



House of Representatives

General Assembly

File No. 99

February Session, 2008

Substitute House Bill No. 5128

House of Representatives, March 20, 2008

The Committee on Banks reported through REP. BARRY of the 12th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CLARIFYING CERTAIN DEPOSITORY INSTITUTION DISCLOSURE REQUIREMENTS.

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

1 Section 1. Section 42-150u of the 2008 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2008*):

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

15 invalid under the law of this state.

16 (b) The provisions of subsection (a) of this section shall not apply to
 17 (1) contracts between a consumer and an agency of the state or any
 18 political subdivision of the state or of the federal government, (2)
 19 negotiable instruments, [and] (3) contract provisions for late fees,
 20 prepayment penalties or default interest rates, and (4) contracts
 21 originated or held by an institution, or any subsidiary or affiliate of
 22 such institution, that is regulated by the Department of Banking or by
 23 a federal bank regulatory agency, provided, in the case of a contract
 24 originated or held by a subsidiary or affiliate of such institution, the
 25 subject matter of the contract is an activity that is financial in nature or
 26 incidental to such an activity as described in the Bank Holding
 27 Company Act, 12 USC 1843 (k)(4).

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2008	42-150u

BA 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

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5128*****AN ACT CLARIFYING CERTAIN DEPOSITORY INSTITUTION DISCLOSURE REQUIREMENTS.*****SUMMARY:**

This bill extends to contracts held by certain financial institutions, an exception to the prohibition on liquidated damages provisions in certain contracts. Under the law, 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 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 law provides that the 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 further excludes contracts originated or held by Department of Banking (DOB) or federal bank regulatory agency regulated institutions, or any subsidiary or affiliate of such institutions. However, for contracts originated or held by an institution’s

subsidiary or affiliate, the subject matter of the contract must be a financial activity or incidental to such activity.

EFFECTIVE DATE: July 1, 2008

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.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/04/2008)