

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 1074

INTRODUCER: Senator Calatayud

SUBJECT: Debt Relief Services

DATE: January 19, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Knudson	BI	Pre-meeting
2.			CM	
3.			RC	

I. Summary:

Senate Bill 1074 amends the credit counseling services provisions to clarify that debt relief services do not fall within its scope. Specifically, the bill:

- Amends the definition of “debt management services” to exclude debt relief services;
- Defines the term “debt relief services;”
- Provides that the penalty provisions for violating credit counseling services provisions do not apply to debt relief services; and
- Authorizes the Attorney General to bring an action against a debt relief provider for a violation of specified federal law.

The bill has an effective date of July 1, 2024.

II. Present Situation:

Telemarketers who sell debt relief services are regulated under federal law. Florida law does not contain provisions dedicated exclusively to regulating debt relief services but such services may fall within the definition of debt management services and therefore be subject to the provisions of the credit counseling services provisions in ch. 817, F.S. Providers that sell debt relief services, who must comply with compensation requirements under federal law that are different from compensation requirements under Florida law for credit counseling agencies that provide debt management services, are then subject to private causes of action under Florida Deceptive and Unfair Trade Practices Act (FDUTPA) for violating provisions of the chapter.¹

¹ Section 817.806(1), F.S.

Credit Counseling Services

Federal law

There are no federal laws that require credit counseling agencies to be licensed. As required under federal bankruptcy laws, however, the U.S. Department of Justice publishes a list of credit counseling agencies that are approved pursuant to this law.² According to the Consumer Financial Protection Bureau, credit counseling organizations are nonprofit organizations and provide services relating to:³

- Providing guidance on managing money and debts;
- Providing the consumer with a credit report or free educational materials and workshops;
- Assisting with developing a budget; and
- Creating and organizing a debt management plan to reduce the consumer's debt.

A consumer under a debt management plan makes payments to the credit counseling agency each month or pay period and the agency makes monthly payments to each of the consumer's creditors.⁴ Under a debt management plan, a consumer may reduce their debt payment and save more money in interest than the fees required for the credit counseling service.⁵

Florida law

Credit counseling services are regulated under part IV of the fraudulent practices section of the crimes provisions under Title XLVI of the Florida Statutes. A credit counseling agency may provide credit counseling services or debt management services.⁶ Credit counseling services may include “confidential money management, debt reduction, and financial education services.”⁷ Debt Management services means “services provided to a debtor by a credit counseling organization for a fee to: (a) Effect the adjustment, compromise, or discharge of any unsecured account, note, or other indebtedness of the debtor; **or** (b) Receive from the debtor and disburse to a creditor any money or other thing of value”⁸ (emphasis added).

There are several exceptions for which part IV does not apply, including:⁹

- Any debt management or credit counseling services provided in the practice of law;
- Any person¹⁰ who engages in debt adjustment to adjust the indebtedness owed to such person;
- Specified entities or their subsidiaries, including:

² The U.S. Department of Justice, *List of Credit Counseling Agencies Approved Pursuant to 11 U.S.C. §111*, available at: [U.S. Trustee Program | List of Credit Counseling Agencies Approved Pursuant to 11 U.S.C. § 111 | United States Department of Justice](#) (last visited Jan. 18, 2024).

³ The CFPB, *What is Credit Counseling*, Aug. 2, 2023, available at: [What is credit counseling? | Consumer Financial Protection Bureau \(consumerfinance.gov\)](#) (last visited Jan. 18, 2024).

⁴ *Id.*

⁵ Experian, *How Much Can a Debt Management Plan Save You?*, Apr. 3, 2023, available at: [Can a Debt Management Plan \(DMP\) Save You Money? - Experian](#) (last visited Jan. 18, 2024).

⁶ Section 817.801(1), F.S.

⁷ Section 817.801(2), F.S.

⁸ Section 817.801(4), F.S.

⁹ Section 817.803, F.S.

¹⁰ Section 817.801(5), F.S., defines “person” as “any individual, corporation, partnership, trust, association, or other legal entity.”

- The Federal National Mortgage Association,
- The Federal Home Loan Mortgage Corporation,
- The Florida Housing Finance Corporation,
- A bank, bank holding company, trust company, savings and loan association, credit union, credit card bank, or savings bank that is regulated and supervised by a specified federal regulator or any state banking regulator,
- A consumer reporting agency,¹¹ or
- Any subsidiary or affiliate of a bank holding company, its employees and its exclusive agents acting under written agreement.

It is unlawful for any person to charge or accept more than the regulated fee or contribution¹² from a debtor residing in Florida while engaging in debt management services or credit counseling services. Specifically, a fee or contribution:¹³

- Greater than \$50 for the initial setup or consultation;
- Greater than \$120 per year for additional consultations; or
- If debt management services are provided, the lesser of 15% of the amount paid monthly by the debtor to the person or \$75 per month.

Any person engaging in debt management services or credit counseling services must disburse to the appropriate creditors all funds received from a debtor, less any permitted fees and credit contributions, within 30 days after receipt of the funds. Such person is required to maintain a separate trust account for the receipt and disbursement of any funds.¹⁴

Any person engaged in debt management services or credit counseling services must comply with the following requirements:¹⁵

- Obtain from a licensed certified public accountant an annual audit that must include specified accounts; and
- Obtain and maintain insurance coverage of minimum specified amounts for employee dishonesty, depositor's forgery, and computer fraud.

Any person who violates any provision of the credit counseling services provision under Part IV commits an unfair and deceptive trade practice.¹⁶

¹¹ "Consumer reporting agency" means "any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports." 15 U.S.C. s. 1681a(f).

¹² Section 817.801(3), F.S., defines creditor contribution as "any sum that a creditor agrees to contribute to a credit counseling agency, whether directly or by setoff against amounts otherwise payable to the creditor on behalf of debtors."

¹³ Section 817.802(1), F.S. Florida law does not prohibit any person who is providing debt management or credit counseling services from imposing upon and receiving from a debtor a reasonable and separate charge or fee for insufficient funds transactions. Section 817.802(2), F.S.

¹⁴ Section 817.805, F.S.

¹⁵ Section 817.804, F.S.

¹⁶ Section 817.806(1), F.S.

Federal Debt Relief Services Regulation

The Telemarketing and Consumer Fraud and Abuse Prevention Act (the Telemarketing Act), 15 U.S.C. ss. 6101-6108, requires the Federal Trade Commission (FTC) to adopt rules prohibiting deceptive or other abusive telemarketing¹⁷ acts or practices. The Telemarketing Act sets out specific provisions that must be contained in the rules, including, but not limited to, a provision that requires any person engaged in telemarketing for the sale of goods or services to promptly and clearly disclose that the purpose of the call is to sell the services, the nature and price of the services, and any other disclosures required by the FTC.¹⁸ The FTC has adopted the required rules in the Telemarketing Sales Rule (TSR). The Telemarketing Act authorizes any state to bring a civil action against any person who has violated the TSR to obtain damages, restitution, or other compensation, to enjoin the telemarketing, to enforce compliance, or to obtain such further relief as the court may deem appropriate.¹⁹

The TSR, amongst other things, prohibits any person, such as a seller²⁰ or telemarketer,²¹ from engaging in deceptive telemarketing acts or practices which include, but are not limited to:²²

- Before a customer consents to the purchase of services, failing to truthfully, clearly, and consciously disclose specified material information, including specific information relating to the sale of any debt relief service;
- Misrepresenting in the sale of services any of the specified material information; and
- Causing billing information to be submitted for payment, or collecting or attempting to collect payment for services without express verifiable authorization, except in specified circumstances.

The specified disclosures for debt relief services include, to the extent applicable, information relating to:²³

- The amount of time necessary to achieve the represented results or to make a bona fide settlement offer;
- The amount of money or the percentage of each outstanding debt that the customer must accumulate before the debt relief service provider will make a bona fide settlement offer to each of them;
- The use of the debt relief services that will likely adversely affect the customer's creditworthiness, may result in the customer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the customer owes; and
- The customer's funds held in an account being owned by the customer.

¹⁷ 15 U.S.C. s. 6106 defines "telemarketing" as "a plan, program, or campaign which is conducted to induce purchases of goods or services, or a charitable contribution, donation, or gift of money or any other thing of value, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog" that meet specified criteria.

¹⁸ 15 U.S.C. s. 6102(a)(3).

¹⁹ 15 U.S.C. s. 6103(a).

²⁰ 16 C.F.R. s. 310.2(dd) defines "seller" as "any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration."

²¹ 16 C.F.R. s. 310(gg) defines "telemarketer" as "any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor."

²² 16 C.F.R. s. 310.3.

²³ 16 C.F.R. s. 310.3(a)(1)(viii).

The TSR also prohibits abusive telemarketing acts or practices that restrict when a telemarketer or seller may request or receive payment of any fee or consideration for any debt relief service until or unless:²⁴

- The telemarketer or seller has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt;
- The customer has made at least one payment pursuant to a specified agreement or plan; and
- The fee:
 - Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount; or
 - Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration.

Consumer Debt Relief Initiative and American Association of Debt Relief report that approximately 180 debt settlement/debt resolution companies currently provide debt relief services to Floridians. Based on data points and general information provided by payment processors and industry leading organizations, there are approximately 325,000 Floridians who are actively enrolled in a debt relief services which is expected to increase in the next couple of years to more than 400,000 Floridians. With respect to debt settlement plans:²⁵

- The average debt is approximately \$30,000 spread over 6.7 accounts;
- The average income for enrolled consumers is approximately 10-15% above average household income;
- The average credit score for an enrolled consumer is 590;
- The average length of a plan is approximately 38 months; and
- The average monthly payment deposited into the client’s personal dedicated account is approximately \$465.

Currently, more than \$5.6 billion of Floridians’ unsecured debt is enrolled in debt settlement plans.²⁶

Florida Telemarketing Act

Although the Florida Telemarketing Act does not contain explicit provisions on telemarketing debt relief services, telemarketers who sell debt relief services in Florida are nonetheless required to comply with the general provisions of the Act. Unless an exemption applies,²⁷ a commercial telephone seller or an entity providing substance abuse marketing services must obtain a license from the Department of Agriculture and Consumer Services (DACS) to conduct business in Florida.²⁸ The Florida Telemarketing Act requires the entities that apply for a license to disclose

²⁴ 16 C.F.R. s. 310.4(a)(5).

²⁵ Email from Kelly C. Mallette, Ronald L. Book, P.A., to Jacqueline Moody, Senior Attorney, Florida Senate Committee on Banking and Insurance, *Additional Information [Relating to SB 1074]*, (Jan. 18, 2024) (on file with Senate Committee on Banking and Insurance) (attaching “Debt Relief Services”).

²⁶ *Id.*

²⁷ Section 501.604, F.S., provides for exemptions relating to, for instance, an isolated transaction, solicitation for religious or charitable purposes, or a licensed securities broker.

²⁸ Section 501.605(1), F.S.

specified information to the DACS.²⁹ The DACS may issue a notice of noncompliance, impose an administrative fine, or issue other orders if any regulated entity, applicant, or certain specified related persons meet certain criteria, such as being convicted of certain crimes or filed for bankruptcy within the previous 7 years.³⁰ The Telemarketing Act provides other protections such as subjecting any person who engages in certain unlawful acts or practices to civil penalties or criminal prosecution.³¹

Florida Deceptive and Unfair Trade Practices

The FDUTPA provides that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.³² This makes sellers and telemarketers subject to the enforcement actions identified in part II of ch. 501, F.S., which include civil actions brought by the Attorney General and criminal prosecution by a State Attorney in the appropriate judicial circuit. Civil actions may also include an injunction, an action seeking damages, or a civil penalty up to \$10,000 per violation.³³

III. Effect of Proposed Changes:

Senate Bill 1074 intends to clarify that the credit counseling services provisions do not apply to debt relief services, which are regulated under the TSR. The bill's amendments to current law will limit the legal actions brought against telemarketers of debt relief services for failing to comply with ch. 817, F.S. However, such sellers would remain subject to causes of action pursuant to 15 U.S.C. s. 6103 for violating the provisions of the TSR. Telemarketers of debt relief services are also subject to causes of action for any violations of the requirements under FDUTPA or any violations of the Florida Telemarketing Act.

Section 1 of the bill amends the definition of “debt management services” to mean “services provided to a debtor by a credit counseling organization for a fee to:

- (a) Effect the adjustment, compromise, or discharge of any unsecured account, note, or other indebtedness of the debtor; and
- (b) Receive from the debtor and disburse to a creditor any money or other thing of value.”

The bill also provides that the definition of “debt management services” does not include debt relief services. These amendments to the definition may have an unintended consequence of narrowing the scope of credit counseling services covered within the scope of Florida law.

Further, the term “debt relief service” is defined to have the same meaning in 16 C.F.R. s. 310.2, and excludes a debt management service in which any money or other thing of value is received from a debtor and distributed to a creditor.

Section 2 of the bill provides that the provisions governing penalties for any violation of the credit counseling services provisions do not apply to debt relief services. The bill also provides

²⁹ Section 501.606, F.S.

³⁰ Section 501.612, F.S.

³¹ Sections 501.616, 501.619, and 501.623 F.S.

³² Section 501.204(1), F.S.

³³ Section 501.2075, F.S.

that the Attorney General has discretion to bring a cause of action under federal law against a debt relief services provider for any violation of debt relief services in 16 C.F.R. part 310.

Section 3 of the bill provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Florida Office of Attorney General (the OAG) reports that the bill may subject consumers to higher fees but it is unknown to what extent or with what frequency this may occur.³⁴

C. Government Sector Impact:

The Florida OAG reports that the fiscal impact would be “minimal or indeterminate, and would be absorbed within current resources.”³⁵

³⁴ Email from Elizabeth Guzzo, Director of Legislative Affairs, the OAG, to Jacqueline Moody, Senior Attorney, Florida Senate Committee on Banking and Insurance, *SB 1074 – Debt Relief Services*, (Jan. 17, 2024) (on file with Senate Committee on Banking and Insurance).

³⁵ Email from Elizabeth Guzzo, Director of Legislative Affairs, the OAG, to Jacqueline Moody, Senior Attorney, Florida Senate Committee on Banking and Insurance, *SB 1074 – Debt Relief Services*, (Jan. 19, 2024) (on file with Senate Committee on Banking and Insurance).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 817.801 and 817.806.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.