debt settlement plans
239 enacted on or after July 1, 2012.

240 Section 8. This act shall take effect July 1, 2012.

241
242 ===== T I T L E A M E N D M E N T =====

243 And the title is amended as follows:

244 Delete everything before the enacting clause



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245 and insert:

246 A bill to be entitled
247 An act relating to debt settlement services; amending
248 s. 817.801, F.S.; defining terms and revising
249 definitions; amending s. 817.802, F.S.; conforming a
250 cross-reference; amending s. 817.803, F.S.; clarifying
251 that an attorney is exempt from regulation under part
252 IV of ch. 817, F.S., under certain circumstances;
253 creating s. 817.8035, F.S.; requiring that debt
254 settlement services be provided pursuant to a debt
255 settlement plan; requiring a debt settlement provider
256 to make certain disclosures to the debtor before a
257 debtor consents to payment; prohibiting a debt
258 settlement provider from making certain
259 misrepresentations to a debtor; providing certain
260 conditions that a debt settlement provider must meet
261 before receiving payment; providing that a debtor may
262 withdraw any account funds placed with a debt
263 settlement provider at any time without penalty;
264 amending s. 817.804, F.S.; extending auditing and
265 insurance requirements to persons providing debt
266 settlement services; amending s. 817.805, F.S.;
267 authorizing a debt settlement provider to hold funds
268 in order to allow the funds to accumulate; providing
269 for applicability; providing an effective date.