S.108

Introduced by Senator Pearson

Referred to Committee on

Date:

Subject: Commerce and trade; consumer protection

Statement of purpose of bill as introduced: This bill proposes to create certain protections for consumers before a lender or lessor may repossess an automobile.

An act relating to the Vermont Automobile Repossession Act

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 9 V.S.A. chapter 58 is added to read:

CHAPTER 58. VERMONT AUTOMOBILE REPOSSESSION ACT

§ 2341. FINDINGS AND PURPOSE

(a) The General Assembly finds:

(1) Living in a rural State, Vermonters rely heavily on automobiles for their personal and professional obligations.

(2) Vermont consumers who have purchased an automobile through an extension of credit, or who have leased an automobile, may fall behind on payments, and default may occur more frequently during difficult economic or emotional times.

(3) Vermont consumers should be allowed an opportunity to cure a default on the loan or lease within a reasonable time before an automobile is repossessed.

(b) The purpose of this chapter is to ensure that:

(1) Vermont consumers are allowed to cure a default on a loan or lease within the time provided in this chapter.

(2) If a Vermont consumer is unable to cure a default, and the secured party or lessor repossesses the automobile, the repossession cannot take place unless without a breach of the peace.

(3) In the event of repossession, a consumer is allowed to redeem the automobile within the time provided by this chapter.

(4) The secured party who holds title to the automobile, or the lessor, shall be allowed to dispose of the automobile after repossession in order to recover the fair market value of the vehicle and expenses from the repossession according to the provisions of this chapter and any other applicable laws of this State.

§ 2342. DEFINITIONS

As used in this chapter:

(1) "Automobile" means a passenger motor vehicle that is purchased, leased, or registered in the State of Vermont and shall not include tractors, motorized highway building equipment, road-making appliances,

snowmobiles, the living portion of recreation vehicles, or trucks with a gross vehicle weight rating over 12,000 pounds, and that is used or bought for use primarily for personal, family, or household purposes.

(2) "Automobile lease agreement" means the bargain, with respect to the lease, of the lessor and the consumer in fact as found in their language. The term includes a sublease agreement.

(3) "Automobile loan agreement" means a transaction that creates or provides for a security interest in an automobile in which:

(A) a consumer incurs an obligation primarily for personal, family, or household purposes;

(B) a security interest secures the obligation; and

(C) the automobile is held or acquired primarily for personal, family, or household purposes.

(4) "Consumer":

(A) means a natural person in an automobile lease agreement who acquires, applies for, or is offered the right to possession and use of an automobile, and includes his or her legal representative, fiduciary, executor, administrator, or successor in interest, but does not include a guarantor on a consumer lease; or

(B) means a natural person, and his or her legal representative, fiduciary, executor, administrator, or successor in interest, who, with respect to an obligation secured by a security interest in the automobile:

(i) owes payment or other performance of the obligation;

(ii) has provided property other than the collateral to secure payment or other performance of the obligation; or

(iii) is otherwise accountable in whole or part for payment or other performance of the obligation; and

(C) does not include issuers or nominated persons under a letter of credit.

(5) "Lessor" means a person who transfers the right to possession and use of an automobile under an automobile lease agreement. Unless the context clearly indicates otherwise, the term includes a sublessor.

(6) "Secured party" means a person or business that holds a security interest arising under an automobile loan agreement.

§ 2343. DEFAULT; NOTICE; RIGHT TO CURE; REINSTATEMENT

(a) The default provisions of a consumer automobile lease agreement or automobile loan agreement are enforceable only to the extent that:

(1) the consumer does not make one or more payments required by the lease or loan agreement; or

(2) the lessor or secured party establishes that the prospect of payment, performance, or realization of the lessor's or secured party's interest in the automobile is significantly impaired.

(b)(1) After a default under an automobile lease agreement or automobile loan agreement by the consumer, the lessor or secured party shall not accelerate, take judicial action to collect, or repossess the automobile until the lessor or secured party gives the consumer the notice required by this section and the consumer does not cure the default in the time allowed under this section.

(2) A lessor or secured party may initiate a procedure to cure by sending to the consumer, at any time after the consumer has been in default for 10 days, a notice of the right to cure the default.

(3) The notice shall be delivered via certified mail, return receipt requested, or via first-class mail, at the consumer's address last known to the lessor or secured party.

(4) The time when notice is given shall be deemed to be upon actual delivery of the notice to the consumer or three business days following the mailing of the notice to the consumer at the consumer's address last known to the lessor or secured party.

(c) The notice shall be in writing and shall conspicuously state the rights of the consumer upon default in substantially the following form:

(1) The heading shall read: "Rights of Defaulting Consumer under Vermont Law."

(2) The body of the notice shall read:

"You may cure your default in (describe automobile lease or loan agreement in a manner enabling the consumer to identify it) by paying to (name and address of lessor or secured party) (amount due) before (date that is at least 21 days after notice is delivered).

"If you pay this amount within the time allowed, you are no longer in default and may continue with the automobile (lease or loan) agreement as though no default has occurred.

"If you do not cure your default by the date stated above, the lessor or secured party may sue you to obtain a judgment for the amount of the debt and may take possession of the automobile.

"If the lessor or secured party takes possession of the automobile, you may get it back by paying the full amount of your debt plus any reasonable expenses incurred by the lessor or secured party if you make the required payment within 20 days after the lessor or secured party takes possession.

"If (the secured party) sells the vehicle repossessed from the consumer for an amount exceeding the amount outstanding on the automobile (loan) agreement, including reasonable expenses related to judicial action and or repossession, the excess funds shall be returned promptly to the defaulting consumer.

"You have the right to cure a default only once in any 12-month period during the automobile (lease or loan) agreement.

"If you default again within the next 12 months in making your payments, we may exercise our rights without sending you another right-to-cure notice.

"If you have questions, telephone (name of lessor or secured party) at (telephone number)."

(d)(1) Within the period for cure stated in the notice under this section, the consumer may cure the default by tendering the amount of all unpaid sums due at the time of tender, including any unpaid delinquency or default charges, but without additional security deposit or prepayment of period payments not yet due.

(2) Cure restores the rights of the lessor or secured party and consumer under the automobile loan agreement or automobile lease agreement as if the default had not occurred.

(e) A consumer has the right to cure only once in any 12-month period during the automobile lease agreement or automobile loan agreement.

§ 2344. REPOSSESSION OF AUTOMOBILE AS A RESULT OF DEFAULT UNDER A LOAN OR LEASE AGREEMENT

(a)(1) A lessor or secured party under a consumer automobile lease agreement or automobile loan agreement may take possession of the automobile.

(2) In taking possession, the lessor or secured party may proceed only if the possession can be obtained without a breach of the peace.

(b) The consumer under an automobile lease agreement or automobile loan agreement may redeem the automobile from the lessor or secured party and have the automobile lease agreement or automobile loan agreement reinstated at any time within 20 days of the lessor's or secured party's taking possession of the automobile, or thereafter until the lessor or secured party has either disposed of the automobile, entered into a contract for its disposition, or gained the right to retain the automobile.

(c) The lessor or secured party may, after gaining possession of the automobile, sell or otherwise dispose of the automobile after the 20-day redemption period provided for in subsection (b) of this section.

§ 2345. STATUTE OF LIMITATIONS

(a) An action for default under an automobile lease agreement or automobile loan agreement, including breach of warranty or indemnity, must be commenced within two years after the cause of action accrued.

(b) By the original lease or loan agreement, the parties may reduce the period of limitation to not less than one year.

Sec. 2. PROSPECTIVE APPLICATION

This act shall apply only to a loan or lease agreement that is executed or renewed on or after July 1, 2017.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2017.