

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

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

21  
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, debt settlement services, or  
27 credit counseling services for compensation.

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" means a written agreement or  
35 contract between a credit counseling agency and a debtor whereby  
36 the credit counseling agency, in return for a direct or indirect  
37 payment by the debtor of fees not exceeding those in s. 817.802,  
38 will provide credit counseling services or debt management  
39 services that contemplate that creditors will reduce finance  
40 charges or fees for late payment, 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, reduction of  
44 interest rate or fees, modification of terms, or negotiation or  
45 discharge of any unsecured account, note, or other indebtedness  
46 of the debtor; or

47 (b) Receive from the debtor and disburse to a creditor any  
48 money or other thing of value with the expectation that the  
49 debtor will repay the entire principal amount owed to the  
50 creditor.

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

57 (7) "Debt settlement services" means services provided to a  
58 debtor with the expectation of obtaining the creditor's

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59 agreement to accept less than the principal amount of debt in  
60 full satisfaction of the debt.

61 (8) ~~(5)~~ "Person" means any individual, corporation,  
62 partnership, trust, association, or other legal entity.

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

65 817.802 Unlawful fees and costs.—

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

77 Section 3. Section 817.8035, Florida Statutes, is created  
78 to read:

79 817.8035 Debt settlement plans; disclosures to debtor;  
80 payments; refunds.—

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

84 (2) Before a debtor consents to payment for debt settlement  
85 services, the credit counseling agency must disclose, in a clear  
86 and conspicuous manner, all of the following material  
87 information:

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88       (a) The amount of time necessary to achieve the represented  
89 results and, to the extent that the debt settlement service may  
90 include a settlement offer to any of the debtor's creditors or  
91 debt collectors, the anticipated time by which the credit  
92 counseling agency will make a bona fide settlement offer to each  
93 of them.

94       (b) To the extent that the debt settlement service may  
95 include a settlement offer to any of the debtor's creditors or  
96 debt collectors, the amount of money or the percentage of each  
97 outstanding debt that the debtor must accumulate before the  
98 credit counseling agency will make a bona fide settlement offer  
99 to each of them.

100       (c) To the extent that any aspect of the debt settlement  
101 service relies upon or results in the debtor's failure to make  
102 timely payments to creditors or debt collectors, that the use of  
103 the debt settlement service will likely adversely affect the  
104 debtor's creditworthiness, may result in the debtor being  
105 subject to collection actions or sued by creditors or debt  
106 collectors, and may increase the amount of money the debtor owes  
107 due to the accrual of fees and interest.

108       (d) To the extent that the credit counseling agency  
109 requests or requires the debtor to place funds in an account at  
110 a state or federal financial institution insured by the Federal  
111 Deposit Insurance Corporation or the National Credit Union Share  
112 Insurance Fund, that the debtor owns the funds held in the  
113 account, the debtor may withdraw such funds from the debt  
114 settlement service at any time without penalty, and, if the  
115 debtor requests to withdraw such funds, the debtor must receive  
116 all funds in the account, other than funds earned by the credit

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117 counseling agency, within 7 business days after the debtor's  
118 request.

119 (3) The credit counseling agency shall provide the debtor  
120 with a copy of the disclosures required under subsection (2)  
121 within 7 days after the debtor consents to pay the credit  
122 counseling agency for debt settlement services.

123 (4) A credit counseling agency may not misrepresent,  
124 directly or by implication, any material aspect of any debt  
125 management service, including, but not limited to, the amount of  
126 money or the percentage of the debt amount which a debtor may  
127 save by using such service; the amount of time necessary to  
128 achieve the represented results; the amount of money or the  
129 percentage of each outstanding debt the debtor must accumulate  
130 before the credit counseling agency will initiate attempts or  
131 make a bona fide offer to negotiate, settle, or modify the terms  
132 of the debtor's debt with the debtor's creditors or debt  
133 collectors; the effect of the service on a debtor's  
134 creditworthiness; the effect of the service on the collection  
135 efforts of the debtor's creditors or debt collectors; the  
136 percentage or number of debtors who attain the represented  
137 results; and whether a debt settlement service is offered or  
138 provided by a nonprofit entity.

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

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

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

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

148       1. Bears the same proportional relationship to the total  
149 fee for settling the entire debt balance as the individual debt  
150 amount bears to the entire debt amount. The individual debt  
151 amount and the entire debt amount are those owed at the time the  
152 debtor enrolled in the debt management service; or

153       2. Is a percentage of the amount saved as a result of the  
154 settlement. The percentage charged may not change from one  
155 individual debt to another and may not exceed 30 percent of the  
156 amount saved. The amount saved is the difference between the  
157 amount owed at the time the debtor enrolled in the debt  
158 settlement service and the amount actually paid to satisfy the  
159 debt.

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

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

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

171       (c) The entity administering the account, if the credit  
172 counseling agency does not administer the account, is not owned  
173 or controlled by, or in any way affiliated with, the credit  
174 counseling agency; and

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

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

183       Section 4. Section 817.805, Florida Statutes, is amended to  
184 read:

185       817.805 Disbursement of funds.—Any person engaged in debt  
186 management, debt settlement, or credit counseling services shall  
187 disburse to the appropriate creditors all funds received from a  
188 debtor, less any fees permitted by s. 817.802 and any creditor  
189 contributions, within 30 days after receipt of such funds,  
190 unless the reasonable payment of one or more of the debtor's  
191 obligations requires that the funds be held for a longer period  
192 in order to accumulate. However, a creditor contribution may not  
193 reduce any sums to be credited to the account of a debtor making  
194 a payment to the credit counseling agency for further payment to  
195 the creditor. Further, any person engaged in such services shall  
196 maintain a separate trust account for the receipt of any funds  
197 from debtors and the disbursement of such funds on behalf of  
198 such debtors.

199       Section 5. This act shall take effect October 1, 2012.