



House of Representatives

General Assembly

File No. 279

February Session, 2010

Substitute House Bill No. 5409

House of Representatives, April 1, 2010

The Committee on Banks reported through REP. BARRY of the 12th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING DEBT SETTLEMENT SERVICES.

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

1 Section 1. Subsection (a) of section 36a-671 of the 2010 supplement
2 to the general statutes is repealed and the following is substituted in
3 lieu thereof (*Effective October 1, 2010*):

4 (a) As used in this section and sections 36a-671a to 36a-671d,
5 inclusive, (1) "debt negotiation" means, for or with the expectation of a
6 fee, commission or other valuable consideration, assisting a debtor in
7 negotiating or attempting to negotiate on behalf of a debtor the terms
8 of a debtor's obligations with one or more mortgagees or secured
9 creditors of the debtor, including the negotiation of short sales of
10 residential property or foreclosure rescue services; (2) "debtor" means
11 any individual who has incurred indebtedness or owes a debt for
12 personal, family or household purposes; (3) "mortgagee" means the
13 original lender under a mortgage loan secured by residential property
14 or its agents, successors or assigns; (4) "mortgagor" means a debtor
15 who is an owner of residential property, including, but not limited to,

16 a single-family unit in a common interest community, who is also the
17 borrower under a mortgage encumbering such residential property; (5)
18 "short sale" means the sale of residential property by a mortgagor for
19 an amount less than the outstanding balance owed on the loan secured
20 by such property where, prior to the sale, the mortgagee or an assignee
21 of the mortgagee agrees to accept less than the outstanding loan
22 balance in full or partial satisfaction of the mortgage debt and the
23 proceeds of the sale are paid to the mortgagee or an assignee of the
24 mortgagee; (6) "foreclosure rescue services" means services related to
25 or promising assistance in connection with (A) avoiding or delaying
26 actual or anticipated foreclosure proceedings concerning residential
27 property, or (B) curing or otherwise addressing a default or failure to
28 timely pay with respect to a mortgage loan secured by residential
29 property, and includes, but is not limited to, the offer, arrangement or
30 placement of a mortgage loan secured by residential property or other
31 extension of credit when those services are advertised, offered or
32 promoted in the context of foreclosure related services; and (7)
33 "residential property" means one-to-four family owner-occupied real
34 property.

35 Sec. 2. (NEW) (*Effective October 1, 2010*) (a) For purposes of sections 2
36 to 11, inclusive, of this act: (1) "Debt settlement provider" means any
37 individual or entity that offers or agrees to provide debt settlement
38 services to any individual for or with the expectation of a fee,
39 commission or other valuable consideration; and (2) "debt settlement
40 services" means negotiating or attempting to negotiate down
41 unsecured consumer debt resulting in payment of less than the
42 amount owed being accepted as full payment or full satisfaction of
43 such debt.

44 (b) No person shall engage in debt settlement services as a debt
45 settlement provider in this state without a debt settlement services
46 license. Any person desiring to obtain such a license shall file with the
47 Banking Commissioner an application signed under oath and setting
48 forth such information as the commissioner may require. Each
49 applicant for such license and each licensee shall notify the

50 commissioner of any change in the applicant's business from that
51 stated in the application for the license.

52 (c) An application for a debt settlement services license or renewal
53 of such license shall be in writing on a form provided by the
54 commissioner and include the following: (1) The history of criminal
55 convictions of the applicant for the ten-year period prior to the date of
56 the application; (2) the applicant's partners, if the applicant is a
57 partnership; (3) the applicant's members, if the applicant is a limited
58 liability company or an association; (4) the applicant's officers,
59 directors and owners, if the applicant is a corporation; and (5)
60 sufficient information pertaining to the history of any criminal
61 convictions of such partners, directors, members, officers, directors
62 and owners for the ten-year period prior to the date of the application,
63 as the commissioner deems necessary to make findings pursuant to
64 subsection (d) of this section.

65 (d) If the commissioner finds, upon the filing of an application for a
66 debt settlement services license, that (1) the financial responsibility,
67 character, reputation, integrity and general fitness of the applicant and
68 of the applicant's partners, if the applicant is a partnership, members, if
69 the applicant is a limited liability company or association, and officers,
70 directors and owners, if the applicant is a corporation, are such as to
71 warrant a belief by the commissioner that the debt settlement services
72 business will be operated soundly and efficiently, in the public interest
73 and consistent with the purposes of sections 2 to 11, inclusive, of this
74 act; and (2) the applicant is solvent and no proceeding in bankruptcy,
75 receivership or assignment for the benefit of creditors is pending
76 against the applicant, the commissioner may issue the applicant a debt
77 settlement services license. If the commissioner fails to make such
78 findings, or finds that the applicant or any partner, member, officer,
79 director or owner of the applicant has been convicted within the past
80 ten years of any misdemeanor involving any aspect of the debt
81 settlement business or of any felony, the commissioner shall not issue a
82 license and shall notify the applicant of the reasons for denying the
83 application for a license. Any denial of an application for a license by

84 the commissioner shall, when applicable, be subject to the provisions
85 of section 46a-80 of the general statutes.

86 (e) An applicant may withdraw an application for a license. Such
87 withdrawal shall be effective upon receipt by the commissioner of a
88 notice of intent to withdraw such application. The commissioner may
89 issue a denial of an application for a license that has been withdrawn
90 not later than one year after the effective date of the withdrawal.

91 (f) Each applicant for a debt settlement services license shall, at the
92 time of filing such application with the commissioner, pay to the
93 commissioner an application fee of one thousand six hundred dollars.
94 Each such license shall expire at the close of business September
95 thirtieth of the odd-numbered year following its issuance unless such
96 license is renewed. Each licensee shall, not later than September first of
97 the year in which the license expires, file such application for renewal
98 as the commissioner may require.

99 (g) If the commissioner determines that a check tendered by an
100 applicant to pay an application fee has been dishonored, the
101 commissioner shall automatically suspend the license or a renewal
102 license that has been issued but is not yet effective. The commissioner
103 shall give the licensee notice of the automatic suspension pending a
104 proceeding for revocation or refusal to renew such license and an
105 opportunity for a hearing on such actions in accordance with section
106 36a-51 of the general statutes.

107 (h) No abatement of the license fee shall be made if the license is
108 surrendered, revoked or suspended prior to the expiration of the
109 period for which it was issued. The fee required by subsection (f) of
110 this section shall be nonrefundable.

111 Sec. 3. (NEW) (*Effective October 1, 2010*) (a) The commissioner may
112 suspend, revoke or refuse to renew any debt settlement services license
113 or take any other action, in accordance with the provisions of section
114 36a-51 of the general statutes, for any reason the commissioner deems
115 a sufficient ground on which to deny an application for a license

116 pursuant to sections 2 to 11, inclusive, of this act, or, if the
117 commissioner finds that the licensee or any proprietor, director, officer,
118 member, partner, shareholder, trustee, employee or agent of such
119 licensee has done any of the following: (1) Made any material
120 misstatement in the application; (2) committed any fraud or
121 misappropriated funds; (3) violated any of the provisions of sections 2
122 to 11, inclusive, of this act or any other law or regulation applicable to
123 the conduct of its business; or (4) materially failed to perform any
124 obligations owed pursuant to an agreement with a debtor in this state.

125 (b) The commissioner may take action, in accordance with sections
126 36a-50 and 36a-52 of the general statutes, against (1) any person who
127 has violated, is violating or is about to violate the provisions of
128 sections 2 to 11, inclusive, of this act; or (2) any licensee or any
129 proprietor, director, officer, member, partner, shareholder, trustee,
130 employee or agent of such licensee who has committed any fraud,
131 misappropriated funds or materially failed to perform any obligations
132 owed pursuant to an agreement with a debtor in this state.

133 Sec. 4. (NEW) (*Effective October 1, 2010*) (a) Each debt settlement
134 services license shall state the address at which the licensee's debt
135 settlement services business is to be conducted and the full name of the
136 licensee. If a licensee does not have a physical location in this state, the
137 licensee shall maintain a registered agent in this state and such agent's
138 address shall be stated on the debt settlement services license. Each
139 debt settlement services license shall be maintained at the address
140 stated on such license and available for public inspection.

141 (b) No licensee shall use any name other than the name stated on
142 such licensee's debt settlement services license. Any licensee seeking to
143 change the address of such licensee's debt settlement services business
144 shall provide written notice to the commissioner prior to such change.

145 (c) No license shall be transferable or assignable except that, in
146 connection with the acquisition of a licensee by merger or otherwise,
147 the license shall be transferred to the acquirer upon such terms and
148 following such application as the commissioner prescribes.

149 (d) Not later than fifteen days after a licensee ceases to engage in the
150 business of debt settlement services in this state for any reason,
151 including a business decision to terminate operations in this state,
152 license revocation, bankruptcy or voluntary dissolution, such licensee
153 shall surrender its debt settlement services license to the commissioner
154 in person or by registered mail.

155 Sec. 5. (NEW) (*Effective October 1, 2010*) Each debt settlement
156 services licensee who receives or holds consumer funds for payment to
157 creditors shall maintain, for the benefit of debtors, a separate bank
158 account in which all payments received from debtors who are
159 residents of this state shall be deposited. Every licensee shall keep and
160 use in such licensee's business such books, accounts and records that
161 will enable the commissioner to determine whether such licensee is
162 complying with the provisions of sections 2 to 11, inclusive, of this act
163 and with the regulations adopted pursuant to said sections. Every
164 licensee shall preserve such books, accounts and records for at least
165 seven years after making the final entry on any transaction recorded
166 therein.

167 Sec. 6. (NEW) (*Effective October 1, 2010*) The commissioner may
168 adopt such regulations, in accordance with chapter 54 of the general
169 statutes, as the commissioner deems necessary to administer and
170 enforce the provisions of sections 2 and 3 of this act.

171 Sec. 7. (NEW) (*Effective October 1, 2010*) The provisions of sections 2
172 to 11, inclusive, of this act shall not apply to the following: (1) Any
173 attorney admitted to the practice of law in this state, when engaged in
174 such practice; (2) any bank or agent of any bank, fiduciary, or financing
175 or lending institution that is authorized to transact business in this
176 state or any other state and performs debt settlement services as an
177 incidental part of its principal business; (3) any title insurance or
178 abstract company authorized to transact business in this state or any
179 other state, while doing an escrow business; and (4) any person acting
180 pursuant to any law of this state or the United States or to the order of
181 a court.

182 Sec. 8. (NEW) (*Effective October 1, 2010*) (a) No debt settlement
183 services license or a renewal of such a license shall be granted unless
184 the applicant meets one of the following surety bond, bond substitute
185 or insurance requirements:

186 (1) Each applicant shall file with the commissioner a surety bond
187 written by a surety authorized to write such bonds in this state. For
188 every applicant, the principal amount of the bond shall be in an
189 amount determined by the commissioner but, subject to the provisions
190 of this subdivision, shall not exceed forty thousand dollars, except if
191 the applicant receives or holds consumer funds for payment to
192 creditors, the bond shall be the higher of forty thousand dollars or
193 twice the amount of the highest total amount of payments received by
194 the applicant from debtors in this state in connection with the
195 applicant's debt adjustment activity in any month during the
196 preceding twelve-month period ending July thirty-first of each year.
197 Each licensee shall submit to the commissioner evidence that the bond
198 complies with the provisions of this subdivision by September first of
199 each year;

200 (2) As a substitute for a surety bond, a licensee may file with the
201 commissioner, in the same amount required for a surety bond in
202 subdivision (1) of this subsection, one of the following: (A) An
203 irrevocable letter of credit, issued or confirmed by a bank approved by
204 the commissioner, payable upon presentation of a certificate by the
205 commissioner stating that the provider or its agent has not obtained a
206 surety bond, or (B) bonds or other obligations of the United States or
207 guaranteed by the United States or bonds or other obligations of this
208 state or a political subdivision of this state, to be deposited and
209 maintained with a bank approved by the administrator for this
210 purpose; and

211 (3) In lieu of the surety bond or bond substitute, the applicant may
212 provide evidence of insurance in the amount of two hundred fifty
213 thousand dollars that (A) insures against the risk of dishonesty, fraud,
214 theft and other misconduct on the part of the applicant or licensee or a

215 director, employee or agent of the applicant or licensee, (B) is issued by
216 an insurance company authorized to do business in this state and rated
217 at least an A by a nationally recognized rating organization, (C) has a
218 minimum deductible of ten per cent of the total insurance coverage,
219 (D) is payable to the applicant, to any individuals who have an
220 agreement with the applicant and to this state, and (E) is not subject to
221 cancellation by the applicant without the approval of the
222 commissioner or without a replacement policy that meets the
223 requirements set forth in this subsection.

224 (b) The form of any surety bond filed pursuant to this section shall
225 be approved by the Attorney General. Any surety bond filed pursuant
226 to this section shall be conditioned upon the licensee faithfully
227 performing its obligations under any and all written agreements with
228 debtors and conducting its debt settlement business consistent with the
229 provisions of sections 2 to 11, inclusive, of this act. Any debtor who
230 may be damaged by the failure of the licensee to perform its
231 obligations under any written agreements may proceed on any such
232 surety bond or bond substitute against the principal or surety on such
233 surety bond or bond substitute or file a claim on the insurance policy
234 to recover damages. The commissioner may proceed on any such
235 surety bond or bond substitute against the principal or surety on such
236 surety bond or bond substitute, or both, to collect any civil penalty
237 imposed upon the licensee pursuant to subsection (a) of section 36a-50
238 of the general statutes. The proceeds of any such surety bond, bond
239 substitute or insurance policy, even if commingled with other assets of
240 the licensee, shall be deemed by operation of law to be held in trust for
241 the benefit of such claimants against the licensee in the event of
242 bankruptcy of the licensee and shall be immune from attachment by
243 creditors and judgment creditors.

244 (c) Any surety bond, bond substitute or insurance policy required
245 by this section shall be maintained for as long as the licensee holds a
246 debt settlement services license. The aggregate liability under any such
247 surety bond, bond substitute or insurance policy shall not exceed the
248 principal amount of the surety bond or bond substitute or the limit of

249 liability of the insurance policy.

250 (d) The surety or insurance company shall have the right to cancel
251 any bond, bond substitute or insurance policy written or issued under
252 this section at any time by a written notice to the licensee stating the
253 date cancellation shall take effect. Such notice shall be sent by certified
254 mail to the licensee not later than thirty days prior to the date of
255 cancellation. No such bond, bond substitute or insurance policy shall
256 be cancelled unless the surety or insurance company notifies the
257 commissioner in writing not later than thirty days prior to the date of
258 cancellation. After receipt of such notification from the surety or
259 insurance company, the commissioner shall give written notice to the
260 licensee of the date the cancellation of such bond, bond substitute or
261 insurance policy shall take effect. The commissioner shall
262 automatically suspend the license on such date unless, prior to such
263 date, the licensee submits a letter of reinstatement of the bond, bond
264 substitute or insurance policy from the surety or insurance company or
265 a new bond, bond substitute or insurance policy or the licensee has
266 surrendered the license. After a license has been automatically
267 suspended, the commissioner shall give the licensee notice of the
268 automatic suspension, pending proceedings for revocation or refusal
269 to renew and an opportunity for a hearing on such actions in
270 accordance with section 36a-51 of the general statutes and require the
271 licensee to take or refrain from taking such action that, in the opinion
272 of the commissioner, will effectuate the purposes of this section.

273 (e) No licensee shall use, attempt to use or make reference to, either
274 directly or indirectly, any word or phrase that states or implies that the
275 licensee is endorsed, sponsored, recommended, bonded or insured by
276 this state.

277 Sec. 9. (NEW) (*Effective October 1, 2010*) (a) Before providing debt
278 settlement services in this state, a debt settlement services provider
279 shall fully explain its services and fully disclose all fees to be charged
280 for such services and the schedule for collecting such fees.

281 (b) A debt settlement provider shall not furnish debt settlement

282 services to any debtor in this state unless the provider has prepared a
283 financial analysis of such debtor.

284 (c) Before a debtor assents to an agreement to engage in a debt
285 settlement program with a debt settlement provider, such debt
286 settlement provider shall (1) provide the debtor with a copy of the
287 analysis required by subsection (b) of this section in a record that
288 identifies the debt settlement provider and that the debtor may keep
289 whether or not the debtor assents to the agreement; and (2) inform the
290 debtor of the availability, at the debtor's option, of assistance by a toll-
291 free communication system or in person to discuss the financial
292 analysis and fee schedule required pursuant to subsections (a) and (b)
293 of this section.

294 (d) Before a debtor assents to an agreement with a debt settlement
295 services provider, such provider shall inform the debtor of the
296 provider's name and address and that:

297 (1) Debt settlement programs are not suitable for all debtors and
298 that the debtor may ask the provider about other ways to deal with
299 indebtedness;

300 (2) Participation in the debt settlement program may adversely
301 affect the debtor's credit rating or credit score;

302 (3) Nonpayment of debt may lead creditors to increase finance and
303 other charges or undertake collection activity, including litigation;

304 (4) Unless the debtor is insolvent, if a creditor settles for less than
305 the full amount of the debt, the debt settlement program may result in
306 the creation of taxable income to the debtor, even though the debtor
307 does not receive any money;

308 (5) Specific results cannot be predicted or guaranteed and the
309 provider cannot force negotiations or settlements with creditors, but
310 will advocate solely on behalf of the creditor;

311 (6) The debtor is required to set aside money in a savings account

312 according to the debt settlement provider's plan before settlements can
313 be negotiated;

314 (7) The debt settlement services provider does not provide
315 accounting, bankruptcy or legal advice to the debtor unless the
316 provider is professionally licensed to provide such advice;

317 (8) The debt settlement provider is the debtor's advocate and does
318 not receive compensation from creditors, banks or third-party
319 collection agencies; and

320 (9) The debt settlement provider does not make monthly payments
321 to the debtor's creditors.

322 (e) Every agreement between a debt settlement provider and a
323 debtor shall be in writing.

324 (f) A debt settlement provider shall not:

325 (1) Settle a debt on behalf of an individual for more than fifty per
326 cent of the amount of the debt owed a creditor unless the individual
327 assents to the settlement after the creditor has assented;

328 (2) Act under a power of attorney authorizing it to settle a debt,
329 unless the power of attorney expressly limits the provider's authority
330 to settle debts for not more than fifty per cent of the amount of the debt
331 owed a creditor;

332 (3) Exercise or attempt to exercise a power of attorney after an
333 individual has terminated an agreement;

334 (4) If the provider does not receive and hold consumer funds for
335 payment to creditors, initiate a transfer from an individual's account at
336 a bank with another person unless the transfer is: (A) A return of
337 money to the individual, (B) for payment of a fee, provided such
338 payment occurs before termination of an agreement and is properly
339 authorized by the agreement and sections 2 to 11, inclusive, of this act,
340 (C) for payment of a creditor for purposes of funding a negotiated

341 settlement authorized pursuant to subdivisions (1) and (2) of this
342 subsection, or (D) for payment of a creditor for purposes of funding a
343 negotiated settlement, provided both the transfer of money and
344 settlement have been authorized by the debtor;

345 (5) Settle a debt or lead an individual to believe that a payment to a
346 creditor is in settlement of a debt to the creditor unless, at the time of
347 settlement, the individual receives a certification or confirmation by
348 the creditor that the payment is in full settlement of the debt or is part
349 of a payment plan that is in full settlement of the debt;

350 (6) Make a representation that (A) the provider will furnish money
351 to pay bills or prevent attachments, (B) payment of a certain amount
352 will guarantee satisfaction of a certain amount or range of
353 indebtedness, or (C) participation in a program will or may prevent
354 litigation, garnishment, attachment, repossession, foreclosure, eviction
355 or loss of employment;

356 (7) Employ an unfair, unconscionable or deceptive act or practice,
357 including the knowing omission of any material information;

358 (8) Advertise, display, distribute, broadcast or televise or permit to
359 be advertised, displayed, distributed, broadcast or televised the
360 licensee's services, rates or terms in any manner by which any false,
361 misleading or deceptive statement or representation is made with
362 regard to the services to be performed by the licensee or the charges to
363 be made for such services;

364 (9) Lend money or provide credit to the individual, other than
365 through a separate affiliate holding an appropriate lending license,
366 except as a deferral of a settlement fee at no additional expense to the
367 individual;

368 (10) Purchase from a creditor any obligation of a debtor;

369 (11) Operate as a collection agent and as a licensee with regard to
370 the same debtor's account;

371 (12) Permit any contract or agreement to be signed by the debtor
372 unless the contract or agreement is fully and completely filled in;

373 (13) Obtain a mortgage or other security interest from any person in
374 connection with the services provided to the debtor;

375 (14) Provide the debtor less than the full benefit of a compromise of
376 a debt arranged by the provider, except for fees charged for services as
377 specified in the written agreement;

378 (15) Advise individuals to stop payment on any of the accounts
379 being handled by the provider;

380 (16) Except as permitted by federal law, disclose the identity or
381 identifying information of the debtor or the identity of the debtor's
382 creditors, except (A) to the commissioner, upon proper demand, (B) to
383 a creditor of such debtor to the extent necessary to secure the
384 cooperation of the creditor in a program, (C) to the extent necessary to
385 administer the program, or (D) as authorized by such debtor; or

386 (17) Falsely represent that it is a not-for-profit entity or not-for-profit
387 credit counselor that will provide stand-alone credit counseling
388 services.

389 Sec. 10. (NEW) (*Effective October 1, 2010*) (a) A debt services provider
390 shall not directly or indirectly impose a fee or other charge on an
391 individual or receive money from or on behalf of an individual for
392 debt settlement services, except as permitted by this section.

393 (b) Fees for debt settlement services shall not exceed the following:

394 (1) The lesser of four hundred dollars or four per cent of the debt
395 listed in the debt settlement services plan at the inception of such plan
396 for the following services, which include, but are not limited to: (A)
397 Consultation, (B) obtaining a credit report, and (C) setting up an
398 account; and

399 (2) Ten dollars for a monthly service fee for each creditor remaining

400 at the time such fee is assessed.

401 (c) With respect to an agreement that provides for a flat fee based on
402 the overall amount of included debt, the total aggregate amount of fees
403 charged to any individual pursuant to chapter 669 of the general
404 statutes, including fees charged pursuant to subdivisions (1) and (2) of
405 subsection (b) of this section, shall not exceed seventeen per cent of the
406 principal amount of debt included in the agreement at the inception of
407 the agreement. The flat fee authorized under this section shall be
408 assessed in equal monthly payments over the course of at least half the
409 length of the debt services plan, as estimated at such plan's inception,
410 unless the payment of fees is voluntarily accelerated by the individual
411 in a separate record and at least half of the overall amount of
412 outstanding debt covered by the agreement has been settled.

413 (d) With respect to agreements in which fees are calculated as a
414 percentage of the amount saved by an individual, a settlement fee shall
415 not exceed thirty per cent of the excess of the outstanding amount of
416 each debt over the amount actually paid to the creditor, as calculated
417 at the time of settlement. Settlement fees authorized pursuant to this
418 subsection shall become billable only as debts are settled and the total
419 aggregate amount of fees charged to any individual under part II of
420 chapter 669 of the general statutes, including fees charged under this
421 subsection, may not exceed twenty per cent of the principal amount of
422 debt included in the agreement at such agreement's inception.

423 (e) A debt services provider may not impose or receive fees under
424 both subsections (c) and (d) of this section.

425 Sec. 11. (NEW) (*Effective October 1, 2010*) (a) Any person who
426 engages in debt settlement services without a license as required
427 pursuant to sections 2 to 10, inclusive, of this act shall be fined not
428 more than one thousand dollars or imprisoned not more than one year,
429 or both, for each violation. Each day on which a person engages in
430 debt settlement services without a license as required by said sections
431 shall constitute a separate violation.

432 (b) Any person who violates any other provision of sections 2 to 10,
 433 inclusive, of this act shall be fined not more than one thousand dollars
 434 for the first offense and, for each subsequent offense, shall be fined not
 435 more than one thousand dollars and imprisoned not less than thirty
 436 days, but not more than one year.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2010	36a-671(a)
Sec. 2	October 1, 2010	New section
Sec. 3	October 1, 2010	New section
Sec. 4	October 1, 2010	New section
Sec. 5	October 1, 2010	New section
Sec. 6	October 1, 2010	New section
Sec. 7	October 1, 2010	New section
Sec. 8	October 1, 2010	New section
Sec. 9	October 1, 2010	New section
Sec. 10	October 1, 2010	New section
Sec. 11	October 1, 2010	New section

Statement of Legislative Commissioners:

In section 2(h) "(e)" was changed to "(f)" for the purpose of accuracy. In section 8(d), "as amended by this act" was deleted for consistency of internal references. In section 9 (f)(4), "subsection (f) of section 9 of this act" was changed to "this subsection" for accuracy. In section 10 (c), "this subsection" was changed to "subsection (b) of this section" for accuracy.

BA Joint Favorable Subst.-LCO

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: None

Municipal Impact: None

Explanation

The bill modifies requirements for private debt settlement services and has no fiscal impact to the Department of Banking.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5409*****AN ACT CONCERNING DEBT SETTLEMENT SERVICES.*****SUMMARY:**

This bill exempts, from the licensing requirements for debt negotiators established in PA 09-208, fee-based individuals or entities who negotiate only with unsecured creditors on behalf of a debtor. The bill instead creates separate licensing requirements for such individuals or entities who negotiate or attempt to negotiate unsecured consumer debt resulting in payment of less than the amount owed being accepted as full payment or full satisfaction of the debt. The bill defines such services as debt settlement, and defines debt settlement providers as those who offer or agree to provide debt settlement services to an individual for or with the expectation of valuable consideration.

The bill's requirements for debt settlement providers differ in various ways from existing requirements for debt negotiators, such as:

1. modifying the permissible form of fees that a debt settlement provider may charge a debtor and establishing maximum fees;
2. modifying enforcement, including providing specific penalties for violations, allowing the banking commissioner to adopt regulations to enforce certain provisions, and eliminating the commissioner's authority to order a reduction or repayment of fees;
3. modifying the application and licensing requirements, including grounds for license denial and exemptions from licensure;

4. establishing bank account and recordkeeping requirements for debt settlement licensees;
5. modifying the surety bond requirement for debt settlement providers, and allowing them to file a bond substitute or produce evidence of insurance in lieu of a surety bond;
6. modifying contract requirements, requiring specific disclosures, and eliminating the debtor's right to cancel a contract within three business days; and
7. prohibiting debt settlement providers from engaging in various activities.

EFFECTIVE DATE: October 1, 2010

DEBT SETTLEMENT SERVICES

§ 10 – Permissible Fees

The bill specifies the maximum fees that debt settlement providers may charge for debt settlement services. The allowable fees cannot exceed: (1) the lesser of \$400 or 4% of the debt listed in the debt settlement services plan upon inception, for services including consultation, obtaining a credit report, and setting up the account; and (2) a \$10 monthly service fee for each creditor remaining in the program when such a fee is assessed.

Providers can charge a flat fee based on the overall amount of the included debt or a fee based on a percentage of the amount saved by the debtor, but not both.

If the agreement provides for a flat fee, the total fees charged to an individual under the applicable banking statutes, including fees charged as provided by this bill, cannot exceed 17% of the debt principal included at the agreement's inception. A flat fee must be assessed in equal monthly payments over the course of at least half the length of the plan, as estimated at the plan's inception, unless the individual voluntarily accelerates the payments and at least half of the

outstanding debt covered by the agreement has been settled.

If the agreement provides for a fee based on a percentage of the amount the individual saves through the program, the fee cannot exceed 30% of the amount saved by the debtor, calculated at the time of settlement. Such fees are only billable as debts are settled. The total amount of fees charged to an individual under the applicable banking statutes, including fees based on a percentage of the amount saved by an individual, cannot exceed 20% of the principal amount of debt included in the agreement at its inception.

By contrast, the debt negotiation law instead authorizes the banking commissioner to establish a maximum fee schedule that a debt negotiator may charge for specific services. It prohibits a person offering debt negotiation services from receiving valuable consideration until the services are fully performed. A person offering debt negotiation services can receive reasonable periodic payments as services are rendered, provided such payments are clearly stated in the contract.

§§ 3, 6, 11 – Enforcement and Penalties; Regulations

With one exception, the bill gives the banking commissioner the same authority to suspend, revoke, or refuse to renew a debt settlement license, or take other enforcement actions pursuant to his general powers under the banking statutes, as applies to debt negotiators. Under the bill, one ground for such actions is a finding that the licensee or various individuals connected to the licensee materially failed to perform any obligations owed pursuant to an agreement with a debtor in Connecticut. By contrast, the debt negotiation law allows the commissioner to take such actions upon finding that any such individuals failed to perform any agreement with a debtor, without explicitly requiring that the failure be material or that the debtor be in Connecticut.

The bill provides that any person who engages in debt settlement services without a license will be fined up to \$1,000 or imprisoned up

to one year, or both, for each violation. The bill provides that each day in which a person engages in debt settlement services without a license constitutes a separate violation.

The bill provides that a person who violates any other provision of the debt settlement services law is subject to a fine of up to \$1,000 for a first offense. Each subsequent offense subjects a violator to a fine of up to \$1,000 dollars and imprisonment for between thirty days and one year.

Unlike the bill, the debt negotiation law authorizes the banking commissioner, upon complaint, to review any fees or charges assessed by a person offering debt negotiation services and order a reduction of the fees or charges or a repayment of the amount that the commissioner deems excessive, taking into consideration the fees that other people performing similar debt negotiation services charge for such services and the benefit of the services to the consumer. The commissioner can do this under his general power to conduct investigations.

The bill allows the banking commissioner to adopt regulations to administer and enforce the bill's debt settlement services provisions related to applications, licensing, fees, and enforcement.

§ 2 –Application Requirements

Like the debt negotiation law, the bill requires any person seeking to engage in debt settlement services as a debt settlement provider in Connecticut to obtain a license. However, unlike the debt negotiation law, the bill does not specify what is required for the services to be considered to occur in this state.

Unlike the current law for debt negotiators, the bill does not require a person to obtain a separate license for each location where debt settlement will be conducted.

The bill modifies the requirements for license approval in the case of applicants that are corporations. The bill allows the banking

commissioner to issue a debt settlement license to a corporation if he finds (among other requirements) that the applicant and any officers, directors and owners have the financial responsibility, character, reputation, integrity and general fitness to warrant the belief that the business will be operated soundly and efficiently, in the public interest and consistent with the purposes of the bill. Current law allows the commissioner to issue a license if he makes such findings with regards to the applicant and any officers, directors, and principal employees (rather than owners).

The bill requires the commissioner to deny a debt settlement application if he finds that the applicant or, depending on the form of the business, the applicant's partner, member, officer, director, or owner has been convicted within the past 10 years of any felony or of a misdemeanor involving any aspect of the debt settlement business. By contrast, the debt negotiation law allows, but does not require, the commissioner to deny an application due to criminal convictions within the past 10 years.

Unlike the law for debt negotiators, the bill does not explicitly require a 10-year history of criminal convictions for the applicant's partners, members, officers, directors, and owners. However, the bill does require (as is required for debt negotiators) that the application contains sufficient information pertaining to such individuals' criminal history convictions over the prior 10 years as the commissioner deems necessary to determine whether to deny the application.

§ 2 – Licensing Fees and Renewal

The licensing fee for debt settlement providers is the same as for debt negotiators – \$1,600. However, the debt negotiation law provides that if the license will expire in one year or less, the applicant only has to pay \$800. The bill does not provide such a provision for debt settlement providers.

§ 4 – Licensing Requirements

The bill requires each debt settlement services license to state the

licensee's full name and business address. If a licensee does not have a physical location in this state, the licensee must maintain a registered agent in Connecticut and the agent's address must be stated on the license. Each license must be maintained at the address stated on the license and be available for public inspection. A debt settlement licensee may not use any name other than the one stated on its license.

The bill specifies that a debt settlement license may only be transferred in the case of the acquisition of the licensee by merger or otherwise, following an application prescribed by the commissioner. The debt negotiation law prohibits license transfer without exception.

The bill requires a licensee who ends its debt settlement services business in Connecticut for any reason to surrender its license to the commissioner, in person or by registered mail, within 15 days of ending such business.

§ 7 – Exemption from Licensing Requirement

In addition to those who are exempted by the debt negotiation law, the bill exempts the following from its requirements: (1) a title insurance or abstract company authorized to transact business in Connecticut or any other state, while doing an escrow business; and (2) a person acting pursuant to any Connecticut or federal law.

However, the bill does not exempt the following, who are exempt from the debt negotiation law: (1) any person licensed as a debt adjuster under the banking statutes, while performing debt adjuster services; and (2) any bona fide nonprofit organization organized under IRS Code § 501(c)(3) or any corresponding section.

The bill narrows the exemption for banks and other financial institutions. The bill exempts a bank or agent of any bank, fiduciary, or financing or lending institution authorized to transact business in Connecticut or any other state and that performs debt settlement services as an incidental part of its principal business. The debt negotiation law exempts any bank, out-of-state bank, Connecticut credit union, federal credit union, or out-of-state credit union,

provided subsidiaries of such institutions other than operating subsidiaries of federal banks and federally-chartered out-of-state banks are not exempt from licensure.

§ 5 – Bank Account and Recordkeeping

The bill requires each debt settlement services licensee who receives or holds consumer funds for payment to creditors to maintain a separate bank account for the benefit of debtors. Each such licensee must deposit into this account all payments received from debtors who are Connecticut residents.

The bill requires each licensee to keep and use in its business the books, accounts and records to enable the commissioner to determine whether the licensee is complying with the debt settlement services law, including any regulations adopted pursuant to such law. Licensees must preserve such books, accounts and records for at least seven years after making the final entry on any transaction recorded within the book, account or record.

These requirements do not apply to debt negotiators.

§ 8 – Surety Bond Requirement; Bond Substitutes and Insurance

The bill expands the types of assurances a licensee can provide to permit a bond substitute (an irrevocable letter of credit or other bond) or provide evidence of insurance as an alternative to filing a surety bond.

If an applicant files a surety bond, the bond must be in an amount determined by the banking commissioner of (1) up to \$40,000 or (2) if the applicant receives or holds consumer funds for payment to creditors, the higher of \$40,000 or double the highest total amount of payments received by the applicant from debtors in Connecticut in connection with the applicant's debt adjustment activity in any month during the preceding twelve-month period ending July 31st of each year. The bill requires a licensee, by September 1st of each year, to submit evidence to the commissioner that the bond complies with these requirements. The debt negotiation law requires the surety bond

to be in an aggregate amount of \$40,000 for all licensed locations.

An irrevocable letter of credit or other government bonds or obligations in lieu of a surety bond must be in the same amount as required for a surety bond. An irrevocable letter of credit must be issued or confirmed by a bank approved by the commissioner and must be payable upon presentation of a certificate by the commissioner stating that the provider or its agent has not obtained a surety bond. The other permissible bonds or obligations include: (1) bonds or obligations issued or guaranteed by the United States, and (2) bonds or obligations of Connecticut or its political subdivisions. Such bonds or obligations must be deposited and maintained with a bank approved by the administrator to serve as a substitute for the surety bond requirement. The bill does not define administrator.

If the applicant produces evidence of insurance in lieu of a bond or bond substitute, the insurance must be for \$250,000 and must:

1. insure against the risk of dishonesty, fraud, theft or other misconduct by the applicant, licensee, or the applicant or licensee's director, employee, or agent;
2. be issued by an insurance company authorized to do business in Connecticut that has at least an "A" rating by a nationally recognized rating organization;
3. have a minimum 10% deductible;
4. be payable to the applicant, to any individuals who have an agreement with the applicant, and to the state; and
5. not be subject to cancellation without the commissioner's approval or without a replacement policy that meets the requirements set forth above.

The bill applies various other surety bond provisions of the debt negotiation law to debt settlement licensees who file a bond substitute or produce evidence of insurance, as well as to those who file a surety

bond.

Current law allows a debtor to proceed on a surety bond against the principal or surety, or both, to recover damages if the debtor is damaged by (1) the licensee's failure to perform any written agreements or (2) conduct inconsistent with the debt negotiation law. The bill does not have a provision analogous to the latter provision.

§ 9 – Agreement; Required Disclosures

The bill requires a debt settlement provider to fully explain its services and disclose all fees and the fee schedule before providing debt settlement services in Connecticut. By contrast, debt negotiators must provide each debtor with a contract that include similar information plus the results to be achieved.

The bill requires debt settlement providers to prepare a financial analysis of a debtor before serving debtors in this state. The bill does not specify what the analysis requires. By contrast, each debt negotiation contract must contain (1) a statement certifying that the person offering debt negotiation services has reviewed the consumer's debt and (2) an individualized evaluation of the likelihood that the proposed debt negotiation services would reduce the consumer's debt or debt service or, if appropriate, prevent the consumer's home from being foreclosed.

Before a debtor agrees to work with a debt settlement provider on a debt settlement program, the provider must (1) inform the debtor of the provider's name and address; (2) give the debtor a copy of its financial analysis of the debtor, in a record identifying the provider and that the debtor may keep whether or not the debtor agrees to work with the provider on a debt settlement program; and (3) inform the debtor of the availability, at the debtor's option, to obtain assistance, in person or through a toll-free communication system, to discuss the provider's fee schedule and financial analysis.

An agreement between a debt settlement provider and a debtor must be in writing. Before a debtor enters into such an agreement, the

provider must also inform the debtor that:

1. debt settlement is not suitable for all debtors, and the debtor may ask the provider about other ways to deal with indebtedness;
2. participating in the program may lower the debtor's credit rating or credit score;
3. failure to pay debt may lead creditors to increase finance and other charges or to undertake collection activity, including litigation;
4. unless the debtor is insolvent, if a creditor settles for less than the full amount of the debt, the program may result in taxable income to the debtor, even though the debtor does not receive any money;
5. specific results cannot be predicted or guaranteed and the provider cannot force negotiations or settlements with creditors, but will advocate solely on the creditor's behalf;
6. the debtor must set aside money in a savings account according to the debt settlement provider's plan before the provider can negotiate settlements (the bill does not specifically require the debtor to do so);
7. the provider does not provide accounting, bankruptcy, or legal advice to the debtor unless professionally licensed to do so;
8. the provider is the debtor's advocate and is not paid by creditors, banks, or third-party collection agencies; and
9. the provider does not make monthly payments to the debtor's creditors.

In contrast to the bill, the debt negotiation law provides that each contract must allow the consumer to cancel or rescind it within three business days after the consumer signs the contract.

The debt negotiation law provides that any contract that does not comply with the above requirements and additional provisions relating to fees is voidable by the consumer. The bill does not contain such a provision.

§ 9 – Prohibited Activities

The bill prohibits a debt settlement provider from taking several actions. Providers may not:

1. settle an individual's debt for more than 50% of the amount owed a creditor unless the individual agrees to the settlement after the creditor has agreed;
2. act under a power of attorney authorizing the provider to settle a debt, unless the power of attorney expressly limits such authority to settle debts for not more than 50% of the amount of the debt owed a creditor;
3. exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;
4. settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt unless, at the time of settlement, the creditor certifies or confirms to the individual that the payment is in full settlement of the debt or is part of a payment plan that is in full settlement;
5. represent that (a) the provider will furnish money to pay bills or prevent attachments; (b) payment of a certain amount will guarantee satisfaction of a certain amount of indebtedness; or (c) participation in a program will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction or loss of employment;
6. employ an unfair, unconscionable or deceptive act or practice, including the knowing omission of any material information;
7. advertise, distribute, broadcast, televise, or permit such displays

- of the licensee's services, rates, or terms in any manner by which a false, misleading, or deceptive representation is made regarding the licensee's services or charges;
8. lend money or provide credit to the individual, other than through a separate affiliate holding an appropriate lending license, except as a deferral of a settlement fee at no additional expense to the individual;
 9. purchase a debtor's obligation from a creditor;
 10. operate as a collection agent and licensee with regard to the same debtor's account;
 11. permit the debtor to sign a contract or agreement that is not fully and completely filled in;
 12. obtain a mortgage or other security interest from any person in connection with the provider's services to the debtor;
 13. provide the debtor less than the full benefit of a compromise of a debt that the provider arranges with creditors, except for fees charged for services as specified in the written agreement;
 14. advise individuals to stop payment on any account that the provider is handling;
 15. disclose the debtor's identity or identifying information or the identity of the debtor's creditors, except (a) as permitted by federal law; (b) to the commissioner upon proper demand; (c) to a creditor as necessary to secure the creditor's cooperation in the program; (d) as necessary to administer the program; or (e) as authorized by the debtor; or
 16. falsely represent that the provider is a not-for-profit entity or not-for-profit credit counselor that will provide stand-alone credit counseling services.

The bill also prohibits debt settlement providers from initiating a

transfer from an individual's bank account with another person, if the provider does not receive and hold consumer funds for payment to creditors, unless the transfer is: (1) a return of money to the individual; (2) to pay a fee, provided the payment occurs before the agreement's termination and is properly authorized by the agreement and the debt settlement services law; (3) to pay a creditor to fund a negotiated settlement, provided the debtor has authorized both the transfer and settlement; or (4) to pay a creditor to fund a negotiated settlement authorized pursuant to the subsections of the bill allowing a provider to (a) settle a debt for more than 50% of the amount owed if the individual and creditor agree, or (b) act under a power of attorney expressly limiting the provider's authority to settle debts for not more than 50% of the amount owed a creditor.

COMMITTEE ACTION

Banks Committee

Joint Favorable

Yea 18 Nay 0 (03/16/2010)