

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1245 Credit Counseling Services
SPONSOR(S): Hasner
TIED BILLS: **IDEN./SIM. BILLS:** SB 2682

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Commerce		Sheheane	Billmeier
2) Judiciary			
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

Credit counseling services generally advertise a service intended to assist people with managing their personal debt. Credit counseling services may attempt to help an individual avoid foreclosure and bankruptcy, reduce interest rates, and lower or consolidate monthly payments.

Many credit counseling services offer assistance through "debt management plans" (DMP). The DMP is advertised as a way to pay down debt through monthly deposits to the credit counseling service, which in turn distributes these funds to the creditors. Credit counseling services advertise that they work with clients and creditors to design a debt repayment program that will minimize monthly payments, interest and related fees, providing a manageable plan for clients.

HB 1245 allows a maximum of \$50 for an initial set up or consultation fee for a debt management plan and \$120 per year for additional consultations. The bill will allow up to 7.5%, or \$25, whichever is greater, of the amount paid monthly by the debtor to the creditors for collection by the debt manager. The bill requires any debt manager or credit counselor to have a certified public accountant audit the accounts in which funds of debtors are deposited on an annual basis. The bill requires a debt manager or credit counselor to maintain insurance coverage in the amount of \$100,000, or 10 percent of the monthly average for the immediately preceding six months of the aggregate amount of all deposits made with the debt manager by debtors, whichever is greater. The bill requires that a debt manager or credit counselor disburse funds of the debtor to the proper creditor not more than 30 days after receiving such funds. The bill authorizes the Attorney General and the Office of Financial Regulation (OFR) to prosecute any case arising under this bill.

The bill provides exceptions for certain persons who may engage in debt management including those in the practice of law, any person who incidentally engages in debt adjustment, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a bank, a bank holding company, trust company, savings and loan association, credit union, credit card bank, or savings bank that is regulated by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, or the Department of Financial Services.

According to the Office of Financial Regulation, there will be a recurring cost as a result of this bill. Please see "fiscal analysis and economic impact statement."

The bill takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1245.com.doc
DATE: March 16, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Credit counseling organizations generally advertise a service intended to assist people with managing their personal debt. Credit counseling organizations may attempt to help an individual avoid foreclosure and bankruptcy, reduce interest rates, and lower or consolidate monthly payments.

Credit counseling organizations may also offer individual advice for developing budgets, managing money, using credit, and building a savings plan.

Many credit counseling services offer assistance through "Debt Management Plans" (DMP). The DMP is advertised as a way to pay down debt through monthly deposits to the credit counseling service, which in turn distributes these funds to the creditors. Credit counseling services advertise that they work with clients and creditors to design a debt repayment program that will minimize monthly payments, interest and related fees, providing a manageable plan for clients.

Currently, there are no laws in Florida regulating credit counseling organizations. There is growing concern across the nation as new organizations obtain non-profit status from the IRS and use this status to gain the confidence of consumers. Many times, these organizations will charge upfront fees or "voluntary contributions" for their services.

According to a representative with the Florida Attorney General's Office, there are currently two investigations into questionable credit counseling practices in Florida. On November 19, 2003, the Federal Trade Commission (FTC) filed suit against Ameridebt for engaging in deceptive practices prompting the FTC to reissue two consumer alerts on credit counseling. Georgia's "Fairness in Credit Counseling Act" became law in July 2003, implementing consumer protections against debt management services. With increasing concern over the lack of regulation of these credit counseling services, more states may propose legislation for the regulation of credit counseling services.

Proposed Changes

This bill places new requirements on credit counseling services and debt management services. "Credit counseling services" is defined as confidential money management, debt reduction, and financial educational services. "Debt management services" is defined as 1) services provided to a debtor by a credit counseling organization for a fee to effect the adjustment, compromise, or discharge of any unsecured account, note or other indebtedness of the debtor or 2) services provided by a credit counseling organization to a debtor that involves receiving from the debtor and disbursing to a creditor any money or other thing of value.

Under current law, there is no limit on fees charged by credit counseling services and debt managers. The bill allows a maximum of \$50 for an initial set up or consultation fee for a debt management plan and \$120 per year for additional consultations. The bill will allow up to 7.5%, or \$25, whichever is greater, of the amount paid monthly by the debtor to the creditors for collection by the debt manager. The bill requires that a debt manager or credit counselor disburse funds of the debtor to the proper creditor not more than 30 days after receiving such funds.¹ The bill authorizes the Attorney General and the Office of Financial Regulation to prosecute any case arising under this bill and allows for \$10,000 for each violation. A civil penalty collected shall accrue to the state and shall be deposited into the General Revenue Fund.

The bill provides exceptions for certain persons who may engage in debt management including those in the practice of law, any person who incidentally engages in debt adjustment, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a bank, a bank holding company, trust company, savings and loan association, credit union, credit card bank, or savings bank that is regulated by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, or the Department of Financial Services.

The bill requires any debt manager or credit counselor to have a certified public accountant audit the accounts in which funds of debtors are deposited on an annual basis. A copy of the audit must be made available upon written request from any party. The bill requires a debt manager or credit counselor to maintain insurance coverage in the amount of \$100,000, or 10 percent of the monthly average for the immediately preceding six months of the aggregate amount of all deposits made with the debt manager by debtors, whichever is greater. The bill requires a copy of the annual audit and insurance policies to be filed with the Office of Financial Regulation, but does not give OFR any oversight responsibility for receipt of the filings.

The bill takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1. Creates Part IV of chapter 817, F.S., to add sections 817.801, 817.802, 817.803, 817.804, 817.805, and 817.806.

s. 817.801, F.S., is created to provide definitions for “credit counseling services”, “debt management services”, “person”, and “credit counseling agency.”

s. 817.802, F.S., is created to provide limits for fees that a credit counselor or debt manager may charge from any debtor in Florida.

s. 817.803, F.S., is created to provide exceptions to the created credit counseling services regulations, including attorneys, those who may incidentally engage in debt adjustment, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a bank, bank holding company, trust company, savings and loan association, credit unions, and other organizations supervised by the Comptroller of the Currency.

s. 817.804, F.S., is created to provide financial disclosure requirements for credit counseling services and debt management businesses.

s. 817.805, F.S., is created to provide regulations for credit counseling services and debt managers relating to disbursement of funds to the appropriate creditors of the debtor.

¹ This bill requires any person engaging in credit counseling or debt management services to maintain a separate trust account for the receipt of any funds from each debtor and the disbursement of such funds on behalf of such debtor.

s. 817.806, F.S., is created to provide that any case arising in this part of law may be prosecuted by the Attorney General and the Office of Financial Regulation and provides that any person who has participated in a practice declared unlawful under s. 817.802, s. 817.803, s. 817.804, or s. 817.805 is liable for a civil penalty of up to \$10,000 for each violation.

Section 2. This bill will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Office of Financial Regulation, there will be a recurring cost as a result of this bill because the Office is given authority to prosecute cases arising from the bill. The amount is indeterminate. Any civil penalties received as a result of this bill are deposited into the General Revenue Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Office of Financial Regulation, the private sector is difficult to project. All firms engaged in credit counseling will have to obtain and maintain insurance coverage. The cost of such coverage will largely be driven by the financial condition of the company. There will also be an annual premium to renew such coverage.

Further, credit counseling firms will have to have an annual audit prepared by a certified public accountant. The cost associated with the audit will vary based on a number of factors, including the size of the business involved, location, etc.

The bill may represent a substantial increase in recordkeeping for some firms. The cost of such recordkeeping is impossible to project. Maximum fees are established by the bill, which may reduce revenues to certain firms.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to OFR, the bill establishes Office of Financial Regulation as a repository for all filings but states OFR has no oversight responsibility for receipt of the filings. If filings are required but not reviewed for completeness, accuracy or timeliness, it may give the public a false sense of security that the State has "passed" or "approved" the filings in some manner. It could put the State in an awkward legal position if negative information is filed and no action taken on it.

The bill will result in increased workload for the Office, without any increase in resources:

1. Consumers will contact or file complaints with OFR because they will believe OFR regulates the counseling firms.
2. Employees will be required to organize and/or maintain the filings in some logical manner and will be required to provide copies of the filings pursuant to public records requests.
3. Staff will be expected to examine, investigate or otherwise review the activity of credit counseling firms, and to prosecute cases as directed by the bill. OFR will have to absorb costs for these activities, but civil penalties will be "deposited as received in the General Revenue Fund unallocated."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A