

The Honorable Garrett Richter  
322 Senate Office Building  
404 South Monroe Street  
The Florida Legislature  
Tallahassee, FL 32399-1100

Sent via e-mail:  
richter.garrett.web@flsenate.gov

RE: SB 336

Dear Sen. Richter:

The organizations signed below have strong concerns about HB 67 and SB 336, Credit Counseling Services, and cannot support the bills. Existing Florida law is more than adequate to protect consumers in the area of debt settlement. We will share with you some history of the debt settlement industry and our specific concerns with the legislation.

Debt settlement, as an industry, markets itself as being able to eliminate consumer debt by negotiating reduced debt payoffs with a consumer's creditors. The model generally requires that the debtor stop making payments to their creditors and, instead, make payments directly to the debt settlement company or to an account controlled by the debt settlement company. Large fees are charged for this service. In an industry sample of 4500 debt settlement customers of one company, 60% cancelled the debt settlement service, and the median time for cancellation was between five and six months after starting debt settlement.<sup>1</sup> The industry's own study shows why the debt settlement model, relying on large fees obtained as soon as possible because of the overwhelming early cancellation by consumers, does not work. From approximately 2005 to 2009, 21 states brought 128 enforcement actions against 84 debt relief companies for unfair or deceptive trade practices. Florida's Attorney General Bill McCollum brought numerous suits against debt settlement service providers for violating Florida law. As recently as September 2011, Colorado Attorney General announced another lawsuit against an Orlando based company engaging in debt management services and preying on Colorado consumers.

Effective September 2010, the Federal Trade Commission passed regulations to rein in the debt settlement industry. Though the FTC rules provide much needed consumer protections, including guidance on the timing of the fees, the FTC does not have the authority to regulate the amount of the fee. State law must continue to protect consumers from extremely high debt settlement fees.

HB 67 and SB 336 amend current law governing debt settlement companies found in Chapter 817. Under current law, by definition, debt settlement services are included in Chapter 817 as debt management services. The current fees allowed are

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<sup>1</sup> R. Briesch, *Economic Factors and the Debt Management Industry*, August 6, 2009.

a \$50 set up plus \$35 per month. HB 67 and SB 336 will increase these allowed fees and make other changes that do not support consumers:

**Increases Fees** – First and foremost, the bill allows debt settlement service providers to charge fees in excess of what current law allows. Under the suggested changes, the debt settlement service provider may charge fees once a single debt is “altered” and the consumer has made only one payment on this debt. The fees may be charged in two ways: proposed sec. 817.8035(5)(c)(1) has no cap on the fee charged; it provides that the fees must be in the same proportion each debt bears to the entire debt; proposed sec. 817.8035(5)(c)(2) places a fee cap of 30% of the amount saved by the consumer. Either method for calculating the fees is a dramatic increase over the current fee charged.

**Illusory Disclosures** - The consumer is not given true pre-contract disclosures since the consumer does not receive a copy of the disclosures until 7 days after the consumer consents to pay for the debt settlement services. The reasoning for this is that the industry relies heavily on Internet and telephone sales; but that is no excuse for the consumer entering into an agreement without crucial disclosures.

**No Pre-Screening of Applicants to Determine if Program is Suitable for the Consumer** – The bills do not require the debt settlement service provider to conduct a financial analysis prior to enrolling the consumer to ensure that the consumer will benefit from the program.

**A Consumer Withdrawing Still Loses Fees** – The bills provide that the consumer may “withdraw from the debt settlement service at any time without penalty” and will receive all funds back except the funds already earned by the debt settlement provider. The debt settlement service provider may begin charging fees immediately upon negotiating the settlement of one of the consumer’s debts and after the consumer has made one payment on the debt. Nothing in the legislation provides for the timing of the fees after the initial requirements are met. This industry has a history of stacking fees as early as possible.

Based on the industry’s own study of their success rate and other data available, the risk is too high and success too low to allow for-profit debt settlement service providers to charge high fees to consumers who are already having financial difficulty. Consumers in Florida have enjoyed the protections of the current fee structure provided by law. This fee structure should be retained.

Sincerely,

Florida Consumer Action Network  
Bill Newton, Executive Director  
Alice Vickers, Consumer & Housing Issues Advocate



United Way of Florida  
Theodore G. Granger, President



Florida Public Interest Research Group  
Brad Ashwell, Legislative Advocate



Florida Legal Services, Inc.  
Dorene Barker, Legislative Director



Jacksonville Area Legal Aid, Inc.  
Lynn Drysdale, Esq.



Consumers Union  
Suzanne Martindale, Staff Attorney



Walter Dartland, Executive Director  
Consumer Federation of the Southeast

