

Legal Assistance Resource Center

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H.B. 5611 -- Arrest for failure to pay for leased goods

Judiciary Committee public hearing – March 14, 2006

Testimony of Raphael L. Podolsky

Recommended Committee action: REJECTION OF THE BILL

This bill, mistitled as an act concerning “the failure to return” leased goods, is in fact an effort to generate arrests and promote the threat of arrest for the failure to pay for leased goods which have previously been returned. There is already a law (C.G.S. 53a-119(13)) which makes it a crime for a person who leases goods to fail to return them within 192 hours of written demand.¹ This bill, which is structured as an amendment to the obscure common law action of “trover” (now used principally against stealing a car for joyriding purposes), attempts to turn police officers into bill collectors for companies which lease goods (e.g., Taylor Rental or U-Haul).

- The bill invites serious abuses in debt collection practices. It will result in customers who have returned property late being threatened with arrest for failure to pay. Those threats may come from the goods leasing company, or they may come from police officers to whom complaints have been made. It will in some cases lead to arresting people for inability to pay a bill. Its real practical significance is in the power of the threat of arrest to intimidate consumers into paying. Moreover, it can be used not only by the creditor itself but by collection agencies. The potential for abuse is enormous.
- Arrest is inappropriate for the non-payment of a bill. It is a civil matter and should be handled civilly. If this particularly industry can have customers who owe it money arrested, why shouldn't all businesses be able to do the same? Why, for example, shouldn't every credit card issuer be able to obtain the arrest of consumers with unpaid balances? It is important to understand that this bill is NOT about police intervention to force the return of leased goods which the customer is refusing to return. In those cases, the criminal intent is the intent not to return the good. H.B. 5611 is about collecting payment for goods which have been returned but on which there is an outstanding balance. The intent not to pay a bill is a matter ordinarily handled civilly.
- The bill covers all forms of leased goods. It is not just about contractors who may lease heavy equipment worth thousands of dollars. The bill covers all forms of leasing -- from a movie video to a computer to a sofa to a child's musical instrument to an automobile. It is not triggered either by fraud or by the consumer's intent to

¹Depending on the value of the property leased, this bill in some cases makes it a more serious offense to return the leased goods than to keep them. It also uses a shorter time period (120 hours) and does not require the giving of notice.

keep the good permanently or to dispose of it to someone else. It instead transforms a civil dispute over non-payment (often no more than a small claims lawsuit) into a criminal dispute, with much higher stakes but without the usual criminal standard of intent.

- The goods leasing company can significantly limit its risk of loss by the use of other remedies available to it: A company can control the amount of deposit it requires, insist upon a credit card, or refuse to lease to a person who has previously failed to pay a bill. It can minimize the risk of running up a significant bill beyond the deposit which it holds by repossession or, in appropriate cases, by the use of the larceny-of-leased-goods statute.
- The bill is a misuse of the trover statute: Criminal trover is normally used in conjunction with larceny or conversion. The criminal statute is designed for property taken without the consent of the owner, which is why it is a Class A misdemeanor. This bill proposes to apply the statute to situations in which a customer rents goods with the consent of the owner and has paid at least of portion of the rental fee.
- The bill does not effectively exclude rent-to-own contracts: The sponsors of this bill claim that it does not apply to rent-to-own contracts, a type of contract with a long history of especially abusive collection tactics. That is not clear from the language of the bill, which covers rentals under an agreement providing for "the return of such property at a specified time." Rent-to-own contracts are usually automatically renewing weekly contracts, which provide for the return of property at a specified time if the next week's rent is not paid by a certain date.

Alternate approach

Last year, the Judiciary Committee JF'd a bill dealing with the same issue but in a way which did not create the problems raised by H.B. 5611. The bill responded to industry complaints that, under the larceny statute, the police often will not intervene against a customer who has failed to return leased goods until the certified mail receipt for the 192-hour demand notice is returned to the company by the U.S. Postal Service. This can add several weeks to the process if the customer fails to claim the certified mail. The 2005 Judiciary Committee bill fixed that problem by making clear that the police could act 192 hours after the notice was sent, rather than received. That bill would have helped the industry by strengthening its ability to force the return of the goods, thereby limiting its potential loss. The bill died on the House calendar. We do not oppose the readoption of that bill by the Judiciary Committee this year. Such a bill would replace the existing bill by adding the following to the end of Subpart (A) of C.G.S. 53a-119(13), the statute dealing with larceny of leased goods:

Acknowledgement of receipt of such written demand by the lessee shall not be necessary to establish that one hundred ninety-two hours have passed since such demand was sent.