

Public Hearing – March 8, 2016

Members of the Banking Committee

Please SUPPORT legislation that provides protection to Connecticut consumers whose rights have been hindered by contract terms.

**Proposed H.B. No. 5561: AN ACT CONCERNING FAIRNESS IN CONSUMER CONTRACTS**

The National Association of Consumer Advocates (NACA) is a non-profit association of attorneys and consumer advocates committed to representing consumers' interests. Our members are private and public sector attorneys, legal services attorneys, law professors, and law students whose primary focus is the protection and representation of consumers. We respectfully urge you to SUPPORT this legislation that would address the serious harm caused to consumers by the use of forced arbitration clauses by businesses.

There has been substantial attention to the problems caused by forced arbitration. Many state legislatures have avoided addressing this problem because of fear that any state action could be pre-empted. There are, however, measures that Connecticut can take that would not be pre-empted by the Federal Arbitration Act. These measures are set forth and detailed in The Model State Consumer & Employee Justice Enforcement Act developed by the National Consumer Law Center.<sup>1</sup> HB 5561 incorporates many of these measures.

The conduct of one Connecticut car dealership illustrates the harm that forced arbitration causes to consumers. A Better Way Wholesale Autos in Naugatuck, CT is the largest volume car dealership in Connecticut. There have, however, been many complaints by consumers regarding its business practices and the quality of the cars that it sells. For example, consumers have claimed that the dealership required them to purchase unwanted extras such as prepaid oil change contracts as a condition of financing. At least three of these consumers prevailed on this claim following evidentiary hearings. Additionally, other consumers have claimed that they were sold cars that had pre-existing damage that made them unsafe to drive. This dealership's business practices have been the subject of news reports by WTNH News 8<sup>2</sup> and, more recently, NBC Connecticut 30<sup>3</sup>.

Faced with increasing lawsuits, A Better Way added an arbitration clause to its purchase order form. The clause provided that consumers are not entitled to an evidentiary hearing but are restricted to submitting their claims on the documents. The American Arbitration Association refused to administer this clause, because its Consumer Protocols provide that claimants are entitled to an evidentiary hearing as a matter of fundamental fairness. A Better Way responded by amending the clause in its contract to substitute a different claims administrator for the AAA, and future claimants are therefore not entitled to a hearing under their contracts.

Arbitration clauses that deny a consumer the right to a hearing are not designed to ensure that prompt and efficient resolution of disputes; they are designed to prevent consumers from bringing any claims, regardless of their merit.

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<sup>1</sup> Available at [www.nclc.org/images/pdf/arbitration/model-state-arb-act-2015.pdf](http://www.nclc.org/images/pdf/arbitration/model-state-arb-act-2015.pdf)

<sup>2</sup> <http://wtnh.com/2014/01/30/investigating-used-cars-and-extended-warranties/>

<sup>3</sup> <http://www.nbcconnecticut.com/troubleshooters/Dealership-Complaints-Point-to-Loss-of-Money-Patience-and-Right-to-Sue--369912271.html>.

HB 5561 would address this problem in several ways. First, it would deem any contract unconscionable if it fails to permit a consumer the right to present evidence at an in-person hearing. It would also ensure that the consumer be permitted to obtain discovery of information from the business. The bill would also make it an unfair trade practice for a business to limit a consumer's right to present evidence of a claim.

Quite significantly, HB 5561 would permit any person to bring a civil action as a *qui tam* plaintiff. Since *qui tam* actions are brought on behalf of the state, they would not be restricted by limitations in the contract preventing suits from being brought in court.

There are two ways that consumer protection laws can be enforced: public enforcement by the state and private enforcement by consumers. In an era of shrinking budgets, public enforcement becomes increasingly difficult.

Consequently, it is vital that consumers be able to privately enforce consumer protection laws by bringing civil actions with lawyers, who act as private attorneys general. Unfortunately, businesses have learned that they can opt-out of the civil justice system by implementing restrictive forced arbitration clauses that effectively deny a consumer any remedy.

NACA respectfully submits that this proposed legislation would restore balance and address a serious problem that has been caused by the unequal bargaining power between businesses and consumers.

Thank you for your support of this legislation which helps consumers.

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