



## Memorandum in Opposition

March 14, 2018

### House Bill 5491 (Joint Committee on Banking)

Dear Members of the Joint Committee on Banking:

On behalf of Encore Capital Group, Inc. and its wholly-owned subsidiaries (collectively, “Encore”), I’m writing in **opposition** to House Bill 5491. This bill would render courts’ valid judgments, and court-ordered payment schedules, virtually meaningless, and would have a detrimental impact on the availability of affordable credit to Connecticut consumers.

By way of background, Encore is a publicly-traded company and a leading provider of debt recovery solutions for consumers, with more than 60 years of experience helping consumers toward a better life. Through its subsidiaries, our company purchases portfolios of consumer receivables from major banks and partners with individuals as they repay their obligations and work toward financial recovery.

We take a consumer-centric approach to helping consumers resolve their obligations, and each of our 5,600 employees takes great pride in this. This means that we forgive or suspend debt where consumers demonstrate a hardship.<sup>1</sup> Indeed, in 2017 we forgave over \$266 million in debt to consumers across the country.

Still, even with our consumer-centric approach, we sometimes must resort to litigation as a last resort. A key priority for us is to try to communicate with our consumers to resolve their debt obligations, and we typically offer a steep discount off of the face value of the debt. In addition, we charge no interest or fees on debt we purchase. Still, for a small segment of consumers who we believe have the ability, but not the willingness, to repay their obligations, litigation is a path we sometimes take.

When we do proceed to the last resort of litigation and a court awards a judgment for a valid debt obligation, we believe that judgment should be enforced and the debt obligation should be repaid. When we obtain a judgment issued by a Connecticut court of law, if a consumer fails to abide by a court-ordered installment payment plan, bank executions are an important way we are able to collect on the judgment. If the law enabling creditors to enforce court orders and judgments through bank executions has no teeth, courts’ judgments will be rendered meaningless.

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<sup>1</sup> See Encore’s Consumer Bill of Rights, Article 2 (attached).



## **HB 5491 Would Render Courts' Installment Payment Orders – and Courts' Judgments – Virtually Meaningless**

In Connecticut, upon issuing a judgment, the Court enters an installment payment order – generally \$35 per week. No bank execution can be done so long as the consumer makes the installment payments. If the consumer is unable to make the payments, he or she may ask the court to lower the weekly amount. However, if the consumer simply violates a court-ordered payment schedule, then creditors may obtain the money due through wage garnishment or another method.

Unfortunately, HB 5491 is in effect eliminating the ability of judgment creditors to use bank garnishments to collect a valid court-ordered judgment. Since the average amount we collect through bank garnishments is typically around \$700, an automatic exemption of \$1,000 would leave us unable to use bank garnishments when a consumer has refused to comply with an installment order.

If a valid judgment has been obtained by a creditor, it is reasonable that that money in a consumer's account should be allotted to pay the installment schedule ordered by the court. By making it impossible for creditors to obtain those funds, this bill would encourage consumers to shield money in a bank account. Ultimately, the bill would encourage consumers to violate court orders to make minimal weekly payments, because consumers could shield their earnings in a bank account.

## **HB 5491 Would Also Harm the Very Consumers it is Intended to Protect**

Without bank levies as an option, wage garnishments will be the next option for creditors, but unfortunately, wage garnishments will cost the consumer hundreds of dollars each year in court and marshal fees. Not only does the judgment amount accrue interest during the wage garnishment period but court fees and state marshal fees are also assessed to the judgment debtor. The court charges \$105 for a wage garnishment execution to be processed and the marshal receives 15% of the money they collect on behalf of the judgement creditor. In addition to increasing the judgement amount, the wage garnishment period will be prolonged for the consumer due to the fees collected throughout the process.

Consumer would also be subject to debtors' examinations, in which judgement debtors must answer a slew of questions regarding their personal assets and accounts. This is an intrusive process for consumers, and if the debtor fails to appear in court, a Magistrate or judge may issue a *capias* order for failure to appear in court. While Encore does not pursue debtor's exams because of the potential harm posed to consumers, it is an option that other creditors may pursue should bank levies become unavailable.

## **There are Existing Protections in Place That Eliminate the Need for this Legislation**

There already is a robust process by which judgment debtors – those who truly cannot afford to repay their debt – may exempt a host of assets. Under current law, a judgment debtor may claim that certain funds in their bank account, as discussed above, are exempt from a bank levy through a well-established, court supervised process called a “claim of exemption.” A claim of exemption must be liberally construed



by the court in favor of the consumer claiming the exceptions.<sup>2</sup> These protections include a variety of items completely exempt from execution, including:

- The first \$1,000 in a judgment debtor's account;
- Veterans' benefits;
- All types of social security benefits,
- Supplemental security income benefits;
- Pension benefits;
- Unemployment compensation benefits; and
- Child support payments

This claim of exemption process works well, and it justly ensures that consumers who truly cannot afford to pay their judgments are protected from bank levies.

With these protections in place, it should be noted that bank executions are a last resort, as we typically only seek to garnish funds from a bank account after we've tried, unsuccessfully, to work out a reasonable payment arrangement we negotiated with the consumer (and with the court's oversight). Also please note that Connecticut only allows one active execution at a time. This means that if a creditor is garnishing wages, the creditor cannot garnish funds in a bank account at the same time. With the above protections already in place, we see that HB 5491 would go far beyond – to an outright elimination of creditors' ability to execute funds in a judgment debtor's bank account. Not only would this render courts' orders and judgments meaningless, but it would have a devastating impact on Connecticut consumers' ability to obtain affordable credit.

Any changes to add additional exemptions to this well-established process would harm the very consumers it is intended to protect, as well as that consumer who pay their financial obligations. Increasing available exemptions places restrictions on a creditors ability to enforce past-due financial obligations. Consequently, such restrictions reduce the availability of affordable credit for all consumers.

### **The Availability of Credit for All Connecticut Consumers Would Decline**

This inequity doesn't just impact creditors and the consumers who failed to repay their valid debt obligations. The inequity will harm a far greater segment of society -- Connecticut consumers who seek credit to get a mortgage, car loan, or credit card, the majority of which *do* repay their valid debt obligations. Simply put, the availability of credit at reasonable prices will go down. Numerous research studies in recent years have shown just this – that placing more restrictions on the collection of validly owed debt causes the availability of credit to decrease.<sup>3</sup> As Professor Todd Zywicki of the Mercatus Center at George Mason University found in his comprehensive research, greater restraints on creditors' remedies will reduce the

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<sup>2</sup> *Konover Const. Corp. v. Silberstein*, Superior Court, Judicial District of New Haven at New Haven, No. CV 02-0467948 S (July 22, 2003).

<sup>3</sup> *Debt Collection Agencies and the Supply of Consumer Credit*, Philadelphia Federal Reserve Working Paper 15-23 (June 2015).



supply of lending and raise prices, at the expense of other consumers who may end up paying more or obtaining less access to credit.<sup>4</sup> Another recent study noted that cumbersome regulation has “restricted the availability of financial products and credit, particularly for low-income borrowers, young people, and minorities.”<sup>5</sup> Finally, a recent study from the Harvard Kennedy School of Government noted that a 250% surge in credit card related restrictions by regulations since 2007 has contributed to a drop in annual credit card originations to lower-risk-score Americans.<sup>6</sup>

It is critical to maintain creditors’ ability to collect valid judgments through bank executions, so that Connecticut continues to be a state where creditors who have extended money and have not been repaid are able to recoup the outstanding debt owed to them. Without the ability to recoup valid debt obligations, creditors will have little incentive to lend money to Connecticut consumers in the first place. We ask you to consider these unintended consequences and urge the Committee to issue an unfavorable report on HB 5491.

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Thank you for your attention to this important matter. Please feel free to contact me directly at 858-309-6923 for any further information.

Sincerely,

Sonia Gibson  
Senior Manager, Government Affairs

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<sup>4</sup> Todd J. Zywicki, *The Law and Economics of Consumer Debt Collection and its Regulation*. Mercatus Center at George Mason University (September 2015).

<sup>5</sup> *Dodd-Frank At 5: Higher Costs, Uncertain Benefits*, American Action Forum (July 2015).

<sup>6</sup> Marshall Lux and Robert Green, *Out of Reach: Regressive Trends in Credit Card Access*, Harvard Kennedy School of Government (April 2016)