

## SB-1131

Sec. 5. (NEW) (*Effective October 1, 2011*) (a) A person who is attempting to collect a debt shall not attempt to contact any person by telephone at a residence if such debt collector is told by a person who answers the telephone at such residence that the alleged debtor the debt collector is attempting to contact does not live at such residence.

(b) A violation of subsection (a) of this section shall be considered an abusive, harassing, fraudulent, deceptive or misleading attempt to collect a debt in violation of section 36a-646 of the general statutes.

(c) In addition to any penalty prescribed in chapter 669 of the general statutes, any person who violates subsection (a) of this section shall be subject to a civil penalty of one thousand dollars per violation and each such violation shall be considered an unfair or deceptive act or practice pursuant to subsection (a) of section 42-110b of the general statutes.

## TESTIMONY

**TO:** Joint Committee on General Law

**FR:** William L. Marohn, Esq.

**DT:** March 8, 2011

**RE:** **Opposition to Section 5 of SB 1131**

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### INTRODUCTION:

Good morning Chairman Doyle, Chairman Taborsak, Vice Chairmen, Ranking Members and Members of the General Law Committee.

My name is Attorney William Marohn, and I am here to present opposition to Section 5 of Senate Bill 1131.

I am a creditor's rights attorney, member of the Connecticut Creditor Bar Association (CCBA), a key employee of a Small Business in this state, and a Connecticut resident. I speak here today wearing each of these hats.

**I want to begin by stating that I and my fellow members of the Connecticut Creditor Bar Association are aligned with your stated purpose for Section 5; the prohibition of certain abusive collection practices.**

With that said, I must oppose Section 5 as it does not fulfill its stated purpose; it is overbroad; is ripe for abuse; and quite frankly will lead to numerous unintended consequences.

### **ISSUES WITH PROPOSED CONSTRUCTION:**

As constructed, Section 5 fails to offer definitions for the following key terms: “person”, “residence”, and “debt”. Each of these terms are essential elements in determining liability and will require litigation for judicial interpretation. As I will illustrate in my discussion on impact, this deficiency in construction leaves this proposal overbroad, ripe for abuse and has unintended consequences.

While “person”, “residence”, and “debt” are not defined, the proposed bill has now offered for the first time in Connecticut a definition of a “debt collector”. This term of art defined under the Federal Fair Debt Collection Practices Act (See, 15 U.S.C. 1692a(6)) would now have a new and distinct definition in Connecticut. In Connecticut a debt collector would be defined as “a person who is attempting to collect a debt”. This is a vast and wholly unnecessary expansion to the well established Federal definition.

Subsection (c) provides civil penalty for violation of Section 5. However the draft is silent and provides no time limitation on the bringing of an action. Without any time limitation, a party suing under the act can wait until it is likely that the “debt collector” has ceased retaining its records relating to an account and then bring a claim. This would place the “debt collector” in an untenable position; either bear the undue burden of retaining records relating to collection claims in perpetuity, or run the risk of being sued without any records to defend a claim.

The proposal is further deficient in that it fails to provide any defenses to an action commenced under the section. As discussed there is no statute of limitations defense. There is no defense for a good faith bona fide error. There is no defense for a situation where you receive a subsequent call from the “alleged debtor” instructing you to call him/her at the residence previously called.

A “debt collector” faces a per-se statutory penalty under this section, under C.G.S. Sec. 36a-646 **and** under 42-110b but is afforded no defenses to a claim. This is a clear example of using an elephant gun to swat a fly.

Finally, without any reciprocal provision protecting businesses from the abusive use of the statute a “debt collector” will have no recourse for frivolous suits brought against it. Connecticut businesses will bear the financial burden of defending these claims and after a successful defense have no practical way to recoup its financial loss. Without penalty for a frivolous claim raised under this section, this proposal lends itself to abuse.

## IMPACT:

In preparation for today, I asked my wife to read the draft. My wife is Vice-President and in charge of fundraising for a large non-profit organization in this state. After reading Section 5, her first response to me was “does this mean that if we contact someone regarding fulfillment of a past due donation, and are told that the donor does not live there, that we will could be sued for \$1,000.00 if we call again?”... My answer was that if the legislation proceeds as proposed, yes. Without statutorily defining either person or debt, her non-profit is a person, and a past due donation is a debt.

This result is not aligned with the statutes stated purpose; is a brief example of the overbroad scope of the legislation; shows how easily the statute can be abused, and demonstrates an unintended consequence if the statute were enacted.

Although I don't necessarily believe that this is the intent, this committee must understand that **every business in the state that has an outstanding receivable will be exposed to liability under this proposal.**

The businesses will likely fall into one of two general categories.

The first category is the businesses that have existing relationships with organizations that assist them with collection of receivables. For ease of illustration, I will call this category my clients. Initially after its enactment, I will advise my clients that the risk to reward of making any collection calls is not justified and that they should consider litigation much earlier in the collection process. This will inhibit non-judicial resolution of claims, will lead to an increase in court filings, and will rob people who would otherwise like to resolve their debts without litigation the opportunity to do so.

The second category is the business that attempts to collect it own receivables. There is a miniscule likelihood that small businesses throughout the state are aware of today's hearings, or of this bill and its impact. That means that thousands of Connecticut businesses will face a brave new world October 1<sup>st</sup> if this proposal is enacted. The first time that most businesses will ever hear of the act is when they are named defendant in a lawsuit. A lawsuit which provides per-se liability and no defenses.

I can not believe that the legislature would intend this consequence. As proposed the bill will restrict legitimate debt collection efforts, will lead to needless litigation, and will touch all businesses in Connecticut. The harm that is being addressed does not warrant these results.

**CONCLUSION:**

There are already existing Federal and State statutory remedies specifically addressing abusive debt collection practices. The proposed bill misses the mark in that it does not fulfill its stated purpose, is overbroad, ripe for abuse and leads to unintended consequences.

For the foregoing reasons Section 5 should be rejected by this committee.

Thank you.