



House of Representatives

General Assembly

File No. 205

January Session, 2009

House Bill No. 5099

House of Representatives, March 25, 2009

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

AN ACT CONCERNING REPOSSESSION OF MOTOR VEHICLES FROM RETAIL BUYERS.

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

1 Section 1. Subsection (a) of section 36a-785 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2009*):

4 (a) When the retail buyer is in default in the payment of any sum
5 due under the retail installment contract or installment loan contract,
6 or in the performance of any other condition [which] that such contract
7 requires him to perform, or in the performance of any promise, the
8 breach of which is by such contract expressly made a ground for the
9 retaking of the goods, the holder of the contract may retake possession
10 thereof, provided the filing of a petition in bankruptcy under 11 USC
11 Chapter 7 by a retail buyer of a motor vehicle, or such retail buyer's
12 status as a debtor in bankruptcy, shall not be considered a default of a
13 retail installment contract or ground for repossession of such motor
14 vehicle. Unless the goods can be retaken without breach of the peace, it

15 shall be retaken by legal process, but nothing herein contained shall be
16 construed to authorize a violation of the criminal law. In the case of
17 repossession of any motor vehicle without the knowledge of the retail
18 buyer, the local police department shall be notified of such
19 repossession immediately thereafter. In the absence of a local police
20 department or if the local police department cannot be reached for
21 notification, the state police shall be promptly notified of such
22 repossession.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	36a-785(a)

BA *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**HB 5099*****AN ACT CONCERNING REPOSSESSION OF MOTOR VEHICLES FROM RETAIL BUYERS.*****SUMMARY:**

By law, when a buyer defaults on a retail installment contract or installment loan contract, the contract holder can repossess the goods if the contract expressly allows him or her to do so. Under the bill, a retail buyer's Chapter 7 or 11 bankruptcy petition filing or bankruptcy debtor status cannot be considered as a default under the contract or grounds for repossession of the vehicle.

EFFECTIVE DATE: October 1, 2009

COMMENT***Possible Contracts Clause Violation***

As the bill does not exclude contracts executed before the bill's effective date, it is possible that it could be challenged as a violation of the Contracts Clause of the U.S. Constitution (Article I, Section 10) for those contracts that have provisions making bankruptcy a default or ground for repossession.

The Contracts Clause of the U.S. Constitution bars states from passing any law that impairs the obligation of contracts. However, the U.S. Supreme Court has held that claims of a contract clause violation must first undergo a three-step analysis. Courts must determine whether (1) there is a contractual relationship, (2) a change in a law has impaired that relationship, and (3) the impairment is substantial (*General Motors Corp. v. Romein*, 503 U.S. 181 (1992)). If the court determines that the contract has been substantially impaired, it must then determine whether the law at issue has a legitimate and important public purpose and whether the adjustment of the rights of

the parties to the contractual relationship was reasonable and appropriate in light of that purpose. A challenged law will not be held to impair the contract clause if the impairment, although substantial, is reasonable and necessary to fulfill an important public purpose (*Energy Reserves Group v. Kansas Power & Light*, 459 U.S. 400, 411-412 (1983)).

COMMITTEE ACTION

Banks Committee

Joint Favorable

Yea 16 Nay 0 (03/10/2009)