

TO: MEMBERS OF THE BANKING COMMITTEE

FROM: THE CONNECTICUT BANKERS ASSOCIATION
(Contact Tom Mongellow or Fritz Conway)

RE: PROPOSED SENATE BILL 320

POSITION: OPPOSE

This bill is evidently being spearheaded by a plaintiffs' class action law firm that has developed a cottage business suing banks in Connecticut and elsewhere. Similar to proposed SB 317, the proposal contained in SB 320 comes in the midst of pending litigation involving this firm and a Connecticut bank and is an apparent attempt to convince the legislature to combat a perceived problem that did not occur.

The *purported* purpose of this legislation is to prevent banks from collecting attorneys' fees from a consumer's deposit account *prior to* the adjudication of litigation involving the deposit account. Importantly, in the case which is the subject of the pending litigation, the bank *did not charge the customer's account for any attorneys' fees incurred during the course of the litigation*. In fact, the named plaintiff closed her deposit account before the litigation was even commenced. Moreover, although the bank has asked the court for a declaratory ruling concerning its rights under the contract, the bank has *not* asked the consumer to pay its legal fees. This legislative proposal is a smokescreen attempt to suggest that the bank somehow charged the consumer's deposit account for attorneys' fees prior to the adjudication of the litigation (which the bank simply did not do).

Many banks in Connecticut have contract provisions which allow them to charge a customer's deposit account in a variety of legitimate situations. Although the provisions are typically drafted in a broad manner (i.e., to cover a wide range of potential circumstances), we are not aware of any situations where banks are alleged to have used those provisions irresponsibly. If this bill is enacted, banks across Connecticut will be unable to use contract provision to charge their customers for "losses, costs and expenses" that are legitimately incurred in administering the deposit account relationship where litigation is not involved. For example, a bank would be unable to use a contractual provision to recover the losses, costs and expenses incurred in connection with collecting on a *bad check* that has been deposited by the customer. It could also prevent a bank from using contractual provisions to recover losses, costs and expenses incurred as a result of a customer's *fraudulent* activities (such as check kiting, identity theft, etc.).

In addition, if this bill is enacted, banks across Connecticut will be forced to amend their deposit contracts. This will create tremendous burden and expense for the industry (e.g., legal costs to redraft the contracts, costs to reprint the contracts, postage expense to mail out change-in-terms provisions to all existing customers, etc.). These costs are not absorbed in a vacuum. The true economic impact is that the added expense would ultimately result in higher fees being paid by Connecticut residents on bank products. Why would the legislature want to prompt that very real result when an *actual problem* has not presented itself?

In short, this is ill-advised legislation, in the midst of a pending lawsuit, asking the legislature to address a perceived concern that did not actually happen, with a legislative outcome that would actually harm Connecticut residents. We strongly encourage you to vote against proposed SB No. 320.