

Legal Assistance Resource Center

❖ of Connecticut, Inc. ❖

16 Main Street, 2nd floor ❖ New Britain, Connecticut 06051
phone (860) 616-4472 ❖ cell (860) 836-6355 ❖ RPodolsky@LARCC.org

Testimony of Raphael L. Podolsky

Banking Committee public hearing -- March 8, 2016

H.B. 5561 -- Fairness in consumer contracts

SUPPORT

Section 3 of this bill protects consumers by defining a number of anti-consumer provisions often found in boilerplate consumer contracts as being “substantively unconscionable” so as to make them unenforceable under well-established state judicial doctrines on the unenforceability of unconscionable clauses. These include clauses that impose an inconvenient venue for hearing disputes under the contract, waive the consumer’s right to seek remedies guaranteed by state or federal law, waive the right to punitive damages or attorney’s fees if otherwise allowed by law, require an unreasonably short time period for the consumer to raise a dispute, impose unreasonable or unaffordable costs to bring a claim under the contract, and fail to provide for the taking of testimony in-person. The bill also makes explicit provision for a court to “reform” a contract with certain improper clauses and authorizes the use of “qui tam” proceedings in which an individual is allowed to bring an action on behalf of the state to enforce the act and to share in some portion of any award obtained.

H.B. 5564 -- Small gift card balances

SUPPORT

The bill gives the consumer the right to cash out a remaining balance of less than \$10 on a gift card. In effect, this allows the consumer to get change in cash when the gift card balance is very small. While the amounts involved are not large, this bill prevents such balances from being lost to the consumer. Cards are often not used when most of the value has been spent.

H.B. 5571 – Collection agencies/debt collection

SUPPORT (amendment requested)

This bill expands the Consumer Collection Agency Act (CCAA) to include agencies collecting federal income taxes and makes a number of other changes to protect debtors from abusive collection practices. These include requiring complete documentation to both the consumer and the court of the debt and the amount claimed, precluding suit beyond the statute of limitations, preventing a post-statute of limitations payment from extending the statute of limitations, and applying the private cause of action in §36a-645(a) to consumer collection agencies. We suggest the following changes in the bill:

(1) Expand the CCAA to include all third-party tax collections, not just federal income tax ones;

(2) Revise lines 208-215 to delete the “unless” clause, i.e., to delete “unless the consumer debtor explicitly, in writing, agreed to the imposition of such interest, fee, charge or expense on the debt with the creditor at the time the debt was incurred.” The purpose of Item (15) on the list of prohibited practices is presumably to keep the collection agency

from adding new charges. It appears to us that the “unless” clause would undermine this protection if the original contract has a boilerplate provision authorizing the collection agency to add charges. If that is a possible result, then the “unless” clause should be removed from the bill.

H.B. 5572 -- Small loan licensees

SUPPORT (amendment requested)

This bill is a complete revision of the Small Loan Act. We generally support the bill, which includes a number of provisions that strengthen the law. We request, however, one substantive and three technical changes to the bill. These are:

(1) Interest rates on closed-end small loans: The bill raises the interest rate on small loans to 36%, which is the maximum allowable under the federal Military Lending Act (lines 258-264). The existing statutes use “add-on” rates which translate to an APR (annual percentage rate) that starts at about 36% for loans under \$600 and declines to about 20% for loans of \$1,800 or more. The statutory rate for open-end small loans is a uniform 19.8%, which the bill retains; but the bill uses the higher 36% rate for closed-end loans. This constitutes more than a 50% increase on the current small loan rate limit. We agree that the bill should convert the existing rate structure to APRs, but we think that it should not raise the maximum allowable interest rate for closed-end small loans.

(2) Technical corrections: In line 44, it appears that “instrument” should follow the word “negotiable.” Line 126 should probably read “principal or interest,” rather than “principal and interest.” In line 398, the word “just” should be deleted as unnecessarily restrictive.

S.B. 403 -- Commercial power of sale

OPPOSE

S.B. 403 authorizes the use of “power of sale” in foreclosures. A power of sale allows a foreclosure to be carried out without the lender having to go through the courts. This is sometimes known as non-judicial foreclosure. Instead of the lender bringing the foreclosure action, the burden falls on the borrower to initiate litigation to prevent the lender from taking the property without court involvement. While the bill exempts owner-occupied 1- to 4-family buildings, we nevertheless oppose it because of the undesirability of using a non-judicial process for foreclosure and because of the danger that it will become the start of a slippery slope that could one day lead to the extension of power of sale to all foreclosures.

By shifting the initiation of litigation to the defendant, power of sale significantly changes the balance between the parties. It effectively treats a borrower's failure to start a court action as a default and, by doing so, will result in defaults that would not otherwise have occurred. It also puts the burden of proof on the property owner, who under this bill must prove his claim by the enhanced proof level of “clear and convincing evidence.” The bill appears to allow the debtor to make only limited defenses, permits deficiency judgments, and deems all sales “commercially reasonable” without regard to the reasonableness of the price obtained. The very fact that this version of the bill exempts homeowners of smaller buildings from the act is itself an acknowledgment that its provisions are burdensome to the debtor. In a commercial context, it is likely to be most burdensome to financially-stressed smaller businesses, since they are least likely to be able

to initiate litigation so as to raise defenses. For all these reasons we see the bill as a potentially harmful major change in foreclosure law that may eventually extend to homeowners. We think it is better not to start down that road.

S.B. 408 -- Interest rate on tax liens

SUPPORT

This bill addresses two problems. First, the bill reduces the 18% rate on delinquent property taxes for 1- to 4-family buildings to 12% upon the filing of a lis pendens giving notice of the intent to file a tax foreclosure action. It is long past the time that the 18% rate should have been reduced. The pre-1969 interest rate of 6% was increased to 9% in 1969, 12% in 1975, 15% in 1981, and 18% in 1982, as market interest rates rose to a peak in the late 1970s and early 1980s. When market rates subsequently fell, however, the interest rate on delinquent taxes was never lowered. The purpose of interest on delinquent bills is to compensate for the lost use of the money. With interest rates now at historic lows far below 18% (indeed, barely above 0%), in fairness to homeowners this rate should be lowered.

Second, the bill addresses a range of abuses that have resulted from the municipal sell-off of tax liens at discounted prices to third parties. The bill discourages this practice by terminating the further accrual of interest if the tax lien is sold to a third party. Whatever may be the rationale for high interest rates for the municipality, third-party debt collectors should not become the beneficiary of the burdens this places on homeowners.

S.B. 409 -- Protections for homeowners facing tax foreclosure

**SUPPORT
(with amendment)**

This bill, like S.B. 408, protects homeowners from abusive practices regarding the collection of delinquent taxes. The legal services programs have handled many cases in which tax foreclosure proceedings have been brought against retired seniors whose low incomes have resulted in their falling behind on their municipal taxes. In some cases, the house may have been paid for but the owner cannot afford the taxes. This bill prohibits the sale of tax liens for debts of less than \$5,000, reduces the interest rate to 10% once the lien has been sold, requires purchasers of tax liens to make an effort to work out a repayment plan rather than moving to foreclosure, and imposes other restrictions on the collection of tax lien debt. Equally important, the bill makes homeowners facing tax foreclosure eligible for the state's Emergency Mortgage Assistance Program (EMAP), by which the Connecticut Housing Finance Authority advances money to the homeowner to pay off the back taxes, with the homeowner repaying CHFA based on their income or, if their income is very low, at the time the homeowner chooses to sell the house. EMAP is a very important program used in mortgage foreclosures. This bill makes it available in tax foreclosures as well.

I also want to endorse the recommendations of Atty. Sarah Poriss that violation of this statute be made a per se unfair trade practice and that attorney's fee claims by a tax lien holder be documented in detail. A variation on that latter proposal might be to set a much lower presumptive maximum, e.g., \$500, \$750, or at most \$1,000, and require detailed documentation for any attorney's fee claim in excess of that amount.

We support the concept of helping public housing residents build a positive credit record through the consistent payment of rent on time. For residents who are able successfully to maintain such a record, this would be a beneficial program. We are concerned, however, about the credit-related consequences for residents who do not succeed. The bill seems to assume that public housing authorities do not presently report rent payment data to credit bureaus. Although the bill is designed to result in positive reporting, it could have an opposite effect if it generates negative reports. If the bill is to move forward, we suggest modifying it by (a) for now, authorizing only one pilot project and (b) explicitly prohibiting the reporting of negative information. This is consistent with line 8 of the bill, which frames the pilot as one that “will record and report timely rent payments by tenants.”