

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Ray Cox at 3:30 p.m. on March 15, 2004 in Room 527-S of the Capitol.

All members were present except:

Representative Larry Campbell- excused
Representative Rob Boyer- excused
Representative Tom Burroughs- excused
Representative Vaughn Flora- excused

Committee staff present:

Bruce Kinzie, Revisor's Office
Bill Wolff Legislative Research Department
Maggie Breen, Secretary

Conferees appearing before the committee:

Kevin Glendening - Office of State Bank Commissioner
Jeff Witherspoon - Consumer Credit Services, Inc.
Karen Hiller - Housing and Credit Counseling, Inc.

Others attending:

See Attached List.

Chairman Cox opened the hearing on SB 509 - Credit service organizations; inclusion of debt management services.

Proponents:

Kevin Glendening, Office of State Bank Commissioner, said the bill addresses some additional language to our existing Credit Services Organization Act. The law is outdated, woefully inadequate, and doesn't really serve its purpose. **SB 509** is the attempt to update the language, by expanding the definition of what a credit service organization is, in order to address the market place today. It defines practices by stating required and prohibited activities regarding how business with consumers is to be done. Finally, to ensure that laws are complied with, it increases the enforcement tools available to his office. It takes a proactive step that should help to ensure Kansas consumers receive both adequate information, concerning what can and cannot be done in regard to their credit situation, and provides protections against deceptive practices. (**Attachment 1**)

Representatives Grant, Brunk and Cox asked questions.

Kevin said that Chairman Cox asked a question earlier relative to bonding. He said that they require surety bonds on basically everything they license: mortgage people; finance companies; payday lenders; everybody across the board. Based on the most current information they have, the cost of the bonds range from \$5 and \$10 per \$1,000 of coverage. Chairman Cox pointed out that opponents, who could not be present today but have submitted written testimony, have suggested the use of insurance rather than bonds. Kevin said with insurance the "errors and omissions" people just line up to receive the money whereas the bond is payable to his department.

Jeff Witherspoon, Executive Director of Consumer Credit Services, Inc., said his agency currently has about 1,200 clients on a Debt Management Plan. These plans are used by consumers to help avoid bankruptcy and to repay their debt obligations. Last year they helped counsel and educate 8,000 Kansans through financial counseling and education programs. A "new breed" of credit counseling agencies has emerged. These out of state agencies are taking advantage of Kansas consumers. They do this through high fees and inaccurate promises. They do not offer any educational programs or services, yet present themselves as non-for-profit agencies. This bill will help protect Kansans from being taken advantage of. It will also level the playing field. His agency would be allowed to charge a small nominal fee for services. (**Attachment 2**)

Chairman Cox asked Jeff where he received his funding. He said the majority, 70%, of his funding comes

CONTINUATION SHEET

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE at 3:30 p.m. on March 15, 2004 in Room 527-S of the Capitol.

from creditors called a fair share donation, which they receive when they are able to assist clients in paying their bills. They also receive grant money and about 10% from fees.

Karen Hiller, Housing and Credit Counseling, Inc., urged the committee to support **SB 509**. She said she and Jeff are providing true comprehensive nonprofit credit counseling services across the state. Every day her office receives calls from people who are desperate. At least a couple of times a week, they are contacted by folks who have already gotten hooked up with unscrupulous credit counseling people and have already lost money to them. They were already vulnerable or deeply in trouble when they contacted these unscrupulous agencies for help and then they are just been offered a settlement plan or been required to pay a big fee up front. She said they find themselves helpless to help those people who have already been taken advantage of by the bad guys. Her agency actual goes through the clients budget and provides support and follow up sessions as well as education for the client and their family. She spoke in full support of the bill and said Kevin has done a great job in trying to address the problems out there. (**Attachment 3**)

Representative Wilk asked why in Section 1 (b) everyone had to be licensed except an attorney? Karen said she though it was because the prior statute allows attorneys to do this already and that statute is being amended but allowed to stay on the books.

This point was discussed.

Opponents:

John Berglund - Association of Independent Consumer Credit Counseling Agencies (AICCCA) - Written Only (**Attachment 4**)

David C. Jones, Ph. D., AICCCA - Written Only (**Attachment 5**)

Representative Dillmore said it was unfortunate that the opponents couldn't be present because in John Berglund's testimony on page 3, the 4th paragraph, he's talking about not-for-profits not being allowed to compete with for-profits doing any normal business. He really wished the gentleman was here so he could understand what he's saying because we need to be careful about that. It really doesn't make any sense at all to him. What about credit unions and what about co-ops?

Representative Brunk expressed concerned regarding the fees and the big spread in the bond requirements. He was concerned that we might penalize the good citizens who were trying to run good businesses.

Kevin said our fees are the lowest among the surrounding states and the bond requirements were set up with a broad range and the details would be determined by rules and reg. They are looking at what some of the other states have done and will set it up on a tiered system based upon the volume of activity the company is doing.

Chairman Cox closed the hearing on **SB 509**.

He then said he would work **SB 379, Sub for SB 380, SB 392, SB 508 and SB 509**.

SB 379 - Asset forfeiture; notice to lienholder.

Representative Dillmore made a motion to pass SB 379 favorably. Representative Dreher seconded the motion. The motion carried.

Sub for SB 380 - Liens for wrecker and towing services; notice to lienholders.

Representative Wilk made a motion to amend Sub for SB 380 by adding the word "or city" on page 4, line 35, and adding on page 3, item "(d) The provisions of this section shall apply to any motor vheicle which has been impounded as provided in K.S.A. 8-1567, and amendments threreto." Representative Lane seconded the motion. The motion carried.

Representative Grant made a motion to pass Sub for SB 380 as amended. Representative Dillmore

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seconded the motion. The motion carried.

SB 392 - Authorizing the committee on surety bonds and insurance to competitively negotiate certain contracts.

Representative Goico made a motion to pass SB 392 favorably. Representative Grant seconded the motion. The motion carried.

SB 508 - Standard nonforfeiture law for individual deferred annuities

Representative Wilk made a motion to pass SB 508 out favorably and place it on the consent calendar. Representative Lane seconded the motion. The motion carried.

SB 509 - Credit service organizations; inclusion of debt management services.

Representative Dillmore made a motion to pass SB 509 favorably for passage. Representative Humerickhouse seconded the motion.

Representative Dillmore asked about the possibility of having the language in the bill reflect a range of fees and allowing adjustments to be made according to the rate of inflation. He suggested this be done for a certain period of time, in order to give regulators the authority to adjust the fees according to price inflation rather than have them have to come back every couple of years to receive fee increases.

Kevin said he believes that is included in the bill under provision for rules and regulation. Discussion followed.

Representative Wilk made a substitute motion to strike out subsection (b), on page 1, which would eliminate attorney's being exempt from the provisions of the act. Representative Brunk seconded the substitute motion.

Representative Dillmore said he didn't agree that attorneys should be included in the act. They are agents of individual clients and are empowered to handle their legal and financial affairs as directed by them over a much broader course of business than just whether they are going to file bankruptcy for them.

General discussion followed.

Representative Dillmore said he thought the amendment was a "deal killer," that it would be a good way to kill the bill.

Representative Wilk said he didn't agree that it was a deal killer. If that was the case, we'd have to include CPA's, accountants, bankers, and other folks that all have expertise. We're not excluding any of them. It's just attorneys. If we're going to do this and license this, we ought to include them all. He doesn't think the amendment kills the bill, he just thinks it levels the playing field.

The substitute motion failed.

The original motion carried.

Representative Grant made a motion to approve the March 10th committee minutes as written. Representative Wilk seconded the motion. The motion carried.

Meeting adjourned at 4:34 p.m.

The date of the next meeting is undetermined.

Since the committee did not meet again, the minutes were sent to committee members asking for additions or corrections by March 26th, with the understanding that if none were received they would be considered approved as written. None were received.



KANSAS

OFFICE OF THE STATE BANK COMMISSIONER
CLARENCE W. NORRIS, Bank Commissioner

KATHLEEN SEBELIUS, GOVERNOR

March 15, 2004

House Committee on Financial Institutions

Testimony on SB 509

Mr. Chairman and members of the committee:

In combination with increasing levels of consumer debt in this country, there has been a proliferation in companies and organizations purporting to help those consumers “get out of debt”. Some of these organizations have come under scrutiny by both State and Federal regulators questioning these organizations’ business practices and methods of operation. Complaints by consumers who believe they were misled by some of these organizations have also increased nationally. SB 509 is intended to update and expand the protections contained in our present credit services organization (CSO) law to better address and, reduce or prevent, potential problems reflective of how these programs are marketed in today’s environment. The amendments contained in SB 509 lay a good foundation to address these concerns and can be summarized in three areas as follows:

First, the present definition of a CSO would be expanded to encompass those “debt management” activities commonly offered by credit counseling businesses and organizations.

Second, the bill establishes the terms and conditions under which a CSO may engage in debt management activities with a consumer. The bill requires the agreement between the consumer and the CSO be in writing and clearly explain the responsibilities of the CSO and the rights of the consumer. The bill also requires the CSO to take reasonable steps to identify all of the consumer’s creditors and prepare a realistic budget plan, as well as itemize any fees to be paid by the consumer per the agreement. The CSO must also report to the consumer, at least quarterly, progress in meeting the agreed upon plan. In addition, the bill establishes parameters on allowable charges and how funds received from consumers for distribution to creditors are maintained and disbursed. The bill also contains various restrictions designed to reduce the potential for deceptive schemes. Among these are prohibitions on structuring an agreement that would result in negative

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Attachment 1

Testimony on SB 509

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amortization of a consumer's debts, requiring or soliciting a consumer to purchase any other product or service in connection with providing debt management services, or purchasing any debts of the consumer.

The third area addressed by the bill pertains to strengthening the enforcement tools available to foster compliance with the law. In addition to registration requirements, the bill would give our agency specific authority to examine the CSO, issue administrative orders, and levy fines of up to \$10,000 for violations of the law.

This bill, in my opinion, represents a proactive step in the right direction that should help to ensure Kansas consumers receive both adequate information concerning what can and cannot be done in regard to their credit situation, and protections against deceptive practices. I believe the provisions contained in this bill encourage legitimate practices among the providers of these services and will help ensure consumers who may be struggling to meet their financial obligations, and who seek assistance, are not placed in further financial peril. Thank you for your favorable consideration of this bill.

Respectfully,

Kevin Glendening
Deputy Commissioner



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October 14, 2003

Not-for-Profit Credit Counselors Are Targets of an I.R.S. Inquiry

By JENNIFER BAYOT

The Internal Revenue Service is investigating the business practices of nonprofit credit counseling services, which advise millions of people in debt.

The investigation could jeopardize the agencies' nonprofit status and upend the industry just as a proposed change in federal bankruptcy law stands to steer many thousands more people to debt counseling. As nonprofit concerns, the agencies are now exempt from dozens of state and federal regulations.

The I.R.S., the Federal Trade Commission and state regulators plan to issue an unusual joint advisory today warning consumers to be wary about the total costs when seeking help from tax-exempt credit counseling organizations.

"Consumers need to know not to read too much into not-for-profit status — that's no guarantee that someone is legit," said C. Steven Baker, director of the Federal Trade Commission's Midwest operations. "A lot of these credit counseling companies are using tax-exempt status as a get-out-of-regulation-free card. That's why we're teaming up with the I.R.S. on this issue."

Consumer advocates say the actions are long overdue, and many credit counselors say they welcome the scrutiny because they believe that some new entrants are giving the entire industry a bad name.

An estimated nine million people sought the help of credit counseling services last year, according to the National Consumer Law Center and the Consumer Federation of America. From these and earlier inquiries, at least one million people have consolidated their debts, and are now making a single payment each month to the agencies, which in turn distribute the money to creditors.

The I.R.S. declined to identify the agencies it was investigating. In a rare disclosure about its enforcement efforts, though, the tax agency said it was auditing "a significant number" of credit counselors and is conducting a more rigorous review of new ones that apply for tax exemption. The agency is examining the fees charged consumers, the salaries paid to officers and a host of transactions with for-profit companies.

Illinois and Missouri have sued AmeriDebt, one of the biggest agencies, saying it charges excessive fees and diverts money to companies that are affiliated with it.

A close look at tax records and other documents shows that some executives of Cambridge Credit Counseling and Consolidated Credit Counseling Services also have relationships with companies that they pay for various services. Cambridge and Consolidated say that there is nothing improper about their business relationships and that they have been examined by independent parties.

If any of these companies are found to be improperly benefiting for-profit companies, they risk losing their nonprofit status.

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"We take a dim view of the use of the tax code by credit counseling groups to game the system, and are concerned by recent developments," said Mark W. Everson, the I.R.S. commissioner. "Those groups that are using the tax code to skirt consumer protection laws should think twice. We will work with other federal agencies and state regulators to combat abuse in this area."

To be exempt from taxes, a credit counseling agency must limit its services to poor customers or must primarily provide education and counseling to the public, the I.R.S. said. Simply enrolling people in payment plans is not enough.

The industry has changed drastically in the last decade from mostly small local organizations to very visible national operations that advertise aggressively. These big companies have ushered in some welcome improvements, like 24-hour customer service lines and electronic payments.

But consumer advocates say that some agencies seem more intent on making money by overcharging their customers or by funneling money to related companies rather than acting in the best interests of their clients.

A potential for conflicts of interest has existed since the industry's beginnings in the 1960's. Credit counselors receive contributions from credit card companies, which provide incentives to push people into repayment plans — even people who need only budgeting tips or who might be best served by bankruptcy protection. Recently, though, the contributions from credit card companies have been shrinking, and consumers are being asked to pay more for the help.

"Because of the work that we do, we have to be an arbiter for both sides, and I do think some tension comes from that," said Suzanne Boas, president of the Consumer Credit Counseling Service of Greater Atlanta. "But if you're very clearly focused on providing value for consumers, I think that's a tension that can be resolved."

Credit counseling helps many people find a way to regain their financial footing. They learn to trim costs and stick to a budget and determine whether bankruptcy is a reasonable option. Clients who enroll in the agencies' payment plans may benefit because the agencies can negotiate lower interest rates, smaller minimum payments and the elimination of late charges.

Many Americans are struggling to pay their bills, and those out of work find job opportunities bleak. Research by the Federal Reserve indicates that household debt has risen to a record 14 percent of disposable income. Personal bankruptcies are on track this year to surpass last year's record of 1.5 million, according to the American Bankruptcy Institute.

Bankruptcy legislation passed by the House could steer even more people to counseling agencies. It would require, among other things, that anyone who wants to file for personal bankruptcy consult first with a credit counselor.

"You're going to have people forced en masse to become victims due to Congress's beneficence," predicted Stephen Gardner, a lawyer in Dallas who has served as an assistant attorney general for consumer protection in Texas.

A look at some of the big agencies' practices and financial statements shows a variety of complicated fee structures and a quagmire of related companies.

The credit agencies say that they are generally asking for higher fees because of the smaller contributions from credit card companies and that their fees are strictly voluntary. But consumer advocates say that some agencies fail to mention that the fees are optional or pressure customers to pay them, pointing out that the agencies are nonprofit.

The Consumer Federation of America says a reasonable setup fee should not exceed \$50.

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AmeriDebt — which is based in Germantown, Md., and has close to 100,000 clients — retains 3 percent of customers' overall debt, typically the equivalent of a month's worth of payments, as an initial voluntary contribution. It then collects \$7 a month for each credit card account it handles, at a minimum of \$20 a month per consumer.

"It has been AmeriDebt's longstanding policy to provide its services to all consumers who ask for our help, whether or not they make a voluntary contribution," the company said in a statement.

AmeriDebt emphasized that the fees are voluntary and that it can reduce people's monthly payments by roughly 50 percent.

Cambridge Credit Counseling, which is one of the country's five largest credit counselors and is adding 4,000 customers a month, initially consolidates payments and then deducts the equivalent of one month of the consumer's payment under the new plan. It also charges maintenance fees of 10 percent of each month's payments or \$25, whichever is greater. Cambridge, which is based in Agawam, Mass., says the enrollment fees help people stay committed to the repayment programs.

Furthermore, customers who stick to their payment plans for six months can claim half of any contributions that Cambridge receives from their creditors, thus recouping some fees. The company says that since 1996 it has returned close to \$12 million to its customers through this program.

While it is evaluating fees in the industry, the I.R.S. is looking at what counseling agencies do with money they receive. Many are paying what seem like excessive salaries, it said. Some owners of the nonprofit concerns also own stakes in profit-making companies, which they send business to in various ways, prompting further investigation by the I.R.S. Again, the agency declined to identify the companies, but complicated business dealings are common in the industry.

The lawsuits filed by the Illinois and Missouri attorneys general say that AmeriDebt operates more like a for-profit enterprise, and both suits accuse the company of charging excessive fees.

Over the last three years, AmeriDebt has paid \$75 million to have its customers' accounts managed by companies owned by Andris Pukke, the husband of its founder, Pamela Shuster, and a former officer.

AmeriDebt said "it would cost millions of dollars to invest in the same technology and personnel that are available at less cost from vendors."

Mr. Pukke, 34, left AmeriDebt three years ago, the company said, and has since had no affiliation with it.

Cambridge Credit manages its own accounts. But it pays much of its revenues to for-profit companies owned by its founders, John and Richard Puccio, who are brothers.

Tax returns show that it paid millions during its fiscal year ended July 31, 2002, to a debt-referral company owned by John Puccio.

Cambridge also paid the brothers \$984,000 last year toward its \$14.1 million purchase of two other for-profit credit counseling companies that the Puccios founded. The sale price, said Cambridge's lawyer, Paul Kaplan, was independently reviewed and approved by the accounting firms BDO Seidman and KPMG. Cambridge said that its executives' salaries had also been reviewed and approved by an outside firm. John and Richard Puccio earn six-figure salaries from either Cambridge or two related companies, adding up to more than \$500,000 a year for each, according to tax returns.

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Last year, a report by a Massachusetts Senate committee expressed concern about Richard Puccio, noting that the Securities and Exchange Commission barred him for five years from the securities industry in 1996 for "engaging in high-pressure, fraudulent sales tactics in utter disregard of his obligations to customers and their welfare."

Mr. Kaplan, Cambridge's lawyer, said no regulators had objected to Mr. Puccio's role at the group. "He sits on the board, but he has no office or title, and he doesn't deal with consumers," Mr. Kaplan said.

On its most recent tax return, Consolidated Credit Counseling in Fort Lauderdale, Fla., another of the biggest agencies, lists five for-profit businesses as related organizations.

Florida public records list Howard Dvorkin, the president of Consolidated Credit, as the sole officer of three of those organizations.

The five companies provide Consolidated with office space, software, accounts processing, marketing and office equipment — often at substantial discounts, Mr. Dvorkin said.

"We've had compensation studies on any related-party transactions," he responded to inquiries. "We have an independent board review them to make sure they're at market or below."

Mr. Dvorkin said that the affiliated companies helped shield Consolidated from various liabilities and that keeping the businesses separate was more efficient. "We don't do anything wrong," he said. "We're a legitimate service."

The draft of the statement to be released by regulators today tells consumers to beware of quick fixes offered by some credit advisers. Among other things, it suggests consumers look at total costs, any voluntary contributions and monthly service charges, which "may add to your debt and defeat your efforts to pay your bills."

Mark Pacella, president of the National Association of State Charity Officials, said, "State charity officials are working with other state and federal agencies to remedy abuses."



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March 15, 2004

Dear House Members:

My name is Jeff Witherspoon and I am the Executive Director of Consumer Credit Counseling Service of Salina/Wichita Kansas. I am speaking today in support of Senate Bill 509.

Our agency currently services over 1,200 clients on a Debt Management Plan. These plans are used by Kansas consumers to help avoid bankruptcy and to repay their debt obligations. CCCS of Salina/Wichita provides confidential, one-on-one/face-to-face counseling to those seeking our help. Last year we helped counsel and educate over 8,000 Kansans through financial counseling and our education programs. CCCS is a not-for-profit agency. In order to retain our not-for-profit status, we must offer educational services in addition to DMP's. We do this by offering a large variety of financial classes to the general public, as well as our clients.

Most of our clients come to us because their bills have gotten out of control and they are scared. Many have defaulted on loan payments including: mortgages, vehicles, student loans, and credit cards. Our clients cover a vast socioeconomic range from the elderly on fixed incomes to the professionals making six figures. It does not matter what you make in life, it depends more on how you spend it.

But, a large problem is now occurring in the credit counseling industry. A "new breed" of credit counseling agencies has emerged. These out of state agencies are taking advantage of Kansas consumers through high fees and inaccurate promises. They do not offer any education programs/services, but present themselves as not-for-profit agencies. Consequently they are violating Kansas law. Currently, Kansas has a law that prohibits agencies from charging a fee for debt adjusting or debt management. My agency has specifically not violated this law throughout its 19 year history.

Take for example the situation with an elderly client named Evelyn. Evelyn came to our agency needing help. She was currently already on debt management plan with on of the "new breed" of credit counseling agencies. Evelyn was on a fixed income; her monthly income was \$1861 per month. A very adequate amount for an elderly widow, but there was a problem; she owed over \$187,000 in credit card debt. Her minimum payments to the creditors each month was over \$3,000. It should have been obvious to the counselor that Evelyn could not make the monthly payments, let alone repay that amount of money. It was more than \$1,100 more per month than her income. But, the other counseling agency had told her that she was doing well and signed her up on their Debt Management Plan. Unbeknownst to her, they kept her first \$3,000 payment she sent as the start up fee for joining their service. They also planned to keep 10% of her future payments as their monthly maintenance fee. If she would have been able to complete her DMP Plan, she would have paid more than \$18,000 in fees. We would have helped her for free. The IRS is currently investigating this company as well as others because they feel they are not legally not-for-profit agencies.

This case, although extreme, is happening every day in Kansas. As debt strapped consumers turn for help, they need to be able to contact true non-profit credit counseling agencies that are designed with the client's best interests in mind. This bill will help to protect Kansans from being taken advantage of by this "new breed" of counseling agency.

This bill will also level the playing field for my agency as well. Because of the current law, we have not been charging our clients a monthly fee, but with passage of the bill my agency would then be able to charge a small nominal fee for our services. I believe strongly that regulation of my industry and consistent enforcement of the laws of the state of Kansas are necessary to make it fair to any agency choosing to do business in our state. I have great faith in the office of the State Banking Commission to help enforce this pending legislation, if passed. Regulation of my industry is imperative to the protection of Kansas consumers and to ensure fair business practices in the credit counseling industry.

Again, I strongly encourage your support of SB 509, and thank you for your time and consideration of my concerns.

Jeff Witherspoon
Executive Director
Consumer Credit Counseling Service, Inc.
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March 12, 2004

House Committee on Financial Institutions

Testimony on SB 509

My name is Karen Hiller and I am the Executive Director of Housing and Credit Counseling, Inc., a nonprofit consumer credit counseling agency-serving Kansas. I encourage your support of Senate Bill 509.

Housing and Credit Counseling Inc. is a community service agency for people who need help with financial issues. We are a local agency with offices in Topeka, Lawrence, Manhattan and Emporia, Kansas. We are dedicated to financial education and counseling and serve over 10,000 Kansans per year. Of those, 1250 clients are currently on our Debt Management Programs. These programs allow Kansans to repay their debts and avoid bankruptcy. In 2003, clients of our Debt Management Program returned \$5,456,482.47 to their creditors. Most of our clients come to our offices because they are scared due to an overload of debt and they fear they may have to file bankruptcy. Our clients typically lack the financial education to take control of their finances or they have experienced a devastating life situation such as death, divorce or a loss of a job that they were not prepared to deal with. Our agency's education, counseling and Debt Management Program have allowed Kansans to take control of their finances.

A problem that is occurring within the credit counseling industry is "look like agencies". These largely Internet based organizations offer false hope, untrue promises and high fees. These debt adjusting companies advertise an immediate "fix", usually in 15 minutes or less on the internet or phone, and spend their revenue from client fees and creditors on advertising and profit. They have demonstrated that their prime interest is not the client's needs but the client's fees. These types of agencies often charge setup fees, which can be as much as a client's entire first months payment, and large monthly maintenance fees. In addition, they provide little or no personal financial counseling, education or support to their clients. Often Housing and Credit Counseling Inc. counsels individual after they have been taken advantage of by unscrupulous agencies. We see the direct damage these agencies have inflicted on Kansas's residents. Their debt has increased, their credit history ruined and more times than not, their only option is now bankruptcy. And this does not even begin to touch on the emotional toll these people have experienced.

As more and more scared and vulnerable Kansans are searching for financial help, it is important that they are not taken advantage of by the agency they turn to help for. This bill will protect Kansans by eliminating and/or controlling the credit-counseling industry.

Thank you for your consideration of this bill.

House Financial Institutions
3-15-04
Attachment 3

TESTIMONY OF

John E. Berglund

RE: SB 509

Thank you for offering me the opportunity to express my thoughts on portions of the legislation before you regarding Debt Management or Credit Counseling as it is frequently referred to. I would have come in person today but it was just this past Friday that I learned about the hearing. I am testifying on behalf of the American Independent Consumer Credit Counselors (AICCCA). I tried to get a flight from Denver (I live in Denver) to Topeka but found out that there are no direct flights. The best option was to fly to Omaha and drive down but this morning's flight was full. I just got back to Denver from a meeting in Washington D.C. that ended at noon yesterday.

I am the president of Consumer Credit Counseling Services of Greater Denver, Inc., a CCCS started in 1967. Our organization became a part of Money Management International, Inc. (MMI) in April of last year. Both of these organizations have tax exempt status under section 501(c)(3) of the Internal Revenue Code.

I am forwarding to Bruce Kenize copies of other documents from the President of AICCCA. These documents comment in detail about various sections of SB 509. My comments will be limited to those provisions of the draft involving fees, bonding and for-profit involvement.

New Section 11 (b) 1 and 2 establish fees.

Set-up Fees: The current version of the bill allows for a set-up fee of \$50 inclusive of any cost for credit bureau reports. Legitimate agencies take the most at risk and difficult consumer situations and expend a great deal of energy stabilizing them in the beginning of a debt management plan. We believe a maximum of \$75 as a set up fee should be allowed plus a reasonable fee for the cost of providing credit bureau reports.

Monthly Maintenance Fees: The current version of the bill allows for \$20 per month or \$5 per account whichever is lower. We believe a maximum of \$50 per month but not more than 15% of the average monthly amount disbursed to creditors should be allowed for Monthly Maintenance Fees.

It will take between three (3) and five (5) years for credit counseling agencies to average the level of fees allowed by this legislation. They will never actually reach it since fees are waived for those who cannot afford to pay. We cannot and should not be allowed to take any of our present Debt Management Contracts and raise fees for our existing clients. It takes from 3-5 years to complete a debt management plan so

for every client we add at the higher fee we have one in place at the current level.

The national average cost to maintain a debt management plan is approximately \$42. This does not count the cost of education provided other than the actual initial counseling itself. It is higher in NY and California and it is a little lower in Kansas. Our costs are going to go up at least along the lines of the Consumer Price Index. We have every reason to believe creditor "Fair Share" contributions are going to continue on their downward trend. By the time we can average the amount allowed in this bill in 3 – 5 years, our costs will be \$50.

Bonding: Below is a section (18-5-3.1) of Georgia law that provides for insurance as protection for consumers and the administrator for debt adjusting:

"(a) (2) Obtain and maintain at all times insurance coverage for employee dishonesty, depositors forgery, and computer fraud in an amount not less than the greater of \$1,000,000 or 10 percent of the monthly average for the immediately preceding six months of the aggregate amount of all deposits made with such person by all debtors. The deductible on such amount shall not exceed 10 percent of the face amount of the policy coverage. Such policy shall be issued by a company rated at least "A" or its equivalent by a nationally recognized rating organization and such policy shall provide for 30 days' advance notice of termination of the policy to be provided to the Governor's Office of Consumer Affairs."

We believe the protection from an insurance policy of this type will protect consumers and the Administrator charged with the enforcement of the debt management act.

Surety bonds are very expensive and will add to the bottom line cost of every agency. Some bonding companies will require the personal assets of the applicant to be sued as a guarantee. Credit counseling agencies who operate in more than one state may find their bonding company will simply refuse to provide a surety bond at some point.

Dr. Jones, the President of the AICCCA has stated our concerns in a letter I am incorporating by reference. It has been forwarded to Bruce Kenize for this Committee's use.

A surety bond can still be an option along with letters of credit and a cash deposit if the agency so desires.

For – Profit vs. Non - Profit: I have been participating in the National Counsel of Commissioners for Uniform State Laws (NCCUSL) meetings to write a Uniform State Law for adoption by each state similar to the UCC. Also present were representatives of the National Consumer Law Center (NCLC), the Consumer Federation of American and at least one other similar organization.

I mention them because an issue came up at the meeting that began Friday March 12th and ran through yesterday March 14th. The issue was whether or not for-profit entities should be allowed to operate to provide credit counseling. Many states have traditionally allowed only 501(c)(3) organizations to provide this service.

At first the consumer groups present had no opinion or did not consider it to be a major issue. By the end of yesterday, they felt it needed to be limited to non-profit 501(c)(3) organizations. I believe I know why they began to change their minds but it would be better if you asked them. I sat next to Travis Plunkett from the Consumer Federation of America. We discussed this and fees to the extent we were able to do so during the meeting and plan to continue to do so later this week.

I have been thinking about this issue for at least two years after watching what so-called non-profit organizations have done hiding behind the guise of a non-profit. Large up front fees have been assessed and many times charges are designed as "contributions" but the consumer doesn't realize he is even making a contribution.

I believe in capitalism and I agree that non-profits should not be allowed to compete against for-profits in any normal business while claiming exemption from taxes. It would be unfair. So why would we be concerned if for-profits were allowed into what has traditionally been a non-profit field? The consumers who need our services are vulnerable. For-profits will spend a great deal on advertising, something our budgets do not allow. Their ads are well done. They look like traditional credit counseling agencies when they advertise. More than once, I've found myself watching one of their ads thinking it was one of ours (or should have been) before catching the name of the company doing the advertising. Advertising works. It has hurt the non-profits and will eventually put us out of business. The tax advantage will not mean anything if our clients only hear about the for-profits.

Much of the actions that are prompting legislation have been committed by agencies who committed them while acting under the guise of a non-profit. We ask that you do not enact legislation that will harm agencies that follow, not only the letter of the law, but the spirit and intent of the law as well.

The for-profit representatives at our meeting this past weekend spoke eloquently stating that for-profits were allowed into the hospital business and look at the results. They said it works just fine. I don't know about any of you, but it hasn't worked fine in Colorado. Hospital wards are severely understaffed by nurses. There are plenty of nurses available but they have taken themselves out of the workforce due to legitimate fears of liability working on understaffed wards.

If any of you have ever dealt with the effects of "Capitation" you understand that doctors are put in the terrible position of withholding tests and other procedures or their income will be decreased dollar for dollar. From looking rather quickly at

your bill this morning, I did not see any limitation on for-profits and if I did miss it, I apologize.

If there is any chance of postponing this for a short time so that I could come over from Denver to testify in person I would be grateful for the opportunity. Again thank you for taking time to listen to my views on a portion of SB 509.

John E. Berglund

From: "AICCCA" <assoc@aiccca.org>
To: <Brucek@rs.state.ks.us>
Date: 3/15/04 9:16AM
Subject: Urgent [AICCCA] Mar 15 hearing - Kansas Senate Bill No. 509 Comments

TO: Bruce Kenzie

Kansas - House Financial Institutions and Insurance
Committee

785-296-5291

brucek@rs.state.ks.us

FROM: David C. Jones, Ph.D., President

Association of Independent Consumer Credit Counseling
Agencies (AICCCA)

RE: SB 509 - Kansas Credit Services Organization Act.

Comments on highlighted sections of SB-509

The Association of Independent Consumer Credit Counseling Agencies (AICCCA) is a national non-profit organization representing responsible credit counseling agencies. AICCCA members represent more consumers repaying their debts through structured debt management plans than any other association. Many of those consumers reside in the state of Kansas. The AICCCA has reviewed Kansas Senate Bill No. 509, the Kansas Credit Services Organization Act, and offers the following comments:

Page 3, Line 29, New Section 4. This provision requires that registrants provide bonding in values ranging between \$25,000 and \$1 million. The AICCCA agrees with the intent to protect Kansas consumers from fraudulent acts or business failures. However, bonds cost between 1-1/2% and 2% of the face value at a minimum. Agencies must meet significant requirements to acquire bonds. Even medium-sized bonds may require that the directors of the agency pledge their personal assets to acquire the bond. There is also a requirement for large reserves to acquire a bond of medium size or larger. Responsible credit counseling agencies follow the IRS guidelines that dictate the use of most surplus funds for the benefit of consumers; not the accumulation of reserves. A \$300,000 bond costs a minimum \$3,500 to \$6000 annually assuming that an agency can even qualify for it. A \$1 million bond would cost \$20,000 per year or more. Most small to medium-sized agencies cannot afford to reduce consumer services to be able to afford such bonding. The AICCCA does not believe that the intent of this bill is to eliminate the service of most local and regional credit counseling services from the

support of Kansas citizens. We recommend the requirement that registrants provide insurance coverage that protects against fraudulent acts and business failure. Such policies can be provided at significantly higher levels, at affordable rates, and are attainable. The recently enacted Georgia law includes such a provision in lieu of bonding and this approach is under consideration currently by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

Page 8, Line 33, (b) (1) . This provision limits the enrollment fee to \$50 and includes the cost of a credit report. The AICCCA recommends a limit of \$75 for enrollment and allows a reasonable, low fee for credit reports.

Page 8, Line 36 (b) (2). This provision limits the monthly maintenance fee to the lesser of \$20 or \$5 per account. These fees are unrealistically low in the current environment. The AICCCA recommends a monthly maintenance fee of no more than \$50. Under AICCCA guidelines, both the enrollment fee and the monthly maintenance fee are reduced or waived for consumers who cannot afford to pay them. AICCCA agency average fees are much lower than the maximums listed due to the requirement that no consumer may be denied service because of an inability to pay a fee.

If the bonding requirements and the low fee provisions are retained, most AICCCA members will be unable to serve Kansas clients. This has been the unintended result in Maryland which has enacted high bond requirements and where only a handful of mostly very large agencies have been able to meet those requirements. The citizens are therefore penalized because they cannot receive the services of the most responsible, truly non-profit agencies while the large national agencies (many of which the law was written to control) are the only ones left to them.

Sincerely,

David C. Jones, Ph.D.

President

AICCCA
Association of Independent Consumer
Credit Counseling Agencies

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January 30, 2004

WHITE PAPER ON BONDING

Association of Independent Consumer Credit Counseling Agencies (AICCCA)

The Association of Independent Consumer Credit Counseling Agencies, (AICCCA) is in favor of rigorous state laws that provide consumer protections against unscrupulous credit counseling companies and the subsequent enforcement of those laws.

One common element of many new laws is an unrealistically high bonding requirement. AICCCA is opposed to needlessly high bonding requirements and see dishonesty insurance as a much preferable means of dealing with consumer complaints and potential mishandling of funds by agencies.

The following is intended, as a side-by-side review of the benefits and drawbacks of insurance versus bonding in providing the consumer protections that AICCCA believes is essential in restoring the public trust of the credit counseling industry.

BOND

Is difficult to obtain and will result in a dramatically lower number of agencies who are able to participate in the state.

Is readily accessible to large, profit oriented companies that are the current focus of several state regulatory and legal actions

Can be accessed only under very stringent conditions. Company must suffer adverse regulatory action before a bond could be called.

Level of Bond unlikely to reflect full exposure of consumers

If regulatory action takes place, bond is immediately available to state needed by either a regulatory

Denies consumers access to a wide range of credit counseling alternatives.

INSURANCE

Relatively easy and inexpensive to obtain.

Also easily available to large companies but more accessible so that clients can get paid more readily if a claim occurs.

Much more readily accessed. Individual claims could be made. Little or no regulatory involvement to get relief for consumers.

Higher dollar value due to lower cost to obtain, provides more consumer protection.

Protection is available without state regulatory action. Can be accessed if agency or individual consumers.

Preserves the widest range of alternatives for consumers.

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