

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: CS/SB 1702

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Debt Relief Services

DATE: March 19, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	WPSC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

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. 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 provide credit counseling services, debt management services, debt settlement 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.

- 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.
- Increases the fees for debt relief organizations providing debt settlement services. Fees for these services would be capped at 40 percent of the savings realized less any other fees authorized to be collected under this act. However, such fees collected for debt settlement, in the aggregate, may not exceed 20 percent of the enrolled debt or original debt.
- Requires detailed service contract 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.
- Allows consumers to have a right of cancellation or cooling off period of at least five days.
- 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.

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, 817.801, 817.802, 817.803, 817.804, 817.805, and 817.806. The bill amends the following sections of the Florida Statutes: 516.07, 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,¹ the Telemarketing and Consumer Fraud Act,² and other acts.

¹ 15 U.S.C. ss. 41-58.

² 15 U.S.C ss. 6101-6108.

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,³ 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.”⁴ 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,⁵ 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,⁶ or by a consumer.⁷

Credit Counseling Services and Debt Management Services -- In Florida, credit counseling organizations provide credit counseling and debt management services.⁸ The term “credit counseling services” means money management, debt reduction, and financial educational services. “Debt management services” generally means services provided for a fee to adjust or discharge the indebtedness of the debtor.⁹

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.

³ Part II of ch. 501, F.S.

⁴ Section 501.204, F.S.

⁵ Section 501.207(1)(b), F.S.

⁶ Section 501.203(2), F.S.

⁷ Section 501.211(1), F.S.

⁸ Part IV, ch.817, F.S.

⁹ Section 817.801, 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.”¹⁰ 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.”¹¹ However, industry representatives recognize “there are problems with the industry and fraudulent practices are more common than not.”¹²

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.”¹³ A bank looks at the

¹⁰ *Florida 2009 Debt Management Legislation/Regulation Memorandum*, September 9, 2009. Provided by Genie Hayes, representative of Credit Solutions of America.

¹¹ *Id.*

¹² Testimony by Jack Craven, President of Debt Settlement USA, at FTC Consumer Protection and Debt Settlement Industry Workshop, September 25, 2008, Washington, D.C.

¹³ 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.¹⁴ A representative of American Express stated that its policy is not to work with debt settlement companies.¹⁵ 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.¹⁶

According to the FTC, some debt negotiation programs can be very risky and have long-term adverse impact on a consumer's credit report.¹⁷ 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.¹⁸ 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.¹⁹ 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.

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

¹⁴ *Id.*

¹⁵ 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.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Knee Deep In Debt*, FTC Facts For Consumers, December 2005.

¹⁸ 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).

¹⁹ Colorado Department of Law, *2008 Annual Report of Colorado Debt Management Services Providers* (October 15, 2009).

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 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:

(Sections 1-17)

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, debt settlement 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 related rescue services. The definition of the term, “debt management services,” is revised by including interest rate reduction, modification of terms, and negotiation or discharge of unsecured debt, thereby excluding debt settlement services. The term, “debt settlement

services,” is created and is defined to include services provided to a debtor with the expectation of obtaining the creditor’s agreement to accept less than the principal amount of a debt in full satisfaction of the debt. This revises the current 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 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 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.
- Authorizes administrative fines of up to \$25,000 for a violation of the act.
- 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, debt management services, and debt settlement services. However, the Department of Legal Affairs provides consumer protection by using its enforcement authority, under 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 estimated amount of any payments to be made by the debtor to any 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 the 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 the debt relief organization providing debt management services 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 fee for debt settlement services is capped at 40 percent of the savings realized which defined to be the difference between the amount of enrolled debt and the amount paid to the creditor in discharge of the enrolled debt, less any monthly fees or consultation fees authorized pursuant to the act. The fees for such debt settlement services in the aggregate, may not exceed 20 percent of the enrolled debt. For service contracts requiring the fees to be paid on a monthly basis, the payment must be spread uniformly over at least 18 months or 50 percent of the term of the contract, whichever is greater. However, the organization is prohibited from collecting the fee unless the debt management services or debt settlement services result in a settlement, discharge, or modification of the debt on terms more favorable to the debtor than the terms of the original agreement between the debtor and creditor.

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

Section 19 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.

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.

The fees for debt relief organizations are revised by applying the fee caps to nonresidents, as well as residents, and by allowing a debt relief organization providing debt management services 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.

The fee for debt settlement services is capped at 40 percent of the savings realized which is defined to be the difference between the amount of enrolled debt and the amount paid to the creditor in discharge of the enrolled debt, less any monthly fees or consultation fees authorized pursuant to the act. The fees for such debt settlement services in the aggregate, may not exceed 20 percent of the enrolled debt. For service contracts requiring the fees to be paid on a monthly basis, the payment must be spread uniformly over at least 18 months or 50 percent of the term of the contract, whichever is greater.

C. Government Sector Impact:

The Office of Financial Regulation provided the following fiscal analysis of the bill:

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%)	<u>\$ 40,000</u>	<u>\$ 40,000</u>	<u>\$ 40,000</u>
Total Recurring	\$ 304,308	\$ 304,308	\$ 304,308
Non-Recurring			
Expense	\$ 15,508		
OCO	\$ 5,500		
OPS	\$ 30,000		
Contract Services	<u>\$ 202,198</u>		
Total Non-Recurring	\$ 253,206		

Total Expenditures \$ 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.)

CS by Banking and Insurance on March 17, 2010:

Debt Relief Organizations

Requires debt relief organizations (persons engaged in credit counseling, debt management, or debt settlement services) to register annually with the Office of Financial Regulation (OFR). Applicants must meet registration requirements, including a criminal background check. The minimum amount of a surety bond that must be obtained is increased from \$50,000 to \$100,000 to benefit consumers who suffer any loss due to any violation of this act. Presently, these entities are not subject to registration by any state agency.

Requires the debt relief organization to prepare a written financial analysis of the debtor’s financial condition that is used to determine the debtor’s suitability for debt management services or debt settlement services prior to the debtor signing a service contract. Requires detailed disclosures and documentation regarding any fees, savings, payment schedule, the financial suitability of the program, and the services to be provided.

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. The CS provides that it is a felony of the third degree for a person to provide debt management or debt

settlement services without first registering with the OFR. Currently, any violation of part IV, of ch. 817, F.S., is a felony of the third degree.

Revises the definition of the term, “debt relief organization,” to include credit counseling services, debt management services, as well as debt settlement services. The definition of the term, “debt management services,” is revised to exclude debt settlement services by providing a separate definition for debt settlement services.

Revises the fees for debt management services and debt settlement services. The CS increases the fees for debt relief organizations providing debt settlement services. Fees for these services would be capped at 40 percent of the savings realized less any fees authorized to be collected under this act. However, such fees collected for debt settlement, in the aggregate, may not exceed 20 percent of the enrolled debt or original debt. For service contracts requiring the fees to be paid on a monthly basis, the payment must be spread uniformly over at least 18 months or 50 percent of the term of the contract, whichever is greater.

Deletes provisions relating to the consumer debt collection under part VI, chapter 559, F.S.

Repeals outdated provisions related to budget planning under ch. 559, F.S.

Provides technical, conforming changes.

B. Amendments:

None.