

Legislative History for Connecticut Act

SB 1107	(PA 79-452)	1979
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JOINT
STANDING
COMMITTEE
HEARINGS

GENERAL LAW
PART 1
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RICHARD RICE (Continued): of our customers and hope this Committee will give them a favorable recommendation. Many of our customers are confused because we over-inform them with figures for both the year's finance charges imposed and the year's finance charges paid. Of course, this information is in addition to everything else required by Truth in Lending, including another figure for the current month's finance charges. Because a customer's average daily balances vary throughout the year, the two annual figures are usually different. Thus, this requirement creates the question, which figure should the customer use on the income tax return, imposed or paid. If the requirement was simply to provide either the finance charges imposed or paid to those customers requesting this information, our statements would be that much simpler for anyone to understand, and that's something we all desire. Thank you.

SEN. CUTILLO: Thank you.

RICHARD RICE: I have several copies of the statement.

SEN. CUTILLO: Thank you very much. Any questions of the Committee. You have a statement?

RICHARD RICE: Yes, sir. You apparently added Bill No. 1107, an act limiting attorneys' fee clauses in consumer contracts to today's testimony. I agree with the statement of purpose to require that attorneys' fees charged be -- not be grossly out of proportion to the value of the attorney's services provided. Certainly that's a good thing that we would be in favor of. The prices of goods sold include all costs the retailer must pay. Setting the limit on fees that is lower than the actual reasonable charges costs all members of the consuming public in the price of merchandise offered for sale. Attorneys' fees are usually paid only upon the actual collection of defaulted obligations, thus the actual fee is paid by the person causing the cost, not by the rest of the general public who have not caused such cost. Of course, exorbitant fees should not be allowed by courts.

We would be not in favor of a limit of 15 percent as the bill now stands.

SEN. CUTILLO: You would what?

RICHARD RICE: We would not favor a limit of 15 percent, which is lower than the reasonable costs that the courts are allowing attorneys to charge.

SEN. CUTILLO: In other words, you're against the bill?

CREIGHTON SHOOR (Continued): brought in a \$125 watch to be repaired and did not pay for \$25 in repairs towards the watch and we had to go through the procedure as outlined in the statutes, we would be unable to sell the article because of the limitation of one-third value of jewelry before sale is permitted. Although this may have been all right in 1919, it is not by today's prices.

I have a copy of the law as it passed in 1919 with this one-third the value of the article before the sale is permitted provision. Times have changed. We urge you to please give House Bills 6657 and House Bill 7458 a favorable report.

Also, while I'm here, I would like to support House Bill 6650 to prevent deceptive practices by retailers who run going out of business sales, and also to support House Bill 1231 --

SEN. CUTILLO: Excuse me, what was your position on that 6657?

CREIGHTON SHOOR: Supporting it. And also to support House Bill 1231, relating to open-end credit plan reporting. Thank you.

SEN. CUTILLO: And 6651 is the other one?

CREIGHTON SHOOR: 6650 and 1231.

SEN. CUTILLO: Any questions of the Committee? Hearing none, thank you very much.

That's John Jepson.

JOHN JEPSON: Perhaps I should take a class in penmanship.

SEN. CUTILLO: That's all right. Raphael, you're next.

JOHN JEPSON: John K. Jepson, I've been asked to talk on behalf of the Connecticut Bankers Association with respect to proposed Bill No. 1107. Obviously you cannot direct comments to specific language because it isn't in that form yet, but I would like to make a few comments with respect to the general concept.

We're all consumers. Consumer contracts are frequently entered into by most of us any time we need a service that calls for such. These services are priced by rendering institutions so as to pay employees, to pay taxes, and

JOHN JEPSON (Continued): hopefully to make a profit. We feel that there's a number of problems with this bill and we'd like to just take a moment and point out a few for your consideration.

We see this bill as passing on the cross of defaulting debtors to all creditors, rather than those individuals who are responsible for the default. We feel it's really unfair to take and spread this cost among all creditors. We feel that the allowance of attorney's fees in consumer contracts provides a valuable incentive to make timely payments. Clearly it's an additional cost which must be picked up if an individual defaults. It's also a point that is frequently waived in negotiations if a person gets behind but is willing to try and bring himself current over a period of time. We also are aware, and I will give you photocopies of sections of an FTC study later on, I do not have photocopies at this point, that the failure to allow attorney's fees in consumer contracts frequently leads to the assertion of frivolous defenses, increasing again the cost to the overall consumer as opposed to just the defaulting consumer.

One interesting point in the bill as stated, from a purpose point of view -- first, let me address the issue of consumer. I'm not sure what consumer means here, but conceivably it could be defined to include mortgage loans, and so forth, I don't know. Ultimately the Legislature will work that out. But one interesting point is that the bill does not apply to the state of Connecticut, it only applies to presumably lending institutions and things of this nature. I used to work for the State of Connecticut in the Attorney General's office and frequently was called upon to make collections on behalf of the state; in those instances where we've had causes allowing attorney's fees, we would charge those fees. Now this was in-house counsel, collecting fees without going outside, based on attorney's services. Naturally the court would rule on them and we were allowed them. The alternative as apparently is proposed here is that all these fees created caused by defaulting creditors would be passed on to the taxpayer.

So obviously the state has taken a position in the past, at least, with respect to state activities, that is not going to burden the total taxpayer base with the cost of defaulting debtors, but that's being proposed here with respect to passing on the costs of defaulting debtors to all consumers, which basically is your tax paying base anyway.

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JOHN JEPSON (Continued): I mentioned an FTC study. They did specifically look at these issues. I will send you photocopies of the conclusions, the basic finding they make is that attorney's fees are legitimate items to be included in consumer contracts. I believe there are only a few states, six or seven, that limit these fees. I don't think anyone here, for or against the bill, is concerned about reasonable attorney's fees being paid. Unreasonable fees, I don't think anyone wants, and I'm sure --

SEN. CUTILLO: I guess that's the problem, though, the definition between individual legislators as what's reasonable and what isn't.

JOHN JEPSON: Let me give you an example. Let's assume that mortgages are included in here. Let's assume \$100,000 mortgage is foreclosed on a default basis, no defenses whatsoever. Under this bill, by virtue of setting a limit, you allow the attorney \$15,000 for foreclosing. That's ridiculous. So I'm saying that it cuts both ways and it just doesn't make sense to place a limitation on it. Now if the issue is improper attorney's fees, then maybe that issue ought to be faced head-on by the Legislature, but I believe the U.S. Supreme Court has already acted in this area and knocked out fee schedules and basically in Connecticut, I think we go a time and effort basis, and so forth. So whether you're setting an outside limit of 15 percent that you can get across the board regardless of work and effort, even in small claims, a \$5,000 claim, maybe the work and effort would not require a 15 percent fee, but in a default situation, by getting military affidavits and stuff, the attorney may spend a lot longer than \$150 on a \$1,000 claim.

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We respectfully suggest that if we can live with the reasonable attorney's fees and have the parties who are responsible for the default pick it up, since we are in a stronger position overall.

Are there any questions on any of the topics which I have addressed?

SEN. CUTILLO: Thank you for your testimony.

Raphael Podolsky, to be followed by Corrado Uccello.

RAPHAEL PODOLSKY: My name is Raphael Podolsky, I'm from the Legal Services Legislative Office. In my testimony, Mr. Chairman, I'd like to refer to some things that are attached to my written testimony, but if I could, I'd like to just give you copies of that now.

SEN. CUTILLO: Yes, would you.

RAPHAEL PODOLSKY: There are three bills that I'd like to address. The relevant attachment is actually on the second bill, so I think you probably don't need to look at this testimony as yet.

The first bill is the bill that you just heard testimony on, which is the Senate Bill 1107, an act that concerns attorney fee clauses in consumer contracts. I've heard two witnesses speak against this bill and I guess what I'd like to start by suggesting is that both witnesses seem implicitly to recognize the problem, implicitly they seem to accept the statement of purpose, but seem to object to what is suggested as the content of the bill. The general rule in Connecticut when two people, when somebody sues somebody else, is that each side has to bear its own attorney's fees. The plaintiff pays his own lawyer, the defendant pays his lawyer. In fact, that's the rule in most states. To get around that rule, what has happened is that in consumer contracts a clause has been inserted, called the reasonable attorney fee clause. It says that if the creditor or the seller has to bring an action to enforce the contract, the debtor defaults, and the debtor agrees to pay the creditor's reasonable attorney's fees.

It's not a bargain kind of clause, it's not in the business context, these kind of things may be bargained into the contract, but it's what they call a contract of adhesion, a uniform form contract, and the consumer really has no choice other than to sign it if he wants to purchase the goods. It's not the kind of thing you can comparison shop on.

What has happened is that a long history of abuse has developed over those clauses. The theory of the clauses is if you don't pay your bill and they have to get a lawyer to sue you, you ought to pay what the extra cost that you've imposed on the creditor or the seller. But what has happened is that the kind of collection work that is done typically involves very very simple cases, most of which go by default, and in Connecticut if a case goes by default, the attorney doesn't even have to go to court. It can be done on the papers. The creditor provides a statement of the account, the attorney has a secretary fill in the blanks and type it up, it's mailed to the court, the other paperwork is mailed to the court. The amount of actual attorney work done is very very low and it is not highly skilled work. Nevertheless, for

RAPHAEL PODOLSKY (Continued): years and years, attorneys have routinely requested and received as "reasonable attorney's fees" 33 percent of the amount of the judgment. And that may not seem like much if you're talking about a \$300 or \$400 judgment, but if you're talking about a \$3,000 or a \$4,000 judgment, that is an awful lot of money.

In the last two years, the judicial system in Connecticut has become aware of the problem, in part because of the introduction of bills in this Legislature, and has made some effort to control the size of those awards in default cases, and gradually what's happened on the regular docket, those awards have been working their way down to 20 percent even though attorneys continue to ask for 33, and in small claims they've been working their way down towards 15 percent. But these are cases that involve judgments by default. What has happened out of this abusive problem and long history is the development of protective statutes, and Connecticut already has some. In Connecticut, for example, a small loan company cannot include an attorney's fee clause in its contract. It is illegal in Connecticut, therefore small loan companies cannot claim attorney's fees. If consumer goods are purchased on an installment contract, there is by statute in Connecticut a limit of 15 percent that can be awarded for attorney's fees. If a suit is brought on a landlord/tenant matter on a lease, there is a limit of 15 percent. Seven states in this country totally prohibit attorney fee clauses in consumer contracts. That is to say there can be no such clause, and many other states have limits that effects some or all consumer contracts.

In 1975, the FTC began an investigation. The statements that the previous speaker made to you about the results of that investigation are not accurate. The staff has recommended and continues to recommend total prohibition on attorney fee clauses. The presiding officer has recommended that FTC take no action. The FTC itself is now faced with contrary recommendations and the matter is pending in front of the FTC at the moment. I do not know and I don't think anyone knows how the FTC will resolve that issue.

Last year, legislation was proposed in this state that would have put an across the board 15 percent maximum. That legislation passed the House by 105 to 21, and I looked through the list of Committee members to see how the members on this Committee had voted in the House, and of those people who on the Committee this year who were in the House last year, the vote was 8 to 1. Representative Mazza, I will tell you, was the one. All other members of

RAPHAEL PODOLSKY (Continued): the Committee in the House who voted on that bill last year voted in favor of it.

It seems to me that the problem is the failure to define reasonable by statute, because what has happened is on a case to case basis, the judicial department can't handle it, and so what they for years did was simply gave whatever the lawyer asked for, and now they've tried to develop, you know, knock off a little bit, take a third of what he asks and knock it off. And they have not really addressed the question of what's fair and reasonable.

What this bill proposes to do is address it by legislation and to build on the existing Connecticut protective statutes. In cases in which judgment is by default, the bill would say there will be no attorney's fee that could be added. In cases that were not by default, that is to say contested, the maximum would be set by 15 percent. But it is important that you understand, and this deals with something Mr. Rice testified to earlier in the hearing, it does not in any way limit what are known as taxable costs. When you bring an action and prevail in Connecticut, you are entitled as a matter of taxable cost to the cost of your filing fee, to the cost that you had to pay the sheriff, and in a default case to \$50 for proceedings before trials. The fact is -- that is not effected, all these things are add-ons to those amounts. The fact is that the \$50 before trial is not an unreasonable amount to cover the fair value of attorney's work incurred in a default case. In a case that is not by default, this bill would still prohibit an add-on of 15 percent.

Now the previous speaker suggested 15 percent is excessive. I would agree that 15 percent is excessive in some cases, but it seems to me we have to take a step somewhere and this would propose a maximum.

I also want you to know that attorneys do indeed routinely make requests for very high fees. Last week we did a sampling of some cases of default cases in the Superior Court in Hartford and found that 25 percent of the requests showed attorney fee requests of more than \$800, including requests going as high as \$1,700 for default judgments in which essentially a minimal amount of work was done, and even in those cases where the court did in some cases knock it down, the \$1,700 was knocked down to around \$1,100. Now \$1,100 is still an awful lot of money for that kind of work.

The final thing that was called to your attention on this bill, is this is not a regulation of attorney's fees. It

RAPHAEL PODOLSKY (Continued): is important you understand that. The creditor and the attorney can make any deal they want for how much they're going to pay. What we are talking about is how much may be passed on to the debtor. It is one thing to say that you can add on to his bill a reasonable amount for the extra collection work that has been imposed on the creditor. It is another to say you can routinely when very little work is done add \$50 plus 20, 25, 33 percent to the amount of the judgment. What this bill tries to do is to address that problem, using the formula that parallels both existing Connecticut legislation and legislation of other states.

I would urge the Committee's support for this bill.

SEN. CUTILLO: Any questions of Raphael? Thank you.

RAPHAEL PODOLSKY: The second bill I would like to address and the reason I wanted to give you a written attachment, are two bills, 6662 and 1105. I'll address them jointly; dealing with used car disclosures.

I testified to you last week already about Senate Bill 117, which as I read it is really substantially the same bill, and so I don't want to repeat my testimony on that. These bills all parallel the proposed Federal Trade Commission regulations. Those regulations are 31 pages long and go into great detail. Now I've spent a lot of time in the last month or so trying to find a reasonable way to translate those regulations into a Connecticut statute. What I've attached to my testimony is a copy of what I would propose to you as a full draft of House Bill 6662, a bill of rights for used car buyers, which could be used as a full draft for 1105 or 117, because you could very easily combine the bill into a single bill.

Even that full draft you'll notice is fairly long, it's ten pages, and I think it's necessary for the Committee fairly soon if it's interested in this kind of legislation to begin looking closely at particular drafts. Because obviously what the particular draft says make a big difference as to what the bill's going to be. The basic principle of the FTC rule would be the use of a window form in which the dealer checks whether various systems of the car are okay or not okay, and also discloses the relevant warranty law. I want you to know that the form that you have there is not identical to the FTC form, the FTC proposed form. An identical version could be used, and I think would be acceptable, but it seems to me we can do better and what I've tried to draft is something

JANE NADEL (Continued): One other point I'd like to make about the used car bill is that the provision for a three day cooling off period. I think again the practice in the trade is that if you come in and discuss the purchase and then you decide that you don't want that particular vehicle before you take any car off the lot that many dealers will give you your deposit back. And, I think there should be a three day cooling off period or on the alternative there should be some provision of limitation of deposit.

I'd just like to briefly, are there any questions about my comments on this?

: Anybody have any questions?

JANE NADEL: Briefly there are a few other bills. I'd like to testify in support of Senate Bill 1107, limiting attorney fees consumer contract. I think the amount of work that an attorney actually does in some of these collection cases is very minimal and this gentleman who testified earlier saying he paid 25 to 33% when there is a judgment by default as I understood it, I hope I misunderstood it because I really think he's getting ripped off. I think that Raphael Podolsky described very well why it is inequitable to have this type fees included in the contract.

The other bill I would like to address briefly is 7298, the mandatory express warranty for new cars. There are some problems, there are a number of problems with new cars, that I'm sure you're aware of. I'm not certain quite frankly how they should be addressed, but I think something should be done about it. For instance, it is very disheartening to know that in 1977 there were more cars recalled than sold. In 1978 there was a little bit of a better year, but that's not necessarily saying too much. We're familiar now with the Pinto case wherein defects show up somewhat after someone has purchased a car that are very serious and can really endanger people, but yet the manufacturers could have remedied for \$10.00 a car.

A lot of these defects do not show up in the warranty period. I think that's the reason why this bill has been proposed. Some of these defects show up after warranty. Now legally, a defect which the manufacturers notify during the warranty period should be covered even if the car is out of warranty, but a lot of times the dealers will say, I'm sorry it's out of warranty. Legally that's incorrect. However there are some defects that don't show up at all during the warranty period and I'd like to describe to you something that I think is pretty terrible for all of us which has become known as the secret warranty. Manufacturers often -- if a customer, lets say they've had a car for 18 months and they have a

RICHARD MEEK (Continued): feel is an ideal law and I have a copy of that which I'd like to leave with you.

SEN. CUTILLO: Any questions? Thank you Dick.

Hepburn I believe, Halperin, Holiday Food Company. Irving Shurberg to be followed by, I don't see him, Larry Green and Rich Waters after.

IRVING SHURBERG: Good afternoon gentlemen, my name is Irving Shurberg, I'm an attorney practicing law in New Britain, Connecticut. I appear here on behalf of myself in the interest of several of my unnamed client, I don't represent any particular association or group. With reference to bill number 1107 - An Act Limiting Attorney's Fee Clauses in Consumer Contracts.

Let me say first of all, let's get, I speak here in self interest that this bill in some way will act as a detriment to an attorney, it does not. The limiting of attorney's fee clauses in consumer contracts only hurts the creditor, the retailer, the businessman, it does not hurt the attorney because the attorney is going to get paid by his client whether or not there is an attorney's fee provision in the contract, and for that reason, I'm really not appearing here as an attorney, although that is my profession, I'm appearing as a consumer because this bill, although it's statement of purpose is to protect consumers, is an anti-consumer bill. The bill is, protects defaulting debtors people who do not pay their obligations and will have to be sued. The burden of that cause, which the businessman and the retailer is going to pass on to the consumer is therefore born by the entire consumer public and not by the individual who really should bear the cost of the bill. Now of the attorney's. Now the cost that a retailer or a businessman incurs in paying an attorney to collect the bill, is a real cost. It's not 15%, I don't of any business which pays an attorney a fee of that low amount, it's more like 25%, or 30% or a third, depending upon the individual arrangement, and that's a real cost that the business incurs when in an attempt to collect a debt that is not paid by a defaulting consumer. So therefore, to limit the fees to 15%, to my way of thinking is really not fair to the business, it only provides a benefit to the defaulting debtor. Now the bill in question here is defective in many respects, first of all, in those cases where it says, involve judgement by default, I would say for example in foreclosure mortgage cases, about 90% or perhaps even more of those cases are judgement by default, even where the defendent obtains an attorney that appears, the judgements are technically entered by default and what you're going to is you're going to prohibit a bank or a foreclosing mortgagee from recovering his attorney's fee because the defendent

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IRVING SHURBERG (Continued): has not interposed any defense, so it's in the interest of the defendant, the consumer, not to interpose it in defense because if the judgement is entered against him by default, he doesn't cost him attorney's fee, now frankly, I don't see the logic to that. The bill furthermore does not define what a consumer is or what a consumer contract is, doesn't include notes, doesn't mortgages, is it only limited to retail transactions, I think not. In all the bills that I have seen that define what a consumer is, it's a very large group of people. So the bill is vague in that respect, I think also that you gentlemen should be aware, in spite of what Mr. Podolsky said about what the courts are awarding as attorney's fees, there is a very careful regulation at the present time by the clerk's offices in the courts and by the judges, as to what attorneys may recover his attorney's fees. It does not in my experience, equal anywhere near 25%, as a standard, for example, in small claims court, by rule of court, the attorney's fees are limited to \$50 or 15%, whichever is lower, and that is the limit that the courts will award in those cases. In order for an attorney to recover more than that, he has to come to court, make a personal appearance and explain why his fees should be higher. In cases which are not small claims, which go simply by default on the processing of papers, the courts will only award 15%. That is also an unwritten rule of court now. In order to get more than that, you're going to have to go before the judge and you're going to have to explain why your services should equal more than 15%. So the regulation of reasonable attorney's fees, I think, today, based on my experience, is reasonably done by the court. I see this bill as unnecessary, I see it as a detriment to the consumer and only really serves the interest of those people who don't pay their debts and have to be sued for the collection of it.

SEN. CUTILLO: Very good testimony, any questions? Thank you.

Mr. Waters, to be followed by the Department of Consumer Protection.

RICHARD WATERS: My name is Richard Waters, manager of the Credit Bureau of Bridgeport, Connecticut. The Credit Bureaus appreciate this opportunity to speak in opposition to house bill 6482. This bill requires the registration of investigators of Credit Bureaus and other companies. We simply do not see the need for another bill requiring such registration. Credit Bureaus Corp. is already registered with the Secretary of State, we pay our required fees annually. We would think that other credit reporting agencies in Connecticut do likewise. Therefore we wonder why just our industry is now being singled out for this double registration requirement. If

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clerk of the committee, Rosemary Nardi. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Will you remark further? (Applause).

Madam Clerk, return to the calendar.

THE CLERK:

Please turn to page 3 of the calendar, bottom item on the page, calendar 547, File 533, Favorable Report of the Joint Standing Committee on Energy and Public Utilities, Senate Bill 1415 ...

SENATOR LIEBERMAN:

Mr. President.

THE CHAIR:

Senator Lieberman.

SENATOR LIEBERMAN:

I wanted to save the Clerk some breath, Mr. President. It's a hot day and she's been working very hard. We'd like to mark that P.T. at the current time.

THE CHAIR:

That item is passed retaining its place.

SENATOR LIEBERMAN:

We wanted to pass it temporarily, Mr. President.

THE CHAIR:

Pass temporarily. Excuse me.

THE CLERK:

Turning to page 4 of the calendar, second item from the top, calendar 604, File 595, Favorable Report of the Joint Standing Committee on General Law. Substitute for Senate Bill 1107, An Act

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Limiting Attorney's Fee Clauses in Consumer Contracts.

SENATOR CUTILLO:

Mr. President.

THE CHAIR:

Senator Cutillo.

SENATOR CUTILLO:

Mr. President, at this time I would make a motion that calendar No. 604, Senate Bill 1107, File No. 595 be referred to the Committee on Judiciary.

THE CHAIR:

You have heard the motion.

SENATOR CUTILLO:

Mr. President, I believe there will be remarks. I believe there will be disagreement with this motion. I would move also that there be a roll call vote on the motion.

THE CHAIR:

The motion is to refer this item to the Committee on Judiciary. Will you remark on the motion?

SENATOR CUTILLO:

Mr. President, I will remark just briefly before sitting down.

THE CHAIR:

You have the floor, Senator Cutillo.

SENATOR CUTILLO:

The reason for the motion, during the course of any legislative session, we become involved, this bill did emanate and come from

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General Law. It did belong in Judiciary. We did not refer it to Judiciary. Having talked to the two co-chairmen of that committee, it has been agreed at least among several people that it should have gone there, therefore, this motion to refer.

Thank you.

THE CHAIR:

Will you remark further?

SENATOR CASEY:

Mr. President.

THE CHAIR:

Senator Casey.

SENATOR CASEY:

I object to the referral to Judiciary. This bill like other consumer bills, came out of General Law. I believe that is its rightful jurisdiction. We have an amendment that I would like to put forth on the Senate floor at the proper time and I urge the members to give us a chance to discuss this bill in the open.

Thank you.

THE CHAIR:

Will you remark further? If not, call an immediate roll call.

THE CLERK:

Immediate roll call has been ordered in the Senate. Would all Senators please return to the Chamber. Roll call in the Senate. Would all Senators please take their seats.

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THE CHAIR:

I will explain the vote. Did you want to speak on the motion, Senator?

SENATOR SCHNELLER:

I was going to ask you, Mr. President, before the roll call if you would be good enough to explain the roll call vote.

THE CHAIR:

I shall, Sir.

SENATOR SCHNELLER:

Thank you.

THE CHAIR:

Thank you, Senator. We are on page 4 of the calendar, calendar item 604, Substitute Senate Bill 1107. A motion has been made by the Chairperson of the Committee on General Law, Senator Cutillo to refer this bill to the Committee on Judiciary. Objection has been made by Senator Casey. Senator Cutillo requested a roll call. We are in the process of that roll call. If you wish to support the reference to Judiciary, you vote green. If you wish to support the objection, you vote red. The machine is open. Has everyone voted? Has everyone voted? The machine will be closed. The Clerk will take a tally. The vote is 16 yea, 19 nay. Referral fails. The bill is properly before the Chamber.

SENATOR CASEY:

Mr. President.

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THE CHAIR:

Senator Casey.

SENATOR CASEY:

I move acceptance of the joint committee's favorable report, unanimous favorable report and passage of the bill. I understand that the Clerk has an amendment.

THE CLERK:

Clerk has Senate Amendment Schedule "A", File 595, Substitute Senate Bill 1107, offered by Senator Casey. It's LCO 8614. 8614.

SENATOR CASEY:

I ask that the reading be waived.

THE CHAIR:

The question is on adopting the committee's favorable report and passage of the bill. An amendment has been offered by Senator Casey. Do you wish to move for adoption of the amendment, Senator Casey?

SENATOR CASEY:

I so move, Mr. President

THE CHAIR:

Motion has been made to adopt. You wish to waive the reading of the amendment, Senator Casey?

SENATOR CASEY:

Yes, Sir.

THE CHAIR:

Without objection, it is so ordered. Proceed.

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SENATOR CASEY:

Thank you, Mr. President. This amendment, I believe, makes the bill a very fair bill both to the attorneys, to the business man and also to the consumer. What the amendment does is to put a cap on default cases only in consumer contracts. That would be 15% or \$500.00 whichever is less. In most cases of default, which I believe is 50% of the contract cases handled by attorneys, there is little more than a letter or a follow up done by the attorney and I feel that 15% or \$500.00 limit, whichever is less, is a fair approach to this problem.

THE CHAIR:

Will you remark further on Senate "A"? Hearing no further remarks

SENATOR CASEY:

Mr. President, I ask for a roll call vote.

THE CHAIR:

Roll call has been requested. Those in favor of roll call signify by saying aye. More than 20% having responded in the affirmative, it shall ordered. Announce a roll call in the Senate.

THE CLERK:

Roll call has been ordered in the Senate. Would all Senators please return to the Chamber. Roll call in the Senate. Would all Senators please take their seats.

THE CHAIR:

Will you remark further on the adoption of Senate "A". We

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are voting on LCO 8614. The machine is open. Have all Senators voted?

THE CLERK:

Roll call is in process in the Senate. Would all Senators please return to the Chamber.

THE CHAIR:

Machine is closed. The Clerk will take a tally. The vote is 34 yea, 0 nay, the amendment is adopted. The bill is before us as amended by Senate "A".

SENATOR CASEY:

Thank you, Mr. President. I'll just make it brief because it is such a hot day. The bill before us right now, I believe is a fair bill as I said before. Right now, an attorney sending a consumer a letter and getting a response immediately and having the case ending in default, I feel is a simple matter and that the 15% or \$500.00 limit is a very understandable limit to put on, cap to put on this type of contract ending.

THE CHAIR:

The bill is still before us. Will you remark further?

SENATOR CASEY:

Mr. President, if there are no objections, I move it to the consent calendar.

THE CHAIR:

Is there objection to placing the item on consent? Hearing none, it is so ordered.

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meet again until next Tuesday and we will then meet on Tuesday, Wednesday and Thursday at noon each day with a caucus of both Republicans and Democrats to precede at ten in the morning.

THE CHAIR:

The machine may be closed. The Clerk please tally the vote. Result of the vote - 34 total voting, 18 necessary for passage, 34 yea, 0 nay. The consent calendar is adopted. Senator Lieberman.

SENATOR LIEBERMAN: SB 1107, SB 1651, HB 7817, HB 7888, HB 7692, HB 6082, SB 1264, HB 5747, HB 7067, HB 6938, SB 1617, HB 7637, HB 7963

Mr. President, I move for suspension of the rules to allow for immediate transmittal to the House of those items that should go to the House.

THE CHAIR:

Without objection, so ordered.

SENATOR LIEBERMAN:

Mr. President, I would like to thank the Members of the Circle for their cooperation. I think the calendar is in pretty good shape at this point. I hope everyone has a good long week-end.

THE CHAIR:

You too, Senator Lieberman.

SENATOR LIEBERMAN:

Thank you.

THE CHAIR:

I hope you'll pray in the Synagogue for all of us as usual on your Sabbath.

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THE CLERK:

Clerk is going to turn to page 23 top item on the page, Calendar 604, File 595, Favorable Report of the Joint Standing Committee on General Law. Substitute for Senate Bill 1107. An Act Limiting Attorney's Fee Clauses In Consumer Contracts. (As amended by Senate Amendment Schedule "A"). The House rejected Senate "A" on 5/18.

SENATOR CUTILLO:

Mr. President.

THE CHAIR:

Senator Cutillo.

SENATOR CUTILLO:

Mr. President, at this time, I'm going to move a recom-
mittal. May I speak on the recommittal?

THE CHAIR:

Motion is on recommittal. Will you remark?

SENATOR CUTILLO:

Yes, Mr. President and when the vote is taken I ask that
it be taken by roll call.

THE CHAIR:

The Clerk please announce a roll call.

SENATOR CUTILLO:

Mr. President, when this bill was taken up initially several weeks ago we had a disagreement in this Chamber as to the structure that it's now in. We did compromise. We had an amendment, I believe by Senator Casey, at least we agreed on one between Senator

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Casey and myself. The House has rejected it. It did make it a more plausible bill. We now have a disagreement between Senator Casey, myself and other concerned parties pertaining to this bill. I feel that by recommitting it, in the interim and next year when we come back into session, we'll be able to get the bill out again the way we had agreed to with the amendment and, hopefully, with the House Members having a better understanding of what we're doing. It is, therefore, Mr. President - therefore, Mr. President, these are the reasons that I move a recommitment on the bill.

THE CHAIR:

Motion is on recommitment. If there's no objection, so ordered.

SENATOR CASEY:

Mr. President, I object.

THE CHAIR:

Senator Casey.

SENATOR CASEY:

Thank you.

THE CHAIR:

I beg your pardon, a roll call was asked for.

SENATOR CASEY:

Thank you. Thank you very much. O.K. I object to the recommitment. To go over what Senator Cuttillo said, the bill was amended, our amendment that we passed and agreed upon two weeks ago was overturned in the House. Tonight I'd like to ask the Members of the Chamber to consider the bill as it unanimously.

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came out of the General Law Committee about a month, month and a half ago. The bill would as unamended as it was rejected in the House would take off the limit of \$500.00 that a business man can get a judgement by the judge to the consumer. This would provide in cases where the contract is larger than most cases, it would give the attorney an unlimited amount as far as the ceiling he could attain or the businessman could attain from the consumer. It would not in any way affect the amount the attorney can in turn charge the businessman. In the situation of default, that was overturned also and this bill would consider every situation be it default judgement or not and I would ask that the Senate overturn the move for recommittal and discuss the bill out in the open.

THE CHAIR:

Motion is on recommittal. Will you remark further? Senator Curry.

SENATOR CURRY:

Mr. President, I rise to oppose recommittal and to concur with Senator Casey. I believe that that a majority of this body will support this bill unamended and did a majority of the House of Representatives and, in fact, I believe that a majority of this Body on the day that the amendment was offered would have supported the bill unamended. The bill very simply states that attorney's fees shall not be available to an attorney who is a salaried employee of a creditor, seller, etc., and that no at-

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torney's fees be available prior to the commencement of a law suit and it limits attorney's fees on consumer contracts, that is to say, contracts for sale or lease of a good services for household personal or family uses to 15% and that does not limit the lawyer's fee. That limits the amount of money which can be added on to the contract charged^{and} to the debtor. I believe that it's a fundamental principle upon which there was majoritarian consensus within this Circle upon the day of initial passage, and I would oppose its recommital.

THE CHAIR:

Motion is on recommital. Will you remark further? Clerk please announce a roll call.

THE CLERK:

Immediate roll call in the Senate. Would all Senators please return to the Chamber. Immediate roll call has been ordered in the Senate. Would all Senators please take their seats.

THE CHAIR:

Voting on Calendar No. 604, Senate Bill 1107. The motion is to recommit. The machines will be open. The machine is closed. Total number voting 34, necessary for passage 18. Those voting yea 12, those voting nay 22, Motion for recommital fails.

SENATOR SULLIVAN:

Mr. President.

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THE CHAIR:

Senator Sullivan.

SENATOR SULLIVAN:

Point of order Mr. President. Mr. President, it appears that this bill has to do with court proceedings, attorney's fees, salaried employees engaged in a law suit and I would ask for a ruling of the Chair. I believe that this bill, and if I'm not mistaken, in this session we have passed a bill a portion of which is in this bill already, which came out of Judiciary and I would ask the Chair to make a ruling as to whether or not this bill is properly before us as I think it's within the province of the Judiciary Committee and not the General Law Committee from whence this bill came.

SENATOR CASEY:

Mr. President.

THE CHAIR:

Senator Casey.

SENATOR CASEY:

I'd like to oppose Senator Sullivan on this situation. I feel that contracts are certainly

THE CHAIR:

Senator, Senator Sullivan has made a point of order as to whether or not the bill is properly before us or should have come from the jurisdiction of the Committee on Judiciary. The Chair will have to rule on that. Do you have a point of order, Senator?

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SENATOR DEPIANO:

Well, I just wanted to join in with Senator Sullivan because we just did a bill on the calendar dealing with almost the exact same thing concerning attorney's fees and contracts and consumer contracts and therefore I feel that this particular bill is not properly before this Body on the basis that it should have come to the Judiciary Committee.

THE CHAIR:

Senator Casey.

SENATOR CASEY:

Mr. President, the last time this legislation was before the Body, there was a move to refer to the Judiciary Committee and that motion was defeated.

THE CHAIR:

Senator Ruggiero. Speaking to the point of order?

SENATOR RUGGIERO:

Yes, please, Mr. President. I would presume that the Chair has invited debate on the point of order.

THE CHAIR:

Limited debate.

SENATOR RUGGIERO:

Thank you Mr. President. Only, Mr. President, I would just like to speak on a motion to refer, obviously, has nothing to do with a point of order. Had a point of order been raised I believe that point would have been well taken when it came up the first

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time. I would point the Chair to Joint Rules No. 3K, first three sentences which says, "the Committee on Judiciary which shall have cognizance of all matters," and I underline the word "all", "relating to courts, judicial procedures, Etc." Mr. President, I believe the point is well taken and would hope that you would rule accordingly.

THE CHAIR:

The Senate will stand at ease. The Chair has reviewed and discussed with both sides the elements in dispute with respect to Senator Sullivan's point of order. The Chair does not feel that the subject matter of Calendar No. 604, Senate Bill 1107 is without the jurisdiction of the General Law Committee and therefore rules that the bill is properly before us and the point of order is not well taken. Senator Casey.

SENATOR CASEY:

Thank you Mr. President. I move the bill be - is the motion before us yet, Mr. President? I move that the bill be accepted as unanimously passed by the joint favorable - joint committee - and bill be passed in the House before us.

THE CLERK:

Do you want to concur with ...

SENATOR CASEY:

Oh, I concur. I concur, Mr. President.

THE CLERK:

You have to reject Senate "A" if you want to be in con-

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currence with the House.

SENATOR CASEY:

O.K. I move the rejection of Senate "A". Would that be a separate motion?

THE CHAIR:

That would be a separate motion, Senator.

SENATOR CASEY:

Thank you, Mr. President. I move the rejection of Senate "A".

THE CHAIR:

Motion is on rejection of Senate Amendment Schedule "A". Will you remark further?

SENATOR DEPIANO:

Mr. President.

THE CHAIR:

Senator DePiano.

SENATOR DEPIANO:

I would like to remark on the motion to reject today and ask that this Body vote against the rejection of that amendment. The amendment was given due deliberation in this Chamber. It provided and made a very weak bill into a good bill. Down in the House they felt that that was not acceptable to them and once we're in a position where we either have to swallow what the House wants us to do or, in effect, stand up and be counted. Now we all voted on the original amendment and I believe it went on the consent calendar at that particular time, so apparently we all thought

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it was an excellent amendment and therefore I ask, under the circumstances, that we should vote against the rejection of House Amendment "A" and let this bill go for this term and have it come back in January after more input can be put into the bill.

THE CHAIR:

Motion is on rejection of Senate Amendment Schedule "A".
Will you remark further? Senator Cunningham.

SENATOR CUNNINGHAM:

Thank you, Mr. President. Mr. President, I rise also against rejection of Senate Amendment "A". I voted when this bill was originally before this Chamber and I voted again today against recommitment, but I would not support the bill with Senate Amendment "A" on it. Thank you Mr. President.

THE CHAIR:

Will you remark further? Senator Casey.

SENATOR CASEY:

Mr. President, the bill as it is before us calls for 15% cap on any judgements by a businessman to a consumer. This has precedent in ...

SENATOR CUTILLO:

Mr. President. Mr. President. Mr. President.

SENATOR CASEY:

This has president in ...

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SENATOR CUTILLO:

Point of inquiry please?

THE CHAIR:

Senator Cutillo.

SENATOR CUTILLO:

An inquiry.

THE CHAIR:

Well.

SENATOR CUTILLO:

Mr. President, because the LCO is closed, is it at all possible, seeing that we all understand what the amendment was to start with, that we could have and discuss and possibly put on originally what Senate Amendment "A" was. We don't have the ability to go to the LCO to get the amendment to have it spread out and do it technically. I would ask of the Chair if it's at all possible to do that.

THE CHAIR:

Senator Casey.

SENATOR CASEY:

Mr. President, may I through you to Senator Cutillo, if you would like to see that amendment, look in your file and it's there.

SENATOR CUTILLO:

On the inquiry, Mr. President, to you.

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THE CHAIR:

I think, Senator Casey, it has not been reprinted and is not in the file.

SENATOR CASEY:

Excuse me, Mr. President.

THE CHAIR:

Senator Cutillo, in response to your inquiry, we'll have copies of Senate Amendment Schedule "A" distributed.

SENATOR CUTILLO:

We can do that then, Mr. President?

THE CHAIR:

We can do that right now.

SENATOR CUTILLO:

Thank you.

THE CHAIR:

The Senate will stand at ease.

SENATOR CASEY:

May I continue, Mr. President? May I continue?

THE CHAIR:

Senator Casey, you may proceed.

SENATOR CASEY:

Thank you Mr. President. 15% cap on ...

SENATOR RUGGIERO:

Point of order, Mr. President. I would ask that this matter be passed temporarily until we have an opportunity to

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look at the amendment please?

THE CHAIR:

In view of the fact that it's going to be five minutes or less that the amendment will be on your desk, will pass this temporarily. Clerk will proceed with the calendar.

THE CLERK:

Clerk will turn to page 32 of the .. thirty .. under the heading of Foot, page 34, excuse me, I was right to begin with, page 32 of the calendar, Calendar 529, File 500. Favorable Report of the Joint Standing Committee on Insurance and Real Estate. Substitute for Senate Bill 1365, An Act Concerning Municipal Risk Management Pools.

SENATOR MURPHY:

Mr. President.

THE CHAIR:

Senator Murphy.

SENATOR MURPHY:

Mr. President, I move acceptance of the joint committee's favorable report and passage of the bill. I believe the Clerk has an amendment.

THE CLERK:

Clerk has Senate Amendment Schedule "A", File 500, Substitute Senate Bill 1365 offered by Senator Murphy. LCO 9109.

SENATOR MURPHY:

Mr. President, I move adoption of the amendment and move

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THE CHAIR:

You wish for adoption of the bill as amended and move it to the consent calendar. Without objection, so ordered.

THE CLERK:

Clerk has completed the calendar except for the item that SB 1107 we passed temporarily at the top of page 23, I believe the amendments have been passed out.

SENATOR CASEY:

Mr. President, we now have the amendment before us and I hope that this motion to reject is proper.

THE CHAIR:

Motion is for rejection of the amendment. Do you wish to remark?

SENATOR CASEY:

Yes, Mr. President. 15% cap is has precedent in Connecticut law. It's included in the retail installment sales financing act since the 1940's, the Landlord-Tenant Act since 1976, The Small Loan Act which I believe is zero percent and the Uniform Consumer Credit Code which is zero preferred for zero or 15% across the nation. This is not in the Connecticut law though. The Small Claim Court has a rule that encourages 15%. This bill affects consumer contracts such as bank loans, credit card transactions, collection work for unsecured purchase goods, those goods that cannot be repossessed, service contracts such as health spas or Arthur Murray Dance Studios. If there is no law suit in this

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case, Mr. President, there is no percentage. There's a reasonable percentage that would be allowed in certain situations but this would not affect late payments, clauses in contracts, would not affect reasonable collection fees in consumer contracts and, of course, you will always have the taxable items, those sheriff's fees and filing fees that are done in court. These are automatic without a contract. Also in cases of default, there's \$50.00 provision for pre-trial costs for attorneys and also for trial contest that \$50.00 for the pre-trial and \$75.00 for a total of \$125.00 contested that need not be in consumer contract. I feel this bill is good as it is before us and I urge my fine colleagues to reject this amendment.

THE CHAIR:

Motion is for rejection of the amendment. Would you remark further? Senator DePiano.

SENATOR DEPIANO:

Mr. President, I'd like to move for a roll call vote on this particular motion, but I would like to say one further thing. This is a little more than this particular bill at stake at this particular time. We are on record now as having made this particular amendment law as far as the Senate was concerned. It went on the consent calendar. It was voted unanimously. We all gave our stamp of approval that this was a good amendment. Now it goes down to the House. They have another view. In effect, they're telling us, look, you were wrong on that amendment. They give us

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no reason why and send it back up here, and we're supposed to be puppy dogs now and say, look, we were wrong when we first voted on this House Amendment, on this Senate Amendment. We were wrong and now we're going to swallow and reject it. I think it's a little more than this particular bill, and I think we have to stand up and be counted.

THE CHAIR:

Will you remark further?

SENATOR CURRY:

Mr. President.

THE CHAIR:

Senator Curry.

SENATOR CURRY:

I would hope that we would reject the amendment. I have noticed in my short tenure here that there sometimes does develop between the two Houses an atmosphere similar to that which might develop between two competing fraternity houses on a college campus, and I think that is inappropriate to decisions based upon the merits of a given bill and I've been burnt personally myself seeing that kind of a syndrome work the other way. I think that we have to ignore the natural feeling of competitiveness that we might have toward our House colleagues and look at the merits of this legislation. If we do that, what we find is a very simple bill, a bill which says that in a contract for money, property or services intended primarily for personal, family or household use

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there shall not be collected from the debtor or purchaser more than 15% surcharge for attorney's fees and that these shall not be collected by salaried employee of the creditor or seller and that they shall not be collected prior to the commencement of a law suit. That's simply fair. It does not mean a very great change, and all of us who are attorneys here ought to know that it does not mean a very great change in what is now customary practice. All of us, I think, who are attorneys know that in most cases, particularly in terms of the collection of bad debts, we're charging, attorneys will charge a certain portion of the total bad debt and do sufficiently well. We're not changing customary practice that much. Rather we're insuring that we would all regard it at least standard will be adhered to, so, with all due respect to one of the finest attorneys in the Circle, Senator DePiano, by universal acclaim, I would say that I do not feel like a puppy dog in rejecting this amendment. I feel that I'm looking at the merits of a sensible bill and making a reasonable judgement.

THE CHAIR:

Clerk will please announce a roll call.

THE CLERK:

Immediate roll call has been ordered in the Senate. Would all Senators please return to the Chamber. Roll call in the Senate. Would all Senators please take their seats.

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SENATOR DEPIANO:

Mr. President.

THE CHAIR:

Senator DePiano.

SENATOR DEPIANO:

Would you in your expert way clarify the vote on this particular bill.

THE CHAIR:

I intend to, Senator DePiano. Are all the Senators back in the Circle? Motion is for rejection of the amendment. An affirmative vote, a yes vote, is for rejection. A no vote is for non-rejection. The machine is open. Please record your vote.

SENATOR CURRY:

Point of order, Mr. President. I have to confess to a certain confusion at this point.

THE CHAIR:

The motion was made by Senator Casey to reject the amendment.

SENATOR CURRY:

To reject Senate Amendment "A"?

THE CHAIR:

Correct. And if you wish to conform with his suggestion, you vote yes. If you disagree with that, you vote no. Has everyone voted? Machine is closed. Clerk please tally the vote. Result of the vote. 34 total voting, 18 necessary for passage.

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18 yea, 16 nay. The amendment is rejected. Senator Casey.

SENATOR CASEY:

Mr. President, thank you for your patience with this weary freshman. Is this bill properly before us now?

THE CHAIR:

The bill is properly before us. Proceed.

SENATOR CASEY:

I'd like to comment. Once again, this bill puts a limit on the amount of collection costs for attorney's fee, not the attorney's fee themselves, that can be added into a consumer's bill if he's sued for payment. The limit is established at 15% of the amount of the judgement. It's purpose is to put an end to the practice by which the consumer is forced to pay unreasonable collection costs, far out of proportion to the value or the extra work the creditor has gone through. Mr. President, I urge my colleagues to support this bill.

THE CHAIR:

Will you remark further? Senator DePiano.

SENATOR DEPIANO:

Mr. President, unless I read my calendar incorrectly, we have voted on Senate Amendment Schedule "A" as to whether to accept it or reject it. There is also House Amendment Schedule "A" that has not been acted upon by this Body. Therefore, I do not think the bill is properly before us at this time.

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THE CHAIR:

The Senator is incorrect. We may proceed. The vote is on the bill. Will you remark further? Senator Ruggiero.

SENATOR RUGGIERO:

Mr. President, through you a question to Senator Casey. Actually, I'll address my question to Senator Curry as a proponent of the bill if he wishes to answer it. Senator Casey said that in his opinion 15% is a reasonable figure. If any of the proponents of the bill want to tell me why 15% happens to be a reasonable figure, I would be happy to hear the answer.

THE CHAIR:

Do you care to respond? Senator Curry. Briefly.

SENATOR CURRY:

Very briefly, Mr. President. It's an ingenious question on the part of Senator Ruggiero.

THE CHAIR:

The question is a simple one. Why do you think the percentage of 15% is reasonable?

SENATOR CURRY:

The experience of those who have worked on this bill has been that that is a figure which provides ...

SENATOR RUGGIERO:

Mr. President, point of order, maybe Mr. Curry could speak up. He's kind of mumbling on this end. We can't hear him.

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THE CHAIR:

The point of order is that you have not articulated your explanation. Would you kindly do so?

SENATOR RUGGIERO:

That's what I tried to say, Mr. President.

SENATOR CURRY:

Through you, Mr. President, the information received by those who worked closely on this bill was that this figure did represent a more than adequate return to any attorney involved in such work, that it provided for what anyone would accept to be adequate hourly wage given the complication of the work. In fact, ^afar more than adequate hourly wage. I do not have here, the Senator might have rightly guessed, a statistical corroboration of that thesis, beyond which discussion of what is reasonable or unreasonable necessarily takes us into some of the more abstract realms of discussion into which we might enter this evening and which might incur the wrath on both our heads of the entire remainder of this Circle, so I will offer that as a response in ^{that} hope the Senator from Torrington is duly satisfied.

THE CHAIR:

Senator Ruggiero, the response has been made. Do you have another question?

SENATOR RUGGIERO:

Through you, Mr. President, to Senator Curry, would you please tell the Circle who provided the information that led you

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to believe this 15% was reasonable?

THE CHAIR:

 that
Question has been propounded is where you have your information. I think he wants to know your citation. Senator Curry, if you wish to respond?

SENATOR CURRY:

Yes. I would just like to say a couple of things to Senator Ruggiero. The 15% figure is already well established both in Connecticut and nationally. Two Connecticut laws, the Retail Installment Sales Financing Act and the Landlord-Tenant Act already use the form of the 15% limit for certain kinds of consumer contracts. This limit applies to all secured consumer contracts and residential leases whether judgement is contested or by default. In addition, the Connecticut Small Claims Rule discourages although they do not prohibit awards of more than 15% to creditors for attorney's fees in default cases. Practice book section 467HH. At the national level, the uniform consumer credit code, UCCC, which has been proposed by the National Conference of Commissioners on Uniform State Laws would not permit a creditor to claim more than 15% on any consumer contract whether by default or not, there is thus a solid precedent for the use of the 15% maximum, Senator Ruggiero.

SENATOR RUGGIERO:

Senator Curry, let me just respond ...

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THE CHAIR:

Senator Ruggiero, Senator Ruggiero.

SENATOR RUGGIERO:

I do have the floor, Mr. President, Right?

THE CHAIR:

I understand that. You want to continue colloquy? You have another question?

SENATOR RUGGIERO:

No. I think I have a statement to make, Mr. President.

THE CHAIR:

All right. You may proceed.

SENATOR RUGGIERO:

First of all, Mr. Curry, let me tell you that if you want to equate a suit on a consumer contract with the Landlord and Tenant Act, I don't think you've been practicing long enough, because you haven't done enough of them. No. 2, when you talk about a 15% limitation in the practice book that limitation is there in accordance with where Senate "A" was - for default, a situation where they change the procedures in the State of Connecticut. What we have now is the situation you talk about in the abstract and trying to determine attorney fees in the abstract. What we have now in the State of Connecticut is a situation where the judge reviews the file and he determines how much work an attorney had to put in to collect the debt and that's the amount of money he awards, not to the attorney,

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that's the amount of money he awards to the plaintiff. The attorney charges the same fee to his client regardless of what the judge allows the plaintiff to receive from the defendant. This is not a bill for the attorneys. Our fees, my fees, my office fees are not changing one nickel. The only thing we're doing is we're taking the businessman, who has to go after the deadbeats and we're allowing that businessman to have to spend more and more money because somebody wanted to go in and buy three refrigerators when they didn't need them and couldn't pay for them and get away without having to pay the consequences. I think this State, Mr. President, has continuously hurt business. I serve on the Business Tax Sub-committee. We've tried a number of times and we have bills, we're trying to strengthen business in the State of Connecticut. This type of legislation does nothing but hurt it. It's good legislation for the deadbeat and the guy who doesn't want to pay his bills. It's not an attorney's fee bill. Our fees are the same. Every attorney that sits in this room is going to charge his client the same amount of money. All we're doing is taking it out of the businessman's pocket and allowing the deadbeat to get away with something else in this State.

THE CHAIR:

Senator Post.

SENATOR POST:

Mr. President, I would like to add one additional thing to

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the argument of Senator Ruggiero whose remarks I support and the arguments we've made previously about freedom of contract and the ability of people to enter into contracts, that being a concept. The new thing I would like to add to the argument is that even under the provisions of this bill what we're doing is encouraging law suits. As it now stands, if you don't bring the law suit, you're limited as to how much you can collect. If you do bring the law suit, you're not limited, so it would seem to me, if I understand the bill correctly, what we are doing is saying that all you have to do is file the law suit and you can collect a larger amount. What that means is, if you have a debt against somebody, don't try and collect it quickly and easily. Make sure you bring your law suit so that you qualify for the higher amount. What that does is encourage more litigation, more law suits, more expense to everybody. Rather than encouraging settlement of these claims, this kind of a bill is going to encourage the bringing of more law suits and for those three reasons I think we ought to reject it. Thank you.

SENATOR CUNNINGHAM:

Mr. President.

THE CHAIR:

Senator Cunningham.

SENATOR CUNNINGHAM:

Mr. President, through you, I'd like to inquire of Senator Curry,

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THE CHAIR:

Why don't you take a shot at Casey now? Curry's tired.

SENATOR CUNNINGHAM:

No, I'm going to inquire of Senator Curry on this, through you, Mr. President, Senator Curry, have you had any personal experience with regard to the collection or defense of consumer claim, consumer actions?

THE CHAIR:

The question has been directed to Senator Curry. Senator Curry, you may respond.

SENATOR CURRY:

Despite the impropriety as I view the question, I'll tell you in a simple one word answer. Yes.

THE CHAIR:

Senator Curry, may I ask that you observe the rules and stand please?

SENATOR CURRY:

Yes. I'm sorry, Mr. President. Yes.

THE CHAIR:

Senator Cunningham.

SENATOR CUNNINGHAM:

Mr. President, through you, a further question to Senator Curry. Based upon your personal experience, do you believe that in all cases a 15% limit is reasonable?

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SENATOR CURRY:

Mr. President, I've already answered the question, I think

SENATOR CLOUD:

Mr. President, point of order. Point of order, Mr. President.

THE CHAIR:

Point of order has been suggested by Senator Cloud. Will you state your point of order.

SENATOR CLOUD:

Yes. Mr. President, I do not see the germaneness of the questions proposed to Senator Curry with respect to his personal experience on a matter dealing with his own private practice. The bill that is before us deals with the percentage limitation on attorney's fees. It has nothing to do, in my opinion, whether Senator Curry has had any personal experience or not in this particular issue. Therefore, I raise a point of order on germaneness of the issue by way of questions proposed by Senator Cunningham.

THE CHAIR:

Question is out of order. The point raised by Senator Cloud is appropriate. I rule the question as being not germane and out of order. Senator Cunningham, do you have another question?

SENATOR CUNNINGHAM:

No. I have no further questions, but I do want to remark on the bill, Mr. President.

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THE CHAIR:

You may proceed.

SENATOR CUNNINGHAM:

Mr. President, I supported the bill with the amendment on it. As I indicated before, I opposed recommittal when the bill was originally before this Chamber. I supported it with the amendment on it. It went on consent. It is obvious on the vote with regard to the amendment that without the amendment there is at least substantial feeling against this bill. I believe that our present system in the courts of handling it is superior to a 15% automatic limitation. Usually, if there's a substantial amount in controversy, it should be less than 15%. The problem comes when you're dealing with a small businessman, a small creditor with a relatively small amount to collect, or you're dealing with a debtor who decides that he doesn't want to pay and he'll fight it whether he's got a legitimate defense or not. You go to court. You go to court again and again and again. Mr. President, I would submit that 15% limitation and what might be a \$300.00 debt which would be \$45.00 may be very much unfair to the creditor and may very easily lead to a situation where either two things occur. Either the creditor has to write off a lot of these small amounts or else he just won't give credit to these individuals. Mr. President, it is not to the benefit of the consumer nor to the people that Senator Curry seeks to help by this legislation because frankly, Mr.

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President, it will lead to more denial of credit. I do not oppose the concept of a very small limitation on a default judgement where the time consumed by an attorney is negligible, but to place such a limitation where legal action has been held and where under the present system the courts are beginning more than in the past to weigh very carefully what is a reasonable fee. Now ten or fifteen years ago, Senator Curry's action might have been well taken. We aren't living ten or fifteen years ago. We're living now. The problem of these creditor relationships is not what it was ten or fifteen years ago. The courts act reasonably. They only give reasonable fees today, and I do not believe that this kind of artificial limit, which as Senator Post has indicated, will increase litigation, I do not believe this bill should pass and I will vote against it. Thank you Mr. President.

THE CHAIR:

Will you remark further? Roll call has been requested.

Clerk please make an announcement?

THE CLERK:

Immediate roll call has been requested in the Senate. Would all Senators please take their seats. Immediate roll call has been ordered in the Senate. Would all Senators please return to the Chamber.

THE CHAIR:

Machine is open. Please record your vote.

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THE CLERK:

Roll call in process in the Senate. Would all Senators please take their seats.

THE CHAIR:

Machine is closed. Clerk please tally the vote. Result of the vote 19 yea, 15 nay, the bill is adopted.

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CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1979

VOL. 22
PART 25
8526-8872

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CLERK:

Senate Bill 555 as amended by Senate Amendment "A" and House Amendments "A" and "B".

Total number voting	134
Necessary for passage	68
Those voting yea	134
Those voting nay	0
Those absent and not voting	17

SPEAKER ABATE:

The bill as amended passes.

CLERK:

Calendar No. 1216, File 595, substitute for Senate Bill No. 1107 AN ACT LIMITING ATTORNEY'S FEE CLAUSES IN CONSUMER

CONTRACTS. As amended by Senate Amendment Schedule "A". Favorable Report of the Committee on General Law.

REP. GIONFRIDDO: (33rd)

Mr. Speaker.

SPEAKER ABATE:

Rep. Paul Gionfriddo of the 33rd.

REP. GIONFRIDDO: (33rd)

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report, and passage of the bill in concurrence with the Senate.

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SPEAKER ABATE:

The question is on acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate. Will you remark, sir?

REP. GIONFRIDDO: (33rd)

Yes, Mr. Speaker. Mr. Speaker, what this bill does is define some of the conditions under which attorney's fees could be passed along from the creditors to the person owing the creditor in various circumstances involving consumer contracts. It limits to 15% that percentage of which -- of the final award which can be passed along. It would limit that to 15%. Mr.

Speaker, the Clerk has an amendment, previously designated Senate Amendment Schedule "A", LCO No. 8614. Would the Clerk please call the amendment. Could I be allowed permission to summarize?

SPEAKER ABATE:

Would the Clerk please call the amendment.

CLERK:

LCO No. 8614 offered by Senator Casey of the 31st district.

SPEAKER ABATE:

The gentleman is requesting leave of the Chamber to summarize the amendment in lieu of Clerk's reading. Is there objection? Hearing none, you may proceed with summarization.

REP. GIONFRIDDO: (33rd)

Mr. Speaker, what this amendment does is two things.

1) It limits those consumer contracts with which this legislation deals to only those matters dealing with judgment by default.

The second thing it does is place a cap of \$500 on top of the 15%. Mr. Speaker, I move adoption of Senate Amendment Schedule "A".

SPEAKER ABATE:

The question is on adoption of Senate Amendment Schedule "A". Will you remark further on its adoption?

REP. JAEKLE: (122nd)

Mr. Speaker.

SPEAKER ABATE:

Will you remark further on the adoption of Senate "A"?

Rep. Jaekle.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. A question through you to the proponent of the amendment, please.

SPEAKER ABATE:

State your questions, please, sir.

REP. JAEKLE: (122nd)

Thank you. As I understand the proposed amendment, this would limit attorney's fees, recoverable attorney's fees, to not more than \$500. Is that correct, through you, Mr. Speaker?

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SPEAKER ABATE:

Rep. Gionfriddo.

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker. As stated by the questioner, yes.

REP. JAEKLE: (122nd)

Thank you. One more question I'd like to pose a hypothetical. Would this mean, if a bank has a \$100,000 mortgage and a creditor has defaulted and a foreclosure action is brought, that the bank would only be entitled to \$500 maximum in attorney's fees for the processing of a \$100,000 foreclosure action, through you, Mr. Speaker.

SPEAKER ABATE:

Rep. Gionfriddo, will you respond, sir?

REP. GIONFRIDDO: (33rd)

Yes, Mr. Speaker. Through you, as would be reasonable under this bill, yes.

REP. JAEKLE: (122nd)

Mr. Speaker, commenting briefly on the amendment, and I guess I should preface my remarks by saying I have supported this legislation in the file last session, and was one of the fifteen unanimous votes in the General Law Committee in favor of this bill. This Senate Amendment, I think, has gone much too far

by putting a maximum cap on allowable attorney's fees in consumer contracts at \$500. This will, in effect, result not in a loss of what the attorney is going to get, but it's going to shift who pays the cost of collection from the debtor that borrowed the money, to the creditor who lent the money to the debtor, with a contract provision that if the debtor is to default, he will pay not only cost of collection, but the reasonable attorney's fees in effecting collection of that amount of money due. When I posed my question, this act would apply to very complicated foreclosure actions of hundreds of thousands of dollars, and limit recovery to the creditor of only \$500. Frankly, I think this has gone overboard, and I will urge rejection of the Senate amendment.

SPEAKER ABATE:

Will you remark further on the adoption of Senate Amendment Schedule "A"? Will you remark further on its adoption?

REP. HANLON: (70th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Neal Hanlon.

REP. HANLON: (70th)

Mr. Speaker, following up on some of the questions that Mr. Jaekle posed to the proponent of the bill, I'd like to ask, through you, a couple of questions of the gentleman reporting off

the amendment.

SPEAKER ABATE:

State your first questions, please sir.

REP. HANLON: (70th)

Through you, Mr. Speaker, I'd like the gentleman, if he would, to share with us his opinion as to whether, in the hypothetical situation Mr. Jaekle set forth, that is the \$100,000 foreclosure action, my question is, in your opinion, do you think a \$500 attorney's fee would be fair?

SPEAKER ABATE:

Rep. Gionfriddo, will you respond, sir?

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker, yes.

SPEAKER ABATE:

Rep. Hanlon

REP. HANLON: (70th)

Through you, Mr. Speaker. Do you think it is fair that other depositors of a lending institution should have to bear the additional legal expenses that an attorney may charge the bank or the lending institution for processing that foreclosure action?

SPEAKER ABATE:

Rep. Gionfriddo, will you respond?

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REP. GIONFRIDDO: (33rd)

Yes, Mr. Speaker, through you, no.

SPEAKER ABATE:

Rep. Hanlon.

REP. HANLON: (70th)

Through you, Mr. Speaker. How then can you support this amendment?

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker.

SPEAKER ABATE:

Rep. Gionfriddo.

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker, what the Reps. Jaekle and Hanlon are referring to is as they said, a hypothetical situation. What I think those of us who have studied this bill, studied the legislation, studied the effect of the amendment might have on the legislation, have learned that for the most part, when you're dealing with mortgage foreclosures, you're not dealing with complicated areas which are going to involve the necessity of passing along attorney's fees in amounts greater than \$500. In fact, in researching this some last night, I was made aware that typically, in mortgage foreclosures, attorney's fees range in the \$500 to \$600 area. And I could ask the question of some

of the questioners as to what they believe the number of instances are that we might be dealing with their complicated, hypothetical situation. But I think two things are important to note here. One of them is, Mr. Speaker, in terms of the necessity or in terms of what we're passing along to other consumers that the creditor can only pass along \$500, is first of all, the event that property of such value is returned to the creditor, then the creditor is actually not left holding the bag. The creditor is actually out there with additional property that the creditor didn't previously have. Further, that the attorney's fees that we're dealing with in these complicated instances are still not regarded as substantially over the \$500 level in most nearly all, and perhaps all instances. We're doing \$800, \$900, perhaps \$1,500, and in those particular instances, Mr. Speaker, I find it hard to suggest that there is going to be an additional burden placed on other consumers as a result of not being able to pass along these kinds of costs. And further, when you look at what's happened to the consumer who's already lost the case, already lost a \$100,000 home, he's already lost the \$500, there are additional kinds of charges that are going to be put onto him, it's kind of hard to justify piling on an additional couple of hundred dollars on top of that, Mr. Speaker.

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So I don't think, basically, because of the hypothetical situation, we really have much to worry about in terms of these questions.

SPEAKER ABATE:

Rep. Hanlon, you still have the floor, sir.

REP. HANLON: (70th)

Through you, Mr. Speaker, is there any restriction in either the file copy of this bill or the amendment, on an ability of an attorney to charge the lending institution more than \$500 for representing them in an either foreclosure or collection action?

SPEAKER ABATE:

Rep. Gionfriddo.

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker, no.

REP. HANLON: (70th)

Mr. Speaker, just following up on what Rep. Jaekle said earlier, I think this is a blatant defect in this bill and in this amendment. There is absolutely no restriction on the ability of an attorney to charge a lending institution or any other person who holds a consumer contract more than \$500. So who's going to end up paying the tab? Not the person that defaulted on the loan or the consumer transaction. It's going to be the

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other depositors at the lending institutions and other consumers throughout the state. There's absolutely no restriction on an attorney -- on any attorney, from charging more than \$500, and who's going to bear the burden? Not the person that defaulted, the other consumers and the other depositors of the lending institution. I think this is an anti-consumer amendment. I would urge its rejection.

REP. GLICKSON: (137th)

Mr. Speaker.

SPEAKER ABATE:

Will you remark further? Rep. Glickson.

REP. GLICKSON: (137th)

Mr. Speaker, may I direct a question, through you, to the proponent of the bill?

SPEAKER ABATE:

State your question, please sir.

REP. GLICKSON: (137th)

Rep. Gionfriddo, in regard to lines 8 through 11 of the file copy, the prohibition on receiving, claiming or collecting payment for attorney's fees prior to the commencement of a lawsuit, does this mean that there's a prohibition on collecting anything for services rendered prior to the lawsuit, or that there's a prohibition on collecting anything until a lawsuit has been instituted.

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SPEAKER ABATE:

Rep. Gionfriddo, will you respond?

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker, if I understand the question properly, prior to when the lawsuit had been instituted.

REP. GLICKSON: (137th)

Are you saying that you can't ...

SPEAKER ABATE:

Through the Chair, Rep. Glickson.

REP. GLICKSON: (137th)

Are you saying that if a lawsuit ...

SPEAKER ABATE:

Through the Chair, is that correct, Rep. Glickson?

REP. GLICKSON: (137th)

Through you, Mr. Speaker, if there is ultimately a lawsuit instituted, would the attorney be allowed to collect anything for services rendered prior to the actual institution of the lawsuit?

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker. First of all, I want to be clear. We're dealing with only judgment by default. Secondly, O.K., so long as we're clear there. Then, Mr. Speaker, as I understand the question -- could I have the question once more?

I did get off on that one point.

SPEAKER ABATE:

Rep. Glickson, would you be kind enough to restate your question, sir.

REP. GLICKSON: (137th)

Through you, Mr. Speaker. I realize, as Rep. Gionfriddo points out that if we're talking about judgments by default, there will necessarily have been a lawsuit instituted. So my question is does the file copy prevent the recovery of attorney's fees for services rendered prior to the institution of that lawsuit?

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker, no it does not.

REP. GLICKSON: (137th)

Thank you, Mr. Speaker.

REP. FRANKEL: (121st)

Mr. Speaker.

SPEAKER ABATE:

Will you remark further? Rep. Robert Frankel.

REP. FRANKEL: (121st)

Thank you, Mr. Speaker. May I be excused from the Chamber for possible conflict?

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SPEAKER ABATE:

The Journal will so note.

REP. MATTIES: (20th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Matties.

REP. MATTIES: (20th)

SPEAKER: Thank you, Mr. Speaker. I'd like to think that I'm not overly friendly with the lawyers, but I think this bill -- the best reason for rejecting Senate "A" was given by Rep. Gionfriddo. If there are very few cases that exceed \$500, then we don't need the amendment. If he is incorrect, and there are an awful lot of cases that exceed \$500, then this bill is in support of people that don't pay their bills. And I don't think that's what we're here for. So that there just doesn't seem to be any merit whatsoever to this. The bill actually, the amendment even more so, and I would hope that we will reject the amendment.

SPEAKER ABATE:

Will you remark further?

REP. BERMAN: (19th)

Mr. Speaker.

SPEAKER ABATE:

Rep. John Berman.

REP. BERMAN: (19th)

May I exempt myself because of a possible conflict?

SPEAKER ABATE:

The Journal will so note, sir.

Will you remark further? Will you remark further?

REP. GRANDE: (79th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Andrew Grande.

REP. GRANDE: (79th)

Mr. Speaker, I rise in support of the amendment. I think that the amendment makes the bill more palatable, as it was negotiated by many parties, and I think that all parties concerned that were dealing with this matter seemed to feel as though this was a fair amendment to be added to this bill. So therefore, I move for its acceptance.

SPEAKER ABATE:

Will you remark further?

REP. WILLARD: (11th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Richard Willard.

I think you're dealing with only the majority of the members

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REP. WILLARD: (11th)

May I please be excused for a possible conflict, please.

SPEAKER ABATE:

The Journal will so note, sir. Will you remark further?

Will you remark further?

REP. VAN NORSTRAND: (141st)

Mr. Speaker.

SPEAKER ABATE:

Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

I don't intend to add to the parade, Mr. Speaker. A question through you to the proponent of the bill.

SPEAKER ABATE:

State your question, please sir.

REP. VAN NORSTRAND: (141st)

Rep. Gionfriddo, does this bill, as I read it, does this bill apply to foreclosure actions?

SPEAKER ABATE:

Rep. Gionfriddo, will you respond?

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker, only foreclosure actions which essentially, which are in default, first of all. It only refers again to default judgments. And only those, essentially there, I think you're dealing with only the category of foreclosure

actions on home mortgages, essentially what you're dealing with.

SPEAKER ABATE:

Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

Through you, Mr. Speaker, as I understand the language about default, though, it would only be if you adopted Senate "A".

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker, we're discussing Senate "A" and that's why I responded to it in terms of Senate "A". If you just refer specifically to the bill, the bill refers only to consumer contracts.

REP. VAN NORSTRAND: (141st)

Through you, Mr. Speaker.

SPEAKER ABATE:

Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

It appears to refer to any contract or lease, and we're dealing with contracts, the subject of which is money, and which is for personal, family or household purposes. It would appear family purposes and money would suggest foreclosures should be included. Are we in agreement on that?

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SPEAKER ABATE:

Rep. Gionfriddo.

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker, mortgage foreclosures, yes, we are in agreement on that.

REP. VAN NORSTRAND: (141st)

Thank you. Mr. Speaker, speaking briefly to the amendment, I have a feeling one of two things is going to happen if you were to pass the amendment, which sounds good on its face in the sense of 15%. I think people like the idea there should be limits and caps and attorneys shouldn't get rich or something, but the fact remains the cost in many, even though default, in many complex foreclosures, if you get a home mortgage where there are a number of mechanics liens and the like, the drafting and the terms of the hours and the work that will be devoted, even after default with the defendents and aimed at them, it frequently has no defense, is going to lead to cost that is going to well exceed what Senate "A" would do. The problem with that, if you say, well, fine, that's too bad, tough on the attorneys. The problem is the banks are going to have to address the problem because no one is going to be able to afford to bring a foreclosure action, and they're going to have to get more money up front to cover this risk. I think in the long run your consumers are going to suffer.

REP. WRIGHT: (77th) Mr. Speaker,

SPEAKER ABATE: Rep. Gardner Wright.

REP. WRIGHT: (77th) Mr. Speaker, I rise in opposition to the amendment, I think for many reasons similar to those stated by Rep. Van Norstrand. I think we can't repeal the laws of economics and the laws of inflation, and the amount that it costs per hour for attorney fees and court appearances and all the different charges that are associated with foreclosure and all the various legal services that are required. The problem is, and I think we're all aware of it, there are many instances that, especially in the foreclosure area, where many consumers have been gouged by arrangements between the banks and the attorneys and other people who are involved in it, and the property has been resold, and this is what we're trying -- this is what people are trying to protect against. But you can't do that with this kind of a bill. It doesn't work. It's another attempt for a simple answer to a very hard problem. And I'd like to remind people who were in the House in 1973 - 1974 that we had a very similar bill dealing with requiring banks to pay interest on escrow funds. And we all felt it was a good consumer bill and I voted for it.

And it said that any bank who holds an escrow fund for payment of insurance or taxes would have to credit - 4% interest on those funds. And we were going to save the consumer maybe \$2 a year or \$3 dollars a year. And the banks said that it will become too expensive for them to administer this fund and still credit interest. It's only the fact that they don't have to pay interest on the fund which allows them to administer the program. So what has happened now, is many banks, including the bank where I have my mortgage, refuse to take those deposits. They refuse to hold escrow funds for payment of taxes, and so every six months I have to come up with \$1,000 or something to pay the taxes. When I used to pay it every month in my mortgage payment. I was a lot easier for me. The little bit that I'm saving in interest, that I could have earned in interest, and that you could have earned on your mortgage, has been locked because now I have to worry about having the money to pay the taxes on my house every six months when they come due. I like the concept of the amendment. I think the history of what's happened with the payment of interest on escrow funds indicates that it is not that simple an economic issue to deal with, and one that I think will be just as big a failure here as was a disservice to consumers when we required interest. This will do the same thing. I think Rep. VanNorstrand is correct.

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There will be an additional charge placed on the consumer when you buy a house or when you do -- in some way so that the bank will have the money to foreclose if it should ever be necessary. You may find yourself having to put up an escrow in the beginning so that there will be money to pay for it. And in 30 years from now, if you finish paying off your mortgage, you might get the money back. I think it's an amendment that has a well intended purpose, but one which is not workable.

SPEAKER ABATE: Will you remark further on the adoption of Senate "A".

REP. MIGLIARO: (80th) Mr. Speaker.

\$100,000. I believe in the amount of liens, the

SPEAKER ABATE: They are Rep. Eugene Migliaro of the 80th.

REP. MIGLIARO: (80th) Thank you, Mr. Speaker.

I rise in opposition to the amendment also. And just to echo the words of the minority leader, Rep. VanNorstrand, just recently we had a closing in my business and believe me, I believe in the amount of liens, the mechanics liens that were involved, I think it took almost 3½ months to bring everybody into line, and the hours and time that was put in, it just doesn't seem feasible to me that you should put a cap on a situation such as that. I think the bill goes a little bit too far, the amendment does, and I would urge its rejection.

SPEAKER ABATE:

Will you remark further?

REP. PIER: (5)

Mr. Speaker.

SPEAKER ABATE:

Rep. John Pier.

REP. PIER: (15th)

Mr. Speaker, as a salaried member of the bar, and I'll say first of all I have a conflict of interest. Probably for what I'm going to say I wouldn't have one anyhow. I speak in favor of the amendment. I'm not quite sure where all these \$100,000, non-contested -- that's what we're talking about -- non-contested default judgments are really going to come from. They are not going to be so simple and so clean. What we're talking about, number one, is not what the attorney can charge. What we're talking about is what can be collected from the unfortunate person who ends up defaulting. Most of the kinds of situations which you're dealing with the kind of dollars that have been evidenced here of \$100,000, there is no way that that's going to be an uncontested kind of case. With that much money at stake, it isn't going to be a freebie, and we're not talking about that kind of case. What we're talking about essentially, are consumer contracts to which, in some cases, an unconscionable amount of money is added on by contract or otherwise, to the

essential debt of someone who realistically can't afford to pay it. This is not a substantial limitation on the ability of the attorney to collect in those very complicated ones. They're going to be able to charge it. There aren't going to be very many of the big ones that are going to have to be spread among the rest of the mortgage holders in a bank or depositors in a bank or insurance contract holders in insurance companies or wherever else you're going to have these kinds of things. I cannot see the reaction and the objection of the practicing bar to what is a relatively reasonable, relatively limited ability to collect attorney's fees in the simple situation of default judgments which is all we're talking about in a particular situation with this amendment. I urge your support of the amendment and passage of the bill as amended.

SPEAKER ABATE:

Will you remark further on the adoption of Senate "A".

REP. SPONHEIMER: (103rd)

Mr. Speaker.

SPEAKER ABATE:

Rep. Sponheimer.

REP. SPONHEIMER: (103rd)

Through you a question to Rep. Gionfriddo.

SPEAKER ABATE:

State your question please, sir.

REP. SPONHEIMER: (103rd)

Yes, Rep. Gionfriddo, in the event that a suit, a foreclosure action, is brought against a number of defendants, including the mortgagee, and the mortgage is defaulted, but the other defendants contest the foreclosure, and results in the issue being tried to the court. Are the attorney's fees still limited to \$500 vs. the mortgagee as the only person to whom you would have cause and effect situation.

SPEAKER ABATE:

Rep. Gionfriddo.

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker. The simple answer to that is no.

SPEAKER ABATE:

Rep. Sponheimer, you still have the floor, sir.

REP. SPONHEIMER: (103rd)

Through you, Mr. Speaker, you say that the answer is no. To whom can you charge the other part of the fee?

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker. Essentially, if you have in effect, with regards to the mortgagee, if he defaults, you can charge \$500 vs. the mortgagee. If there are other provisions by which attorney's fees can be assessed against those other

defendants, then you would be allowed to assess those attorney's fees. If they are separated off, and that's how that would work.

REP. SPONHEIMER: (103rd)

Thank you, Mr. Speaker. I think that the proponent of the amendment is somewhat unfamiliar with a foreclosure situation. If you bring an action against a mortgagee, you must name the subsequent lien holders in the action. They have a right to contest the mortgage -- excuse me, they have a right to contest the claim in the foreclosure action. Even if the mortgagee defaults a subsequent lienors can contest the action. In the event they contest the action and lose, you cannot charge them any attorney's fees. No attorney's fees can be charged against any subsequent lienor, due to the fact they are only contesting your claim. So I think this is a very complicated area with which we're dealing, with which many people are totally unfamiliar, and I think again, we're trying to take a great, big giant step to cover all situations, and we just can't do it. I think the amendment has a laudible concept, and I can see that the idea of holding and limiting the consumer contract fees to 15% over attempting to limit it to \$500, I think we're transgressing into areas where people do not understand the legal complexities involved, and I think that some of the people who very often are not in line with the lawyers in the legislature were correct.

This is just another cost that's going to be passed on to the consumer. As Gardner Wright said, the bank will get the money up front if they have to in order to cover their extra, additional costs. So I think that we are attempting to do an awful lot through a supposedly simple amendment. But we are not covering what is the intention of the amendment.

SPEAKER ABATE:

Will you remark further on the adoption of Senate "A"?

REP. LAWLOR: (2nd)

Mr. Speaker.

SPEAKER ABATE:

Rep. Richard Lawlor.

REP. LAWLOR: (2nd)

Through you, Mr. Speaker, a question to the proponent of the amendment.

SPEAKER ABATE:

State your question, sir.

REP. LAWLOR: (2nd)

Through you, Mr. Speaker, should a default judgment be rendered against a mortgagee, and a subsequent lienor not contest the claim but rather move for foreclosure by sale, necessitating the legal work which such an undertaking would demand, such as advertising, holding the sale, conversations with potential bidders, and so on and so forth, would that attorney's fees still

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be limited to the amount of \$500?

SPEAKER ABATE:

Rep. Gionfriddo.

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker, I'll yield to Rep. Glickson for that answer.

SPEAKER ABATE:

Rep. Glickson, will you accept the yield?

REP. GLICKSON: (137th)

Yes. Through you, Mr. Speaker, I could make two points in response to the question, if the proponent of the bill doesn't think I'm stretching his intent too far. One would be to suggest that the only reasonable interpretation in the mortgage contracts of a lawsuit resulting in a judgment by default would be a mortgage foreclosure in which none of the parties contests the foreclosure. So that even if the mortgagor himself defaults or fails to appear, if one of the other -- if one of the subsequent lienors or anybody else who's a necessary party contests, it would seem to me that that would take the case out of the judgment entered by default language of the bill. And secondly, in response to your question, I would also observe that the bill covers attorney's fees, and a number of the expenses involved in a mortgage foreclosure, which might reasonably be assessed against the defendant, are really not attorney's fees, such as

sherriff's fees, the cost of execution, perhaps costs of title searching, etc. I only suggest this to suggest that the -- within the context of the bill as it's proposed to be amended, the limitation of \$500 is probably not all that severe. It would probably not really pinch anybody in too many cases.

REP. LAWLOR: (2nd)

Mr. Speaker.

SPEAKER ABATE:

poor of Rep. Lawlor.

REP. LAWLOR: (2nd)

Yes, Mr. Speaker, I would remark on the amendment, and seriously urge rejection of this amendment, and that pursuant to question it's not at all clear whether an attorney acting as a court appointed committee under conditions which I have just stated, acting as an attorney, as a committee, pursuant to court order, selling a piece of property and actually doing substantial amounts of work, and work which results in the sale of the property and a significant possible savings to the defaulting mortgagee, be limited to \$500. I would point out that an attorney so acting as a committee must file a report with the Superior Court before the judge of his doings, stating everything that he did perform in the nature of his services and requesting a fee for so doing, and that fee is subject to judicial review, is reviewed by the courts. The courts do take into account the

amount of time, and the results obtained by the attorney acting in that manner, and again I would think because of all that that this amendment is very poorly conceived and that in fact, again, it does go much farther than I think the proponent intended, and in fact, will, I believe, as others have stated, in the end hurt consumers.

I would also note that it's been stated here that in the -- every time we talk about the defaulting mortgagee, it's the poor defaulting mortgagee. Well, any of us who come from urban areas can tell you that in many cases, it is the poor defaulting mortgagee with someone who bought a piece of property with really no intentions of making repairs or paying taxes or keeping up the property, but with intention of buying a piece of property and renting it, and letting it run for as long as he could, and then defaulting on the property and then abandoning the property. So we do not always have a poor defaulting mortgagee in many instance, we have someone who, in effect, is just out to milk the property and nothing else. And again, there may be subsequent lienors who may be saved significant amount of money through a foreclosure by sale, and through the efforts of that attorney so acting, and I think this bill would hamper those -- would hinder those situations, and would not be a good amendment. I would therefore urge its rejection.

SPEAKER ABATE:
REP. GRANDE: (79th)

Mr. Speaker.

SPEAKER ABATE:

Will you remark futher? Rep. Andrew Grande.

REP. GRANDE: (79th)

Mr. Speaker, I must apologize to Attorney Lawlor because I didn't understand anything he said for the last five minutes he spoke, and I think if many of the attorneys in this Chamber would get up and continue to speak on this Bill, it could go on and one.

And I think in any case, on any Bill that comes before us, they could end up making us not understand half of the Bill.

What this Bill does is a simple compromise -- the amendment, that is, to the Bill. Simply, attorney's fees are limited to \$500 in default cases, but in cases where the defendant appears, the attorneys will not be limited to 15%.

I think that's as simple a language as we can get, and it just tells us that if they appear, they don't have to be limited.

If they do not appear, they would be limited to \$500.

SPEAKER ABATE:

Will you remark further?

REP. SPONHEIMER: (103rd)

Mr. Speaker.

SPEAKER ABATE:

Rep. Sponheimer.

REP. SPONHEIMER: (103rd)

Yes, Mr. Speaker. Mr. Speaker, through you, a question to Rep. Grande.

SPEAKER ABATE:

State your question, please.

REP. SPONHEIMER: (103rd)

Rep. Grande, did you just state for legislative intent that if an attorney appears in the case, or if the defendant appears in the case, then this provision regarding the default is not applicable?

REP. GRANDE: (79th)

Yes.

SPEAKER ABATE:

Rep. Sponheimer, you still have the floor.

REP. SPONHEIMER: (103rd)

Through you, Mr. Speaker, if a judgment of default for failure to plead is entered, although an appearance is entered by the defendant or by an attorney, either the defendant per se

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or by the attorney for the defendant, is it your understanding that a default for, excuse me, a judgment for default for failure to plead will render this section inapplicable?

SPEAKER ABATE:

Rep. Grande.

REP. GRANDE: (79th)

Mr. Speaker, although I'm not an attorney, and one of my colleagues used to say that all the time and I used to tell him not to apologize for that, but, in my opinion, if you appear, if you appear, if either the defendant appears, he is eligible, his attorney is eligible, is allowed to charge in excess of 15%.

REP. SPONHEIMER: (103rd)

Thank you, Mr. Speaker.

SPEAKER ABATE:

Will you remark further on the adoption of Senate Amendment Schedule "A"?

REP. JAEKLE: (122nd)

Mr. Speaker.

SPEAKER ABATE:

Rep. Jaekle.

REP. JAEKLE: (122nd)

Boy, I sure wish legislative intent could indeed change the plain wording of this Bill, but it doesn't. I'm also very disturbed that the Chairman of the General Law Committee does

not understand the Bill and the consequences of the Bill, and was unable to understand the complexity of a foreclosure action and of the fee arrangements and the review of lawyer's fees that Rep. Lawlor indicated.

This Bill, with the Amendment, would limit attorneys fees 15% of the judgment, with the Amendment that limit would only apply to default judgments. Default judgments are not only entered for failure to appear, they're not only entered for failure to answer. You can go quite a long time in a case before you file something a defendant doesn't respond and you get a default judgment. A lot of hours can be expended before a default judgment can be entered. There's been a lot of misinformation, I guess it's a little unfortunate, but it seems like all the attorneys in the Chamber are opposed to the Bill, making it sound like this is an anti-lawyer bill and therefore desirable to this House.

Attorney Pier indicated that he was a salaried attorney. Well, I'm a salaried attorney too, I don't get in any more money if I bring in a thousand or twenty thousand dollars in fees. This is an anti-creditor bill, yes. It is a pro deadbeat bill, yes. The limit of \$500 is unreasonably low in certain complex legal matters. The 15% limit I supported because it would apply across the board. It would apply to a hundred thousand dollar action, or a million dollar action.

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Five hundred dollars will have the same affect, the same universal application to all legal matters where a consumer is involved and there was money lent, or property or services involved. The five hundred dollars is unreasonably low in complex foreclosure matters, even when a default judgment is ultimately obtained. The five hundred dollars is not the limit on the attorney's fees. I guess I'll have to repeat that.

It doesn't limit what attorneys charge. It limits whose going to pay that cost of collecting the money, the individual that lent the money with an understanding at the time that he'd be repaid is provided in his contract, that if there's a default and he had to go to court and hire an attorney, the debtor, the borrower would be responsible for those reasonable attorneys' fees, under the supervision of a court.

This Bill will say to the creditor, I'm sorry, this might have cost two or three thousand dollars to process your claim. The attorney's going to charge the creditor that much money, but the court can only award \$500. You pay the attorney out of your pocket, out of any recovery you might be lucky enough to get.

The debtor, he's home free, all he does is return the money that he had, that was not his initially, but was lent to him with only a \$500. attorney fee. I think it's unreasonable. I will tell you that some of the proponents of this Bill were unaware that this would even apply to foreclosure actions until

I discussed it with some of them out in the hall, who have decided not to lapse, but hold steadfast to the Senate Amendment. There could have been a compromise. This could have just been limited to default matters without a \$500 cap. It could, this Bill could have been amended so that it would not apply to foreclosures, or it could have been amended to actions less than \$10,000, where a \$500 cap might not be reasonable -- might be reasonable.

The proponents decided not to go that route. They decided to stick, or hopefully, hand with this Amendment, it's a bad Amendment, it is going to prove anti-consumer. It may well lead to higher interest rates, higher mortgage interest rates at a time when the state is suffering already overly high mortgage interest rates.

I can only strongly urge defeat of this Amendment.

SPEAKER ABATE:

Will you remark further on the adoption of Senate Amendment Schedule "A"?

REP. SMITH: (107th)

Mr. Speaker.

SPEAKER ABATE:

Rep. David Smith of the 107th.

REP. SMITH: (107th)

Thank you, Mr. Speaker. Like Rep. Grande, I'm not an

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attorney. However, unlike Rep. Grande, I don't think I'll be subjecting myself to cross-examination from the Bar because I'm opposed to the Senate Amendment for all of the reasons that have so eloquently been given to us by the lawyers. And I do think it's going to cost the consumer money if we pass this.

The only other thing I'd like to ask, Mr. Speaker, is when the vote is taken, it be taken by roll.

SPEAKER ABATE:

The question is on a roll call vote. All those in favor, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER ABATE:

In the opinion of the Chair, the requisite 20% having been satisfied, when the vote is taken, it will be taken by roll.

Will you remark further? Will you remark further on the adoption of Senate Amendment Schedule "A"?

REP. GLICKSON: (137th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Glickson.

REP. GLICKSON: (137th)

Thank you, Mr. Speaker. I certainly have great respect

for Rep. Jaekle's understanding of this matter. I would just point out that the number of mortgage foreclosure cases in which an attorneys fee, uncontested mortgage foreclosure cases in which an attorneys fee of \$500 would be unreasonably low, would be so small that spreading the extra costs among all the mortgagee customers, would, I think, not be unreasonable in any way.

And just elaborating further on one point, Rep. Lawlor's point about committees and so forth, I do not think that money paid to the committee would be limited by this Bill because a court appointed committee would not be the holder of the contract on which the action was brought. And, I urge adoption of the Senate Amendment because I think other difficulties with this Bill will appear if the Senate Amendment is not adopted and I reserve my comments in the hopes that the Amendment would be adopted.

SPEAKER ABATE:

Will you remark further?

REP. VAN NORSTRAND: (141st)

Mr. Speaker.

SPEAKER ABATE:

Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

There's been a of discussion about what foreclosures mean and what they do and what they entail. I have the greatest

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for Rep. Grande and he needs no humility about not answering questions about foreclosure law. Please understand what this Bill does as amended.

It speaks defaults. Rep. Glickson suggested very few of those. I suggest to you virtually every foreclosure ends in default because they enter for failure to plead, failure to appear, or more often, failure to disclose a defense. Which the simple answer is, there is no defense the way the rules work because the person owes the money, they don't have a defense.

Sometimes, and I know we tend to say we want to be for the consumer and all that, I frankly don't think this debate ever even occurred in the Senate. I don't think, I know when we were in Bill review, we looked at this and I said this is a foreclosure, too. It doesn't make any sense in a foreclosure. The judgment will be by default but there may be a long time and a lot of work because there may be attaching, liening mechanics-men or a variety of other subsequent lien holders such as second and third mortgagees. You've got to establish pleadings for all those priorities if there is, as Rep. Lawlor said, a sale.

You've got to go through all the pleadings to have that sale confirmed. I don't accept the representation that's made that a title search is not the attorney's fee if he performs that. That's part of it. If you even assign a para-legal to try to hold the cost to a minimum in your office, and you've got ten

mechanics liens on there, or five mechanics liens and there are problems of priorities, even if you have a para-legal, you could readily do 20 hours, just trying to get the title straightened out so you can even bring the action.

You'll be at \$500 before you even start the case. They're all by default. Understand, too, there is nothing in here about ordinary course of business. This is any private mortgage, any relative of yours or something like that, lends money to somebody on a mortgage. There's nothing in here it has to be a regular course of business.

I don't think, I think the reason it's not here is I think the proponents really intended this to remain just for consumer action, law claim actions, where as Rep. Grande said, nobody showed up.

The problem with default is, it's a long way from beginning to end, it's nothing to do with whether anybody showed up or not.

I urge defeat of the Amendment, Mr. Speaker, and I would remind people, as Rep. Jaekle alluded to, that whatever cost, in any foreclosure action are ultimately approved pursuant to the contractual rights of the holder, have to be approved by the court.

SPEAKER ABATE:

Will you remark further on the adoption of Senate Amendment Schedule "A"? Will you remark further on its adoption?

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REP. GIONFRIDDO: (33rd)

those Mr. Speaker.

SPEAKER ABATE:

state. Rep. Gionfriddo.

REP. GIONFRIDDO: (33rd)

well. Very briefly, in summation, Mr. Speaker, once more to return to the Amendment, what the Senate Amendment does, for the benefit of the people who weren't here for the entire debate is two things. One, it limits the Bill, which referred to consumer contracts, simply to judgments by default because its grossly limiting already and second, it places a \$500 cap on those items. Now the one area in which the debate is focused, in which points have been made, refer to that area of foreclosures on home mortgages. Now, as I pointed out before Mr. Speaker, in researching this, it's hard to get some feel for what generally the area of attorneys fees is involved in that and generally, in this state, you're talking in the \$500, \$600 range. So by limiting the \$500 to the vast majority of cases, you're not dealing with a problem, and you don't come under any problem here. Where you come under a problem, it's been suggested by the debate, is where you're dealing with property of substantial value, say the hundred thousand dollar home, which is a very

complicated issue, property that somebody wants. In most of those instances, Mr. Speaker, a judgement's not entered by default, it's contested and that seems to be the norm in this state. Where judgements are entered by default and where there are complications, we've not had anyone who has suggested that well, hypothetically that's the problem, when, in fact, there are any substantial number of cases in this state we're dealing with.

I suggest Mr. Speaker, and I suggest that most people arguing this understand that we're not dealing with any significant number of cases here. An important point to remember about that is that oftentimes in these cases (A), as I've said before, they are contested. And (B), where they're not contested, where you're dealing with things like title searches, those kinds of problems, that many times, attorneys break those out of the flat attorney fee and that's a charge that's set differently.

And if that's the case here, then again, it's simply not going to refer, it's not going to be covered under the \$500. The attorneys will be able to add on those fees.

Now the other thing you have to keep in mind there is that even in these cases, you're talking about attorneys fees being awarded, which have in the past been awarded, which only a few hundred dollars over that \$500 range. Now to suggest, as some people have, that this means we're going to be passing on a sub-

stantial cost to other consumers, I find hard to believe because the creditor himself will have in his possession, substantial property and, in fact, Mr. Speaker, has both that property later on to discharge, to resell, and, in terms, in dealing with property, prices which will be substantially inflated and furthermore, Mr. Speaker, will have what will not, in fact, be -- I've forgotten the second point, but it's not important.

Basically, Mr. Speaker, that's where the argument is on this area. When you're arguing against this Bill, you're arguing from hypothetical instances. When you're arguing in favor of the Bill, you're arguing both on behalf of that consumer who's already lost his hundred thousand dollar home, who's already had \$500 tacked on, who's already had a title search tacked on in some cases, other court fees tacked on in some cases. Consumers, who in many instances, have accounts which then become uncollectable and you can't get the money anyway. And you're furthermore benefitting all consumers.

SPEAKER ABATE:

Excuse me, sir, would the House please come to order. Would the members please be seated.

Would the House please come to order. Would all staff and guests please come to the Well of the House.

Rep. Gionfriddo.

Thank you, Mr. Speaker.

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REP. GIONFRIDDO: (33rd)

Thank you, Mr. Speaker.

Furthermore, Mr. Speaker, and I'll conclude on this next point after this one. You are benefitting the class of consumers as a whole by this legislation. If this legislation will in fact enable us to do something about the area of uncollectable accounts which is, in practice and in fact, a significant problem in this area of this state.

And the final point, Mr. Speaker, is that while the debate on this Senate Amendment has focused on mortgage disclosures, home mortgage disclosures, I just wish to remind the members of the Assembly, Mr. Speaker, that they represent a small part of the consumer contract, motions entered by default that we're talking about here. And a very small item has been singled out for some very substantial debate and I think it helps to keep some perspective on that, too.

SPEAKER ABATE:

Will you remark further?

REP. RAPOPORT: (73rd)

Mr. Speaker.

SPEAKER ABATE:

Rep. Natalie Rapoport.

REP. RAPOPORT: (73rd)

Thank you, Mr. Speaker. I, too, am not a lawyer and many

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of us here aren't and I'd like to direct a question to Rep. Jaekle, perhaps he could give me some insight as to the manner in which lawyers fees are determined. I have in front of me a clipping that I clipped out of the newspaper that categorizes real estate handlings.

And under it, it gives the price of representation of buyer or seller at so much and that's a rather large, flat fee and then below that a different price, an add-on if you will, title search if necessary, and below that an add-on, if you will, preparation of bank documents, and below that, nothing. That totals, for real estate, for a sale of real estate, approximately \$250 if all things are necessary.

My question, through you, Mr. Speaker is an attorney's fee, when billed to his client, a singular flat fee and add-ons for separate entities separate dealings, such as Representative Gionfriddo suggests that one fee is billed and other fees are added on, if more intense attorneys abilities are utilized to, in fact, present a case? Through you, Mr. Speaker.

SPEAKER ABATE:

Rep. Jaekle.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. I don't know that I'm really able to give you the practice of all the attorneys in the state. I can speak from limited experience on fees that I have seen both

charged by my office and other offices I have had dealings with. I will comment that the items you were referring to were not that, Mr. Speaker, that was on a purchase of a home or purchase of court matters, that was on a purchase of a home or purchase of real estate, how different services performed by a attorney in addition, the and other, at both, you, in a connection with the purchase of real estate are charged. If I client and in a connection with the purchase of real estate, then could shift to the court aspect, if you had a general, well, then not really the same, but, in a connection with the purchase of real estate, I will say for a real estate closing, I do not see having anything to do with this Bill. But yes, I think many attorneys charge what they charge, and I think many attorneys charge some sort of flat fee for basic package of services they would be providing in a closing, and if there is additional work, such as additional requirements from mortgage banks, complicated title searches or what have you for protracted negotiations, yes, I would say they charge additionally for additional services rendered.

Through you, Mr. Speaker.

SPEAKER ABATE:

Rep. Rapoport, you still have the floor, Madam.

REP. RAPOPORT: (73rd)

Thank you, Mr. Speaker. Rep. Jaekle, through you, Mr. Speaker, I did not refer to the fact that the real estate price quoted for representation of an attorney was a sale, it merely says real estate representation of a buyer or seller, it doesn't say for a sale, Mr. Speaker, it just stipulates that it's there, real estate, and to be handled for a buyer or seller regardless

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of the reasoning and below that it says title search, if necessary, \$75., and bank documents preparation, \$25. and then down below that, Mr. Speaker, through you, it says above fees do not include court costs or sheriff's fees, so that I'm sure that there are additional fees that are, in fact, presented by bills, to the client and in arguments pro and con, the Senate Amendment, we're not really sure, as consumers, exactly what the attorney's fee is until it's all outlined and prepared and initiated exactly what the charges are for.

And my question, through you, Mr. Speaker is, is this done on every bill that is set forth by an attorney?

SPEAKER ABATE:

Rep. Jaekle, do you care to respond to that question, sir?

REP. JAEKLE: (122nd)

Mr. Speaker, again I can't comment on the billing practices of every attorney in the state. Bills that I have had occasion to see in the context of court actions which is what this bill deals with, judgements being brought for consumer contracts, typically charges exist on an hourly basis.

And, anticipating another question, hourly rates that I have seen throughout the state vary by as much as, well the range would exist between say \$50 to \$100 an hour for the services of an attorney. And many bills itemize the number of hours an attorney spends on a legal matter and applies the applicable

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hourly rate to come up with a total bill.

REP. RAPOPORT: (73rd)

SPEAKER: Thank you. Through you, Mr. Speaker, thank you.

One of the reasons I've asked the questions are that I've seen some attorney's bills and I don't know how they all practice throughout the state and how they all bill, but I've had occasion to meet with some constituents who have had in fact dealt with attorneys and when presented with bill were presented with most sums, nothing itemized. Included in the whole fee, but not itemized. So never really are we sure of what just what an attorney is in fact charging because it is all lumped together in one category, and then a solid or singular dollar amount is applied.

And I think perhaps if would include some of this in plain language, we the consumer would know more about what's going on.

REP. SPONHEIMER: (103rd)

Mr. Speaker.

SPEAKER ABATE:

SPEAKER: Will you remark further on the adoption of Senate "A"?

REP. SPONHEIMER: (103rd)

Mr. Speaker.

SPEAKER ABATE:

Rep. John Sponheimer.

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REP. SPONHEIMER: (103rd)

Through you, Mr. Speaker, a question to Rep. Gionfriddo.

SPEAKER ABATE:

State your question please, sir.

REP. SPONHEIMER: (103rd)

Rep. Gionfriddo, you stated that in the course of your research you found a certain range of attorneys' fees for a certain number of foreclosures. May I ask you in what court records you researched these, these please. In what court in the state.

SPEAKER ABATE:

Rep. Gionfriddo, will you respond, sir?

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker. The question as framed, doesn't enable me to answer the question properly. I talked to attorneys.

SPEAKER ABATE:

Rep. Sponheimer, you still have the floor.

REP. SPONHEIMER: (103rd)

Through you, Mr. Speaker. How many attorneys did you speak to regarding this matter?

SPEAKER ABATE:

Rep. Gionfriddo.

REP. GIONFRIDDO: (33rd)

I spoke to two attorneys who have also spoken to another two attorneys.

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SPEAKER ABATE:

involve Rep. Sponheimer.

REP. SPONHEIMER: (103rd)

Through you, Mr. Speaker. I assume then Rep. Gionfriddo you did not check a single court record or document concerning the particular fees with which you made reference to in your research.

SPEAKER ABATE:

be the Rep. Gionfriddo.

REP. GIONFRIDDO: (33rd)

Through you, Mr. Speaker. I think that is correct. That I made that point.

SPEAKER ABATE:

Rep. Sponheimer.

REP. SPONHEIMER: (103rd)

Thank you, Mr. Speaker. I know the debate has been long, and I'll just be brief in stating again I think we are attempting to put a great umbrella over an area and attempt to cover many things that we've seen. We're dealing with a complicated legal area. And the proponent says that he talked to a couple of lawyers who talked to a couple of other lawyers. We don't even know what the lawyers do for a closure. We don't even know in what area they are drawing upon their information.

So I think that many of these speakers, both lawyers and

nonlawyers have illustrated some of these difficult points involved in this area. It's too bad the proponent of the amendment would not accept a further amendment to delineate foreclosures, because I think that sometimes people get stubborn around this house and try to do too much with too little information. I think again, we aren't working under the so called guides of consumerism, doing something which many of us do not understand. And it's too bad, because the ultimate losers will be the people.

SPEAKER ABATE:

Will you remark further on the adoption of Senate Amendment Schedule "A"?

REP. GRANDE: (79th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Andrew Grande.

REP. GRANDE: (79th)

In as much as some individuals don't think that I understood anything about this bill, I do. And I would recognize that at this time it would probably be more appropriate, more appropriate, rather than to lose the amendment, to defeat the amendment, pass the bill, and put forth this amendment with the corrections that are necessary when it reaches the Senate floor.

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SPEAKER ABATE:

Will you remark further on the adoption of Senate Amendment Schedule "A"? If not, would all the members please be seated. Would all staff and guests please come to the well of the House. The machine will be opened.

The House of Representatives is voting by roll at this time. Would the members please return to the Chamber immediately. The House of Representatives is voting by roll at this time. Would all the members please return to the Chamber immediately.

Have all the members voted? Would the members please check the roll call machine to determine if their vote is properly recorded. The machine will be locked. The clerk will take the tally. Will the clerk please announce the tally.

CLERK:

SPEAKER ABATE: Senate "A" to Senate Bill 1107.

Total number voting	135
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Necessary for passage	68
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Those voting yea	35
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Those voting nay	100
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Those absent and not voting	16
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SPEAKER ABATE:

The amendment fails. Will you remark further on this bill?

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REP. GIONFRIDDO: (33rd)

Mr. Speaker.

SPEAKER ABATE:

Rep. Gionfriddo.

REP. GIONFRIDDO: (33rd)

Mr. Speaker, we have before us a very excellent bill which passed the General Law Committee on a vote of 15 to nothing. We've, I think, gone through the bill in the past, it's fully explained, and I urge the members of the House to adopt the bill.

SPEAKER ABATE:

Will you remark further on this bill?

REP. GLICKSON: (137th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Andrew Glickson.

REP. GLICKSON: (137th)

Mr. Speaker, I have to beg the Chamber's pardon. But I would like to point out now one of the reasons why this amendment was important.

The file copy as I read it prohibits a creditor from collecting any attorneys fees unless a law suit is instituted. And I think this is a policy matter, it's not useful to encourage the institution of law suits merely to enable the collection of

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attorneys' fees. And I think this would not be a constructive bill in its unamended form. I urge its rejection.

SPEAKER ABATE:

Will you remark further? Will you remark further on the bill? If not, would all the members please be seated. Would all staff and guests please come to the well of the House. The machine will be opened.

The House of Representatives is voting by roll at this time. Would the members please return to the Chamber immediately. The House of Representatives is voting by roll at this time. Would the members please return to the Chamber immediately.

SPEAKER: Have all the members voted? Will the members please check the roll call machine to determine if their vote is properly recorded. The machine will be locked. The Clerk will take the tally. Will the Clerk please announce the tally.

CLERK:

Senate Bill 1107.

Total number voting 136

Necessary for passage 69

Those voting yea 96

Those voting nay 40

Those absent and not voting 15

SPEAKER ABATE:

The bill passes.