

Legislative History for Connecticut Act

SB1559	PA 79-453	SCAW	1979
Judiciary:	800-802		3
Senate:	2541-2544, 4274-4277		8
House:	7485-7491		7
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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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Joint Standing Committee hearings, Judiciary. 1979., pt.3
Proceedings / Connecticut General Assembly, House. 1979, v.22 pt.22
Proceedings / Connecticut General Assembly, Senate. 1979 v.22:pt.8.,
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Proceedings / Connecticut General Assembly, Senate. 1979 v.22:pt.13.,
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MARIE BETTE (Continued): enough so that -- I mean if their parents don't -- aren't able to take care of them -- then they have the benefit of that kind of life.

REP. TULISANO: Thank you. Raphael Podolsky.

RAPHAEL PODOLSKY: My name is Raphael Podolsky. I'm a lawyer with the Legal Services Legislative Office. I'd like to speak on several bills before the committee. The first one is Senate Bill 1559, which is an act that deals with attorney's fee clauses in consumer contracts.

I hesitated some before on deciding what position we were going to be taking on this bill, but we support the bill as a small step in the right direction. And, I just want to say to you why I think it's rather a small, rather than a big step.

What the bill would do is it would provide that attorney's fee clauses in consumer contracts are reciprocal. That is to say if the consumer says, "I agree to pay the creditors attorney's fees if I default that it will be interpreted that if the default is to be the other way around and it's the creditor that defaults, the consumer would be entitled to claim attorney's fees. That is improvement over the status quo because those clauses are unfair. But, I think it's important that the Committee understand fully what the nature of the problem is because this does not -- it really addresses one small aspect of the problem.

The main nature of the problem is that attorney's fees awards under consumer contracts are often astronomical in size, and they are out of proportion to what is a reasonable entitlement, although they're called reasonable attorney's fees, they're often not reasonable because they involve, often, very small amounts of work, and I have seen attorney's fees award for \$1,000, \$1200, \$1800 on default judgments and those members of the committee who are lawyers now, in order to obtain a judgment by default for failure to appear, there is no substantial amount of attorney work involved.

There have been two ways in which efforts have been made to limit those kind of attorney's fees awards. One is simply by prohibiting the clause on the grounds those clauses are what they call -- are clauses and contracts of adhesion. They are not really consented to. That is the recommendation of the Federal Trade Commission staff, is the recommendation of the Model Consumer Credit Act, of Alternative A of the Consumer Credit Code and it is the law of this state under the small loan act, where attorney's fees clauses are simply

RAPHAEL PODOLSKY (Continued): not permitted. The second approach is to put a statutory maximum on what can be allowed and that's an alternative way of providing protection.

For example: the Plain Language Subcommittee of the General and Judiciary Committee, which two of the members here are members, has recommended that if a suit is brought under the Plain Language Act, presuming that act was passed, that attorney's fees not be awarded in excess of \$100 to the consumer. We might take that principal and say that under an attorney's fees clause in a consumer contract, no attorney's fees in excess of \$100 may be awarded to the creditor. Any amount in excess of that being per se unreasonable -- that is the approach being taken in a pro consumer bill and perhaps a similar approach might be taken across the board.

The other common way of doing it is to put a percentage maximum on it. For example, 15% is the common maximum. That's what we have on the Landlord Tenant Act, that's what we have on the Retail Installment Sales Financing Act, that is what Alternative B of the Consumer Credit Code recommends and that is the policy that they attempt to follow, although it's not mandated in Small Claims Court. So that those ways provide what I would call substantive protection. They say that certain kind there is a maximum that is reasonable and that's where we will give the effective protection to consumers.

This bill simply adopts a reciprocal approach which, as I say, is an improvement over the status quo and is therefore desirable. In the particular bill, I would suggest to you two changes that I think ought to be made.

In Line 23, and this one's quite important, it says that it makes it reciprocal to the consumer who successfully prosecutes an action or a counter claim. Most cases in which the consumer will be involved, the consumer will be the defendant. And, if the consumer prevails in defending a suit, he should also get the benefit of the reciprocal attorney's fees, so it ought to say who successfully prosecutes or defends an action or a counter claim. You need that to have a true reciprocity under the bill.

The second thing is which is Lines 31 to 37, there is a long section dealing with what happens when you have a salaried in-house counsel bringing the lawsuit for you. That is, first of all, quite uncommon because typically creditors farm these cases out to people who are not their employees. They farm them out to private members of the Bar.

RAPHAEL PODOLSKY (Continued): But, it seems to be a consensus in those statutes where the issues have been looked at that where you use an in-house employee, you should not be claiming attorney's fees at all. For example, the Retail Installment Sales Financing Act, which has a 15% limit specifically says that to get the 15%, you have to farm it out to someone who is not a salaried employee. In other words, you have to have extra incurred cost, not merely using one of your regular salaried people to bring the lawsuit.

Similarly, the 15% alternative of the Uniform Credit Code says the same thing. It seems to me, you ought to change the lines to say no attorney's fees should be awarded to a commercial party who is represented by a salary employee and take out what would otherwise be Line 31 to 37.

I will leave with you some specific language. It seems to me with those two changes you would then have this bill in the form to be a good bill for what it would accomplish.

Well, I don't know if the Chairman's comment was picked up on the record that I did give -- the reason -- I'll tell you the reason that I hesitate -- I hesitated initially to support the bill is to the extent that this bill purports to be a complete reform, it then tends to discourage the legislature from enacting what I would call a true reform. But, on the other hand, the bill does improve the situation, and I guess my comment to the Committee on it is that you should not view this bill as solving the problem of excessive attorney's fees awards. It equalizes the situation but doesn't solve the problem; and, I hope that the legislature will still address the problem of excessive awards which it has to do with subsequent legislation.

The other bills with which I want to comment on, my comments will be briefer. I think in most of them, other people have already spoken. On Senate Bill 425, this is the one dealing with judicial review if general assistance appeals. Attorney Hershinson, who spoke to you before, was bombarded with questions that suggested criticisms of the bill. I would just suggest to you that you should -- the bill is an important bill, but you shouldn't make a mountain out of it because it's not there. The bill accepts the fundamental principal that you ought to have the judicial review of administrative agency decision is really a very fundamental protection in this State and in this country. The reason it's fundamental is that when an agency knows it can never be reviewed by anybody, that it's decision is final, it promotes arbitrariness in the agency.

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THE CHAIR:

Senator, we cannot do that because one member has already absented himself.

SENATOR OWENS:

You're correct. Your point is well taken. Thank you.

THE CHAIR:

So it's going to have to be roll called right now and without further delay, without further comment, announce an immediate roll call.

THE CLERK:

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

THE CHAIR:

The machine is open. Have all Senators voted? The machine is closed. The Clerk will take a tally. The vote is 30 yea, 2 nay. Bill is passed.

THE CLERK:

Turning to page 27 of the calendar, top item on the page, calendar 765, File 769, Favorable Report of the Joint Standing Committee on Judiciary. Substitute for Senate Bill 1559, An Act Concerning Attorney's Fee Clauses in Consumer Contracts.

SENATOR SANTANIELLO:

Mr. President.

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THE CHAIR:

Senator Santaniello.

SENATOR SANTANIELLO:

Thank you, Mr. President. Move acceptance of the joint committee's favorable report and passage of the bill.

THE CHAIR:

The question is on acceptance and passage. Will you remark, Senator?

SENATOR SANTANIELLO:

Just briefly, Mr. President. This bill makes attorney's fees clause reciprocal. For example, a clause for the benefit of the creditor will automatically allow the attorney fees to the prevailing debtor who successfully prosecutes or defends an action or counter-claim based upon the contract or lease. If there's no objection, Mr. President, move it to consent.

THE CHAIR:

Senator, the Clerk believes she has an amendment on the bill, I'm not sure.

THE CLERK:

Clerk has amendment offered by Senator DePiano, Senate Amendment Schedule "A", File 769, Substitute Senate Bill 1559, it's LCO 7490. Copies have been distributed.

THE CHAIR:

Senator DePiano has offered an amendment.

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SENATOR SANTANIELLO:

I move the amendment and waive the reading, Mr. President.

THE CHAIR:

Question is on adoption of Senate "A". Will you remark on adoption?

SENATOR SANTANIELLO:

Just briefly from what I understand and see before me, Mr. President, it's just a technical amendment which strikes the word before "provides" puts in the word "which" to clear up the language.

THE CHAIR:

Will you remark on the adoption of Senate "A"? Hearing no remarks, those in favor indicate by saying aye. Those in opposition to? Senate "A" is adopted. Bill is before us as amended by Senate "A".

SENATOR SANTANIELLO:

I move ... Mr. President.

THE CHAIR:

Senator Santaniello.

SENATOR SANTANIELLO:

Again I move to consent if there's no objection.

THE CHAIR:

Is there objection.

SENATOR POST:

Mr. President, I would like to register a vote against this bill.

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THE CHAIR:

Senator Post objects to the movement for the consent calendar. Roll call will be ordered. Is there further discussion on the bill? Announce an immediate roll call in the Senate please.

THE CLERK:

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

THE CHAIR:

The machine is open. Have all Senators voted? Machine will be closed. The Clerk will take a tally. Machine is closed. We can announce it before I hit the gavel. Machine is closed. The Clerk will take a tally. Before I announce the vote, was some Senator unable to vote on the machine, did he wish to cast this vote now? Hearing none, the vote is 31 yea, 1 nay. Bill is passed.

THE CLERK:

Turning to page 27 of the calendar, calendar 767, File 781, Favorable Report of the Joint Standing Committee on Education. Substitute for Senate Bill 1593, An Act Concerning Vocational Rehabilitation.

SENATOR O'LEARY:

Mr. President.

THE CHAIR:

Senator O'Leary:

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SENATOR DEPIANO:

Yes, I now move for passage of the bill as amended by House Amendment "A". As an explanation, this bill would clarify that bona fide researchers commissioned by a state agency would inspect records of juvenile matters upon an order of the Superior Court. If there's no objection I move that it be placed on the consent calendar.

THE CHAIR:

Motion has been made to place this bill on the consent calendar. Is there any objection? Hearing none, so ordered.

THE CLERK:

Calendar 765, Files 769, 1130, Favorable Report of the Joint Standing Committee on Judiciary. Substitute for Senate Bill 1559, An Act Concerning Attorney's Fee Clauses In Consumer Contracts. (As amended by Senate Amendment Schedule "A" and House Amendment Schedule "A").

SENATOR DEPIANO:

Mr. President, I move for adoption of House Amendment Schedule "A".

THE CHAIR:

Motion is on House Amendment Schedule "A". Will you remark?

SENATOR DEPIANO:

Yes. House Amendment Schedule "A" would, in effect, eliminate a provision of the bill which would have made it an unfair or deceptive trade practice for a commercial party to have included a

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clause in a contract or lease which provides for the recovery of an attorney's fees by a consumer on terms less favorable than those for the commercial party.

THE CHAIR:

Motion is on House Amendment Schedule "A". Are there any further remarks? Hearing none, all those in favor signify by saying aye. Those opposed? The Amendment is adopted. Senator DePiano.

SENATOR DEPIANO:

I now move for adoption of the bill as amended by Senate Amendment "A" and House Amendment "A".

THE CHAIR:

Motion is on adoption of the bill as amended by Senate Amendment "A" and House Amendment "A". Will you remark further?

SENATOR DEPIANO:

Yes. This bill would require that in a specified situation attorney's fees be awarded to a consumer who successfully brings or defends an action based upon a contract or lease whenever such contract or lease provides for the attorney's fees of a commercial party and a commercial party is being defined as any seller, creditor, lessor or their assignee to be paid by the consumer. If there's no objection, I move it be placed on the consent calendar.

THE CHAIR:

Motion is to place this bill on the consent calendar. Is there any objection?

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SENATOR POST:

Yes, Mr. President. There is objection.

THE CHAIR:

Senator Post. Do you wish to remark?

SENATOR POST:

Yes, Sir. I do wish to remark very briefly. I personally believe in the concept of freedom of contract and if two people wish to enter into a contract, they should be entitled to do so, and as long as those provisions aren't in violation of some great public policy, I think the people should have that freedom. I don't think we need to take this freedom away in this bill. We're trying to protect people from themselves and the contracts they're willing to enter into. I therefore wish, as I did before when it was before us, to register my opposition to this bill.

SENATOR DEPIANO:

Mr. President.

THE CHAIR:

Senator DePiano.

SENATOR DEPIANO:

In response, I think that most of the time these consumer contracts are drawn up by the creditor and under the circumstances many of the consumers are not aware of that provision in the bill, and therefore, I think they should be protected because I think that if a creditor brings a law suit and he fails and had he been successful, he would have collected attorney's fees. I think it's

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only fair that we legislate that the consumer can get the same protection and therefore be entitled attorney's fees. I think it's a good consumer bill and I urge its passage and ask for a roll call.

THE CHAIR:

The Clerk please announce a roll call vote?

THE CLERK:

Immediate roll call 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:

Machine is open.

THE CLERK:

Roll call in process in the Senate. Would all Senators please return to the Chamber. Senator Baker, are you going to vote?

THE CHAIR:

Machine is closed. Total number voting 34, necessary for passage 18, those voting yea 32, those voting nay, 2, the bill is passed.

THE CLERK:

Calendar 770, Files 780 and 1175, Favorable Report of the Joint Standing Committee on Government Administration and Elections. Substitute for Senate Bill 1557, An Act Concerning Sub- sids Filed by General Bidders. (As amended by House Amendment

take the tally. Will the Clerk please announce the tally.

CLERK:

Senate Bill 1566.

Total number voting	141
Necessary for passage	71
Those voting yea	141
Those voting nay	0
Those absent and not voting	10

SPEAKER ABATE:

The bill passes.

CLERK:

Calendar No. 1097, File 769, Substitute for Senate Bill No. 1559, AN ACT CONCERNING ATTORNEY'S FEE CLAUSES IN CONSUMER CONTRACTS. As amended by Senate Amendment Schedule "A".

Favorable Report of the Committee on Judiciary.

REP. TULISANO: (29th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Richard Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I move for 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. Will you remark, sir?

REP. TULISANO: (29th)

Yes, Mr. Speaker. Mr. Speaker the Clerk has amendment LCO No. 8631.

SPEAKER ABATE:

The Clerk has in his possession an amendment, LCO No. 8631, designated House Amendment Schedule "A". Would the Clerk please call and read the amendment.

CLERK:

LCO No. 8631, offered by Rep. Tulisano of the 29th district.

Delete lines 13 to 18, inclusive, in their entirety and insert the following in lieu thereof: "party. No"

REP. TULISANO: (29th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Tulisano.

REP. TULISANO: (29th)

Speak on the amendment, Mr. Speaker.

SPEAKER ABATE:

Do you move adoption of the amendment, sir?

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REP. TULISANO: (29th)

And move adoption of the amendment.

SPEAKER ABATE:

The question is on adoption of House Amendment Schedule "A". Will you remark on this adoption?

REP. TULISANO: (29th)

Yes, Mr. Speaker. What this amendment does is delete language which indicates that the, if in terming contrary to the main part of the bill is included in the contract, it would be a violation or a deceptive act or practice of violation 735, and give the Department of Consumer Protection some input into the legislation totally unneeded in the file copy. The file copy without this language is a self-enforceing act and we certainly don't need any additional work for the bureaucracy. And I move its adoption.

SPEAKER ABATE:

Will you remark further on the adoption of House "A"? Will you remark further on this adoption. If not, all those in favor of its adoption, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER ABATE:

Opposed, nay. The aye's have it. The amendment is adopted, and it is ruled technical. Will you remark further on this bill as amended by House Amendment Schedule "A"?

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REP. TULISANO: (29th)

Mr. Speaker, the Clerk has another amendment, LCO 7490.

SPEAKER ABATE:

The Clerk has in his possession an amendment, previously designated Senate Amendment Schedule "A", LCO No. 7490. Will the Clerk please call and read the amendment?

CLERK:

LCO No. 7490, offered by Senator DePiano of the 23rd district. In line 3, before the word "provide" strike out the word "which".

SPEAKER ABATE:

The amendment is in your possession, sir. What is your pleasure.

REP. TULISANO: (29th)

Mr. Speaker, I move adoption of the amendment.

SPEAKER ABATE:

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

REP. TULISANO: (29th)

Yes, Mr. Speaker. The amendment just clarifies some of the language and is making it good grammar.

SPEAKER ABATE:

Will you remark further on the adoption of Senate "A"? Will you remark further on its adoption? If not, all those in favor of its adoption, please indicate by saying aye.

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REPRESENTATIVES:

Aye.

SPEAKER ABATE:

Opposed, nay. The aye's have it. The amendment is adopted, and it too is ruled technical.

Will you remark further on the bill as amended by Senate "A" and House "A"?

REP. TULISANO: (29th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, the legislation before us today provides the first time the ability for consumers in this state to obtain attorney's fees, of reasonable amount, as a result of defending or prosecuting any action in which the commercial party has provided for attorney's fees for their own behalf. What this does is give some equity to the situation. At the present time, many form contracts include attorney's fees provisions for the commercial property, and even though the commercial party, and even though that party may be wrong and a consumer successfully defends an action against him, or her, they would not be entitled to receive attorney's fees in defending that action. This will put some equity in the situation to the same extent that any commercial party will

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receive. And it's an attempt to balance the law and I move passage of the bill.

SPEAKER ABATE:

Will you remark further on the bill as amended? Will you remark further on this bill as amended? 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. Will the members please return to the Chamber immediately. The House is voting by roll at this time. Would 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 Chair will remind all those members present in the Chamber that they must cast a vote. Will the members please check the roll call machine. The machine will be locked. The Clerk will take the tally.

REP. ANASTASIA: (138th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Lawrence Anastasia.

REP. ANASTASIA: (138th)

May I be recorded in the affirmative, please.

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SPEAKER ABATE:

Will the Journal so note, Rep. Anastasia has cast his vote in the affirmative.

REP. MAZZA: (115th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Vito Mazza.

REP. MAZZA: (115th)

Thank you, Mr. Speaker. In the affirmative, please.

SPEAKER ABATE:

The Journal will so note, sir. Will the Clerk please announce the tally.

CLERK:

Senate Bill 1559, with Senate Amendment "A" and House Amendment "A".

Total number voting	142
Necessary for passage	72
Those voting yea	142
Those voting nay	0
Those absent and not voting	9

SPEAKER ABATE:

The bill as amended passes.

CLERK:

Calendar No. 1098, File 781, Substitute for Senate Bill