

FOR CONSIDERATION By the Committee on Banking and Insurance

597-01474C-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

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

224

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

227

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