

[First Reprint]
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."

9

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. ¹The "cash price" of the property shall be
17 one of the following:

18 (1) the manufacturers' suggested or list price;

19 (2) two times (a) the documented acquisition cost from the
20 manufacturer and (b) the actual cost of shipping, which cost shall not
21 exceed 10% of the acquisition cost; or

22 (3) the published or advertised price of the same property selling
23 in the same trade area.¹

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

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

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

31 "Rental-purchase agreement" means an agreement for the use of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SSM committee amendments adopted December 15, 1997.

1 personal property by a consumer primarily for personal, family or
2 household purposes, for an initial period of four months or less, that
3 is automatically renewable with each payment after the initial period,
4 but does not obligate or require the consumer to continue renting or
5 using the property beyond the initial period, and that permits the renter
6 to become the owner of the property.

7 "Merchant" means a person who regularly provides the use of
8 property through rental-purchase agreements and to whom rental
9 payments are initially payable on the face of the rental-purchase
10 agreement.

11 "Retail price" means the manufacturers' suggested retail price, or
12 if there is no manufacturers' suggested retail price available for the
13 property, "retail price" means a price based on the published or
14 advertised prices of the same property selling on a non-discount basis
15 in the same trade area which is established by regulation on a
16 quarterly basis by the Division of Consumer Affairs in the Department
17 of Law and Public Safety.¹

18

19 3. a. A rental-purchase agreement that complies with the
20 provisions of this act shall not be construed as, nor be governed by,
21 the laws relating to:

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

24 (2) a retail charge account as defined in subsection (r) of section
25 1 of P.L.1960, c.40 (C.17:16C-1);

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

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

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

32 (1) rental-purchase agreements primarily for business, commercial
33 or agricultural purposes, or those made with governmental agencies,
34 instrumentalities or organizations;

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

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

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

40

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

46 b. The disclosures shall be made at or before consummation of the

1 rental-purchase agreement. Agreements shall be written in plain
2 English, and in any other language used by a merchant in
3 advertisements for rental-purchase agreements.

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

9 d. If a disclosure becomes inaccurate as the result of any act,
10 occurrence or agreement by the consumer after delivery of the
11 required disclosures, the resulting inaccuracy is not a violation of this
12 act.

13

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

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

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

21 (3) a statement that the consumer is responsible for the fair market
22 value of the property, according to the early buy-out formula, if, and
23 as of the time, it is stolen, damaged or destroyed;

24 (4) a brief description of the rented property, sufficient to identify
25 the property to the consumer and the merchant, including an
26 identification number, if applicable, and a statement indicating whether
27 the property is new or used, but a statement that indicates new
28 property is used is not a violation of this act;

29 (5) the cash price of the property ¹,including the information that
30 the cash price is one of the following: (a) the manufacturers'
31 suggested or list price; (b) two times (i) the actual cost of acquisition
32 from the manufacturer and (ii) the actual cost of shipping, which cost
33 shall not exceed 10% of the acquisition cost; or (c) the published or
34 advertised price of the same merchandise selling in the same trade
35 area¹ ;

36 (6) ¹the retail price of the property;

37 (7)¹ the total of initial payments paid or required at or before
38 consummation of the rental-purchase agreement or delivery of the
39 property, whichever is later;

40 ¹[(7)] (8)¹ a statement that the total dollar amount of payments
41 does not include other charges that a consumer may incur, such as late
42 payment, default, pickup and reinstatement fees, which charges shall
43 be separately and individually disclosed by dollar amount in the
44 rental-purchase agreement;

45 ¹[(8)] (9)¹ a statement clearly summarizing the terms of the
46 consumer's option to purchase, including a statement that the

1 consumer has the right to exercise an early purchase option and the
2 price, formula or method for determining the price at which the
3 property may be so purchased;

4 ¹[(9)] (10)¹ a statement identifying the party responsible for
5 maintaining or servicing the property while it is being rented, together
6 with a description of that responsibility, and a statement that if any
7 part of a manufacturer's express warranty covers the rental property
8 at the time the consumer acquires ownership of the property, it shall
9 be transferred to the consumer, if allowed by the terms of the
10 warranty;

11 ¹[(10)] (11)¹ the date of the consummation of the agreement and
12 the identities of the merchant and the consumer;

13 ¹[(11)] (12)¹ a statement that the consumer may terminate the
14 agreement without penalty by voluntarily surrendering or returning the
15 property in good repair upon expiration of any rental term along with
16 any past due rental payments; and

17 ¹[(12)] (13)¹ notice of the right to reinstate a rental-purchase
18 agreement pursuant to section ¹[7] 9¹ of this act, which notice shall
19 include the provisions of section ¹[7] 9¹ of this act¹;

20 (14) in 10-point bold type on a separate page to be signed by the
21 consumer separately from the rental-purchase agreement, a copy of
22 which is to be given to the consumer and a copy of which is to be kept
23 by the merchant, the following:

24 (a) the difference between what the consumer would pay if the
25 consumer purchased the property for the retail price and the amount
26 the consumer would pay to own the property by making all the rental
27 payments necessary under the rental purchase agreement, expressed
28 as a dollar amount; and

29 (b) a statement that if the intention of the consumer is to own the
30 property which is the subject of the rental-purchase agreement and the
31 consumer can obtain conventional financing for that purchase,
32 purchasing the property from a retailer would be a less expensive
33 option;

34 (15) a statement indicating that the following grace periods apply
35 with respect to a payment period, setting forth when a payment will be
36 considered late:

37 (a) for a weekly payment period, no late fee shall be assessed for
38 a payment that is made within two calendar days after the date the
39 scheduled payment is due; and

40 (b) for any payment period, longer than one week, no late fee shall
41 be assessed for a payment that is made within five calendar days after
42 the date the scheduled payment is due;

43 (16) (a) a statement indicating that a late fee shall not exceed \$5
44 per late payment;

45 (b) that a late fee may be collected only once on each minimum
46 payment due however long it remains in default;

1 (c) that payments received shall be applied first to the payment of
2 the amount due and then to late fees and any other charges; and

3 (d) that the late fee may be collected at the time it accrues or any
4 time later;

5 (17) a statement that the merchant is responsible for delivering and
6 picking up any goods that are too large to be transported by the
7 consumer¹.

8 b. With respect to matters specifically governed by the federal
9 Consumer Credit Protection Act (15 U.S.C. §1601 et seq.),
10 compliance with that act shall be deemed to satisfy the disclosure
11 requirements of this section.

12
13 6. A rental-purchase agreement may not contain a provision:

14 a. Requiring a confession of judgment;

15 b. Requiring a garnishment of wages;

16 c. Permitting the merchant a security interest in or other claim to
17 a property interest in any property except property delivered by the
18 merchant pursuant to the rental-purchase agreement;

19 d. Authorizing a merchant or an agent of the merchant to commit
20 a breach of the peace during repossession of the property;

21 e. Waiving a defense, counterclaim, or right the renter may have
22 against the merchant or an agent of the merchant;

23 f. Requiring a balloon payment in addition to regular rental
24 payments in order to acquire ownership of the property, or requiring
25 rental payments totaling more than the cost to acquire ownership, as
26 disclosed in the rental-purchase agreement; or

27 g. Requiring purchase of insurance from the merchant to cover the
28 property.

29
30 ¹⁷. a. The following grace periods shall apply to payments made
31 with respect to a rental-purchase agreement:

32 (1) for a weekly payment period, no late fee shall be assessed for
33 a payment that is made within two calendar days after the date the
34 scheduled payment is due; and

35 (2) for any payment period longer than one week, no late fee shall
36 be assessed for a payment that is made within five calendar days after
37 the date the scheduled payment is due.

38 b. (1) A late fee shall not exceed \$5 per late payment;

39 (2) A late fee may be collected only once on each minimum
40 payment due however long it remains in default;

41 (3) Payments received shall be applied first to the payment of the
42 amount due and then to late fees and any other charges; and

43 (4) A late fee may be collected at the time it accrues or at any time
44 afterward.

45 c. (1) Subject to paragraph (2) of this subsection c., if any
46 consumer who has signed the rental-purchase agreement experiences

1 an interruption or reduction of 25 percent or more of income due to
2 involuntary job loss, involuntary reduced employment, illness,
3 pregnancy, or disability after one-half of the total amount of periodic
4 payments necessary to acquire ownership under the agreement has
5 been paid, the merchant shall reduce the amount of each periodic
6 payment by (a) the same percent the consumer's income has been
7 reduced or (b) 50 percent, whichever is less, for the period during
8 which the consumer's income is interrupted or reduced. If payment
9 amounts are reduced, the total dollar amount of payments necessary
10 to acquire ownership shall not be increased, and the rights and duties
11 of the merchant and the consumer shall not be otherwise affected. If
12 the consumer's income is restored, the merchant may increase the
13 amount of the periodic payments, but in no event shall the amount of
14 the periodic payments exceed the originally scheduled amount of
15 periodic payments, nor shall the total dollar amount of payments
16 necessary to acquire ownership exceed the total amount of the original
17 rental-purchase agreement.

18 (2) The periodic payment shall be reduced pursuant to paragraph
19 (1) of this subsection c. only if the consumer provides the merchant
20 with evidence of the amount and cause of the interruption or reduction
21 of income.¹

22
23 ¹8. A merchant shall be responsible for delivery and pick-up of any
24 goods that are too large to be transported by the consumer.¹

25
26 ¹[7.] 9.¹ a. A consumer who fails to make a timely rental payment
27 may reinstate a rental-purchase agreement without losing any rights or
28 options which exist under the agreement, if the following apply:

29 (1) subsequent to having failed to make a timely rental payment,
30 the consumer promptly returns or surrenders the property upon the
31 merchant's request; and

32 (2) not more than 60 days have passed since the property was
33 returned to the merchant; except that if the consumer has paid ¹[60]
34 50¹ percent or more of the total of payments necessary to acquire
35 ownership of the property, then the reinstatement period shall be
36 extended to 180 days.

37 b. As a condition of reinstatement under this section, the merchant
38 may require the payment of all past due rental charges, any applicable
39 late fee, plus a reinstatement fee not to exceed \$5.

40 c. Nothing in this section shall prevent a merchant from attempting
41 to repossess property during the reinstatement period, but that
42 repossession shall not affect the consumer's rights to reinstate. Upon
43 reinstatement, the merchant shall provide the consumer with the same
44 property or substitute property of comparable quality and condition.

1 ¹[8.] 10.¹ a. No merchant shall offer a rental-purchase agreement
2 in which 50 percent of all rental payments necessary to acquire
3 ownership of the rented property exceeds the posted cash price of the
4 rented property. When 50 percent of all rental payments made by a
5 consumer equals the posted cash price of the property disclosed to the
6 consumer pursuant to paragraph (5) of subsection a. of section 5 of
7 this act, the consumer shall acquire ownership of the rented property
8 and the rental-purchase agreement shall terminate.

9 b. At any time after tendering an initial rental payment, a consumer
10 may acquire ownership of the property that is the subject of the
11 rental-purchase agreement by tendering the amount by which the
12 posted cash price of the rented property exceeds 50 percent of all
13 rental payments previously made by the consumer.

14
15 ¹[9.] 11.¹ A merchant shall provide the consumer a written receipt
16 for each payment made by cash or money order, upon request by the
17 consumer.

18
19 ¹[10.] 12.¹ a. A renegotiation shall occur when an existing
20 rental-purchase agreement is satisfied and replaced by a new
21 agreement undertaken by the same merchant and consumer. A
22 renegotiation shall be considered a new agreement requiring new
23 disclosures pursuant to this act. However, events such as the
24 following shall not be treated as renegotiation:

25 (1) the addition or return of property in a multiple-item agreement
26 or the substitution of the rental property, if in either case the average
27 payment allocable to a payment period is not changed by more than 25
28 percent;

29 (2) a deferral or extension of one or more periodic payments, or
30 portions of a periodic payment;

31 (3) a reduction in charges in the agreement; and

32 (4) an agreement involved in a court proceeding.

33 b. No new disclosures are required for any extension of a
34 rental-purchase agreement.

35
36 ¹[11.] 13.¹ a. If an advertisement for a rental-purchase agreement
37 refers to or states the dollar amount of any payment and right to
38 acquire ownership for any one specific item, the advertisement shall
39 also clearly and conspicuously state the following items, as applicable:

40 (1) that the transaction advertised is a rental-purchase agreement;

41 (2) the total number and total dollar amount of payments necessary
42 to acquire ownership; and

43 (3) that the consumer does not acquire ownership rights if the total
44 dollar amount of payments necessary to acquire ownership is not paid.

45 b. Any personal property displayed or offered under a
46 rental-purchase agreement shall bear a tag which clearly and

1 conspicuously states:

2 (1) the cash price of the property;

3 (2) the dollar amount of the periodic payment ¹and the payment
4 period¹ ;

5 (3) the total dollar amount that must be paid in order to acquire
6 ownership of the property under a rental-purchase agreement; ¹[and]¹

7 (4) ¹the retail price;

8 (5) the difference between the amount of the retail price and the
9 total amount that must be paid in order to acquire ownership of the
10 property under a rental-purchase agreement expressed as a dollar
11 amount; and

12 (6)¹ that the property is new or used.

13 c. An owner or agent of the medium in which an advertisement for
14 a rental-purchase agreement appears or through which it is
15 disseminated shall not be liable pursuant to this section.

16 d. The provisions of subsection a. of this section shall not apply to
17 an advertisement which does not refer to or state the amount of any
18 payment, or which is published in the yellow pages of a telephone
19 directory or in any similar directory of business.

20

21 ¹[12.] 14.¹ a. Notwithstanding any provision of subsection b. of
22 this section to the contrary, a merchant who fails to comply with the
23 requirements of this act shall be liable to the consumer in an amount
24 equal to the greater of:

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

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

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

31 b. No consumer shall offset any amount for which a merchant is
32 potentially liable under subsection a. of this section against any amount
33 owed by the consumer, unless the amount of the merchant's liability
34 has been determined by judgment of a court of competent jurisdiction
35 in an action in which the merchant was a party. This subsection b.
36 does not bar a consumer then in default on an obligation from
37 asserting a violation of this act as an original action, or as a defense or
38 counterclaim to an action brought by a merchant against the consumer.

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

1 ¹[13.] 15.¹ This act shall take effect on the 180th day after
2 enactment.

3

4

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6

7 Provides for regulation of certain rental-purchase agreements.