



General Assembly

February Session, 2012

Raised Bill No. 158

LCO No. 1065

01065_____BA_

Referred to Committee on Banks

Introduced by:
(BA)

AN ACT CONCERNING ENFORCEMENT BY THE BANKING COMMISSIONER.

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

1 Section 1. Section 36a-17 of the 2012 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2012*):

4 (a) The commissioner, in the commissioner's discretion, may, subject
5 to the provisions of section 36a-21 and the Freedom of Information
6 Act, as defined in section 1-200; (1) make such public or private
7 investigations or examinations within or outside this state, concerning
8 any person subject to the jurisdiction of the commissioner, as the
9 commissioner deems necessary to carry out the duties of the
10 commissioner, (2) require or permit any person to testify, produce a
11 record or file a statement in writing, under oath, or otherwise as the
12 commissioner determines, as to all the facts and circumstances
13 concerning the matter to be investigated or about which an action or
14 proceeding is pending, and (3) publish information concerning any
15 violation of any provision of the general statutes within the jurisdiction
16 of the commissioner or any regulation or order adopted or issued

17 under such provision.

18 (b) Any Connecticut bank, Connecticut credit union or Connecticut
19 credit union service organization which causes or has caused any
20 electronic data processing services to be performed for such bank,
21 credit union or credit union service organization either on or off its
22 premises by an electronic data processing servicer shall enter into a
23 written contract with such servicer. Such contract shall specify the
24 duties and responsibilities of the bank, credit union or credit union
25 service organization and such servicer and provide that such servicer
26 shall allow the commissioner to examine such servicer's books, records
27 and computer systems in accordance with this subsection, if required
28 by the commissioner. The Connecticut bank, Connecticut credit union
29 or Connecticut credit union service organization shall promptly notify
30 the commissioner of any material change in its electronic data
31 processing services. The commissioner may examine the books,
32 records and computer systems of any electronic data processing
33 servicer that performs electronic data processing services for a
34 Connecticut bank, Connecticut credit union or Connecticut credit
35 union service organization, if such services substantially impact the
36 operations of the Connecticut bank, Connecticut credit union or
37 Connecticut credit union service organization as determined by the
38 commissioner, in order to (1) determine whether such servicer has the
39 capacity to protect the customer information of such bank, credit union
40 or credit union service organization, and (2) assess such servicer's
41 potential for continued service. The commissioner may assess a fee of
42 one hundred fifty dollars per day plus costs for each examiner who
43 conducts such examination, the total cost of which the commissioner
44 may allocate on a pro rata basis to all Connecticut banks, Connecticut
45 credit unions and Connecticut credit union service organizations
46 under contract with such servicer.

47 (c) For the purpose of any investigation, examination or proceeding
48 under this title the commissioner may administer oaths and
49 affirmations, subpoena witnesses, compel attendance of witnesses,

50 take evidence, require written statements and require the production
51 of any records which the commissioner deems relevant or material.
52 The commissioner may require that certified copies of any such
53 records be provided to the commissioner at the commissioner's office.
54 The commissioner may issue subpoenas in this state at the request of
55 another state, provided (1) the activities concerning which the
56 information is sought would constitute a basis for an investigation,
57 examination or proceeding under this title had such activities occurred
58 in this state, and (2) such other state has reciprocal legal authority to
59 issue subpoenas in such state on behalf of the commissioner.

60 (d) Any person who is the subject of any such investigation,
61 examination or proceeding shall make its records available to the
62 commissioner in readable form; provide personnel and equipment
63 necessary, including, but not limited to, assistance in the analysis of
64 computer-generated records; provide copies or computer printouts of
65 records when so requested; furnish unrestricted access to all areas of
66 its principal place of business or wherever records may be located; and
67 otherwise cooperate with the commissioner.

68 (e) The superior court for the judicial district of Hartford, upon
69 application of the commissioner, may issue to any person refusing to
70 obey a subpoena issued pursuant to subsection (c) of this section an
71 order requiring that person to appear before the commissioner or any
72 officer designated by the commissioner to produce records so ordered
73 or to give evidence concerning the matter under investigation or in
74 question. Failure to obey the order of the court may be punished by the
75 court as a contempt of court.

76 (f) As used in this section, "records" includes, but is not limited to,
77 books, papers, correspondence, memoranda, agreements, diaries, logs,
78 notes, ledgers, journals, visual, audio, magnetic or electronic
79 recordings, computer printouts and software, and any other
80 documents.

81 Sec. 2. Section 36a-50 of the general statutes is repealed and the

82 following is substituted in lieu thereof (*Effective October 1, 2012*):

83 (a) (1) Whenever the commissioner finds as the result of an
84 investigation that any person has violated any provision of the general
85 statutes within the jurisdiction of the commissioner, or any regulation,
86 rule or order adopted or issued thereunder, the commissioner may
87 send a notice to such person by registered or certified mail, return
88 receipt requested, or by any express delivery carrier that provides a
89 dated delivery receipt. The notice shall be deemed received by the
90 person on the earlier of the date of actual receipt or seven days after
91 mailing or sending. Any such notice shall include: (A) A statement of
92 the time, place, and nature of the hearing; (B) a statement of the legal
93 authority and jurisdiction under which the hearing is to be held; (C) a
94 reference to the particular sections of the general statutes, regulations,
95 rules or orders alleged to have been violated; (D) a short and plain
96 statement of the matters asserted; (E) the maximum penalty that may
97 be imposed for such violation; and (F) a statement indicating that such
98 person may file a written request for a hearing on the matters asserted
99 [within] not later than fourteen days [of] after receipt of the notice.

100 (2) If a hearing is requested within the time specified in the notice,
101 the commissioner shall hold a hearing upon the matters asserted in the
102 notice unless such person fails to appear at the hearing. After the
103 hearing, if the commissioner finds that the person has violated any
104 such provision, regulation, rule or order, the commissioner may, in the
105 commissioner's discretion and in addition to any other remedy
106 authorized by law, order that a civil penalty not exceeding one
107 hundred thousand dollars per violation be imposed upon such person.
108 If such person does not request a hearing within the time specified in
109 the notice or fails to appear at the hearing, the commissioner may, as
110 the facts require, order that a civil penalty not exceeding one hundred
111 thousand dollars per violation be imposed upon such person.

112 (3) Each action undertaken by the commissioner under this
113 subsection shall be in accordance with the provisions of chapter 54.

114 (b) Whenever it appears to the commissioner that any such person
115 has violated, is violating or is about to violate any such provision,
116 regulation, rule or order, the commissioner may, in the commissioner's
117 discretion and in addition to any other remedy authorized by law: (1)
118 Bring an action in the superior court for the judicial district of Hartford
119 to enjoin the acts or practices and to enforce compliance with any such
120 provision, regulation, rule or order. Upon a proper showing, a
121 permanent or temporary injunction, restraining order or writ of
122 mandamus shall be granted and a receiver or conservator may be
123 appointed for such person or such person's assets. The court shall not
124 require the commissioner to post a bond; (2) seek a court order
125 imposing a penalty not to exceed one hundred thousand dollars per
126 violation against any such person found to have violated any such
127 provision, regulation, rule or order; or (3) apply to the superior court
128 for the judicial district of Hartford for an order of restitution whereby
129 such person shall be ordered to make restitution of any sums shown
130 by the commissioner to have been obtained by such person in violation
131 of any such provision, regulation, rule or order, plus interest at the rate
132 set forth in section 37-3a. Such restitution shall, at the option of the
133 court, be payable to the receiver or conservator appointed pursuant to
134 this subsection, or directly to the person whose assets were obtained in
135 violation of any such provision, regulation, rule or order. Whenever
136 the commissioner prevails in any action brought under this subsection,
137 the court may allow to the state its costs.

138 (c) Whenever the commissioner finds as the result of an
139 investigation that any person has violated any provision of the general
140 statutes within the jurisdiction of the commissioner, or any regulation,
141 rule or order adopted or issued under such provisions, the
142 commissioner may, in addition to any other remedy authorized by
143 law, order such person to (1) make restitution of any sums shown to
144 have been obtained in violation of any such provision, regulation, rule
145 or order plus interest at the legal rate set forth in section 37-1; (2)
146 provide disgorgement of any sums shown to have been obtained in
147 violation of any such provision, regulation, rule or order; or (3) both

148 make restitution and provide disgorgement in accordance with
149 subdivisions (1) and (2) of this subsection. After the commissioner
150 issues such an order, the person named in the order may, not later than
151 fourteen days after the receipt of such order, file a written request for a
152 hearing. The order shall be deemed received by the person on the
153 earlier of the date of actual receipt or seven days after mailing or
154 sending. Any such hearing shall be held in accordance with the
155 provisions of chapter 54.

156 [(c)] (d) The provisions of this section shall not apply to chapters
157 672a, 672b and 672c.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2012	36a-17
Sec. 2	October 1, 2012	36a-50

Statement of Purpose:

To aid in the administration and enforceability of the Department of Banking's laws concerning consumer credit practices and its ability to protect the public by making certain aspects of the Banking Commissioner's authority concerning consumer credit practices similar to the commissioner's authority concerning persons engaged in the securities business, including providing the commissioner with administrative authority to order restitution and disgorgement on behalf of harmed Connecticut consumers.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]