



CONNECTICUT BANKERS ASSOCIATION

February 17, 2009

To: Members of the Banks Committee

Fr: Connecticut Bankers Association

Contacts: Gerry Noonan, Tom Mongellow or Fritz Conway

Re: Positions and Statements on Various Legislation Before the Committee

The CBA appreciates the opportunity to provide the below testimony to the Committee and respectfully asks that the Members consider our positions on each of the Bills commented upon.

S.B. No. 619 AN ACT CONCERNING MINOR CHANGES TO FORECLOSURE PROCEDURES

Position: Support with Certain Revisions

This Bill contains two provisions related to foreclosure assistance and/or prevention. The first provision deals with the paperwork that a borrower receives when served with a foreclosure complaint. Currently, that paperwork must include a notice alerting the borrower to the availability of the State's new *foreclosure mediation program*. Section 1 of the Bill would clarify that this notice should appear at the very beginning of the paperwork (in front of the writ, summons and complaint). This procedural change will enhance the visibility of the notice and, hopefully, increase the number of eligible borrowers who elect to participate in the mediation program. In this regard, the CBA is optimistic about the results that are being achieved through the mediation program. The mediation program helps to bring lenders and borrowers together at a very early stage in the foreclosure to see whether a mutually acceptable settlement can be reached. We support this measure and hope that it will help to keep people in their homes, or promote other reasonable settlements where feasible.

The second provision would allow for the reopening of a judgment of foreclosure in cases involving strict foreclosure (for up to four months). This provision would address situations where, after title has legally vested in the lender's name, the lender and borrower continue to engage in discussions in an effort to reinstate the loan or modify the debt. If there is a successful resolution to those discussions (e.g., allowing the borrower to stay in the home and pay a restructured debt), this provision would allow for the parties to reopen the judgment and implement the settlement.

The CBA supports that type of mechanism, provided all the parties consent to the reopening. We are, however, concerned about the wording of the Bill and the potential impact on title during the four month period following the vesting of title. Questions will arise from a subsequent purchaser looking to buy the house during that four month period as to whether the title transfer might not be unwound by a reopened judgment. We would urge the inclusion of additional language that attempts to resolve this title uncertainty.

More specifically, we would suggest and support language to make it clear that the right to reopen the judgment will terminate upon the earlier of two months or the subsequent conveyance of title. We would also suggest that the four month period be shortened to two.

S.B. No. 873 AN ACT CONCERNING STATE CHARTERED BANKS

Position: Support

This Bill would clarify Public Act 2008-167 to clearly state that the Department of Banking has authority to oversee the compliance with that Act with respect to state banking institutions, and that a Bank's compliance with the Federal Gramm-Leach-Bliley security safeguards is deemed to be compliance with the Act. Last year's bill contained ambiguities that prevented clear regulatory oversight by the Department of Banking and created confusion with the federal laws concerning the protection of personal information.

H.B. No. 5099 AN ACT CONCERNING REPOSSESSION OF MOTOR VEHICLES FROM RETAIL BUYERS

Position: Oppose

This bill would eliminate the ability of a lender to use a standard default provision in auto lending allowing the lender, in the event that the borrower declares bankruptcy, to have the car returned to the lender. We oppose the concept for several reasons. First, the auto industry, including dealers, manufacturers and specialized auto lenders, is in the midst of a nationwide crisis and is fighting for survival. This is particularly due to the lack of availability of loans for customers who have impaired credit. To institute a new law, which would prevent lenders from having the collateral (the car), returned to them in the event of the borrower declaring bankruptcy, would only increase the overall risk of car lending in the Connecticut marketplace and exacerbate the auto lending credit crunch. Additionally, in order for the auto credit market to expand and return to normal, the State must retain a consistency in its creditor rights that makes portfolios of Connecticut auto loans attractive for investors to purchase. Those investor purchases will recapitalize local lenders and allow them to continue to make auto loans. Now is not the time to be creating more risk and less availability in the credit markets.

H.B. No. 6091 AN ACT CONCERNING NEGATIVE ACCOUNT BALANCES; H.B. No. 6092 AN ACT CONCERNING OVERDRAFT FEES; H.B. No. 6093 AN ACT CONCERNING AUTOMATIC OVERDRAFT PROTECTION

Position: Oppose

These bills cover a variety of overdraft pricing controls and operational issues and we are in opposition to them for the following reasons.

Overdraft protection programs provide a valuable service for depositors. If an individual engages in a transaction (e.g., writing a check), which exceeds the balance in a deposit account, an automatic overdraft program allows the transaction to proceed using the bank's money to cover the difference. Among other things, this service avoids the hassle and potential embarrassment of a denied transaction (e.g., a bounced check). These services can also help a consumer avoid a merchant's return check fee and the reporting of a bounced check to a consumer reporting agency (which can harm the consumer's credit history). These services have value to consumers, which is why consumers enroll in them. The bank providing the services deserves to be compensated for them, even in cases where the "negative balance" is later cured through repayment. If a consumer engages in transactions that cause *multiple* overdrafts on a single day, each overdraft event would give rise to a separate, valuable service for which the bank should be compensated.

These bills would regulate pricing and would prohibit certain banks from charging for legitimate services. If this bill is enacted, we respectfully submit that the legislature would be overlooking several important concerns. To start, the financial marketplace in Connecticut has, through the natural incentives of competition, produced different *options* for consumers. Indeed, different banks have different types of overdraft programs, many with different protection features and alternative pricing models. Customers can always ask their bank about the options that are available to them. If the options no longer match the customer's needs, the customer can look for another bank that offers product features that make better sense for that customer. Of course, an individual can always avoid overdraft protection fees *in their entirety* by careful management of their account balances and deposit account transactions.

State government regulation of pricing will simply tie up the creative hands of competition and reduce the options that are available to consumers. On top of that, for many institutions, *federal preemption* will override this State legislation, leaving Connecticut banks at a distinct competitive disadvantage when designing and pricing their product options.

Finally, and importantly, we also wish to note that the topic of overdraft protection practices is currently under review at the federal level. Among other things, the Federal Reserve Board is currently soliciting comments on a number of issues related to overdraft protection, with the intention of requiring banks to provide several new consumer disclosures under Regulation E. We hope and expect that those new disclosures (which have been subjected to consumer focus-group testing) will ultimately help customers better understand the options that are available to them. We urge the Committee to allow this federal rulemaking process to run its course.

H.B. No. 6233 AN ACT CONCERNING SAFE HARBOR PROVISIONS FOR REVOLVING LOANS

Position: Support

This bill will allow mortgages securing non-revolving, future advance commercial loans, to have the same statutory priority with respect to future advances, as is now provided for revolving loans secured by a commercial mortgage. After reviewing the Statute, we were unable to determine any reason as to why a non-revolving future advance loan was not included in the safe harbor. We can only surmise that the drafters were unaware at that time that some banks may offer that product feature. We urge your support of this legislation for consistency in the statutes for lending products of similar design.

Proposed S.B. No. 242 AN ACT CONCERNING THE PAYMENT OF INTEREST ON MORTGAGE LOANS BY MEMBERS OF THE ARMED FORCES CALLED TO ACTIVE SERVICE

This bill would allow members of the armed forces to request the suspension of mortgage interest payments when called into active service. In this regard, we note that active service members are already entitled to broad protections under the federal Servicemembers Civil Relief Act. Among other things, the SCRA provides protection against excessive interest rates. It also provides detailed procedural mechanisms that allow servicemembers to pursue protection from foreclosure proceedings as well as obtain certain debt adjustments. Creditors currently provide servicemembers with notices regarding their rights under the SCRA whenever they become delinquent on a mortgage loan. And the Department of Defense maintains a comprehensive program to help servicemembers pursue those rights.

The CBA fully supports the members of our armed forces and the important protections given to those individuals under the SCRA. We do not, however, believe that additional

requirements outside the SCRA are necessary or advisable. In particular, this legislation would create procedural uncertainties for creditors in Connecticut. Adequate, alternative protections already exist under the SCRA, and the procedural requirements are well defined and uniformly administered throughout the country. For that reason, we suggest that S.B. 242 is unnecessary.

Proposed S.B. No. 248 AN ACT CONCERNING INCREASES IN MINIMUM MONTHLY PAYMENTS ON CREDIT CARDS

Position: Oppose

This bill seeks to enact a new law which would require credit card companies to provide advance notice of increases in minimum monthly payments. We submit that this bill is unnecessary because Connecticut law *already* contains such a requirement.

Many years ago, the State of Connecticut enacted a comprehensive consumer protection law known as the Truth-in-Lending Act (see C.G.S. § 36a-675 *et. seq.*). That law incorporated the relevant provisions of the federal Truth-in-Lending Act and the corresponding regulations adopted by the Federal Reserve Board. Under section 226.9(c) of Regulation Z, credit card companies are *currently* required to provide *advance written notice* if certain terms are changed. In particular, subsection 9(c)(1) calls for advance written notice whenever "*the required minimum periodic payment is increased*". This bill would create a redundant legal requirement and is simply unnecessary.

Proposed S.B. No. 447 AN ACT CONCERNING LIMITATIONS ON ESCROW ACCOUNTS

Position: Oppose

The CBA strongly opposes Bill No. 447 particularly because escrow practices are currently governed by a federal law known as the Real Estate Settlement Procedures Act (RESPA). This important consumer protection law *already* places strict limits on the amounts that may be collected for escrow purposes. In so doing, RESPA establishes a uniform national system for the servicing of mortgage loans. A state law that forces a departure from those standards will interfere with uniformity of servicing operations (which are often dictated by secondary market investors), who buy mortgages and create liquidity in the marketplace so more mortgages can be originated. In the end, the law would make Connecticut a less attractive option for mortgage investment dollars. This is not the time to weaken credit availability in our State.

In addition, this Bill would be contrary to some of the consumer protection principles that are emerging in these troubled economic times. Indeed, many consumer advocates argue that escrow accounts should be required with mortgage loans because they provide budgetary discipline for consumers. In short, they help consumers to avoid the problems that often arise with uninsured homes and delinquent taxes. Importantly, municipalities are prime benefactors of escrow accounts, as they receive a consistent flow of property tax dollars. Consumers benefit through an escrow account's automatic savings approach that spreads the annual cost of taxes and insurance over the year, through more affordable monthly payments.

We note that escrows are now required in all "nonprime home loans" under last year's mortgage reform legislation (P.A. 08-176) and in all "higher priced mortgage loans" under the new Truth-in-Lending regulations. This Bill would be in direct conflict with those requirements.

Finally, the notion that interest should be paid on escrow accounts at the prime rate is simply unreasonable. Escrow accounts are expensive and time consuming to maintain for lenders

and often involve significant cash outlays using the lenders' own money (on an interest free basis) to subsidize escrow accounts that fall short of the amount required to pay taxes or insurance. When positive balances exist, under existing Connecticut law interest is payable to the borrower at a rate that is tied to a nationally recognized deposit rate index, subject to a floor of 1.5%. Right now, that minimum floor rate far exceeds the rates being paid by banks on their demand deposit accounts. Indeed, the CBA firmly believes the minimum floor rate is unreasonable and should be removed. For all of the preceding reasons, the CBA strongly opposes S.B. 447.

Proposed S.B. No. 620 AN ACT CONCERNING BANK INFORMATION RELATED TO COURT-ORDERED MONEY JUDGMENTS

Position: Oppose

This Bill would create a central State managed database containing the personal financial information of *all* Connecticut residents with banking relationships. It would be used for the purpose of collecting civil, criminal, family and other court-ordered judgments. We believe this to be an expensive, cumbersome, risky and ill-advised initiative.

Connecticut banking institutions currently undertake great efforts to protect the privacy and security of their customers' personal financial information, and already participate in a carefully designed system to collect judgments.

A statutory requirement to channel all of this personal information to a central registry would needlessly expose Connecticut residents to data security risks that would be difficult (if not impossible) to manage safely. Moreover, the cost to assemble and properly manage such a program would be staggering, for both the State and the participating banks. This type of program is simply not feasible or warranted. For these and many other reasons, we strongly urge your opposition to this Bill.

Proposed H.B. No. 5265 AN ACT CONCERNING THE CASHING OF CHECKS BY BANKS

Position: Oppose

This bill seeks to prohibit a bank from charging a non-customer a fee for cashing a check drawn on that bank. This is a price control and we are opposed to it for a number of reasons. First, check fraud is always of concern for both banks and their customers. One of the primary fiduciary responsibilities of a bank is to safeguard a depositor's monies. A large portion of fraud perpetrated against bank customers has to do with *stolen or forged checks presented by non-customers*. Even if the non-customer has "proper ID" and there is money in the account, it's no guarantee that the check presented is legitimate. A bank needs to spend its time and resources to ensure that the check and the presenter are legitimate and *protect the customer's deposits*. By charging a fee to the non-customer, a bank can deter fraudulent checks, offset costs associated with servicing non-customers, and recoup a small portion of losses from check scams.

Additionally, if a non-customer is repeatedly using a particular bank, they should establish a relationship with that bank, which is usually the first step towards building credit and financial stability.

Good *customer* service is a central goal for banks, and if a non-customer wishes to use the services of a bank, the *existing bank customers should not have to subsidize the non-customer's* service. The non-customer cashing a check receives a valuable service, access to cash. By simply opening a low cost account, which almost all banks offer, they can avoid those charges.

Proposed H.B. No. 5316 AN ACT CONCERNING INACTIVE ACCOUNT FEES

Position: Oppose

This bill seeks to prohibit the imposition of a dormancy fee when a customer has another active account in the bank. We believe the subject of this Bill was already adequately addressed in Public Act 2007-2. More specifically, P.A. 07-2 requires a notification by mail to the customer, *fifteen days prior* to the imposition of a dormancy fee. That notification has to be sent to the last known address of the depositor and indicate in 12 point type that the account is inactive, and needs to be activated or they will be charged a dormancy fee. In other words, when customers have an inactive account, and another active account in the bank, they will receive the 15 day notice, before they will be charged a dormancy fee.

The depositor usually just has to call the bank to "activate" the account and avoid the fee. Thus, the customer just has to open their mail and see that they need to activate the account within the fifteen day window by contacting the bank.

Unfortunately, if a customer has *not* had any activity with respect to a deposit account for three years, the State requires a bank to escheat that account, as abandoned property, to the State Treasurer - regardless of whether there are other active accounts. That monitoring of the account, mailing of letters and schedules as well as the attempts to contact the customer are typically why some banks impose a dormancy fee.

Full Disclosure and Customer Choice. The Federal Truth in Savings Act and the Connecticut Deposit Account Contract Act already require advance disclosure of any fees (including dormancy fees) associated with a deposit account. The disclosures are available before an account is opened, which allows consumers and potential customers to "shop" for a bank account that best suits their needs. Many banks in the state offer accounts which have **no** dormancy fees. If the avoidance of dormancy fees is important, the customer has access to disclosure information that will permit informed shopping.

Federal pre-emption would prevent this law from being applied to federally chartered banks. In *Wells Fargo v. James*, 321 F.3d. 488 (5th Cir. 2003), the fifth Circuit Court of Appeals ruled that the National Bank Act pre-empts State law and allows national banks to charge service charges to customers, despite State laws to the contrary. Given this precedent, federally chartered banks, which control 60% of the deposit marketplace in Connecticut, cannot be compelled to comply with State legislation relating to bank fees. Thus, only Connecticut chartered institutions would be required to comply with this bill, putting such institutions at a competitive disadvantage.

Proposed H.B. No. 5683 AN ACT CONCERNING ATM SAFETY

Position: Oppose

This bill would require all newly installed ATM's to be equipped with a panic button to alert law enforcement in the event of a robbery. This issue has been discussed in the Committee many times in the past, and while it seems a simple concept, it is fraught with concerns and potential negative consequences. Panic buttons, direct phones to the police, and special alert codes are a few of the proposals which have been raised by the Committee in the past. Criminals are customers too, and they will be well aware of any emergency features, such as panic buttons, which are installed on an ATM.

The concept assumes that the customer and the criminal both react in a predetermined fashion. This seldom happens. Crimes can be violent and the customer may well provoke a violent and life threatening response by attempting to hit a panic button. This is one of the primary reasons the banking industry and law enforcement have consistently opposed this concept.

Additionally, we are all familiar with pranksters causing false alarms at the local fire departments, and there is no doubt, this will occur with an ATM panic button.

Last, but certainly not least, the installation of a panic button will be extremely expensive and require special technology, a dedicated phone line to the police or security service and more. For what law enforcement agrees is potentially no added security, bank customers will wind up paying more for ATM access, to pay for the cost of this concept.

Proposed H.B. No. 5911 AN ACT CONCERNING THE VALUATION OF GEOTHERMAL UNITS IN HOME APPRAISALS.

Position: Oppose

This Bill would require banks to include the full cost of geothermal units in home appraisals. Respectfully, we believe this Bill is unworkable and ill-advised.

Importantly, banks do not perform the actual appraisal functions. Those functions are ordinarily performed by a State licensed appraiser who is required to adhere to professional standards, including certain *independence* standards which require the appraiser to be free from undue influence. Consistent with those independence standards, banks are prohibited by federal law from demanding that an appraiser assign specific values to all or any part of the property.

Indeed, appraisers are generally required to consider all relevant factors when arriving at an estimate of the "fair market value". While the presence or absence of geothermal units could certainly affect the fair market value of a home, an appraiser should not be compelled by law to "include the full cost" of the units in the appraisal. That requirement could artificially distort the determination of "fair market value". The impact of the units on fair market value should be left to the independent, professional judgment of the appraiser, operating in accordance with well established appraisal laws and rules.

Proposed H.B. No. 5912 AN ACT CONCERNING ATTORNEYS' FEES AGREEMENTS BETWEEN MORTGAGE CREDITORS AND CONSUMER DEBTORS

Position: Oppose

This Bill would prohibit a lender from requiring a borrower to pay for the cost of lender's counsel in a mortgage loan transaction, unless that counsel also represents the borrower. We think this provision is ill-advised and would ultimately result in fewer pricing options for consumers.

The mortgage marketplace is extremely competitive, and lenders frequently differentiate their product offering through different pricing structures. Some lenders pass on certain out-of-pocket expenses (such as attorneys' fees, recording costs, etc.), while others absorb some or all of those expenses and rely instead on other forms of compensation. In order to survive and manage risk, lenders need to obtain reasonable compensation for their efforts, no matter whether that compensation comes from points, recovery of fees and/or interest charges. Whenever a state steps in and prohibits the collection of certain specific fees, it simply limits the pricing options that

are available to achieve the necessary rate of return. Fewer pricing options mean reduced creativity and flexibility in product design, and ultimately, fewer choices for consumers.

Importantly, the Bill also raises issues of federal preemption, which has the potential to place Connecticut chartered institutions at a distinct competitive disadvantage, in the design and pricing of their products.

Finally, the Bill, as drafted, would arguably prohibit a lender in a collection action from recovering its attorneys' fees from a borrower who has defaulted on a loan contract. Such a restriction would have an extremely negative impact on the cost of credit in Connecticut, and we urge your opposition to the Bill.

Thank you for your attention to these comments on the legislation before you and we would be happy to respond to the Committee concerning any questions or comments you may have.