

First Supplement to Memorandum 74-26

Subject: Study 72 - Liquidated Damages

I have been informed that the Board of Governors has considered Senate Bill 1532 (liquidated damages) and has unanimously determined that the State Bar will oppose the enactment of this bill. This information was obtained by telephone and I have not received a written communication setting out the reasons for this decision by the State Bar. However, as stated in the basic memorandum, there seems to be a general feeling that Senate Bill 1532 would operate with unjustified harshness, especially against consumers in real estate transactions.

In light of this action by the State Bar, it seems that it would be appropriate for the Commission to withdraw its recommendation that legislation on liquidated damages be enacted at the current session and to give further study to this matter when time permits with a view to possibly submitting a new recommendation to a future session.

Attached as Exhibit I is a letter suggesting that SB 1532 be amended to include a provision for late payment charges for a lease of personal property.

Respectfully submitted,

John H. DeMouly
Executive Secretary

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April 19, 1974

Senator Robert S. Stevens
State Capitol
Sacramento, Calif. 95814

Re: SB 1532

Dear Senator Stevens:

I am counsel for Automotive Leasing Association. This is trade association of vehicle lessors. Our auto leases are in conformity with Automobile Leasing Act, Civil Code 2985.7 to 2985.93.

Unlike the Rees-Levering Act, which regulates conditional sales (CC 2982(c)), there is no provision in the Leasing Act for late charges. All lease contracts contain provision, that if rent is late, there shall be paid by lessee a late charge of 5% of monthly rent. This is a one-time charge.

Since the decision in *Garrett v Coast Federal S & Loan Ass'n*, 9 C3rd 731, we believe that there should be legislative validation for late charges on leases. This would place this industry in same position so far as late payments are concerned, as conditional sales.

While your proposed bill changes the emphasis from disapproval to approval of liquidated damages, we suggest that a statute stating that a late charge, on personal property leases, that did not exceed 5% for each late installment, is reasonable, would prevent litigation over what is "reasonable."

We suggest that there be added to proposed CC 3319, the following language: "On leases of personal property, where rent is paid in periodic installments, a late charge not exceeding 5% on a delinquent installment, and which may be collected only one time, is reasonable."

While the leasing industry can justify late charges, under the test of *Garrett*, additional collection expenses and loss of interest, we request legislative approval of one-time late charge not to exceed 5% of late installment.

Sincerely,



AMG:a
cc: Law Revision Commission