



# House of Representatives

**File No. 903**

General Assembly

January Session, 2007

**(Reprint of File No. 640)**

Substitute House Bill No. 6897  
As Amended by House Amendment  
Schedules "A" and "B"

Approved by the Legislative Commissioner  
May 31, 2007

**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, and applicable to contracts*  
2 *entered into, renewed or extended on or after said date*) (a) No provision in a  
3 written contract for the purchase or lease of goods or services  
4 primarily for personal, family or household purposes that provides for  
5 the payment of liquidated damages in the event of a breach of the  
6 contract shall be enforceable unless (1) the contract contains a  
7 statement in boldface type at least twelve points in size immediately  
8 following such liquidated damages provision stating "I  
9 ACKNOWLEDGE THAT THIS CONTRACT CONTAINS A  
10 LIQUIDATED DAMAGES PROVISION", and (2) the person against  
11 whom such provision is to be enforced signs such person's name or  
12 writes such person's initials next to such statement. Nothing in this  
13 section shall validate a clause that is a penalty clause or is otherwise  
14 invalid under the law of this state.

15 (b) The provisions of subsection (a) of this section shall not apply to  
16 (1) contracts between a consumer and an agency of the state or any  
17 political subdivision of the state or of the federal government, (2)  
18 negotiable instruments, and (3) contract provisions for late fees,  
19 prepayment penalties or default interest rates.

20 Sec. 2. Section 49-10a of the general statutes is repealed and the  
21 following is substituted in lieu thereof (*Effective October 1, 2007*):

22 (a) A mortgagee shall, upon written request of the mortgagor or the  
23 mortgagor's attorney or other authorized agent provide a payoff  
24 statement in writing to the person requesting [such] the payoff  
25 statement on or before the date specified in such request, provided  
26 such request date is at least ten business days [from] after the date of  
27 receipt of the written request for a payoff statement. If the request is  
28 made in connection with a default, the mortgagor's attorney may make  
29 such written request directly to the mortgagee, provided such written  
30 request contains a representation that the person requesting the payoff  
31 statement is the mortgagor's attorney and that the mortgagor has  
32 authorized the request.

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

46 (c) The mortgagee shall not impose any fee or charge for the first

47 payoff statement requested within a calendar year, unless the  
48 mortgagor or the mortgagor's attorney or other authorized agent  
49 requests expedited delivery of the payoff statement, agrees to pay a fee  
50 for such expedited delivery and the payoff statement is provided by  
51 the agreed upon date.

52 Sec. 3. Subsection (a) of section 36a-785 of the general statutes is  
53 repealed and the following is substituted in lieu thereof (*Effective*  
54 *October 1, 2007*):

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

This act shall take effect as follows and shall amend the following sections:
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Section 1	<i>October 1, 2007, and applicable to contracts entered into, renewed or extended on or after said date</i>	New section
Sec. 2	<i>October 1, 2007</i>	49-10a
Sec. 3	<i>October 1, 2007</i>	36a-785(a)

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:

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***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.

House Amendment "A" altered the notice requirements in certain contracts, and has no fiscal impact.

House Amendment "B" made changes related to requests for mortgage payoff statements, and has no fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

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**OLR Bill Analysis****sHB 6897 (as amended by House "A" and "B")\******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 entered into, renewed, or extended on or after October 1, 2007 primarily for personal, family, or household purposes that provides for the payment of liquidated damages in the event of a breach is enforceable unless:

1. the contract contains a statement in boldface type at least 12 points in size immediately following the provision stating "I ACKNOWLEDGE THAT THIS CONTRACT CONTAINS A LIQUIDATED DAMAGES PROVISION," 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.

This requirement does not apply to (1) contracts between a consumer and an agency of the federal government, the state or any political subdivision of the state, (2) negotiable instruments, and (3) contract provisions for late fees, prepayment penalties, or default interest rates.

The bill specifies that it does not validate a clause that is a penalty clause or is otherwise invalid under state law.

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. 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.

\*House Amendment "A" specifies certain types of contracts that the liquidated damages requirement does not apply to, requires the liquidated damages statement be at least 12 instead of 10 points in size, changes what the statement must specify, and provides that it does not validate a penalty clause or one that is otherwise invalid under state law.

\*House Amendment "B" reestablishes the requirement that the request date be at least 10 business days instead of eight after the date the request was received.

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)