

March 8, 2016

To: Members of the Banking Committee

Fr: Connecticut Bankers Association

Contacts: Tom Mongellow, Fritz Conway

RE: H.B. 5571: An Act Concerning Consumer Collection Agencies and Debt Collection Actions

POSITION: Oppose, as Presently Drafted

This bill would impose cumbersome and confusing procedural requirements on "creditors" (which includes all banks) when trying to collect debts that are owed to them. Banks are heavily regulated and examined by both state and federal regulators, in this area. As presently drafted, the legislation would likely create compliance risks for creditors and result in frivolous challenges in collection actions. Those challenges are frequently used to delay or extract monies from banks by plaintiff attorneys.

Among other things, the bill sets forth a lengthy list of evidentiary items that would have to be filed with the court in any action to collect on a consumer debt. Those evidentiary items (which would have to be "authenticated") must be submitted even in cases where there is absolutely no debate or disagreement as to the underlying facts concerning the nature and amount of the debt that is owed to the creditor. By way of examples, the bill would require submission of the following evidentiary items (among others):

- The identity of the "*original* creditor ... to whom the debt is owed" (there is no way to satisfy this requirement when the "original" creditor is no longer owed anything because the debt has been assigned)?
- The "original charge-off balance on the debt". This informational requirement creates the potential for confusion surrounding the impact of a "charge-off". By way of background, banks are subject and held to conservative accounting rules which compel them to "charge-off" a delinquent debt after a certain period of time, so it is no longer carried as an asset on the balance sheet (and is not included in capital calculations). That accounting classification *does not mean that the debt itself is no longer valid or that the debt can no longer be collected*. This new evidentiary requirement will inevitably invite frivolous challenges concerning an accounting classification that has nothing to do with the validity of the debt.

The bill would also require a creditor to provide the informational items "not later than five business days after the *initial communication* with the consumer debtor" and *to cease all collection efforts until the information is provided*. This section of the bill is drafted in such a way that it suggests that the requirements can apply outside of a collection action. The "initial communication" with a consumer debtor typically takes place shortly after a loan is originated (e.g., sending out the first monthly bill after the account is opened). At that time, the consumer debtor is not likely to be in default and may never even ultimately become delinquent.

We would look forward to working with the Committee and the proponents of the bill to address the problematic provisions in the bill.