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STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2452

By: Seikel

AS INTRODUCED

An Act relating to breach of contract for sale of consumer items; providing for remedies of vendors of consumer items; authorizing remedy provided by Uniform Commercial Code; specifying circumstances under which right of repossession applies; providing for additional remedy if repossession cannot be obtained without breach of peace; authorizing vendors to make application for writ of attachment; providing for affidavit in support of writ; specifying content of affidavit; providing for presentation of application to sheriff of certain county; providing for service of writ; providing for surrender of possession by debtor or debtors; providing for objection to writ of attachment; specifying time period for filing of objection; prescribing procedures related to objection; requiring service of objection upon vendor; specifying time limit for action in replevin to be filed; providing for effect of failure to file action for replevin; authorizing action for conversion for failure to file action; providing for damages based upon filing of objection to writ of attachment under certain circumstances; providing for treble damages; authorizing attorney fees to prevailing party in

certain actions; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22.1 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. If a consumer breaches a contract for the sale of a consumer good by failure to make payment for the item, or by instructing a drawee bank to stop payment on an instrument made payable to the vendor of the item, then the vendor of the item shall have the right to repossess the item according to the same standard as provided in Section 9-503 of Title 12A of the Oklahoma Statutes.

B. The right of repossession as authorized by this section shall apply whether or not the vendor of the goods has a secured interest in the item and shall apply whether or not any secured interest so held by the vendor is evidenced by a notice filed as provided by law for perfection of a security interest in the item.

C. If a vendor seeks to repossess a consumer item as authorized by this section, and is unable to recover repossession of the consumer item without a breach of the peace, then such vendor may prepare an affidavit in support of an application for a writ of attachment directed to the sheriff of the county in which the consumer item is alleged to be located which recites the following facts in support of the application:

1. The exact legal name of the debtor or debtors;
2. The date upon which the contract for the sale of the consumer item was entered into;

3. A precise description of the consumer item, including any serial number, model number, or other unique identification number or identification system;

4. The purchase price for the consumer item;

5. The date upon which the debtor or debtors took physical possession of the consumer item;

6. The address of the debtor or debtors as last-known by the vendor;

7. The last-known location of the consumer item;

8. The date upon which the vendor asserts that the debtor or debtors defaulted in an obligation to make full or partial payment for the item;

9. The balance, computed to a date within thirty (30) days of the date upon which application is made for the writ of assistance, of the debt which the vendor asserts to be due;

10. Any credits for payments made by the debtor or debtors upon the obligation for payment of the purchase price of the consumer item;

11. The legal name of the vendor;

12. The address at which the vendor receives notice of any legal process upon it;

13. The date upon which the vendor received notification from any financial institution that an instrument for payment of the purchase price of the consumer item, or any part of such purchase price, was dishonored or ordered not to be paid by the debtor or debtors;

14. The name of any financial institution providing notification to the vendor as provided in paragraph 13 of this subsection; and

15. Any other information which the vendor deems to be relevant to the application for a writ of attachment.

D. Upon presentation of a complete affidavit to the sheriff of the county in which the consumer item is alleged to be located, the sheriff of such county shall issue a writ of attachment directed to the debtor or debtors named in the affidavit. Such writ may be served upon the debtor or debtors in the manner provided by law for service of civil process. Upon service of the writ, the debtor or debtors shall surrender possession of the consumer item to the sheriff or to the vendor as may be directed by the sheriff.

E. A debtor or debtors served with a writ of attachment for repossession of a consumer item pursuant to this section shall have a period of ten (10) days within which to file with the court clerk of the county in which the writ of attachment was issued an objection to the writ. The form of the objection shall be prescribed by the Administrative Director of the Courts. If the objection is filed, the court clerk shall serve notice of the objection by certified mail with return receipt requested upon the vendor who obtained the writ of attachment at the address listed in the affidavit in support of the application for the writ. Upon service of notice of the objection, a vendor shall file an action for replevin as provided by Sections 1571 et seq. of Title 12 of the Oklahoma Statutes within five (5) days of the date upon which the notice of objection is received by the vendor.

F. If a vendor fails to file an action for replevin of the consumer item within the time specified in subsection E of this section, such failure shall be deemed to constitute an act of conversion and the debtor or debtors may recover damages from the vendor as provided by law or may recover possession of the consumer item or both such damages and possession.

G. If a debtor or debtors file an objection to a writ of attachment served as provided by this section without a basis upon which to assert that the recovery of possession by the vendor is not authorized for any reason, then such debtor or debtors shall be

liable for three (3) times the amount of damages to which the vendor of the consumer item would otherwise be entitled to recover after determining the amount of any deficiency due and owing to such vendor after sale or other disposition of the consumer item.

H. The prevailing party in an action by a vendor to recover damages as authorized by subsection G of this section against a debtor or debtors shall be entitled to an award of a reasonable attorney fee. The prevailing party in an action for replevin filed as provided by subsection E of this section shall be entitled to an award of a reasonable attorney fee.

SECTION 2. This act shall become effective September 1, 1994.

44-2-8147

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