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

3083

2009-2010 Regular Sessions

I N A S S E M B L Y

January 22, 2009

Introduced by M. of A. PHEFFER, PRETLOW, PEOPLES, GIANARIS, AUBRY, ORTIZ, SCHROEDER, GABRYSZAK -- Multi-Sponsored by -- M. of A. CAHILL, GLICK, HIKIND, HOYT, MAYERSOHN, TOWNS -- 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; to repeal certain provisions of such law relating thereto; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Legislative findings and intent. The legislature finds and declares that merchants that lease personal property pursuant to rental-purchase agreements, commonly referred to as rent-to-own agreements, provide a unique transaction that is popular with many consumers. The legislature also finds that rent-to-own merchants provide credit-constrained consumers with the ability to obtain high quality goods and the flexibility to terminate agreements at any time without further obligation.

The legislature also finds that article 11 of the personal property law fails to provide rent-to-own merchants with appropriate regulatory guidance with respect to how such merchants are to set cash prices. The legislature also finds that many rent-to-own merchants set cash prices at a level considerably higher than the price at which the same or similar merchandise is offered to consumers at nearby retailers. The legislature further finds and declares that there is a need to clarify article 11 of the personal property law to ensure that rent-to-own merchants set cash prices at fair and reasonable levels.

The legislature also finds that rent-to-own agreements are complex and that consumers need clear and useful disclosures in order to make informed decisions regarding these agreements.

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

LBD03472-01-9

Therefore, it is the intent of the legislature to require rent-to-own merchants to provide consumers with enhanced disclosures and to establish reasonable price controls based on an extensive retail survey to be performed by the consumer protection board and the department of economic development. Upon receipt of this survey data, the legislature intends to amend article 11 of the personal property law to implement fair and reasonable formulas for use by rent-to-own merchants in setting cash prices, ensuring that rent-to-own customers pay fair prices and providing much-needed regulatory guidance to rent-to-own merchants.

S 2. Subdivision 6 of section 500 of the personal property law, as added by chapter 792 of the laws of 1986, is amended and three new subdivisions 7, 8 and 9 are added to read as follows:

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. An agreement that complies with this article is not a retail installment sales contract, agreement, or obligation as defined in this chapter [or] NOR a security interest as defined in subdivision thirty-seven of section 1-201 of the uniform commercial code.

7. "COST OF RENTAL" MEANS THE DIFFERENCE BETWEEN THE TOTAL OF ALL PERIODIC PAYMENTS NECESSARY TO ACQUIRE OWNERSHIP UNDER THE RENTAL-PURCHASE AGREEMENT AND THE CASH PRICE OF THE RENTAL MERCHANDISE THAT IS SUBJECT TO THE RENTAL-PURCHASE AGREEMENT.

8. "FEE" MEANS ANY PAYMENT, CHARGE, FEE, COST, OR EXPENSE, HOWEVER DENOMINATED, OTHER THAN A RENTAL PAYMENT.

9. "TOTAL OF PAYMENTS" MEANS THE TOTAL AMOUNT OF PERIODIC PAYMENTS NECESSARY TO ACQUIRE OWNERSHIP OF THE MERCHANDISE THAT IS THE SUBJECT OF THE RENTAL-PURCHASE AGREEMENT IF THE CONSUMER MAKES ALL REGULARLY SCHEDULED PAYMENTS.

S 3. Paragraph (e) of subdivision 3 and subdivisions 4, 5, 6 and 7 of section 501 of the personal property law, as added by chapter 792 of the laws of 1986, are amended 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 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.

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 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.

5. A rental-purchase agreement must provide that:

(a) a charge in addition to periodic payments, if any, must be reasonably related to the cost of a service performed;

(b) a consumer who fails to make a timely payment may reinstate an agreement without losing rights or options previously acquired and without incurring any charges, other than rental charges for the time he possessed the property, except for those charges provided for in paragraph (e) of subdivision three of THIS section [five hundred one of this article] by making the required payment before the later of seven days or half the number of days in a regular payment period after the due date of the payment; [and]

(c) if the merchandise is returned or voluntarily surrendered by the consumer, other than through judicial process, during the applicable reinstatement period set forth in paragraph (b) of this subdivision, the consumer's right to reinstate the agreement as set forth in paragraph (b) of this subdivision shall be extended for a period of not less than [thirty days] ONE YEAR after the date of the return of the merchandise[. If a consumer has paid one-half the total of payments necessary to acquire ownership, the right to reinstate the agreement shall be extended for a period of not less than sixty days after the date of the return of the merchandise. If a consumer has paid three-quarters of the total of payments necessary to acquire ownership, the consumer's rights to reinstate the agreement shall be extended for a period of not less than one hundred eighty days after the return of the merchandise]; AND

(D) THE CONSUMER HAS THE OPTION OF MAKING PERIODIC PAYMENTS PURSUANT TO AN AGREEMENT ON A WEEKLY OR MONTHLY BASIS.

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 description of the merchandise provided;

(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;

(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";

(e) the amount and purpose of any payment, charge, or fee, 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 the price the consumer would have paid to exercise an early purchase option pursuant to this article or the cost of the repair as determined by the merchant;

(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] (A) EVERY RENTAL-PURCHASE AGREEMENT SHALL BE CONTAINED IN A SINGLE DOCUMENT WHICH SHALL SET FORTH ALL OF THE AGREEMENTS OF THE MERCHANT AND THE CONSUMER WITH RESPECT TO THE RIGHTS AND OBLIGATIONS OF EACH PARTY. EVERY RENTAL-PURCHASE AGREEMENT SHALL BE WRITTEN IN AT LEAST TEN-POINT TYPE IN THE SAME LANGUAGE AS PRINCIPALLY USED IN ANY ORAL SALES PRESENTATION OR NEGOTIATIONS LEADING TO THE EXECUTION OF THE AGREEMENT, AND SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE ALL OF THE FOLLOWING:

(1) THE NAMES OF THE MERCHANT AND THE CONSUMER, THE MERCHANT'S BUSINESS ADDRESS AND TELEPHONE NUMBER, THE CONSUMER'S ADDRESS, THE DATE ON WHICH THE AGREEMENT IS EXECUTED, AND A DESCRIPTION OF THE MERCHANDISE SUFFICIENT TO IDENTIFY IT;

(2) WHETHER THE MERCHANDISE SUBJECT TO THE RENTAL-PURCHASE AGREEMENT 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;

(3) THE MINIMUM PERIOD FOR WHICH THE CONSUMER IS OBLIGATED UNDER THE RENTAL-PURCHASE AGREEMENT; THE DURATION OF THE RENTAL-PURCHASE AGREEMENT IF ALL REGULARLY SCHEDULED PERIODIC PAYMENTS ARE MADE, DESIGNATED AS THE "RENTAL PERIOD"; AND THE AMOUNT OF EACH PERIODIC PAYMENT;

(4) THE TOTAL OF PAYMENTS AND THE TOTAL NUMBER OF PERIODIC PAYMENTS NECESSARY TO ACQUIRE OWNERSHIP OF THE MERCHANDISE IF THE RENTER MAKES ALL REGULARLY SCHEDULED PERIODIC PAYMENTS;

(5) THE CONSUMER'S RIGHT TO CHOOSE WHETHER TO MAKE PERIODIC PAYMENTS ON A WEEKLY OR MONTHLY BASIS;

(6) THE CASH PRICE OF THE MERCHANDISE SUBJECT TO THE RENTAL PURCHASE AGREEMENT;

(7) THE COST OF RENTAL;

(8) THE AMOUNT AND PURPOSE OF ANY OTHER PAYMENT OR FEE PERMITTED BY THIS ARTICLE IN ADDITION TO THOSE SPECIFIED PURSUANT TO SUBPARAGRAPHS THREE AND FOUR OF THIS PARAGRAPH, INCLUDING ANY LATE PAYMENT FEE;

(9) A STATEMENT THAT THE TOTAL NUMBER AND DOLLAR AMOUNT OF PAYMENTS NECESSARY TO ACQUIRE OWNERSHIP OF THE RENTAL MERCHANDISE DISCLOSED UNDER SUBPARAGRAPH FOUR OF THIS PARAGRAPH DOES NOT INCLUDE OTHER FEES PERMITTED BY THIS ARTICLE, SUCH AS LATE PAYMENT FEES, AND THAT THE CONSUMER SHOULD READ THE RENTAL-PURCHASE AGREEMENT FOR AN EXPLANATION OF ANY APPLICABLE ADDITIONAL FEES;

(10) 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 THE PRICE THE CONSUMER WOULD HAVE PAID TO EXERCISE AN EARLY PURCHASE OPTION PURSUANT TO THIS ARTICLE OR THE COST OF THE REPAIR AS DETERMINED BY THE MERCHANT;

(11) THAT THE CONSUMER DOES NOT ACQUIRE OWNERSHIP RIGHTS UNLESS THE CONSUMER HAS COMPLIED WITH THE OWNERSHIP TERMS OF THE AGREEMENT;

(12) THE FOLLOWING NOTICE:

NOTICE

YOU ARE RENTING THIS MERCHANDISE. YOU WILL NOT OWN IT UNTIL YOU MAKE ALL OF THE REGULARLY SCHEDULED PAYMENTS OR YOU USE THE EARLY PURCHASE OPTION.

YOU DO NOT HAVE THE RIGHT TO KEEP THE MERCHANDISE IF YOU DO NOT MAKE REQUIRED PAYMENTS OR DO NOT USE THE EARLY PURCHASE OPTION. IF YOU MISS A PAYMENT, THE MERCHANT CAN REPOSSESS THE MERCHANDISE, BUT, YOU MAY HAVE THE RIGHT TO THE RETURN OF THE SAME OR SIMILAR MERCHANDISE.

SEE THE CONTRACT FOR AN EXPLANATION OF YOUR RIGHTS.

(13) A DESCRIPTION OF THE CONSUMER'S RIGHT TO ACQUIRE OWNERSHIP OF THE MERCHANDISE BEFORE THE END OF THE RENTAL PERIOD AS PROVIDED IN SECTION FIVE HUNDRED FOUR OF THIS ARTICLE;

(14) A DESCRIPTION OF THE CONSUMER'S REINSTATEMENT RIGHTS AS PROVIDED IN SUBDIVISION SIX OF THIS SECTION;

(15) IF WARRANTY COVERAGE IS TRANSFERABLE TO A CONSUMER WHO ACQUIRES OWNERSHIP OF THE MERCHANDISE, A STATEMENT THAT THE UNEXPIRED PORTION OF ALL WARRANTIES PROVIDED BY THE MANUFACTURER, DISTRIBUTOR, OR SELLER OF THE MERCHANDISE THAT IS THE SUBJECT OF THE RENTAL-PURCHASE AGREEMENT WILL BE TRANSFERRED BY THE MERCHANT TO THE CONSUMER AT THE TIME THE CONSUMER ACQUIRES OWNERSHIP OF THE MERCHANDISE FROM THE MERCHANT; AND

(16) A DESCRIPTION OF THE MERCHANT'S OBLIGATION TO MAINTAIN THE RENTAL MERCHANDISE AND TO REPAIR OR REPLACE RENTAL MERCHANDISE THAT IS NOT OPERATING PROPERLY, AS PROVIDED IN SECTION FIVE HUNDRED FOUR-A OF THIS ARTICLE.

(B) (1) THE DISCLOSURES REQUIRED BY SUBPARAGRAPHS THREE, FOUR, SIX AND SEVEN OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE PRINTED IN AT LEAST TEN-POINT BOLDFACED TYPE OR CAPITAL LETTERS IF TYPED AND SHALL BE GROUPED TOGETHER IN A BOX FORMED BY A HEAVY LINE IN THE FOLLOWING FORM:

TOTAL OF PAYMENTS	COST OF RENTAL	CASH PRICE
$	$	$
YOU MUST PAY THIS AMOUNT TO OWN THE MERCHANDISE IF YOU MAKE ALL THE REGULAR PAYMENTS. YOU CAN BUY THE MERCHANDISE FOR LESS UNDER THE	AMOUNT OVER CASH PRICE YOU WILL PAY IF YOU MAKE ALL REGULAR PAYMENTS.	MERCHANDISE AVAILABLE AT THIS PRICE FOR CASH FROM THE MERCHANT. SEE ABOUT YOUR EARLY PURCHASE OPTION RIGHTS.

EARLY
PURCHASE
OPTION.

AMOUNT OF EACH PAYMENT	NUMBER OF PAYMENTS	RENTAL PERIOD
$ PER _____ (INSERT PERIOD)		

(2) THE BOX DESCRIBED IN SUBPARAGRAPH ONE OF THIS PARAGRAPH SHALL APPEAR IMMEDIATELY ABOVE THE SPACE RESERVED FOR THE BUYER'S SIGNATURE.

(C) THE DISCLOSURES REQUIRED BY SUBPARAGRAPHS THREE, FOUR, SIX AND SEVEN OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE GROUPED TOGETHER IN A BOX FORMED BY A HEAVY LINE IN THE FORM PRESCRIBED IN PARAGRAPH (B) OF THIS SUBDIVISION AND SHALL BE CLEARLY AND CONSPICUOUSLY PLACED ON A TAG OR STICKER AFFIXED TO THE MERCHANDISE AVAILABLE FOR RENTAL-PURCHASE. IF THE MERCHANDISE AVAILABLE FOR RENTAL-PURCHASE IS NOT DISPLAYED AT THE MERCHANT'S PLACE OF BUSINESS BUT APPEARS IN A PHOTOGRAPH OR CATALOG SHOWN TO CONSUMERS, A TAG OR STICKER SHALL BE AFFIXED TO THE PHOTOGRAPH OF THE MERCHANDISE OR CATALOG SHOWN TO CONSUMERS OR SHALL BE GIVEN TO CONSUMERS. THE DISCLOSURE REQUIRED BY SUBPARAGRAPH TWO OF PARAGRAPH (A) OF THIS SUBDIVISION ALSO SHALL BE CLEARLY AND CONSPICUOUSLY PLACED ON THE TAG OR STICKER.

(D) ALL DISCLOSURES REQUIRED BY THIS SUBDIVISION SHALL BE PRINTED OR TYPED IN A COLOR OR SHADE THAT CLEARLY CONTRASTS WITH THE BACKGROUND.

S 4. 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] FORTY-EIGHT hours prior to signing. A COPY OF THE FULLY COMPLETED RENTAL-PURCHASE AGREEMENT AND ALL OTHER DOCUMENTS WHICH THE MERCHANT REQUESTS THE CONSUMER TO SIGN SHALL BE GIVEN TO THE CONSUMER AT THE TIME THEY ARE SIGNED. THE RENTAL-PURCHASE AGREEMENT SHALL NOT BE ENFORCEABLE AGAINST THE CONSUMER UNTIL THE CONSUMER HAS RECEIVED A SIGNED COPY. IN ADDITION TO ANY OTHER RIGHT OF CANCELLATION, A CONSUMER HAS THE RIGHT TO CANCEL A RENTAL-PURCHASE AGREEMENT, WITHOUT PENALTY OR OBLIGATION IF THE CONSUMER HAS NOT TAKEN POSSESSION OF THE PROPERTY.

S 5. Section 504 of the personal property law is REPEALED and a new section 504 is added to read as follows:

S 504. EARLY PURCHASE OPTION. 1. (A) THE CONSUMER HAS THE RIGHT TO ACQUIRE OWNERSHIP OF THE MERCHANDISE WITHIN THREE MONTHS OF THE DATE ON WHICH THE CONSUMER EXECUTED THE RENTAL-PURCHASE AGREEMENT BY TENDERING TO THE MERCHANT AN AMOUNT EQUAL TO THE CASH PRICE AND ANY PAST DUE FEES LESS ALL PERIODIC PAYMENTS THAT THE CONSUMER HAS PAID.

(B) AT LEAST THIRTY, BUT NOT MORE THAN SIXTY DAYS BEFORE A CONSUMER'S RIGHT UNDER PARAGRAPH (A) OF THIS SUBDIVISION EXPIRES, THE MERCHANT SHALL PERSONALLY DELIVER OR SEND BY FIRST-CLASS MAIL TO THE CONSUMER A NOTICE INFORMING THE CONSUMER OF THE RIGHT DESCRIBED IN PARAGRAPH (A) OF

THIS SUBDIVISION, INCLUDING THE AMOUNT THE CONSUMER MUST PAY TO ACQUIRE OWNERSHIP AND THE DATE BY WHICH PAYMENT MUST BE MADE. THE STATEMENT SHALL NOT BE ACCOMPANIED BY ANY OTHER WRITTEN INFORMATION INCLUDING SOLICITATIONS FOR OTHER RENTAL-PURCHASE AGREEMENTS.

2. AFTER THE EXPIRATION OF THE THREE-MONTH PERIOD FOLLOWING THE EXECUTION OF THE RENTAL-PURCHASE AGREEMENT, THE CONSUMER HAS THE RIGHT TO ACQUIRE OWNERSHIP OF THE MERCHANDISE AT ANY TIME BY TENDERING TO THE MERCHANT ALL PAST DUE PAYMENTS AND FEES AND AN AMOUNT EQUAL TO THE CASH PRICE STATED IN THE RENTAL-PURCHASE AGREEMENT MULTIPLIED BY A FRACTION THAT HAS AS ITS NUMERATOR THE NUMBER OF PERIODIC PAYMENTS REMAINING UNDER THE AGREEMENT AND THAT HAS AS ITS DENOMINATOR THE TOTAL NUMBER OF PERIODIC PAYMENTS.

3. (A) THE MERCHANT SHALL, IN CONNECTION WITH A CONSUMER'S RIGHTS UNDER SUBDIVISION TWO OF THIS SECTION, PROVIDE THE CONSUMER WITH A WRITTEN STATEMENT IN THE MANNER SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION THAT CLEARLY STATES:

(1) THE TOTAL AMOUNT THE CONSUMER WOULD HAVE TO PAY TO ACQUIRE OWNERSHIP OF THE RENTAL MERCHANDISE IF THE CONSUMER MAKES ALL REGULARLY SCHEDULED PAYMENTS REMAINING UNDER THE RENTAL-PURCHASE AGREEMENT; AND

(2) THE TOTAL AMOUNT THE CONSUMER WOULD HAVE TO PAY TO ACQUIRE OWNERSHIP OF THAT MERCHANDISE PURSUANT TO SUBDIVISION ONE OF THIS SECTION.

(B) THE STATEMENT REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE PERSONALLY DELIVERED OR SENT BY FIRST-CLASS MAIL TO THE CONSUMER WITHIN SEVEN DAYS AFTER:

(1) THE DATE THE CONSUMER REQUESTS INFORMATION ABOUT THE AMOUNT REQUIRED TO PURCHASE THE RENTAL MERCHANDISE; AND

(2) THE DATE THE CONSUMER HAS MADE ONE-HALF OF THE TOTAL NUMBER OF PERIODIC PAYMENTS REQUIRED TO ACQUIRE OWNERSHIP OF THE RENTAL MERCHANDISE. THE STATEMENT SHALL NOT BE ACCOMPANIED BY ANY OTHER WRITTEN INFORMATION INCLUDING SOLICITATIONS FOR OTHER RENTAL-PURCHASE AGREEMENTS.

S 6. The personal property law is amended by adding a new section 504-a to read as follows:

S 504-A. MAINTENANCE OF MERCHANDISE. 1. THE MERCHANT SHALL MAINTAIN THE PROPERTY SUBJECT TO THE RENTAL-PURCHASE AGREEMENT IN GOOD WORKING ORDER WHILE THE AGREEMENT IS IN EFFECT WITHOUT CHARGING ANY FEE TO THE CONSUMER IN ADDITION TO THE REGULARLY SCHEDULED RENTAL PAYMENTS SET FORTH IN THE RENTAL-PURCHASE AGREEMENT.

2. BY THE END OF THE SECOND BUSINESS DAY FOLLOWING THE DAY ON WHICH THE MERCHANT RECEIVED NOTICE FROM THE CONSUMER THAT THE PROPERTY IS NOT OPERATING PROPERLY, THE MERCHANT SHALL REPAIR OR REPLACE THE PROPERTY WITHOUT ANY FEE TO THE CONSUMER IN ADDITION TO THE REGULARLY SCHEDULED RENTAL PAYMENTS SET FORTH IN THE RENTAL-PURCHASE AGREEMENT.

3. IF A REPAIR OR REPLACEMENT CANNOT BE IMMEDIATELY EFFECTED, THE MERCHANT SHALL TEMPORARILY SUBSTITUTE PROPERTY OF COMPARABLE QUALITY AND CONDITION WHILE REPAIRS ARE BEING EFFECTED. IF REPAIRS CANNOT BE COMPLETED TO THE REASONABLE SATISFACTION OF THE CONSUMER WITHIN THIRTY DAYS AFTER THE MERCHANT RECEIVES NOTICE FROM THE CONSUMER OR WITHIN A LONGER PERIOD VOLUNTARILY AGREED TO BY THE CONSUMER, THE MERCHANT SHALL PERMANENTLY REPLACE THE PROPERTY.

4. ALL REPLACEMENT PROPERTY SHALL BE THE SAME BRAND, IF AVAILABLE, AND COMPARABLE IN QUALITY, AGE, CONDITION, AND WARRANTY COVERAGE TO THE REPLACED PROPERTY. IF THE SAME BRAND IS NOT AVAILABLE, THE BRAND OF THE REPLACEMENT PROPERTY SHALL BE AGREEABLE TO THE CONSUMER, PROVIDED, HOWEVER THAT ANY REQUEST BY THE CONSUMER SHALL NOT BE UNREASONABLE.

5. ALL OF THE CONSUMER'S AND MERCHANT'S RIGHTS AND OBLIGATIONS UNDER THE RENTAL-PURCHASE AGREEMENT AND THIS TITLE THAT APPLIED TO THE PROPER-

TY ORIGINALLY SUBJECT TO THE RENTAL-PURCHASE AGREEMENT SHALL APPLY TO ANY REPLACEMENT PROPERTY.

6. THE CONSUMER SHALL NOT BE CHARGED, OR HELD LIABLE FOR, ANY PRO RATA PORTION OF A PERIODIC PAYMENT FOR ANY PERIOD OF TIME GREATER THAN ONE FULL DAY AND EACH FULL DAY THEREAFTER DURING WHICH THE PROPERTY THAT IS THE SUBJECT OF THE RENTAL-PURCHASE AGREEMENT OR ANY PROPERTY SUBSTITUTED FOR IT PURSUANT TO THIS SECTION IS NOT IN GOOD WORKING ORDER.

7. THIS SECTION DOES NOT APPLY TO THE REPAIR OF DAMAGE RESULTING FROM THE CONSUMER'S INTENTIONAL, WILLFUL, WANTON, RECKLESS, OR NEGLIGENT CONDUCT. IF THE MERCHANT DOES NOT COMPLY WITH THIS SECTION BECAUSE OF THIS SUBDIVISION, THE MERCHANT HAS THE BURDEN OF PROOF TO ESTABLISH THAT NONCOMPLIANCE WAS JUSTIFIED AND IN GOOD FAITH.

8. A MERCHANT SHALL NOT DELIVER TO A CONSUMER ANY PROPERTY WHICH THE MERCHANT KNOWS OR HAS REASON TO KNOW IS DEFECTIVE.

S 7. Subdivision 1 of section 505 of the personal property law, as added by chapter 792 of the laws of 1986, is 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; AND

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

S 8. 1. The consumer protection board, in conjunction with the department of economic development, and in consultation with representatives from the rent-to-own industry, the business community, and consumer advocates, shall perform a survey of retailers located within the state to determine the average markup applied by retailers to consumer goods offered for sale to the public. In performing such survey the consumer protection board and department of economic development shall:

(a) gather data on those goods generally offered for sale and rental by rent-to-own stores and separately consider and report on markups applied to computer systems, electronic sets, appliances, automotive accessories, furniture, jewelry and musical instruments;

(b) gather data from a representative sample of retailers, including those with high sales volume, those with low sales volume and those who sell used merchandise; and

(c) gather data from every market in which rent-to-own transactions are offered to the public to the extent practicable.

2. Any records, documents, papers, maps, books, tapes, photographs, files, sound recordings, or other business material, regardless of form or characteristics, obtained by the consumer protection board and department of economic development pursuant to this section are confidential. At the conclusion of the survey, any matter determined by the consumer protection board and the department of economic development to be a trade secret or proprietary confidential business information held by either the consumer protection board or the department of economic development pursuant to such survey shall be considered confidential.

3. The consumer protection board and department of economic development shall prepare and submit, on or before March 1, 2010, the results of the survey and its joint recommendation as to appropriate and fair formulas for determining cash prices for computer systems, electronic

sets, appliances, automotive accessories, furniture, jewelry and musical instruments, and other merchandise for the purpose of establishing limits on the total cost of rental-purchase transactions to the governor, temporary president of the senate, speaker of the assembly, and minority leaders of the senate and assembly.

4. For the purposes of this section, the terms:

(a) "markup" shall mean the difference between the retailer's cost of goods and the price at which such goods are offered for sale to the public; and

(b) "retailer's cost" shall mean the documented actual cost, including actual freight charges, of the merchandise to the retailer from a wholesaler, distributor, supplier, or manufacturer and net of any discounts, rebates, and incentives.

S 9. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to all agreements entered into or offered on or after such date; provided, however, that section eight of this act shall take effect immediately and shall expire and be deemed repealed March 1, 2010.