



Senate

General Assembly

File No. 138

February Session, 2008

Substitute Senate Bill No. 534

Senate, March 25, 2008

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING CASH ADVANCE CONTRACTS AND PLAINTIFFS IN PERSONAL INJURY AND WRONGFUL DEATH CASES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2008*) (a) As used in
2 subsections (a) to (j), inclusive, of this section:

3 (1) "Cash advance contract" means any financial transaction
4 resulting in an advance of compensation to a consumer who has a
5 pending personal injury or wrongful death claim or civil action in
6 exchange for the contractual right to receive any funds in excess of the
7 amount of that advance from the proceeds of any realized settlement,
8 judgment or verdict resulting from such claim or action, including, but
9 not limited to, any nonrecourse capital advances made for such
10 purposes.

11 (2) "Consumer" means any person, estate, legal representative or
12 assignee of a person or estate, who has any financial interest in a

13 pending personal injury or wrongful death claim or civil action or has
14 a reasonable expectation of the receipt of compensation from such a
15 claim or action.

16 (3) "Cash advance company" means a person or entity that offers to
17 provide or provides to a consumer in this state a nonrecourse capital
18 advance, based on the consumer's status as a plaintiff in a pending
19 personal injury or wrongful death claim or civil action.

20 (b) All cash advance companies, their employees, agents,
21 subsidiaries, successors and assigns, who enter into cash advance
22 contracts with consumers, shall comply with the following: (1) All cash
23 advance contracts shall comply with sections 42-152 to 42-158,
24 inclusive, of the general statutes or the 2008 supplement to the general
25 statutes; and (2) such contracts shall be filled in completely and contain
26 the following disclosures on the first page, in 12-point or larger bold
27 type, with a heading entitled "Disclosure Statement" and in a form
28 approved by the Department of Consumer Protection: (A) The total
29 amount to be advanced to the consumer; (B) itemization of all fees; (C)
30 percentage fee or rate of return, and stated on an annualized basis,
31 including frequency of compounding; and (D) the total amount to be
32 repaid by the consumer, calculated at six-month intervals, carried
33 forward to thirty-six months, including all fees and any minimum
34 required payment amount.

35 (c) (1) All cash advance contracts shall provide that the consumer
36 may cancel the contract within five business days following the
37 consumer's receipt of funds, without penalty or further obligation.
38 Such contracts shall contain the following notice, written in a clear and
39 conspicuous manner: "CONNECTICUT CONSUMER'S RIGHT TO
40 CANCELLATION: YOU MAY CANCEL THIS CONTRACT
41 WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE
42 BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING
43 FROM (insert the name of the cash advance company)". (2) Such
44 contracts shall specify that, in order for the cancellation to be effective,
45 the consumer must either (A) return the full amount of the disbursed

46 funds to the cash advance company by delivering the cash advance
47 company's uncashed check to the office address designated on the
48 disclosure statement, or (B) mail a notice of cancellation and include
49 with the mailing a return of the full amount of disbursed funds, in the
50 form of the cash advance company's check, a registered or certified
51 check or a money order, by insured, registered or certified United
52 States mail, postmarked within five business days of receiving the
53 funds from the cash advance company, at the address specified for
54 such cancellation in the cash advance contract.

55 (d) The consumer shall initial each page of a cash advance contract.
56 All cash advance contracts shall contain a legend, immediately above
57 the consumer's signature, in 12-point or larger bold type, reading: "DO
58 NOT SIGN THIS CASH ADVANCE CONTRACT BEFORE YOU
59 READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACE.
60 YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY BEFORE
61 YOU SIGN THIS CONTRACT. YOU ARE ENTITLED TO A
62 COMPLETELY FILLED IN COPY OF THIS CONTRACT."

63 (e) All cash advance contracts shall contain a written certification by
64 the consumer's attorney of record stating the attorney has reviewed the
65 contract and explained its terms to the consumer, including the
66 annualized rate of return used to calculate the amount to be paid by
67 the consumer.

68 (f) Except when oral negotiations are conducted in another
69 language, all cash advance contracts shall be printed in both English
70 and Spanish. In the event oral negotiations are conducted in any other
71 language (1) the principal terms of the contract shall be translated in
72 writing into the consumer's native language; (2) the consumer shall
73 sign the translated document containing the principal terms and initial
74 each page; and (3) the translator shall sign a notarized affirmation
75 confirming that the principal terms have been presented to the
76 consumer in his or her native language and acknowledged by the
77 consumer, in writing. For purposes of this subsection, "principal terms"
78 includes all of the items required by subsections (b) to (e), inclusive, of

79 this section.

80 (g) If a cash advance contract provides for attorney's fees and costs
 81 in the case of a breach of the contract by either party, the contract shall
 82 provide that such attorney's fees and costs shall be reasonable and may
 83 be recovered by the prevailing party. Any limitation placed on such
 84 attorney's fees and costs shall apply equally to both parties.

85 (h) A cash advance contract shall not require mandatory arbitration
 86 to resolve disputes between the parties.

87 (i) A cash advance company shall register its name, address and
 88 principal place of business with the Department of Consumer
 89 Protection and shall submit any proposed cash advance contract form
 90 to be used in this state at least ninety days before entering into the
 91 contract with a consumer.

92 (j) Failure to comply with any provision of subsections (a) to (i),
 93 inclusive, of this section shall be an unfair trade practice pursuant to
 94 subsection (a) of section 42-110b of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2008	New section

Statement of Legislative Commissioners:

In subdivision (1) of subsection (b) of section 1, "or the 2008 supplement to the general statutes" was added for clarity.

GL *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Consumer Protection, Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a potential minimal revenue gain due to Connecticut Unfair Trade Practices Act (CUTPA) violations of provisions in the bill.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**SB 534*****AN ACT CONCERNING CASH ADVANCE CONTRACTS AND PLAINTIFFS IN PERSONAL INJURY AND WRONGFUL DEATH CASES.*****SUMMARY:**

This bill requires a cash advance company to (1) register its name, address, and principal place of business with the Department of Consumer Protection (DCP) and (2) submit proposed contract forms to DCP at least 90 days before entering into them with a consumer.

The bill also requires cash advance companies, and their employees who enter cash advance contracts, to write contracts that comply with the law requiring plain language in consumer contracts and to disclose the amount of fees and interest the consumer must pay (see BACKGROUND).

The bill requires cash advance contracts to (1) give consumers five business days in which to cancel a contract; (2) contain certain provisions; and (3) be printed in both English and Spanish, with exceptions for negotiations conducted in other languages.

If a cash advance contract provides for attorney's fees and costs in the case of a breach of the contract by either party, the bill requires contracts to provide that the attorney's fees and costs must be reasonable and may be recovered by the prevailing party. Any limitation placed on such attorney's fees and costs must apply equally to both parties.

The bill prohibits the contracts from requiring mandatory arbitration to resolve disputes.

A violation of the bill's requirements is deemed to be an unfair trade

practice (see BACKGROUND).

EFFECTIVE DATE: October 1, 2008

CASH ADVANCE CONTRACTS AND COMPANIES

A cash advance contract is a financial transaction resulting in an advance of compensation to a consumer who has a pending personal injury or wrongful death claim or civil action in exchange for the contractual right to receive any funds in excess of the amount of that advance from the proceeds of any settlement, judgment, or verdict resulting from the claim or action, including nonrecourse capital advances made for such purposes (see BACKGROUND). A cash advance company is one that provides or offers to provide a nonrecourse capital advance based on a consumer's status as a plaintiff in a pending personal injury or wrongful death claim or civil action. The bill defines "consumer" as a person, estate, legal representative, or assignee of a person or estate who has a financial interest in a pending personal injury or wrongful death claim or civil action or has a reasonable expectation of receiving compensation from such a claim or action.

FIVE-DAY COOLING OFF PERIOD

The bill requires a cash advance contract to allow a consumer to cancel it within five business days after receiving a cash advance, without penalty or further obligation. The contracts must include the following notice, written clearly and conspicuously: "CONNECTICUT CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM (insert the name of the cash advance company)."

The contracts must specify that, for the cancellation to be effective, the consumer must either:

1. return the full amount of the disbursed funds to the cash advance company by delivering the cash advance company's

uncashed check to the office address designated on the disclosure statement, or

2. mail a notice of cancellation and return the full amount in the form of (a) the cash advance company's check, (b) a registered or certified check, or (c) a money order by insured, registered, or certified United States mail, postmarked within five business days of receiving the funds and mailed to the address stated in the cash advance contract.

FEE AND RATE DISCLOSURE

The bill requires cash advance contracts to be filled in completely and include the following disclosures on the first page, in 12-point or larger bold type, with a heading entitled "Disclosure Statement" and in a form DCP approves:

1. the total amount to be advanced to the consumer;
2. itemization of all fees;
3. percentage fee or rate of return, stated on an annualized basis, including frequency of compounding; and
4. the total amount the consumer must repay, calculated at six-month intervals, carried forward to 36 months, including all fees and any required minimum payment.

REQUIRED CONTRACT PROVISIONS

The bill requires consumers to initial each page of a cash advance contract. All cash advance contracts must include a legend, immediately above the consumer's signature, in 12-point or larger bold type, stating: "DO NOT SIGN THIS CASH ADVANCE CONTRACT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACE. YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY BEFORE YOU SIGN THIS CONTRACT. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS CONTRACT."

The bill also requires cash advance contracts to include a written certification by the consumer's attorney of record stating the attorney has reviewed the contract and explained its terms to the consumer, including the annualized rate of return used to calculate the amount to be paid by the consumer.

LANGUAGE OF THE CONTRACT

Except when oral negotiations are conducted in another language, the bill requires cash advance contracts to be printed in both English and Spanish. If oral negotiations are conducted in another language:

1. the contract's principal terms must be translated in writing into the consumer's native language;
2. the consumer must sign the translated document containing the principal terms and initial each page; and
3. the translator must sign a notarized affirmation confirming that the principal terms have been presented to the consumer in his or her native language and acknowledged by the consumer in writing.

For this purpose, "principal terms" include all of the requirements relating to (1) contracts being written in plain language with all blanks filled in and containing required disclosures, (2) a consumer's right to cancel within five business days, (3) the requirement that a consumer initial each page, (4) the required statement that must appear immediately above a consumer's signature, and (5) a consumer's attorney of record reviewing the contract.

BACKGROUND

Plain Language in Consumer Contracts

The law requires all consumer contracts, defined as those having a value of \$25,000 or residential leases, to be written in plain language and establishes two alternative tests for determining if the requirement has been satisfied. The subjective test requires the contracts to meet nine standards, such as using short sentences and paragraphs,

everyday words, and readable type. The objective test has 11 standards, such as limiting the number of words per sentence to 50 and words per paragraph to 150, limiting the average number of syllables per word to less than 1.55, and prohibiting type face smaller than eight points (CGS § 42-152).

Nonrecourse Payments

An injured person who receives a non-recourse payment does not have to repay the advance if they are unsuccessful in the lawsuit, and only has to repay up to the amount of their share of the settlement in the event that the settlement is smaller than anticipated

Connecticut Unfair Trade Practices Act

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 19 Nay 0 (03/06/2008)