

TESTIMONY OF MARTA FARB
BEFORE THE BANKING COMMITTEE OF THE CONNECTICUT GENERAL ASSEMBLY
CONCERNING COMMITTEE BILLS 317 & 320

February 19, 2015

Good morning, Chairman Leone and Members. My name is Marta Farb. I would like to take this opportunity to support Committee Bill 317 – An Act Concerning Attorneys’ Fees Provisions in Depository Contracts -- and 320 – An Act Concerning Liability for Any Loss of Assets Held by Banks or other Entities. These proposals will protect consumers from abusive litigation tactics by banks.

I speak from personal experience. I am a single Mom who has been struggling for years to raise three kids in tough times. Even for a professional with a college degree, it’s been hard to find long-term, full-time work. I’ve struggled to make ends meet. Struggled to pay the bills. Struggled to even keep the heat on in the house.

The last thing that I needed was a struggle with my bank. But I started getting charged multiple overdraft fees when I shouldn’t have been. I couldn’t afford them, and the Bank’s explanation for the charges didn’t make any sense. I closed the account and later, I went to see a lawyer. I thought what the Bank was doing was wrong and I wanted to stop it. I filed a lawsuit.

The Bank counterclaimed and said its deposit agreement made me liable for its litigation expenses, regardless of whether the bank won or lost. Even worse, the agreement allowed the bank to take the money from customers’ accounts without prior notice. If I had left my account at the bank, they could have just taken the money out as their lawyer’s bills came in.

Not that my money would have lasted long. I’m just an individual, a regular customer. If my lawyer wasn’t willing to work on a contingent fee basis, I wouldn’t have a lawyer. But on my best day, I could never have afforded to hire Pullman & Comley, or Goodwin Procter out of Boston. The bank, of course, hired both of them. And they’ve been keeping both firms busy over the course of four years of litigation. There is no way I could ever pay these kinds of attorneys, and the same goes for virtually any individual bank customer.

There’s only one reason why the bank filed the counterclaim; only one reason why it included this fee-shifting provision in its deposit agreement. The bank is sending a simple, brutal message. Challenge us and we’ll bankrupt you. Even if you win.

Committee bills 317 and 320 fix an existing statute that provides no protection from fee-shifting provisions that require consumers to pay their opponent’s legal fees whether they win or lose. The current statute only deals with the problem of commercial parties trying to make consumers pay their attorneys’ fees whenever the commercial party won a lawsuit, without forcing commercial parties to pay consumers’ legal bills when the consumers won. The statute’s

solution was to make any provision like that work both ways, so that the loser always had to pay the winner's fees. But it doesn't work when the provision requires the consumer to pay even when she wins.

The proposed new language in Committee bill 317 amends the existing statute to prevent banks from including fee-shifting provisions requiring their consumers to pay their legal fees in the event of a dispute between them. This is the best solution. It address the problem that some fee-shifting provisions, like the one that my bank used, simply can't work both ways. But more importantly, it's the simple truth that banks can afford high-priced lawyers that would bankrupt their customers. If the bank is forced to pay the consumer's legal fees, it's an inconvenience. If the consumer has to pay the bank's legal fees, it's a catastrophe.

I would suggest a very minor modification to the proposed language in paragraph 1(b) of Committee Bill 317 that reads "[n]o bank . . . shall include a clause in its consumer contracts allowing for such bank or other entity to collect attorneys' fees from its customers *if such bank or other entity prevails* in a claim brought by consumers based on the consumer contract." It would be better to remove the highlighted phrase "if such bank or other entity prevails" from the new language. Based on my own experience, a bank might well argue that the highlighted language limits the prohibition on fee shifting provisions to ones which are triggered when the bank prevails in a dispute. That would leave banks free to impose provisions that shifted the cost of their attorneys' fees to their consumers *regardless* of whether the bank prevailed in the dispute. Without the highlighted phrase, the new language would unequivocally apply to *any* clause in a consumer contract that allowed a bank to collect its attorneys' fees from consumers in claims brought by the consumers against the bank.

Committee Bill 320 adds language to the statute to prevent banks from holding consumers liable for costs and litigation expenses until the rights of the parties have be adjudicated. This should prevent banks from taking matters into their own hands and draining their customers' accounts while issues are still being litigated in court. If I hadn't closed my account before I filed suit, that could very well have happened to me.

Finally, Committee Bills 317 and 320 both clarify the fact that deposit agreements are "consumer contracts." That seems obvious, since the existing statute applies to contracts for purchase of services and deposit agreements are nothing more than contracts for banking services. But my bank certainly has argued that its deposit agreement is not a consumer contract, and it never hurts to make things very clear.

Thank you for your time and for your work on this important issue.