



Senate

General Assembly

File No. 184

January Session, 2009

Substitute Senate Bill No. 705

Senate, March 25, 2009

The Committee on Housing reported through SEN. GOMES of the 23rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING DEBT REDUCTION SERVICES.

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

1 Section 1. Section 36a-700 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2009*):

3 (a) As used in this section: [, "credit clinic"]

4 (1) (A) "Credit clinic" means any person who sells, provides or
5 performs, or who represents that such person can or will sell, provide
6 or perform, a service for the express or implied purpose of correcting,
7 changing or deleting adverse entries on a consumer's credit record,
8 history or rating, [or] providing advice or assistance to a consumer
9 with regard to correcting, changing or deleting adverse entries on a
10 consumer's credit record, history or rating in return for the payment of
11 a fee; [, "Credit clinic"] and (B) "credit clinic" does not include: [(1)] (i)
12 Credit rating agencies as defined in section 36a-695; [(2)] (ii) any
13 person licensed to practice law in this state provided such person
14 renders services [as a credit clinic, as defined in this subsection]

15 described in subparagraph (A) of this subdivision, within the course
16 and scope of his practice as an attorney; or [(3)] (iii) any organization
17 [which] that is exempt from taxation pursuant to Section 501(c)(3) of
18 the Internal Revenue Code of 1986, or any subsequent corresponding
19 internal revenue code of the United States, [as from time to time
20 amended] as amended from time to time;

21 (2) "Debt reduction service" means the selling, provision or
22 performance of, or the representation that a person can sell, provide or
23 perform, a service for the express or implied purpose of reducing or
24 eliminating a consumer's debt or reducing the interest rate charges on
25 such debt, and includes foreclosure rescue services except when such
26 services are performed by (A) any bank or credit union licensed or
27 chartered by the federal government, the state of Connecticut or any
28 other state; (B) any existing creditor of the consumer when such service
29 relates solely to the debt the consumer owes to such creditor; (C) any
30 debt adjuster licensed pursuant to sections 36a-655 to 36a-665,
31 inclusive, when performing debt adjustment services under such
32 license; or (D) an attorney in the representation of a client;

33 (3) "Foreclosure rescue services" means services related to or
34 promising assistance in connection with (A) avoiding or delaying
35 actual or anticipated foreclosure proceedings concerning residential
36 property, or (B) curing or otherwise addressing a default or failure to
37 timely pay with respect to a residential mortgage loan obligation and
38 includes, but is not limited to, the offer, arrangement or placement of a
39 residential mortgage loan or other loan when those goods or services
40 are advertised, offered or promoted in the context of foreclosure-
41 related services.

42 (b) A credit clinic shall provide to each purchaser of the services of a
43 credit clinic a contract which contract shall include, in bold face type a
44 minimum size of ten points, the following statements:

45 RIGHT TO REVIEW YOUR FILE

46 The federal Fair Credit Reporting Act gives you the right to know

47 what your credit file contains, and the credit rating agency must
48 provide someone to help you to interpret the data. Sections 36a-695 to
49 36a-699, inclusive, of the Connecticut general statutes [gives] give you
50 the right to receive an actual copy of your credit report. You will be
51 required to identify yourself to the credit rating agency and you may
52 be charged a small fee. There is no fee, however, if you are seeking a
53 credit report for the first time in twelve months or have been turned
54 down for credit, employment or insurance because of information
55 contained in a report within the preceding thirty days.

56 **INCORRECT INFORMATION**

57 If you notify the credit rating agency that you dispute the accuracy
58 of information, the agency must reinvestigate and modify or remove
59 inaccurate data. The credit rating agency may not charge any fee for
60 this investigation or for modifying or removing inaccurate data. If
61 reinvestigation does not resolve the dispute, you may enter a
62 statement of one hundred words or less in your file [,] explaining why
63 you dispute the accuracy of your record or file. This statement, or a
64 coded version of it, must be included with all reports [which] that the
65 credit rating agency issues on you. If the error is corrected, the credit
66 rating agency must notify any person who requested a report on you
67 during the previous two years for employment purposes and the
68 previous six months for any other purpose.

69 **TIME LIMITS ON ADVERSE DATA**

70 Most kinds of information in your file may be reported for a period
71 of seven years. If you have declared personal bankruptcy, however,
72 that fact may be reported for ten years. After seven or ten years, the
73 information cannot be disclosed by a credit rating agency unless you
74 are being investigated for a credit application of fifty thousand dollars
75 or more, for an application to purchase life insurance of fifty thousand
76 dollars or more, or for employment at an annual salary of twenty
77 thousand dollars or more.

78 (c) In addition to statements required in subsection (b) of this

79 section with regard to a credit clinic, each contract for a credit clinic or
80 a debt reduction service shall contain a complete, detailed list of
81 services to be performed, [by the credit clinic] the costs of such services
82 and the results to be achieved. [by the credit clinic.] A copy of the
83 consumer's current credit report shall be attached to the contract with
84 the adverse entries to be modified clearly marked. Each debt reduction
85 service contract shall contain (1) a statement certifying that the person
86 offering debt reduction services has reviewed the consumer's debt, and
87 (2) an individualized evaluation of the likelihood that the proposed
88 debt reduction services would reduce the consumer's debt or debt
89 service or, if appropriate, prevent the consumer's residential home
90 from being foreclosed. Each contract shall allow the consumer to
91 cancel or rescind such contract during the three-day period after the
92 date on which the consumer signed the contract. Such contract shall
93 contain a clear and conspicuous caption that shall read, "Buyer's three-
94 day right to cancel", along with the following statement: "If you wish
95 to cancel this contract, you may cancel by mailing a written notice by
96 certified or registered mail to the address specified below. The notice
97 shall state that you do not wish to be bound by this contract and must
98 be delivered or mailed before midnight of the third business day after
99 you sign this contract.".

100 (d) Any contract [which] that does not comply with the provisions
101 of subsections (b), [and] (c) and (e) of this section shall be void and the
102 credit clinic or debt adjuster shall return to the consumer any
103 payments made by the consumer [to the credit clinic] under the voided
104 contract.

105 (e) No credit clinic or person offering debt reduction services may
106 charge a fee or receive any money or other valuable consideration for
107 the performance of any service the credit clinic or person offering debt
108 reduction services has agreed to perform for any consumer until the
109 credit clinic or person offering debt reduction services has fully
110 performed such service. No person may sell, provide, perform or
111 represent that such person can or will sell, provide or perform a debt
112 reduction service unless such person is an organization exempt from

113 taxation under Section 501(c)(3) of the Internal Revenue Code of 1986
114 or any subsequent corresponding internal revenue code of the United
115 States, as amended from time to time.

116 (f) The Banking Commissioner may review any fees or charges
117 assessed by the credit clinic or the person offering debt reduction
118 services and order the reduction of such fees or charges or repayment
119 of such amount of the fees or charges that the commissioner deems
120 excessive, taking into consideration the fees that other credit clinics or
121 other persons performing similar debt reduction services charge for
122 such services and the financial benefit to the consumer of such
123 services. In conducting an investigation pursuant to this subsection,
124 the commissioner shall have the same authority as specified in section
125 36a-17.

126 (g) The provisions of this section shall apply to any credit clinic or
127 debt reduction service contract if the consumer signing the contract is a
128 resident of this state or maintains a domicile in this state and such
129 consumer negotiates or agrees to the terms of the services contract in
130 person, by mail, by telephone or via the Internet while physically
131 present in this state.

132 ~~[(f)]~~ (h) A violation of any provision of this section shall be deemed
133 an unfair or deceptive trade practice pursuant to section 42-110b.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2009	36a-700

HSG *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Consumer Protection, Dept.	GF - Cost	120,000	120,000
Consumer Protection, Dept.	GF - Revenue Gain	Potential	Potential
State Comptroller - Fringe Benefits ¹	GF - Cost	65,000	65,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a cost to the state of approximately \$185,000 due to the need for a Special Investigator and an Accountant in the Department of Consumer Protection (DCP) plus fringe benefits. The bill would have the Department of Consumer Protection responsible for regulating debt reduction services & foreclosure rescue services and for ensuring the provision of consumer protection contracts that provide a 3-day right of cancellation for these services. The DCP would be in charge of oversight for any companies that provide these services but are not licensed by the State Department of Banking. The contract disputes with these entities could become Connecticut Unfair Trade Practices Act (CUTPA) complaints and entail consumer restitution and therefore result in a potential revenue gain to the state.

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

The Out Years

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

OLR Bill Analysis**sSB 705*****AN ACT CONCERNING DEBT REDUCTION SERVICES.*****SUMMARY:**

This bill (1) defines, regulates, and requires certain actions of debt reduction services, similar to current law's requirements for credit clinics, and (2) requires debt reduction services to be tax-exempt nonprofit entities, as defined under federal law, to operate in the state.

It creates a three-day period during which a consumer may break a debt reduction contract without consequence, and extends this to credit clinic service contracts.

The bill applies to contracts of a credit clinic service or debt reduction service, which includes certain foreclosure rescue services, when the consumer who signs the contract is a Connecticut resident or maintains a home in the state and negotiates or agrees to the contract terms in person, by mail or telephone, or via the Internet while physically present in the state.

Under the bill, the banking commissioner may review any fees or charges a credit clinic or person offering debt reduction services assesses. He has the same investigative powers for these purposes as with other banking issues.

Violations under the bill, as with current law concerning credit clinics, are an unfair trade practice.

The bill also makes conforming and technical changes.

EFFECTIVE DATE: July 1, 2009

DEBT REDUCTION SERVICES AND CREDIT CLINICS

Debt Reduction Services Definition

The bill defines “debt reduction services” as the selling, providing, or performing of, or representation that a person can sell, provide, or perform, a service for the express or implied purpose of reducing or eliminating a consumer’s debt or reducing the interest rate charges on such debt. The definition includes foreclosure rescue services, but, it excepts services preformed by any:

1. federally or state-licensed or chartered bank or credit union;
2. existing creditor of the consumer when the service relates solely to the debt the consumer owes that creditor;
3. debt adjuster licensed under Connecticut law, when performing debt adjustment services under such license; or
4. attorney representing a client.

Under the bill, “foreclosure rescue services” means those related to or promising assistance with:

1. avoiding or delaying actual or anticipated foreclosure proceedings of residential property or
2. fixing a default or failure to pay a residential mortgage loan obligation on time, including the offer, arrangement or placement of a residential mortgage loan or other loan when those goods or services are advertised, offered, or promoted in as foreclosure-related services.

Credit Clinics

By law, a credit clinic is a business that offers services to correct, change, or delete adverse credit entries other than credit rating agencies, attorneys, and certain tax-exempt organizations.

Tax Exemption

Current law, unchanged by the bill, prohibits tax exempt organizations from operating credit clinics. With respect to debt

reduction services, the bill requires that they be tax exempt as defined by federal law.

Other Requirements and Prohibitions for Debt Reduction Service Companies

The bill prohibits debt reduction services from charging or being paid in advance for their services and requires them to disclose certain information about their services and charges, similar to the law for credit clinics.

By law, each contract for a credit clinic must contain a complete, detailed list of services to be performed by the clinic and the results the clinic will achieve. A copy of the consumer's current credit report must be attached to the contract with the adverse entries to be modified clearly marked. The bill extends these requirements to debt services, including foreclosure rescue services.

It requires all debt reduction service contracts to contain:

1. a statement certifying that the person offering debt reduction services has reviewed the consumer's debt and
2. an individualized evaluation of the likelihood that the proposed debt reduction services would reduce the consumer's debt or debt service or, if appropriate, prevent the consumer's residential home from being foreclosed.

The bill requires each contract to allow the consumer to cancel or rescind the contract during the three-day period after the date on which the consumer signed the contract. The contract must contain a clear and conspicuous caption stating: "Buyer's three-day right to cancel." It must also state:

"If you wish to cancel this contract, you may cancel by mailing a written notice by certified or registered mail to the address specified below. The notice shall state that you do not wish to be bound by this contract and must be delivered or mailed before midnight of the third business day after

you sign this contract.”

By law, a credit clinic contract that does not contain the provisions current law requires is void and the credit clinic must return any payments the consumer made under the voided contract to the consumer. The bill makes void debt reduction service contracts, including foreclosure rescue services, that do not contain the bill’s requirements (e.g., three-day cancellation clause), and stipulates that such services must also return a consumer’s payments in such a case.

Banking Commissioner’s Powers

The commissioner may order debt reduction services to reduce or repay portions of the fees or charges that he deems excessive, taking into consideration the fees that other credit clinics or similar debt reduction services charge for their services and the financial benefit of the services to the consumer.

BACKGROUND

Unfair Trade Practices

The Connecticut Unfair Trade Practice Act allows the Consumer Protection 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. It 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

Housing Committee

Joint Favorable Substitute

Yea 10 Nay 0 (03/10/2009)