

Committee Substitute for
Committee Substitute for Senate Bill No. 2682

An act relating to credit counseling services; creating pt. IV, ch. 817, F.S.; providing definitions; prohibiting certain persons from accepting certain fees or costs from debtors under certain circumstances; providing exceptions; providing disclosure and financial reporting requirements for debt management or credit counseling services; providing disbursement of funds requirements; providing civil penalties; providing for awards of attorney's fees and costs; providing for criminal penalties; providing an effective date.

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

Section 1. Part IV of chapter 817, Florida Statutes, consisting of sections 817.801, 817.802, 817.803, 817.804, 817.805, and 817.806, Florida Statutes, is created to read:

PART IV
CREDIT COUNSELING SERVICES

817.801 Definitions.—As used in this part:

(1) “Credit counseling services” means confidential money management, debt reduction, and financial educational services.

(2) “Debt management services” means services provided to a debtor by a credit counseling organization for a fee to:

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

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

(3) “Person” means any individual, corporation, partnership, trust, association, or other legal entity.

(4) “Credit counseling agency” means any organization providing debt management services or credit counseling services.

817.802 Unlawful fees and costs.—

(1) It is unlawful for any person, while engaging in debt management services or credit counseling services, to charge or accept from a debtor, directly or indirectly, a fee or contribution greater than \$50 for the initial setup or initial consultation. Subsequently, the person may not charge or accept a fee or contribution from a debtor greater than \$120 per year for additional consultations or, alternatively, if debt management services as defined in s. 817.801(2)(b) are provided, the person may charge the greater of 7.5 percent of the amount paid monthly by the debtor to the person or \$35 per month.

(2) No provision of this section prohibits any person, while engaging in debt management or credit counseling services, from imposing upon and receiving from a debtor a reasonable and separate charge or fee for insufficient funds transactions.

817.803 Exceptions.—Nothing in this part applies to:

(1) Any debt management or credit counseling services provided in the practice of law in this state;

(2) Any person who engages in debt adjustment to adjust the indebtedness owed to such person; or

(3) The following entities or their subsidiaries:

(a) The Federal National Mortgage Association;

(b) The Federal Home Loan Mortgage Corporation;

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

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

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

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

817.804 Requirements; disclosure and financial reporting.—

(1) Any person engaged in debt management services or credit counseling services shall:

(a) Obtain from a certified public accountant licensed under s. 473.308 an annual audit of all accounts of such person in which the funds of debtors are deposited and from which payments are made to creditors on behalf of debtors.

(b) Obtain and maintain at all times insurance coverage for employee dishonesty, depositor's forgery, and computer fraud. The insurance coverage must be in an amount not less than the greater of \$100,000 or 10 percent of the monthly average of the aggregate amount of all deposits made for distribution to creditors with such person by all debtors for the 6 months immediately preceding the date of initial application for or renewal of the insurance. The deductible on such coverage shall not exceed 10 percent of the face amount of the policy coverage.

(2) A copy of the annual audit and insurance policies required by this section shall be available for public inspection at each branch location. Copies shall be provided, upon written request, to any party requesting a copy for a charge not to exceed the cost of the reproduction of documents.

817.805 Disbursement of funds.—Any person engaged in debt management or credit counseling services shall disburse to the appropriate creditors all funds received from a debtor, less any fees permitted by s. 817.802, within 30 days after receipt of such funds. Further, any person engaged in such services shall maintain a separate trust account for the receipt of any funds from each debtor and the disbursement of such funds on behalf of such debtor.

817.806 Violations.—

(1) Any person who violates any provision of this part commits an unfair or deceptive trade practice as defined in part II of chapter 501. Violators shall be subject to the penalties and remedies provided therein. Further, any consumer injured by a violation of this part may bring an action for recovery of damages. Judgment shall be entered for actual damages, but in no case less than the amount paid by the consumer to the credit counseling agency, plus reasonable attorney's fees and costs.

(2) Any person who violates any provision of this part commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. This act shall take effect July 1, 2004.

Approved by the Governor June 23, 2004.

Filed in Office Secretary of State June 23, 2004.