

BILL PCS HB 311

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

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

48
 49 Be It Enacted by the Legislature of the State of Florida:

50
 51 Section 1. The Division of Statutory Revision is requested
 52 to rename part II of chapter 559, Florida Statutes, consisting
 53 of ss. 559.101-559.117, as "Debt Relief Services."

54 Section 2. Section 559.101, Florida Statutes, is created
 55 to read:

56 559.101 Short title.—This part may be cited as the "Debt

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57 Relief Services Act."

58 Section 3. Section 817.801, Florida Statutes, is
 59 transferred, renumbered as 559.102, Florida Statutes, reordered,
 60 and amended to read:

61 559.102 ~~817.801~~ Definitions.—As used in this part:

62 (1) "Commission" means the Financial Services Commission.

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

69 (a) A company's executive officers, including the
 70 president, chief executive officer, chief financial officer,
 71 chief operations officer, chief legal officer, chief compliance
 72 officer, director, or other individuals having similar status or
 73 functions.

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

78 (c) For a partnership, all general partners and limited or
 79 special partners who have contributed 10 percent or more, or who
 80 have the right to receive upon dissolution 10 percent or more,
 81 of the partnership's capital.

82 (d) For a trust, each trustee.

83 (e) For a limited liability company, all managing members
 84 and those members who have contributed 10 percent or more, or

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85 who have the right to receive upon dissolution 10 percent or
 86 more, of the partnership's capital.

87 (6)-(1) "Debt relief organization ~~Credit counseling agency~~"
 88 means a person offering to provide or ~~any organization~~ providing
 89 debt management services, debt settlement services, or credit
 90 counseling services for compensation.

91 (3)-(2) "Credit counseling services" means ~~confidential~~
 92 money management, debt reduction, financial analysis, and
 93 financial educational services provided to a debtor. The term
 94 does not include foreclosure-related rescue services.

95 (4)-(3) "Creditor contribution" means any sum that a
 96 creditor agrees to contribute to a debt relief organization
 97 ~~credit counseling agency~~, whether directly or by setoff against
 98 amounts otherwise payable to the creditor on behalf of debtors.

99 (5)-(4) "Debt management services" means services, other
 100 than foreclosure-related rescue services, provided to a debtor
 101 by a debt relief ~~credit counseling~~ organization for a fee to:

102 (a) Effect the adjustment, compromise, interest rate
 103 reduction, modification of terms, negotiation, or discharge of
 104 any unsecured account, note, or other indebtedness of the
 105 debtor; or

106 (b) Receive funds periodically from the debtor and
 107 disburse to a creditor any money or other thing of value with
 108 the expectation that the debtor will repay the creditor the
 109 entire principal owed.

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

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113 less than the principal amount of a debt in full satisfaction of
 114 the debt.

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

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

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

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

133 (a) Financial statements, including notes related to the
 134 financial statements and required supplementary information,
 135 prepared in conformity with United States generally accepted
 136 accounting principles.

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

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141 (12) "Office" means the Office of Financial Regulation of
 142 the Financial Services Commission.

143 (13)-(5) "Person" has the same meaning as in s. 1.01, F.S.
 144 means any individual, corporation, partnership, trust,
 145 association, or other legal entity.

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

148 Section 4. Section 559.103, Florida Statutes, is created
 149 to read:

150 559.103 Powers and duties of the Office of Financial
 151 Regulation; fees.-

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

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

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

161 Section 5. Section 559.104, Florida Statutes, is created
 162 to read:

163 559.104 Rules.-The commission may adopt rules to
 164 administer this part, including rules that:

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

167 (2) Establish time periods during which an applicant for
 168 registration is barred from registration or a registered debt

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169 relief organization is barred from renewal due to prior criminal
 170 convictions of, or guilty or nolo contendere pleas by, any of
 171 the applicant's or registrant's control persons, regardless of
 172 adjudication.

173 (a) The rules must provide:

174 1. Permanent bars for felonies involving money laundering,
 175 breach of trust, dishonesty, embezzlement, fraud, fraudulent
 176 conversion, misappropriation of property, racketeering, or
 177 theft;

178 2. A 15-year disqualifying period for felonies involving
 179 moral turpitude;

180 3. A 7-year disqualifying period for all other felonies;
 181 and

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

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

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

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

196 (e) Section 112.011 is not applicable to eligibility for

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197 registration under this part.

198 Section 6. Section 817.803, Florida Statutes, is
 199 transferred, renumbered as section 559.105, Florida Statutes,
 200 and amended to read:

201 559.105 ~~817.803~~ Exceptions. ~~Nothing in~~ This part does not
 202 apply ~~applies~~ to:

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

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

211 (3) The following entities or their subsidiaries:

212 (a) The Federal National Mortgage Association;

213 (b) The Federal Home Loan Mortgage Corporation;

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

216 (d) Any financial institution as defined under s.
 217 655.005 (1) (h) ~~A bank, bank holding company, trust company,~~
 218 ~~savings and loan association, credit union, credit card bank, or~~
 219 ~~savings bank that is regulated and supervised by the Office of~~
 220 ~~the Comptroller of the Currency, the Office of Thrift~~
 221 ~~Supervision, the Federal Reserve, the Federal Deposit Insurance~~
 222 ~~Corporation, the National Credit Union Administration, the~~
 223 ~~Office of Financial Regulation of the Department of Financial~~
 224 ~~Services, or any state banking regulator; or~~

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

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

231 Section 7. Section 559.106, Florida Statutes, is created
 232 to read:

233 559.106 Registration of debt relief organization.—

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

240 (2) In order to apply for registration, an applicant must
 241 submit:

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

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

249 (c) Fingerprints for the applicant and each of the
 250 applicant's control persons in accordance with rules adopted by
 251 the commission.

252 1. The fingerprints may be submitted to the office, or a

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253 vendor acting on behalf of the office.

254 2. The office may contract with a third-party vendor to
 255 provide live-scan fingerprinting in lieu of a paper fingerprint
 256 card.

257 3. A state criminal history background check must be
 258 conducted through the Department of Law Enforcement, and a
 259 federal criminal history background check must be conducted
 260 through the Federal Bureau of Investigation.

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

269 5. The costs of fingerprint processing, including the cost
 270 of retaining the fingerprints, shall be borne by the person
 271 subject to the background check.

272 6. The office is responsible for reviewing the results of
 273 the state and federal criminal history checks and determining
 274 whether the applicant meets registration requirements.

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

277 (e) Submit additional information or documentation
 278 requested by the office and required by rule concerning the
 279 applicant or a control person of the applicant. Additional
 280 information may include documentation of pending and prior

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281 disciplinary and criminal history events, including arrest
 282 reports and certified copies of charging documents, plea
 283 agreements, judgments and sentencing documents, documents
 284 relating to pretrial intervention, orders terminating probation
 285 or supervised release, final administrative agency orders, or
 286 other comparable documents that may provide the office with the
 287 appropriate information to determine eligibility for
 288 registration.

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

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

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

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

305 (c) Is the subject of a pending felony criminal
 306 prosecution or a prosecution or an administrative enforcement
 307 action, in any jurisdiction, which involves fraud, racketeering,
 308 embezzlement, fraudulent conversion, misappropriation of

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309 property, theft, dishonesty, breach of trust, or any other act
 310 of moral turpitude;

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

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

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

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

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

327 559.107 Registration renewal.—

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

330 (a) A completed registration renewal form as prescribed by
 331 commission rule.

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

334 (c) Any additional information or documentation requested
 335 by the office and required by rule concerning the registrant or
 336 control person of the registrant. Additional information may

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337 include documentation of any pending and prior disciplinary and
 338 criminal history events, including arrest reports and certified
 339 copies of charging documents, plea agreements, judgments and
 340 sentencing documents, documents relating to pretrial
 341 intervention, orders terminating probation or supervised
 342 release, final administrative agency orders, or other comparable
 343 documents that may provide the office with the appropriate
 344 information to determine eligibility for renewal of
 345 registration.

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

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

353 Section 9. Section 817.804, Florida Statutes, is
 354 transferred, renumbered as section 559.108, Florida Statutes,
 355 and amended to read:

356 559.108 ~~817.804~~ Financial requirements; surety bond;
 357 ~~disclosure and financial reporting.~~

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

360 (a) Obtain from a licensed certified public accountant an
 361 annual independent financial audit report ~~in accordance with~~
 362 ~~generally accepted auditing standards that includes shall~~
 363 ~~include all accounts of such person in which the funds of~~
 364 ~~debtors are deposited and from which payments are made to~~

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365 | creditors on behalf of debtors. A debt relief organization must
 366 | submit a copy of the report to the office within 120 days after
 367 | the end of the registrant's fiscal year. The commission may
 368 | establish by rule the manner for filing a financial audit
 369 | report.

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

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

389 | 1. The original executed surety bond issued by a surety
 390 | company authorized to do business in this state.

391 | 2. A statement from the surety company that the premium
 392 | for the bond has been paid in full by the applicant.

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393 3. A statement from the surety company that the bond
 394 issued by the surety company meets the requirements of this
 395 part. The liability of the surety company under any bond issued
 396 pursuant to this section may not, in the aggregate, exceed the
 397 amount of the bond regardless of the number or amount of any
 398 claims filed or which might be asserted against the surety on
 399 such bond. If multiple claims are filed which collectively
 400 exceed the amount of the bond, the surety may pay the full
 401 amount of the bond to the office and is not further liable under
 402 the bond. The office shall hold such funds for distribution to
 403 claimants and administratively determine and pay to each
 404 claimant a pro rata share of each valid claim made within 6
 405 months after the date the first claim is filed against the
 406 surety.

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

413 Section 10. Section 559.109, Florida Statutes, is created
 414 to read:

415 559.109 Maintenance of records.-

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

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

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

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

436 Section 11. Section 559.111, Florida Statutes, is created
 437 to read:

438 559.111 Financial analysis; service contracts.-

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

445 (2) Based on the completed financial analysis, the debt
 446 relief organization shall provide to the debtor, and retain a
 447 copy of, a written determination of the debtor's suitability for
 448 debt management or debt settlement services and whether the

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449 debtor can reasonably meet the requirements of the service
 450 contract, including the debtor's ability to save the amount
 451 estimated to be needed to fund the settlement of the debt.

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

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

457
 458 IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR
 459 CREDITORS BEFORE SIGNING THIS CONTRACT. YOUR CREDITORS
 460 MAY BE WILLING TO DIRECTLY NEGOTIATE A SETTLEMENT,
 461 INTEREST RATE REDUCTION, MODIFICATION, PAYMENT PLAN,
 462 OR RESTRUCTURING OF YOUR DEBT FREE OF CHARGE.

463
 464 YOUR USE OF DEBT MANAGEMENT OR DEBT SETTLEMENT
 465 SERVICES MAY RESULT IN LATE FEES, ADDITIONAL DEBTS,
 466 AND AN ADVERSE CREDIT RATING. YOU SHOULD CONTACT YOUR
 467 CREDITOR FOR MORE INFORMATION.

468
 469 (b) A full and detailed description of the services to be
 470 performed by the debt relief organization for the debtor,
 471 including the financial analysis determining the suitability of
 472 the debtor for debt management or debt settlement services, all
 473 guarantees and all promises of full or partial refunds, the
 474 estimated date or length of time by which the services are to be
 475 performed, and a copy of the Florida Debt Relief Services Act.

476 (c) All terms and conditions of payment, including the

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477 anticipated total of all payments to be made by the debtor and
 478 the estimated amount of any payments to be made to the debt
 479 relief organization or to any other person.

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

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

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

493
 494 NOTICE OF RIGHT TO CANCEL

495
 496 YOU MAY CANCEL ANY CONTRACT FOR CREDIT COUNSELING,
 497 DEBT MANAGEMENT, OR DEBT SETTLEMENT SERVICES WITHIN 5
 498 BUSINESS DAYS AFTER THE DATE THE CONTRACT IS SIGNED BY
 499 YOU WITHOUT INCURRING ANY PENALTY OR OBLIGATION.

500
 501 YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10
 502 BUSINESS DAYS AFTER RECEIPT OF YOUR CANCELLATION
 503 NOTICE.

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

509
 510 TO: ...(name of debt relief organization)...
 511 AT: ...(address)...

512
 513 BY SIGNING AND DATING THIS NOTICE, I HEREBY CANCEL MY
 514 SERVICE CONTRACT, EXECUTED ON: ...(date service
 515 contract signed)...

516
 517 ...(Signature of Debtor) ...
 518 ...(Date)...
 519 ...(Address)...
 520 ...(Phone Number)...

521
 522 (4) The debt relief organization must provide the debtor,
 523 at the time the documents are signed, with a copy of the
 524 completed service contract as described in subsection (3) and
 525 all other documents the organization requires the debtor to
 526 sign.

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

530 559.112 ~~817.805~~ Disbursement of funds.—A debt relief
 531 organization offering debt management services that include
 532 disbursement to a creditor must ~~Any person engaged in debt~~

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

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

548 559.113 ~~817.802~~ Prohibited acts Unlawful fees and costs.-

549 (1) A debt relief organization may not, directly or
 550 indirectly, charge or accept from a debtor:

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

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

559 (c) A fee or contribution ~~from a debtor residing in this~~
 560 ~~state~~ greater than \$120 per year for credit counseling services

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561 provided in addition to the initial consultation under
 562 subsection (b). ~~additional consultations or, alternatively, if~~
 563 (d) A fee or contribution for debt management services
 564 which exceeds as defined in s. 817.801(4)(b) are provided, the
 565 person may charge the greater of 7.5 percent of the amount paid
 566 monthly by the debtor to the organization for disbursement to a
 567 creditor person or \$35 per month, whichever is greater, or 7.5
 568 percent of the enrolled debt.

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

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

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

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589 of total enrolled debt.
 590 (2) A debt relief organization may not:
 591 (a) Advise any debtor, directly or indirectly, to not
 592 contact or communicate with his or her creditors before or
 593 during the service contract period.
 594 (b) Make or use any false or misleading representations or
 595 omit any material fact in connection with the offer, sale, or
 596 provision of services, or engage, directly or indirectly, in any
 597 fraudulent, false, misleading, unconscionable, unfair, or
 598 deceptive act or practice in connection with the offer or sale
 599 of any of the services of a debt relief organization.
 600 (c) Provide services to a debtor without executing a
 601 service contract that complies with s. 559.111.
 602 (d) Fail to provide copies of the financial analysis, all
 603 service contracts, and any other documents the debtor is
 604 required to sign as provided under s. 559.111.
 605 (e) Fail to perform any of the terms, conditions, and
 606 obligations provided in the service contract with the debtor.
 607 (f) Fail to disclose on any offer or sale of services,
 608 including any Internet website, the debt relief organization's
 609 name, business address, telephone number, and e-mail address, if
 610 any.
 611 (g) Fail to provide the debtor with a 5-business-day right
 612 of cancellation without the debtor incurring any penalty or
 613 obligation.
 614 (h) Fail to obtain an annual financial audit report and
 615 surety bond.
 616 (i) Fail to submit an annual financial audit report to the

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617 office.

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

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

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

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

630 559.114 Debtor complaints; administrative duties.—

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

635 (2) The office shall inform and furnish relevant
 636 information to the appropriate regulatory body if a debt relief
 637 organization exempt from registration under this part has been
 638 named in consumer complaints alleging violations of this part.

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

641 (4) A debt relief organization that provides or attempts
 642 to provide debt management or debt settlement services without
 643 first registering in accordance with this part is subject to a
 644 penalty of up to \$25,000 in addition to the other remedies

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645 provided in this part and under part II of chapter 501. The
 646 office shall advise the appropriate state attorney, or the
 647 Attorney General, of any determination by the office of a
 648 violation of this part by any debt relief organization that is
 649 not registered as required by this part. The office shall
 650 furnish the state attorney or Attorney General with the office's
 651 information concerning the alleged violations of such
 652 requirements. The enforcing authority is entitled to reasonable
 653 attorneys fees and costs in any action brought to enforce this
 654 part against an unregistered debt relief organization.

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

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

664 559.115 Subpoenas.—

665 (1) The office may:

666 (a) Issue and serve subpoenas and subpoenas duces tecum to
 667 compel the attendance of witnesses and the production of all
 668 books, accounts, records, and other documents and materials
 669 relevant to an investigation conducted by the office. The
 670 office, or its authorized representative, may administer oaths
 671 and affirmations to any person.

672 (b) Seek subpoenas or subpoenas duces tecum from any court

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673 to command the appearance of witnesses and the production of
 674 books, accounts, records, and other documents or materials at a
 675 time and place named in the subpoenas, and an authorized
 676 representative of the office may serve such subpoenas.

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

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

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

695 Section 16. Section 559.116, Florida Statutes, is created
 696 to read:

697 559.116 Cease and desist orders.—The office may issue and
 698 serve upon any person an order to cease and desist and to take
 699 corrective action if it has reason to believe the person is
 700 violating, has violated, or is about to violate any provision of

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701 this part, any rule or order issued under this part, or any
 702 written agreement between the person and the office. All
 703 procedural matters relating to issuance and enforcement of such
 704 order are governed by the Administrative Procedure Act.

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

708 559.117 ~~817.806~~ Violations; penalties.-

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

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

724 (a) The office may impose suspension rather than
 725 revocation of a registration if circumstances warrant that one
 726 or the other should be imposed and the registrant demonstrates
 727 that the registrant has taken affirmative steps that can be
 728 expected to effectively eliminate the violations and that the

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729 registrant's registration has never been previously suspended.

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

734 (3)-(2) It is Any person who violates any provision of this
 735 part commits a felony of the third degree, punishable as
 736 provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084 for any
 737 person to provide debt management or debt settlement services in
 738 this state without first registering with the office, or to
 739 register or attempt to register by means of fraud,
 740 misrepresentation, or concealment.

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

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

745 516.07 Grounds for denial of license or for disciplinary
 746 action.-

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

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

753 Section 20. This act shall take effect July 1, 2010.