

[Second 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) ²an amount equal to or not exceeding² the manufacturers'
19 suggested or list price;

20 (2) ²an amount equal to or not exceeding² two times (a) the
21 documented acquisition cost from the manufacturer and (b) the actual
22 cost of shipping, which cost shall not exceed 10% of the acquisition
23 cost; or

24 (3) ²an amount equal to or not exceeding² the published or
25 advertised price of the same property selling in the same trade area.¹

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

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

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.

² Senate floor amendments adopted December 18, 1997.

1 ²"Director" means the Director of the Division of Consumer Affairs
2 in the Department of Law and Public Safety.

3 "Division" means the Division of Consumer Affairs in the
4 Department of Law and Public Safety.²

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

7 "Rental-purchase agreement" means an agreement ², in writing,
8 which contains all of the terms and conditions² for the use of personal
9 property by a consumer primarily for personal, family or household
10 purposes, for an initial period of four months or less, that is
11 automatically renewable with each payment after the initial period, but
12 does not obligate or require the consumer to continue renting or using
13 the property beyond the initial period, and that permits the renter to
14 become the owner of the property ², and that requires the merchant
15 during the rental term, to: (1) maintain the personal property in good
16 working condition, including repairing, or replacing, if repair cannot
17 be completed within a reasonable time, any property which fails to
18 perform as a result of a defect in the property not caused by harmful
19 conditions outside the merchant's or manufacturer's control or by
20 improper use by the consumer, as long as no other person has been
21 permitted to repair it; and (2) pay any applicable personal property
22 taxes on the property. The merchant may, but shall not be required to
23 repair or replace property which has been damaged by the negligent or
24 intentional act of the consumer².

25 "Merchant" means a person who regularly provides the use of
26 property through rental-purchase agreements and to whom rental
27 payments are initially payable on the face of the rental-purchase
28 agreement.

29 ¹"Retail price" means the manufacturers' suggested retail price, or
30 if there is no manufacturers' suggested retail price available for the
31 property, "retail price" means a price based on the published or
32 advertised prices of the same property selling on a non-discount basis
33 in the same trade area which ²price² is established by regulation on a
34 quarterly basis by the Division of Consumer Affairs in the Department
35 of Law and Public Safety.¹

36

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

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

42 (2) a retail charge account as defined in subsection (r) of section
43 1 of P.L.1960, c.40 (C.17:16C-1);

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

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

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

4 (1) rental-purchase agreements primarily for business, commercial
5 or agricultural purposes, or those made with governmental agencies,
6 instrumentalities or organizations;

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

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

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

12

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

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

22 c. The disclosures shall be made clearly and conspicuously in
23 writing ², signed by the merchant and the consumer,² and a copy of
24 the rental-purchase agreement shall be provided to the consumer at the
25 time the agreement is consummated. The disclosures required
26 pursuant to section 5 of this act shall be made on the face of the
27 contract above the line for the consumer's signature. ²During the
28 initial term of a rental-purchase agreement whose term is longer than
29 one week, the consumer may return the property for any reason,
30 cancel the remainder of the agreement and receive a pro rata refund
31 for the weeks remaining in the initial term.²

32 d. ²[If a disclosure becomes inaccurate as the result of any act,
33 occurrence or agreement by the consumer after delivery of the
34 required disclosures, the resulting inaccuracy is not a violation of this
35 act.] The disclosures required by this act shall be made on a form the
36 format and wording of which is prescribed by the director by
37 regulation, consistent with and limited to the requirements of section
38 5 of this act. A merchant may, at its option, disclose more information
39 than is required by section 5 of this act, if the disclosure is made
40 clearly and conspicuously in writing and as part of the rental-purchase
41 agreement.²

42

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

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

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

4 (3) a statement that the consumer is responsible for the fair market
5 value of the property, according to the early buy-out formula, if, and
6 as of the time, it is stolen, damaged or destroyed ²while in the
7 possession of or subject to the control of the consumer²;

8 (4) a brief description of the rented property, sufficient to identify
9 the property to the consumer and the merchant, including an
10 identification number, if applicable, and a statement indicating whether
11 the property is new or used, but a statement that ²incorrectly² indicates
12 ²that² new property is used is not a violation of this act;

13 (5) the cash price of the property ¹,including the information that
14 the cash price is one of the following: (a) the manufacturers'
15 suggested or list price; (b) two times (i) the actual cost of acquisition
16 from the manufacturer and (ii) the actual cost of shipping, which cost
17 shall not exceed 10% of the acquisition cost; or (c) the published or
18 advertised price of the same merchandise selling in the same trade
19 area¹ ;

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

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

24 ¹~~[(7)]~~ (8)¹ a statement that the total dollar amount of payments
25 does not include other charges that a consumer may incur, such as late
26 payment, default, pickup and reinstatement fees, which charges shall
27 be separately and individually disclosed by dollar amount in the
28 rental-purchase agreement;

29 ¹~~[(8)]~~ (9)¹ a statement clearly summarizing the terms of the
30 consumer's option to purchase, including a statement that the
31 consumer has the right to exercise an early purchase option and the
32 price, formula or method for determining the price at which the
33 property may be so purchased;

34 ¹~~[(9)]~~ (10)¹ a statement identifying the party responsible for
35 maintaining or servicing the property while it is being rented, together
36 with a description of that responsibility, and a statement that if any
37 part of a manufacturer's express warranty covers the rental property
38 at the time the consumer acquires ownership of the property, it shall
39 be transferred to the consumer ²[, if allowed by the terms of the
40 warranty]²;

41 ¹~~[(10)]~~ (11)¹ the date of the consummation of the agreement and
42 the identities of the merchant and the consumer;

43 ¹~~[(11)]~~ (12)¹ a statement that the consumer may terminate the
44 agreement without penalty by voluntarily surrendering or returning the
45 property in good repair upon expiration of any rental term along with
46 any past due rental payments; ²[and]²

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

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

8 (a) the difference between what the consumer would pay if the
9 consumer purchased the property for the retail price and the amount
10 the consumer would pay to own the property by making all the rental
11 payments necessary under the rental purchase agreement, expressed
12 as a dollar amount; and

13 (b) a statement that if the intention of the consumer is to own the
14 property which is the subject of the rental-purchase agreement and the
15 consumer can obtain conventional financing for that purchase,
16 purchasing the property from a retailer ²[would] may² be a less
17 expensive option;

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

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

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

27 (16) (a) a statement indicating that a late fee shall not exceed \$5
28 per late payment:

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

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

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

35 (17) a statement that the merchant is responsible for delivering and
36 picking up any goods that are too large to be transported by the
37 consumer^{1 2}; and

38 (18) A statement concerning the consumer's right of early
39 termination, if applicable, pursuant to subsection c. of section 4 of this
40 act².

41 b. ²[With respect to matters specifically governed by] Disclosures
42 required by this section shall be made in addition to any disclosures
43 required pursuant to² the federal Consumer Credit Protection Act (15
44 U.S.C. §1601 et seq.)²[, compliance with that act shall be deemed to
45 satisfy the disclosure requirements of this section]².

- 1 6. A rental-purchase agreement may not contain a provision:
- 2 a. Requiring a confession of judgment;
- 3 b. Requiring a garnishment of wages;
- 4 c. Permitting the merchant a security interest in or other claim to
- 5 a property interest in any property except property delivered by the
- 6 merchant pursuant to the rental-purchase agreement;
- 7 d. Authorizing a merchant or an agent of the merchant to commit
- 8 a breach of the peace during repossession of the property;
- 9 e. Waiving a defense, counterclaim, or right the renter may have
- 10 against the merchant or an agent of the merchant;
- 11 f. Requiring a balloon payment in addition to regular rental
- 12 payments in order to acquire ownership of the property, or requiring
- 13 rental payments totaling more than the cost to acquire ownership, as
- 14 disclosed in the rental-purchase agreement; ²[or]²
- 15 g. Requiring purchase of insurance from the merchant to cover the
- 16 property ²; or
- 17 h. Waiving any provision of this act or the regulations promulgated
- 18 pursuant to section 15 of this act².
- 19
- 20 ¹⁷. a. The following grace periods shall apply to payments made
- 21 with respect to a rental-purchase agreement:
- 22 (1) for a weekly payment period, no late fee shall be assessed for
- 23 a payment that is made within two calendar days after the date the
- 24 scheduled payment is due; and
- 25 (2) for any payment period longer than one week, no late fee shall
- 26 be assessed for a payment that is made within five calendar days after
- 27 the date the scheduled payment is due.
- 28 b. (1) A late fee shall not exceed \$5 per late payment;
- 29 (2) A late fee may be collected only once on each minimum
- 30 payment due however long it remains in default;
- 31 (3) Payments received shall be applied first to the payment of the
- 32 amount due and then to late fees and any other charges; and
- 33 (4) A late fee may be collected at the time it accrues or at any time
- 34 afterward.
- 35 c. (1) Subject to paragraph (2) of this subsection c., if any
- 36 consumer who has signed the rental-purchase agreement experiences
- 37 an interruption or reduction of 25 percent or more of income due to
- 38 involuntary job loss, involuntary reduced employment, illness,
- 39 pregnancy, or disability after one-half of the total amount of periodic
- 40 payments necessary to acquire ownership under the agreement has
- 41 been paid, the merchant shall reduce the amount of each periodic
- 42 payment by (a) the same percent the consumer's income has been
- 43 reduced or (b) 50 percent, whichever is less, for the period during
- 44 which the consumer's income is interrupted or reduced. If payment
- 45 amounts are reduced, the total dollar amount of payments necessary
- 46 to acquire ownership shall not be increased, and the rights and duties

1 of the merchant and the consumer shall not be otherwise affected. If
2 the consumer's income is restored, the merchant may increase the
3 amount of the periodic payments, but in no event shall the amount of
4 the periodic payments exceed the originally scheduled amount of
5 periodic payments, nor shall the total dollar amount of payments
6 necessary to acquire ownership exceed the total amount of the original
7 rental-purchase agreement.

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

12
13 ¹8. A merchant shall be responsible for delivery and pick-up of any
14 goods that are too large to be transported by the consumer.¹

15
16 ¹[7.] 9.¹ a. A consumer who fails to make a timely rental payment
17 may reinstate a rental-purchase agreement without losing any rights or
18 options which exist under the agreement, if the following apply:

19 (1) subsequent to having failed to make a timely rental payment,
20 the consumer ²[promptly]² returns or surrenders the property ²[upon]
21 within 72 hours of² the merchant's ²written² request; and

22 (2) not more than 60 days have passed since the property was
23 returned to the merchant; except that if the consumer has paid ¹[60]
24 50¹ percent or more of the total of payments necessary to acquire
25 ownership of the property, then the reinstatement period shall be
26 extended to 180 days.

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

30 c. Nothing in this section shall prevent a merchant from attempting
31 to repossess property during the reinstatement period, but that
32 repossession shall not affect the consumer's rights to reinstate ²and
33 shall not be attempted until the time period for voluntary return set
34 forth in paragraph (1) of subsection a. of this section has expired².
35 Upon reinstatement, the merchant shall provide the consumer with the
36 same property ², if it is still in the same condition as it was at the time
37 it was returned to the merchant,² or substitute property of comparable
38 quality and condition.

39
40 ¹[8.] 10.¹ a. No merchant shall offer a rental-purchase agreement
41 in which 50 percent of all rental payments necessary to acquire
42 ownership of the rented property exceeds the posted cash price of the
43 rented property. When 50 percent of all rental payments made by a
44 consumer ², or a higher percentage as may be set forth in the rental-
45 purchase agreement,² equals the posted cash price of the property
46 disclosed to the consumer pursuant to paragraph (5) of subsection a.

1 of section 5 of this act, the consumer shall acquire ownership of the
2 rented property and the rental-purchase agreement shall terminate.

3 b. At any time after tendering an initial rental payment, a consumer
4 may acquire ownership of the property that is the subject of the
5 rental-purchase agreement by tendering the amount by which the
6 posted cash price of the rented property exceeds 50 percent ², or a
7 higher percentage as may be set forth in the rental-purchase
8 agreement.² of all rental payments previously made by the consumer.
9

10 ¹[9.] 11.¹ A merchant shall provide the consumer a written receipt
11 for each payment made by cash or money order, upon request by the
12 consumer.
13

14 ¹[10.] 12.¹ a. A renegotiation shall occur when an existing
15 rental-purchase agreement is satisfied and replaced by a new
16 agreement undertaken by the same merchant and consumer. A
17 renegotiation shall be considered a new agreement requiring new
18 disclosures pursuant to this act. However, events such as the
19 following shall not be treated as renegotiation:

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

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

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

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

28 b. No new disclosures are required for any extension of a
29 rental-purchase agreement ²effectuated by an automatic renewal upon
30 payments made after the initial rental period².
31

32 ¹[11.] 13.¹ a. If an advertisement for a rental-purchase agreement
33 refers to or states the dollar amount of any payment and right to
34 acquire ownership for any one specific item, the advertisement shall
35 also clearly and conspicuously state the following items, as applicable:

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

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

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

41 b. Any personal property displayed or offered under a
42 rental-purchase agreement shall bear a tag which clearly and
43 conspicuously states:

- 1 (1) the cash price of the property;
- 2 (2) the dollar amount of the periodic payment ¹and the payment
3 period¹ ;
- 4 (3) the total dollar amount that must be paid in order to acquire
5 ownership of the property under a rental-purchase agreement; ¹[and]¹
- 6 (4) ¹the retail price;
- 7 (5) the difference between the amount of the retail price and the
8 total amount that must be paid in order to acquire ownership of the
9 property under a rental-purchase agreement expressed as a dollar
10 amount; and
- 11 (6)¹ ²[that] whether² the property is new or used.
- 12 c. An owner or agent of the medium in which an advertisement for
13 a rental-purchase agreement appears or through which it is
14 disseminated shall not be liable pursuant to this section.
- 15 d. The provisions of subsection a. of this section shall not apply to
16 an advertisement which does not refer to or state the amount of any
17 payment, or which is published in the yellow pages of a telephone
18 directory or in any similar directory of business.
- 19
- 20 ¹[12.] 14.¹ ²[a. Notwithstanding any provision of subsection b. of
21 this section to the contrary, a merchant who fails to comply with the
22 requirements of this act shall be liable to the consumer in an amount
23 equal to the greater of:
- 24 (1) the actual damages sustained by the consumer as a result of the
25 merchant's failure to comply with this act; or
- 26 (2) twenty-five percent of the total of payments necessary to
27 acquire ownership, but not less than \$100 nor more than \$1,000.
- 28 That merchant shall also be liable to the consumer for the costs of
29 the action and reasonable attorneys' fees, as determined by the court.
- 30 b. No consumer shall offset any amount for which a merchant is
31 potentially liable under subsection a. of this section against any amount
32 owed by the consumer, unless the amount of the merchant's liability
33 has been determined by judgment of a court of competent jurisdiction
34 in an action in which the merchant was a party. This subsection b.
35 does not bar a consumer then in default on an obligation from
36 asserting a violation of this act as an original action, or as a defense or
37 counterclaim to an action brought by a merchant against the consumer.
- 38 c. No action under this section shall be brought in any court of
39 competent jurisdiction more than two years after the date the
40 consumer made his last rental payment, or more than two years after
41 the date of the occurrence of a violation that is the subject of the suit,
42 whichever is later] It is an unlawful practice and a violation of
43 P.L.1960, c.39 (C.56:8-1 et seq.) to violate any provision of this act².
- 44
- 45 ²15. The director shall promulgate rules and regulations pursuant
46 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1

1 et seq.), necessary to effectuate the purposes of this act.²

2

3 ¹[13.] ²[15.] 16.² This act shall take effect on the 180th day after
4 enactment ². except that subsection d. of section 4 shall take effect on
5 the 90th day after adoption of regulations implementing the provisions
6 of this act².

7

8

9

10

11 Provides for regulation of certain rental-purchase agreements.