



General Assembly

February Session, 2016

***Raised Bill No. 5293***

LCO No. 1010



Referred to Committee on BANKING

Introduced by:  
(BA)

***AN ACT CONCERNING RETAIL INSTALLMENT SALES FINANCING.***

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

1 Section 1. Section 36a-773 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2016*):

3 Every retail seller or sales finance company, if insurance is included  
4 in a retail installment contract, shall, within fifteen days after execution  
5 of the retail installment contract, send or cause to be sent to the retail  
6 buyer a policy or policies or certificate of insurance clearly setting forth  
7 the amount of the premium, the kind or kinds of insurance and the  
8 scope of the coverage and all of the terms, exceptions, limitations,  
9 restrictions and conditions of the insurance contract or contracts. [of  
10 the insurance.] In the event of repossession of goods under section 36a-  
11 785, as amended by this act, the holder of the retail installment contract  
12 shall refund all unearned insurance premiums and apply the refund  
13 toward the balance of the retail buyer's obligations under the retail  
14 installment contract. For purposes of this section, "unearned insurance  
15 premiums" means the premiums that are collected by an insurer in  
16 advance, but subject to return if the coverage under the insurance

17 contract or contracts ends before the term covered by the premiums is  
18 complete.

19 Sec. 2. Section 36a-774 of the 2016 supplement to the general statutes  
20 is repealed and the following is substituted in lieu thereof (*Effective*  
21 *October 1, 2016*):

22 Every installment loan contract shall be in writing executed by the  
23 retail buyer and a copy thereof shall be delivered to such retail buyer  
24 at the time of the execution thereof. Within fifteen days after the  
25 execution of such installment loan contract, the holder thereof shall  
26 send or cause to be sent to the retail buyer a policy or policies or  
27 certificates of insurance clearly setting forth the amount of the  
28 premium, the kind or kinds of insurance and the scope of the coverage  
29 and all of the terms, exceptions, limitations, restrictions and conditions  
30 of the insurance contract or contracts. [of the insurance.] Every  
31 installment loan contract for the purchase of consumer goods subject to  
32 section 36a-771 and this section shall set forth the information required  
33 to be disclosed under sections 36a-675 to 36a-686, inclusive, and the  
34 regulations thereunder, using the form, content and terminology  
35 provided therein.

36 Sec. 3. Section 36a-778 of the general statutes is repealed and the  
37 following is substituted in lieu thereof (*Effective October 1, 2016*):

38 The holder of any retail installment contract or any installment loan  
39 contract shall not receive or collect any charges or expenses for  
40 delinquency and collection, including, but not limited to, any service  
41 fees for accepting payments over the telephone or Internet, except as  
42 follows: The holder of a retail installment contract or installment loan  
43 contract, [other than] except a contract for the purchase of a  
44 commercial vehicle or an installment loan contract regulated by  
45 sections 36a-555 to 36a-573, inclusive, may collect a delinquency and  
46 collection charge for default in the payment of any such contract or  
47 installment [thereof] of such contract, when such default has continued

48 for a period of ten days, such charge not to exceed five per cent of the  
49 amount of the installments in default or the sum of ten dollars,  
50 whichever is the lesser. [; provided this provision shall have no  
51 application to installment loan contracts regulated by sections 36a-555  
52 to 36a-573, inclusive.] The holder of any retail installment contract or  
53 any installment loan contract for the purchase of a commercial vehicle,  
54 as defined in section 36a-770, except an installment loan contract  
55 regulated by sections 36a-555 to 36a-573, inclusive, may collect a  
56 delinquency and collection charge for default in the payment of any  
57 such contract or installment [thereof] of such contract, when such  
58 default has continued for a period of ten days, such charge not to  
59 exceed five per cent of the amount of the installments in default. [,  
60 provided this provision shall have no application to installment loan  
61 contracts regulated by sections 36a-555 to 36a-573, inclusive.] In  
62 addition to any such delinquency and collection charge, the retail  
63 installment contract or the installment loan contract may provide for  
64 the payment of attorney's fees not exceeding fifteen per cent of the  
65 amount due and payable under such contract when such contract is  
66 referred to an attorney, who is not a salaried employee of the holder of  
67 the contract, for collection, plus the court costs. The restriction on  
68 charges [herein provided] under this section shall not apply to any  
69 expenses permitted under section 36a-785, as amended by this act.

70 Sec. 4. Section 36a-785 of the 2016 supplement to the general statutes  
71 is repealed and the following is substituted in lieu thereof (*Effective*  
72 *October 1, 2016*):

73 (a) When the retail buyer is in default in the payment of any sum  
74 due under the retail installment contract or installment loan contract,  
75 or in the performance of any other condition that such contract  
76 requires [him] the retail buyer to perform, or in the performance of any  
77 promise, the breach of which is by such contract expressly made a  
78 ground for the retaking of the goods, the holder of the contract may  
79 retake possession [thereof] of such goods, provided the filing of a  
80 petition in bankruptcy under 11 USC Chapter 7 by a retail buyer of a

81 motor vehicle, or such retail buyer's status as a debtor in bankruptcy,  
82 shall not be considered a default of a retail installment contract or  
83 ground for repossession of such motor vehicle. Unless the goods can  
84 be retaken without breach of the peace, [it] the goods shall be retaken  
85 by legal process, [but nothing herein contained] provided nothing  
86 contained in this section shall be construed to authorize a violation of  
87 the criminal law. In the case of repossession of any motor vehicle  
88 without the knowledge of the retail buyer, the local police department  
89 shall be notified of such repossession [within] not later than two hours  
90 after repossession. In the absence of a local police department or if the  
91 local police department cannot be reached for notification, the state  
92 police shall be promptly notified of such repossession.

93 (b) Not less than ten days prior to the retaking, the holder of such  
94 contract [, if he so desires,] may serve upon the retail buyer, personally  
95 or by registered or certified mail, a notice of intention to retake the  
96 goods on account of the buyer's default. The notice shall state [the] that  
97 the retail buyer is in default and [the period at the end of which]  
98 designate (1) the date upon which such goods will be retaken, [and] (2)  
99 the dollar amount needed to cure the default, and (3) the date by  
100 which such payment shall be made. The notice shall briefly and clearly  
101 state [what] the retail buyer's rights under this subsection [will be] in  
102 [case] the event such goods are retaken. If the notice is so served and  
103 the buyer does not perform the conditions and provisions [as to which  
104 he is in] required under the contract to cure the default before the day  
105 set for retaking, the holder of the contract may retake said goods and  
106 hold such goods subject to the provisions of subsections (d), (e), (f), (g)  
107 and (h) of this section regarding resale, but without any right of  
108 redemption.

109 (c) If the holder of such contract does not give the notice of intention  
110 to retake, described in subsection (b) of this section, [he] the holder  
111 shall retain such goods for fifteen days after the retaking within the  
112 state in which [they] such goods were located when retaken. During  
113 such period the retail buyer, upon payment or tender of the

114 unaccelerated amount due under such contract at the time of retaking  
115 and interest, or upon performance or tender of performance of such  
116 other condition as may be named in such contract as precedent to the  
117 retail buyer's continued possession of such goods, or upon  
118 performance or tender of performance of any other promise for the  
119 breach of which such goods were retaken, and upon payment of the  
120 actual and reasonable expenses of any retaking and storing, may  
121 redeem such goods and become entitled to take possession of [the  
122 same] such goods and to continue in the performance of such contract  
123 as if no default had occurred. The holder of such contract shall, [within  
124 three days of] not later than three days after the retaking, furnish or  
125 mail, by registered or certified mail, to the last known address of the  
126 buyer, a written statement of the unaccelerated sum due under such  
127 contract and the actual and reasonable expense of any retaking and  
128 storing. [For failure] Failure to furnish or mail such statement as  
129 required by this section [, the holder of the contract shall forfeit the]  
130 shall result in forfeiture of the holder's right to claim payment for the  
131 actual and reasonable expenses of retaking and storage, and [also] the  
132 holder shall be liable for the actual damages suffered because of such  
133 failure. If such goods are perishable so that retention for fifteen days  
134 [as herein prescribed] under subsection (d) of this section would result  
135 in their destruction or substantial injury, the provisions of this  
136 subsection shall not apply and the holder of the contract may resell the  
137 goods immediately upon such retaking.

138 (d) If the retail buyer does not redeem such goods within fifteen  
139 days after the holder of the contract has retaken possession, the holder  
140 of the contract shall sell such goods at public or private sale [which  
141 sale may be held] not less than fifteen days and [shall be held] not  
142 more than one hundred eighty days after the retaking. When the  
143 holder of the contract retakes possession by legal process, and an  
144 answer is interposed, the holder of the contract may, at his election,  
145 hold such retaken goods for a period not to exceed thirty days after the  
146 entry of final judgment by a court of competent jurisdiction entitling

147 the holder of the contract to possession of such goods before holding  
148 such resale. The holder of the contract shall give the retail buyer not  
149 less than ten days' written notice of the time and place of any public  
150 sale, or the time after which any private sale or other intended  
151 disposition is to be made, either personally or by registered mail or by  
152 certified mail, [receipted for on mailing] return receipt requested,  
153 directed to the retail buyer at [his] such retail buyer's last-known place  
154 of business or residence. The holder of the contract may bid for such  
155 goods at any public sale. The proceeds of the resale shall be considered  
156 to be either the amount paid for such goods at such sale or the fair cash  
157 retail market value of such goods at the time of repossession,  
158 whichever is the greater, except as otherwise provided in subsection  
159 (g) of this section.

160 (e) Proceeds of the resale shall be applied in the following order of  
161 priority: (1) First, to the payment of the actual and reasonable expenses  
162 [thereof] of such resale, (2) if, after application pursuant to subdivision  
163 (1) of this subsection, there are proceeds remaining, then to the  
164 payment of the actual and reasonable expenses of any retaking and  
165 storing of said goods, and (3) if, after application pursuant to  
166 subdivisions (1) and (2) of this subsection, there are proceeds  
167 remaining, then to the satisfaction of the balance due under the  
168 contract. [Within thirty days of] Not later than thirty days after the  
169 resale, the holder of the contract shall give the retail buyer a written  
170 statement itemizing the disposition of the proceeds. Any sum  
171 remaining after the satisfaction of such claims shall be paid to the retail  
172 buyer.

173 (f) [Notwithstanding that] Even if the proceeds of the resale are [not  
174 sufficient] insufficient to defray the actual and reasonable expenses  
175 [thereof] of such resale, and [also] such actual and reasonable expenses  
176 of any retaking and storing of such goods and the balance due under  
177 the contract, the holder of the contract may not recover the deficiency  
178 from the retail buyer or any surety or guarantor for [him] the retail  
179 buyer, or from any one who has succeeded to the obligations of such

180 retail buyer, except as provided in subsection (g) of this section.

181 (g) If the goods retaken consist of a motor vehicle the aggregate cash  
182 price of which was more than two thousand dollars, the prima facie  
183 fair market value of such motor vehicle shall be calculated by adding  
184 together the [average] highest-stated trade-in value for [that] such  
185 motor vehicle and the [average] highest-stated retail value for [that]  
186 such motor vehicle and dividing [that] the sum of such values by two.  
187 Such [average] highest-stated trade-in value and [average] highest-  
188 stated retail value shall be determined by the values as stated in the  
189 National Automobile Dealers Association Used Car Guide, Eastern  
190 Edition, as of the date of repossession. If the goods retaken consist of a  
191 boat the aggregate cash price of which was more than two thousand  
192 dollars, the prima facie fair market value of such boat shall be  
193 calculated by adding together the [average] highest-stated trade-in  
194 value for [that] such boat and the [average] highest-stated retail value  
195 for [that] such boat and dividing [that] the sum of such values by two.  
196 Such [average] highest-stated trade-in value and [average] highest-  
197 stated retail value shall be determined by the values as stated in the  
198 National Automobile Dealers Association Appraisal Guide for Boats,  
199 Eastern Edition, as of the date of repossession. In the event that the  
200 value of such motor vehicle or boat is not stated in such publication,  
201 [then] the fair market value at retail minus the reasonable costs of  
202 resale shall be determined by the court. The prima facie evidence of  
203 fair market value of such motor vehicle or boat so determined may be  
204 rebutted only by direct in-court testimony. If such value of the motor  
205 vehicle or boat is less than the balance due under the contract, plus the  
206 actual and reasonable expenses of the retaking of possession, the  
207 holder of the contract may recover from the retail buyer, or from  
208 anyone who has succeeded to [his] such retail buyer's obligations, as a  
209 deficiency, the amount by which such liability exceeds such fair  
210 market value, as defined in this subsection. If the actual resale price  
211 received by the holder exceeds such fair market value, as defined in  
212 this subsection, the actual resale price shall govern.

213 (h) After the holder retakes possession as provided in subsection (a)  
214 of this section, or if the holder obtains a prejudgment remedy against  
215 the goods under chapter 903a, the retail buyer or anyone who has  
216 succeeded to [his] such retail buyer's obligations shall not be liable for  
217 any balance due, except to the extent permitted by subsection (g) of  
218 this section. The holder may seek a monetary judgment on the contract  
219 against the buyer unless the goods have been repossessed, with or  
220 without judicial process. Goods purchased under the contract shall not  
221 be executed upon to satisfy such judgment. When such judgment  
222 becomes final, the holder's security interest in the goods shall be  
223 extinguished. If the contract covers a retail sale of a motor vehicle  
224 required to be registered, the holder shall comply with section 14-188.

225 (i) If the holder of the contract fails to comply with the provisions of  
226 subsections (c), (d), (e), (f), (g) and (h) of this section, after retaking the  
227 goods, the retail buyer may recover from the holder of the contract  
228 [his] such retail buyer's actual damages, if any, and in no event less  
229 than one-fourth of the sum of all payments which have been made  
230 under the contract.

231 (j) No act or agreement of the retail buyer before or at the time of the  
232 making of a retail installment contract or installment loan contract nor  
233 any agreement or statement by the retail buyer in such contract shall  
234 constitute a valid waiver of the provisions of subsections (c), (d), (e),  
235 (f), (g), (h) and (i) of this section.

236 (k) After the delivery of the goods to the retail buyer and prior to  
237 any retaking [thereof] of such goods by the holder of the contract, the  
238 risk of injury and loss shall rest upon the retail buyer.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	36a-773
Sec. 2	<i>October 1, 2016</i>	36a-774
Sec. 3	<i>October 1, 2016</i>	36a-778

Sec. 4	October 1, 2016	36a-785
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**Statement of Purpose:**

To modernize the retail sales financing statutes in accordance with current industry practices.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*