

By the Committee on Banking and Insurance

597-02032-10

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1                   A bill to be entitled  
2           An act relating to consumer credit protection;  
3           amending s. 559.565, F.S.; expanding the authority of  
4           the Attorney General to take action against out-of-  
5           state consumer debt collectors; creating s. 559.786,  
6           F.S.; providing that a violation of provisions  
7           relating to consumer debt collectors is a violation of  
8           the Florida Deceptive and Unfair Trade Practices Act;  
9           amending s. 817.801, F.S.; revising definitions;  
10          defining the terms "debtor" and "financial audit  
11          report"; amending s. 817.802, F.S.; prohibiting a  
12          credit counseling organization from engaging in  
13          certain additional specified acts; deleting a  
14          provision that allows the organization to collect a  
15          fee for insufficient fund transactions; amending s.  
16          817.803, F.S.; revising provisions relating to an  
17          exception provided to attorneys providing  
18          representation to clients; amending s. 817.804, F.S.;  
19          requiring a credit counseling organization to obtain a  
20          surety bond; creating s. 817.8045, F.S.; providing for  
21          service contracts; requiring certain provisions to be  
22          included in such contracts; requiring the credit  
23          counseling organization to provide the debtor with  
24          copies of all signed documents; amending ss. 817.805  
25          and 817.806, F.S.; conforming terms to changes made by  
26          the act; providing an effective date.

27  
28   Be It Enacted by the Legislature of the State of Florida:  
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30 Section 1. Subsection (3) of section 559.565, Florida  
31 Statutes, is amended to read:

32 559.565 Enforcement action against out-of-state consumer  
33 debt collector.—The remedies of this section are cumulative to  
34 other sanctions and enforcement provisions of this part for any  
35 violation by an out-of-state consumer debt collector, as defined  
36 in s. 559.55(8).

37 (3) In order to effectuate the provisions of this section  
38 and enforce the requirements of this part as it relates to out-  
39 of-state consumer debt collectors, the Attorney General is  
40 expressly authorized to initiate such action on behalf of the  
41 state as he or she deems appropriate in any state court or  
42 federal district court, as appropriate, including injunctive  
43 relief on behalf of consumers of competent jurisdiction.

44 Section 2. Section 559.786, Florida Statutes, is created to  
45 read:

46 559.786 Deceptive and unfair trade practices.—A violation  
47 of this part is a violation of the Florida Deceptive and Unfair  
48 Trade Practices Act. In addition to any remedies provided under  
49 this part, violations of this part are subject to the penalties  
50 and remedies provided under part II of chapter 501.

51 Section 3. Section 817.801, Florida Statutes, is amended to  
52 read:

53 817.801 Definitions.—As used in this part:

54 (1) "Credit counseling organization agency" means a person  
55 ~~any organization~~ providing debt management services or credit  
56 counseling services.

57 (2) "Credit counseling services" means ~~confidential~~ money  
58 management, debt reduction, and financial educational services.

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59 The term does not include foreclosure-related rescue services.

60 (3) "Creditor contribution" means any sum that a creditor  
61 agrees to contribute to a credit counseling organization ~~agency~~,  
62 whether directly or by setoff against amounts otherwise payable  
63 to the creditor on behalf of debtors.

64 (4) "Debt management services" means services provided to a  
65 debtor by a credit counseling organization for a fee to:

66 (a) Effect the adjustment, compromise, or discharge of any  
67 unsecured account, note, or other indebtedness of the debtor; or

68 (b) Receive from the debtor and disburse to a creditor any  
69 money or other thing of value.

70 (5) "Debtor" means an individual who obtains credit, seeks  
71 a credit agreement with a creditor, or owes money to a creditor.

72 (6) "Financial audit report" means a report prepared in  
73 connection with a financial audit that is conducted in  
74 accordance with generally accepted auditing standards prescribed  
75 by the American Institute of Certified Public Accountants by a  
76 certified public accountant licensed to do business in the  
77 United States, and which includes:

78 (a) Financial statements, including notes related to the  
79 financial statements and required supplementary information,  
80 prepared in conformity with United States generally accepted  
81 accounting principles.

82 (b) An expression of opinion regarding whether the  
83 financial statements are presented in conformity with United  
84 States generally accepted accounting principles, or an assertion  
85 that such an opinion cannot be expressed and the reasons.

86 (7) ~~(5)~~ "Person" has the same meaning as in s. 1.01 ~~means~~  
87 any individual, corporation, partnership, trust, association, or

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88 ~~other legal entity.~~

89 Section 4. Section 817.802, Florida Statutes, is amended to  
90 read:

91 817.802 Prohibited acts ~~Unlawful fees and costs.~~ A credit  
92 counseling organization may not:

93 (1) ~~It is unlawful for any person, while engaging in debt~~  
94 ~~management services or credit counseling services, to~~ Charge or  
95 accept from a debtor ~~residing in this state,~~ directly or  
96 indirectly, any payment for services before the execution of a  
97 written service contract, or charge or accept from a debtor a  
98 fee or contribution greater than \$50 for the initial setup or  
99 initial consultation. Subsequently, the organization ~~person~~ may  
100 not charge or accept a fee or contribution from a debtor  
101 ~~residing in this state~~ greater than \$120 per year for additional  
102 consultations; however or, alternatively, if debt management  
103 services ~~as defined in s. 817.801(4)(b)~~ are provided, the  
104 organization ~~person~~ may charge ~~the greater of~~ 7.5 percent of the  
105 amount paid monthly by the debtor to the organization ~~person~~ or  
106 \$35 per month, whichever is greater.

107 (2) Advise any debtor, directly or indirectly, not to  
108 contact or communicate with his or her creditors before or  
109 during the service contract period.

110 (3) Make or use any false or misleading representations or  
111 omit any material fact in the offer or sale of services offered,  
112 or engage, directly or indirectly, in any fraudulent, false,  
113 misleading, unconscionable, unfair, or deceptive act or practice  
114 in connection with the offer or sale of any of the services of a  
115 credit counseling organization.

116 (4) Provide services to a debtor without executing a

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117 service contract that complies with s. 817.8045.

118 (5) Fail to provide copies of all service contracts and  
119 other documents the debtor is required to sign as provided under  
120 s. 817.8045.

121 (6) Fail to perform any of the terms, conditions, and  
122 obligations provided in the service contract with the debtor.

123 (7) Fail to obtain an annual financial audit report and  
124 surety bond.

125 ~~(2) This section does not prohibit any person, while~~  
126 ~~engaging in debt management or credit counseling services, from~~  
127 ~~imposing upon and receiving from a debtor a reasonable and~~  
128 ~~separate charge or fee for insufficient funds transactions.~~

129 Section 5. Section 817.803, Florida Statutes, is amended to  
130 read:

131 817.803 Exceptions. ~~Nothing in~~ This part does not apply  
132 applies to:

133 (1) A person licensed to practice law in this state who is  
134 providing legal representation to a client with respect to  
135 credit counseling services or debt management and who does not  
136 engage in the business of providing credit counseling or debt  
137 management services on a continuing basis. ~~Any Debt management~~  
138 ~~or credit counseling services provided in the practice of law in~~  
139 ~~this state;~~

140 (2) A ~~Any~~ person who engages in debt adjustment to adjust  
141 the indebtedness owed to such person. ~~;~~ ~~or~~

142 (3) The following entities or their subsidiaries:

143 (a) The Federal National Mortgage Association;

144 (b) The Federal Home Loan Mortgage Corporation;

145 (c) The Florida Housing Finance Corporation, ~~a public~~

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146 ~~corporation~~ created in s. 420.504;

147 (d) A bank, bank holding company, trust company, savings  
148 and loan association, credit union, credit card bank, or savings  
149 bank that is regulated and supervised by the Office of the  
150 Comptroller of the Currency, the Office of Thrift Supervision,  
151 the Federal Reserve, the Federal Deposit Insurance Corporation,  
152 the National Credit Union Administration, the Office of  
153 Financial Regulation of the Department of Financial Services, or  
154 any state banking regulator;

155 (e) A consumer reporting agency as defined in the Federal  
156 Fair Credit Reporting Act, 15 U.S.C. s. 1681a ~~ss. 1681-1681y~~, as  
157 ~~it existed on April 5, 2004~~; or

158 (f) Any subsidiary or affiliate of a bank holding company,  
159 its employees and its exclusive agents acting under written  
160 agreement.

161 Section 6. Section 817.804, Florida Statutes, is amended to  
162 read:

163 817.804 Financial requirements; disclosure ~~and financial~~  
164 ~~reporting.~~—

165 (1) A credit counseling organization must ~~Any person~~  
166 ~~engaged in debt management services or credit counseling~~  
167 ~~services shall:~~

168 (a) Obtain from a licensed certified public accountant an  
169 annual financial audit report ~~in accordance with generally~~  
170 ~~accepted auditing standards~~ that includes ~~shall include~~ all of  
171 the organization's accounts ~~of such person~~ in which the funds of  
172 debtors are deposited and from which payments are made to  
173 creditors on behalf of debtors.

174 (b) Obtain and maintain at all times insurance coverage for

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175 employee dishonesty, depositor's forgery, and computer fraud.  
176 ~~The insurance coverage must be~~ in an amount not less than the  
177 greater of \$100,000 or 10 percent of the monthly average of the  
178 aggregate ~~amount~~ of all deposits made by debtors to the  
179 organization for distribution to creditors ~~with such person by~~  
180 ~~all debtors~~ for the 6 months immediately preceding the date of  
181 initial application for or renewal of the insurance. The  
182 deductible on such coverage may ~~shall~~ not exceed 10 percent of  
183 the face amount of the policy coverage.

184 (c) Obtain and maintain a surety bond from a surety company  
185 authorized to do business in this state. The amount of the bond  
186 shall be specified by rule, but must be at least \$50,000 but not  
187 more than \$2 million. The rule must provide allowances for  
188 business volume. The bond shall be in favor of the state for the  
189 use and benefit of any debtor who suffers or sustains any loss  
190 or damage by reason of any violation of this part.

191 (2) A copy of the annual financial audit report and  
192 insurance policies required by this section must ~~shall~~ be  
193 available for public inspection at each branch location of the  
194 organization. Copies shall be provided, upon written request, to  
195 any party requesting a copy for a charge that does not ~~to~~ exceed  
196 the cost of copying the ~~reproduction~~ of documents.

197 Section 7. Section 817.8045, Florida Statutes, is created  
198 to read:

199 817.8045 Service contracts.-

200 (1) The service contract between the credit counseling  
201 organization and the debtor must be signed and dated by the  
202 debtor and include all of the following:

203 (a) The following statement in at least 12-point uppercase

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204 type at the top of the service contract:

205

206 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR  
207 CREDITORS BEFORE SIGNING THIS CONTRACT. YOUR CREDITORS  
208 MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR A  
209 RESTRUCTURING OF YOUR DEBT FREE OF CHARGE.

210

211 YOUR FAILURE TO DIRECTLY CONTACT YOUR CREDITORS MAY  
212 RESULT IN LATE FEES, ADDITIONAL DEBTS, AND AN ADVERSE  
213 CREDIT RATING.

214

215 (b) A full and detailed description of the services to be  
216 performed by the credit counseling organization for the debtor,  
217 including all guarantees and all promises of full or partial  
218 refunds, and the estimated date or length of time by which the  
219 services are to be performed.

220 (c) All terms and conditions of payment, including the  
221 total of all payments to be made by the debtor and the specific  
222 amount of any payments to be made to the credit counseling  
223 organization or to any other person.

224 (d) The credit counseling organization's principal business  
225 address and the name and address of its agent in the state  
226 authorized to receive service of process.

227 (e) A clear and conspicuous statement in boldface type, in  
228 immediate proximity to the space reserved for the debtor's  
229 signature, which states: "You, the debtor, may cancel this  
230 service contract at any time before midnight of the 5th business  
231 day after the date of signing this contract. [See the attached  
232 Notice of Right to Cancel for further explanation of this



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233 right.]”

234 (f) A Notice of Right to Cancel attached to the contract,  
235 in duplicate and easily detachable, which contains the following  
236 statement in at least 12-point uppercase type:

237

238 NOTICE OF RIGHT TO CANCEL

239

240 YOU MAY CANCEL ANY CONTRACT FOR DEBT MANAGEMENT OR  
241 CREDIT COUNSELING SERVICES WITHIN 5 BUSINESS DAYS  
242 AFTER THE DATE THE CONTRACT IS SIGNED BY YOU WITHOUT  
243 INCURRING ANY PENALTY OR OBLIGATION.

244

245 YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10  
246 BUSINESS DAYS AFTER RECEIPT OF YOUR CANCELLATION  
247 NOTICE.

248

249 TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND  
250 DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER  
251 WRITTEN NOTICE CLEARLY INDICATING YOUR DESIRE TO  
252 CANCEL YOUR CONTRACT.

253

254 TO: ... (name of credit counseling organization)...  
255 AT: ... (address)...

256

257 BY SIGNING AND DATING THIS NOTICE, I HEREBY CANCEL MY  
258 SERVICE CONTRACT, EXECUTED ON: ... (date service  
259 contract signed)...

260

261 ... (Signature of Debtor)...

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262        ...(Date)...  
 263        ...(Address)...  
 264        ...(Phone Number)...

265  
 266        (2) The credit counseling organization must provide the  
 267 debtor, at the time the documents are signed, with a copy of the  
 268 completed service contract and all other documents the  
 269 organization requires the debtor to sign.

270        Section 8. Section 817.805, Florida Statutes, is amended to  
 271 read:

272        817.805 Disbursement of funds.—A credit counseling  
 273 organization must ~~Any person engaged in debt management or~~  
 274 ~~credit counseling services shall~~ disburse to the appropriate  
 275 creditors all funds received from a debtor, less any fees  
 276 permitted by s. 817.802 and any creditor contributions, within  
 277 30 days after receipt of such funds. However, a creditor  
 278 contribution may not reduce any sums ~~to be~~ credited to the  
 279 account of a debtor making a payment to the organization ~~credit~~  
 280 ~~counseling agency~~ for further payment to the creditor. Further,  
 281 a credit counseling organization must ~~any person engaged in such~~  
 282 ~~services shall~~ maintain a separate trust account for the receipt  
 283 of any funds from debtors and the disbursement of such funds on  
 284 behalf of such debtors.

285        Section 9. Subsection (1) of Section 817.806, Florida  
 286 Statutes, is amended to read:

287        817.806 Violations.—

288        (1) Any person who violates any provision of this part  
 289 commits an unfair or deceptive trade practice as defined in part  
 290 II of chapter 501. Violators are ~~shall be~~ subject to the

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291 penalties and remedies provided therein. Further, any debtor  
292 ~~consumer~~ injured by a violation of this part may bring an action  
293 for recovery of damages. Judgment shall be entered for actual  
294 damages, but in no case less than the amount paid by the debtor  
295 ~~consumer~~ to the credit counseling organization ~~agency~~, plus  
296 reasonable attorney's fees and costs.

297 Section 10. This act shall take effect October 1, 2010.