

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  
 23   to 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

HB 67

2012

29 management, debt reduction, and financial educational services.

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  
 58 a debtor with the expectation of obtaining the creditor's  
 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

85 settlement services, the credit counseling agency must disclose  
86 truthfully, in a clear and conspicuous manner, all of the  
87 following material information:

88 (a) The amount of time necessary to achieve the  
89 represented results and, to the extent that the debt settlement  
90 service may include a settlement offer to any of the debtor's  
91 creditors or debt collectors, the anticipated time by which the  
92 credit counseling agency will make a bona fide settlement offer  
93 to each 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 an insured financial institution, that the debtor owns the funds  
111 held in the account, the debtor may withdraw such funds from the  
112 debt settlement service at any time without penalty, and, if the

113 debtor requests to withdraw such funds, the debtor must receive  
114 all funds in the account, other than funds earned by the credit  
115 counseling agency, within 7 business days after the debtor's  
116 request.

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

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

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

139 (a) The credit counseling agency has renegotiated,  
140 settled, reduced, or otherwise altered the terms of at least one

HB 67

2012

141 debt pursuant to a debt settlement plan;

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

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

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

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

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

164 (a) The funds are held in an account at an insured  
165 financial institution;

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

168 (c) The entity administering the account, if the credit

HB 67

2012

169 counseling agency does not administer the account, is not owned  
170 or controlled by, or in any way affiliated with, the credit  
171 counseling agency; and

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

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

180 Section 4. Section 817.805, Florida Statutes, is amended  
181 to read:

182 817.805 Disbursement of funds.—Any person engaged in debt  
183 management, debt settlement, or credit counseling services shall  
184 disburse to the appropriate creditors all funds received from a  
185 debtor, less any fees permitted by s. 817.802 and any creditor  
186 contributions, within 30 days after receipt of such funds,  
187 unless the reasonable payment of one or more of the debtor's  
188 obligations requires that the funds be held for a longer period  
189 in order to accumulate. However, a creditor contribution may not  
190 reduce any sums to be credited to the account of a debtor making  
191 a payment to the credit counseling agency for further payment to  
192 the creditor. Further, any person engaged in such services shall  
193 maintain a separate trust account for the receipt of any funds  
194 from debtors and the disbursement of such funds on behalf of  
195 such debtors.

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