



House of Representatives

General Assembly

File No. 640

January Session, 2007

Substitute House Bill No. 6897

House of Representatives, April 30, 2007

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING LIQUIDATED DAMAGES PROVISIONS IN CONTRACTS, REQUESTS FOR MORTGAGE PAYOFF STATEMENTS AND THE REPOSSESSION OF MOTOR VEHICLES IN BANKRUPTCY CASES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2007*) No provision in a
2 contract for the purchase or lease of goods or services primarily for
3 personal, family or household purposes that provides for the payment
4 of liquidated damages in the event of a breach of the contract shall be
5 valid or enforceable unless (1) the contract contains a statement in
6 boldface type at least ten points in size immediately following such
7 liquidated damages provision stating "I HAVE READ THIS
8 LIQUIDATED DAMAGES PROVISION AND UNDERSTAND ITS
9 MEANING", and (2) the person against whom such provision is to be
10 enforced signs such person's name or writes such person's initials next
11 to such statement.

12 Sec. 2. Section 49-10a of the general statutes is repealed and the

13 following is substituted in lieu thereof (*Effective October 1, 2007*):

14 (a) A mortgagee shall, upon written request of the mortgagor or the
15 mortgagor's attorney or other authorized agent, provide a payoff
16 statement in writing to the person requesting [such] the payoff
17 statement on or before the date specified in such request, provided
18 such request date is at least [ten] eight business days [from] after the
19 date of receipt of the written request for a payoff statement. If the
20 request for a payoff statement is made in connection with a default on
21 the mortgage, the mortgagor's attorney may make such written request
22 directly to the mortgagee, provided such written request contains a
23 representation that the person requesting the payoff statement is the
24 mortgagor's attorney and that the mortgagor has authorized the
25 request.

26 (b) If the mortgagee fails to provide [such] the payoff statement on
27 or before such request date, the mortgagee shall not be entitled to the
28 payment of any interest on the mortgage loan which is secured by such
29 mortgage which accrues after the expiration of such request date. If the
30 mortgagee provides the payoff statement to the person requesting the
31 [same] payoff statement after the expiration of such request date,
32 interest on the mortgage loan which accrues after the receipt of [such]
33 the payoff statement by the person who has requested it shall again be
34 payable. The burden of proof shall be on the mortgagor with respect to
35 the receipt by the mortgagee of the mortgagor's request for a payoff
36 statement of the mortgage loan, and thereafter shall be on the
37 mortgagee with respect to the receipt of the payoff statement by the
38 mortgagor or the mortgagor's attorney or other authorized agent.

39 (c) The mortgagee shall not impose any fee or charge for the first
40 payoff statement requested within a calendar year, unless the
41 mortgagor or the mortgagor's attorney or other authorized agent
42 requests expedited delivery of the payoff statement, agrees to pay a fee
43 for such expedited delivery and the payoff statement is provided by
44 the agreed upon date.

45 Sec. 3. Subsection (a) of section 36a-785 of the general statutes is

46 repealed and the following is substituted in lieu thereof (*Effective*
47 *October 1, 2007*):

48 (a) When the retail buyer is in default in the payment of any sum
49 due under the retail installment contract or installment loan contract,
50 or in the performance of any other condition which such contract
51 requires [him] the retail buyer to perform, or in the performance of any
52 promise, the breach of which is by such contract expressly made a
53 ground for the retaking of the goods, the holder of the contract may
54 retake possession thereof, except that the filing of a petition in
55 bankruptcy under Chapter 7 of Title 11 of the United States Code by
56 the retail buyer of a motor vehicle, or such retail buyer's status as a
57 debtor in bankruptcy under said chapter, shall not by itself be a default
58 or a ground for the retaking of the motor vehicle for the purposes of
59 this subsection. Unless the goods can be retaken without breach of the
60 peace, [it] the goods shall be retaken by legal process, but nothing
61 [herein contained] in this section shall be construed to authorize a
62 violation of the criminal law. In the case of repossession of any motor
63 vehicle without the knowledge of the retail buyer, the local police
64 department shall be notified of such repossession immediately
65 thereafter. In the absence of a local police department or if the local
66 police department cannot be reached for notification, the state police
67 shall be promptly notified of such repossession.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	New section
Sec. 2	<i>October 1, 2007</i>	49-10a
Sec. 3	<i>October 1, 2007</i>	36a-785(a)

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes changes to statutes governing certain transactions between private parties. There is no related fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 6897*****AN ACT CONCERNING LIQUIDATED DAMAGES PROVISIONS IN CONTRACTS, REQUESTS FOR MORTGAGE PAYOFF STATEMENTS AND THE REPOSSESSION OF MOTOR VEHICLES IN BANKRUPTCY CASES.*****SUMMARY:**

Under this bill, no provision in a contract to purchase or lease goods or services primarily for personal, family, or household purposes that provides for the payment of liquidated damages in the event of a breach is valid or enforceable unless:

1. the contract contains a statement in boldface type at least 10 points in size immediately following the liquidated damages provision that states "I HAVE READ THIS LIQUIDATED DAMAGES PROVISION AND UNDERSTAND ITS MEANING" and
2. the person against whom the provision is to be enforced signs his or her name or writes his or her initials next to the statement.

Current law requires the mortgagee, upon written request of the mortgagor or the mortgagor's attorney or other authorized agent, to provide a payoff statement in writing to the person requesting the payoff statement on or before the date specified in such request, if the request date is at least 10 business days after the date the mortgagee received the written request. The bill requires that the request date be at least eight business days instead of 10 after the date the request was received.

If the request for a payoff statement is made in connection with a default on the mortgage, the bill authorizes the mortgagor's attorney to make the written request directly to the mortgagee, if it contains a

representation that the person requesting the payoff statement is the mortgagor's attorney and that the mortgagor has authorized the request.

By law, when the retail buyer is in default in the payment of any sum due under a retail installment contract or installment loan contract, or in breach of any other condition, which is expressly made a ground for the retaking the goods, the lesser or other holder of the contract may retake possession. The bill specifies that the filing of a petition in bankruptcy under Chapter 7 of Title 11 of the United States Code by the retail buyer of a motor vehicle, or such retail buyer's status as a debtor in bankruptcy, is not by itself a default or a ground for the retaking of the motor vehicle.

EFFECTIVE DATE: October 1, 2007

BACKGROUND

Liquidated Damages

“Liquidated damages” is an amount of money agreed upon by both parties to a contract that one will pay to the other upon breaching (breaking or backing out of) the contract or if a lawsuit arises due to the breach.

Common Law

Currently, there is both common law (judge-made) law and statutory law in Connecticut that affects the enforceability of liquidated damages contract clauses. Under Connecticut common law, a contract provision that fixes liquidated damages for breach of contract is enforceable if (1) the damage that was to be expected as result of a breach of contract was uncertain in amount or difficult to prove; (2) the parties had the intent to liquidate damages in advance; and (3) the amount stipulated was reasonable because it was not greatly disproportionate to the amount of the damage which, as the parties looked forward, seemed to be the presumable loss that would be sustained in the event of a contract breach (*American Car Rental, Inc. v. Comm'r of Consumer Protection*, 273 Conn. 296, 306-307, 869 A.2d 1198

(2005)).

Related Statutes

Under Connecticut's commercial code provisions dealing with the sale of goods, damages for breach by either party may be liquidated in the contract but only at an amount that is reasonable in the light of (1) the anticipated or actual harm caused by the breach, (2) the difficulties of proof of loss, and (3) the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy (CGS § 42a-2-718). A similar statute exists for the leasing of goods (CGS § 42a-2A-710(a)).

Other statutes impose certain limits or requirements on liquidated damages provisions in funeral service contracts, the involuntary liquidations of the businesses and property of foreign banks, and transfers of structured settlements (CGS §§ 33-213, 36a-428n, 42-202(e), 52-225 (13) and (19), 52-225h).

Bankruptcy Code –Chapter Seven

Individuals can file for bankruptcy in a federal court under Chapter 7 ("straight bankruptcy," or liquidation (11 USC § 701 et seq)). In a Chapter 7 bankruptcy, the individual is allowed to keep certain exempt property. Some liens, however (such as real estate mortgages), survive. The value of property which can be claimed as exempt varies from state-to-state. Other assets, if any, are sold by the interim trustee to repay creditors. Many types of unsecured debt are legally discharged by the bankruptcy process, but there are many classes of debt that are not discharged. Common exceptions to discharge include child support, most taxes, most student loans, and fines and restitution imposed by a court for any crimes committed by the debtor.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0 (04/13/2007)