

Amendment No. 490

Assembly Amendment to Assembly Bill No. 477	(BDR 8-935)
Proposed by: Assembly Committee on Commerce and Labor	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

BRU/WLK



Date: 4/19/2019

A.B. No. 477—Enacts provisions governing the accrual of interest in certain consumer form contracts. (BDR 8-935)



ASSEMBLY BILL NO. 477—COMMITTEE
ON COMMERCE AND LABOR

MARCH 25, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Enacts provisions governing the accrual of interest in certain consumer form contracts. (BDR 8-935)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~for omitted material~~ is material to be omitted.

AN ACT relating to consumer contracts; enacting the Consumer Protection from the Accrual of Predatory Interest After Default Act; prohibiting the use of certain form contracts; limiting prejudgment and postjudgment interest rates and attorney's fees under certain circumstances; prohibiting choice of law, forum selection and other provisions in certain form contracts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law contains various provisions governing retail installment sales. (Chapter 97 of NRS) **Sections 2-19** of this bill enact the Consumer Protection from the Accrual of Predatory Interest After Default Act, which contains provisions governing the use of form contracts in certain consumer transactions. **Sections 5-8** of this bill define "business," "consumer," "consumer debt" and "consumer form contract." **Section 9** of this bill prohibits the use of a consumer form contract by a business that is not in compliance with the provisions of this bill. **Section 10** of this bill exempts certain business organizations and other persons from the provisions of this bill. **Section 11** of this bill prohibits the inclusion of a choice of law or forum selection provision in a consumer form contract. **Section 12** of this bill requires any consumer form contract involving financial services be signed by the consumer in writing or electronically signed in full compliance with Section 101(c) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001(c). **Section 13** of this bill prohibits the inclusion of certain provisions in a consumer form contract that would limit a consumer's rights. **Section 14** of this bill declares that any **provision in a consumer form contract** ~~for provision~~ that violates the provisions of this bill is void and unenforceable. **Section 15** of this bill provides that if a consumer enters a ~~credit transaction~~ **consumer form contract** with a person who is required to be licensed but is not, the contract is void for all purposes. ~~Section 16 of this bill limits the claim for collection of consumer debt based on a consumer form contract to breach of contract and provides defenses for the consumer.~~ **Section 17** of this bill provides certain methods for calculating the rate of prejudgment and postjudgment interest under different circumstances. **Sections 18 and 19** of this bill provide certain methods for calculating attorney's fees for the prevailing party in any action to collect a consumer debt.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 8 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 19, inclusive, of this act.

Sec. 2. *This chapter may be cited as the Consumer Protection from the Accrual of Predatory Interest After Default Act.*

Sec. 3. 1. *The purpose of this chapter is to protect consumers.*

2. *This chapter must be construed as a consumer protections statute for all purposes.*

3. *This chapter must be liberally construed to effectuate its purpose.*

Sec. 4. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 5 to 8 , inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 5. *“Business” means a proprietorship, corporation, partnership, association, trust, unincorporated organization or other enterprise doing business in this State.*

Sec. 6. *“Consumer” means a natural person.*

Sec. 7. *“Consumer debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily personal, family or household purposes, whether or not such obligation has been reduced to judgment.*

Sec. 8. 1. *“Consumer form contract” means a ~~contract in writing between a business and a consumer involving goods and services,~~ retail charge agreement or a retail installment contract involving a retail installment transaction in writing between a retail seller and a consumer buyer, or a lease in writing between a lessor and a consumer lessee, involving the sale or lease of goods or services, including, without limitation, credit or financial services, primarily for personal, family or household purposes and which has either been drafted by the business or by a third party for use with more than one consumer, unless a second consumer is the spouse of the first consumer.*

2. *As used in this section:*

(a) “Buyer” has the meaning ascribed to it in NRS 97.085.

(b) “Goods” has the meaning ascribed to it in NRS 97.035.

(c) “Retail charge agreement” has the meaning ascribed to it in NRS 97.095.

(d) “Retail installment contract” has the meaning ascribed to it in NRS 97.105.

(e) “Retail installment transaction” has the meaning ascribed to it in NRS 97.115.

(f) “Retail seller” has the meaning ascribed to it in NRS 97.125.

(g) “Services” has the meaning ascribed to it in NRS 97.135.

Sec. 9. 1. *A business, including, without limitation, any officer, agent, employee or representative, shall not individually or in cooperation with another, solicit the execution of, receive or rely upon a consumer form contract, including, without limitation, reliance upon the consumer form contract as a basis of a suit or claim, unless the business has complied with the provisions of this chapter.*

2. *The provisions of this chapter apply to any person who seeks to evade its application by any device, subterfuge or pretense.*

Sec. 10. *The provisions of this chapter do not apply to:*

1. ~~*Except as otherwise provided in section 9 of this act, a*~~ *A person doing business pursuant to the authority of any law of this State or of the United States*

1 relating to banks, national banking associations, savings banks, trust companies,
2 savings and loan associations, credit unions, mortgage brokers, mortgage
3 bankers, thrift companies or insurance companies, including, without limitation,
4 any affiliate or subsidiary of such a person regardless of whether the affiliate or
5 subsidiary is a bank.

6 2. Any business:

7 (a) Whose principal purpose or activity is lending money on real property
8 which is secured by a mortgage;

9 (b) Approved by the Federal National Mortgage Association as a seller or
10 servicer; and

11 (c) Approved by the United States Department of Housing and Urban
12 Development and the Department of Veterans Affairs.

13 3. A person who provides money for investment in loans secured by a lien
14 on real property, on his or her own account.

15 4. A seller of real property who offers credit secured by a mortgage of the
16 property sold.

17 5. A person who exclusively extends credit to any person who is not a
18 resident of this State for any business, commercial or agricultural purpose that is
19 located outside this State.

20 6. A person while performing any act authorized pursuant to chapter 604A
21 of NRS.

22 **Sec. 11.** If a consumer form contract is signed by the consumer or
23 otherwise formed while the consumer resides in this State ~~with~~ with a person
24 operating within this State:

25 1. A choice of law provision in a consumer form contract which provides
26 that the consumer form contract is to be governed or interpreted pursuant to the
27 laws of another state is void. Enforcement and interpretation of such a contract
28 must be governed by the laws of this State if enforcement of the consumer form
29 contract is sought in a court of this State.

30 2. A forum selection provision in a consumer form contract which provides
31 that any claims or actions related to the consumer form contract must be litigated
32 in a forum outside this State is void.

33 **Sec. 12.** 1. Any consumer form contract involving a loan, extension of
34 credit, deposit account or other financial services must be signed by the consumer
35 in writing or electronically in full compliance with Section 101(c) of the
36 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §
37 7001(c).

38 2. Any change of terms to a consumer form contract must be agreed to by
39 the consumer by affirmative consent, signed in writing or electronically in full
40 compliance with Section 101(c) of the Electronic Signatures in Global and
41 National Commerce Act, 15 U.S.C. § 7001(c).

42 **Sec. 13.** A consumer form contract must not contain:

43 1. A provision that the consumer will hold the other party harmless, or that
44 otherwise relieves the other party of liability, for any harm or damage caused to
45 the consumer arising from the consumer form contract.

46 2. A confession of judgment clause.

47 3. A waiver of the right to a jury trial, ~~if applicable,~~ unless the consumer
48 agrees to an alternative dispute resolution such as binding arbitration, in any
49 action brought by or against the consumer.

50 4. Any assignment of or order for payment of wages or other compensation
51 for services.

5. A provision in which the consumer agrees not to assert any claim or defense arising out of the consumer form contract or to seek any remedies pursuant to any consumer protection law.

6. A waiver of any provision of this chapter or any other consumer protection statute. Any such waiver shall be deemed null, void and of no effect.

7. A provision requiring or having the practical effect of requiring that any aspect of a resolution of a dispute between the parties to the agreement be kept confidential. This subsection does not affect the right of the parties to agree that certain specified information is a trade secret or otherwise confidential or to later agree, after the dispute arises, to keep a resolution confidential.

Sec. 14. ~~Any consumer form contract or provision thereof that violates this chapter shall be void and unenforceable. If only one provision of a consumer form contract violates this chapter, a~~ A provision in a consumer form contract that violates this chapter shall be void and unenforceable. A court may refuse to enforce other provisions of the consumer form contract as equity may require.

Sec. 15. Any consumer ~~credit transaction~~ form contract entered into by a consumer with a person who is required to be licensed pursuant to any provision of NRS or NAC in order to enter into the consumer transaction, but is not so licensed, is void. Neither the obligee nor any assignee of the obligation may collect, receive or retain any principal, finance charge or other fees in connection with the transaction.

Sec. 16. ~~If a consumer debt was created by or based upon a consumer form contract, any action for collection of the consumer debt may only be based on a claim for breach of contract and not upon an open account, account stated, quantum meruit or other cause of action and may not allege that the consumer form contract is an instrument or contract under seal. Regardless of the cause of action asserted, a consumer may raise a defense based upon the reasonable value of goods or services provided.~~ (Deleted by amendment.)

Sec. 17. If the plaintiff is the prevailing party in any action to collect a consumer debt:

1. And no rate of interest is stated in the consumer form contract, any prejudgment or postjudgment interest must be limited as set forth in this section.

2. And a rate of interest is stated in the consumer form contract, interest stops accruing at the rate stated in the consumer form contract on the date of default and may be awarded by the court only as set forth in this section.

3. Interest under the consumer form contract, prejudgment interest and postjudgment interest awarded by the court must not be compounded.

4. Interest accrues at the rate stated in the consumer form contract only through the date of default, and any prejudgment or postjudgment interest the court awards the plaintiff must be limited to the lesser of:

(a) The rate of interest in the consumer form contract; or

(b) A rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

Sec. 18. 1. If the plaintiff is the prevailing party in any action to collect a consumer debt, the plaintiff is entitled to collect attorney's fees only if the consumer form contract or other document evidencing the indebtedness sets forth an obligation of the consumer to pay such attorney's fee and subject to the following conditions:

(a) If a consumer form contract or other document evidencing indebtedness provides for attorney's fees in some specific percentage, such provision and

1 *obligation is valid and enforceable for an amount not to exceed 15 percent of the*
2 *amount of the debt, excluding attorney's fees and collection costs.*

3 *(b) If a consumer form contract or other document evidencing indebtedness*
4 *provides for the payment of reasonable attorney's fees by the debtor, without*
5 *specifying any specific percentage, such provision must be construed to mean the*
6 *lesser of 15 percent of the amount of the debt, excluding attorney's fees and*
7 *collection costs, or the amount of attorney's fees calculated by a reasonable rate*
8 *for such cases multiplied by the amount of time reasonably expended to obtain*
9 *the judgment.*

10 *2. The documentation setting forth a party's obligation to pay attorney's*
11 *fees must be provided to the court before a court may enforce those provisions.*

12 **Sec. 19.** *If the debtor is the prevailing party in any action to collect a*
13 *consumer debt, the debtor is entitled to an award of reasonable attorney's fees.*
14 *The amount of the debt that the creditor sought may not be a factor in*
15 *determining the reasonableness of the award. ~~In the alternative, at the debtor's~~*
16 *~~election, a prevailing debtor must be awarded the amount of attorney's fees that~~*
17 *~~the plaintiff would have been entitled to collect if the plaintiff had been the~~*
18 *~~prevailing party.]~~*

19 **Sec. 20.** The provisions of this act apply to contracts entered into on or after
20 October 1, 2019.