

1239

2009-2010 Regular Sessions

I N S E N A T E

January 28, 2009

Introduced by Sen. THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the personal property law, in relation to providing consumers with greater protection in rental purchase agreements

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

- 1 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
2 new subdivisions 7 and 8 are added to read as follows:
3 2. "Cash price" means the AVERAGE price at which [a merchant, in the
4 ordinary course of business, would offer to sell the merchandise to the
5 consumer for cash on] THE MERCHANDISE, OR MERCHANDISE OF SUBSTANTIALLY
6 THE SAME KIND, QUALITY, OR QUANTITY, IS OFFERED FOR SALE BY A REASONABLE
7 NUMBER OF MERCHANTS IN THE TRADE AREA DURING THE SIXTY DAYS PRIOR TO the
8 date of the rental-purchase agreement.
9 6. "Rental-purchase agreement" means an agreement for the use of
10 merchandise by a consumer for PRIMARILY personal, family, or household
11 purposes, for an initial period of four months or less, that is renewable
12 with each payment after the initial period and that permits the
13 [lessee] CONSUMER to become the owner of the property, WHETHER OR NOT
14 THE CONSUMER IS OBLIGATED TO COMPLETE THE PAYMENTS ON THE AGREEMENT. An
15 agreement that complies with this article is not a retail installment
16 sales contract, agreement, or obligation as defined in this chapter [or]
17 NOR a security interest as defined in subdivision thirty-seven of
18 section 1-201 of the uniform commercial code.
19 7. "LEASE CHARGE" MEANS THE CHARGE TO BE PAID BY THE CONSUMER FOR THE
20 PRIVILEGE OF ENTERING INTO A RENTAL-PURCHASE AGREEMENT OVER THE MAXIMUM
21 PERIOD WHICH THE AGREEMENT COULD RUN UNDER ITS TERMS, INCLUDING ALL
22 RENEWALS OR EXTENSIONS, LESS THE CASH PRICE. THE TERM DOES NOT INCLUDE
23 ANY AMOUNT FOR WHICH THE CONSUMER MAY BE LIABLE FOR LOSS OR DAMAGE, ANY
24 LATE CHARGES, REINSTATEMENT FEES, EARLY TERMINATION FEES, OR OTHER FEES
25

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

LBD03472-02-9

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.

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

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

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

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

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

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

25 (f) whether OR NOT the consumer is liable for loss or damage to the
26 merchandise and, if so, the maximum amount for which the consumer may be
27 liable, which in the case of loss shall in no event be greater than the
28 price the consumer would have paid to exercise an early purchase option
29 pursuant to this article. In the case of damage to the merchandise,
30 other than normal wear and tear, the consumer [shall be] IS liable for
31 the lesser of: (1) the price the consumer would have paid to exercise an
32 early purchase option pursuant to this article or (2) the ACTUAL cost of
33 the repair [as determined by the merchant], REDUCED BY ALL DISCOUNTS,
34 PAID BY THE MERCHANT OR (3) TWO ITEMIZED ESTIMATES OF THE COST OF SUCH
35 REPAIR;

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

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

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

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

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

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

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

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

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

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

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

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

19 S 5. Section 505 of the personal property law, as added by chapter 792
20 of the laws of 1986, is amended to read as follows:

21 S 505. Advertisement. 1. An advertisement for a rental-purchase agree-
22 ment [that refers to or states the amount of a payment or the right to
23 acquire ownership of any one particular item under the agreement] shall
24 clearly and conspicuously state:

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

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

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

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

32 (E) THE LEASE CHARGE.

33 2. [An advertisement for personal property available through rental-
34 purchase agreements that refers to more than one appliance or particular
35 item and includes information on periodic payment amounts shall include
36 a representative item available at that amount and shall conspicuously
37 state:

38 (a) that the merchandise offered may be new or used;

39 (b) that transaction advertised is a rental-purchase agreement; and

40 (c) that the consumer does not acquire ownership rights unless the
41 consumer complies with the ownership terms of the agreement.

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

46 (a) the cash price of the merchandise;

47 (b) the amount of the periodic payment and the total number of period-
48 ic payments required for ownership; [and]

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

51 (D) THE LEASE CHARGE.

52 S 6. This act shall take effect on the ninetieth day after it shall
53 have become a law and shall apply to all agreements entered into or
54 offered on or after such date.