

**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 Banking and Insurance Committee

BILL: PCS/SB 1702 (440580)  
 INTRODUCER: Banking and Insurance Committee  
 SUBJECT: Consumer Credit Protection  
 DATE: March 13, 2010      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	WPSC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

In the last few years, an increasing number of disreputable companies have been capitalizing on the economic turmoil and credit troubles of consumers. Some consumers are unable to pay their credit card obligations due to the loss of a job, overspending, divorce, or family illness and are often the subject of harassment and abuse by unethical debt collectors. These financial problems can take a toll on consumers, particularly vulnerable older consumers, resulting in consumers seeking a quick fix. Unscrupulous entities target such consumers by engaging in deceptive and misleading marketing practices (e.g., promising the cancellation of debts for pennies on the dollar, avoiding bankruptcy, or erasing bad credit) or charging egregious fees for services that are never provided.

This committee bill is the result of the Banking and Insurance Committee’s interim report entitled, *Regulation of Debt Relief Services (2010-103)*, which reviewed laws related to the regulation of debt relief organizations, which includes credit counseling organizations (CCOs) and other providers of debt management services, and consumer debt collection agencies. The bill creates the following additional consumer protections and enforcement tools for state regulators:

***Debt Relief Organizations***

- Requires debt relief organizations to register annually with the Office of Financial Regulation (OFR). Applicants must meet stringent registration requirements, including a criminal background check and the maintenance of a surety bond in an amount of at least \$100,000 to benefit consumers who suffer any loss due to any violation of this act.
- Allows consumers to have a right of cancellation or cooling off period of at least five days.

- Requires detailed disclosures and documentation regarding any initial consultation fees, monthly fees, fees based on savings, payment schedule, the financial suitability of the program, and the services to be provided.
- Revises the fee provisions for debt management services by applying the fee caps to all consumers, including nonresidents, and by allowing a debt relief organization the option to collect 7.5 percent of the amount paid monthly by the debtor to the organization or \$35 per month, whichever is greater; *or as an alternative*, 7.5 percent of the total amount of enrolled debt.
- Provides the OFR with broad, discretionary authority to investigate the books and records of a debt relief organization and to take disciplinary action, such as imposing administrative fines of up to \$25,000, and revoking or suspending the registration of a debt relief organization.

### ***Consumer Debt Collection Agencies***

- Streamlines the existing statutory authority for the regulation of consumer debt collection agencies into one agency by transferring duties related to the registry and referral of complaints from the Department of Financial Services to the OFR and eliminating the requirement of a sworn complaint.
- Codifies the prohibited acts in the federal Fair Debt Collection Act, which would provide greater consumer protections.
- Provides that a violation of the Consumer Collection Agency Act would be deemed an unfair and deceptive trade practice within the meaning of part II of ch. 501, F.S., Florida Deceptive and Unfair Trade Practices Act.
- Increases administrative fines for violations, currently capped at \$1,000 to \$25,000, which would allow the OFR to impose significant economic sanctions on unscrupulous consumer collection agencies.
- Provides the OFR with broad, discretionary authority to investigate the books and records of a consumer collection agency promptly, based on the nature and severity of an alleged violation rather than the accumulation of five unresolved complaints, as required currently.
- Expands the authority of the Attorney General to include taking action against out-of-state debt collectors in a state court when appropriate.

This bill creates the following sections of the Florida Statutes: 559.101, 559.103, 559.104, 559.106, 559.107, 559.109, 559.111, 559.114, 559.115, 559.116, 559.5522, 559.5524, 559.5551, 559.5554, 559.5556, 559.566, 559.727, 559.786, 817.801, 817.802, 817.803, 817.804, 817.805, and 817.806. The bill amends the following sections of the Florida Statutes: 559.55, 559.551, 559.552, 559.553, 559.555, 559.563, 559.565, 559.715, 559.72, 559.725, 559.726, 559.730, 559.77, 559.785, 817.801, 817.802, 817.803, 817.804, 817.805, and 817.806. The bill repeals the following sections of the Florida Statutes: 559.10, 559.11, 559.12, and 559.13.

## **II. Present Situation:**

Consumer credit is a critical component of the U.S. economy. Credit allows consumers to purchase goods and services for which they are unable or unwilling to pay the entire cost at the time of purchase. By extending credit, however, creditors take the risk that some consumers will not repay all or part of the amount that they owe, and creditors initiate collection efforts.

## **Federal Laws and Regulations Related to Consumer Debt and Credit**

The debt relief industry is comprised of businesses providing products and services, including credit counseling, credit repair, debt management, debt settlement, and debt collection. Many federal laws have been enacted to protect consumers from deceptive and fraudulent practices related to debt relief services. The Federal Trade Commission (FTC) has jurisdiction to enforce certain federal consumer protection laws through the Federal Trade Commission Act,<sup>1</sup> the Telemarketing and Consumer Fraud Act,<sup>2</sup> the Credit Repair Organizations Act,<sup>3</sup> and Fair Debt Collection Practices Act.<sup>4</sup> The intent of the Fair Debt Collection Practices Act is to protect consumers from harmful debt collection practices and to protect ethical collectors from an unfair competitive disadvantage. The act applies to third-party collectors, which include contingency agencies, collection law firms, and debt buyers

## **Regulation of Debt Relief Services in Florida**

Florida law does not assign any specific state agency with the duty of enforcing the laws governing credit counseling agencies and debt management services. However, the Department of Legal Affairs and state attorneys do protect consumers from the entities that employ unfair practices by using several enforcement tools. Under Florida law, the Office of Financial Regulation regulates consumer collection agencies.

***Florida Deceptive and Unfair Trade Practices Act*** -- The Florida Deceptive and Unfair Trade Practices Act,<sup>5</sup> provides remedies and penalties for “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”<sup>6</sup> Violations of this part include any violation of this act and rules adopted pursuant to the FTC Act, including the standards of unfairness and deception set forth and interpreted by the FTC or the federal courts. Willful violations of the act occur when the person knew or should have known that the conduct was unfair, deceptive, or prohibited by rule. Remedies for practices prohibited by the act may include an action to enjoin a person from committing such acts,<sup>7</sup> an action to recover actual damages caused by the violation, and the imposition of a civil penalty, generally not more than \$10,000 for each willful violation. Actions can be brought by a state attorney, the Department of Legal Affairs,<sup>8</sup> or by a consumer.<sup>9</sup>

***Credit Counseling Services and Debt Management Services*** -- In Florida, credit counseling organizations provide credit counseling and debt management services.<sup>10</sup> The term “credit counseling services” means money management, debt reduction, and financial educational

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<sup>1</sup> 15 U.S.C. ss. 41-58.

<sup>2</sup> 15 U.S.C ss. 6101-6108.

<sup>3</sup> 15 U.S.C. s. 1679.

<sup>4</sup> 15 U.S.C. s. 1692.

<sup>5</sup> Part II of ch. 501, F.S.

<sup>6</sup> Section 501.204, F.S.

<sup>7</sup> Section 501.207(1)(b), F.S.

<sup>8</sup> Section 501.203(2), F.S.

<sup>9</sup> Section 501.211(1), F.S.

<sup>10</sup> Part IV, ch.817, F.S.

services. “Debt management services” generally means services provided for a fee to adjust or discharge the indebtedness of the debtor.<sup>11</sup>

Any person engaged in credit counseling or debt management services is prohibited from charging fees to any consumer or debtor *residing in Florida* in excess of amounts prescribed in s. 817.802, F.S. Section 817.802(1), F.S., prohibits a person, while engaging in debt management services or credit counseling services, and from charging or accepting a fee greater than \$50 for the initial consultation. Subsequently, the person may not charge or accept a fee greater than \$120 per year for additional consultations or, alternatively, if debt management services are provided, the person may charge 7.5 percent of the amount paid monthly by the debtor or \$35 per month, whichever is greater. A violation of any provision of part IV of ch. 817, F.S., is an unfair or deceptive trade practice under the Florida Deceptive and Unfair Trade Practices Act. The Department of Legal Affairs can enforce Part II of ch. 501, F.S., against credit counseling agencies engaging in unfair and deceptive trade practices. A person who violates any provision of the act commits a third-degree felony. A consumer harmed by a violation of this act may bring an action for recovery of damages, costs, and attorney’s fees.

***Consumer Debt Collection Agencies*** -- Part VI of ch. 559, F.S., regulates consumer collection agencies and protects consumers from certain debt collection practices that involve fraud, harassment, threats, and other unscrupulous activities. Section 559.725, F.S., designates the Department of Financial Services (DFS) as the registry for consumer complaints. Once the DFS receives a sworn complaint against an entity, the DFS refers the complaints to the appropriate regulatory authority or the Florida Bar, if appropriate. However, in January 2008, the OFR and the DFS mutually agreed to delegate the registry to the OFR.

The OFR is responsible for the registration<sup>12</sup> of consumer collection agencies and has limited investigative and enforcement powers and duties. Any out-of-state debt collector who collects or attempts to collect consumer debt prior to registration is subject to an administrative fine not to exceed \$1,000.<sup>13</sup> Section 559.72, F.S., outlines prohibited practices as they relate to the collection of consumer debts, which range from prohibitions against persons impersonating a law enforcement officer or government agent to using threats of force or violence. Section 559.725, F.S., authorizes the OFR to investigate, by means of written communication, with the accused collection agency. However, the OFR has no authority to examine the actual books and records of a consumer collection agency to determine the factual basis of a complaint. Before the OFR may take action, there must be at least five unresolved, sworn complaints filed by five different consumers within a 12-month period against a consumer collection agency.

The OFR is required to notify the appropriate state attorney or the Attorney General in the case of an out-of-state consumer debt collector, of any determination by the OFR of a violation of the requirements of this part.<sup>14</sup> State attorneys may apply to a court of competent jurisdiction upon the sworn affidavit of any person alleging a violation of any of the provisions of this part.<sup>15</sup>

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<sup>11</sup> Section 817.801, F.S.

<sup>12</sup> Section 559.555, F.S.

<sup>13</sup> Section 559.565, F.S.

<sup>14</sup> Section 559.725, F.S.

<sup>15</sup> Section 559.78, F.S.

## Debt Relief Industry

In recent years, the number of consumer complaints and inquiries related to debt relief has increased significantly at both the federal and state levels. The recent increase in complaints may be attributable to a number of factors: the recent recession and the resulting increase in delinquent debt flowing to collection departments and collection agencies, and the increased ease with which consumers can file complaints or inquiries via the Internet.

***Credit Counseling Organizations*** -- Credit counseling organizations generally assist people with managing their personal debt and developing budgets. These organizations may attempt to help debtors avoid foreclosure or bankruptcy and reduce interest rates and monthly payments on unsecured loans. A debt management plan (DMP) allows a debtor to reduce debt through monthly deposits to the credit counseling organization (CCO), which then distributes those funds to creditors. The CCO uses the money to pay unsecured loans and other debts in accordance with a payment schedule that has been agreed upon with the consumer and creditor. Depending on a consumer's debt and financial resources, a DMP may not be suitable for every consumer.

***Debt Management Services*** -- Debt negotiation and settlement programs differ greatly among the debt management services. In contrast to the traditional, nonprofit CCOs, debt negotiation or settlement companies generally operate as for-profit entities and negotiate with creditors to reduce the amount of the debt, including the principal, on behalf of the consumer. In return for a settlement, the consumer pays the provider a fee based on the savings on the principal plus monthly fees and consultation fees. Although a consumer may negotiate directly with a creditor to renegotiate the terms of the debt, a consumer with little financial educational background may feel intimidated by this process and seek assistance from a third party.

Advocates for the debt settlement industry state “there are essentially three options for Floridians in debt crisis—bankruptcy, consumer credit counseling, and debt settlement.”<sup>16</sup> If a person is ineligible for a debt management plan offered by a CCO, other options are available, such as negotiating with the credit card company or filing for bankruptcy. According to industry representatives, debt settlement programs give consumers “the ability to avoid bankruptcy and pay off debt at a reduced rate.”<sup>17</sup> However, industry representatives recognize “there are problems with the industry and fraudulent practices are more common than not.”<sup>18</sup>

Representatives of the banking and credit card industries disagree with the role or value of debt settlement companies. A representative of the American Bankers Association contended that a debt settlement company does not provide any real value to the debt negotiation process since the consumer can work directly with the bank and reach the same agreement. In fact, the representative said, “the notion that a consumer needs to go to debt settlement, that they can't possibly get the same kind of deal (directly) is just simply false.”<sup>19</sup> A bank looks at the

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<sup>16</sup> *Florida 2009 Debt Management Legislation/Regulation Memorandum*, September 9, 2009. Provided by Genie Hayes, representative of Credit Solutions of America.

<sup>17</sup> *Id.*

<sup>18</sup> Testimony by Jack Craven, President of Debt Settlement USA, at FTC Consumer Protection and Debt Settlement Industry Workshop, September 25, 2008, Washington, D.C.

<sup>19</sup> Testimony by Ginny O'Neill, Senior Counsel, Center for Regulatory Compliance of the American Bankers Association, at FTC Consumer Protection and Debt Settlement Industry Workshop, September 25, 2008, Washington, D.C.

individual's financial hardship and works with the debtor to establish a negotiated agreement.<sup>20</sup> A representative of American Express stated that its policy is not to work with debt settlement companies.<sup>21</sup> The objective of American Express is to work with the cardholder. If necessary, the company refers the cardholder to a nonprofit credit counseling organization due to their emphasis on financial education.<sup>22</sup>

According to the FTC, some debt negotiation programs can be very risky and have long-term adverse impact on a consumer's credit report.<sup>23</sup> Some companies will direct their customers to cease making payments to their creditors, and instead send payments to the debt negotiation company or to a bank account established for the consumer. A debt relief company may require the consumer to provide the company with a power of attorney, which authorizes the company to negotiate with debtors and initiate transfers from a bank account. According to the FTC, the goal of debt settlement is to save enough cash, while not paying creditors, so that the creditors will offer a fraction of the balance owed as settlement in lieu of the full debt.<sup>24</sup> However, if a consumer stops making monthly payments on a credit card, late fees and interest generally continue to accrue on the account. The credit card company is required to report nonpayments to the credit reporting agencies, resulting in adverse information on the consumer's credit report. There is no guarantee that a creditor will accept partial payment and settlement of the debt and the creditor may initiate litigation to recover the debt.

The results of a recent report on debt management, issued by the State of Colorado, are consistent with some of these concerns regarding the effectiveness of debt settlement and credit counseling companies.<sup>25</sup> The data, collected from 42 Colorado debt settlement and credit counseling companies, reveals that less than 9 percent of consumers contracting with these companies since 2006 completed their agreements by either paying off or settling all of their debts. Consumers paid an average fee of \$495 for credit counseling and \$1,666 for debt settlement; however, these amounts do not reflect total contract fees since generally they are paid the entire term for credit counseling and during the first half of the term for debt settlement.

***Consumer Debt Collection Agencies*** -- Currently, there are 1,313 consumer collection agencies registered with the OFR. Since January 2008, the OFR has not levied any fines, nor has it suspended or revoked any registrations because it has not documented five unresolved complaints by five different consumers against one specific consumer collection agency. The current statutory framework prevents the OFR from initiating disciplinary action against a debt collector until the OFR receives at least five, unresolved sworn complaints from five different consumers within a 12-month period, regardless of the severity of the alleged violation. The OFR does not have the statutory authority to examine or investigate the books or records of a debt collector to determine the legitimacy of the complaint.

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<sup>20</sup> *Id.*

<sup>21</sup> Testimony of Anna Flores, Vice President of Consumer Affairs for American Express, at FTC Consumer Protection and Debt Settlement Industry Workshop, September 25, 2008, Washington, D.C.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Knee Deep In Debt*, FTC Facts For Consumers, December 2005.

<sup>25</sup> Federal Trade Commission, *Consumer Credit and Debt: The Role of the Federal Trade Commission in Protecting the Public* (March 24, 2009) (prepared Statement of the Federal Trade Commission before the U.S. House Committee on Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection).

<sup>25</sup> Colorado Department of Law, *2008 Annual Report of Colorado Debt Management Services Providers* (October 15, 2009).

The OFR's authority to discipline registrants is limited. For example, the OFR may not revoke or suspend a registration if the collection agency can show by a preponderance of the evidence that the violations were not intentional and resulted from a bona fide error.<sup>26</sup> The OFR must also consider the registrant's volume of business when deciding whether to suspend or revoke a registration. The law allows the OFR to fine a registrant not to exceed \$1,000 for a violation of the prohibited practices provisions. However, any action by the OFR to revoke, suspend or issue an administrative fine must be taken within two years of the date of the last violation upon which the action is founded. The OFR does not have the authority to impose significant administrative sanctions against a consumer collection agency that fails to register. Rather, the act provides it is a first-degree misdemeanor to operate a consumer collection agency without first registering with the office, unless the entity is exempt.<sup>27</sup>

The federal version of Florida's Consumer Collection Agency Act is known as the Fair Debt Collection Practices Act (FDCPA). Many of the provisions of the federal act are similar to the Florida Consumer Collection Agency Act. However, there are key consumer and regulatory provisions in the FDCPA that are not included under Florida's law, such as: provisions pertaining to communications in connection with debt collection; acquisition of location information; false or misleading representations; unfair practices; validation of debts; and the furnishing of deceptive forms.

### **Recent State Enforcement Actions against Debt Relief Companies**

In February 2008, attorneys general for Florida and North Carolina sued a Florida attorney, Laura Hess and her companies, for defrauding approximately 37,000 credit card holders nationwide under the guise of providing legitimate debt relief services. Hess enrolled credit card holders in debt management programs that claimed to settle debts for pennies on the dollar. Clients were told that an "audit" had been performed on the clients' accounts documenting violations under the federal Fair Credit Billing Act. The clients were advised that they no longer were responsible for paying these debts (exceeding over \$30 million) because notices were sent to the creditors disputing all charges. In exchange for these frivolous disputes of the debt, Hess would charge the clients exorbitant upfront fees without providing any services. These actions led to the creditors taking civil action against the debtors and Hess. Ultimately, Hess's companies were liquidated and settlements were reached to help provide restitution to affected consumers and the credit card companies.

On October 19, 2009, the Florida Attorney General filed two lawsuits against five debt settlement-related companies. According to the complaints, the businesses promised consumers they could pay off their debts for a fraction of the amount owed, but instead collected large upfront fees and left customers little or no money to pay creditors, ruined credit, lawsuits, and bankruptcy in some cases. American Debt Arbitration (ADA) allegedly promised to help consumers pay off their debts at significant savings, but failed to disclose adequately the actual costs of their services. In the complaint against Credit Solutions of America (CSA), the Florida Attorney General alleged that CSA "systematically engages in numerous fraudulent, deceptive, and unfair business practices in its large-scale debt settlement operation, including but not

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<sup>26</sup> Section 559.730, F.S.

<sup>27</sup> Section 559.785, F.S.

limited to, unlawfully charging significant advance fees before completing or, in many instances, commencing performance of its services, falsely representing the success rates of its program, and deceptively advertising and promoting its debt settlement program through misrepresentations and material omissions.”

### **Proposed FTC Regulations Related to Debt Relief Services**

The FTC recently proposed rules to combat deceptive and abusive telemarketing of debt relief services—services that purportedly can reduce consumers’ credit card and other unsecured debt. The proposed regulations would:

- Prohibit companies from charging fees until they provide the debt relief services;
- Require disclosures about the debt relief services being offered, including how long it will take to obtain promised debt relief and how much the services will cost;
- Prohibit specific misrepresentations about material aspects of debt relief services, including success rates and whether a debt relief company is nonprofit; and
- Define the term, “debt relief service,” to cover any service to renegotiate, settle, or in any manner alter the payment terms or other terms of the debt between a consumer and one or more unsecured creditors or debt collectors, including a reduction in the balance, interest rate, or fees owed.

### **III. Effect of Proposed Changes:**

#### **Consumer Debt Collection (Sections 1-23)**

**Registration** -- The bill strengthens registration requirements by authorizing the adoption of rules by the Financial Services Commission, which oversees the OFR, that establish the following time period during which an applicant is barred from initial registration or renewal:

- A permanent bar from registration for felonies involving money laundering, breach of trust, dishonesty, embezzlement, fraud, fraudulent conversion, misappropriation of property, racketeering, or theft;
- A 15-year disqualifying period for felonies involving moral turpitude;
- A 7-year disqualifying period for all other felonies; and
- A 5-year disqualifying period for misdemeanors involving fraud, dishonesty, or any other act of moral turpitude.

The bill also requires state and federal criminal background checks for an applicant and each of the applicant’s control persons (as defined in section 1 of the bill) at the time of the initial registration and the annual renewal, and the maintenance of a surety bond in the amount of at least \$100,000. The bill also revises the entities that are exempt from registration to conform to the exemptions provided under the federal act.

Under current law, a consumer collection agency must meet minimal requirements to register with the OFR. The applicant is required to submit an application and pay a registration fee. Information required on the application includes submission of business and trade names; the location of the business; statements identifying information as to owners, officers, directors and resident agents; and statements identifying and explaining any occasion on which a professional

or occupational license held by the registrant or principal was the subject of any suspension or revocation proceeding.<sup>28</sup>

***Regulatory and enforcement powers*** -- The bill provides the following:

- Authorizes the OFR to investigate any person the OFR believes has violated any provision of part VI of ch. 559, F.S. Under current law, there must be at least five unresolved, sworn complaints filed by five different consumers within a 12-month period against a consumer collection agency prior to the OFR initiating action to investigate a complaint.
- Requires a registered consumer collection agency to provide a written response to the OFR within 20 days after receipt of a written request from the OFR concerning a consumer complaint.
- Requires registrants to maintain specified books and records for 5 years and allows the OFR access to such books and records.
- Increases maximum administrative fines from \$1,000 to \$25,000 for violations of the prohibited acts delineated in s. 559.72, F.S. The bill also increases the maximum administrative fine from \$1,000 to \$25,000 for a consumer collection agency that collects or attempts to collect debt in Florida prior to registering with the OFR.
- Authorizes the OFR to issue subpoenas and issue cease and desist orders.
- Authorizes the OFR to revoke or suspend the registration of a registrant for violating the prohibited acts provisions under s. 559.72, F.S. Under current law, the OFR may take action if a registrant has engaged in repeated violations which establish a clear pattern of abuse of prohibited acts under the section.
- Extends the period of time an action under the civil remedies provision can be commenced from 2 to 5 years after the date of the last violation upon which the action is founded.
- Increases the penalty for unregistered activity from a misdemeanor of the first degree to a felony of the third degree.
- Clarifies that, in addition to an action in federal district court as now expressly authorized in law, the Attorney General may bring an action against out-of-state consumer debt collectors in state court when appropriate, for violations of part VI of ch. 559, F.S.
- Provides that a violation of the consumer debt collection provisions would be deemed an unfair and deceptive trade practice within the meaning of Part II of ch. 501, F.S.

**Debt Relief Organizations (Credit Counseling Services /Debt Management Services, Sections 24-40)**

The bill creates the “Debt Relief Services Act,” within part II of ch. 559, F.S., and designates the OFR as the regulator. The bill revises definitions pertaining to credit counseling and debt management transactions. The term, “debt relief organization,” is defined to mean a person offering to provide or providing debt management services or credit counseling services, to reflect changes in the products and services offered. The definition of the term, “credit counseling services,” is revised to include financial analysis and exclude foreclosure-rescue related services, which are subject to the provisions of s. 501.1377, F.S. The definition of the term, “debt management services,” is revised to include effecting the settlement, interest rate reduction, modification of terms, and negotiation of unsecured debt. This clarifies the current

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<sup>28</sup> Section 559.555, F.S.

law, which provides that debt management services include the adjustment, compromise, or discharge of unsecured debt.

**Registration** -- The bill strengthens regulatory oversight of debt relief organizations by establishing annual registration requirements. The bill authorizes the adoption of rules by the Financial Services Commission, which oversees the OFR, that would establish the following time period during which an applicant is barred from initial registration or renewal:

- A permanent bar from registration for felonies involving money laundering, breach of trust, dishonesty, embezzlement, fraud, fraudulent conversion, misappropriation of property, racketeering, or theft;
- A 15-year disqualifying period for felonies involving moral turpitude;
- A 7-year disqualifying period for all other felonies; and
- A 5-year disqualifying period for misdemeanors involving fraud, dishonesty, or any other act of moral turpitude.

The bill also requires state and federal criminal background checks for an applicant and each of the applicant's control persons (as defined in section 26 of the bill) at the time of the initial registration and the annual renewal, and the maintenance of a surety bond in the amount of at least \$100,000. The bill also revises the entities that are exempt from registration.

**Regulatory and enforcement powers** -- The bill provides the following:

- Authorizes the OFR to investigate any person the OFR believes has violated any provision of part II of ch. 559, F.S.
- Requires registrants to maintain specified books and records for 5 years and allows the OFR to access the books and records.
- Authorizes administrative fines of up to \$25,000 for a violation of the act.
- Authorizes the OFR to issue subpoenas and issue cease and desist orders.
- Authorizes the OFR to revoke or suspend the registration of a registrant for violating the prohibited acts provisions under this part.
- Provides that, in addition to any remedies provided under this part, violators are subject to the penalties and remedies and enforcement actions provided in part II of ch. 501, F.S.
- Provides that it is a felony of the third degree for any person to provide credit counseling or debt management services without first registering with the OFR or to register or attempt to register by means of fraud or misrepresentation.

Currently, Florida law does not assign any specific state agency with the duty of enforcing the laws governing credit counseling agencies or debt management services. However, the Department of Legal Affairs and state attorneys do protect consumers from the entities that employ unfair methods of competition or unconscionable, deceptive, and unfair practices by using several enforcement tools, including part II of ch. 501, F.S., the Florida Deceptive and Unfair Trade Practices Act.

**Financial Analysis and Service Contract Disclosures** – The bill requires that prior to signing a service contract, the debt relief organization is required to prepare and provide to the debtor a written financial analysis specific to the debtor which includes an analysis of the debtor's income, expenses, and all debts. Based on the completed financial analysis, the debt relief

organization is required to provide the debtor with a copy of the written determination of the debtor's suitability for the debt management services.

The bill establishes minimum disclosures that must be contained in a written service contract between a debt relief organization and a debtor and requires the organization to provide the consumer a copy of the completed service contract and all other documents the organization requires the consumer to sign at the time the documents are signed. The required disclosures and statements include:

- A statement advising the debtor to contact his or her creditors before signing the contract; that the creditors may be willing to negotiate a payment plan or a restructuring of the consumer's debt; and that failure to contact the creditors may result in late fees, additional debts, and an adverse credit rating.
- Detailed description of the services to be performed, including all guarantees and promises of full or partial refunds, and the estimated date or length of time required to perform all services.
- The terms and conditions of payment, including the payments made by the debtor to the organization or other person.
- A written disclosure that the debtor has a right to cancel the contract at any time prior to midnight of the fifth business day after the date contract is signed.

**Prohibited Acts** -- The bill also expands the list of prohibited acts for a debt relief organization to include the following:

- Receiving payment for services before the execution of a written service contract;
- Making false or misleading representations,
- Advising a consumer not to communicate with his or her creditor,
- Providing services without the execution of a written contract,
- Failing to maintain the surety bond, and
- Failing to comply with any provision of this act.

The fees for debt management services are revised in the bill by applying the fee caps to nonresidents, as well as residents, and by allowing a debt relief organization the option to collect 7.5 percent of the amount paid monthly by the debtor to the organization or \$35 per month, whichever is greater; or as an alternative, 7.5 percent of the enrolled debt. However, the organization is prohibited from collecting the fee until all services in the written contract have been completed and the services result in a discharge or modification of debt on terms more favorable to the debtor than the terms in the original debt.

Under current law, any person engaged in credit counseling or debt management services is prohibited from charging fees to any consumer or debtor residing in Florida in excess of amounts prescribed in s. 817.802, F.S. Section 817.802(1), F.S., prohibits a person, while engaging in debt management services or credit counseling services, from charging or accepting a fee greater than \$50 for the initial consultation. Subsequently, the person may not charge or accept a fee greater than \$120 per year for additional consultations or, alternatively, if debt management services are provided, the person may charge 7.5 percent of the amount paid monthly by the debtor or \$35 per month, whichever is greater. A violation of any provision of part IV of ch.

817, F.S., is an unfair or deceptive trade practice under the Florida Deceptive and Unfair Trade Practices Act.

**Section 41** repeals outdated ss. 559.10, 559.11, 55.12, and 55.13, F.S, relating to budget planning.

**Section 42** provides that this act will take effect January 1, 2011.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

Effective April 1, 2011, debt relief organizations are required to apply for registration with the OFR on an annual basis, submit an annual registration fee of \$1,000, and submit to state and federal criminal background check as part of the registration process.

Applicants would incur a cost of \$43.25 associated with the background checks for each “control person” in the organization.

The registration fee for consumer debt collection agencies increases from \$200 to \$750 per year to fund the staffing associated with the increased regulation and oversight.

Applicants would incur a fee of \$43.25 for background checks for each “control person” of the consumer debt collection agency.

B. Private Sector Impact:

**Debt Relief Organizations**

The bill enhances consumer protections for persons using debt relief organizations by creating regulatory oversight, registration, and additional enforcement authority of these organizations by the OFR. The bill creates administrative fines of up to \$25,000, which would allow the OFR to impose significant economic sanctions on unscrupulous organizations. The mandatory disclosures and prohibited practices will provide additional protections for consumers.

**Consumer Debt Collection**

The bill provides greater protections for consumers by increasing regulatory oversight and enforcement authority by the OFR. The bill expedites the complaint process required under ch. 559, F.S., for consumers by eliminating the requirement of a sworn complaint because a sworn complaint imposes a chilling effect on persons seeking the resolution of a complaint. The bill also provides the OFR with broad, discretionary authority to investigate the books and records of a consumer collection agency promptly. The bill increases administrative fines, currently capped at \$1,000, to \$25,000, which would allow the OFR to impose significant economic sanctions on unscrupulous consumer collection agencies. The bill also authorizes the Attorney General to bring action against out-of-state consumer debt collectors in state court when appropriate.

**C. Government Sector Impact:**

The Office of Financial Regulation provided the following fiscal impacts.

**Consumer Debt Collection Estimated Fiscal Impact**

	(FY 10-11)	(FY 11-12)	(FY 12-13)
<i>Revenues</i>			
Recurring			
Application and renewal fees (\$750 x 1,477)	\$1,107,750	\$1,107,750	\$1,107,750
Non-Recurring			
Total Revenues	\$1,107,750	\$1,107,750	\$1,107,750
<i>Expenditures</i>			
Recurring – 5 FTE			
Salary and Benefits	\$ 376,512	\$ 376,512	\$ 376,512
Expense	\$ 62,540	\$ 62,540	\$ 62,540
Transfer to DMS	\$ 1,995	\$ 1,995	\$ 1,995
Service Charge to General Revenue (8%)	<u>\$ 88,620</u>	<u>\$ 88,620</u>	<u>\$ 88,620</u>
Total Recurring*	\$ 529,667	\$ 529,667	\$ 529,667
Non-Recurring			
Expense	\$ 19,385		
OCO	<u>\$ 6,500</u>		
Total Non-Recurring	\$ 25,885		
<i>Total Expenditures</i>	\$ 555,552	\$ 529,667	\$ 529,667

\* Expenses already incurred but not included above = \$ 205,118 annually (3 FTE)

Positions included:

- Licensing 1 Financial Specialist
- Investigations/Complaints 1 Financial Control Analyst
- 1 Financial Specialist

Legal  
 1 Financial Examiner/Analyst II  
 1 Senior Attorney

Implementation of the proposed bill will also require the Office to make changes to the Regulatory and Licensing (REAL) System. The necessary changes are minimal and will be completed by the vendor within the maintenance contract at no additional charge.

The revenue identified above would be the total revenue generated from application and renewal fees. In January, the OFR provided information on the program under the current statute. The \$285,485 in Consumer Collection revenue identified in that information for FY 2008-09 would be replaced by the revenue above. There are currently 3 positions dedicated to licensing and complaint functions with current expenditures of \$205,118, which would be in addition to the expenses identified above.

**Debt Relief Organizations Estimated Fiscal Impact**

	(FY 09-10)	(FY 10-11)	(FY 11-12)
<i>Revenues</i>			
Recurring			
Application and renewal fees (500 x \$1,000 maximum)	\$ 500,000	\$ 500,000	\$ 500,000
Non-Recurring			
Total Revenues	\$ 500,000	\$ 500,000	\$ 500,000
<i>Expenditures</i>			
Recurring – 4 FTE			
Salary and Benefits	\$ 221,680	\$ 221,680	\$ 221,680
Expense	\$ 41,032	\$ 41,032	\$ 41,032
Transfer to DMS	\$ 1,596	\$ 1,596	\$ 1,596
Service Charge to General Revenue (8%)	\$ 40,000	\$ 40,000	\$ 40,000
Total Recurring	\$ 304,308	\$ 304,308	\$ 304,308
Non-Recurring			
Expense	\$ 15,508		
OCO	\$ 5,500		
OPS	\$ 30,000		
Contract Services	\$ 202,198		
Total Non-Recurring	\$ 253,206		
<i>Total Expenditures</i>	\$ 557,514	\$ 304,308	\$ 304,308

Positions included:  
 Licensing 1 FTE (Financial Examiner Analyst II)  
 Investigations 3 FTE (1 Financial Specialist,

1 Financial Examiner Analyst II, and  
1 Financial Examiner Analyst I)

Implementation of the proposed bill will also require the Office to make changes to the Regulatory and Licensing (REAL) System. The necessary changes are estimated to cost \$202,198 in the first year (nonrecurring) to meet the January 1, 2011 effective date of the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

**B. Amendments:**

None.