By the Committees on Commerce, Economic Opportunities, and Consumer Services; Banking and Insurance; and Senators Aronberg, Atwater, Lynn and Campbell

310-2495-04

1	A bill to be entitled
2	An act relating to credit counseling services;
3	creating pt. IV, ch. 817, F.S.; providing
4	definitions; prohibiting certain persons from
5	accepting certain fees or costs from debtors
6	under certain circumstances; providing
7	exceptions; providing disclosure and financial
8	reporting requirements for debt management or
9	credit counseling services; providing
10	disbursement of funds requirements; providing
11	civil penalties; providing for awards of
12	attorney's fees and costs; providing for
13	criminal penalties; providing an effective
14	date.
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16	Be It Enacted by the Legislature of the State of Florida:
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18	Section 1. Part IV of chapter 817, Florida Statutes,
19	consisting of sections 817.801, 817.802, 817.803, 817.804,
20	817.805, and 817.806, is created to read:
21	<u>PART IV</u>
22	CREDIT COUNSELING SERVICES
23	817.801 Definitions
24	(1) "Credit counseling services" means confidential
25	money management, debt reduction, and financial educational
26	services.
27	(2) "Debt management services" means services provided
28	to a debtor by a credit counseling agency for a fee to:
29	(a) Effect the adjustment, compromise, or discharge of
30	any unsecured account, note, or other indebtedness of the
31	debtor; or

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CODING: Words stricken are deletions; words underlined are additions.

1	(b) Receive from the debtor and disburse to a creditor
2	any money or other thing of value.
3	(3) "Person" means any individual, corporation,
4	partnership, trust, association, or other legal entity.
5	(4) "Credit counseling agency" means any organization
6	providing debt management services or credit counseling
7	services.
8	817.802 Unlawful fees and costs
9	(1) It is unlawful for any person, while engaging in
10	debt management services or credit counseling services, to
11	charge or accept from a debtor, directly or indirectly, a fee
12	or contribution greater than \$50 for the initial setup or
13	initial consultation. Subsequently, the person may not charge
14	or accept a fee or contribution from a debtor greater than
15	\$120 per year for additional consultations or, alternatively,
16	if debt management services as defined in s. 817.801(2)(b) are
17	provided, the person may charge the greater of 7.5 percent of
18	the amount paid monthly by the debtor to the person or \$35 per
19	month.
20	(2) No provision of this section prohibits any person,
21	while engaging in debt management or credit counseling
22	services, from imposing upon and receiving from a debtor a
23	reasonable and separate charge or fee for insufficient funds
24	transactions.
25	817.803 ExceptionsNothing in this part applies to:
26	(1) Any debt management or credit counseling services
27	provided in the practice of law in this state;
28	(2) Any person who engages in debt adjustment to
29	adjust the indebtedness owed to such person; or
30	(3) The following entities or their subsidiaries:
31	(a) The Federal National Mortgage Association:

1	(b) The Federal Home Loan Mortgage Corporation;
2	(c) The Florida Housing Finance Corporation, a public
3	corporation created in s. 420.504; or
4	(d) A bank, bank holding company, trust company,
5	savings and loan association, credit union, credit card bank,
6	or savings bank that is regulated and supervised by the Office
7	of the Comptroller of the Currency, the Office of Thrift
8	Supervision, the Federal Reserve, the Federal Deposit
9	Insurance Corporation, the National Credit Union
10	Administration, or the Department of Financial Services.
11	817.804 Requirements; disclosure and financial
12	reporting
13	(1) Any person engaged in debt management services or
14	credit counseling services shall:
15	(a) Obtain from a certified public accountant licensed
16	under s. 473.308 an annual audit of all accounts of such
17	person in which the funds of debtors are deposited and from
18	which payments are made to creditors on behalf of debtors.
19	(b) Obtain and maintain at all times insurance
20	coverage for employee dishonesty, depositor's forgery, and
21	computer fraud. The insurance coverage must be in an amount
22	not less than the greater of \$100,000 or 10 percent of the
23	monthly average of the aggregate amount of all deposits made
24	for distribution to creditors with such person by all debtors
25	for the 6 months immediately preceding the date of initial
26	application for or renewal of the insurance. The deductible
27	on such coverage shall not exceed 10 percent of the face
28	amount of the policy coverage.
29	(2) A copy of the annual audit and insurance policies
30	required by this section shall be available for public
31	inspection at each branch location. Copies shall be provided,

1	upon written request, to any party requesting a copy for a
2	charge not to exceed the cost of the reproduction of
3	documents.
4	817.805 Disbursement of funds Any person engaged in
5	debt management or credit counseling services shall disburse
6	to the appropriate creditors all funds received from a debtor,
7	less any fees permitted by s. 817.802, within 30 days after
8	receipt of such funds. Further, any person engaged in such
9	services shall maintain a separate trust account for the
10	receipt of any funds from each debtor and the disbursement of
11	such funds on behalf of such debtor.
12	817.806 Violations
13	(1) Any person who violates any provision of this part
14	commits an unfair or deceptive trade practice as defined in
15	part II of chapter 501. Violators shall be subject to the
16	penalties and remedies provided therein. Further, any consumer
17	injured by a violation of this part may bring an action for
18	recovery of damages. Judgment shall be entered for actual
19	damages, but in no case less than the amount paid by the
20	consumer to the credit counseling agency, plus reasonable
21	attorney's fees and costs.
22	(2) Any person who violates any provision of this part
23	commits a felony of the third degree, punishable as provided
24	<u>in s. 775.082 or s. 775.083.</u>
25	Section 2. This act shall take effect July 1, 2004.
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1 2	STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR
	<u>CS/SB 2682</u>
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counseling agency to include debt management services	The committee substitute: (1) revises the definition of credit counseling agency to include debt management services; (2)
5 6	provides that the section requiring a debt management service or credit counseling service to obtain insurance coverage and undergo an annual audit applies to any person engaged in debt
7	management or credit counseling services; (3) removes reference to a fidelity bond and provides that a debt
8	management or credit counseling service must obtain insurance coverage for employee dishonesty, depositor's forgery, and
computer fraud in an amount not less than the greater of \$100,000 or 10 percent of the monthly average of the aggreamount of all deposits made for distribution to creditors such person by all debtors for the 6 months immediately preceding the date of initial application for or renewal	computer fraud 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
	preceding the date of initial application for or renewal of the insurance; (4) removes the requirement that the insurance
12	policy be issued by a company rated at least "A-," and removes the requirement that the policy provide 30 days' advance
13	written notice of termination of the policy; (5) creates a separate section on violations, in which it states that a
14	violation of any provision of this part is a violation of the Florida Deceptive and Unfair Trade Practices Act, and also
15	provides that any person who violates any provision of this part commits a third-degree felony; and (6) changes the
16	effective date to July 1, 2004.
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