
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

Committee Report: Favorable

House action: Adopted

Read second time: February 4, 1997

CHAPTER ____

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;

2

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

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

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

6 (i) Legal process; or

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

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

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

11 (2) The notice shall:

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

14 (ii) Briefly state the rights of the borrower in case the goods are
15 repossessed.

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

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

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

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

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

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

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

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

32 (2) Resume the performance of the agreement.

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

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

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

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

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

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

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

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

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

21 (iii) The remaining net balance;

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

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

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

26 (vii) The [requirement that the] purchaser's name, address, and
27 business [must be filed by the seller with the Commissioner of Financial Regulation and
28 that the Commissioner may provide that information to the borrower where it is necessary
29 to ascertain that:

30 1. The sale was accomplished in a commercially reasonable
31 manner; and

32 2. Any alleged deficiency balance due the seller is, in fact,
33 due];

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

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

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

6 (i) The sale was accomplished in a commercially reasonable manner;
7 and

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

9 [(4)] (3) The Commissioner of Financial Regulation may make a
10 determination concerning any private sale that the sale was not accomplished in a
11 commercially reasonable manner. Upon that determination, the Commissioner may enter
12 an order disallowing any claim for a deficiency balance.

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

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

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

18 (ii) The actual and reasonable cost of retaking and storing the goods;
19 and

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

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

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

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

30 12-921.

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

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

35 (i) Legal process; or

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

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

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

4 (2) The notice shall:

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

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

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

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

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

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

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

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

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

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

26 (2) Resume the performance of the agreement.

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

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

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

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

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

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1 conduct, or if the property has been previously repossessed from the consumer borrower
2 and redeemed by the consumer borrower.

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

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

6 2. A public auction.

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

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

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

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

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

19 (iii) The remaining net balance;

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

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

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

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

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

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

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

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

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

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

2 (ii) The actual and reasonable cost of retaking and storing the
3 property; and

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

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

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

11 (1) (1) (i) In this subsection, "consumer goods" means tangible personal
12 property used or bought for use primarily for personal, family, or household purposes that
13 is:

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

15 2. A fixture.

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

18 (2) This subsection applies to tangible personal property securing a plan
19 that:

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

21 (ii) Is in actual or constructive possession of the credit grantor where
22 the perfection of the security interest in the property depends on the possession of the
23 property.

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

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

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

36 1. The consumer borrower; and

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

erest in consumer goods, if a

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

3 B. Is known by the credit grantor to have a security interest in
4 the property.

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

9 2. In the absence of written objection, the credit grantor may
10 retain the property in full satisfaction of the outstanding unpaid indebtedness under the
11 plan.

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

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

16 (ii) If the property is retained, all obligations of the borrower under
17 the plan shall be discharged.

18 12-1021.

19 (a) (1) A credit grantor may repossess tangible personal property securing a
20 loan under an agreement, note, or other evidence of the loan if the consumer borrower is
21 in default.

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

24 (i) Legal process; or

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

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

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

30 (2) The notice shall:

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

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

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

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

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

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

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

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

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

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

16 (2) Resume the performance of the agreement.

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

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

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

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

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

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

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

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

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

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

10

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

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

4 2. A public auction.

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

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

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

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

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

17 (iii) The remaining net balance;

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

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

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

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

26 1. The sale was accomplished in a commercially reasonable
27 manner; and

28 2. Any alleged deficiency balance due the seller is, in fact,
29 due];

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

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

34 [(3) In addition to the information required under paragraph (2) of this
35 subsection, the seller shall file with the Commissioner of Financial Regulation the
36 purchaser's name, address, and business address. The Commissioner may provide to the

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1 borrower the purchaser's name, address, and business address if the Commissioner
2 determines that the borrower must have the information in order to ascertain that:

3 (i) The sale was accomplished in a commercially reasonable manner;
4 and

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

6 [(4)] (3) The Commissioner of Financial Regulation may make a
7 determination concerning any private sale that the sale was not accomplished in a
8 commercially reasonable manner. Upon that determination, the Commissioner may enter
9 an order disallowing any claim for a deficiency balance.

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

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

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

15 (ii) The actual and reasonable cost of retaking and storing the
16 property; and

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

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

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

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

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

28 2. A fixture.

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

31 (2) This subsection applies to tangible personal property securing a loan
32 that:

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

34 (ii) Is in actual or constructive possession of the credit grantor where
35 the perfection of the security interest in the property depends on the possession of the
36 property.

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

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

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

14 1. The consumer borrower; and

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

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

19 B. Is known by the credit grantor to have a security interest in
20 the property.

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

25 2. In the absence of written objection, the credit grantor may
26 retain the property in full satisfaction of the outstanding unpaid indebtedness under the
27 loan.

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

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

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

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

