

Act Number: 09-161

Bill Number: 6233

Senate Pages: 5677-5678, 5701-5703 5

House Pages: 1605-1608 4

Committee: Banks: 41-44, 101-103, 105 9

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Bill 6097 is marked go.

Moving to Calendar Page 25, Mr. President.

Calendar Page 25, Calendar 256, Senate Bill 877 is marked go.

And, Mr. President, on Calendar -- moving to Calendar Page 32. Yes, Mr. President, on Calendar Page 30 -- Calendar Page 32, Calendar Number 40, House Bill 6233 --

THE CHAIR:

Senator Looney, there -- oh, okay.

A VOICE:

450.

THE CHAIR:

450?

SENATOR LOONEY:

Calendar 450, rather.

THE CHAIR:

Yes, sir.

SENATOR LOONEY:

Calendar Page 32, Calendar 450.

THE CHAIR:

Yes, sir.

SENATOR LOONEY:

Yes, Mr. President. Calendar 450, on Page 32, House Bill 6233. Mr. President, move to place that

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item on the Consent Calendar.

THE CHAIR:

There is a motion to place Calendar Number 450 on the Consent Calendar. Without objection, so ordered, sir.

SENATOR LOONEY:

Yes. Thank you, Mr. President. Continuing Calendar Page 32, Calendar 467, Senate Bill 1031. Mr. President, would move to place that item on the Consent Calendar.

THE CHAIR:

There is a motion to place Calendar Number 467 on the Consent Calendar. Without objection, so ordered, sir.

SENATOR LOONEY:

Yes. Thank you, Mr. President. Mr. President, moving to Calendar Page 35. Calendar Page 35, Calendar 205, Senate Bill 948. Mr. President, move to place that item on the Consent Calendar.

THE CHAIR:

There is a motion to place Calendar Number 205 on the Consent Calendar. Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, moving to Calendar Page 48, Calendar 508, Senate Bill 930;

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Mr. Clerk, please call Consent Calendar.

THE CLERK:

Immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the chamber. Immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the chamber.

Mr. President, those items placed on the Second Consent Calendar --

THE CHAIR:

Mr. Clerk, please hold for a second.

I'm trying to hear the Clerk call the Consent Calendar and I'm sure you don't want to miss that vote either, so if I could have your attention and quiet, please.

Mr. Clerk.

THE CLERK:

The items placed on the Second Consent Calendar begin on Senate Agenda 1, substitute for House Bill 6486, substitute for House Bill 6649. Senate Agenda Number 3, House Bill 6394. Today's Calendar, Calendar Page 3, Calendar 317, Senate Bill 586; Calendar Page 4, Calendar 455, House Bill 5018; Calendar Page 7, Calendar Number 593, Substitute House Bill 5286; Calendar Page 8, Calendar 606, substitute

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for House Bill 5883; Calendar Page 9, Calendar 619,
House Bill 6343; Calendar 626, House Bill 6476;
Calendar 629, substitute for House Bill 6232; Calendar
Page 10, Calendar 634, House Bill 6544; Calendar 636,
substitute for House Bill 6483; Calendar Page 11,
Calendar 649, substitute for House Bill 6466; Calendar
Page 13, Calendar 663, substitute for House Bill 5254;
Calendar Page 15, Calendar 680, substitute for House
Bill 5821; Calendar Page 16, Calendar 684, House
Bill 6231; Calendar Page 17, Calendar 689, substitute
for House Bill 5421; Calendar Page 18, Calendar 695,
substitute for House Bill 6419; Calendar Page 19,
Calendar 699, substitute for House Bill 6284; Calendar
Page 21, Calendar 711, House Bill 5099; Calendar 712,
substitute for House Bill 6025; Calendar Page 22,
Calendar 718, substitute for House Bill 5861; Calendar
Page 23, Calendar 720, substitute for House Bill 5108;
Calendar Page 32, Calendar 450, House Bill 6233;
Calendar 467, substitute for Senate Bill 1031; and,
Calendar Page 35, Calendar 205, substitute for Senate
Bill 948. Mr. President, that completes the items
placed on the Second Consent Calendar.

THE CHAIR:

Will you please call the Consent Calendar? The
machine will be open.

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THE CLERK:

The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the chamber. The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the chamber.

THE CHAIR:

Have all Senators voted? If all Senators have voted, please check your vote. The machine will be closed. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent Calendar
Number 2:

Total Number Voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar Number 2 passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, would move for immediate transmittal to the House of Representatives of any items voted on, on Consent Calendar Number 2, requiring additional action by the

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refer to Judicial; Calendar 381, refer to Finance;
Calendar 382, refer to Energy and Technology;
Calendar 383, refer to Environment; Calendar 385,
refer to Human Services; Calendar 386, refer to Public
Safety; Calendar 387, refer to Planning and
Development; Calendar 336, refer to Judiciary;
Calendar 164, refer to Education; and Calendar 225,
refer to Appropriations.

Mr. Speaker, I move that for these referrals or
these bills to committees as indicated.

SPEAKER DONOVAN:

The motion is the referral of these bills to the
committees as indicated. Is there objection? Is
there objection? Hearing none, so ordered.

Will the Clerk please call Calendar 178.

THE CLERK:

On page 7, Calendar 178, House Bill Number 6233,
AN ACT CONCERNING SAFE HARBOR PROVISIONS FOR REVOLVING
LOANS, favorable report of the Committee on Banks.

SPEAKER DONOVAN:

Representative Ryan.

Representative Wright.

REP. WRIGHT (41st):

Thank you, Mr. Speaker. I move for acceptance of

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the joint committee's favorable report and passage of the bill.

SPEAKER DONOVAN:

The question is acceptance of the joint committee's favorable report and passage of the bill.

Will you remark?

REP. WRIGHT (41st):

Thank you, Mr. Speaker. This bill deals with the priority of open-end real estate mortgages, securing commercial revolving and non revolving loans. It broadens the current statutory safe harbor provisions in general statutes 49 2 subsection C, to protect the priority of commercial non revolving loans in the same manner as commercial revolving loans.

This bill puts commercial non revolving loans on equal footing with commercial revolving loans under those state statutory safe harbor provisions, and redefines them both as commercial future advance loans. With extension of these statutory safe harbor provisions to non revolving loans, commercial lenders will have assurance that advances under non revolving loans will have the same priority as advances under commercial revolving loans and it should make available more business credit. I urge passage of the

bill. Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative. Will you remark further on the bill? Representative Stripp.

REP. STRIPP (135th):

Thank you, Mr. Speaker. Mr. Speaker, I think this is a very good bill in this day and age of belt and suspenders lending. Bankers, generally speaking, are a little nervous about lending into this volatile world economically that we are faced with right now. And this bill would preserve the priority on a loan that's made as of the date that the loan is closed and the original filing is made, despite the fact that the money may be advanced over a period of time. It's also important because the title insurance companies are very reluctant to insure over this and that, therefore, makes the lenders even more nervous about it. So this bill will help alleviate that fear. It will help loosen up lending and I think it's a good bill and will help our economy. Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative. Remark further on the bill? Remark further on the bill before us? Remark

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further? If not, staff and guests please come to the well of the House. Members take their seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. Members to the chamber. The House is voting by roll call.

SPEAKER DONOVAN:

Have all the members voted? Have all the members voted? Members, please check the board and make sure that vote has been properly cast. If all the members have voted, the machine will be locked and the Clerk will please take a tally. Clerk, please announce the tally.

THE CLERK:

House bill 6233.

Total Number Voting 145 .

Necessary for Passage 73

Those voting Yea 145

Those voting Nay 0

Those absent and not voting 6

SPEAKER DONOVAN:

The bill is passed. Clerk, please call Calendar 122.

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have done, exempt open-system gift cards from existing law.

I urge you to support Senate Bill 874.

And I'll be happy to take any questions from the committee.

REP. BARRY: Okay, thanks very much. Does anyone have any questions?

All right, you are relieved.

JOE TESTA: Thank you.

REP. BARRY: Thanks for coming.

JOE TESTA: Thank you.

REP. BARRY: Is Ray Podolsky in the room? Okay, John Anderson from CATIC?

JOHN ANDERSON: Good afternoon.

REP. BARRY: Hello, how are you?

JOHN ANDERSON: Good thank you.

Representative Barry, Senator Duff, distinguished members of the Banks Committee, my name is John Anderson. I am here speaking on behalf of CATIC, a domestic title insurer, in support of House Bill 6233.

The title of that bill or the purpose of the bill is an act concerning safe harbor provisions for revolving loans.

A couple of common types of loans secured by mortgages, one of them is the -- what we call the closed-end loan. Where you have all of

the -- the mortgage -- all of the loan proceeds advanced at one time, at the time of the closing, and the mortgage is recorded and that mortgage priority and enforceability over subsequent encumbrances is established as of the date of that recording.

Other types of loans have future advances where all of the funds that are being loaned are not advanced all at once but are advanced over time by the lender to the borrower. And in Connecticut the priority of those advances is determined by decisional law and also by some statutory law.

The decisional law involves the holdings in previous court cases that have said that with regard to these future advances, the priority of obligatory advances made by lenders will be protected, and that is they will be established as of the time that mortgage is recorded. But with regard to discretionary advances, the advances were not protected prior to the Legislature addressing that issue.

And so we have a couple of different statutes that actually protect the priority and enforceability of discretionary advances that are secured by mortgages. One is 49-3, which is the Construction Mortgage Statute; it protects discretionary advances made for the protection of loans being made to construct homes. The other is 49-2, and specifically 49-2(c), that addresses the priority of advances made for things such as Commercial Revolving Loans and Consumer Revolving Loans and mortgages securing a letter of credit.

The purpose of this particular bill is to extend the protection of 49-2(c) to commercial

loans which do not have a revolving feature. Revolving feature involves a situation where -- let's say for a loan of \$100,000 the lender may advance \$50,000 at once and then perhaps \$20,000 a little bit after that, and if the borrower then pays back, say, \$30,000 of that particular loan, he'll have the opportunity to have that additional 30,000 advanced again later.

A nonrevolving commercial loan would be where funds are advanced, not all at once but over time, and amounts are paid back by the borrower and then those amounts that are paid back cannot be readvanced.

We just feel that there's no need to distinguish between the protection given to a revolving open-end commercial loan and a nonrevolving commercial loan.

So the purpose of this bill, again, is to extend the protection of 49-2(c) to a commercial loan which does not have a revolving feature.

And that's the end of my testimony. Does anybody have any questions?

REP. BARRY: Thanks a lot, John. Obviously you're like -- you're the expert and -- I would consider in the state of Connecticut on this stuff, and I know where this came from and I talked to CATIC about this so I'm familiar with this issue.

Does anyone have any questions?

Okay, thanks very much --

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pab BANKS COMMITTEE

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JOHN ANDERSON: Thank you.

REP. BARRY: -- for your thorough presentation.

Representative Carlo Leone. No autographs please, Carlos, got to get going.

REP. LEONE: Thank you. Thank you, Chairman Duff and Chairman Barry. For the record my name is State Rep Carlo Leone from Stamford. Thank you for giving me the opportunity to speak today.

I just wanted to bring up a bill that I had proposed, an Act Concerning Regulation of Financial Industries, proposed Bill 6094. And basically, it's just a general and -- a general statement in terms of trying to craft language that would prevent fraud and mismanagement and poor business practices as a result of the loss of investments to individuals, investors, and any other entities.

Given the state of the current economic and financial collapse of our markets and given how we've seen how it's reverberated through the state of Connecticut, I just wanted to make sure that we have something in place that we can build upon to ensure that the State of Connecticut is doing what it can do for the protection of our citizens and our investors.

So even though we don't have something specific at this point in time, I just wanted to make sure that the Banks Committee had the opportunity to discuss it and craft some framework. I have complete faith in the ability of the Chairman and the members of the committee to work on this language. I would

WRITTEN TESTIMONY IN SUPPORT OF HOUSE BILL 6233

To: Senator Duff and Representative Barry

From: Jonathan Anderson and Richard Sellman, CATIC

Date: February 17, 2009

Re: Proposed Revision to Connecticut General Statutes Section 49-2(c)

Many real estate-secured commercial credit facilities are requested by borrowers and underwritten by banks and other lenders as so-called "closed-end" loans. In this type of loan, the primary feature is that the full principal amount requested is advanced by the lender to the borrower at the closing, to be repaid over an agreed term often in some installment fashion. The loan is evidenced by a promissory note and secured by a real estate mortgage on the borrower's property. In this type of loan, another feature is that, as the loan principal is repaid, the borrower has no ability to request that additional principal advances be made; hence the term "closed-end" loan.

In this instance, there is no issue concerning the priority of the lien of the mortgage securing the closed-end loan. The priority is established as of the time the mortgage is recorded and it covers the principal loan amount advanced at that time.

There are also other real estate-secured types of credit facilities requested by borrowers and underwritten by commercial lenders that are referred to as "open-end" loans. In this type of facility, the lender agrees to make available to the borrower a stated principal amount which may, but often is not fully advanced at the closing. Rather, by the terms of the loan agreement, the lender has reserved a sum of money for the borrower which may be drawn down for a period of time following the closing. The facility may or may not contain a "revolving feature" whereby the borrower can request advances from time-to-time, repay various principal sums from time to time, and reborrow principal again, within the parameters of a certain total principal amount limit.

The issue in the State of Connecticut, for commercial lenders, is the priority of loan advances made pursuant to a loan facility secured by real estate mortgage after the mortgage is recorded. The issue was created by a body of Connecticut case law developed over a number of years. A key determinant under the case law is whether the future loan advances were obligatory or discretionary on the part of the lender. Only obligatory future advances were protected. Clearly, the lending community prefers to retain control over future risk and discretionary advances are desirable.

The legislature has addressed the issue in Section 49-2, subsection (c) of the General Statutes, by creating a statutory safe harbor for the priority of certain future advance mortgages. Currently the statute grants priority to future discretionary advances made under a commercial revolving loan facility, without regard to whether the authorized amount of indebtedness is either, at the time of recording of the mortgage, or at any future time, fully advanced.

For various business and credit underwriting reasons, commercial lenders may be willing to, and often do, write real estate secured future advance loans, but without a revolving feature. From the borrower's perspective, it may be important to be able to reserve the use of a certain principal sum over time, even though it is not necessary or desirable to take the full authorized loan amount, or even any amount, at the closing, at the time the mortgage is recorded. Based on the current wording of the statute, such a loan facility secured by mortgage does not necessarily enjoy the priority of the future advance safe harbor provision. We do not discern any rational purpose in according different treatment to non-revolving future advance commercial mortgages.

The proposed amendment will make clear that mortgages securing either revolving or non-revolving future advance commercial loans will enjoy the same statutory priority with respect to future advances, provided the requirements of the statute are complied with.

Respectfully Submitted

CATIC

By Jonathan Anderson and Richard Sellman



CONNECTICUT BANKERS ASSOCIATION

February 17, 2009

To: Members of the Banks Committee SB873 HB5099 HB6091 HB6092
 Fr: Connecticut Bankers Association HB6093 HB6233 SB242 SB248
SB447 SB620 HB5265 HB5316
 Contacts: Gerry Noonan, Tom Mongellow or Fritz Conway HB5683 HB5911 HB5912

Re: Positions and Statements on Various Legislation Before the Committee

The CBA appreciates the opportunity to provide the below testimony to the Committee and respectfully asks that the Members consider our positions on each of the Bills commented upon.

S.B. No. 619 AN ACT CONCERNING MINOR CHANGES TO FORECLOSURE PROCEDURES

Position: Support with Certain Revisions

This Bill contains two provisions related to foreclosure assistance and/or prevention. The first provision deals with the paperwork that a borrower receives when served with a foreclosure complaint. Currently, that paperwork must include a notice alerting the borrower to the availability of the State's new *foreclosure mediation program*. Section 1 of the Bill would clarify that this notice should appear at the very beginning of the paperwork (in front of the writ, summons and complaint). This procedural change will enhance the visibility of the notice and, hopefully, increase the number of eligible borrowers who elect to participate in the mediation program. In this regard, the CBA is optimistic about the results that are being achieved through the mediation program. The mediation program helps to bring lenders and borrowers together at a very early stage in the foreclosure to see whether a mutually acceptable settlement can be reached. We support this measure and hope that it will help to keep people in their homes, or promote other reasonable settlements where feasible.

The second provision would allow for the reopening of a judgment of foreclosure in cases involving strict foreclosure (for up to four months). This provision would address situations where, after title has legally vested in the lender's name, the lender and borrower continue to engage in discussions in an effort to reinstate the loan or modify the debt. If there is a successful resolution to those discussions (e.g., allowing the borrower to stay in the home and pay a restructured debt), this provision would allow for the parties to reopen the judgment and implement the settlement.

The CBA supports that type of mechanism, provided all the parties consent to the reopening. We are, however, concerned about the wording of the Bill and the potential impact on title during the four month period following the vesting of title. Questions will arise from a subsequent purchaser looking to buy the house during that four month period as to whether the title transfer might not be unwound by a reopened judgment. We would urge the inclusion of additional language that attempts to resolve this title uncertainty.

More specifically, we would suggest and support language to make it clear that the right to reopen the judgment will terminate upon the earlier of two months or the subsequent conveyance of title. We would also suggest that the four month period be shortened to two.

These bills would regulate pricing and would prohibit certain banks from charging for legitimate services. If this bill is enacted, we respectfully submit that the legislature would be overlooking several important concerns. To start, the financial marketplace in Connecticut has, through the natural incentives of competition, produced different *options* for consumers. Indeed, different banks have different types of overdraft programs, many with different protection features and alternative pricing models. Customers can always ask their bank about the options that are available to them. If the options no longer match the customer's needs, the customer can look for another bank that offers product features that make better sense for that customer. Of course, an individual can always avoid overdraft protection fees *in their entirety* by careful management of their account balances and deposit account transactions.

State government regulation of pricing will simply tie up the creative hands of competition and reduce the options that are available to consumers. On top of that, for many institutions, *federal preemption* will override this State legislation, leaving Connecticut banks at a distinct competitive disadvantage when designing and pricing their product options.

Finally, and importantly, we also wish to note that the topic of overdraft protection practices is currently under review at the federal level. Among other things, the Federal Reserve Board is currently soliciting comments on a number of issues related to overdraft protection, with the intention of requiring banks to provide several new consumer disclosures under Regulation E. We hope and expect that those new disclosures (which have been subjected to consumer focus-group testing) will ultimately help customers better understand the options that are available to them. We urge the Committee to allow this federal rulemaking process to run its course.

H.B. No. 6233 AN ACT CONCERNING SAFE HARBOR PROVISIONS FOR REVOLVING LOANS

Position: Support

This bill will allow mortgages securing non-revolving, future advance commercial loans, to have the same statutory priority with respect to future advances, as is now provided for revolving loans secured by a commercial mortgage. After reviewing the Statute, we were unable to determine any reason as to why a non-revolving future advance loan was not included in the safe harbor. We can only surmise that the drafters were unaware at that time that some banks may offer that product feature. We urge your support of this legislation for consistency in the statutes for lending products of similar design.

Proposed S.B. No. 242 AN ACT CONCERNING THE PAYMENT OF INTEREST ON MORTGAGE LOANS BY MEMBERS OF THE ARMED FORCES CALLED TO ACTIVE SERVICE

This bill would allow members of the armed forces to request the suspension of mortgage interest payments when called into active service. In this regard, we note that active service members are already entitled to broad protections under the federal Servicemembers Civil Relief Act. Among other things, the SCRA provides protection against excessive interest rates. It also provides detailed procedural mechanisms that allow servicemembers to pursue protection from foreclosure proceedings as well as obtain certain debt adjustments. Creditors currently provide servicemembers with notices regarding their rights under the SCRA whenever they become delinquent on a mortgage loan. And the Department of Defense maintains a comprehensive program to help servicemembers pursue those rights.

The CBA fully supports the members of our armed forces and the important protections given to those individuals under the SCRA. We do not, however, believe that additional