

4/8/86

17:1G-1 et seq

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:1G-1 et seq; 2C:21-19 ("Debt adjuster"-- include other intermediaries)

CHAPTER 184

Laws Of: 1986

Bill No: S195 (Previous sessions bill # S 2798)

Sponsor(s): Brown

Date Introduced: Pre-filed

Committee: Assembly: Financial Institutions

Senate: Labor, Industry and Professions

Amended during passage: No

Date of Passage: Assembly: October 27, 1986

Senate: September 15, 1986

Date of Approval: December 10, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

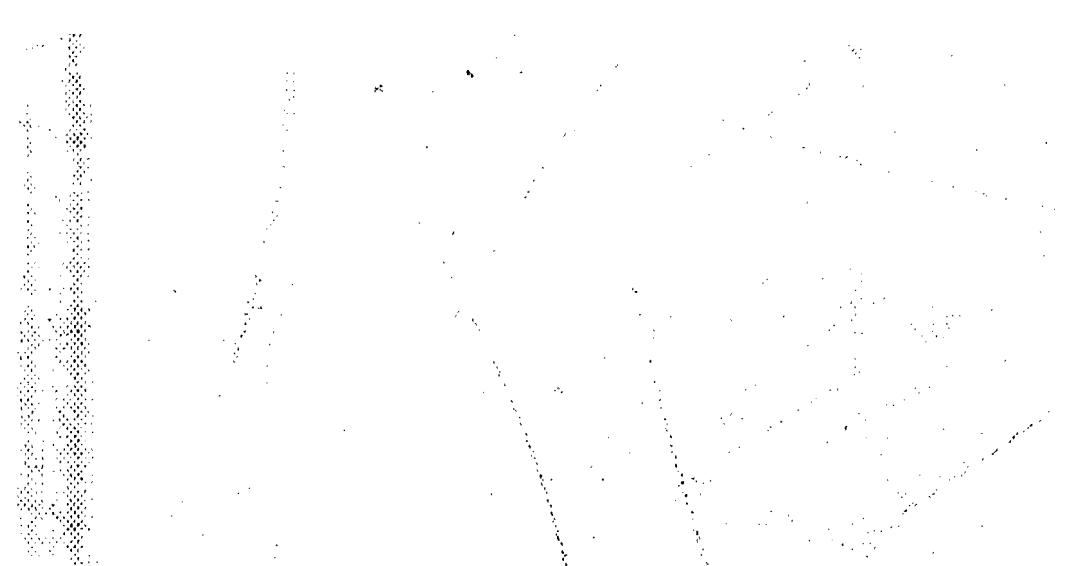
Message on Signing: No

Following were printed:

Reports: No

Hearings: No

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SENATE, No. 195
STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator BROWN

AN ACT concerning debt adjustment and credit counseling and amending P. L. 1979, c. 16 and N. J. S. 2C:21-19.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. Section 1 of P. L. 1979, c. 16 (C. 17:16G-1) is amended to read
2 as follows:

3 1. As used in this act,
4 a. [nonprofit] "Nonprofit social service agency" or "nonprofit
5 consumer credit counseling agency" means any corporation duly
6 organized under Title 15 of the Revised Statutes or Title 15A of
7 the New Jersey Statutes, no part of the assets, income or profit of
8 which is distributable to, or enures to the benefit of its members,
9 directors or officers, except to the extent permitted under this act,
10 and which is engaged in debt adjustment.

11 b. "Credit counseling" means any guidance or educational pro-
12 gram or advice offered by a nonprofit social service agency or
13 nonprofit consumer credit counseling agency for the purpose of
14 fostering the responsible use of credit and debt management.

15 c. (1) "Debt adjuster" means a person who either (a) acts or
16 offers to act for a consideration as an intermediary between a
17 debtor and his creditors for the purpose of settling, compounding,
18 or otherwise altering the terms of payment of any debts of the
19 debtor, or (b) who, to that end, receives money or other property
20 from the debtor, or on behalf of the debtor, for payment to, or dis-
21 tribution among, the creditors of the debtor.

22 (2) The following persons shall not be deemed debt adjusters:
23 (a) an attorney-at-law of this State who is not principally engaged

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.
Matter printed in italics thus is new matter.

24 as a debt adjuster; (b) a person who is a regular, full-time em-
 25 ployee of a debtor, and who acts as an adjuster of his employer's
 26 debts; (c) a person acting pursuant to any order or judgment of
 27 court, or pursuant to authority conferred by any law of this State
 28 or the United States; (d) a person who is a creditor of the debtor,
 29 or an agent of one or more creditors of the debtor, and whose
 30 services in adjusting the debtor's debts are rendered without cost
 31 to the debtor; or (e) a person who, at the request of a debtor,
 32 arranges for or makes a loan to the debtor, and who, at the authori-
 33 zation of the debtor, acts as an adjuster of the debtor's debts in the
 34 disbursement of the proceeds of the loan, without compensation
 35 for the services rendered in adjusting those debts.

36 d. "Debtor" means an individual or two or more individuals
 37 who are jointly and severally, or jointly or severally indebted.

1 2. Section 2 of P. L. 1979, c. 16 (C. 17:16G-2) is amended to read
 2 as follows:

3 2. a. No person other than a nonprofit social service agency or a
 4 nonprofit consumer credit counseling agency shall act as a debt
 5 adjuster.

6 b. It shall be unlawful for any nonprofit social service agency or
 7 nonprofit consumer credit counseling agency [deemed not to be a
 8 debt adjuster pursuant to P. L. 1960, c. 177 (C. 2A:99A-1 et seq.)
 9 or N. J. S. 2C:21-19,] to [engage in] act as a debt [adjustment]
 10 adjuster without first obtaining a license from the Commissioner of
 11 the Department of Banking pursuant to this act. [Any such
 12 licensed agency shall offer credit counseling, but no fee may be
 13 charged for such a service.]

14 c. A licensee is authorized to offer credit counseling.

1 3. Section 3 of P. L. 1979, c. 16 (C. 17:16G-3) is amended to
 2 read as follows:

3 3. Application for said license shall be made on forms prescribed
 4 by the commissioner, who shall be empowered to require informa-
 5 tion deemed necessary to demonstrate that the applicant is qualified
 6 to be licensed and possesses the necessary financial resources to
 7 sustain its operation.

1 4. Section 6 of P. L. 1979, c. 16 (C. 17:16G-6) is amended to read
 2 as follows:

3 6. [In order to cover the cost to a license of providing debt
 4 adjustment, the licensee may charge a fee therefor of 1.0% of the
 5 gross monthly income of the person to whom the service is rendered,
 6 but not more than \$15.00 in any one month, which may be waived
 7 in the discretion of the licensee.] a. A licensee may charge a fee to
 8 cover the cost of providing debt adjustment and credit counseling.

9 *b. The fee for debt adjustment shall not exceed 1% of the gross*
 10 *monthly income of the person to whom the service is rendered, but*
 11 *in no case more than \$15.00 in any one month, except as may be*
 12 *otherwise provided by rule or regulation promulgated by the com-*
 13 *missioner. This fee may be waived in the discretion of the licensee.*

14 *c. The commissioner is authorized to establish the maximum fee*
 15 *that may be charged for credit counseling.*

1 5. Section 8 of P. L. 1979, c. 16 (C. 17:16G-8) is amended to read
 2 as follows:

3 8. Any person who violates any provisions of this act shall be
 4 subject to a penalty of \$500.00 to be collected by and in the name
 5 of the commissioner in a summary proceeding under [the penalty
 6 enforcement law (N. J. S. 2A:58-1 et seq.)] “the penalty enforce-
 7 ment law,” N. J. S. 2A:58-1 et seq.

8 *If the commissioner has reason to believe that any person or*
 9 *licensee has engaged in or is engaging in any practice or trans-*
 10 *action prohibited by P. L. 1979, c. 16 (C. 17:16G-1 et seq.), the*
 11 *commissioner may, in addition to any remedies available, bring a*
 12 *summary action in the name of and on behalf of the State against*
 13 *the person or licensee and any other person concerned or in any*
 14 *way participating in or about to participate in those practices or*
 15 *transactions, to enjoin the person or licensee from continuing those*
 16 *practices or engaging in or doing any act in furtherance of those*
 17 *practices or in violation of that act.*

1 6. N. J. S. 2C:21-19 is amended to read as follows:

2 2C:21-19. Wrongful Credit Practices and Related Offenses.

3 a. Criminal usury. A person is guilty of criminal usury when
 4 not being authorized or permitted by law to do so, he:

5 (1) Loans or agrees to loan, directly or indirectly, any money or
 6 other property at a rate exceeding the maximum rate permitted by
 7 law; or

8 (2) Takes, agrees to take, or receives any money or other prop-
 9 erty as interest on the loan or on the forbearance of any money
 10 or other interest in excess of the maximum rate permitted by law.

11 For the purposes of this section and notwithstanding any law of
 12 this State which permits as a maximum interest rate a rate or rates
 13 agreed to by the parties of the transaction, any loan or forbearance
 14 with an interest rate which exceeds 30% per annum shall not be a
 15 rate authorized or permitted by law, except if the loan or forbear-
 16 ance is made to a corporation any rate not in excess of 50% per
 17 annum shall be a rate authorized or permitted by law.

18 Criminal usury is a crime of the second degree if the rate of
 19 interest on any loan made to any person exceeds 50% per annum

20 or the equivalent rate for a longer or shorter period. It is a crime
21 of the third degree if the interest rate on any loan made to any
22 person except a corporation does not exceed 50% per annum but
23 the amount of the loan or forbearance exceeds \$1,000.00. Other-
24 wise, making a loan to any person in violation of subsection a. (1)
25 and a. (2) of this section is a disorderly persons offense.

26 b. Business of criminal usury. Any person who knowingly en-
27 gages in the business of making loans or forbearances in violation
28 of subsection a. *of this section* is guilty of a crime of the second de-
29 gree and, notwithstanding the provisions of [section] *N. J. S.*
30 2C:43-3, shall be subject to a fine of not more than \$250,000.00 and
31 any other appropriate disposition authorized by [section] *N. J. S.*
31A 2C:43-2b.

32 c. Possession of usurious loan records. A person is guilty of a
33 crime of the third degree when, with knowledge of the nature there-
34 of, he possesses any writing, paper instrument or article used to
35 record criminally usurious transactions prohibited by subsection a.
35A *of this section.*

36 d. Unlawful collection practices. A person is guilty of a dis-
37 orderly persons offense when, with purpose to enforce a claim or
38 judgment for money or property, he sends, mails or delivers to
39 another person a notice, document or other instrument which has
40 no judicial or official sanction and which in its format or appear-
41 ance simulates a summons, complaint, court order or process or an
42 insignia, seal or printed form of a federal, State or local govern-
43 ment or an instrumentality thereof, or is otherwise calculated to
44 induce a belief that such notice, document or instrument has a
45 judicial or official sanction.

46 e. Making a false statement of credit terms. A person is guilty
47 of a disorderly persons offense when he understates or fails to
48 state the interest rate, or makes a false or inaccurate or incomplete
49 statement of any other credit terms.

50 f. Debt adjusters. Any person who shall act or offer to act as
51 a debt adjuster shall be guilty of a crime of the fourth degree.

52 "Debt adjuster" means a person who *either* (1) acts or offers
53 to act for a consideration as an intermediary between a debtor and
54 his creditors for the purpose of settling, compounding, or otherwise
55 altering the terms of payment of any debts of the debtor [and], or
56 (2) *who*, to that end, receives money or other property from the
57 debtor, or on behalf of the debtor, for payment to, or distribution
58 among, the creditors of the debtor. "Debtor" means an individual
59 or two or more individuals who are jointly and severally, or jointly
60 or severally indebted.

61 The following persons shall not be deemed debt adjusters for
62 the purposes of this section: an attorney at law of this State *who is*
63 *not principally engaged as a debt adjuster*; a nonprofit social service
64 or consumer credit counseling agency *licensed pursuant to P. L.*
65 *1979, c. 16 (C. 17:16G-1 et seq.)*; a person who is a regular, full-
66 time employee of a debtor, and who acts as an adjuster of his
67 employer's debts; a person acting pursuant to any order or judg-
68 ment of court, or pursuant to authority conferred by any law of
69 this State or of the United States; a person who is a creditor of
70 the debtor, or an agent of one or more creditors of the debtor, and
71 whose services in adjusting the debtor's debts are rendered without
72 cost to the debtor; or a person who, at the request of the debtor,
73 arranges for or makes a loan to the debtor, and who, at the authori-
74 zation of the debtor, acts as an adjuster of the debtor's debts in
75 the disbursement of the proceeds of the loan, without compensation
76 for the services rendered in adjusting such debts.

1 7. This act shall take effect immediately.

CONSUMER AFFAIRS

Redefines "debt adjuster" to include anyone acting as intermediary
between debtor and creditor.

SENATE, No. 195

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator BROWN

SENATE, No. 2798

STATE OF NEW JERSEY

INTRODUCED MARCH 7, 1985

By Senator BROWN

Referred to Committee on Labor, Industry and Professions

AN ACT concerning debt adjustment and credit counseling and
amending P. L. 1979, c. 16 and N. J. S. 2C:21-19.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 1 of P. L. 1979, c. 16 (C. 17:16G-1) is amended to read
2 as follows:

3 1. As used in this act,

4 *a.* **[nonprofit]** "Nonprofit social service agency" or "nonprofit
5 consumer credit counseling agency" means any corporation duly
6 organized under Title 15 of the Revised Statutes of Title 15A of
7 the New Jersey Statutes, no part of the assets, income or profit of
8 which is distributable to, or enures to the benefit of its members,
9 directors or officers, except to the extent permitted under this act,
10 and which is engaged in debt adjustment.

11 *b.* "Credit counseling" means any guidance or educational pro-
12 gram or advice offered by a nonprofit social service agency or
13 nonprofit consumer credit counseling agency for the purpose of
14 fostering the responsible use of credit and debt management.

15 *c.* (1) "Debt adjuster" means a person who either (a) acts or
16 offers to act for a consideration as an intermediary between a
17 debtor and his creditors for the purpose of settling, compounding,
18 or otherwise altering the terms of payment of any debts of the
19 debtor, or (b) who, to that end, receives money or other property
20 from the debtor, or on behalf of the debtor, for payment to, or dis-
21 tribution among, the creditors of the debtor.

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is not enacted and is intended to be omitted in the law.

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24 as a debt adjuster; (b) a person who is a regular, full-time em-
 25 ployee of a debtor, and who acts as an adjuster of his employer's
 26 debts; (c) a person acting pursuant to any order or judgment of
 27 court, or pursuant to authority conferred by any law of this State
 28 or the United States; (d) a person who is a creditor of the debtor,
 29 or an agent of one or more creditors of the debtor, and whose
 30 service in adjusting the debtor's debts are rendered without cost
 31 to the debtor; or (e) a person who, at the request of a debtor,
 32 arranges for or makes a loan to the debtor, and who, at the authori-
 33 zation of the debtor, acts as an adjuster of the debtor's debts in the
 34 disbursement of the proceeds of the loan, without compensation
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 9 or N. J. S. 2C:21-19,] to [engage in] act as a debt [adjustment]
 10 adjuster without first obtaining a license from the Commissioner of
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 5 gross monthly income of the person to whom the service is rendered,
 6 but not more than \$15.00 in any one month, which may be waived
 7 in the discretion of the licensee.] a. A licensee may charge a fee to
 8 cover the cost of providing debt adjustment and credit counseling.

9 *b. The fee for debt adjustment shall not exceed 1% of the gross*
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 12 *otherwise provided by rule or regulation promulgated by the com-*
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 5 of the commissioner in a summary proceeding under [the penalty
 6 enforcement law (N. J. S. 2A:58-1 et seq.)] "*the penalty enforce-*
 7 *ment law," N. J. S. 2A:58-1 et seq.*

8 *If the commissioner has reason to believe that any person or*
 9 *licensee has engaged in or is engaging in any practice or trans-*
 10 *action prohibited by P. L. 1979, c. 16 (C. 17:16G-1 et seq.), the*
 11 *commissioner may, in addition to any remedies available, bring a*
 12 *summary action in the name of and on behalf of the State against*
 13 *the person or licensee and any other person concerned or in any*
 14 *way participating in or about to participate in those practices or*
 15 *transactions, to enjoin the person or licensee from continuing those*
 16 *practices or engaging in or doing any act in furtherance of those*
 17 *practices or in violation of that act.*

1 6. N. J. S. 2C:21-19 is amended to read as follows:

2 2C:21-19. Wrongful Credit Practices and Related Offenses.

3 a. Criminal usury. A person is guilty of criminal usury when
 4 not being authorized or permitted by law to do so, he:

5 (1) Loans or agrees to loan, directly or indirectly, any money or
 6 other property at a rate exceeding the maximum rate permitted by
 7 law; or

8 (2) Takes, agrees to take, or receives any money or other prop-
 9 erty as interest on the loan or on the forbearance of any money
 10 or other interest in excess of the maximum rate permitted by law.

11 For the purposes of this section and notwithstanding any law of
 12 this State which permits as a maximum interest rate a rate or rates
 13 agreed to by the parties of the transaction, any loan or forbearance
 14 with an interest rate which exceeds 30% per annum shall not be a
 15 rate authorized or permitted by law, except if the loan or forbear-
 16 ance is made to a corporation any rate not in excess of 50% per
 17 annum shall be a rate authorized or permitted by law.

18 Criminal usury is a crime of the second degree if the rate of
 19 interest on any loan made to any person exceeds 50% per annum

20 or the equivalent rate for a longer or shorter period. It is a crime
21 of the third degree if the interest rate on any loan made to any
22 person except a corporation does not exceed 50% per annum but
23 the amount of the loan or forbearance exceeds \$1,000.00. Other-
24 wise, making a loan to any person in violation of subsection a. (1)
25 and a. (2) of this section is a disorderly persons offense.

26 b. Business of criminal usury. Any person who knowingly en-
27 gages in the business of making loans or forbearances in violation
28 of subsection a. is guilty of a crime of the second degree and, not-
29 withstanding the provisions of section 2C:43-3, shall be subject
30 to a fine of not more than \$250,000.00 and any other appropriate
31 disposition authorized by section 2C:43-2b.

32 c. Possession of usurious loan records. A person is guilty of a
33 crime of the third degree when, with knowledge of the nature there-
34 of, he possesses any writing, paper instrument or article used to
35 record criminally usurious transactions prohibited by subsection a.

36 d. Unlawful collection practices. A person is guilty of a dis-
37 orderly persons offense when, with purpose to enforce a claim or
38 judgment for money or property, he sends, mails or delivers to
39 another person a notice, document or other instrument which has
40 no judicial or official sanction and which in its format or appear-
41 ance simulates a summons, complaint, court order or process or an
42 insignia, seal or printed form of a federal, State or local govern-
43 ment or an instrumentality thereof, or is otherwise calculated to
44 induce a belief that such notice, document or instrument has a
45 judicial or official sanction.

46 e. Making a false statement of credit terms. A person is guilty
47 of a disorderly persons offense when he understates or fails to
48 state the interest rate, or makes a false or inaccurate or incomplete
49 statement of any other credit terms.

50 f. Debt adjusters. Any person who shall act or offer to act as
51 a debt adjuster shall be guilty of a crime of the fourth degree.

52 "Debt adjuster" means a person who either (1) acts or offers
53 to act for a consideration as an intermediary between a debtor and
54 his creditors for the purpose of settling, compounding, or otherwise
55 altering the terms of payment of any debts of the debtor [and], or
56 (2) who, to that end, receives money or other property from the
57 debtor, or on behalf of the debtor, for payment to, or distribution
58 among, the creditors of the debtor. "Debtor" means an individual
59 or two or more individuals who are jointly and severally, or jointly
60 or severally indebted.

61 The following persons shall not be deemed debt adjusters for
62 the purposes of this section: an attorney at law of this State who is

63 *not principally engaged as a debt adjuster*; a nonprofit social service
64 or consumer credit counseling agency licensed pursuant to P. L.
65 1979, c. 16 (C. 17:16G-1 et seq.); a person who is a regular, full-
66 time employee of a debtor, and who acts as an adjuster of his
67 employer's debts; a person acting pursuant to any order or judg-
68 ment of court, or pursuant to authority conferred by any law of
69 this State or of the United States; a person who is a creditor of
70 the debtor, or an agent of one or more creditors of the debtor, and
71 whose services in adjusting the debtor's debts are rendered without
72 cost to the debtor; or a person who, at the request of the debtor,
73 arranges for or makes a loan to the debtor, and who, at the author-
74 ization of the debtor, acts as an adjuster of the debtor's debts in
75 the disbursement of the proceeds of the loan, without compensation
76 for the services rendered in adjusting such debts.

1 7. This act shall take effect immediately.

STATEMENT

This bill amends P. L. 1979, c. 16 (C. 17:16G-1 et seq.) and N. J. S. 2C:21-19 to correct widespread abuses in the consumer debt adjustment and credit counseling industry. The term "debt adjuster" has been broadened to include anyone who acts as an intermediary between a debtor and creditors. Those persons who have heretofore been outside of the licensing provisions of the act will now be prohibited from engaging in debt adjustment without a license. To enable the Commissioner of Banking to properly enforce the law, the commissioner has been granted the power to enjoin any person from continuing to engage in practices thought to be in violation of the act. The definition of "debt adjuster" found in N. J. S. 2C:21-19 has been amended so that definition used in the New Jersey Code of Criminal Justice will be the same as that used in the licensing law.

5195 (1986)

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 195

STATE OF NEW JERSEY

DATED: MAY 19, 1986

This bill amends the law which provides for the licensing and regulation of nonprofit social service agencies and nonprofit consumer credit counseling agencies which engage in credit counseling and debt adjustment.

The term "debt adjuster" is broadened to include anyone who acts as an intermediary between a debtor and creditors. Those "debt adjusters" deemed not to be such under N. J. S. 2C:21-19 are also so deemed under the definition of debt adjuster in this bill. Those exempt are, among others, lawyers who are not principally engaged as debt adjusters and persons who are full-time employees of the debtor, who act pursuant to an order or judgment of the court, or who act on behalf of creditors.

Nonprofit social service or consumer credit counseling agencies are required under the bill to possess the necessary financial resources to sustain their operations.

Under current law, these agencies may charge fees for debt adjustment. The limit on these fees remains unchanged under the bill. However, fees for credit counseling, which are not permitted under current law, would be allowed, with the maximum fee being established by the Commissioner of Banking.

Finally, the Commissioner of Banking is granted the power to enjoin any person from continuing to engage in practices that are in violation of the act.

This bill was pre-filed for introduction in the 1986 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE
STATEMENT TO
SENATE, No. 195
STATE OF NEW JERSEY

DATED: SEPTEMBER 29, 1986

This bill amends the statute which provides for the licensing and regulation of nonprofit social service agencies and nonprofit consumer credit counseling agencies which engage in credit counseling and debt adjustment.

The term "debt adjuster" is broadened to include anyone who acts as an intermediary between a debtor and creditors. Those "debt adjusters" deemed not to be such under N. J. S. 2C:21-19 are also so deemed under the definition of debt adjuster in this bill. Those exempt are, among others, lawyers who are not principally engaged as debt adjusters and persons who are full-time employees of the debtor, who act pursuant to an order or judgment of the court, or who act on behalf of creditors.

Nonprofit social service or consumer credit counseling agencies are required under the bill to possess the necessary financial resources to sustain their operations.

Under current law, these agencies may charge fees for debt adjustment. The limit on these fees remains unchanged under the bill. However, fees for credit counseling, which are not permitted under current law, would be allowed, with the maximum fee being established by the Commissioner of Banking.

Finally, the Commissioner of Banking is granted the power to enjoin any person from continuing to engage in practices that are in violation of the act.