
By: Chairman, Commerce and Government Matters Committee (Departmental - Labor, Licensing and Regulation)

Introduced and read first time: January 15, 1997

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Repossessions - Accounting to Commissioner and Borrowers**

3 FOR the purpose of eliminating the requirement of filing a certain accounting with the
4 Commissioner of Financial Regulation; revising the content of a certain accounting
5 required to be given to borrowers; and generally relating to the private sale of
6 repossessed goods.

7 BY repealing and reenacting, with amendments,
8 Article - Commercial Law
9 Section 12-115, 12-921, and 12-1021
10 Annotated Code of Maryland
11 (1990 Replacement Volume and 1996 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article - Commercial Law**

15 12-115.

16 (a) With respect to any loan made at a rate of interest pursuant to § 12-103(a)
17 and (c) or § 12-306 of this title:

18 (1) A lender may repossess goods securing a loan under an agreement if the
19 borrower is in default in:

20 (i) The payment of any sum due under the agreement;

21 (ii) The performance of any other condition which the agreement
22 lawfully requires him to perform in order to obtain unencumbered title to the goods; or

23 (iii) The performance of any promise the breach of which is expressly
24 made a ground for repossessing the goods; and

25 (2) The lender may repossess goods only by:

26 (i) Legal process; or

27 (ii) Self-help, without use of force.

2

1 (b) Nothing in this section authorizes a violation of criminal law.

2 (c) (1) At least 10 days before he repossesses any goods, a lender may serve a
3 written notice on the borrower of his intention to repossess the goods.

4 (2) The notice shall:

5 (i) State the default and any period at the end of which the goods will
6 be repossessed; and

7 (ii) Briefly state the rights of the borrower in case the goods are
8 repossessed.

9 (d) The notice may be delivered to the borrower personally or sent to him at his
10 last known address by registered or certified mail.

11 (e) Within 5 days after he repossesses the goods, the lender shall deliver to the
12 borrower personally or send to him at his last known address by registered or certified
13 mail, a written notice which briefly states:

14 (1) The right of the borrower to redeem the goods, and the amount payable
15 for them;

16 (2) The rights of the borrower as to a resale, and his liability for a
17 deficiency; and

18 (3) The exact location where the goods are stored and the address where
19 any payment is to be made or notice delivered.

20 (f) For 15 days after the lender gives the notice required by subsection (e) of this
21 section, the lender shall retain any repossessed goods.

22 (g) During the period provided for in subsection (f) of this section, the borrower
23 may:

24 (1) Redeem and take possession of the goods; and

25 (2) Resume the performance of the agreement.

26 (h) To redeem the goods, the borrower shall:

27 (1) Tender the amount due under the agreement at the time of redemption,
28 without giving effect to any provision which allows acceleration of any installment
29 otherwise payable after that time;

30 (2) Tender performance of any other promise for the breach of which the
31 goods were repossessed; and

32 (3) If the discretionary notice provided for in subsection (c) of this section
33 was given, pay the actual and reasonable expenses of retaking and storing the goods.

34 (i) This section does not apply if the borrower was guilty of fraudulent conduct,
35 intentionally and wrongfully concealed, removed, damaged, or destroyed the goods, or
36 attempted to do so, and the goods were repossessed because of that conduct.

3

1 (j) (1) The lender shall sell the repossessed goods at private sale (subject to the
 2 provisions of paragraph (2) of this subsection) or at public auction. At least 10 days
 3 before the sale, the lender shall notify the borrower in writing sent by certified mail,
 4 return receipt requested, sent to the borrower's last known address of the time and place
 5 of sale. Any sale of repossessed property must be accomplished in a commercially
 6 reasonable manner.

7 (2) In all cases of a private sale of repossessed goods under this section, a
 8 full accounting shall be made to the borrower in writing and the seller shall [file]
 9 RETAIN a copy of this accounting [with the Commissioner of Financial Regulation] FOR
 10 AT LEAST 24 MONTHS. This accounting shall contain the following information:

- 11 (i) The unpaid balance at the time the goods were repossessed;
- 12 (ii) The refund credit of unearned finance charges and insurance
 13 premiums, if any;
- 14 (iii) The remaining net balance;
- 15 (iv) The proceeds of the sale of the goods;
- 16 (v) The remaining deficiency balance, if any, or the amount due the
 17 buyer;
- 18 (vi) All expenses incurred as a result of the sale;
- 19 (vii) The [requirement that the] purchaser's name, address, and
 20 business [must be filed by the seller with the Commissioner of Financial Regulation and
 21 that the Commissioner may provide that information to the borrower where it is necessary
 22 to ascertain that:
- 23 1. The sale was accomplished in a commercially reasonable
 24 manner; and
- 25 2. Any alleged deficiency balance due the seller is, in fact,
 26 due];
- 27 (viii) The number of bids sought and received; and
- 28 (ix) Any statement as to the condition of the goods at the time of
 29 repossession which would cause their value to be increased or decreased above or below
 30 the market value for goods of like kind and quality.

31 [(3) In addition to the information required under paragraph (2) of this
 32 subsection, the seller shall file with the Commissioner of Financial Regulation the
 33 purchaser's name, address, and business address. The Commissioner may provide to the
 34 borrower the purchaser's name, address, and business address if the Commissioner
 35 determines that the borrower must have the information in order to ascertain that:

- 36 (i) The sale was accomplished in a commercially reasonable manner;
 37 and
- 38 (ii) Any alleged deficiency balance due the seller is, in fact, due.]

4

1 [(4)] (3) The Commissioner of Financial Regulation may make a
2 determination concerning any private sale that the sale was not accomplished in a
3 commercially reasonable manner. Upon that determination, the Commissioner may enter
4 an order disallowing any claim for a deficiency balance.

5 (k) (1) The provisions of this subsection apply to a public sale of goods which
6 secured a loan in excess of \$2,000 at the time the loan was made.

7 (2) The proceeds of a sale to which this subsection applies shall be applied,
8 in the following order, to:

9 (i) The actual and reasonable cost of the sale;

10 (ii) The actual and reasonable cost of retaking and storing the goods;
11 and

12 (iii) The unpaid balance owing under the agreement at the time the
13 goods are repossessed.

14 (3) The lender shall furnish to the buyer a written statement which shows
15 the distribution of the proceeds.

16 (4) If the provisions of this section, including the requirement of furnishing
17 a notice following repossession, are not followed, the lender shall not be entitled to any
18 deficiency judgment to which he would be entitled under the loan agreement.

19 (l) If there is no resale of repossessed goods, all obligations of the borrower
20 under the agreement shall be discharged, and the holder may retain the goods as his own
21 property without obligation to account to the buyer.

22 12-921.

23 (a) (1) A credit grantor may repossess tangible personal property securing a
24 plan under an agreement if the consumer borrower is in default.

25 (2) The credit grantor may repossess tangible personal property from a
26 consumer borrower only by:

27 (i) Legal process; or

28 (ii) Self-help, without use of force.

29 (b) Nothing in this section authorizes a violation of criminal law.

30 (c) (1) At least 10 days before a credit grantor repossesses any tangible
31 personal property, the credit grantor may serve a written notice on the consumer
32 borrower of the intention to repossess the tangible personal property.

33 (2) The notice shall:

34 (i) State the default and any period at the end of which the tangible
35 personal property will be repossessed; and

36 (ii) Briefly state the rights of the consumer borrower in case the
37 tangible personal property is repossessed.

5

1 (d) The notice may be delivered to the consumer borrower personally or sent to
2 him at his last known address by registered or certified mail.

3 (e) Within 5 days after the credit grantor repossesses the tangible personal
4 property the credit grantor shall deliver to the consumer borrower personally or send to
5 him at his last known address by registered or certified mail, a written notice which briefly
6 states:

7 (1) The right of the consumer borrower to redeem the tangible personal
8 property, and the amount payable for it;

9 (2) The rights of the consumer borrower as to a resale, and his liability for a
10 deficiency; and

11 (3) The exact location where the tangible personal property is stored and
12 the address where any payment is to be made.

13 (f) For 15 days after the credit grantor gives the notice required by subsection (e)
14 of this section, the credit grantor shall retain any repossessed property.

15 (g) During the period provided for in subsection (f) of this section, the consumer
16 borrower may:

17 (1) Redeem and take possession of the property; and

18 (2) Resume the performance of the agreement.

19 (h) To redeem the property, the consumer borrower shall:

20 (1) Tender the amount due under the agreement at the time of redemption,
21 without giving effect to any provision which allows acceleration of any installment
22 otherwise payable after that time;

23 (2) Tender performance of any other promise for the breach of which the
24 property was repossessed; and

25 (3) If the discretionary notice provided for in subsection (c) of this section
26 was given, pay the actual and reasonable expenses of retaking and storing the property.

27 (i) This section does not apply if the consumer borrower was guilty of fraudulent
28 conduct, intentionally and wrongfully concealed, removed, damaged, or destroyed the
29 property, or attempted to do so, and the property was repossessed because of that
30 conduct, or if the property has been previously repossessed from the consumer borrower
31 and redeemed by the consumer borrower.

32 (j) (1) (i) Subject to subsection (l) of this section, the credit grantor shall sell
33 the property that was repossessed at:

34 1. Subject to paragraph (2) of this subsection, a private sale; or

35 2. A public auction.

6

1 (ii) At least 10 days before the sale, the credit grantor shall notify the
 2 consumer borrower in writing of the time and place of the sale, by certified mail, return
 3 receipt requested, sent to the consumer borrower's last known address.

4 (iii) Any sale of repossessed property must be accomplished in a
 5 commercially reasonable manner.

6 (2) In all cases of a private sale of repossessed goods under this section, a
 7 full accounting shall be made to the borrower in writing and the seller shall [file]
 8 RETAIN a copy of this accounting [with the Commissioner of Financial Regulation] FOR
 9 AT LEAST 24 MONTHS. This accounting shall contain the following information:

10 (i) The unpaid balance at the time the goods were repossessed;

11 (ii) The refund credit of unearned finance charges and insurance
 12 premiums, if any;

13 (iii) The remaining net balance;

14 (iv) The proceeds of the sale of the goods;

15 (v) The remaining deficiency balance, if any, or the amount due the
 16 buyer;

17 (vi) All expenses incurred as a result of the sale;

18 (vii) The purchaser's name, address, and business;

19 (viii) The number of bids sought and received; and

20 (ix) Any statement as to the condition of the goods at the time of
 21 repossession which would cause their value to be increased or decreased above or below
 22 the market value for goods of like kind and quality.

23 (3) The Commissioner of Financial Regulation may make a determination
 24 concerning any private sale that the sale was not accomplished in a commercially
 25 reasonable manner. Upon that determination, the Commissioner may enter an order
 26 disallowing any claim for a deficiency balance.

27 (k) (1) The provisions of this subsection apply to a public sale of property which
 28 secured a plan in excess of \$2,000 at the time the plan was made.

29 (2) The proceeds of a sale to which this subsection applies shall be applied,
 30 in the following order, to:

31 (i) The actual and reasonable cost of the sale;

32 (ii) The actual and reasonable cost of retaking and storing the
 33 property; and

34 (iii) The unpaid balance owing under the agreement at the time the
 35 property was repossessed.

36 (3) The credit grantor shall furnish to the consumer borrower a written
 37 statement which shows the distribution of the proceeds.

7

1 (4) If the provisions of this section, including the requirement of furnishing
2 a notice following repossession, are not followed, the credit grantor shall not be entitled
3 to any deficiency judgment to which he would be entitled under the plan.

4 (1) (1) (i) In this subsection, "consumer goods" means tangible personal
5 property used or bought for use primarily for personal, family, or household purposes that
6 is:

7 1. Movable at the time a security interest attaches; or

8 2. A fixture.

9 (ii) "Consumer goods" does not include money, documents,
10 instruments, accounts, chattel paper, or general intangibles.

11 (2) This subsection applies to tangible personal property securing a plan
12 that:

13 (i) Has been repossessed by the credit grantor; or

14 (ii) Is in actual or constructive possession of the credit grantor where
15 the perfection of the security interest in the property depends on the possession of the
16 property.

17 (3) In the case of a purchase money security interest in consumer goods, if a
18 consumer borrower has paid 60 percent of the cash price and, after default, has not
19 signed a statement renouncing or modifying the consumer borrower's rights under this
20 subsection, a credit grantor who has repossessed the consumer goods must take
21 reasonable action within 90 days after the repossession to commence disposal of them in
22 the manner provided under subsection (j) of this section.

23 (4) (i) In any other case involving tangible personal property securing a
24 plan, a credit grantor may, after default, propose to retain the property in full satisfaction
25 of the obligations of the borrower under the plan.

26 (ii) If, as authorized by subparagraph (i) of this paragraph, a credit
27 grantor proposes to retain property in full satisfaction of the obligations of the borrower
28 under the plan, the credit grantor shall send written notice of the proposal to:

29 1. The consumer borrower; and

30 2. Except in the case of consumer goods, any other person who
31 has a security interest in the property and who:

32 A. Has duly filed a financing statement indexed in the name of
33 the consumer borrower in this State; or

34 B. Is known by the credit grantor to have a security interest in
35 the property.

36 (iii) 1. If the consumer borrower or other person entitled to receive
37 notification objects in writing within 30 days from the sending of the notification, the
38 credit grantor must take reasonable action to dispose of the property in the manner
39 provided under subsection (j) of this section.

9

1 (3) The exact location where the tangible personal property is stored and
2 the address where any payment is to be made.

3 (f) For 15 days after the credit grantor gives the notice required by subsection (e)
4 of this section, the credit grantor shall retain any repossessed property.

5 (g) During the period provided for in subsection (f) of this section, the consumer
6 borrower may:

7 (1) Redeem and take possession of the property; and

8 (2) Resume the performance of the agreement.

9 (h) To redeem the property, the consumer borrower shall:

10 (1) Tender the amount due under the agreement at the time of redemption,
11 without giving effect to any provision which allows acceleration of any installment
12 otherwise payable after that time;

13 (2) Tender performance of any other promise for the breach of which the
14 property was repossessed; and

15 (3) If the discretionary notice provided for in subsection (c) of this section
16 was given, pay the actual and reasonable expenses of retaking and storing the property.

17 (i) (1) Notwithstanding subsections (g) and (h) of this section, the credit
18 grantor shall have the right to require the consumer borrower to tender payment of the
19 entire balance due under the agreement if:

20 (i) The date of the default in the payments due under the agreement
21 that led to the present repossession occurred within 18 months after the last repossession;
22 or

23 (ii) The consumer borrower was guilty of fraudulent conduct,
24 intentionally and wrongfully concealed, removed, damaged, or destroyed the property, or
25 attempted to do so, and the property was repossessed because of that conduct.

26 (2) Under paragraph (1) of this subsection, the payment by the consumer
27 borrower of the entire balance due under the agreement shall:

28 (i) Constitute redemption by the consumer borrower; and

29 (ii) Entitle the consumer borrower to take possession of the property.

30 (j) (1) (i) Subject to subsection (l) of this section, the credit grantor shall sell
31 the property that was repossessed at:

32 1. Subject to paragraph (2) of this subsection, a private sale; or

33 2. A public auction.

34 (ii) At least 10 days before the sale, the credit grantor shall notify the
35 consumer borrower in writing of the time and place of the sale, by certified mail, return
36 receipt requested, sent to the consumer borrower's last known address.

10

1 (iii) Any sale of repossessed property must be accomplished in a
2 commercially reasonable manner.

3 (2) In all cases of a private sale of repossessed goods under this section, a
4 full accounting shall be made to the borrower in writing and the seller shall [file]
5 RETAIN a copy of this accounting [with the Commissioner of Financial Regulation] FOR
6 AT LEAST 24 MONTHS. This accounting shall contain the following information:

7 (i) The unpaid balance at the time the goods were repossessed;

8 (ii) The refund credit of unearned finance charges and insurance
9 premiums, if any;

10 (iii) The remaining net balance;

11 (iv) The proceeds of the sale of the goods;

12 (v) The remaining deficiency balance, if any, or the amount due the
13 buyer;

14 (vi) All expenses incurred as a result of the sale;

15 (vii) The [requirement that the] purchaser's name, address, and
16 business [must be filed by the seller with the Commissioner of Financial Regulation and
17 that the Commissioner may provide the information to the borrower whenever it is
18 necessary to ascertain that:

19 1. The sale was accomplished in a commercially reasonable
20 manner; and

21 2. Any alleged deficiency balance due the seller is, in fact,
22 due];

23 (viii) The number of bids sought and received; and

24 (ix) Any statement as to the condition of the goods at the time of
25 repossession which would cause their value to be increased or decreased above or below
26 the market value for goods of like kind and quality.

27 [(3) In addition to the information required under paragraph (2) of this
28 subsection, the seller shall file with the Commissioner of Financial Regulation the
29 purchaser's name, address, and business address. The Commissioner may provide to the
30 borrower the purchaser's name, address, and business address if the Commissioner
31 determines that the borrower must have the information in order to ascertain that:

32 (i) The sale was accomplished in a commercially reasonable manner;
33 and

34 (ii) Any alleged deficiency balance due the seller is, in fact, due.]

35 [(4)] (3) The Commissioner of Financial Regulation may make a
36 determination concerning any private sale that the sale was not accomplished in a
37 commercially reasonable manner. Upon that determination, the Commissioner may enter
38 an order disallowing any claim for a deficiency balance.

11

1 (k) (1) The provisions of this subsection apply to a public sale of property which
2 secured a loan in excess of \$2,000 at the time the loan was made.

3 (2) The proceeds of a sale to which this subsection applies shall be applied,
4 in the following order, to:

5 (i) The actual and reasonable cost of the sale;

6 (ii) The actual and reasonable cost of retaking and storing the
7 property; and

8 (iii) The unpaid balance owing under the agreement at the time the
9 property was repossessed.

10 (3) The credit grantor shall furnish to the consumer borrower a written
11 statement which shows the distribution of the proceeds.

12 (4) If the provisions of this section, including the requirement of furnishing
13 a notice following repossession, are not followed, the credit grantor shall not be entitled
14 to any deficiency judgment to which he would be entitled under the loan agreement.

15 (l) (1) (i) In this subsection, "consumer goods" means tangible personal
16 property used or bought for use primarily for personal, family, or household purposes that
17 is:

18 1. Movable at the time a security interest attaches; or

19 2. A fixture.

20 (ii) "Consumer goods" does not include money, documents,
21 instruments, accounts, chattel paper, or general intangibles.

22 (2) This subsection applies to tangible personal property securing a loan
23 that:

24 (i) Has been repossessed by the credit grantor; or

25 (ii) Is in actual or constructive possession of the credit grantor where
26 the perfection of the security interest in the property depends on the possession of the
27 property.

28 (3) In the case of a purchase money security interest in consumer goods, if a
29 consumer borrower has paid 60 percent of the cash price or 60 percent of the loan in the
30 case of another security interest in consumer goods and, after default, has not signed a
31 statement renouncing or modifying the consumer borrower's rights under this subsection,
32 a credit grantor who has repossessed the consumer goods must take reasonable action
33 within 90 days after the repossession to commence disposal of them in the manner
34 provided under subsection (j) of this section.

35 (4) (i) In any other case involving tangible personal property securing a
36 loan, a credit grantor may, after default, propose to retain the property in full satisfaction
37 of the obligations of the borrower under the loan.

12

1 (ii) If, as authorized by subparagraph (i) of this paragraph, a credit
2 grantor proposes to retain property in full satisfaction of the obligations of the borrower
3 under the loan, the credit grantor shall send written notice of the proposal to:

4 1. The consumer borrower; and

5 2. Except in the case of consumer goods, any other person who
6 has a security interest in the property and who:

7 A. Has duly filed a financing statement indexed in the name of
8 the consumer borrower in this State; or

9 B. Is known by the credit grantor to have a security interest in
10 the property.

11 (iii) 1. If the consumer borrower or other person entitled to receive
12 notification objects in writing within 30 days from the sending of the notification, the
13 credit grantor must take reasonable action to dispose of the property in the manner
14 provided under subsection (j) of this section.

15 2. In the absence of written objection, the credit grantor may
16 retain the property in full satisfaction of the outstanding unpaid indebtedness under the
17 loan.

18 (5) If despite complying with the requirements of this section there is no
19 sale of tangible personal property securing a loan under subsection (j) of this section:

20 (i) The credit grantor may retain the property without obligation to
21 account to the borrower; and

22 (ii) If the property is retained, all obligations of the borrower under
23 the loan shall be discharged.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 1997.