

By the Committee on Banking and Insurance; and Senators Richter and Gaetz

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1 A bill to be entitled
2 An act relating to debt settlement services; amending
3 s. 817.801, F.S.; defining terms and revising
4 definitions; amending s. 817.802, F.S.; conforming a
5 cross-reference; amending s. 817.803, F.S.; clarifying
6 that an attorney is exempt from regulation under part
7 IV of ch. 817, F.S., under certain circumstances;
8 creating s. 817.8035, F.S.; requiring that debt
9 settlement services be provided pursuant to a debt
10 settlement plan; requiring a debt settlement provider
11 to make certain disclosures to the debtor before a
12 debtor consents to payment; prohibiting a debt
13 settlement provider from making certain
14 misrepresentations to a debtor; providing certain
15 conditions that a debt settlement provider must meet
16 before receiving payment; providing that a debtor may
17 withdraw any account funds placed with a debt
18 settlement provider at any time without penalty;
19 amending s. 817.804, F.S.; extending auditing and
20 insurance requirements to persons providing debt
21 settlement services; amending s. 817.805, F.S.;
22 authorizing a debt settlement provider to hold funds
23 in order to allow the funds to accumulate; providing a
24 directive to the Division of Statutory Revision;
25 providing for applicability; providing an effective
26 date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 817.801, Florida Statutes, is amended to
31 read:

32 817.801 Definitions.—As used in this part, the term:

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

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

38 (3) "Creditor contribution" means any sum that a creditor
39 agrees to contribute to a credit counseling agency, whether
40 directly or by setoff against amounts otherwise payable to the
41 creditor on behalf of a debtor ~~debtors~~.

42 (4) "Debt management plan" means a written agreement or
43 contract between a credit counseling agency and a debtor whereby
44 the credit counseling agency, in return for a direct or indirect
45 payment by the debtor of fees not exceeding those specified in
46 s. 817.802, will provide credit counseling services or debt
47 management services that contemplate that the debtor's creditors
48 will reduce finance charges or fees incurred by the debtor for
49 late payment, default, or delinquency.

50 (5) ~~(4)~~ "Debt management services" means services provided
51 to a debtor pursuant to a debt management plan by a credit
52 counseling agency ~~organization~~ for a fee to:

53 (a) Effect the adjustment, compromise, reduction of
54 interest rate or fees, modification of terms, negotiation, or
55 discharge of any unsecured account, note, or other indebtedness
56 of the debtor; or

57 (b) Receive from the debtor and disburse to a creditor any
58 money or other thing of value with the expectation that the

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59 debtor will repay the entire principal amount of the unsecured
60 debt owed to the creditor.

61
62 Debt management services do not include debt settlement
63 services.

64 (6) "Debt settlement plan" means a written agreement or
65 contract between a debt settlement provider and a debtor whereby
66 the provider, in return for payment by the debtor, will provide
67 debt settlement services that contemplate that creditors of the
68 debtor will settle debts for less than the principal amount of
69 the debt.

70 (7) "Debt settlement provider" means any person providing
71 debt settlement services.

72 (8) "Debt settlement services" means services provided to a
73 debtor with the expectation of obtaining the agreement of the
74 debtor's creditors to accept less than the principal amount of
75 the debtor's unsecured debt in full satisfaction of the debt.
76 Debt settlement services do not include debt management
77 services.

78 (9)~~(5)~~ "Person" means any individual, corporation,
79 partnership, trust, association, or other legal entity.

80 (10) "Principal amount of the debt" means the total
81 outstanding balance of each unsecured debt included in a debt
82 management plan or debt settlement plan, including accumulated
83 interest and penalties that are not subject to an initial
84 concession by a creditor pursuant to the debt management plan,
85 and which are calculated individually and in the aggregate as of
86 the date the plan is executed.

87 Section 2. Subsection (1) of section 817.802, Florida

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88 Statutes, is amended to read:

89 817.802 Unlawful fees and costs.—

90 (1) It is unlawful for any person, while engaging in debt
91 management services or credit counseling services, to charge or
92 accept from a debtor residing in this state, directly or
93 indirectly, a fee or contribution greater than \$50 for the
94 initial setup or initial consultation. Subsequently, the person
95 may not charge or accept a fee or contribution from a debtor
96 residing in this state greater than \$120 per year for additional
97 consultations or, alternatively, if debt management services as
98 defined in s. 817.801(5)(b) ~~817.801(4)(b)~~ are provided, the
99 person may charge the greater of 7.5 percent of the amount paid
100 monthly by the debtor ~~to the person~~ or \$35 per month.

101 Section 3. Section 817.803, Florida Statutes, is amended to
102 read:

103 817.803 Exceptions.—~~Nothing in~~ This part does not apply
104 ~~applies~~ to:

105 (1) An attorney licensed to practice law in this state who
106 is providing debt management, credit counseling, or debt
107 settlement services and who, in providing such services, is
108 acting in compliance with the Florida Rules of Professional
109 Conduct. ~~Any debt management or credit counseling services~~
110 ~~provided in the practice of law in this state;~~

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

113 (3) The following entities or their subsidiaries:

114 (a) The Federal National Mortgage Association;

115 (b) The Federal Home Loan Mortgage Corporation;

116 (c) The Florida Housing Finance Corporation, a public

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117 corporation created in s. 420.504;

118 (d) A bank, bank holding company, trust company, savings
119 and loan association, credit union, credit card bank, or savings
120 bank that is regulated and supervised by the Office of the
121 Comptroller of the Currency, the Office of Thrift Supervision,
122 the Federal Reserve, the Federal Deposit Insurance Corporation,
123 the National Credit Union Administration, the Office of
124 Financial Regulation of the Department of Financial Services, or
125 any state banking regulator;

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

129 (f) Any subsidiary or affiliate of a bank holding company,
130 its employees and its exclusive agents acting under written
131 agreement.

132 Section 4. Section 817.8035, Florida Statutes, is created
133 to read:

134 817.8035 Debt settlement plans; disclosures to debtor;
135 payments; refunds.-

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

139 (2) Before a debtor consents to payment for debt settlement
140 services, the debt settlement provider must disclose, in writing
141 and in a clear and conspicuous manner, all of the following
142 material information:

143 (a) The amount of time necessary to achieve the represented
144 results and, to the extent that the debt settlement service may
145 include a settlement offer to any of the debtor's creditors or

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146 debt collectors, the anticipated time by which the debt
147 settlement provider will make a bona fide settlement offer to
148 each of them.

149 (b) To the extent that the debt settlement service may
150 include a settlement offer to any of the debtor's creditors or
151 debt collectors, the amount of money or the percentage of each
152 outstanding debt that the debtor must accumulate before the debt
153 settlement provider will make a bona fide settlement offer to
154 each of them.

155 (c) To the extent that any aspect of the debt settlement
156 service relies upon or results in the debtor's failure to make
157 timely payments to creditors or debt collectors, that the use of
158 the debt settlement service will likely adversely affect the
159 debtor's creditworthiness, may result in the debtor being
160 subject to collection actions or sued by creditors or debt
161 collectors, and may increase the amount of money the debtor owes
162 due to the accrual of fees and interest.

163 (d) To the extent that the debt settlement provider
164 requests or requires the debtor to place funds in an account at
165 a state or federal financial institution insured by the Federal
166 Deposit Insurance Corporation or the National Credit Union Share
167 Insurance Fund, that the debtor owns the funds held in the
168 account, the debtor may withdraw such funds from the debt
169 settlement service at any time without penalty, and, if the
170 debtor requests to withdraw such funds, the debtor must receive
171 all funds in the account, other than funds earned by the debt
172 settlement provider, within 7 business days after the debtor's
173 request.

174 (3) A debt settlement provider may not misrepresent,

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175 directly or by implication, any material aspect of any debt
176 settlement service, including, but not limited to, the amount of
177 money or the percentage of the debt amount which a debtor may
178 save by using such service; the amount of time necessary to
179 achieve the represented results; the amount of money or the
180 percentage of each outstanding debt the debtor must accumulate
181 before the debt settlement provider will initiate attempts or
182 make a bona fide offer to negotiate, settle, or modify the terms
183 of the debtor's debt with the debtor's creditors or debt
184 collectors; the effect of the service on a debtor's
185 creditworthiness; the effect of the service on the collection
186 efforts of the debtor's creditors or debt collectors; the
187 percentage or number of debtors who attain the represented
188 results; and whether a debt settlement service is offered or
189 provided by a nonprofit entity.

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

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

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

197 (c) The fee or consideration for settling each individual
198 debt enrolled in a debt settlement plan is a percentage of the
199 amount saved as a result of the settlement. The percentage
200 charged may not change from one individual debt to another and
201 may not exceed 30 percent of the amount saved. The amount saved
202 is the difference between the amount owed at the time the debtor
203 enrolled in the debt settlement plan and the amount actually

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204 paid to satisfy the debt.

205 (5) This section does not prohibit a debt settlement
206 provider from requesting or requiring the debtor to place funds
207 in an account to be used for the debt settlement provider's fees
208 and for payments to creditors or debt collectors in connection
209 with a renegotiation, settlement, reduction, or other alteration
210 of the terms of payment or other terms of a debt if:

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

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

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

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

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

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

229 817.804 Requirements; disclosure and financial reporting.-

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

232 (a) Obtain from a licensed certified public accountant an

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233 annual audit in accordance with generally accepted auditing
234 standards which includes ~~that shall include~~ all accounts of such
235 person in which the funds of debtors are deposited and from
236 which payments are made to creditors on behalf of debtors. If
237 another person administers accounts on behalf of a debtor under
238 agreement with a debt settlement provider, or under the
239 direction or control of that provider, the audit must include
240 all accounts in which the funds of residents of this state are
241 deposited and from which payments are made at the direction or
242 control of the debt settlement provider or its affiliate.

243 (b) Obtain and maintain at all times insurance coverage for
244 employee dishonesty, depositor's forgery, and computer fraud.
245 The insurance coverage must be ~~in an amount~~ not less than the
246 greater of \$100,000 or 10 percent of the monthly average of the
247 aggregate amount of all deposits made for distribution to
248 creditors with such person by all debtors for the 6 months
249 immediately preceding the date of initial application for or
250 renewal of the insurance. The deductible on such coverage may
251 ~~shall~~ not exceed 10 percent of the face amount of the policy
252 coverage.

253 Section 6. Section 817.805, Florida Statutes, is amended to
254 read:

255 817.805 Disbursement of funds.—Any person engaged in debt
256 management, debt settlement, or credit counseling services shall
257 disburse to the appropriate creditors all funds received from a
258 debtor, less any fees permitted by s. 817.802 and any creditor
259 contributions, within 30 days after receipt of such funds,
260 unless, under a debt settlement plan, reasonable payment of one
261 or more of the debtor's obligations requires that the funds be

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262 held for a longer period in order to accumulate. However, a
263 creditor contribution may not reduce any sums to be credited to
264 the account of a debtor making a payment to the credit
265 counseling agency for further payment to the creditor. Further,
266 any person engaged in such services must ~~shall~~ maintain a
267 separate trust account for the receipt of any funds from debtors
268 and the disbursement of such funds on behalf of such debtors.

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

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

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