

February 24, 2015

To: Members of the Banks Committee
Fr: Connecticut Bankers Association
Re: S.B. No. 922 (RAISED) AN ACT CONCERNING MINOR REVISIONS TO CONNECTICUT'S FINANCIAL INSTITUTIONS STATUTES

Position: Support

This bill makes minor technical revisions to Connecticut's banking law and we respectfully request that it be amended to include an important anti-fraud clarification of state banking law. That clarification would make it clear that a bank and its depositor may agree on a reasonable period of time for the depositor to report unauthorized check transactions after the receipt of the depositor's monthly statement. If the depositor reports a questionable transaction within the agreed-upon timeframe (for example 60 days), the depositor preserves its rights to dispute the transaction.

For good reason, these types of contractual provisions are included in virtually all deposit account relationships in America. They are critical to the early detection and prevention of fraud. Unfortunately, in 2013, a trial court in Connecticut ruled that such a provision was void because it violated public policy and UCC section 42a-4-103. That trial court decision runs contrary to the overwhelming weight of judicial decisions in other states (including a decision by New York State's highest court as recently as May of 2014).¹ This legislation would provide an important clarification to ensure that Connecticut's *Uniform* Commercial Code provisions are interpreted in *uniformity* with the rest of the nation (as was originally intended by the legislature).

If these important contract provisions are not upheld by Connecticut courts, instances of fraud, as well as the magnitude of fraud losses, are likely to balloon in Connecticut. Depositors will not be motivated to review monthly statements and report suspicious activity within a reasonable period of time. Early detection and reporting makes it more likely that banks will be able to investigate suspicious activities while the trail is still hot. Early detection can also help the parties to halt ongoing repetitive fraud and track down and recover funds from the wrongdoers. In other words, these provisions provide benefits to depositors, law enforcement and the banking system.

These important public policy considerations have long been recognized by the federal government. Indeed, similar provisions are included in laws administered by the Consumer Financial Protection Bureau. For example, the Electronic Funds Transfer Act and Regulation E establish a 60-day deadline for reporting potential fraud with debit cards and ATM transactions. The Truth-in-Lending Act and Regulation Z establish a similar 60-day deadline for reporting problems on credit card statements.

In summary, enactment of this legislation is important to ensure that Connecticut does not become an outlier in the battle against fraud. New fraudulent schemes emerge virtually every day. Now, more than ever, Connecticut needs to ensure that its laws clearly support the early detection and prevention of these schemes.

¹ See, e.g., *Clemente Bros. Contracting Corp. v. Hafner-Milazzo*, 14 N.E.3d 367 (N.Y. 2014); *Stowell v. Cloquet Co-op. Credit Union*, 557 NW2d 567 (Minn. 1977); *Borowski v. Forstar Bank Milwaukee, NA.*, 579 NW2d 247 (Wis. Ct. App. 1998); *American Airlines Employees Federal Credit Union v. Martin*, 29 SW3d 86 (Tex. 2000); *Parent Teacher Association, Public School 72 v. Manufacturer Hanover Trust Company*, 138 Misc. 2d 289 (1988); *Canfield v. Bank One, Texas, NA*, 51 S.W. 3d 828 (Tex App 2001); *National Title Ins. Corp. Agency v. First Union Nat'l Bank*, 559 S.E. 2n 668 (VA 2002). The trial court's ruling also ran contrary to the previous holding of another Connecticut trial court. See *FCT Electronics, LP v. Bank of America, N.A.*, No 106002699, 2011 Conn. Super. LEXIS 2414.

An Act Concerning the Early Detection and Prevention of Fraud

Be it enacted by the Senate and House of Representatives in General Assembly convened, that subsection (f) of Section 42a-4-406 is hereby repealed and the following is substituted in lieu thereof.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer pursuant to subsection (a) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under section 42a-4-208 with respect to the unauthorized signature or alteration to which the preclusion applies. Relying on subsection (a) of section 42a-4-103, a bank and a customer may agree to reduce the timeframe for discovering and reporting an unauthorized signature or alteration and such an agreement would not, in and of itself, constitute a disclaimer of the bank's responsibility for its lack of good faith or failure to exercise ordinary care or otherwise serve to limit the measure of damages for the lack or failure.