Assembly Bill No. 1635

CHAPTER 153

An act to amend Section 1803.2 of the Civil Code, relating to contracts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 22, 1995. Filed with Secretary of State July 24, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1635, Gallegos. Retail installment contracts.

Existing law prescribes in two sets of provisions, one operative until October 1, 1995, and one operative on and after October 1, 1995, that every retail installment contract contain specified warnings to the buyer, including that the buyer's home may be used as security for the contract. Existing law governs the wording of these warnings and the position at which they appear on the contract.

This bill would provide that the form prescribed for use pursuant to the set of provisions operative on or after October 1, 1995, may be used between the effective date of this bill and October 1, 1995.

The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 1803.2 of the Civil Code, as added by Section 3 of Chapter 888 of the Statutes of 1994, is amended to read:

1803.2. Except as provided in Section 1808.3, every retail installment contract shall be contained in a single document that shall contain:

(a) The entire agreement of the parties with respect to the cost and terms of payment for the goods and services, including any promissory notes or any other evidences of indebtedness between the parties relating to the transaction.

(b) (1) At the top of the contract the words ''Security Agreement'' shall appear in at least 12-point bold type where a security interest in the goods is retained or a security interest on other goods or realty is obtained by the seller as security for the goods or services purchased.

(2) At the top of the contract the words ''Retail Installment Contract'' shall appear in at least 12-point bold type where a security interest is not retained or obtained by the seller as security for the goods or services purchased.

(3) Any contract for goods or services that provides for a security interest in real property shall also provide the following notice, written in the same language, e.g., Spanish, as used in the contract: ‘‘WARNING TO BUYER: IF YOU SIGN THIS CONTRACT, YOU WILL BE PUTTING UP YOUR HOME AS SECURITY. THIS MEANS THAT YOUR HOME COULD BE SOLD WITHOUT YOUR PERMISSION AND WITHOUT ANY COURT ACTION IF YOU MISS ANY PAYMENT AS REQUIRED BY THIS CONTRACT.’’ This notice shall be printed in at least 14-point boldface type, shall be set apart from the rest of the contract by a border, and shall appear directly above the space reserved for the signature of the buyer. A security interest created in any contract described in this paragraph that does not provide the notice as required by this paragraph shall be void and unenforceable.

As used in this subdivision, the term ‘‘security interest’’ refers to a contractual interest in property and not to a mechanic’s lien or other interest in property arising by operation of law.

(c) Where the contract includes a finance charge that is determined on the precomputed basis and provides that the unearned portion of the finance charge to be refunded upon full prepayment of the contract is to be determined by a method other than actuarial, a notice in at least 10-point bold type if the contract is printed reading as follows: ‘‘Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is $1 or more. Because of the way the amount of this refund will be figured, the time when you prepay could increase the ultimate cost of credit under this agreement. (4) If you desire to pay off in advance the full amount due, the amount of the refund you are entitled to, if any, will be furnished upon request.’’

(d) Where the contract includes a finance charge that is determined on the precomputed basis and provides for the actuarial method for computing the unearned portion of the finance charge upon prepayment in full, a notice in at least 10-point bold type if the contract is printed reading as follows: ‘‘Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is $1 or more. (4) If you desire to pay off in advance the full amount due, the amount of the refund you are entitled to, if any, will be furnished upon request.’’

(e) Where the contract includes a finance charge that is determined on the simple-interest basis, a notice in at least 10-point bold type if the contract is printed reading as follows: ‘‘Notice to

buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you desire to pay off in advance the full amount due, the amount which is outstanding will be furnished upon request.''

(f) This section shall become operative on October 1, 1995.

(g) The form specified in this section may be used before October 1, 1995, to comply with the provisions of this section as amended and repealed by Section 2 of Chapter 888 of the Statutes of 1994.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Section 1803.2 of the Civil Code, as amended, repealed, and added by Sections 2 and 3 of Chapter 888 of the Statutes of 1994 would require the use of one form for retail installment contracts until October 1, 1995, and a different form on and after October 1, 1995. In order to save retail sellers from incurring the expense of maintaining supplies of both contract forms in order to comply with these provisions and to protect retail sellers from the inadvertent loss of their security interests due to a failure to use the currently operative form, it is necessary that this act take effect immediately.

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