

SENATE, No. 2062

STATE OF NEW JERSEY

INTRODUCED MAY 15, 1997

By Senators SCOTT and BRYANT

1 AN ACT concerning rental-purchase agreements and supplementing
2 Title 17 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "New Jersey
8 Rental-Purchase Consumer Protection Act."

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10 2. As used in this act:

11 "Advertisement" means a commercial message in any medium that
12 aids, promotes or assists, directly or indirectly, in the consummation
13 of a rental-purchase agreement.

14 "Cash price" means the price at which the merchant would have
15 sold the property to the consumer for cash on the date of the
16 rental-purchase agreement.

17 "Consumer" means a natural person who rents personal property
18 under a rental-purchase agreement to be used primarily for personal,
19 family or household purposes.

20 "Consummation" means the time a consumer becomes contractually
21 obligated on a rental-purchase agreement.

22 "Early buy-out formula" means the cash price of the rented property
23 less 50 percent of the rental payments made by the consumer.

24 "Rental-purchase agreement" means an agreement for the use of
25 personal property by a consumer primarily for personal, family or
26 household purposes, for an initial period of four months or less, that
27 is automatically renewable with each payment after the initial period,
28 but does not obligate or require the consumer to continue renting or
29 using the property beyond the initial period, and that permits the renter
30 to become the owner of the property.

31 "Merchant" means a person who regularly provides the use of
32 property through rental-purchase agreements and to whom rental
33 payments are initially payable on the face of the rental-purchase
34 agreement.

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36 3. a. A rental-purchase agreement that complies with the
37 provisions of this act shall not be construed as, nor be governed by,

1 the laws relating to:

2 (1) a retail installment contract as defined in subsection (b) of
3 section 1 of P.L.1960, c.40 (C.17:16C-1);

4 (2) a retail charge account as defined in subsection (r) of section
5 1 of P.L.1960, c.40 (C.17:16C-1);

6 (3) a retail installment sale of goods or retail installment contract
7 for the sale of goods pursuant to P.L.1968, c.223 (C.17:16C-61.1 et
8 seq.); or

9 (4) a security interest as defined in subsection (37) of
10 N.J.S.12A:1-201.

11 b. The provisions of this act shall not apply to:

12 (1) rental-purchase agreements primarily for business, commercial
13 or agricultural purposes, or those made with governmental agencies,
14 instrumentalities or organizations;

15 (2) a rental or lease of a safe deposit box;

16 (3) a rental or lease or bailment of personal property which is
17 incidental to the lease of real property, and which provides that the
18 consumer has no option to purchase the rented or leased property; or

19 (4) a rental or lease of an automobile.

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21 4. a. A merchant shall disclose to a consumer the information
22 required by section 5 of this act. In a transaction involving more than
23 one merchant, only one merchant shall make the disclosures required
24 by section 5 of this act, but all merchants involved in a rental-purchase
25 agreement with a consumer shall be bound by those disclosures.

26 b. The disclosures shall be made at or before consummation of the
27 rental-purchase agreement. Agreements shall be written in plain
28 English, and in any other language used by a merchant in
29 advertisements for rental-purchase agreements.

30 c. The disclosures shall be made clearly and conspicuously in
31 writing and a copy of the rental-purchase agreement shall be provided
32 to the consumer at the time the agreement is consummated. The
33 disclosures required pursuant to section 5 of this act shall be made on
34 the face of the contract above the line for the consumer's signature.

35 d. If a disclosure becomes inaccurate as the result of any act,
36 occurrence or agreement by the consumer after delivery of the
37 required disclosures, the resulting inaccuracy is not a violation of this
38 act.

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40 5. a. For each rental-purchase agreement, the merchant shall
41 disclose in the agreement the following items, as applicable:

42 (1) the total number, total dollar amount and timing of all payments
43 necessary to acquire ownership of the property;

44 (2) a statement that the consumer will not own the property until
45 the consumer has made the total dollar amount of payments necessary
46 to acquire ownership;

- 1 (3) a statement that the consumer is responsible for the fair market
2 value of the property, according to the early buy-out formula, if, and
3 as of the time, it is stolen, damaged or destroyed;
- 4 (4) a brief description of the rented property, sufficient to identify
5 the property to the consumer and the merchant, including an
6 identification number, if applicable, and a statement indicating whether
7 the property is new or used, but a statement that indicates new
8 property is used is not a violation of this act;
- 9 (5) the cash price of the property;
- 10 (6) the total of initial payments paid or required at or before
11 consummation of the rental-purchase agreement or delivery of the
12 property, whichever is later;
- 13 (7) a statement that the total dollar amount of payments does not
14 include other charges that a consumer may incur, such as late payment,
15 default, pickup and reinstatement fees, which charges shall be
16 separately and individually disclosed by dollar amount in the
17 rental-purchase agreement;
- 18 (8) a statement clearly summarizing the terms of the consumer's
19 option to purchase, including a statement that the consumer has the
20 right to exercise an early purchase option and the price, formula or
21 method for determining the price at which the property may be so
22 purchased;
- 23 (9) a statement identifying the party responsible for maintaining or
24 servicing the property while it is being rented, together with a
25 description of that responsibility, and a statement that if any part of a
26 manufacturer's express warranty covers the rental property at the time
27 the consumer acquires ownership of the property, it shall be
28 transferred to the consumer, if allowed by the terms of the warranty;
- 29 (10) the date of the consummation of the agreement and the
30 identities of the merchant and the consumer;
- 31 (11) a statement that the consumer may terminate the agreement
32 without penalty by voluntarily surrendering or returning the property
33 in good repair upon expiration of any rental term along with any past
34 due rental payments; and
- 35 (12) notice of the right to reinstate a rental-purchase agreement
36 pursuant to section 7 of this act, which notice shall include the
37 provisions of section 7 of this act.
- 38 b. With respect to matters specifically governed by the federal
39 Consumer Credit Protection Act (15 U.S.C. §1601 et seq.),
40 compliance with that act shall be deemed to satisfy the disclosure
41 requirements of this section.
- 42
- 43 6. A rental-purchase agreement may not contain a provision:
- 44 a. Requiring a confession of judgment;
- 45 b. Requiring a garnishment of wages;
- 46 c. Permitting the merchant a security interest in or other claim to

- 1 a property interest in any property except property delivered by the
2 merchant pursuant to the rental-purchase agreement;
- 3 d. Authorizing a merchant or an agent of the merchant to commit
4 a breach of the peace during repossession of the property;
- 5 e. Waiving a defense, counterclaim, or right the renter may have
6 against the merchant or an agent of the merchant;
- 7 f. Requiring a balloon payment in addition to regular rental
8 payments in order to acquire ownership of the property, or requiring
9 rental payments totaling more than the cost to acquire ownership, as
10 disclosed in the rental-purchase agreement; or
- 11 g. Requiring purchase of insurance from the merchant to cover the
12 property.
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- 14 7. a. A consumer who fails to make a timely rental payment may
15 reinstate a rental-purchase agreement without losing any rights or
16 options which exist under the agreement, if the following apply:
- 17 (1) subsequent to having failed to make a timely rental payment,
18 the consumer promptly returns or surrenders the property upon the
19 merchant's request; and
- 20 (2) not more than 60 days have passed since the property was
21 returned to the merchant; except that if the consumer has paid 60
22 percent or more of the total of payments necessary to acquire
23 ownership of the property, then the reinstatement period shall be
24 extended to 180 days.
- 25 b. As a condition of reinstatement under this section, the merchant
26 may require the payment of all past due rental charges, any applicable
27 late fee, plus a reinstatement fee not to exceed \$5.
- 28 c. Nothing in this section shall prevent a merchant from attempting
29 to repossess property during the reinstatement period, but that
30 repossession shall not affect the consumer's rights to reinstate. Upon
31 reinstatement, the merchant shall provide the consumer with the same
32 property or substitute property of comparable quality and condition.
33
- 34 8. a. No merchant shall offer a rental-purchase agreement in which
35 50 percent of all rental payments necessary to acquire ownership of the
36 rented property exceeds the posted cash price of the rented property.
37 When 50 percent of all rental payments made by a consumer equals the
38 posted cash price of the property disclosed to the consumer pursuant
39 to paragraph (5) of subsection a. of section 5 of this act, the consumer
40 shall acquire ownership of the rented property and the rental-purchase
41 agreement shall terminate.
- 42 b. At any time after tendering an initial rental payment, a consumer
43 may acquire ownership of the property that is the subject of the
44 rental-purchase agreement by tendering the amount by which the
45 posted cash price of the rented property exceeds 50 percent of all
46 rental payments previously made by the consumer.

- 1 9. A merchant shall provide the consumer a written receipt for each
2 payment made by cash or money order, upon request by the consumer.
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- 4 10. a. A renegotiation shall occur when an existing rental-purchase
5 agreement is satisfied and replaced by a new agreement undertaken by
6 the same merchant and consumer. A renegotiation shall be considered
7 a new agreement requiring new disclosures pursuant to this act.
8 However, events such as the following shall not be treated as
9 renegotiation:
- 10 (1) the addition or return of property in a multiple-item agreement
11 or the substitution of the rental property, if in either case the average
12 payment allocable to a payment period is not changed by more than 25
13 percent;
- 14 (2) a deferral or extension of one or more periodic payments, or
15 portions of a periodic payment;
- 16 (3) a reduction in charges in the agreement; and
17 (4) an agreement involved in a court proceeding.
- 18 b. No new disclosures are required for any extension of a
19 rental-purchase agreement.
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- 21 11. a. If an advertisement for a rental-purchase agreement refers
22 to or states the dollar amount of any payment and right to acquire
23 ownership for any one specific item, the advertisement shall also
24 clearly and conspicuously state the following items, as applicable:
- 25 (1) that the transaction advertised is a rental-purchase agreement;
26 (2) the total number and total dollar amount of payments necessary
27 to acquire ownership; and
28 (3) that the consumer does not acquire ownership rights if the total
29 dollar amount of payments necessary to acquire ownership is not paid.
- 30 b. Any personal property displayed or offered under a
31 rental-purchase agreement shall bear a tag which clearly and
32 conspicuously states:
- 33 (1) the cash price of the property;
34 (2) the dollar amount of the periodic payment;
35 (3) the total dollar amount that must be paid in order to acquire
36 ownership of the property under a rental-purchase agreement; and
37 (4) that the property is new or used.
- 38 c. An owner or agent of the medium in which an advertisement for
39 a rental-purchase agreement appears or through which it is
40 disseminated shall not be liable pursuant to this section.
- 41 d. The provisions of subsection a. of this section shall not apply to
42 an advertisement which does not refer to or state the amount of any
43 payment, or which is published in the yellow pages of a telephone
44 directory or in any similar directory of business.

1 12. a. Notwithstanding any provision of subsection b. of this
2 section to the contrary, a merchant who fails to comply with the
3 requirements of this act shall be liable to the consumer in an amount
4 equal to the greater of:

5 (1) the actual damages sustained by the consumer as a result of the
6 merchant's failure to comply with this act; or

7 (2) twenty-five percent of the total of payments necessary to
8 acquire ownership, but not less than \$100 nor more than \$1,000.

9 That merchant shall also be liable to the consumer for the costs of
10 the action and reasonable attorneys' fees, as determined by the court.

11 b. No consumer shall offset any amount for which a merchant is
12 potentially liable under subsection a. of this section against any amount
13 owed by the consumer, unless the amount of the merchant's liability
14 has been determined by judgment of a court of competent jurisdiction
15 in an action in which the merchant was a party. This subsection b.
16 does not bar a consumer then in default on an obligation from
17 asserting a violation of this act as an original action, or as a defense or
18 counterclaim to an action brought by a merchant against the consumer.

19 c. No action under this section shall be brought in any court of
20 competent jurisdiction more than two years after the date the
21 consumer made his last rental payment, or more than two years after
22 the date of the occurrence of a violation that is the subject of the suit,
23 whichever is later.

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25 13. This act shall take effect on the 180th day after enactment.
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28 STATEMENT

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30 This bill defines and regulates rental-purchase agreements involving
31 personal property used for personal, family or household purposes.

32 The bill provides that rental-purchase agreements are not to be
33 treated as retail installment contracts, retail charge accounts, credit
34 sales, or consumer leases.

35 The bill specifies disclosures required and prohibits the inclusion of
36 certain provisions in rental-purchase agreements; provides for the
37 reinstatement of the rental-purchase agreement after failure of the
38 consumer to make a timely payment; provides an early purchase option
39 after initial payment; and provides the conditions under which a
40 consumer, who has suffered loss due to a violation of any provision of
41 the act by a merchant, may seek to recover certain costs.

42 The bill further defines what a rental-purchase agreement is by
43 excluding credit sales and consumer rentals or leases as defined in
44 federal law or regulation and provides that, for those rental or
45 lease-purchase agreements specifically subject to the provisions of the
46 federal Consumer Credit Protection Act, compliance with the

1 disclosure requirements of that act satisfies disclosure requirements of
2 the bill.

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7 Provides for regulation of certain rental-purchase agreements.