

LAW OFFICES

HOWARD LEE SCHIFF, P.C.

EAST HARTFORD, CONNECTICUT
PORTLAND, MAINE
AUBURN, MASSACHUSETTS
NASHUA, NEW HAMPSHIRE
PROVIDENCE, RHODE ISLAND
BRATTLEBORO, VERMONT

510 Tolland Street
Telephone (860) 528-9991

East Hartford, Connecticut 06108
Facsimile (860) 528-7602

Howard Lee Schiff 1933-2007

Banking Committee Public Hearing- March 8, 2016
Testimony on HB 5571- An Act Concerning Consumer Collection Agencies and Debt Collection Actions

Good Morning Chairman Lesser, Chairman Winfield, and other distinguished members of the Banks Committee. My name is Adam Olshan and I am an attorney with Law Offices Howard Lee Schiff, P.C. in East Hartford. I reside in Glastonbury and I am the president of the Connecticut Creditor Bar Association.

Today I am here to testify on certain aspects of HB 5571. We are all consumers and consumer protection regarding abusive debt collection practices is essential in a credit-based economy; however, while protecting consumers we must not unduly burden legitimate debt collection. We applaud this committee for taking leadership on a critical topic, however CCBA believes that some aspects of HB 5571 will place unintentional burdens on legitimate debt collection. I and others from CCBA will be sharing some of our thoughts on how to modify the bill in order to achieve the goals in a fair manner without unintended consequences that would unduly burden legitimate debt collection.

In this industry, the Consumer Financial Protection Bureau (“CFPB”) serves as a new regulator that is doing wonderful things to protect consumers in the debt collection space—and it has been lauded as such by state and federal leaders. As a matter of fact, on December 28, 2015 the CFPB issued a Consent Order against the Georgia collection law firm, Fredrick J. Hanna & Associates that establishes bright line new standards for attorneys who collect consumer debts. **This order is effective in April 2016 and it establishes that consumer collection attorneys across America must review certain information and documentation AT PLACEMENT from clients to ensure that there is accuracy in placed balances.** Specifically, at placement the attorney must review, among other documents, the charge-off statement and another credit card statement to show a payment or a purchase. Similar documentation must be reviewed for consumer clients that are not bank clients and the attorneys must review the same when they execute pleadings to commence a lawsuit. If the attorney seeks to attempt to collect any damages over the pervasively regulated charge-off balance (a number that is pervasively regulated by federal guidelines and examination) the attorney must itemize every penny of post-chargeoff sought damages.

Given this, we believe that it is unduly burdensome to require national creditors to itemize pre-chargeoff balances. The CFPB has concluded this very thing and the Hanna Consent Order therefore requires that collection attorneys review post-chargeoff itemizations only. Creditors rely on the federal guidelines and examinations that render the charge-off balance as so inherently reliable and to itemize pre-chargeoff balances would create vast undue challenge our nation’s financial services industry. As a matter of fact, Connecticut’s judicial rules committee has on three separate occasions considered this exact question and in 2011 it crafted the following court rule commentary pertaining to itemizing lawsuit balances for default purposes: **"IT IS THE INTENTION OF THIS RULE (Sec. 24-24) THAT THE FEDERALLY AUTHORIZED CHARGE-OFF BALANCE MAY BE TREATED AS THE "PRINCIPAL" AND ITEMIZATION REGARDING SUCH DEBTS IS REQUIRED ONLY FROM THE DATE OF THE CHARGE-OFF BALANCE."**

The CFPB’s Hanna Consent Order also requires that, for default purposes, the collection attorney review a chargeoff statement and another statement to show a purchase or a payment. Again, it poses undue burden onto the nation’s financial services sector to require it to produce every single document produced relevant to the consumer’s credit account. Instead, we would recommend that this bill create a local standard in keeping with this new CFPB standard to ensure that default judgments are entered following reviews of reliable original account level documentation without requiring so much vast documentation to be suddenly required that banks cannot meet the new standard.

In closing, because this bill, as drafted, would unduly burden legitimate debt collection, it may cause much existing Connecticut collection lawsuit filings to cease. As such, this unanticipated consequence of HB 5571 should certainly be seriously considered by an economic impact study committee before it proceeds further in our Legislature.

Thank you for the opportunity to share these suggestions with you today. The CCBA is grateful to this committee and its leaders for its dedication to both consumers, and creditors—who are simply seeking fairness. We look forward to a robust discussion on HB 5571, in hopes of finding a solution that works for everyone.