

By the Committees on Banking and Insurance; and Banking and Insurance

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1 A bill to be entitled
2 An act relating to debt relief services; providing a
3 directive to the Division of Statutory Revision;
4 creating s. 559.101, F.S.; providing a short title;
5 transferring, renumbering, reordering, and amending s.
6 817.801, F.S.; revising definitions relating to debt
7 relief services; creating s. 559.103, F.S.; providing
8 the powers of the Office of Financial Regulation;
9 creating s. 559.104, F.S.; authorizing the Financial
10 Services Commission to adopt rules; transferring,
11 renumbering, and amending s. 817.803, F.S.; revising
12 provisions relating to who is not subject to the Debt
13 Relief Services Act; providing an exception for
14 attorneys representing clients; creating s. 559.106,
15 F.S.; requiring debt relief organizations to be
16 registered with the office; providing a registration
17 fee; requiring background screening of applicants and
18 control persons; providing grounds for registration
19 issuance or denial; requiring annual renewal; creating
20 s. 559.107, F.S.; requiring registration renewal;
21 transferring, renumbering, and amending s. 817.804,
22 F.S.; requiring a debt relief organization to obtain a
23 surety bond and to provide proof of such bond to the
24 office; creating s. 559.109, F.S.; requiring a debt
25 relief organization to maintain records; creating s.
26 559.111, F.S.; requiring a debt relief organization to
27 prepare a financial analysis for the debtor; providing
28 for service contracts; requiring certain provisions to
29 be included in such contracts; requiring the debt

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30 relief organization to provide the debtor with copies
31 of all signed documents; transferring, renumbering,
32 and amending s. 817.805, F.S.; conforming terms to
33 changes made by the act; transferring, renumbering,
34 and amending s. 817.802, F.S.; prohibiting a debt
35 relief organization from engaging in certain
36 additional specified acts; deleting a provision that
37 allows the organization to collect a fee for
38 insufficient fund transactions; creating s. 559.114,
39 F.S.; providing for debtor complaints to the office;
40 providing procedures and office duties; creating s.
41 559.115, F.S.; providing for the issuance of subpoenas
42 by the office; creating s. 559.116, F.S.; authorizing
43 the office to issue cease and desist orders;
44 transferring, renumbering, and amending s. 817.806,
45 F.S.; conforming terms to changes made by the act;
46 providing administrative penalties; specifying
47 violations that result in criminal penalties;
48 repealing 559.10, 559.11, 559.12, and 559.13, F.S.,
49 relating to obsolete provisions concerning budget
50 planning; amending s. 516.07, F.S.; conforming a
51 cross-reference; providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. The Division of Statutory Revision is requested
56 to rename part II of chapter 559, Florida Statutes, consisting
57 of ss. 559.101-559.117, as "Debt Relief Services."

58 Section 2. Section 559.101, Florida Statutes, is created to

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59 read:

60 559.101 Short title.—This part may be cited as the “Debt
61 Relief Services Act.”

62 Section 3. Section 817.801, Florida Statutes, is
63 transferred, renumbered as 559.102, Florida Statutes, reordered,
64 and amended to read:

65 559.102 ~~817.801~~ Definitions.—As used in this part:

66 (1) “Commission” means the Financial Services Commission.

67 (2) “Control person” means an individual, partnership,
68 corporation, trust, or other organization that possesses the
69 power, directly or indirectly, to direct the management or
70 policies of a company, whether through ownership of securities,
71 by contract, or otherwise. The term includes, but is not limited
72 to:

73 (a) A company’s executive officers, including the
74 president, chief executive officer, chief financial officer,
75 chief operations officer, chief legal officer, chief compliance
76 officer, director, or other individuals having similar status or
77 functions.

78 (b) For a corporation, each shareholder who, directly or
79 indirectly, owns 10 percent or more, or who has the power to
80 vote 10 percent or more, of a class of voting securities, unless
81 the applicant is a publicly traded company.

82 (c) For a partnership, all general partners and limited or
83 special partners who have contributed 10 percent or more, or who
84 have the right to receive upon dissolution 10 percent or more,
85 of the partnership’s capital.

86 (d) For a trust, each trustee.

87 (e) For a limited liability company, all managing members

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88 and those members who have contributed 10 percent or more, or
89 who have the right to receive upon dissolution 10 percent or
90 more, of the partnership's capital.

91 (6)-(1) "Debt relief organization ~~Credit counseling agency~~
92 means a person offering to provide or ~~any organization~~ providing
93 debt management services, debt settlement services, or credit
94 counseling services for compensation.

95 (3)-(2) "Credit counseling services" means ~~confidential~~
96 money management, debt reduction, financial analysis, and
97 financial educational services provided to a debtor. The term
98 does not include foreclosure-related rescue services.

99 (4)-(3) "Creditor contribution" means any sum that a
100 creditor agrees to contribute to a debt relief organization
101 ~~credit counseling agency,~~ whether directly or by setoff against
102 amounts otherwise payable to the creditor on behalf of debtors.

103 (5)-(4) "Debt management services" means services, other
104 than foreclosure-related rescue services, provided to a debtor
105 by a debt relief ~~credit counseling~~ organization ~~for a fee to:~~

106 (a) Effect the adjustment, compromise, interest rate
107 reduction, modification of terms, negotiation, or discharge of
108 any unsecured account, note, or other indebtedness of the
109 debtor; or

110 (b) Receive funds periodically from the debtor and disburse
111 to a creditor any money or other thing of value with the
112 expectation that the debtor will repay the creditor the entire
113 principal owed.

114 (7) "Debt settlement services" means services, other than
115 foreclosure-related rescue services, provided to a debtor with
116 the expectation of obtaining the creditor's agreement to accept

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117 less than the principal amount of a debt in full satisfaction of
118 the debt.

119 (8) "Debtor" means an individual who obtains credit, seeks
120 a credit agreement with a creditor, or owes money to a creditor.

121 (9) "Enrolled debt" means the amount of debt at the time
122 the contract for debt management services is entered but does
123 not include any increases in the amount of debt or additional
124 fees or penalties applied to the debt after services included in
125 the contract are initiated.

126 (10) "Financial analysis" means the review of an
127 individual's budget, income, expenses, and debt by the debt
128 relief organization in order to determine the individual's
129 suitability for additional credit counseling, debt management,
130 or debt settlement services provided by the organization.

131 (11) "Financial audit report" means a report prepared in
132 connection with a financial audit that is conducted in
133 accordance with generally accepted auditing standards,
134 prescribed by the American Institute of Certified Public
135 Accountants, by a certified public accountant licensed to do
136 business in the United States, which includes:

137 (a) Financial statements, including notes related to the
138 financial statements and required supplementary information,
139 prepared in conformity with United States generally accepted
140 accounting principles.

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

145 (12) "Office" means the Office of Financial Regulation of

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146 the Financial Services Commission.

147 (13)-(5) "Person" has the same meaning as in s. 1.01 ~~means~~
148 ~~any individual, corporation, partnership, trust, association, or~~
149 ~~other legal entity.~~

150 (14) "Service contract" means the agreement for services
151 between a debt relief organization and a debtor.

152 Section 4. Section 559.103, Florida Statutes, is created to
153 read:

154 559.103 Powers and duties of the Office of Financial
155 Regulation; fees.-

156 (1) The office is responsible for the administration and
157 enforcement of this part.

158 (2) The office may conduct an investigation of any person
159 if the office has reason to believe, upon complaint or
160 otherwise, that any violation of this part may have been
161 committed or is about to be committed.

162 (3) All fees, charges, and fines collected pursuant to this
163 part shall be deposited in the State Treasury to the credit of
164 the Regulatory Trust Fund under the office.

165 Section 5. Section 559.104, Florida Statutes, is created to
166 read:

167 559.104 Rules.-The commission may adopt rules to administer
168 this part, including rules that:

169 (1) Require electronic submission of any forms, documents,
170 or fees required under this part.

171 (2) Establish time periods during which an applicant for
172 registration is barred from registration or a registered debt
173 relief organization is barred from renewal due to prior criminal
174 convictions of, or guilty or nolo contendere pleas by, any of

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175 the applicant's or registrant's control persons, regardless of
176 adjudication.

177 (a) The rules must provide:

178 1. Permanent bars for felonies involving money laundering,
179 breach of trust, dishonesty, embezzlement, fraud, fraudulent
180 conversion, misappropriation of property, racketeering, or
181 theft;

182 2. A 15-year disqualifying period for felonies involving
183 moral turpitude;

184 3. A 7-year disqualifying period for all other felonies;
185 and

186 4. A 5-year disqualifying period for misdemeanors involving
187 fraud, dishonesty, or any other act of moral turpitude.

188 (b) The rules may provide for an additional waiting period
189 due to dates of imprisonment or community supervision, the
190 commitment of multiple crimes, and other factors reasonably
191 related to the applicant's criminal history.

192 (c) The rules may provide for mitigating factors for crimes
193 identified in subparagraph (a)2. However, the mitigation may not
194 result in a period of disqualification less than 7 years. The
195 rule may not mitigate the disqualifying periods in subparagraphs
196 (a)1., (a)3., and (a)4.

197 (d) An applicant is not eligible for registration until the
198 expiration of the disqualifying period set by rule.

199 (e) Section 112.011 is not applicable to eligibility for
200 registration under this part.

201 Section 6. Section 817.803, Florida Statutes, is
202 transferred, renumbered as section 559.105, Florida Statutes,
203 and amended to read:

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204 559.105 ~~817.803~~ Exceptions. ~~Nothing in This part does not~~
 205 apply ~~applies~~ to:

206 (1) A person licensed to practice law in this state who is
 207 providing credit counseling, debt management, or debt settlement
 208 services as an ancillary matter to her or his representation of
 209 the debtor as a client. ~~Any Debt management or credit counseling~~
 210 ~~services provided in the practice of law in this state;~~

211 (2) A ~~Any~~ person who engages in credit counseling, debt
 212 management, or debt settlement services ~~adjustment~~ to adjust the
 213 indebtedness owed to such person. ~~;~~ ~~or~~

214 (3) The following entities or their subsidiaries:

215 (a) The Federal National Mortgage Association;

216 (b) The Federal Home Loan Mortgage Corporation;

217 (c) The Florida Housing Finance Corporation, ~~a public~~
 218 ~~corporation~~ created in s. 420.504;

219 (d) Any financial institution as defined under s.
 220 655.005(1)(h) ~~A bank, bank holding company, trust company,~~
 221 ~~savings and loan association, credit union, credit card bank, or~~
 222 ~~savings bank that is regulated and supervised by the Office of~~
 223 ~~the Comptroller of the Currency, the Office of Thrift~~
 224 ~~Supervision, the Federal Reserve, the Federal Deposit Insurance~~
 225 ~~Corporation, the National Credit Union Administration, the~~
 226 ~~Office of Financial Regulation of the Department of Financial~~
 227 ~~Services, or any state banking regulator; or~~

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

231 ~~(f) Any subsidiary or affiliate of a bank holding company,~~
 232 ~~its employees and its exclusive agents acting under written~~

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233 agreement.

234 Section 7. Section 559.106, Florida Statutes, is created to
235 read:

236 559.106 Registration of debt relief organization.—

237 (1) Effective April 1, 2011, each person who acts as a debt
238 relief organization in this state must be registered in
239 accordance with this section. This applies to debt relief
240 organizations operating in this state or from another state,
241 regardless of whether such organization is registered, licensed,
242 or the equivalent in accordance with the laws of another state.

243 (2) In order to apply for registration, an applicant must
244 submit:

245 (a) A completed registration application form as prescribed
246 by commission rule which includes the name and principal
247 business address and e-mail address of the debt relief
248 organization.

249 (b) A registration fee of \$1,000. The registration fee is
250 nonrefundable and may not be prorated for a partial year of
251 registration.

252 (c) Fingerprints for the applicant and each of the
253 applicant's control persons in accordance with rules adopted by
254 the commission.

255 1. The fingerprints may be submitted to the office, or a
256 vendor acting on behalf of the office.

257 2. The office may contract with a third-party vendor to
258 provide live-scan fingerprinting in lieu of a paper fingerprint
259 card.

260 3. A state criminal history background check must be
261 conducted through the Department of Law Enforcement, and a

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262 federal criminal history background check must be conducted
263 through the Federal Bureau of Investigation.

264 4. All fingerprints submitted to the Department of Law
265 Enforcement must be submitted electronically and entered into
266 the statewide automated fingerprint identification system
267 established in s. 943.05(2)(b) and available for use in
268 accordance with s. 943.05(2)(g) and (h). The office shall pay an
269 annual fee to the department to participate in the system and
270 inform the department of any person whose fingerprints are no
271 longer required to be retained.

272 5. The costs of fingerprint processing, including the cost
273 of retaining the fingerprints, shall be borne by the person
274 subject to the background check.

275 6. The office is responsible for reviewing the results of
276 the state and federal criminal history checks and determining
277 whether the applicant meets registration requirements.

278 (d) Submit documentation demonstrating that the surety bond
279 requirements specified in s. 559.108 have been satisfied.

280 (e) Submit additional information or documentation
281 requested by the office and required by rule concerning the
282 applicant or a control person of the applicant. Additional
283 information may include documentation of pending and prior
284 disciplinary and criminal history events, including arrest
285 reports and certified copies of charging documents, plea
286 agreements, judgments and sentencing documents, documents
287 relating to pretrial intervention, orders terminating probation
288 or supervised release, final administrative agency orders, or
289 other comparable documents that may provide the office with the
290 appropriate information to determine eligibility for

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291 registration.

292 (3) An application is considered received for the purposes
293 of s. 120.60 upon the office's receipt of the completed
294 application form, all required documentation, criminal history
295 information, the application fee, and all applicable
296 fingerprinting processing fees.

297 (4) The office shall issue a debt relief organization
298 registration to each applicant who is not otherwise ineligible
299 and who meets the requirements of this section. However, it is a
300 ground for denial of registration if the applicant or one of the
301 applicant's control persons:

302 (a) Has been found guilty of, regardless of adjudication,
303 or has entered a plea of nolo contendere or guilty to, any
304 felony, any crime involving racketeering, fraud, theft,
305 embezzlement, fraudulent conversion, breach of trust,
306 misappropriation of property, dishonesty, or moral turpitude;

307 (b) Has committed any violation specified in s. 559.113;

308 (c) Is the subject of a pending felony criminal prosecution
309 or a prosecution or an administrative enforcement action, in any
310 jurisdiction, which involves fraud, racketeering, embezzlement,
311 fraudulent conversion, misappropriation of property, theft,
312 dishonesty, breach of trust, or any other act of moral
313 turpitude;

314 (d) Pays the office any fee, fine, or other amount with a
315 check or electronic transmission of funds which fails to clear
316 the applicant's financial institution;

317 (e) Makes a material misstatement on any application,
318 document, or record required to be submitted under this part or
319 the rules of the commission; or

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320 (f) Has been the subject of any decision, finding,
321 injunction, suspension, prohibition, revocation, denial,
322 judgment, or other adverse action by any state or federal
323 agency.

324 (5) A registration issued under this section expires
325 annually on March 31 unless canceled, suspended, revoked, or
326 otherwise terminated, and must be renewed as provided under s.
327 559.5551.

328 Section 8. Effective April 1, 2011, section 559.107,
329 Florida Statutes, is created to read:

330 559.107 Registration renewal.—

331 (1) In order to renew a debt relief organization
332 registration, a debt relief organization must submit:

333 (a) A completed registration renewal form as prescribed by
334 commission rule.

335 (b) Fingerprints, in accordance with s. 559.106, for any
336 new control persons who have not been screened.

337 (c) Any additional information or documentation requested
338 by the office and required by rule concerning the registrant or
339 control person of the registrant. Additional information may
340 include documentation of any pending and prior disciplinary and
341 criminal history events, including arrest reports and certified
342 copies of charging documents, plea agreements, judgments and
343 sentencing documents, documents relating to pretrial
344 intervention, orders terminating probation or supervised
345 release, final administrative agency orders, or other comparable
346 documents that may provide the office with the appropriate
347 information to determine eligibility for renewal of
348 registration.

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349 (d) A nonrefundable renewal fee of \$750 and nonrefundable
350 fees to cover the cost of further fingerprint processing and
351 retention as set forth in commission rule.

352 (2) The office may not renew a debt relief organization
353 registration unless the registrant continues to meet the minimum
354 requirements for initial registration pursuant to s. 559.106 and
355 adopted rule.

356 Section 9. Section 817.804, Florida Statutes, is
357 transferred, renumbered as section 559.108, Florida Statutes,
358 and amended to read:

359 559.108 ~~817.804~~ Financial requirements; surety bond;
360 disclosure and financial reporting.-

361 (1) A debt relief organization must ~~Any person engaged in~~
362 ~~debt management services or credit counseling services shall:~~

363 (a) Obtain from a licensed certified public accountant an
364 annual independent financial audit report ~~in accordance with~~
365 ~~generally accepted auditing standards that includes shall~~
366 ~~include all accounts of such person~~ in which the funds of
367 debtors are deposited and from which payments are made to
368 creditors on behalf of debtors. A debt relief organization must
369 submit a copy of the report to the office within 120 days after
370 the end of the registrant's fiscal year. The commission may
371 establish by rule the manner for filing a financial audit
372 report.

373 (b) Obtain and maintain at all times insurance coverage for
374 employee dishonesty, depositor's forgery, and computer fraud.
375 ~~The insurance coverage must be~~ in an amount not less than the
376 greater of \$100,000 or 10 percent of the monthly average of the
377 aggregate amount of all deposits made by debtors to the

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378 organization for distribution to creditors ~~with such person by~~
379 ~~all debtors~~ for the 6 months immediately preceding the date of
380 initial application for or renewal of the insurance. The
381 deductible on such coverage may ~~shall~~ not exceed 10 percent of
382 the face amount of the policy coverage.

383 (c) Obtain and maintain a surety bond from a surety company
384 authorized to do business in this state. The amount and form of
385 the bond shall be specified by rule and must be at least
386 \$100,000 but may not exceed \$1 million. The rule must provide
387 allowances for business volume. The bond shall be in favor of
388 the state for the use and benefit of any debtor who suffers or
389 sustains any loss or damage by reason of any violation of this
390 part. Pursuant to initial registration and renewal, each
391 applicant shall furnish to the office:

392 1. The original executed surety bond issued by a surety
393 company authorized to do business in this state.

394 2. A statement from the surety company that the premium for
395 the bond has been paid in full by the applicant.

396 3. A statement from the surety company that the bond issued
397 by the surety company meets the requirements of this part. The
398 liability of the surety company under any bond issued pursuant
399 to this section may not, in the aggregate, exceed the amount of
400 the bond regardless of the number or amount of any claims filed
401 or which might be asserted against the surety on such bond. If
402 multiple claims are filed which collectively exceed the amount
403 of the bond, the surety may pay the full amount of the bond to
404 the office and is not further liable under the bond. The office
405 shall hold such funds for distribution to claimants and
406 administratively determine and pay to each claimant a pro rata

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407 share of each valid claim made within 6 months after the date
408 the first claim is filed against the surety.

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

415 Section 10. Section 559.109, Florida Statutes, is created
416 to read:

417 559.109 Maintenance of records.-

418 (1) Each registered debt relief organization shall
419 maintain, at the principal place of business designated on the
420 registration, all books, accounts, records, and documents
421 necessary to determine the registrant's compliance with this
422 part.

423 (2) The office may authorize the maintenance of records at
424 a location other than a principal place of business. The office
425 may require books, accounts, and records to be produced and
426 available at a reasonable and convenient location in this state.

427 (3) The commission may prescribe by rule the minimum
428 information to be shown in the books, accounts, records, and
429 documents of registrants so that such records enable the office
430 to determine the registrant's compliance with this part.

431 (4) All books, accounts, records, documents, and receipts
432 of any payment transaction must be preserved and kept available
433 for inspection by the office for at least 5 years after the date
434 the transaction is completed. The commission may prescribe by
435 rule requirements for the destruction of books, accounts,

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436 records, and documents retained by the registrant after the
437 completion of the 5 years.

438 Section 11. Section 559.111, Florida Statutes, is created
439 to read:

440 559.111 Financial analysis; service contracts.-

441 (1) Before a debtor signs a service contract, the debt
442 relief organization shall prepare, retain a copy of, and provide
443 to the debtor a written financial analysis specific to the
444 debtor which includes an evaluation of the debtor's income,
445 expenses, and all debts. An additional fee may not be charged
446 for the financial analysis.

447 (2) Based on the completed financial analysis, the debt
448 relief organization shall provide to the debtor, and retain a
449 copy of, a written determination of the debtor's suitability for
450 debt management or debt settlement services and whether the
451 debtor can reasonably meet the requirements of the service
452 contract, including the debtor's ability to save the amount
453 estimated to be needed to fund the settlement of the debt.

454 (3) The service contract between the debt relief
455 organization and the debtor must be signed and dated by the
456 debtor and include all of the following:

457 (a) The following statement in at least 12-point uppercase
458 type at the top of the service contract:

459
460 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR
461 CREDITORS BEFORE SIGNING THIS CONTRACT. YOUR CREDITORS
462 MAY BE WILLING TO DIRECTLY NEGOTIATE A SETTLEMENT,
463 INTEREST RATE REDUCTION, MODIFICATION, PAYMENT PLAN,
464 OR RESTRUCTURING OF YOUR DEBT FREE OF CHARGE.

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465
466 YOUR USE OF DEBT MANAGEMENT OR DEBT SETTLEMENT
467 SERVICES MAY RESULT IN LATE FEES, ADDITIONAL DEBTS,
468 AND AN ADVERSE CREDIT RATING. YOU SHOULD CONTACT YOUR
469 CREDITOR FOR MORE INFORMATION.
470

471 (b) A full and detailed description of the services to be
472 performed by the debt relief organization for the debtor,
473 including the financial analysis determining the suitability of
474 the debtor for debt management or debt settlement services, all
475 guarantees and all promises of full or partial refunds, the
476 estimated date or length of time by which the services are to be
477 performed, and a copy of the Florida Debt Relief Services Act.

478 (c) All terms and conditions of payment, including the
479 anticipated total of all payments to be made by the debtor and
480 the estimated amount of any payments to be made to the debt
481 relief organization or to any other person.

482 (d) The debt relief organization's principal business
483 address and the name and address of its agent in the state
484 authorized to receive service of process.

485 (e) A clear and conspicuous statement in boldface type, in
486 immediate proximity to the space reserved for the debtor's
487 signature, which states: "You, the debtor, may cancel this
488 service contract at any time before midnight of the 5th business
489 day after the date of signing this contract. [See the attached
490 Notice of Right to Cancel for further explanation of this
491 right.]"

492 (f) A Notice of Right to Cancel attached to the contract,
493 in duplicate and easily detachable, which contains the following

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494 statement in at least 12-point uppercase type:

495

496 NOTICE OF RIGHT TO CANCEL

497

498 YOU MAY CANCEL ANY CONTRACT FOR CREDIT COUNSELING,
 499 DEBT MANAGEMENT, OR DEBT SETTLEMENT SERVICES WITHIN 5
 500 BUSINESS DAYS AFTER THE DATE THE CONTRACT IS SIGNED BY
 501 YOU WITHOUT INCURRING ANY PENALTY OR OBLIGATION.

502

503 YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10
 504 BUSINESS DAYS AFTER RECEIPT OF YOUR CANCELLATION
 505 NOTICE.

506

507 TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND
 508 DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER
 509 WRITTEN NOTICE CLEARLY INDICATING YOUR DESIRE TO
 510 CANCEL YOUR CONTRACT.

511

512 TO: ... (name of debt relief organization)...

513 AT: ... (address)...

514

515 BY SIGNING AND DATING THIS NOTICE, I HEREBY CANCEL MY
 516 SERVICE CONTRACT, EXECUTED ON: ... (date service
 517 contract signed)...

518

519 ... (Signature of Debtor)...

520 ... (Date)...

521 ... (Address)...

522 ... (Phone Number)...

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523

524 (4) The debt relief organization must provide the debtor,
525 at the time the documents are signed, with a copy of the
526 completed service contract as described in subsection (3) and
527 all other documents the organization requires the debtor to
528 sign.

529 Section 12. Section 817.805, Florida Statutes, is
530 transferred, renumbered as section 559.112, Florida Statutes,
531 and amended to read:

532 559.112 ~~817.805~~ Disbursement of funds.—A debt relief
533 organization offering debt management services that include
534 disbursement to a creditor must ~~Any person engaged in debt~~
535 ~~management or credit counseling services shall~~ disburse to the
536 appropriate creditors all funds received from a debtor, less any
537 fees permitted by s. 559.113 ~~817.802~~ and any creditor
538 contributions, within 30 days after receipt of such funds.
539 However, a creditor contribution may not reduce any sums ~~to be~~
540 credited to the account of a debtor making a payment to the
541 organization ~~credit counseling agency~~ for further payment to the
542 creditor. Further, a debt relief organization offering debt
543 settlement services or debt management services must ~~any person~~
544 ~~engaged in such services shall~~ maintain a separate trust account
545 for the receipt of any funds from debtors and the disbursement
546 of such funds on behalf of such debtors.

547 Section 13. Section 817.802, Florida Statutes, is
548 transferred, renumbered as section 559.113, Florida Statutes,
549 and amended to read:

550 559.113 ~~817.802~~ Prohibited acts ~~Unlawful fees and costs.—~~

551 (1) A debt relief organization may not, directly or

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552 indirectly, charge or accept from a debtor:

553 (a) Any payment for services before the execution of a
554 written service contract. It is unlawful for any person, while
555 engaging in debt management services or credit counseling
556 services, to charge or accept from a debtor residing in this
557 state, directly or indirectly,

558 (b) A fee or contribution greater than \$50 for the initial
559 setup or initial consultation. Subsequently, the person may not
560 charge or accept

561 (c) A fee or contribution from a debtor residing in this
562 state greater than \$120 per year for credit counseling services
563 provided in addition to the initial consultation under
564 subsection (2). additional consultations or, alternatively, if

565 (d) A fee or contribution for debt management services
566 which exceeds as defined in s. 817.801(4)(b) are provided, the
567 person may charge the greater of 7.5 percent of the amount paid
568 monthly by the debtor to the organization for disbursement to a
569 creditor person or \$35 per month, whichever is greater, or 7.5
570 percent of the enrolled debt.

571 (e) A fee or contribution for debt settlement services
572 which exceeds 40 percent of the savings realized which is
573 defined to be the difference between the amount of enrolled debt
574 and the amount paid to the creditor in discharge of the enrolled
575 debt, less any fees collected pursuant to paragraphs (b) and
576 (c). However, such fees collected for debt settlement services,
577 in the aggregate, may not exceed 20 percent of the enrolled
578 debt. For service contracts requiring fees to be paid on a
579 monthly basis, the payment of such fees must be spread uniformly
580 over at least 18 months or 50 percent of the term of the

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581 contract, whichever is greater.

582 (f) A fee or contribution unless the debt management
583 services or debt settlement services result in a settlement,
584 discharge, or modification of the debt on terms more favorable
585 to the debtor than the terms of the original agreement between
586 the debtor and creditor.

587 (g) Any fee or contribution for debt management, unless no
588 other payment has been received, directly or indirectly, from
589 the debtor for such services. Fees authorized under this
590 subsection may not be a part of or included in the calculation
591 of total enrolled debt.

592 (2) A debt relief organization may not:

593 (a) Advise any debtor, directly or indirectly, to not
594 contact or communicate with his or her creditors before or
595 during the service contract period.

596 (b) Make or use any false or misleading representations or
597 omit any material fact in connection with the offer, sale, or
598 provision of services, or engage, directly or indirectly, in any
599 fraudulent, false, misleading, unconscionable, unfair, or
600 deceptive act or practice in connection with the offer or sale
601 of any of the services of a debt relief organization.

602 (c) Provide services to a debtor without executing a
603 service contract that complies with s. 559.111.

604 (d) Fail to provide copies of the financial analysis, all
605 service contracts, and any other documents the debtor is
606 required to sign as provided under s. 559.111.

607 (e) Fail to perform any of the terms, conditions, and
608 obligations provided in the service contract with the debtor.

609 (f) Fail to disclose on any offer or sale of services,

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610 including any Internet website, the debt relief organization's
611 name, business address, telephone number, and e-mail address, if
612 any.

613 (g) Fail to provide the debtor with a 5-business-day right
614 of cancellation without the debtor incurring any penalty or
615 obligation.

616 (h) Fail to obtain an annual financial audit report and
617 surety bond.

618 (i) Fail to submit an annual financial audit report to the
619 office.

620 (j) Fail to report on a form prescribed by commission rule
621 any change to information contained in an initial application
622 form or any amendment to the application within 30 days after
623 the change is effective.

624 (k) Fail to comply with any of the provisions of this part.

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

629 Section 14. Section 559.114, Florida Statutes, is created
630 to read:

631 559.114 Debtor complaints; administrative duties.-

632 (1) The office shall receive and maintain records of
633 correspondence and complaints from debtors concerning any and
634 all persons who provide credit counseling, debt management, or
635 debt settlement services, including debt relief organizations.

636 (2) The office shall inform and furnish relevant
637 information to the appropriate regulatory body if a debt relief
638 organization exempt from registration under this part has been

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639 named in consumer complaints alleging violations of this part.

640 (3) The office shall investigate complaints and record the
641 resolution of such complaints.

642 (4) A debt relief organization that provides or attempts to
643 provide debt management or debt settlement services without
644 first registering in accordance with this part is subject to a
645 penalty of up to \$25,000 in addition to the other remedies
646 provided in this part and under part II of chapter 501. The
647 office shall advise the appropriate state attorney, or the
648 Attorney General, of any determination by the office of a
649 violation of this part by any debt relief organization that is
650 not registered as required by this part. The office shall
651 furnish the state attorney or Attorney General with the office's
652 information concerning the alleged violations of such
653 requirements. The enforcing authority is entitled to reasonable
654 attorneys fees and costs in any action brought to enforce this
655 part against an unregistered debt relief organization.

656 (5) A registered debt relief organization must provide a
657 written response to the office within 20 days after receipt of a
658 written request from the office for information concerning a
659 consumer complaint. The response must address the issues and
660 allegations raised in the complaint. The office may impose an
661 administrative fine of up to \$2,500 per request per day upon any
662 registrant that fails to comply with this subsection.

663 Section 15. Section 559.115, Florida Statutes, is created
664 to read:

665 559.115 Subpoenas.—

666 (1) The office may:

667 (a) Issue and serve subpoenas and subpoenas duces tecum to

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668 compel the attendance of witnesses and the production of all
669 books, accounts, records, and other documents and materials
670 relevant to an investigation conducted by the office. The
671 office, or its authorized representative, may administer oaths
672 and affirmations to any person.

673 (b) Seek subpoenas or subpoenas duces tecum from any court
674 to command the appearance of witnesses and the production of
675 books, accounts, records, and other documents or materials at a
676 time and place named in the subpoenas, and an authorized
677 representative of the office may serve such subpoenas.

678 (2) If there is substantial noncompliance with a subpoena
679 or subpoena duces tecum issued by the office, the office may
680 petition the court in the county where the person subpoenaed
681 resides or has his or her principal place of business for an
682 order requiring the person to appear, testify, or produce such
683 books, accounts, records, and other documents as are specified
684 in the subpoena or subpoena duces tecum.

685 (3) The office is entitled to the summary procedure
686 provided in s. 51.011, and the court shall advance such cause on
687 its calendar. Attorney's fees and any other costs incurred by
688 the office to obtain an order granting, in whole or in part, a
689 petition for enforcement of a subpoena or subpoena duces tecum
690 shall be taxed against the subpoenaed person, and failure to
691 comply with such order is a contempt of court.

692 (4) To aid in the enforcement of this part, the office may
693 require or permit a person to file a statement in writing, under
694 oath or otherwise as the office determines, as to all the facts
695 and circumstances concerning the matter to be investigated.

696 Section 16. Section 559.116, Florida Statutes, is created

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697 to read:

698 559.116 Cease and desist orders.—The office may issue and
699 serve upon any person an order to cease and desist and to take
700 corrective action if it has reason to believe the person is
701 violating, has violated, or is about to violate any provision of
702 this part, any rule or order issued under this part, or any
703 written agreement between the person and the office. All
704 procedural matters relating to issuance and enforcement of such
705 order are governed by the Administrative Procedure Act.

706 Section 17. Section 817.806, Florida Statutes, is
707 transferred, renumbered as section 559.117, Florida Statutes,
708 and amended to read:

709 559.117 ~~817.806~~ Violations; penalties.—

710 (1) Any person who violates any provision of this part
711 commits an unfair or deceptive trade practice as defined in part
712 II of chapter 501, and ~~violators are also shall be~~ subject to
713 the penalties, and remedies, and enforcement actions provided
714 therein. Further, any debtor consumer injured by a violation of
715 this part may bring an action for recovery of damages. Judgment
716 shall be entered for actual damages, but in no case less than
717 the amount paid by the debtor consumer to the debt relief
718 organization credit counseling agency, plus reasonable
719 attorney's fees and costs.

720 (2) The office may impose an administrative fine on, or
721 revoke or suspend the registration of a registrant who has
722 committed a violation of this part. Final action to fine,
723 suspend, or revoke the registration of a registrant is subject
724 to review in accordance with chapter 120.

725 (a) The office may impose suspension rather than revocation

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726 of a registration if circumstances warrant that one or the other
727 should be imposed and the registrant demonstrates that the
728 registrant has taken affirmative steps that can be expected to
729 effectively eliminate the violations and that the registrant's
730 registration has never been previously suspended.

731 (b) In addition to, or in lieu of suspension or revocation
732 of a registration, the office may impose an administrative fine
733 of up to \$25,000 per violation. The office shall adopt rules
734 establishing guidelines for imposing administrative penalties.

735 (3)-(2) It is ~~Any person who violates any provision of this~~
736 ~~part commits~~ a felony of the third degree, punishable as
737 provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084 for any
738 person to provide debt management or debt settlement services in
739 this state without first registering with the office, or to
740 register or attempt to register by means of fraud,
741 misrepresentation, or concealment.

742 Section 18. Sections 559.10, 559.11, 559.12, and 559.13,
743 Florida Statutes, are repealed.

744 Section 19. Paragraph (g) of subsection (1) of section
745 516.07, Florida Statutes, is amended to read:

746 516.07 Grounds for denial of license or for disciplinary
747 action.-

748 (1) The following acts are violations of this chapter and
749 constitute grounds for denial of an application for a license to
750 make consumer finance loans and grounds for any of the
751 disciplinary actions specified in subsection (2):

752 (g) Any violation of part III of chapter 817 ~~or part II of~~
753 ~~chapter 559 or of any rule adopted under part II of chapter 559.~~

754 Section 20. This act shall take effect January 1, 2011.