

Legislative History for Connecticut Act

SB 489	PA 76-258	1976
Gen. Law. 678-687, 688-693		(16)
Sen. 1374-1386		(23)
House 3579-3584		(6)

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converted to annual percentage rates so that there is a consistency between the maximum rate limitations and the disclosures required Truth in Lending.

We would suggest though that in this particular bill that when using the term, annual percentage rate, that perhaps it be defined or pegged to the definition of annual percentage rate included in the Truth in Lending Act, so there can be no argument as to what annual percentage rate means.

And that concludes our testimony on these three bills. Do I understand correctly that you are also hearing several bills today having to do with repossession?

REP. COLLINS: That's correct.

MR. FOCHT: We were unaware of that and would like to ask the Committee's indulgence in receiving perhaps some written testimony at a later date on those bills, if that would be all right?

REP. GRANDE: As long as you get them before the...

MR. FOCHT: All right. We can.

REP. GRANDE: Make it as soon as possible.

MR. FOCHT: We can get it in almost immediately. Thank you very much.

REP. GRANDE: Bill Warren.

WILLIAM WARREN: Okay. Gentlemen, ladies. My name is Bill Warren. I'm a third year law student at the University of Connecticut and a...and Comments Editor. I'm here testifying on behalf of - in favor of Bill No. 489, which concerns elections of remedies in retail installment sales financing agreements.

I have prepared remarks, which will take about five minutes to go through, but any time that you have any questions or anything like that, I'd be happy to take them as they occur.

For the past year, we've - various members of the University of Connecticut Law Review have been working on the study of...practices. About twenty members of the Review have participated in various parts of this study including preparation of articles. One of the things that a good number of the twenty were involved in was the study of the Hartford Common Pleas and Small Claims Court, specifically with respect to small actions on installment credit.

My particular role in this project was the preparation of an article on deficiency judgments that's going to appear in the summer issue

of the Law Review, and also directing the court study that these twenty people worked on.

Now, I've got a copy of a preliminary draft of that article, which I'd like to put into - I guess, into the record, and in addition, I have some commentary on the Bill 489, which I think would also be useful in terms of the record, although I'm not going to get into it in any way right now. So that is this material here.

I guess with your permission, I will pass it along wherever. Of course it should be -- I should make clear very early that I'm acting as an individual here now. This isn't...he doesn't take any official position on any legislation or anything like that. This is all on my own clip, more or less.

What I'm interested in doing today is telling you as objectively as possible what we found in our study of the Hartford courts. Obviously, I've got a personal opinion on it, and I'm going to try and shy away as much as I can from that personal opinion and get as close as I can to the facts.

Just very briefly, there is - I feel that there's a problem with deficiency judgments and I feel that that's objectively verifiable-- in other words, that this problem exists. And interestingly, Connecticut, although it's only one state in the Union, and although this is a national problem, one -- the first, really of three studies that were done on automobile deficiency judgments, was done in 1969 right here in Connecticut. And our study, which was only the second detailed study in the country of its kind on small installment action was only the second of its kind in the country, as well. So we have, I would say five or six handfuls of studies that have been done, have been done in Connecticut. One in Hartford here, right within six blocks of the Capitol.

Now, I guess deficiency judgment, I should explain and just very briefly, basically when a security interest is taken in consumer goods and the debtor defaults on that obligation, the retail buyer as it's called in the statute, then that collateral can be repossessed and it's resold and the difference between the obligation and what --the price that was obtained upon resale is plus other charges such as attorneys' fees and court costs is the deficiency judgment.

Our studies and the studies that we've done and the studies that I..you today on, indicate that the very existence of deficiency judgment mechanism reduces the whole incentive to maximize the resale price of repossessed goods. The very existence of a remedy is changing the way creditors handle repossessed goods upon, you know, during the resale.

The holder can rely upon the deficiency judgment and to what really makes the problem worse is that when he goes -- when a creditor goes into court, of course, they're increasing the obligation of the -- that the debtor has.

We found in Hartford by fifteen to twenty-five percent. In other words, just the fact that...goes into court and increases that obligation fifteen percent in small claims and an average of twenty-five percent in Common Pleas. So the question is, what alternatives exist and what alternatives may be -- in this case, haven't even been tried in several states and several provinces of Canada. What alternatives exist to remedy the problem.

There's nineteen states, true.

REP. FERRARI: At this point, as I understand it, the problem that we're addressing ourselves to is the fact that there is no regulation of...which are sold once they're repossessed. Is that right? And there should be some interest in establishing maximize the value that goods are sold at so that that maximized amount can be credited to the account of the debtor.

MR. WARREN: That's correct. There does exist, of course, the general, you know, the general guidelines of the uniform commercial code and of course, this stuff, that in theory provides the framework. In theory - in legal theory provides a framework that will assure the retail buyer with a fair return when the goods are sold. That's theoretical.

What the studies have shown is that that doesn't work out in practice.

REP. FERRARI: As a matter of actual fact would you say for example that it's true that someone could repossess a living room set that someone had purchased at say, a thousand dollars, and then turn around and sell it for a hundred dollars and then credit the -- go and try to get a deficiency judgment for the nine hundred dollars difference plus court costs, attorney fees, etcetera?

MR. WARREN: That's theoretically possible. I have -- the studies themselves show --the automobile studies show that, and that's not just an anecdote, you know you can always find one or two horrible someplace, okay? But the study on automobile deficiency judgments show that there is an initial resale after the repossession and that initial resale is at about fifty to sixty-five percent of retail book value.

At sometime thereafter there's another sale and that second sale is at ninety to one hundred and ten percent of retail value. In other words, the way that would work, and this is for an example which I think would be helpful. There's a purchase of '69 VW - this is a

docket number I have. I guess I can only give you the docket number. CV8-74915504 involves a dealer versus an individual retail buyer. Purchased the car in June of '73 for seventeen hundred dollars. It was repossessed on August 1, 1974 at the amount at that time that was owed, was nine hundred and ninety-four dollars. All right, he had made some payments. He or she had made some payments.

It was resold - it was repossessed by a bank. It was resold and this is the first resale that generally studies show average fifty or sixty percent of the obligations. It was resold was five hundred and fifty dollars. Now, that's pretty close to sixty percent, and that's -- it was repossessed on 8/1. The bill wrote nine hundred and ninety-four dollars. The bank resold it to a dealer for five hundred and fifty dollars nineteen days later.

Eleven days after that resale, it was sold for fifteen hundred dollars. You see? So that--if this was only one case then we'd say, well, that's one problem and maybe we should have gotten a lawyer. The study shows that this is an across the board problem. Now, there is less information with respect to other consumer goods. And you specifically asked about furniture. That's what we try to do in our court study.

What we tried to do was go down and find out what people were being credited for in terms of other consumer goods. Because every indication we have is that other consumer goods get repossessed as well. Not as frequently and there's not as much money involved as there is in respect to automobiles, but we have information that other things -- studies that have been done nationally that other consumer goods get repossessed as well. So that's why we went to Common Pleas and Small Claims.

REP. GRANDE: Did you take into consideration in your study the condition of the item?

MR. WARREN: Well, interesting point. Obviously we had in terms of the automobile judgements --

REP. GRANDE: Any one will do.

MR. WARREN: All right. Let's talk about the automobiles because I didn't conduct any of those studies. The fact that within a short period of time after that very low - fifty to sixty-five percent of retail price - book value if you will, the fact that there's a little resale price might lead one to expect, just like you do, that all the cars are junk or in bad condition.

The fact that the second resale later - now this one was eleven days

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- a little extreme, but the fact that the second resale garners basically half or in excess of retail book value indicates that - is some indication that in general they are in reasonable condition.

In addition, some of the people who did the surveys, and like I say, I didn't do it of the automobiles, indicate that their examination of repossessed cars generally is - shows that they're in average working condition. Okay? And beyond that, there is insurance.

REP. GRANDE: Let me interrupt you.

MR. WARREN: Sure.

REP. GRANDE: You gave some statistics here and some dates. You said that the bank it, repossessed it on October 1 for nine-ninety-four. Sold it to the dealer 18 days later for five hundred fifty dollars.

MR. WARREN: Right. And that dealer --

REP. GRANDE: And the dealer sold it for --

MR. WARREN: Fourteen hundred and ninety-five dollars.

REP. GRANDE: And is there any evidence that the dealer had put any work into this vehicle?

MR. WARREN: No evidence of that at all. And it's very possible that that occurs.

REP. GRANDE: There wasn't a check whether or not he put in two hundred, three hundred, four hundred dollars worth of work into the vehicle.

MR. WARREN: Right. I've got to admit there's no evidence of that because this is as it appears from the court battle.

REP. GRANDE: I think that's important.

MR. WARREN: The - this is true. What I'm driving at is if there's major body damage. I think, for instance, suppose the guy has had an accident. And this is the point I was about to make. Insurance covered that. Major body damage to repair it, the insurance paid for that. In addition, the examinations of these cars showed that they are in average condition, and here's a resale eleven days later - I don't know what kind of work was done in eleven days - maybe no work - you can recondition cars reasonably well for a very small amount of money if you're doing it often.

REP. MATTIES: Whose insurance?

- MR. WARREN: The insurance that's generally available when people purchase cars with a lien - when there's a lien attached to it.
- REP. MATTIES: Not on a repossessed car that is being resold.
- MR. WARREN: The specifics of the insurance policy, I'm not too aware of. I know that insurance is available. The general proposition around the country - for - to cover any body damage that the purchaser, you know -- occurred when the purchaser had the vehicle. I realize this is very surprising kind of stuff. One wonders why. Is this some kind of shady deal or something like that. And it isn't. The point is that the bank - you know, our example here, and in general, the study, the bank is going to recover the deficiency judgment. And he's talking to a dealer who doesn't - hasn't even seen this car. Okay? And that bank has no incentive given the existence of the deficiency judgment - that bank has no incentive to maximize that resale price - no reason to drive a hard bargain. The kind of bargaining you and I would be doing if we were selling a car between ourselves. And that's the problem with the deficiency judgment that the bill is trying to rectify.
- REP. FERRARI: Now, theoretically the bank could have sold that car to the dealer for one dollar, right?
- MR. WARREN: Theoretically, yes. And since ninety percent of these kinds of actions go by default, the judges, you know, just can't look at these actions and do their own fact finding. These things go by the boards. Ninety percent go by the boards and ninety-two in Small Claims that we found, and we found eighty percent in Common Pleas with another nineteen percent stipulated exactly for what the creditor asked for originally.
- So really in effect over ninety percent of these kinds of action go by default and never get any judicial review.
- REP. FERRARI: Can you explain that process - how they go by default?
- MR. WARREN: Well, as I understand it, and I'm a law student, not a practitioner, but I have talked to practitioners about this and other parts of these problems. Just to sort of simplify things because I'm not sure I understand all the details of it - basically what happens is that there is an action filed sometime after this repossession process has occurred. That action is filed in court and the debtor has a credit -- the retail buyer, to keep the language consistent with the statute -- the retail buyer has a certain amount of time in which to file an appearance. That is a written appearance. If that person doesn't file a written appearance or if that written appearance is filed but later on the person doesn't show up for the hearings, that's a default.

Now, how did the creditor get a default judgment? Under rule 804 of the Practice Book he mails it in. He does not have to appear in court. He doesn't have to answer the judge's questions. He mails in a motion for default and it's up to the judge then. He's got a big stack of these things every day - to open these things up and look through them. And this Judge -- you know, what is a '65 Mercury worth? I mean, is the Judge supposed to buy it himself when there's a default judgment - look at these values? I don't think that's his role.

So, as a consequence, we've created a mechanism that requires the people to defend in court and people to default. As a matter of the way things work.

REP. MATTIES: Are you advocating then that the bank must become a retailer and used car salesman?

MR. WARREN: No. That's a very good question. In 1969, when the Shipman study was done about a quarter of the dealers who had financing with a few banks with recourse. This is about a quarter of the dealers that were in the sample repossessed cars.

Now, right now, there's no particular incentive for - reason for the recourse to be a method of financing. That's a free choice. When there is recourse, and I think recourse will become a very popular way of financing automobiles - I'll explain what recourse is in a second.

What is recourse? The dealer is made responsible for the repossession of a car or at least that resale. Now, that's what recourse is. Maybe not repossession. That's variants on the recourse arrangements that are possible. Now, that's a free decision as to whether or not to have the recourse. This way we would encourage people to use that recourse because dealers would be the best way for them to maximize the resale price. And the incentive -- that incentive would be there since they will now be entitled to a deficiency judgment.

Right now banks do sell cars off the lot. You can see that from the Motor Vehicle records.

REP. MATTIES: Oh, yes, but they don't sell on the retail --

MR. WARREN: Right. And they get a terrible price for them. That's the problem. They're unloading these things. So I'm not advocating that any particular bank set up a used car lot. They can structure their arrangements with the dealer with recourse so as to permit the maximum resale price. The kind of thing you can get when the dealer sells it and not when a bank sells it except wholesale.

I can--because we've gone over some of these things, I can skip fairly far ahead in my prepared remarks.

One technical question - this is an aside now. There is a technical omission in Part D. I checked with the committee staff. There were two brackets that were unintentionally dropped from Part D, and it's in the first sentence. We should place brackets around the language, and I'm going to quote this now. It's in line 84 and line 85, I believe. And the quote goes, "And the retail buyer has paid at least sixty percent of the time sale price at the time of retaking - of the retaking. And that's the material that - it was the draftsman's intent to omit - consistent with the rest of the bill.

REP. FERRARI: So the reason for omitting that is because the rest of the bill makes that --

MR. WARREN: Yes. Exactly. Right. I've gone over the earlier types of paperwork that were done. Talked about the National Commission. I want to mention right now, the National Commission on Consumer Finance did a study in 1972 and David Kaplovitz who did a study in 1967 - the first study was of creditors. The second study was of debtors. To provide a lot of background information. Those were mentioned.

The three studies that were made of automobile repossessions - the one in the very first was made in Connecticut, and I mentioned the problem of obtained fifty to sixty-five percent of the book value upon these resales.

And I mention that again. There's one little problem that I've got to take care of before I can let you all continue on.

REP. GRANDE: Where are you from, anyhow? You say, you all.

MR. WARREN: The University of Connecticut.

REP. GRANDE: Where are you originally from?

MR. WARREN: Virginia. And that's the last trace of a southern accent I've got.

REP. GRANDE: I've heard you say that three or four times.

MR. WARREN: I do it when I'm comfortable, I think. My mother was born in Stamford and I hope that helps. (Laughter)

Until the review study of the Hartford courts, no one had attempted an investigation of other consumer goods. The situation with the automobiles is just so well established that it's hardly worth talking about anymore. We've got studies in Connecticut, in Washington, D.C., and in California, all of which said basically the same thing. The data varies a little.

The question was, what are we going to do about consumer goods, because those are sold and presumably repossessed. So we looked into the court files and our study was made at Small Claims and Common Pleas. We looked through three thousand cases in Common Pleas and twelve thousand in Small Claims, using statistically valid sampling techniques.

What we were hoping to find was some kind of information which would show that these people were getting a fair return when these things were resold or not. What we were looking for was a description of a stereo. That we could go and take a book - a book on used stereos and find out what the book value of that was - much like was done in those three automobile studies with cars.

Well, none of that information is in those files, and this is also part of the problem with the deficiency judgment process. The Judge, when faced with these - a large measure of defaults, has no information upon which he can base a...respondi -- a...respondi judgment is whether or not this person is getting a fair return. In other words, these goods, when repossession is pled property, and very often you'll have retailers saying that they've loaned money in their pleadings. Now, you know if they are complying with the Small Loans Act, they're not loaning money. But they are pleading loans. They're not even pleading that there was this purchased -- they're not even pleading that there's been a repossession, let alone an adequate description of the goods to provide the Judge with some idea as to whether or not there's fair retail value being credited, or any kind of fair measure of value.

So that and the cost of the deficiency process is why I've concluded that the deficiency process itself of other consumer goods creates problems at least as bad as that with respect to cars.

- REP. FERRARI: What you're proposing in the present bill, as I understand it is that the creditor would have the option of either going after a deficiency judgment or repossession, but that if he goes after the repossession, he's precluded then from getting a deficiency judgment.
- MR. WARREN: That's correct.
- REP. FERRARI: So that he would have to maximize that repossession. In other words, be certain that at the time he takes these goods that they're worth what he has to sell them for and then he has to go out and sell them.
- MR. WARREN: That's correct.
- REP. FERRARI: On the other hand, if he chooses not to do that, then he would still be

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able to go after a default. Not a default but a judgment against the individual?

MR. WARREN: Yes, and which might go by default. Let's make that clear. I really didn't make that clear in my remarks. Right now the creditors have extensive contact with the debtor. I mean they're trying to collect from the guy. They're not trying to drag this guy into court. They call this guy up. They write this person. Now, the person has defaulted for two reasons primarily. The person has lost his job. The person is ill.

The studies are unanimous about that. The two big causes are illness and secondly, the loss of employment. Now, that's at least as bad these days as it was when these studies were made a few years ago.

When that happens there are extensive efforts that this creditors make to try and collect. Very reasonable efforts, too. They write. They call. They really talk to this person and get an idea about where this person stands with respect to them. That kind of information is useful in the - for the creditors determination as to whether to elect to sue personally or to repossess the goods. That creditor doesn't have... (testimony lost due to changing records).

At present, because of these contacts can decide that the goods are worth repossessing, that the resale isn't going to net them anything, that it's too much hassle. They walk into court and file a personal action -- probably for pretty close to what they might have filed a deficiency judgment.

Okay. Thank you very much.

REP. GRANDE: Thank you very much. Representative DeZinno has joined us since we started our meeting. He's from Meriden. On my right. Representative Mesite.

REP. MESITE: Mr. Chairman, members of the General Law Committee. My name is Representative Mesite.

REP. GRANDE: Can you speak a little louder?

REP. MESITE: My name is Patsy Mesite. 82nd District, Meriden, Connecticut. I am here to testify against the increase of two fifty to four hundred dollar bingo prizes. I think that the two-fifty prizes worked out very well in the past and should work out very well in the future. To go to the four hundred dollar prize, I think it would hurt the elderly people most who wait for that one evening out. To go to the four hundred dollars, they would have to increase the paid admission and it would keep a lot of people out, and I think person-

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ally that if they increased the admission it would hurt their attendance. So I go on record that I am opposed to it.

REP. GRANDE: Thank you. Raphael Podolsky.

RAPHAEL PODOLSKY: My name is Raphael Podolsky. I'm from the Connecticut Legal Services Program. I'm an attorney and I had wanted to speak to the Committee about two bills. One of those is Committee Bill No. 489, AN ACT CONCERNING ELECTION OF REMEDIES, which the previous speaker just spoke about, and the other is Committee Bill No. 5698, AN ACT CONCERNING VENUE IN CONSUMER DEBT ACTIONS.

I don't want to repeat the previous speaker's testimony but what I wanted to do was from the perspective of the Legal Services Program, we represent a great many citizens who are sued on bills where they have bought something that's been repossessed. You know, from that perspective we see what those things look like when they come into our office. And one of the things that I wrote out in my testimony were five cases from random from the Legal Services files to indicate the kind of thing that happens in terms of resale, which is really a way of saying the manner in which the system presently works.

The system that allows the creditor to take the goods back, sell it at a very low price and then still go after a deficiency judgment. Because I don't think that in terms of the Bill to protect the debtor's pocketbook. I think this is really one of the most important bills that you have before you because it really does make a difference. Let me mention some of those examples.

We have a case where someone purchased a 1971 Ford Pinto in September, 1974 for a cash price of fifteen hundred dollars. And that means that the actual price was different because there was a down payment which reduced it, to a finance charge which increased it, but it was based on a price of fifteen-ninety for the car. The person who paid cash.

It was repossessed a little over a year later and resold for two hundred dollars. There was a case that I dealt with personally where a '68 Ford LPD was bought in September '73 for thirteen hundred dollars. It was repossessed because it had problems with it. The guy took it into the shop to have the transmission repaired. The bill for the shop work was three hundred twenty-five dollars. He couldn't pay it. As a result, the bank repossessed the car out of the shop, paid the three twenty-five and sold the car for a hundred dollars. Even if you add on the three twenty-five, that

makes it a four hundred twenty-five dollar sale six months after it was bought for thirteen hundred. You've got to say, what's going on when that happens.

You can go through case after case and what turns out is that the cars are repossessed and resold - not even at wholesale - but approximately a third below wholesale. They don't even get wholesale, and all the studies that the previous speaker said indicates that the cars are in average condition.

Representative Matties asked the last speaker a question about insurance. As I understand the law in Connecticut, a creditor selling a car -- financing a vehicle or any other good under the retail installment sales contract may require as a condition of the contract that insurance--that damage insurance basically on the declining value - on the declining value of the collateral made payable to the creditor be included as part of the contract. It has to be listed in the finance charge, and when you do the finance charge, you'd have to include the mandatory insurance as part of the charge. You just can't obscure it. But the creditor can require it.

So that a creditor who is concerned, for example, the guy's going to total the car. He isn't going to keep up insurance on it. He's going to be left with nothing - can acquire it as part of the contract that insurance be included in the finance charges. And I- in addition, what I believe creditors usually do, they maintain a much larger group contract - group insurance policy - which they pay so that they are covered even if the guy defaults. They've got insurance and if he cracks the car up - if that's what is the cause of the decline in value - they're going to get the...back.

REP. MATTIES: Doesn't...

MR. PODOLSKY: I think that's what is commonly done right now. It's fairly common. It may marginally.

REP. MATTIES: The insurance company, it's my understanding - the insurance company will only pay the assured so that if you sell me a car you may stipulate to some kind of an arrangement whereby I'm going to pay the bill. I have not heard of an arrangement whereby you could stipulate with the company insuring me would pay you... (inaudible)

MR. PODOLSKY: Maybe I'm not making myself clear. What I'm talking about is collision insurance - not liability insurance, because the banks, for example, are concerned that if the car is cracked up it gets the balance of the money---and the bank takes out the policy on the car -which is his car. Technically it's still - it still holds title to the car.

REP. MATTIES: The bank is taking out the policy, though.

MR. PODOLSKY: That's right, but it's charging the buyer. The bank is charging him for the cost of maintaining that policy on his car.

REP. MATTIES: That will increase the cost of the car.

MR. PODOLSKY: It increases the finance charges. It increases the finance charge. But what I'm saying is I think that's not an unusual practice, but you're right, it's to the extent that it's not the practice now. It may add some additional cost. That may be true. But what it really means is that an election of remedy system, the creditor does have the mechanism to protect himself from gross destruction of the collateral by accident or major damage.

It does not protect him in its use. In other words, if the guy runs the car into the ground, the insurance isn't going to cover that. If he cracks it up, it will cover that.

The reason this kind of thing happens is that the present system provides no incentive for anybody to resell a car at a high price. What happens - in fact, most of these cars can be resold for approximately - their book value. The Shutman Study discovered that if at the time of repossession the car was resold in a retail market for its book value it would fetch one hundred eight percent - an average of the deficiency. Which means it would be a surplus.

One of the interesting things is that the State of Washington which basically adopted this legislation - it's not word for word the same legislation, but it is an election of remedy legislation - which prohibits a deficiency judgment. They have discovered a remarkable thing and that is that you get surplus.

Once in a great while in Connecticut you will find a surplus although I'm almost certain it doesn't get turned over to the debtor, but it is very, very rare. Usually there is a substantial deficiency as to every resale. In Washington there's probably twenty-five, thirty, thirty-five percent of the cases where there is actually a surplus and the reason is that the creditor in order to get his money has to go out and sell it for the highest price he can get. And the creditors do that. They, in fact, get the full value of the deficiency and sometimes they pick up a little bit extra. And the problem in Washington, according to the Federal Trades Commission, which is studying it, is that the creditors don't turn that surplus over to the debtor. But it's a different order of the problem.

The problem here is that the debtor ends up without the car and he

still owes fifteen hundred dollars on the car. He's got nothing but a fifteen hundred dollar debt. In the end he'll have his wages attached.

In Washington the problem is he doesn't owe anything but they're not giving him back something he's entitled to. And that is the kind of position we ought to be in in this State.

REP. FERRARI: So basically have you found in your experience that typical things that happen would be for example, for somebody to buy their car, pay fifteen hundred dollars for it, have it repossessed when there is a thousand dollars left owing on it, and then after the whole process is complete, perhaps again owe twelve, fourteen, fifteen hundred dollars and not have the car but still owe the debt, when you include court costs, attorney's fees, finance charges, late charges and everything else that's involved.

MR. PODOLSKY: That's right. That's right. Let me tell you something else because there's a way in which the entire system actually encourages in a lot of these arrangements - actually encourages the lowest possible resale price. I don't know if I can state this clearly enough with numbers out loud.

Many of the arrangements are called recourse arrangements. The bank finances. The bank repossesses. It goes through -- or amounts to a paper resale back to the dealer at a very low price. The dealer then put the car out on the lot and he sells it. He's going to sell it at retail. By selling at retail he's going to get back all the money he lost from the unpaid balance on the bill. But he also has the right to go out and sue the debtor for the deficiency that he paid the bank. In fact, he get's paid -- because of the deficiency, he gets paid twice. And the lower the resale price is, the lower the dealer buys the car back from the bank, the more he expands his profit.

In other words, if he buys the car from the bank at five hundred dollars less than retail and then has to pay the bank the five hundred dollars difference for the contract, he could resell it for the five hundred dollars difference and then he could also sue the debtor for five hundred dollars. If he can go it for seven hundred less than retail, he can resell it for the seven hundred dollars difference and sue the debtor for seven hundred. I don't know if I'm making myself very clear. But what happens is if he can succeed in costing the deficiency, he's been paid twice, because this first resale is a fake. It's -- I don't mean it in a malicious sense because it's a common practice in the industry and everybody does it and it's not considered unethical, but it's the common practice.

But it's in fact, a fake resale. It's not even in the wholesale market. After all the debtor bought the car retail. It's being sold sub-wholesale. So what you get is, and you get something that is completely contrary to everybody's expectations.

The debtor thinks they took my car back - I'm done. All right. I couldn't pay. They took it back. It's all over. That's the common sense approach. The next thing they know three months later he gets this court paper and they don't know what it means anyway, and it turns out they're being sued for a thousand dollars.

The grossest kind of abuse, I think, coming next to cars, is with household furniture where in those cases household furniture is virtually worthless when it's repossessed. The amount that you get on the resale of household goods tends to be so small, it's almost like having no collateral.

If you take the household furniture and resell it at the cost of repossession, the cost of storage, the cost of resale, it's going to eat up whatever you get reselling the furniture. Which means you're pretty much assured that the deficiency is going to be every bit as large as it was before you repossessed. And that gives the creditor a very powerful weapon because what he can do, he can say to a debtor, if you don't take your food money and start paying me on this bill, I'm going to take your furniture back and you're still going to owe me as much as you owe me now. And that's the truth because he will.

As a result, furniture isn't repossessed that often because they don't want used furniture. They don't want used appliances. But they use it as a terror technique.

The STC Study, and I just want to read you two very short quotes because they're very interesting. The STC Study which was done is a really very extensive study says that the right to a deficiency never lets the creditor to destroy value in the consumer's hands even when he, himself, receives a comparatively small return for the goods. This the creditor can afford to repossess goods which are essentially worthless to him in order to punish the debtor.

The STC Study also concludes in terms of - it's really a nationwide study - about the repossession of cars. Those practices probably bring lower prices on resale than any other method of disposing of repossessed collateral except junking the car.

As the system has been built up, what will happen is the bank will call three or four dealers and they'll say, I've got a repo. How much will you give me for it? It's a 1969 Ford. And they'll quote

him a price. They've never seen the car. They don't know what condition it's in. And the custom has become... (testimony lost due to changing records).

There's two more points I want to make about that Bill and then I will not take any more of your time on that. One is that for any system to work it has to be self-enforced. In the present system if the debtor went to court and argued that he was being ripped off on this resale there is at least some chance that he might get an adjustment. He would probably get rejustment only to the true wholesale value because there's simply no case law basis for saying that you're entitled to the retail value. But he might at least pick up a hundred dollars or two hundred dollars reduction in the deficiency.

The fact is that that's not the reality of the thing. Debtors don't come into court. They ignore papers. They don't understand what they are. They're afraid of the courts and the judgment goes by default.

The second point is that the old system was the election of remedy system. A similar system to what we have now. It was changed to protect the debtor. What has happened is that the debtor protective system has failed. It was to protect the debtor by having certain notice requirements. You've got to let him know. You've got to give him some advance notice of the day of the sale. What's happened is, it has no impact whatsoever on the sale price. And the lesson has been learned. Half the states now or close to half have been abolishing the deficiency judgments - is that these protective methods simply don't work, and they're now returning to what is really a very conservative system. They're going back to the old days and saying we're much better off when the creditor had to choose. If he wants the whole balance, then let the guy keep the car, let him keep the furniture and sue him for the whole balance. Or, if you want the car, then that's it. And it's your job to sell it at a fair price so that you can get your money back.

The other Bill that I want to mention, I'll just mention very briefly is 5698, which is AN ACT CONCERNING VENUE IN CONSUMER DEBT ACTIONS. I have attached to my testimony a draft of an alternate version of the bill which I think in a lot of ways is simpler and accomplishes the same purpose, but what I did want to call to the Committee's attention is that this is a very real problem and we see it again-- we see it with our clients.

There are a number of companies which routinely sell throughout the State but use their central office as the area used to bring their

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SENATE

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N	15	Louis S. Cutillo	Y	33	Betty Hudson
N	16	William J. Sullivan	Y	34	Lawrence J. DeNardis
Y	17	Joseph P. Flynn	Y	35	Robert D. Houley
Y	18	Mary A. Martin	Y	36	Florence D. Finney

The result of the vote:

Total Number Voting . . . . .	36
Necessary for Passage . . . . .	19
Voting Yea . . . . .	25
Voting Nay . . . . .	11
Absent and Not Voting . . . . .	0

THE BILL IS ADOPTED.

THE CLERK:

Page three of the Calendar. Cal 378, File 374.

Favorable report of the joint standing committee on General Law, Sub. S.B. 489, AN ACT CONCERNING ELECTION OF REMEDIES IN RETAIL INSTALLMENT SALES FINANCING AGREEMENTS.

THE PRESIDENT:

Senator Ciccarello.

SENATOR CICCARELLO (25th)

Mr. President, there is an amendment.

THE CLERK:

The Clerk has Senate Amendment Schedule A, File 374, Sub. S.B. 489. LCO 3435, offered by Senator Ciccarello. Copies have been distributed.

THE PRESIDENT:

Senator Ciccarello.

SENATOR CICCARELLO:

Because of the length, I will waive the reading. If I may speak on the amendment?

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THE PRESIDENT:

Proceed.

SENATOR CICCARELLO:

Mr. President, this bill is designed to put an end to what Judge Roman Lexton, Chief Judge of the Court of Common Pleas has labeled as one of the worst consumer ripoffs in the state. This is the practice of making double profits off of consumers whose property has been repossessed. Under current law, a consumer in default, and I am going to have to give a little exposition on the current law and what this bill will do because I think the amendment and the bill tie in extremely close - a consumer in default, under present law, on a purchase made under the retail installment sales financing act may have his property repossessed. It is then commonly sold at a price far below its wholesale value, let alone its fair market retail value and the debtor is sued for this artificially produced deficiency. A study of the actual practice in Connecticut by Professor Philip Shuchman of the University of Connecticut Law School found that repossessed cars were sold at an average of about fifty percent of their retail value. This is because there is no incentive for a creditor to maximize the resale price since he can more than recoup his losses by suing for a deficiency judgment. It is not unusual for a debtor to have paid nearly the full amount of his contract by the time that the credit is finished and still the debtor is without the good that he has paid for. This bill and the

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amendment will go a long way towards ending this practice by requiring a creditor to elect his remedy, that is to either to sue for the whole contract price, in which case the buyer will get to keep the good, or to repossess, in which case the buyer will not be liable for any balance. However, the bill makes exception for most automobiles by accepting cars with a purchase price of fifteen hundred dollars or more, that is the amendment does this. With such cars, the amendment establishes a rebuttable presumption that the fair market value of the car is the average of the book retail value and the book wholesale value. If the fair market value as so established fails to cover the amount owed, then the creditor repossesses such a car, will retain his right to seek a deficiency judgment. Twenty-two states have in full or in part adopted some form of election of remedies in consumer financing. Some have completely prohibited judgments, deficiency judgments if the creditor chooses to repossess. Others have prohibited deficiencies generally in such cases but have allowed them for more expensive goods, usually setting the dividing line between one thousand and three thousand dollars. This bill, as amended hopefully by the present amendment, follows a very moderate policy by excluding cars costing more than fifteen hundred dollars. The State of Washington, for example, has completely prohibited deficiency judgments in consumer cases in which the seller repossesses and the Federal Trade Commission has reported that their law works. First,

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because their law is self-enforcing. In other words, a consumer does not have to go to court to vindicate his rights. And second, consumer creditors have not been hurt. The fact is that when a creditor is forced to bear the risk of a low resale value price he makes sure that he gets a high resale price. In Washington, the problem has been to get creditors to pay the surplus from the resale over to the debtor. In contrast, in Connecticut resale surpluses are virtually unheard of since there is no incentive to get a fair resale price. This is a very important bill because it will help consumers who are continually ripped off by some of the practices in this area. The simplest way of explaining the amendment, then, is to say that creditors must generally elect their remedy but for cars costing more than fifteen hundred dollars, they will be allowed to sue for deficiency and in such a case, the statute would establish a book value as a prima facie fair market value and the book value used is actually a publication put out by the National Association of Dealers. It's a well-recognized official guide for car prices and I think it would be important to use it in courts to prevent evidentiary problems. In the event that the book has no value for a particular automobile, we leave, by virtue of the amendment, the determination of fair market retail value to the court. I think it is a good amendment. It's a compromise. It is one that has been discussed with banks, representatives of banks, and various interested parties and I hope that it will pass.

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THE PRESIDENT:

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Will you remark further? Senator Rome.

SENATOR ROME: (8th)

Mr. President, I think the amendment, as a matter of fact, cleans up the bill and I have not made up my mind conclusively as to how I am going to vote on the bill, but I still have a number of problems that I would like to address myself to, through the chair to Senator Ciccarello. In Section (q) we talk about the deficiency potential being one-half of the sum of the average trade-in value plus the average retail value as stated in the guide, and we assume the guide will still be there. The concern that I have is that, first and foremost, we are talking about average and in many instances the deficiency continues for some time and in many instances, the deficiency might arise as a result of the person who has the car determining that, number one, they cannot afford to pay, and number two, they might just as well neglect the car because eventually it is going to be repossessed, so we are really not talking, in my mind, about the average retail or the average wholesale. Could you address yourself to that?

THE PRESIDENT:

Senator Ciccarello.

SENATOR CICCARELLO:

Yes. Senator Rome, the information we have from various studies is that the automobiles that are repossessed are not in worse conditions than other cars, that they generally are in

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average condition and what we tried to do by creating that formula was to give in actuality some credence to a cost of resale. In other words, when the car was repossessed it had to be stored, it had to be put in a marketable condition and so in order to avoid any expandable concept for cost of resale, we traded that off for this formula which represents the granting of one-half of the retail price back to the dealer or the reposessor in lieu of resale value..resale costs. I hope that that answers your question to some degree.

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THE PRESIDENT:

Senator Rome.

SENATOR ROME:

Partially. My other problem is that we are talking about a statute which is certainly subject to change but has some semblance of permanency. We have been in the last few years in an inflationary market, in the car market, and we therefore have been in the situation where, by and large, the traditional loss, first year or second year loss and depreciation hasn't applied, and as a matter of fact, used cars have been selling fairly well, as I found out in the past day or so. My problem is in the normal market that hasn't been the case. If in fact inflation comes under control, you will find a greater depreciation in the first year. And what you are saying is that the reposessor, in effect, finds a place or a niche between average retail and average wholesale. And if, in fact, we want to be more explicit as to how his problems might develop in a different kind of a market, he may not have a market for

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the car, and you talk about selling expenses, I am wondering if, in fact, his only realistic opportunity to sell, other than to keep the car on the lot and to incur the overhead of waiting months perhaps to sell the car, would be to sell it wholesale, to market it wholesale. The question is what's wrong with the marketing of it at wholesale? I know in terms of a quote consumer may be wrong, but I am wondering if, in fact, in the average market over the past seven or eight years in the car industry, it hasn't been more appropriate to talk about cars repurchased or repossessed being sold at wholesale rather than retail.

SENATOR CICCARELLO:

Senator Rome, I approach the problem a little differently that is to inquire as to what the consumer should get for his automobile which has been repossessed. And it seems to me that fair market value less the cost of repossession and the cost of resale are in order. Now the problem with that

the PRESIDENT:

Senator Rome.

SENATOR ROME:

My question really is how do you determine the cost of resale, not for this year, nor last year, but over a period of time. The cost of resale really may be so prohibitive that the wholesale price may be the best way of marketing that at the highest possible price.

THE PRESIDENT:

Senator Ciccarello.

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SENATOR CICCARELLO:

All I can say to that is that is a debatable proposition. I might go a step further and go into those states of Washington and New Mexico that actually don't even refer to this type of proposition and simply require that the bank repossess the automobile and be satisfied there with. The Office of Legislative Research received a letter from the Department of Banking in Santa Fe, New Mexico saying that we had no substantial amount of factual data which would allow us to give positive answers to your questions. We are aware of the impression that the elimination of deficiency judgments in New Mexico has had no effect on the availability or cost of credit or consumer goods. I would have to utilize that. I am not entirely sure how long New Mexico has had their law in existence, but I would feel that they have had it in existence long enough to determine whether or not their type of law would have any effects on dealer practices and bank practices and apparently it hasn't or there is no evidence of it.

THE PRESIDENT:

Senator Neiditz.

SENATOR NEIDITZ: (5th)

Mr. President, I sit here in some amazement and amusement and this is the first opportunity, I know the amendment was discussed in caucus with just a reading of it and then I sit with more amazement as I hear some of the responses to Senator Ciccarello to Senator Rome's questions. Maybe some questions of

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mine would help. You just mentioned the New Mexico, the State of New Mexico. Are you aware of what the, through you, Mr. president, the state of the consumer credit law is in the State of New Mexico, other than in this area? Do you have any knowledge of that? Are you aware that the New Mexico is a uniform consumer credit code state? roc

THE PRESIDENT:

Senator Ciccarello.

SENATOR CICCARELLO:

I don't know the implications necessarily of that, perhaps that's the answer you wish.

SENATOR NEIDITZ:

Are you aware that the rates paid by consumers are higher in New Mexico than in Connecticut?

SENATOR CICCARELLO:

I can't answer that.

SENATOR NEIDITZ:

Are you aware

THE PRESIDENT:

Senator Neiditz, do you want to conduct the colloquy without recognition or you'd rather

SENATOR NEIDITZ:

Oh, I thought you were involved in your own colloquy, Mr. President. It was not my intention to interrupt your colloquy with the majority leader.

THE PRESIDENT:

I would like that you proceed with your colloquy. We

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have lost a lot of bodies, so probably you could sit next to  
Senator Ciccarello and converse (laughter). Proceed.

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SENATOR NEIDITZ:

Thank you, Mr. President, for reminding me of our rules.  
I guess I sit here and listen, Mr. President, to references  
made to the number of other states that have this bill or a  
variant of it without any indication whatsoever as to what  
other statutes or the lack of other statutes these states have.  
Now there are many states, Utah, Oklahoma, New Mexico, Wyoming,  
Montana, et cetera, that have the uniform consumer credit code  
which has a whole list of consumer protections along with  
creditor protections and do have a balance. I think that to  
look at this, out of context, and mention that other states  
have this without mentioning what they don't have or other things  
that they have, is to mislead, is to be misled by the quote  
studies that your committee has been given, or the General Law  
Committee has been given. Now, through you, Mr. President, a  
question, if I may. I am aware of Professor Shuchman's  
study in this area. Does Senator Ciccarello have the date of,  
through you, Mr. President, when this study was done and where?

THE PRESIDENT:

Senator Ciccarello.

SENATOR CICCARELLO:

Yes, I do. If you will continue, I'll find

THE PRESIDENT:

Proceed, Senator Neiditz.

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(Senator Neiditz and the President were talking back and forth at the same time with conversation quite garbled) roc

SENATOR NEIDITZ:

I just want to know when the study was done and where it was done.

THE PRESIDENT:

Thank you. We will pause, then, until Senator Ciccarello has found it. (Pause) Will you yield to Senator Flynn, Senator Neiditz?

SENATOR NEIDITZ:

Sure.

THE PRESIDENT:

Senator Flynn.

SENATOR FLYNN: (17th)

Thank you, Senator Neiditz. Mr. President, while we are pausing, I don't want to spill over about this, but I do want to commend you for the excellent way in which you have deported yourself as President Pro Tem and also for your fidelity to the rules. I think we all have been edified by it here this afternoon.

THE PRESIDENT:

Thank you, very much. (Laughter) Senator Rome.

SENATOR ROME:

Could Senator Finney explain that?

THE PRESIDENT:

Senator Ciccarello.

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SENATOR CICCARELLO:

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Mr. President, the Shuchman Study is reported in twenty-two Stamford Law Review, Stamford being my alma mater, for your information and done in 1969, reported on Connecticut Automobile Deficiency Judgments.

THE PRESIDENT:

Does that citation satisfy you, Senator Neiditz?

SENATOR NEIDITZ:

I couldn't - Senator Rome, was trying to get my attention and I just didn't hear the date that the study was done.

SENATOR CICCARELLO:

1969.

SENATOR NEIDITZ:

It was on Connecticut? It was regarding Connecticut?

SENATOR CICCARELLO:

On Connecticut. He did a study of Connecticut practices.

SENATOR NEIDITZ:

Right. I remember reading the study and I remember that it had to be before 1971 because that's when we did our study in the consumer credit area and I wasn't sure how long before that he did it. I think he did raise what is the most serious problem and part of this bill addresses itself to that and that is the disposition in an auction, a private sale or public sale, private sale generally, an inter-dealers' sale of the automobile. And that's what the real crux of the issue is. Not what the

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rest of this bill would address itself to. I am also somewhat appalled, Mr. President, that because the banks or certain banks have agreed to this and certain consumer groups purporting, Mr. President, to speak on behalf of consumers want this that therefore it must be a good bill. I guess I have gotten more and more suspicious lately when I am told in the corridors sometimes that Labor wants it, CBIA wants it - its got to be a good bill. I always have the feeling, Mr. President, that the public is somewhere and somehow being had. When we have groups, organized groups for something, there is someone getting hurt. And it is generally the little person. What I see in this bill, Mr. President, is an attempt to do...to correct one ill regarding automobiles, but we are going to not allow people to, certain people, receive credit, to buy household goods or to buy automobiles. We are also encouraging certain of the better lenders, savings banks that have better rates on car loans than commercial banks; and one savings banks in Greater Hartford I noted in the paper the other day is a point and a half below our two largest commercial banks in this area. Are we going to discourage them from being in the auto loan business? Are we going to say - encourage them to get out of it and get the low-end lender into this business? This is my fear, Mr. President, on behalf of consumers who are not looking at the pure legal lease of this bill, which has been made less pure by this amendment.

THE PRESIDENT:

The question is on the amendment. The crucial question

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Senator Neiditz is if you want this amendment, I assume. Are there any further remarks?

SENATOR CICCARELLO:

Mr. President, I think we have expounded on this and I would request a roll call vote.

THE PRESIDENT:

Will you remark further? Senator Rome.

SENATOR ROME:

Mr. President, there aren't many people here, I am wondering if, in fact, a roll call is necessary because I think that all would concede the amendment improves the bill. I suspect that that would be the attitude. I am wondering if perhaps we could dispense with the roll call in deference to those who should have been here but aren't.

THE PRESIDENT:

Well, we'll adhere to the rule. The Clerk will make the announcement for a roll call. Senator Ciccarello.

SENATOR CICCARELLO:

I withdraw the request for a roll call and ask for a voice vote.

THE PRESIDENT:

Very well. I hope it is decisive. I am sure that there might be people who will want to participate in this and they are assuming that we are going to call for the roll.

SENATOR CICCARELLO:

I would request a roll call, if the President feels that way.

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THE PRESIDENT:

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The Clerk will call for a roll call and make the necessary announcement.

THE CLERK:

There will be an immediate roll call vote in the Senate. Would all senators please return to the chamber. An immediate roll call vote will take place in the Senate. Would all senators please take their seats.

THE PRESIDENT:

The question is on the amendment offered by Senator Ciccarello. A roll call has been ordered. The machine may be open. You may record your vote. Senator DeNardis.

SENATOR DENARDIS:

Mr. President, I just want to indicate that Senator Beck is on her way down.

THE PRESIDENT:

Thank you. The machine is closed. The Clerk may tally the vote. The result of the vote:

Total Number Voting . . . . .	35
Necessary for Passage . . . . .	18
Voting Yea . . . . .	35
Voting Nay . . . . .	0
Absent and Not Voting	1 (Amenta)

THE AMENDMENT IS ADOPTED.

SENATOR CICCARELLO:

Mr. President, I would move the bill as amended.

THE PRESIDENT:

Will you remark?

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SENATOR CICCARELLO:

Mr. President, as I indicated before, this bill, as amended, would go a long way towards ending the practice of double profits and other reprehensible practices that are accomplished, in some instances, in the repossession area. This will require a creditor to elect his remedy, that is, either to repossess the consumer good or to go to court and sue on the contract. With the exception, however, as the amendment provided, that automobiles of the value over fifteen hundred dollars will be an exception to the statutes but that a deficiency judgment would have to conform to the amendment we just passed. I think it's a good bill and should pass.

THE PRESIDENT:

Will you remark further?

SENATOR CICCARELLO:

I would ask for a roll call.

THE PRESIDENT:

A roll call has been requested. The Clerk will make the announcement for a roll call vote.

THE CLERK:

There will be an immediate roll call vote in the Senate. Would all senators please take their seats. An Immediate roll call has been ordered in the Senate. Would all senators please return to the chamber.

THE PRESIDENT:

Is there any objection to this. Do you wish to place this on the Consent Calendar, Senator Neiditz?

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SENATOR NEIDITZ:

I thought he asked for a roll call.

THE PRESIDENT:

I thought maybe you were withdrawing your objection. Do you have any objections? Are you in favor of it or do you wish to speak against it?

SENATOR NEIDITZ:

Well, you asked for a roll call, so if there is a roll call, I am going to speak against it.

THE PRESIDENT:

Very well. You are recognized. Proceed.

SENATOR NEIDITZ:

Mr. President, every session we have at least one bill before us which is part of that P. T. Barnum school of economics and this is one of the first I have seen this year. It just does not recognize the realities of the marketplace. It does not recognize the realities of the way credit is extended or who needs credit. I pointed out many times on this floor that there is probably hardly a person who sits in this circle, who buys a car on credit. He probably pays cash, probably knows a dealer. There aren't people here who buy household goods on credit. You pay cash. And when you get into these areas and you start monkeying around with the law of consumer credit, you are going to be denying people the opportunity to get credit. Where you get into household goods, it isn't a question of-the creditor doesn't repossess in most cases because the repossession -

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he's repossessing furniture or appliances or whatever it is, other household goods that aren't worth anything, that don't have that much resale value. However, it's the existence of that right which allows him, which makes the purchaser think twice about not making a payment or paying for the goods. And very often you have a person, a debtor, who is judgement-proof, so the net effect is to not have creditors, retailers or whatever extend credit to people who desperately need household goods and the only way they can get it is on credit. And this is essentially my objection to this bill. There are parts, as I said in talking on the amendment, that are very good, that address themselves to the problem that Professor Shuchman addressed himself to in his study. That is on automobiles, on the private sale where they go after deficiency judgment after an artificially low price. That question should be addressed, but as far as eliminating or calling for an election of remedy, I have one question. I won't ask through the chair, but I'll ask it rhetorically. How does a creditor get into someone's premises prior to making the election of whether to sue to repossess the household goods or to sue for a deficiency judgment or to sue for the cash balance. Under what rule of law does he get into the apartment or the house? There is none. Do you have a sheriff bring you in on an inspection trip? So essentially, Mr. President, you are not making it an election of remedy, you are saying - you cannot repossess when you get into the area of household goods. You may only sue for the money. Repossession is out because as a practical matter, there is no way of the

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creditor getting in to inspect the goods. So I think the bill should go down and be studied and come back to us.

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THE PRESIDENT:

Will you remark further? I thought we were ready to proceed but I think we are still in the debate area. Senator Alfano.

SENATOR ALFANO: (7th)

Mr. President, I stand to oppose this bill. I think it is obvious that the intention of the bill is good. It's another consumer bill. A bill, I am sure, sponsored by the CCAG. Like many of their bills, they are well-intended but the end result is that they do more harm and damage to the consumer than they do good. This is a typical example of that type of legislation. I've seen it time and time again. For example, the right of rescission, the people now are surprised when they find out that this applies and they go to get a refinancing on their home and they go to a bank and all of a sudden they want the money immediately and they have a waiting period before they get the money. You explain to them that this is a bill that is backed by the consumer organizations to help you and they are all up in arms over it. Well here again we have a situation where consumers in the end are really going to be harmed by this because their credit is going to be really restricted. Too frequently, when credit is extended, it is extended primarily because of the person having financial responsibility and not only that, the lender wants a little bit more too. He would like them to put up as collateral his automobile or some other

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type of security. Now it comes to the point where the lender has got to make an election of remedies. The end result is going to be that the lender is going to be very reluctant and very hesitant before credit is extended. So I think the person who is going to suffer more by this bill than anyone else is the consumer again by a bill that is intended to help them. On that basis, I am going to vote against it.

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THE PRESIDENT:

Are we ready for the roll call? Senator Ciccarello.

SENATOR CICCARELLO:

I just briefly want to respond to the question of the impact on credit. During the discussion on the amendment, I read a portion of a letter from the Department of Banking in New Mexico indicating there was no evidence of any impact on the availability or cost of credit in that state plus there have been studies indicating that there is a no reduction in the amount of credit available in the four Canadian provinces that have adopted the election of remedy approaches and the source of that is a eight University of Bridgeport-Columbia Law Review, 61,1973. Further, there have been no reports of any reduction in the amount of credit available in California, Washington and New Mexico and the source of this is an interesting study which will appear in Volume Eight of the Connecticut Law Review, which will be submitted for publication in the near future. I think the evidence...I understand Senator Neiditz' remarks that you have to view all of these

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in context. I think these studies have done that and have come to the conclusion that there is an abuse that has to be rectified. As far as his rhetorical question, his concern, under the present law, no repossession can be taken unless it is done peaceably and with regard to consumer goods that are inside of an apartment or a home, you cannot enter without consent. Therefore, right now, creditors oftentimes are prevented from repossession unless they can con their way into the home and then take the item. After they have seen it and appraised it for their own purposes and then they assign a terrifically low value to that item. I think this is a good bill and I urge all to vote for it.

THE PRESIDENT:

In view of the protracted debate, I think we will have to issue another call. Senator Neiditz, one moment please.

THE CLERK:

An immediate roll call vote will take place in the Senate. Would all senators please return to the chamber. An immediate roll call in the Senate. Would all senators please take their seats.

THE PRESIDENT:

Senator Neiditz.

SENATOR NEIDITZ:

Mr. President, Senator Ciccarello again read from the letter from the State of New Mexico which was inconclusive, which is from their consumer credit administrator, as they are

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a code state with higher interest rates, with totally different consumer credit law than we have in this state. The other states mentioned have higher rates, have different law than we do. If you make the rates high enough, you can put in all kinds of defenses. But our rates are lower than the states that he is talking about and that makes a very vast difference and for that reason, I just want to allude to the fact that the evidence from New Mexico - ain't no evidence.

THE PRESIDENT:

Thank you. Are you ready to proceed with the roll call. The machine may be open. Excuse me. I think Senator Sullivan got up at the time when I opened the machine.

SENATOR SULLIVAN: (16th)

Mr. President, I'd like to get up to oppose this piece of legislation and just allude to one fact that Senator Ciccarello pointed out that maybe credit would not be curtailed but however, we have to remember that the retailer is not going to take the brunt of the loss himself. So he is going to do it through the raising of the price of the commodity and the cash customer, who purchases it, is going to be paying for it and the person who buys by credit/<sup>and</sup>pays his credit on time, is going to be paying for it. So maybe the retail seller may be able to continue extending credit but I think the consumer in the long run is going to be hurt very much by this particular piece of legislation. So, therefore, I am against it.

THE PRESIDENT:

Wednesday, April 21, 1976

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You may proceed with the roll call. Please record your vote. The machine is closed. The Clerk may tally the vote.

Y	1	Joseph J. Fauliso	Y	19	James J. Murphy, Jr.
Y	2	Wilber G. Smith	Y	20	Richard F. Schneller
A	3	George W. Hannon, Jr.	Y	21	George L. Gunther
Y	4	David M. Barry	Y	22	Howard T. Owens, Jr.
N	5	David H. Neiditz	Y	23	Salvatore C. DePiano
A	6	Paul S. Amenta	Y	24	Wayne A. Baker
N	7	Charles T. Alfano	Y	25	Louis S. Ciccarello
N	8	Lewis B. Rome	Y	26	George C. Guidera
Y	9	J. Martin Hennessey	Y	27	William E. Strada, Jr.
Y	10	Joseph I. Lieberman	Y	28	Joseph W. Schwartz
Y	11	Anthony M. Ciarlone	Y	29	Audrey P. Beck
N	12	Stanley H. Page	Y	30	Harold D. Hansen
Y	13	Anthony P. Miller	Y	31	Joseph J. Dinielli
Y	14	Robert L. Julianelle	N	32	Richard C. Bozzuto
N	15	Louis S. Cutillo	Y	33	Betty Hudson
N	16	William J. Sullivan	Y	34	Lawrence J. DeNardis
Y	17	Joseph P. Flynn	Y	35	Robert D. Houley
N	18	Mary A. Martin	N	36	Florence D. Finney

Total Voting . . . . . 34  
 Necessary for Passage . . . . . 19  
     Voting Yea . . . . . 25  
     Voting Nay . . . . . 9  
     Absent and Not Voting . . . . . 2

THE BILL IS PASSED.

THE CLERK:

Turning to page four of the Calendar, Cal. 417, File 243 and 437. Favorable report of the joint standing committee on The Environment, Sub. House Bill 5681, AN ACT CONCERNING TECHNICAL AMENDMENTS TO THE INLAND WETLANDS ACT, as amended by House Amendment Schedules A, B, and C.

THE PRESIDENT:

Senator Hansen.

SENATOR HANSEN: (30th)

Mr. President, I move for rejection of House Amendments

H-179

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
1976

VOL. 19  
PART 8  
3173 - 3620

House of Representatives

Thursday, April 29, 1976

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THE GUEST SPEAKER:

Will the House please come to order.

THE CLERK:

Page 2, Calendar No. 889, substitute for S.B. No. 489, An Act Concerning Election of Remedies in Retail Installment Sales Financing Agreements, as amended by Senate Amendment Schedule "A", File Nos. 374, 826.

MR. FERRARI (15th):

Mr. Speaker, I move acceptance of the joint committee's favorable report and passage of the bill in concurrence with the Senate.

THE GUEST SPEAKER:

Question is on acceptance and passage. Will you remark?

MR. FERRARI (15th):

Yes, Mr. Speaker. Mr. Speaker, the Clerk has Senate Amendment Schedule "A". Will the Clerk please call the Senate amendment?

THE CLERK:

Senate Amendment Schedule "A", LCO No. 3435.

MR. FERRARI (15th):

Mr. Speaker, may I have leave to summarize the amendment?

THE GUEST SPEAKER:

Is there objection to the gentleman summarizing the amendment?

Hearing none, proceed.

MR. FERRARI (15th):

Thank you, Mr. Speaker. Mr. Speaker, in order to properly summarize the amendment, I must first go just a second into the substance of the bill. The substance of the bill is to provide that in consumer credit

transactions under the retail installment sales act, that the creditor rather than having the opportunity to repossess a good and then also sue for a deficiency judgment, would have to elect his remedy; that is, he could go for the judgment or for the repossession but he could not do both. That's the way that the bill was reported out of the general law committee.

When the bill reached the Senate, there were a number of people who had questions about the concept and so that in a spirit of compromise, we compromised to make a certain exclusion. The exclusion was that cars with a value under \$1500 would be subject to the election of remedies and in the instance of cars over \$1500, that they would be subject to a new rule and the new rule is that there would be a presumption on the part of the court that at the time the car was repossessed, it had a value equal to the average between the wholesale and retail in ADA book value. Now what that means is that it has a presumption that is refutable in court only by direct testimony. The purpose of this is to provide some scale by which to measure whether or not the car was sold for a reasonable amount so that the creditor could be protected.

Mr. Speaker, I move adoption of the amendment.

THE GUEST SPEAKER:

Question is on adoption of Senate Amendment "A".

MR. MORANO (151st):

Mr. Speaker, I'd like to absent myself because of a conflict of interest.

THE GUEST SPEAKER:

The Journal will so note.

MR. MANNIX (142nd):

Mr. Speaker, I would like to absent myself for the same reason.

THE GUEST SPEAKER:

The Journal will so note.

Are there any further remarks? If not, I'm sorry.

MR. RITTER (6th):

Mr. Speaker, thank you. I'm uncomfortable with this amendment, (recor  
28)  
but will support it only to make sure that we have a better chance of pass-  
ing the entire bill.

THE GUEST SPEAKER:

Any further remarks? Question is on adoption of Senate Amend-  
ment "A". All those in favor will indicate by saying aye. Opposed? Senate  
Amendment "A" is ADOPTED.

Will you remark further on the bill as amended by Senate Amend-  
ment "A"?

MR. FERRARI (15th):

Yes, thank you, Mr. Speaker. I believe that in explaining the  
amendment, I have explained just about the entire bill. Just in summary,  
the purpose of the bill is to correct an injustice which has existed in  
our law for some time. The basis of the injustice is that oftentimes  
creditors would repossess an item and then turn it around and sell it at  
an unusually low rate and then sue the debtor for the deficiency judgment  
and many times the debtor would not have the goods which he purchased but  
would wind up having to pay the full purchase price. This is why the General  
Law Committee raised this bill and it was acted upon favorably by the  
Senate.

Let me say also that in the public hearing on this, the chief

circuit court--or common pleas court administrator, Judge Lexton, testified in favor of the bill stating that there were ripoffs going on and he was glad to see that the committee was going to do something about it. With that, Mr. Speaker, I'll end my presentation and move the adoption of the bill. Thank you.

THE GUEST SPEAKER:

Will you remark further on the bill?

MR. SCULLY (75th):

Mr. Speaker, a question to the proponent.

THE GUEST SPEAKER:

Please frame your question.

MR. SCULLY (75th):

Am I to understand correctly that the only book you're going to use is NADA?

THE GUEST SPEAKER:

The gentleman from the 15th care to respond?

MR. FERRARI (15th):

Yes, Mr. Speaker, that's correct.

MR. SCULLY (75th):

Why, a second question through you Mr. Speaker,

THE GUEST SPEAKER:

The gentleman from the 75th still has the floor.

MR. SCULLY (75th):

Why was this the only book selected?

THE GUEST SPEAKER:

Does the gentleman from the 15th care to respond?

MR. FERRARI (15th):

Yes, Mr. Speaker. Because after consultation with a number of people from loan institutions, from banks, members of the Senate, attorneys, we found that this was the best way to handle the situation and so consequently we adopted this.

MR. SCULLY (75th):

Another question through you Mr. Speaker.

THE GUEST SPEAKER:

Please proceed.

MR. SCULLY (75th):

Is this the usual price that a car is sold at, the NADA value?

THE GUEST SPEAKER:

Does the gentleman from the 15th care to respond?

MR. FERRARI (15th):

Mr. Speaker, I've said that the usual price for which a car is sold is its market value. The only purpose of using the book is to say that the court would presume that it would have at least that value and may I say that we're not presuming that it has the NADA book retail value but we're presuming it has a value equal to half the difference between the wholesale and the resale value which could be as much as \$300 to \$600 less than the retail value.

MR. SCULLY (75th):

Another question, Mr. Speaker. Mr. Speaker, is the proponent of the bill aware that there are other books in the state that either have higher values or in fact lower values than NADA which are in common use throughout the State of Connecticut not only by car dealers but by our local assessor's office?

THE GUEST SPEAKER:

The gentleman from the 15th care to respond?

MR. FERRARI (15th):

No, Mr. Speaker, well I was aware there was other, there was at least one other book. I'm not sure that I'm aware that there are more than one other books.

MR. SCULLY (75th):

Thank you Mr. Speaker. Mr. Speaker, I think this is a very laudable bill but I think the use of the NADA book brings some question to my mind as to whether the people are actually getting the value of their car because there is a great difference in the value of the many books that are used throughout this country and the value of cars. I think that because we're using one specific book, that it has harmed this bill immensely.

THE GUEST SPEAKER:

Any further remarks? Are you prepared to vote? Members please be seated, staff come to the well. The machine will be opened. Have all members voted and is your vote properly recorded? The machine is still open. The machine will be locked, the Clerk please take a tally.

The Clerk please announce the tally.

THE CLERK:

Total Number Voting.....	134
Necessary for Passage.....	68
Those Voting Yea.....	121
Those Voting Nay.....	13
Those Absent and Not Voting.....	17

THE GUEST SPEAKER:

The bill is PASSED.

Ladies and gentlemen of this Chamber, before I yield the Chair back to my colleague and friend, I'm going to ask leave and indulgence of