



House of Representatives

File No. 741

General Assembly

February Session, 2008

(Reprint of File No. 42)

House Bill No. 5130

As Amended by House Amendment Schedules
"A" and "B"

Approved by the Legislative Commissioner
April 28, 2008

**AN ACT LIMITING USE OF CHECKS TO CREATE BINDING
AGREEMENTS ON CONSUMERS AND CONCERNING THE FILING OF
A BANKRUPTCY PETITION BY RETAIL BUYERS OF MOTOR
VEHICLES.**

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

1 Section 1. (NEW) (*Effective October 1, 2008*) (a) As used in this
2 section: (1) "Check" has the same meaning as provided in section 42a-3-
3 104 of the general statutes; (2) "consumer" means an actual or
4 prospective purchaser, lessee or renter of goods or services; (3)
5 "endorsing" means affixing a signature or the use of other words on the
6 check by the consumer for the purpose of negotiating the check; and
7 (4) "seller" means any person who sells, leases or rents, or offers to sell,
8 lease or rent goods or services by use of printed advertisement,
9 postcard or other written notice.

10 (b) No agreement entered into on or after October 1, 2008, by a
11 consumer to purchase, lease or rent goods or services by endorsing a
12 check payable to the consumer from a seller shall be a binding, valid or
13 enforceable contract against the consumer unless the consumer signs a

14 written contract that: (1) Is a separate document; (2) discloses in full
15 the terms of the sale, lease or rental agreement including the method of
16 payment; and (3) complies with the provisions of subsection (c) of this
17 section. Any check sent to a consumer by a seller without such written
18 contract shall be deemed to be an unconditional gift to the consumer
19 without any obligation by the consumer to the seller.

20 (c) The written contract shall include, but not be limited to, the
21 following information:

22 (1) The name, address and telephone number of the seller;

23 (2) A list of all prices or fees being charged including any handling,
24 shipping, delivery or other charges;

25 (3) The date of the transaction;

26 (4) A detailed description of the goods or services being sold, leased
27 or rented;

28 (5) In ten-point boldface type, in a space immediately preceding the
29 space allotted for the consumer's signature, the following statement:
30 "YOU ARE NOT OBLIGATED TO PAY ANY MONEY UNLESS YOU
31 SIGN THIS CONTRACT AND RETURN IT TO THE ADDRESS
32 CONTAINED IN THIS CONTRACT";

33 (6) If the transaction involves a trial offer or introductory rate, the
34 notice required by subsection (b) of section 42-126b of the 2008
35 supplement to the general statutes;

36 (7) If the transaction involves an automatic renewal, the notice
37 required by subsection (c) of section 42-126b of the 2008 supplement to
38 the general statutes;

39 (8) A telephone number or email address for the consumer to notify
40 the seller not to send any future solicitations to the consumer; and

41 (9) All other material terms and conditions.

42 (d) The seller shall provide the consumer with a duplicate copy of
43 the contract with the complete information as presented in the original
44 contract, to be retained by the consumer as proof of the terms of the
45 agreement to purchase, lease or rent.

46 (e) A violation of any provision of this section shall be deemed an
47 unfair or deceptive trade practice under subsection (a) of section 42-
48 110b of the general statutes.

49 Sec. 2. Subsection (a) of section 36a-785 of the general statutes is
50 repealed and the following is substituted in lieu thereof (*Effective*
51 *October 1, 2008*):

52 (a) When the retail buyer is in default in the payment of any sum
53 due under the retail installment contract or installment loan contract,
54 or in the performance of any other condition which such contract
55 requires [him] the retail buyer to perform, or in the performance of any
56 promise, the breach of which is by such contract expressly made a
57 ground for the retaking of the goods, the holder of the contract may
58 retake possession thereof, except that the filing of a petition in
59 bankruptcy under Chapter 7 of Title 11 of the United States Code by
60 the retail buyer of a motor vehicle, or such retail buyer's status as a
61 debtor in bankruptcy under said chapter, shall not by itself be a default
62 or a ground for the retaking of the motor vehicle for the purposes of
63 this subsection. Unless the goods can be retaken without breach of the
64 peace, [it] the goods shall be retaken by legal process, but nothing
65 [herein contained] in this section shall be construed to authorize a
66 violation of the criminal law. In the case of repossession of any motor
67 vehicle without the knowledge of the retail buyer, the local police
68 department shall be notified of such repossession immediately
69 thereafter. In the absence of a local police department or if the local
70 police department cannot be reached for notification, the state police
71 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, 2008</i>	New section
Sec. 2	<i>October 1, 2008</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:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

House "A" (LCO 4777) and House "B" (LC) 4903) are technical and/or have no fiscal impact.

OLR Bill Analysis**HB 5130 (as amended by House "A" and "B")******AN ACT LIMITING USE OF CHECKS TO CREATE BINDING AGREEMENTS ON CONSUMERS.*****SUMMARY:**

This bill sets conditions certain consumer agreements must meet to be binding, valid, and enforceable. It also limits the circumstances under which retail buyers of motor vehicles may be considered in default and the grounds for repossession.

Concerning consumer agreements, the bill applies to agreements entered into starting on October 1, 2008 to purchase, lease, or rent goods or services when the consumer makes the agreement by endorsing a check from a seller. Specifically, the agreement is valid only if the consumer signed a separate written document that contains certain required provisions and notices and fully discloses the terms of the agreement, including the payment method. According to the bill, any check sent to a consumer by a marketer without such written contract is an unconditional gift to the consumer without any obligation by the consumer to the seller. The seller must provide the consumer with a copy of the contract for use as proof of the terms of the agreement. A violation of the bill is an unfair and deceptive trade practice under the Connecticut Unfair Trade Practices Act (see BACKGROUND).

Under current law, when a retail buyer is in default on a retail installment contract or installment loan contract, the contract holder can repossess the goods if allowed to do so by the contract. In the case of a motor vehicle, the bill specifies that a retail buyer's (1) filing a Chapter 7 or Chapter 11 bankruptcy petition or (2) status as a debtor in

one of these bankruptcy proceedings, does not, by itself, constitute a default or grounds for repossessing a motor vehicle.

*House Amendment "A" adds the definition of "check" and "endorsing," changes the definition of "consumer," replaces the term "marketer" with "seller," and eliminates a specific reference to a "plain language" requirement.

*House Amendment "B" adds the provision on retail buyers of motor vehicles in bankruptcy.

EFFECTIVE DATE: October 1, 2008

DEFINITIONS AND CONTRACT TERMS

Under the bill, (1) a check is a draft, other than a documentary draft, payable on demand and drawn on a bank, or a cashier's check or teller's check; (2) a consumer is an actual or prospective purchaser, lessee, or renter of goods or services; (3) endorsing means affixing a signature or the use of other words on the check by the consumer for the purpose of negotiating the check; and (4) a seller is any person who sells, leases, or rents, or offers to do any of these things, by use of a written notice.

The contract must include, at least:

1. the seller's name, address, and telephone number and a telephone number or e-mail address for the consumer to opt out of future solicitations;
2. a detailed description of the goods or services being sold, leased, or rented and a list of all prices or fees being charged, including those for handling, shipping, and delivery;
3. the transaction date;
4. in 10-point boldface type, in a space immediately preceding the space allotted for the consumer's signature, the following statement: "YOU ARE NOT OBLIGATED TO PAY ANY

MONEY UNLESS YOU SIGN THIS CONTRACT AND RETURN IT TO THE ADDRESS CONTAINED IN THIS CONTRACT;" and

- 5. all other material terms and conditions.

Additionally, if the transaction involves a trial offer or introductory rate, the contract must include a clear and conspicuous written notice that the recipient may cancel when the offer or rate ends. The notice must include the procedure for cancelling. If the transaction involves an automatic renewal, the contract must contain a clear and conspicuous notice that the recipient may cancel and must include the procedure for doing so.

BACKGROUND

Connecticut Unfair Trade Practices Act (CUPTA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the Department of Consumer Protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$ 5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$ 5,000 for willful violations and \$ 25,000 for violation of a restraining order.

COMMITTEE ACTION

Banks Committee

Joint Favorable
Yea 17 Nay 0 (03/04/2008)

Judiciary Committee

Joint Favorable

Yea 35 Nay 0 (03/31/2008)