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Judiciary Committee
Connecticut General Assembly
300 Capitol Ave
Hartford Ct. 06106

Re: Defeat Raised Bill No. 1211, 10% Post Judgment Interest

Dear Committee:

I am an attorney in private practice who has been representing consumers for many years. I have seen the devastation caused by high interest rate subprime loans and credit cards. The Committee should not even appear to endorse a high interest rate on judgments for people who are already suffering in this economy.

The bill is a "collection lawyer protection bill." Before 1983, postjudgment interest was automatic under §52-349. In 1983, when the General Assembly enacted the complex and reticulated Postjudgment Procedures Act, it repealed that section. Instead, postjudgment interest was to be determined in the equitable discretion of the court, after notice and proof that the judgment debtor had wrongfully withheld funds. This equitable procedure has been in effect since at least 1917.

Collection lawyers, unlike lawyers in other areas of the law, *never caught up with the change,* have not been applying for postjudgment interest, have not been proving that the consumer wrongfully withheld funds, and instead have been self-adjudicating postjudgment interest even though no court awarded it. It is widely recognized, even by collection lawyers, that most individuals cease paying their debts due to unemployment, medical expenses, or other unanticipated financial disasters. Equitable discretion in setting postjudgment interest rates is a salutary check on further oppression of already beleaguered consumers.

Thus, the bill does not "clarify" §52-356(d); it instead reverses the longstanding judgment of the courts and the considered judgment of the 1983 General Assembly to allow equitable considerations – including the economy, the debtor's financial situation, and prevailing interest rates – to determine the postjudgment rate, up to 10%, rather than automatic imposition of a rate.

The bill seemingly conflicts with the 5% postjudgment limit on hospital bills. §37-3a(b). It also is inconsistent with §37-3c, wherein interest on condemnation judgments in favor of consumers is tied to an objective rate that is currently much lower than 10%.

Note that installment payment orders were not new to the Postjudgment Procedures Act. In 1937, Section 846d was enacted, providing that the judicial authority "may make such reasonable orders for payments to be made by the defendant . . . .In fixing the amounts to be paid and the manner of payment, the court . . . may take into consideration the circumstances of the defendant, including any other actions pending or judgments outstanding against him, the amount of the defendant's income and the amount of the claim or demand." The section was replaced by more elaborate provisions in 1939, Section 1414e, but the same language was reenacted. General Statutes (1939 Rev.) § 1414e; General Statutes (1937 Rev.) § 846d. Thus, equitable considerations in setting postjudgment interest have long been the norm.

This special interest bill oppresses only a limited category of people – individuals who are allowed installment payment orders because they cannot pay a judgment in full. Other judgment debtors, such as businesses or governments, are not permitted installment payment orders. When enacted, the intent of an installment order was to prevent wage execution and lien foreclosure as long as weekly payments were made. It was not to punish individuals who are struggling financially, but to help those who want to pay instead of filing for bankruptcy. The bill, which might be viewed as endorsing the 10% interest, reverses any incentive to try to pay.

Because the bill applies only to a certain limited category of judgment debtor, it is likely to violate federal and state equal protection laws. Notice and an opportunity to be heard as to the postjudgment interest rate applies to everyone. Making postjudgment interest automatic without the notice and hearing as to the postjudgment rate that all other judgment debtors are entitled to, violates their due process and will spawn further litigation.

The bill provides a windfall to special interest groups, largely collection mills and debt scavengers, that have been neglecting to abide by the law. [Debt scavengers buy charged-off consumer accounts for pennies on the dollar.] Debt scavengers are overwhelming our judicial system, and largely obtaining default judgments. For instance, it would be unjust to award 10% interest on a $5,000 debt that the scavenger has bought for less than $250. Please do not endorse such greed; instead allow judicial discretion to continue.

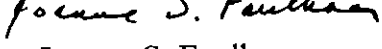
A 10% rate is exorbitant when one cannot even get 1% on a savings account. Your Committee should shun any semblance of endorsing a 10% rate on judgments – which also appears in Raised Bill No. 6608 as Section 32.

There is no need to tinker with §37-3a in these two bills. Postjudgment interest has long been awarded equitably; that should continue.

Whether section 356(d) needs "clarifying" is before the Connecticut Supreme Court in Ballou v. Law Off ices Howard Lee Schiff, P.C., S.C. 18639. If the General Assembly is not satisfied with the Court's interpretation, it can revisit the issue after the decision, instead of tinkering with the statute now.

Thank you for your consideration of these concerns.

Respectfully,



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