

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1031 Debt Relief Services
SPONSOR(S): Insurance & Banking Subcommittee, Buchanan
TIED BILLS: IDEN./SIM. BILLS: CS/SB 1074

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N, As CS	Fletcher	Lloyd
2) Commerce Committee	18 Y, 0 N	Fletcher	Hamon

SUMMARY ANALYSIS

Individuals seeking to manage and reduce their debts often engage credit counseling organizations who provide debt management services and credit counseling services. "Debt management services" is defined by Florida statute as services provided to a debtor by a credit counseling organization for a fee to effect the adjustment, compromise, or discharge of any unsecured account, note, or other indebtedness of the debtor, or receive from the debtor and disburse to a creditor any money or other thing of value.

Any person engaging in debt management services or credit counseling services must comply with Part IV of ch. 817, F.S., which sets a limitation on fees; requires certain disclosures and financial reporting; sets minimum insurance requirements; specifies acts which are considered violations; and subjects the person engaging in such services to the enforcement provisions of Part IV of ch. 817, F.S.

As an alternative to debt management services, individuals who struggle to pay their credit card bills can turn to organizations that offer debt relief services. Unlike credit counseling organizations, debt relief service providers are for-profit businesses that work with credit card companies to renegotiate the amount of principal owed on an individual's debt.

Florida law does not currently define "debt relief services" nor separately regulate providers of debt relief services. However, debt relief companies that use telemarketing to contact potential customers or hire people on their behalf to do so are regulated by the federal Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act), 15 U.S.C. ss. 6101-6108.

The federal regulation under the Telemarketing Act is known as the Telemarketing Sales Rule (TSR), 16 C.F.R. s. 310.2. The TSR provides certain definitions and specifies certain acts that are considered deceptive and abusive telemarketing practices. Although Florida law does not currently regulate providers of debt relief services, the Attorney General has sufficient authority to enforce a violation of the Telemarketing Act or the TSR as an unfair or deceptive trade practice under part II of ch. 501, F.S.

The bill:

- Expands the list of exceptions to Part IV of ch. 817, F.S., relating to credit counseling services, to also exempt a telemarketer or seller who provides any debt relief services; and
- Provides that certain relevant terms have the same meanings as provided in the federal Telemarketing Sales Rule, 16 C.F.R. s. 310.2.

The bill has no fiscal impact on state government or local government. It has an indeterminate positive and negative impact on the private sector.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Debt Management Services

Individuals seeking to manage and reduce their debts often engage credit counseling organizations who provide debt management services and credit counseling services.¹ These organizations are non-profit businesses that assist debtors with managing and reducing their debt by:

- Offering free counseling on credit practices,
- Enrolling qualifying debtors in debt management plans, and
- Providing community education to individuals and families on money management skills.²

“Debt management services” is defined by Florida statute as services provided to a debtor by a credit counseling organization for a fee to effect the adjustment, compromise, or discharge of any unsecured account, note, or other indebtedness of the debtor, **or** receive from the debtor and disburse to a creditor any money or other thing of value.³

Any person engaging in debt management services or credit counseling services must comply with Part IV of ch. 817, F.S., which sets a limitation on fees;⁴ requires certain disclosures and financial reporting;⁵ sets minimum insurance requirements;⁶ specifies certain acts that are considered violations;⁷ and subjects the person engaging in such services to the enforcement provisions of Part IV of ch. 817, F.S.⁸

Additionally, any person who violates Florida’s laws relating to debt management services commits an unfair or deceptive trade practice as defined in Part II of ch. 501, F.S., which relates to Florida’s consumer protection laws.⁹ Further, any consumer injured by a violation of Part II of ch. 501, F.S., may bring an action for recovery of damages.¹⁰ If an injured consumer does bring such an action, judgement must 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.¹¹

Florida law currently provides that Part IV of ch. 501, F.S., does not apply to:

- Any debt management or credit counseling services provided in the practice of law in this state;
- Any person who engages in debt adjustment to adjust the indebtedness owed to such person; and
- The following entities and their subsidiaries:
 - The Federal National Mortgage Association;
 - The Federal Home Loan Mortgage Corporation;
 - The Florida Housing Finance Corporation;
 - 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,

¹ Consumer Financial Protection Bureau, *What is credit counseling?*, <https://www.consumerfinance.gov/ask-cfpb/whatiscredit-counseling-en-1451/> (last visited Jan. 12, 2024).

² *Id.*

³ S. 817.801(4), F.S.

⁴ See s. 817.802, F.S.

⁵ See s. 817.804, F.S.

⁶ See s. 817.804(1)(b), F.S.

⁷ S. 817.806, F.S.

⁸ *Id.*

⁹ S. 817.806(1), F.S.

¹⁰ *Id.*

¹¹ *Id.*

- the Federal Deposit Insurance Corporation, the National Credit Union Administration, OFR, or any state banking regulator;
- 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
 - Any subsidiary or affiliate of a bank holding company, its employees and its exclusive agents acting under written agreement.¹²

Debt Relief Services

As an alternative to debt management services, individuals who struggle to pay their credit card bills can turn to organizations that offer debt relief services.¹³ Unlike credit counseling organizations, debt relief service providers are for-profit businesses that work with credit card companies to renegotiate the amount of principal owed on an individual's debt.¹⁴

Florida law does not currently define "debt relief services" nor separately regulate providers of debt relief services. However, debt relief companies that use telemarketing to contact potential customers or hire people on their behalf to do so are regulated by the federal Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act), 15 U.S.C. ss. 6101-6108.¹⁵

The federal regulation under the Telemarketing Act is known as the Telemarketing Sales Rule (TSR), 16 C.F.R. s. 310.2. The TSR defines the following terms as follows:

- "Debt relief services" means any program that claims directly, or implies, that it can renegotiate, settle, or in some way change the terms of an individual's debt to an unsecured creditor or debt collector.¹⁶ These services typically include reducing the balance, interest rates, or fees that an individual owes.¹⁷
- "Seller" means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.¹⁸
- "Telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.¹⁹

The TSR specifies certain acts that are considered deceptive and abusive telemarketing practices.²⁰ Examples of such acts include:

- Before a customer consents to pay for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, certain material information;²¹
- Misrepresenting, directly or by implication, in the sale of goods or services, certain material information;²²
- Causing billing information to be submitted for payment, or collecting payment for goods or services, directly or indirectly, without the customer's express authorization;²³
- Assisting or facilitating any seller or telemarketer that knows or consciously avoids knowing that they are engaged in any act or practice that violates the provisions of the regulations;²⁴

¹² S. 817.803, F.S.

¹³ Federal Trade Commission, *Debt Relief Services & the Telemarketing Sales Rule: A Guide for Business*, <https://www.ftc.gov/system/files/documents/plain-language/bus72-debt-relief-services-telemarketing-sales-rule-guide-business.pdf> (last visited Jan. 12, 2024).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 16 C.F.R. s. 310.2(o), F.S.

¹⁷ *Id.*

¹⁸ 16 C.F.R. s. 310.2(dd).

¹⁹ 16 C.F.R. s. 310.2(ff).

²⁰ See 16 C.F.R. ss. 310.3 and 310.4.

²¹ See 16 C.F.R. s. 310.3(a)(1)(i)-(viii).

²² See 16 C.F.R. s. 310.3(a)(2).

²³ See 16 C.F.R. s. 310.3(a)(3).

²⁴ See 16 C.F.R. s. 310.3(b).

- Requesting or receiving payment for goods or services represented to remove derogatory information from, or improve, a person’s credit history, credit record, or credit rating until certain conditions are met;²⁵ and
- Requesting or receiving payment in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit.²⁶

Although Florida law does not currently regulate providers of debt relief services, the Attorney General has sufficient authority to enforce a violation of the Telemarketing Act or the TSR as an unfair or deceptive trade practice under part II of ch. 501, F.S.²⁷

Effect of the Bill

The bill expands the list of exceptions to Part IV of ch. 817, F.S., to any telemarketer or seller who provides any debt relief services. The bill also provides that the terms “telemarketer,” “seller,” and “debt relief services” have the same meanings as provided in the TSR.

B. SECTION DIRECTORY:

Section 1. Amends s. 817.803, F.S., relating to exceptions.

Section 2. Provides an effective date of July 1, 2024.

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:

None.

D. FISCAL COMMENTS:

None.

²⁵ See 16 C.F.R. s. 310.4(a)(2).

²⁶ See 16 C.F.R. s. 310.4(a)(4).

²⁷ Email from Elizabeth Guzzo, Director of Legislative Affairs, Office of the Attorney General, RE: HB 1031, Debt Relief Services (Jan. 17, 2024).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment:

- Expanded the list of exceptions to part IV of ch. 817, F.S., relating to credit counseling services, to any telemarketer or seller who provides any debt relief services; and
- Provided that certain terms have the same meanings as provided in the TSR.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.