

HOUSE BILL ANALYSIS

SB 5181

Title: An act relating to a debtor's liability for a deficiency after default under a security agreement.

Brief Description: Making certain debtors liable for any deficiency after default.

Sponsors: Senators Roach, Fairley, Prentice, Benton and Winsley.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Bill Perry (786-7123).

Background: A person who loans money may take a security interest to protect his or her ability to receive repayment of the loan. A creditor with a secured interest in a debt has certain rights when the debtor fails to repay the debt. Certain of those remedies are set out in statute. Other remedies, except as limited or prohibited by statute, may be a part of the contractual agreement between the debtor and the creditor.

One class of security interest is an interest taken by a creditor in exchange for providing the debtor with the money to purchase consumer goods. The creditor's retained interest is in the goods themselves as collateral for the loan. A purchase money security interest in consumer goods may be taken by the seller of the consumer goods, or by a third-party creditor. For instance, when a person buys a car and does not pay cash for it, the purchase may be financed either by the seller of the car or by a bank. In either case, the bank or the car dealer may secure the loan by retaining the right to repossess the car if the debtor defaults on the loan. In the case of a seller financed purchase, the seller may also subsequently convey his or her right to repayment and his or her security interest in the car to a third party.

Under Washington's version of the Uniform Commercial Code (UCC), there are at least four ways a creditor may enforce a purchase money security interest in consumer goods:

- (1) The creditor may repossess the goods;
- (2) The creditor may repossess the goods, sell them, and satisfy the debt out of the proceeds;
- (3) The creditor may file an action in superior court on the debt and obtain a judgment which may then be enforced as other judgments are; or

- (4) The creditor may obtain a judgment and then proceed to a judicial sale of the collateral.

Generally, the second two procedures, involving obtaining a judgment and judicial enforcement of the judgment, are more cumbersome, expensive, and time consuming than the non-judicial remedies of repossession or repossession and sale.

In the case of a non-judicial repossession and sale, the value of the collateral that secures a purchase money loan may not equal the amount of the debt. If the proceeds of sale exceed the debt, the debtor is to receive the excess. If the proceeds of the sale fall short of the debt, however, the creditor may be barred from recovering the deficiency.–

This state has a unique provision in its version of the UCC which prevents some creditors from recovering a deficiency following repossession and sale of consumer goods. This provision was adopted by the Washington Legislature at the time of the original enactment of this state's version of the UCC in 1965. The state supreme court has noted that the provision is somewhat akin to prior Washington law which held that if a conditional sale vendor repossessed, he could not obtain a deficiency.– *Commercial Credit Equipment v. Carter*. Under this provision, a *seller* of goods who has retained a purchase money security interest may not recover a deficiency following non-judicial repossession and sale. This prohibition also applies to one who purchases the security interest from the seller-creditor. This prohibition does not apply, however, to a *third-party creditor* who finances the purchase of consumer goods. *Credit Union v. Edwards*.

Summary of Bill: The prohibition on a deficiency recovery by a holder of a purchase money security interest in consumer goods who repossesses and sells the goods is removed.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.