S T A T E O F N E W Y O R K

2641

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. PRETLOW, AUBRY, PHEFFER -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the personal property law, in relation to providing consumers with greater protection in rental purchase agreements and to repeal certain provisions of such law relating thereto

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

Section 1. Subdivisions 2 and 6 of section 500 of the personal property law, as added by chapter 792 of the laws of 1986, are amended and two new subdivisions 7 and 8 are added to read as follows:

2. "Cash price" means the AVERAGE price at which [a merchant, in the ordinary course of business, would offer to sell the merchandise to the consumer for cash on] THE MERCHANDISE OR MERCHANDISE OF SUBSTANTIALLY THE SAME KIND, QUALITY OR QUANTITY, IS OFFERED FOR SALE BY A REASONABLE NUMBER OF MERCHANTS IN THE TRADE AREA DURING THE SIXTY DAYS PRIOR TO the date of the rental-purchase agreement.

6. "Rental-purchase agreement" means an agreement for the use of merchandise by a consumer for PRIMARILY personal, family, or household purposes, for an initial period of four months or less, that is renewable with each payment after the initial period and that permits the [lessee] CONSUMER to become the owner of the property, WHETHER OR NOT THE CONSUMER IS OBLIGATED TO COMPLETE THE PAYMENTS ON THE AGREEMENT. An agreement that complies with this article is not a retail installment sales contract, agreement or obligation as defined in this chapter or a security interest as defined in [subdivision] SUBSECTION thirty-seven of section 1-201 of the uniform commercial code.

7. "LEASE CHARGE" MEANS THE CHARGE TO BE PAID BY THE CONSUMER FOR THE PRIVILEGE OF ENTERING INTO A RENTAL-PURCHASE AGREEMENT OVER THE MAXIMUM PERIOD THE AGREEMENT COULD RUN UNDER ITS TERMS, INCLUDING ALL RENEWALS OR EXTENSIONS, LESS THE CASH PRICE. THE TERM DOES NOT INCLUDE ANY AMOUNT FOR WHICH THE CONSUMER MAY BE LIABLE FOR LOSS OR DAMAGE, ANY LATE CHARG-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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ES, REINSTATEMENT FEES OR EARLY TERMINATION FEES OR OTHER FEES OR CHARGES FOR INSTALLATION, DELIVERY, SERVICE, REPAIR OR OTHER SERVICES INCIDENTAL TO THE AGREEMENT. SUCH CHARGE SHALL BE CLEARLY PRESENTED AS A PERCENTAGE OF THE CASH PRICE.

8. "TRADE AREA" MEANS THE GEOGRAPHICAL AREA IN WHICH THE MERCHANT SOLICITS OR MAKES RENTAL-PURCHASE AGREEMENTS.

S 2. Paragraphs (e) and (f) of subdivision 3 and subdivisions 4, 6 and 7 of section 501 of the personal property law, as added by chapter 792 of the laws of 1986, are amended and a new paragraph (g) is added to subdivision 3 to read as follows:

(e) requiring the payment of a late charge or reinstatement fee unless a periodic payment is delinquent for more than three days for agreements that are renewed on week by week terms and seven days for agreements that are renewed on month by month terms, PROVIDED HOWEVER, THAT NEITHER SATURDAYS, SUNDAYS NOR FEDERALLY-RECOGNIZED HOLIDAYS DURING WHICH THE UNITED STATES POSTAL SERVICE IS NOT OPEN TO THE PUBLIC SHALL COUNT TOWARD THE THREE OR SEVEN DAY TOTALS, and the charge or fee is in an amount not more than the greater of ten percent of the delinquent amount or three dollars for agreements that are renewed on week by week terms and not more than the greater of ten percent of the delinquent amount or five dollars for agreements that are renewed on month by month terms. In the event that multiple items are leased to a consumer pursuant to more than one rental-purchase agreement, any late fee imposed pursuant to this section shall not exceed ten percent of the total of the periodic payments that are delinquent[.];

(f) requiring a payment in addition to regular periodic payments in order to acquire ownership of the merchandise or requiring periodic payments totalling more than the cost to acquire ownership, as provided in section five hundred three of this article[.]; AND

(G) REQUIRING THE PAYMENT OF A LEASE CHARGE IN EXCESS OF TWENTY-FIVE PERCENT OF THE CASH PRICE PER ANNUM.

4. Only one late charge or reinstatement fee may be assessed for a delinquent periodic payment regardless of the period during which it remains in default. No merchant shall assess a late charge for a periodic payment made in full on its due date or within three days for agreements that are renewed on week by week terms or seven days for agreements that are renewed on month by month terms when the only delinquency is attributable to late fees assessed on earlier periodic payments, PROVIDED HOWEVER, THAT NEITHER SATURDAYS, SUNDAYS NOR FEDERALLY-RECOGNIZED HOLIDAYS DURING WHICH THE UNITED STATES POSTAL SERVICE IS NOT OPEN TO THE PUBLIC SHALL COUNT TOWARD THE THREE OR SEVEN DAY TOTALS. With respect to payments accepted by mail or by store deposit box, no merchant shall assess a late fee for payments which are post-marked or received before the expiration of the applicable delinquency periods.

6. This section does not prevent a merchant from attempting to repossess merchandise during the reinstatement period, provided in paragraph (b) of subdivision five of this section. The consumer's right to reinstate an agreement does not expire because of such a repossession. UPON REPOSSESSION, THE MERCHANT SHALL PROVIDE WRITTEN NOTICE TO THE CONSUMER OF THE CONSUMER'S RIGHT TO REINSTATE THE AGREEMENT PURSUANT TO PARAGRAPH (B) OF SUBDIVISION FIVE OF THIS SECTION AND THE FINAL DATE FOR PAYMENTS NECESSARY FOR REINSTATEMENT PURSUANT TO SUCH PARAGRAPH ALONG WITH THE APPROPRIATE AMOUNT DUE. On reinstatement, the merchant shall provide the consumer with the same merchandise or substitute merchandise of comparable quality and condition. If substitute merchandise is provided, the

merchant shall provide the consumer with the disclosures required in subdivision seven of this section.

7. A rental-purchase agreement must disclose in a conspicuous and informative fashion:

(a) a BRIEF description of the merchandise provided SUFFICIENT TO IDENTIFY THE MERCHANDISE TO THE CONSUMER AND THE MERCHANT, INCLUDING AN IDENTIFICATION NUMBER, IF APPLICABLE;

(b) whether the merchandise is new or used, provided however, that it shall not be a violation of this section to indicate that the merchandise is used if it is actually new;

(c) [the amount and timing of rental-purchase payments] THE TOTAL AMOUNT TO BE PAID BY THE CONSUMER PRIOR TO OR AT THE CONSUMMATION OF THE RENTAL-PURCHASE AGREEMENT, USING THE TERM "AMOUNT DUE AT CONTRACT SIGNING." THE MERCHANT SHALL ITEMIZE EACH COMPONENT OF THE TOTAL AMOUNT BY TYPE AND AMOUNT, INCLUDING ANY REFUNDABLE SECURITY DEPOSIT, ADVANCE PERIODIC PAYMENT, AND AMOUNT OF ANY DOWN PAYMENT;

(d) the total number of payments and the total amount that must be paid to acquire ownership of the merchandise, which amount shall be explicitly labelled "total cost". THIS AMOUNT IS THE SUM OF THE TOTAL AMOUNT DUE AT SIGNING PROVIDED PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION (LESS ANY REFUNDABLE AMOUNTS), THE TOTAL AMOUNT OF PERIODIC PAYMENTS (LESS ANY PORTION OF THE PERIODIC PAYMENT PAID AT THE TIME THE AGREEMENT IS SIGNED), AND OTHER CHARGES OR FEES DISCLOSED AND ASSESSED PURSUANT TO PARAGRAPH (F) OF THIS SUBDIVISION;

(e) the amount and purpose of any payment, charge, or fee, INCLUDING THE LEASE CHARGE, in addition to the regular periodic payments;

(f) whether the consumer is liable for loss or damage to the merchandise and, if so, the maximum amount for which the consumer may be liable, which in the case of loss shall in no event be greater than the price the consumer would have paid to exercise an early purchase option pursuant to this article. In the case of damage to the merchandise, other than normal wear and tear the consumer shall be liable for the lesser of: (1) the price the consumer would have paid to exercise an early purchase option pursuant to this article or (2) the ACTUAL cost of the repair [as determined by the merchant] REDUCED BY ALL DISCOUNTS, PAID BY THE MERCHANT OR (3) TWO ITEMIZED ESTIMATES OF THE COST OF SUCH REPAIR;

(g) that the consumer does not acquire ownership rights unless the consumer has complied with the ownership terms of the agreement;

(h) the cash price of the merchandise; [and]

(i) a statement of the conditions under which a consumer may exercise an early purchase option and under which the merchant or consumer may otherwise terminate the [lease] RENTAL PURCHASE AGREEMENT;

(J) THE NUMBER, AMOUNT, AND DUE DATES OR PERIODS OF PAYMENTS SCHEDULED UNDER THE RENTAL-PURCHASE AGREEMENT, AND THE TOTAL DOLLAR AMOUNT OF THE PERIODIC PAYMENTS;

(K) THE TERM OF THE RENTAL-PURCHASE AGREEMENT WITH A DESCRIPTION SUCH AS "THE NUMBER OF PERIODS OF PAYMENTS IN YOUR AGREEMENT BEFORE YOU OWN THE MERCHANDISE";

(L) A STATEMENT SPECIFYING WHETHER THE CONSUMER OR THE MERCHANT IS RESPONSIBLE FOR MAINTAINING OR SERVICING THE MERCHANDISE, TOGETHER WITH A BRIEF DESCRIPTION OF SUCH RESPONSIBILITY;

(M) A STATEMENT OF THE MERCHANT'S STANDARDS FOR WEAR AND USE (IF ANY), WHICH MUST BE REASONABLE; AND

(N) A STATEMENT IDENTIFYING ALL EXPRESS WARRANTIES AND GUARANTEES FROM THE MANUFACTURER OR MERCHANT WITH RESPECT TO THE MERCHANDISE THAT APPLY TO THE CONSUMER.

S 3. Section 502 of the personal property law, as added by chapter 792 of the laws of 1986, is amended to read as follows:

S 502. Availability. Every rental purchase agreement shall indicate that a consumer at his or her written request shall be permitted to review a completed rental-purchase agreement for up to [twenty-four] SEVENTY-TWO hours prior to signing.

S 4. Section 504 of the personal property law, as added by chapter 792 of the laws of 1986, is amended to read as follows:

S 504. Early purchase option. At any time, after the initial payment, the consumer may acquire ownership of the property by tendering an amount equal to the cash price of the merchandise minus [fifty percent of] all previous [rental-purchase] payments made UNDER THE RENTAL-PURCHASE AGREEMENT, NOT INCLUDING THE PORTION OF ANY SUCH PAYMENTS ATTRIBUTABLE TO THE LEASE CHARGE OR OTHER CHARGES FOR ANY AMOUNT FOR WHICH THE CONSUMER MAY BE LIABLE FOR LOSS OR DAMAGE, ANY LATE CHARGES, REINSTATEMENT FEES OR EARLY TERMINATION FEES OR OTHER FEES OR CHARGES FOR INSTALLATION, DELIVERY, SERVICE, REPAIR OR OTHER SERVICES INCIDENTAL TO THE AGREEMENT.

S 5. Subdivisions 1 and 3 of section 505 of the personal property law, as added by chapter 792 of the laws of 1986, are amended to read as follows:

1. An advertisement for a rental-purchase agreement [that refers to or states the amount of a payment or the right to acquire ownership of any one particular item under the agreement] shall clearly and conspicuously state:

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

(b) the total number of payments and the total amount to be paid to acquire ownership, which amount shall be explicitly labeled "total cost"; [and]

(c) the circumstances under which the consumer can acquire ownership rights;

(D) THAT THE MERCHANDISE OFFERED MAY BE NEW OR USED; AND

(E) THE LEASE CHARGE.

[3.] 2. Every item displayed or offered under a rental-purchase agreement shall have clearly and conspicuously indicated in arabic numerals, so as to be readable and understandable by visual inspection, each of the following affixed to the item:

(a) the cash price of the merchandise;

(b) the amount of the periodic payment and the total number of periodic payments required for ownership; [and]

(c) the total amount that must be paid to acquire ownership of merchandise, which amount shall be explicitly labeled total cost; AND

(D) THE LEASE CHARGE.

S 6. Subdivision 2 of section 505 of the personal property law is REPEALED.

S 7. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all agreements entered into or offered on or after such date.