

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 667 CS

Credit Counseling Services

SPONSOR(S): Hasner

TIED BILLS:

IDEN./SIM. BILLS: SB 1954

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade & Banking Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Olmedillo</u>	<u>Carlson</u>
2) <u>Business Regulation Committee</u>	<u>17 Y, 0 N</u>	<u>Watson</u>	<u>Liepshutz</u>
3) <u>Finance & Tax Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Levin</u>	<u>Diez-Arguelles</u>
4) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Credit counseling services generally advertise a service intended to assist people in managing their personal debt. Credit counseling services may attempt to help an individual avoid foreclosure and bankruptcy, reduce interest rates, and lower or consolidate monthly payments.

This bill creates a definition for "creditor contribution" to mean any sum that a creditor agrees to contribute to a credit counseling agency towards amounts payable to the creditor by the debtor. Creditor contributions may not reduce any sums to be credited to the account of a debtor making a payment to the credit counseling agency for further payment to the creditor.

The bill removes a cap limiting fees that may be charged to out-of-state customers.

The bill allows a debt management or credit counseling service to charge a reasonable and separate fee for insufficient funds transactions.

This bill expands the current requirement that any person engaged in debt management services or credit counseling services obtain an annual audit of all accounts in which the funds of debtors are deposited and subsequently disbursed to creditors.

Finally, the bill authorizes a debt management or credit counseling service to deduct any creditor contributions from all funds it is required to disburse to the creditor on behalf of the debtor.

The bill does not have an effect on state revenues or expenditures. (Please see "Fiscal Analysis and Economic Impact Statement.")

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Credit counseling organizations generally advertise a service intended to assist people with managing their personal debt. Credit counseling organizations may attempt to help an individual avoid foreclosure and bankruptcy, reduce interest rates, and lower or consolidate monthly payments.

Credit counseling organizations may also offer individual advice for developing budgets, managing money, using credit, and building a savings plan.

Many credit counseling services offer assistance through “Debt Management Plans” (DMP). The DMP is advertised as a way to pay down debt through monthly deposits to the credit counseling service, which in turn distributes these funds to the creditors. Credit counseling services advertise that they work with clients and creditors to design a debt repayment program that will minimize monthly payments, interest and related fees, and provide a manageable plan for clients.

A relatively new law became effective in 2004 directly regulating credit counseling organizations.¹ However, it provides exceptions for certain persons who may engage in debt management including those in the practice of law, any person who incidentally engages in debt adjustment, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Florida Housing Finance Corporation, a bank, a bank holding company, trust company, savings and loan association, credit union, credit card bank, or savings bank that is regulated 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, or the Department of Financial Services.²

The credit counseling industry is subsidized by various creditors (e.g. Visa, Mastercard, etc.) through contributions made to various counseling agencies. Typically, an organization engaged in debt management services withholds amounts due to the creditor by the debtor, which the creditor treats as a contribution to an exempt organization.

Proposed Changes

This bill defines “creditor contribution” to mean any sum that a creditor agrees to contribute to a credit counseling agency, whether directly or by setoff against amounts otherwise payable to the creditor on behalf of the debtors. However, the bill specifies that a “creditor contribution” may not reduce the amounts a debtor pays towards his or her debt. This definition ensures

¹ s. 1, ch. 2004-351., created as Part IV of Chapter ss. 817, F.S., ss.817.801-817.806, F.S.

² s. 817.803, F.S.

that consumers receive credit for 100% of the dollars that they pay for consolidation, regardless of any contributions by the credit card companies.

The bill clarifies that the limit on fees a credit counseling service charges does not apply to debtors residing out of Florida. This language will not prohibit a person engaged in debt management services from charging higher fees or costs to debtors located in other states than they do to Florida residents.

Furthermore, the bill clarifies that the law does not prohibit a debt management service or credit counseling service from charging a reasonable and separate fee for insufficient funds transactions.

Section 817.804, F.S., currently requires any person engaged in debt management or credit counseling services to obtain an annual audit of all accounts in which the funds of debtors are deposited and subsequently disbursed to creditors. The bill requires the audit be performed by a licensed certified public accountant in accordance with generally accepted auditing standards. It also amends the provision to specifically "include" all the above-mentioned accounts, which implies that the audit may not have covered all accounts previously.

Finally, the bill requires a debt management or credit counseling service to deduct any creditor contributions from all funds it is required to disburse to the creditor from those it receives from the debtor; and it clarifies that any person engaged in debt management services or credit counseling services shall only maintain a trust account for receipt of any funds from any and all debtors.

C. SECTION DIRECTORY:

Section 1 amends s. 817.801, F.S., and creates the definition of "creditor contribution".

Section 2 amends s. 817.802, F.S., and removes a cap limiting fees that may be charged to out-of-state customers and clarifies that a debt management service or credit counseling service may charge a reasonable and separate fee for insufficient funds transactions.

Section 3 amends s. 817.804, F.S., and expands the current requirement that any person engaged in debt management services or credit counseling services obtain from a licensed certified public accountant an annual audit in accordance with generally accepted auditing standards of all accounts in which the funds of debtors are deposited and subsequently disbursed to creditors.

Section 4 amends s. 817.805, F.S., and requires a debt management or credit counseling service to deduct any creditor contributions from all funds it is required to disburse to the creditor from those it receives from the debtor and clarifies that any person engaged in debt management services or credit counseling services shall only maintain a trust account for receipt of any funds from any and all debtors.

Section 5 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

This bill clarifies that the limit on fees a credit counseling service charges does not apply to debtors residing out-of-state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other: None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 21, 2006, the Economic Development, Trade and Banking Committee adopted an amendment to the bill. The amendment removes "negotiation and settlement" from the definition of debt management services, to conform to the companion SB 1954.

This analysis has been updated to reflect the committee substitute adopted by the Economic Development, Trade and Banking Committee at its February 21, 2006 meeting.

On March 31, 2006 the Finance and Tax Committee adopted an amendment which clarified the audit requirements. The audit must comply with generally accepted auditing standards and may be performed by a licensed certified public accountant, whether licensed in Florida or another state.