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

7746

2009-2010 Regular Sessions

I N A S S E M B L Y

April 23, 2009

Introduced by M. of A. KELLNER -- read once and referred to the Committee on Judiciary

AN ACT to amend the personal property law, in relation to rent-to-own sales practices and disclosure requirements for rental-purchase agreements

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

Section 1. Subdivision 2 of section 500 of the personal property law, as added by chapter 792 of the laws of 1986, is amended and a new subdivision 3-a is added to read as follows:

2. "Cash price" means the BONA FIDE RETAIL price at which a merchant, in the ordinary course of business, would offer to sell the merchandise to the consumer for cash on the date of the rental-purchase agreement. SUCH PRICE SHALL BE REPRESENTATIVE OF MERCHANDISE OFFERED WITHIN THE MARKET AREA AND SHALL BE COMPETITIVE AND COMPARABLE IN PRICE TO SIMILAR MERCHANDISE FOR RETAIL IN SUCH AREA.

3-A. "EFFECTIVE ANNUAL PERCENTAGE RATE" MEANS THE ANNUAL PERCENTAGE RATE OF THE MERCHANDISE SUBJECT TO A RENTAL-PURCHASE AGREEMENT, CALCULATED IN THE SAME MANNER AS AN ANNUAL PERCENTAGE RATE UNDER SECTION 107 OF THE FEDERAL TRUTH IN LENDING ACT (15 USC 1606) EXCEPT THAT (A) IN THE PLACE OF THE FINANCE CHARGE, THERE SHALL BE SUBSTITUTED THE DIFFERENCE BETWEEN THE TOTAL PAYMENTS TO ACQUIRE OWNERSHIP AND THE CASH PRICE, LESS ANY AMOUNTS SPECIFICALLY EXCLUDED FROM THE FINANCE CHARGE UNDER THE TRUTH IN LENDING ACT; (B) IN PLACE OF THE AMOUNT FINANCED, THERE SHALL BE SUBSTITUTED THE CASH PRICE LESS ANY DOWN PAYMENT; AND (C) IT SHALL BE ASSUMED THAT THE CONSUMER SHALL PAY THE TOTAL OF PAYMENTS TO ACQUIRE OWNERSHIP IN THE MERCHANDISE.

S 2. Subdivisions 5 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 subdivision 2-a is added to read as follows:

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

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2-A. A RENTAL-PURCHASE AGREEMENT SHALL SET FORTH THE ITEMS REQUIRED TO BE DISCLOSED BY (A) THE FEDERAL TRUTH IN LENDING ACT (15 USC 1606 ET SEQ) AND THE REGULATIONS THEREUNDER, AS SUCH ACT AND REGULATIONS MAY FROM TIME TO TIME BE AMENDED, (B) THE FEDERAL EQUAL CREDIT OPPORTUNITY ACT (P.L. 93-435, 15 USC 1691 ET SEQ) AS SUCH STATUTE MAY FROM TIME TO TIME BE AMENDED, (C) THE FEDERAL FAIR DEBT AND COLLECTION PRACTICES ACT (15 USC 1692 ET SEQ) AS SUCH STATUTE MAY FROM TIME TO TIME BE AMENDED, AND (D) THE FAIR CREDIT REPORTING ACT (15 USC 1681 ET SEQ) AS SUCH STATUTE MAY FROM TIME TO TIME BE AMENDED.

5. A rental-purchase agreement [must] SHALL 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]

(B-1) A CONSUMER SHALL HAVE THE RIGHT TO TERMINATE THE RENTAL-PURCHASE AGREEMENT AT ANY TIME DURING THE CONTRACT PERIOD AND THE TERMINATION FEE FOR SUCH SHALL NOT EXCEED FIVE PERCENT OF THE CONTRACT PRICE; 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 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.

7. A rental-purchase agreement [must] SHALL 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, INCLUDING THE AMOUNT OF THE PERIODIC PAYMENT AND THE TOTAL NUMBER OF PERIODIC PAYMENTS REQUIRED FOR OWNERSHIP UNDER THE TERMS OF THE AGREEMENT;

(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[.];

(J) AN ITEMIZATION OF SERVICES OFFERED UNDER THE RENTAL-PURCHASE AGREEMENT AND THE PRICE FOR EACH SERVICE; AND

(K) THE EFFECTIVE ANNUAL PERCENTAGE RATE ASSOCIATED WITH THE MERCHANDISE UNDER THE RENTAL-PURCHASE AGREEMENT (WHICH MAY BE ACCOMPANIED BY A STATEMENT THAT THIS RATE APPLIES ONLY IF THE CONSUMER ACQUIRES OWNERSHIP BY MAKING ALL PAYMENTS).

S 3. Subdivisions 2 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:

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

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

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

(c) that the consumer does not acquire ownership rights unless the consumer complies with the ownership terms of the agreement[.]; AND

(D) THE EFFECTIVE ANNUAL PERCENTAGE RATE ASSOCIATED WITH THE MERCHANDISE UNDER THE RENTAL-PURCHASE AGREEMENT (WHICH MAY BE ACCOMPANIED BY A STATEMENT THAT THIS RATE APPLIES ONLY IF THE CONSUMER ACQUIRES OWNERSHIP BY MAKING ALL PAYMENTS).

3. 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, INCLUDING THE AMOUNT OF THE PERIODIC PAYMENT AND THE TOTAL NUMBER OF PERIODIC PAYMENTS REQUIRED FOR OWNERSHIP UNDER THE TERMS OF THE AGREEMENT; [and]

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

(D) AN ITEMIZATION OF SERVICES OFFERED UNDER THE RENTAL-PURCHASE AGREEMENT AND THE PRICE FOR EACH SERVICE.

S 4. Section 503 of the personal property law, as added by chapter 792 of the laws of 1986, is amended to read as follows:

S 503. Total cost. 1. No merchant shall offer a rental-purchase agreement requiring periodic payments totalling more than an amount, fifty percent of which equals the cash price of merchandise. When periodic payments made by a consumer total an amount, fifty percent of which equals the cash price of the merchandise, the consumer shall acquire ownership of the merchandise and the rental-purchase agreement shall terminate.

2. NOTWITHSTANDING ANY GENERAL OR SPECIAL STATUTES, LOCAL LAWS OR ORDINANCES TO THE CONTRARY, ANY LATE CHARGE OR FEE ASSESSED BY A MERCHANT PURSUANT TO THIS ARTICLE SHALL BE TREATED AND COLLECTED AS

INTEREST ASSESSED. NO MERCHANT SHALL ASSESS ANY LATE CHARGE OR FEE AS A LEASING CHARGE. ANY MERCHANT ASSESSING INTEREST CHARGES AT A RATE EXCEEDING TWENTY-FIVE PER CENTUM PER ANNUM SHALL BE PUNISHABLE UNDER CRIMINAL USURY IN THE FIRST DEGREE OR CRIMINAL USURY IN THE SECOND DEGREE, AS DEFINED IN SECTION 190.42 OR 190.40 OF THE PENAL LAW, RESPECTIVELY.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law.