

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 599 Debt Management Services
SPONSOR(S): Commerce Committee, Garcia and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 628

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N	Fletcher	Lloyd
2) Commerce Committee	16 Y, 0 N, As CS	Fletcher	Hamon

SUMMARY ANALYSIS

Debt management services laws regulate the fees credit counseling organizations may charge debtors for debt management services and credit counseling services. Debt management services include effectuating an adjustment, compromise, or discharge of indebtedness, and advising debtors on debt reduction and general money management practices.

There are two types of organization that provide debt management services: non-profit, 501(c)(3) credit counseling agencies and debt settlement companies, typically for-profit organizations. Nonprofit credit counseling agencies work with debtors' creditors, educate debtors about credit practices, and enroll qualifying debtors in debt management plans tailored to their specific situation and budget.

The Legislature created laws in 2004 limiting the amount and types of fees credit counseling agencies may charge debtors for debt management services. Since 2004, however, Florida's limitation on fees for debt management services has not been increased.

The bill revises the fee chargeable to a debtor for receiving from the debtor, and subsequently disbursing to a creditor, money or anything of value from greater of 7.5 percent of the monthly payment or \$35 monthly to up to the lesser of 15 percent of the monthly payment or \$75 monthly.

This bill will not have a fiscal impact on state and local governments but will have both positive and negative fiscal impacts on the private sector.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Credit Counseling Organizations

Debtors seeking to manage and reduce their debts often engage credit counseling organizations who provide debt management services and credit counseling services.¹ Non-profit credit counseling agencies assist debtors with managing and reducing their debt by offering free counseling on credit practices, enrolling qualifying debtors in debt management plans, and providing community education to individuals and families on money management skills.²

Floridians are among the many individuals who could benefit from non-profit credit counseling organizations. According to Experian, the average Floridian carried \$84,926 in debt in 2021.³ The majority consisted of mortgages which averaged \$208,536.⁴ Credit card debt, student loans, and auto loans accounted for the other main sources, with a state average of \$5,620, \$40,866, and \$10,110, respectively.⁵ In 2022, the average Floridian carried \$89,195 in debt, a 5% increase from 2021.⁶

Debt Management Services

Debt management services is defined by Florida statute as services provided for a fee to “effect the adjustment, compromise, or discharge of any unsecured note, account, or other indebtedness of the debtor; or receive from the debtor and disburse to a creditor any money or other item of value.”⁷

Credit counseling agencies and creditors classify individuals who find it particularly difficult to manage their debt, whether due to their health or specific situation, as “vulnerable.”⁸ If an agency or creditor is aware an individual is vulnerable, taking extra measures to ensure the individual receives the same services as others, while not being placed at a disadvantage because of their unique situation, is imperative.⁹

Florida’s Limitations on Fees for Debt Management Services

In 2004, the Legislature recognized the importance of easy access to debt management services, while also acknowledging the vulnerability of debtors, by prescribing the maximum fees a person or entity could charge a debtor for debt management services.¹⁰

¹ Consumer Financial Protection Bureau, *What is credit counseling?*, <https://www.consumerfinance.gov/ask-cfpb/what-is-credit-counseling-en-1451/> (last visited Mar. 10, 2023)

² Financial Counseling Association of America, <https://fcaa.org/> (last visited Mar. 10, 2023)

³ Experian, *Average Consumer Debt Levels Increase in 2022*, <https://www.experian.com/blogs/askexperian/research/consumer-debt-study/> (last visited Mar. 7, 2023).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ S. 817.801(4), F.S.

⁸ Step Change: Debt Charity, *Dealing with the debts of a vulnerable person*, <https://www.stepchange.org/debtinfo/dealing-with-the-debts-of-vulnerable-people.aspx> (last visited Mar. 10, 2023).

⁹ *Id.*

¹⁰ Chapter 2004-351, Laws of Florida, created s. 817.802, F.S.

Specifically, the 2004 legislation made it unlawful for any entity or individual engaging in debt management services or credit counseling services, to charge a debtor:

- a fee greater than \$50 for an initial consultation;¹¹ and
- a fee greater than \$120 per year for additional consultations or, alternatively, in the case of receiving debt payments from the debtor and disbursing to a creditor any money or other item of value, the greater of 7.5% of the amount paid monthly by the debtor or \$35 per month.¹²

No state agency directly regulates credit counseling organizations. Regulation is self-executing by means of private civil actions under part II of ch. 501, including possible action by the Attorney General or local prosecutors.¹³ Any person in violation of the debt services statute “commits an unfair or deceptive trade practice.”¹⁴ A violation results in criminal and civil penalties. Namely, a violation is a third-degree felony, and an individual injured by a violation can bring an action for damages, where judgement is entered for actual damages no less than the amount paid by the aggrieved individual to the credit counseling organization.¹⁵

Although a 2006 amendment narrowed the scope of debtors protected to those debtors specifically residing in the State of Florida,¹⁶ the limitation on fees for debt management services has not been increased since its enactment in 2004.

Effect of the Bill

The bill changes the fee a person or entity may charge for the debt management services described in s. 817.802(4)(b) (namely, receiving from the debtor and disbursing to a creditor any money or item of value) to up to the lesser of 15 percent of the amount paid monthly by the debtor or \$75 per month, rather than the greater of 7.5 percent of the amount paid or \$35 per month. The following table illustrates the current and proposed fees.

Monthly Payment	Current			HB 599			Result of Current vs. HB 599
	Greater of		Monthly Fee Allowed	Lesser of		Monthly Fee Allowed	
	7.5% of monthly	\$35		15% of monthly	\$75		
\$100	\$ 7.50	\$ 35.00	\$ 35.00	\$ 15.00	\$ 75.00	\$ 15.00	Reduction
\$500	\$ 37.50	\$ 35.00	\$ 37.50	\$ 75.00	\$ 75.00	\$ 75.00	Increase
\$1,000	\$ 75.00	\$ 35.00	\$ 75.00	\$ 150.00	\$ 75.00	\$ 75.00	No Change
\$1,500	\$ 112.50	\$ 35.00	\$ 112.50	\$ 225.00	\$ 75.00	\$ 75.00	Reduction

B. SECTION DIRECTORY:

Section 1. Amends s. 817.802(1), F.S., relating to unlawful fees and costs.

Section 2. Provides an effective date of July 1, 2023.

¹¹ S. 817/802(1), F.S.

¹² *Id.*

¹³ Ch. 501, part II, F.S., relating to the protection of consumers from unfair trade practices, and remedies for violations thereof, similar to federal policies relating to consumer protection.

¹⁴ S. 817.806, F.S.

¹⁵ S. 17.806, F.S.

¹⁶ Chapter 2006-136, Laws of Florida, amended s. 817.802, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Credit counseling organizations and debtors residing in Florida would experience fiscal impact from this bill. Specifically, the change in fees to the greater of 15% of the amount paid monthly by the debtor and \$75 would likely result in an increase in some revenue for credit counseling organizations. On the other hand, the increase in the maximum chargeable amount might have a negative, possibly significant, fiscal impact on debtors residing in Florida.¹⁷ Please see *Section III.C., Drafting Issues or Other Comments*, below.

D. FISCAL COMMENTS:

The bill would increase some revenues for credit counseling organizations, but the bill would have a negative fiscal impact on debtors residing in Florida.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY

This bill does not appear to amend or create rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 10, 2023, the Commerce Committee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment modified the bill to authorize debt management service providers to charge less than the maximum allowed fee.

The analysis is drafted to the committee substitute as passed by the Commerce Committee.