



# Senate

General Assembly

**File No. 912**

January Session, 2009

Substitute Senate Bill No. 705

*Senate, May 7, 2009*

The Committee on Appropriations reported through SEN. HARP of the 10th 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 Section 36a-700 of the general statutes is repealed and the  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.

134 Sec. 2. (NEW) (Effective July 1, 2009) Notwithstanding any provision  
135 of the general statutes, moneys received or collected by the Banking  
136 Commissioner on account of, or derived from, assessments or fees  
137 pursuant to section 36a-65 of the general statutes shall be allocated by  
138 the Secretary of the Office of Policy and Management to the  
139 Department of Consumer Protection and the State Comptroller in the  
140 amounts necessary for funding oversight of persons providing debt  
141 reduction services or foreclosure rescue services, as defined in section  
142 36a-700 of the general statutes, as amended by this act, or providing  
143 services as a credit clinic, as defined in said section 36a-700.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	36a-700
Sec. 2	<i>July 1, 2009</i>	New section

**APP**      *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.	BF - Cost	120,000	120,000
Consumer Protection, Dept.	BF - Revenue Gain	Potential	Potential
State Comptroller - Fringe Benefits <sup>1</sup>	BF - Cost	65,000	65,000

Note: BF=Banking 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 DCP 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. Funding for this program would come from the Banking Fund which is currently projected to have a balance of \$17.5 million as of June 30, 2009.

<sup>1</sup> 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 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.

***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 provides funding for oversight of these services. Specifically, it requires that some funds the Banking Department receives or collects from assessments or fees that the law requires credit unions and banks pay to fund the department be used for

oversight of people providing debt reduction, foreclosure rescue, or credit clinics services. It requires the Office of Policy and Management secretary to allocate enough of the Banking Department funds to the Department of Consumer Protection (DCP) and the state comptroller for this oversight.

The bill also makes conforming and technical changes.

EFFECTIVE DATE: July 1, 2009

## **DEBT REDUCTION SERVICES AND CREDIT CLINICS**

### ***Debt Reduction Services***

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 that debt. The definition includes foreclosure rescue services, but it excludes 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 a 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.

The bill requires that debt reduction services be 501(c)(3) tax-exempt organizations. By law, nonprofit organizations may not operate 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.

### ***Credit Clinics***

For credit clinics’ contracts, the law requires certain information in bold face type (at least a 10 point font size) that states there is no fee for a credit report for a person who has been turned down for credit, employment, or insurance due to information in a credit report within the preceding 30 days. The bill adds to the required contract language that there is no fee for people seeking a credit report for the first time in 12 months.

### ***Other Requirements and Prohibitions for Credit Clinics and 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 these services’ 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 any 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 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. 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.

**Legislative History**

On April 22, the Senate referred the bill to the Appropriations Committee. On April 27, the committee favorably reported the substitute that adds funding from the Banking Department for DCP and comptroller oversight of the debt reduction, foreclosure rescue, and credit clinic services.

**COMMITTEE ACTION**

Housing Committee

Joint Favorable Substitute  
Yea 10 Nay 0 (03/10/2009)

Banks Committee

Joint Favorable  
Yea 11 Nay 5 (04/14/2009)

Appropriations Committee

Joint Favorable Substitute  
Yea 30 Nay 14 (04/27/2009)