

5476

2015-2016 Regular Sessions

I N S E N A T E

May 14, 2015

Introduced by Sen. COMRIE -- 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 enacting the "rent to own fair practices act"; 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:

- 1 Section 1. This act shall be known and may be cited as the "rent to
2 own fair practices act".
3 S 2. Subdivision 2 of section 500 of the personal property law, as
4 amended by chapter 309 of the laws of 2010, is amended and two new
5 subdivisions 14 and 15 are added to read as follows:
6 2. "Cash price" means the price [of] AT WHICH the merchandise
7 [described in the rental-purchase agreement that the consumer may pay in
8 cash to the merchant at the inception], OR MERCHANDISE OF SUBSTANTIALLY
9 THE SAME KIND, QUALITY, OR QUANTITY, IS OFFERED FOR SALE AT THE FAIR
10 MARKET VALUE BY A REASONABLE NUMBER OF MERCHANTS IN THE TRADE AREA
11 DURING THE SIXTY DAYS PRIOR TO THE DATE of the rental-purchase agreement
12 [to acquire ownership of such merchandise].
13 14. "TRADE AREA" MEANS THE GEOGRAPHICAL AREA IN WHICH THE MERCHANT
14 SOLICITS OR MAKES RENTAL-PURCHASE AGREEMENTS.
15 15. "FAIR MARKET VALUE" MEANS THE PRICE THAT A SELLER IS WILLING TO
16 ACCEPT AND A BUYER IS WILLING TO PAY ON THE OPEN MARKET AND IN AN ARM'S
17 LENGTH TRANSACTION.
18 S 3. Subdivision 2, paragraph (e) of subdivision 3, subdivisions 4 and
19 6 and paragraph (a) of subdivision 8 of section 501 of the personal
20 property law, subdivisions 2 and 4 and paragraph (e) of subdivision 3 as
21 added by chapter 792 of the laws of 1986, subdivision 6 as amended and
22 paragraph (a) of subdivision 8 as added by chapter 309 of the laws of
23 2010, are amended to read as follows:

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

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1 2. Disclosures required by this section must be printed or typed in
2 each rental-purchase agreement in a size equal to at least [ten-point]
3 TWELVE-POINT bold-faced type.

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

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

32 6. This section does not prevent a merchant from attempting to repos-
33 sess merchandise during the reinstatement period provided in paragraph
34 (b) of subdivision five of this section. The consumer's right to rein-
35 state an agreement does not expire because of such a repossession. [If
36 the consumer is entitled to reinstatement after repossession, then,
37 within fifteen days of the repossession, the merchant shall provide
38 written notice to the consumer of the consumer's right to reinstate the
39 agreement pursuant to paragraph (c) of subdivision five of this
40 section.] UPON REPOSSESSION, THE MERCHANT SHALL PROVIDE WRITTEN NOTICE
41 TO THE CONSUMER OF THE CONSUMER'S RIGHT TO REINSTATE THE AGREEMENT
42 PURSUANT TO PARAGRAPH (B) OF SUBDIVISION FIVE OF THIS SECTION AND THE
43 FINAL DATE FOR PAYMENTS NECESSARY FOR REINSTATEMENT PURSUANT TO SUCH
44 PARAGRAPH ALONG WITH THE APPROPRIATE AMOUNT DUE. On reinstatement, the
45 merchant shall provide the consumer with the same merchandise or substi-
46 tute merchandise of comparable quality and condition. If substitute
47 merchandise is provided, the merchant shall provide the consumer with
48 the disclosures required in subdivision seven of this section.

49 (a) [(1) Subject to federal law and regulation, no rental-purchase
50 agreement shall contain a mandatory arbitration clause. Nothing
51 contained herein shall be construed to prohibit a merchant from incorpo-
52 rating a provision within such contract that such merchant agrees that
53 the decision of the arbitrator or panel of arbitrators shall be final in
54 its application to such merchant and not subject to court review.

55 (2) The provisions of a mandatory arbitration clause shall be null and
56 void but shall not constitute a violation of this article. The inclusion

1 of such clause in a rental-purchase agreement shall not serve to impair
2 the enforceability of any other provision of such contract.] ANY DISPUTE
3 ARISING UNDER A RENTAL-PURCHASE AGREEMENT IS NOT SUBJECT TO MANDATORY
4 ARBITRATION OR BINDING ARBITRATION AND IS SUBJECT TO JUDICIAL REVIEW IN
5 A COURT OF COMPETENT JURISDICTION IN THE STATE OF NEW YORK APPLYING THE
6 LAWS OF THE STATE OF NEW YORK. NO CONTRACT FOR RENTAL-PURCHASE AGREEMENT
7 FOR A PERSONAL PROPERTY MAY CONTAIN ANY ARBITRATION PROVISIONS. THE
8 PROVISION OF A MANDATORY ARBITRATION CLAUSE SHALL CONSTITUTE A VIOLATION
9 OF THIS ARTICLE. NOTHING IN THIS PROVISION SHALL BE CONSTRUED TO KEEP A
10 JUDGE FROM ORDERING DISPUTES TO BE RESOLVED IN A COURT SUPERVISED ALTER-
11 NATIVE DISPUTE RESOLUTION FORUM.

12 S 4. Section 502 of the personal property law, as amended by chapter
13 309 of the laws of 2010, is amended to read as follows:

14 S 502. Availability. Every rental purchase agreement shall indicate
15 that a consumer at his or her request shall be permitted to review a
16 completed rental-purchase agreement for up to [forty-eight] SEVENTY-TWO
17 hours prior to signing. A copy of the fully completed rental-purchase
18 agreement and all other documents which the merchant requests the
19 consumer to sign shall be given to the consumer at the time they are
20 signed. The rental-purchase agreement shall not be enforceable against
21 the consumer until the consumer has received a signed copy. In addition
22 to any other right of cancellation, a consumer has the right to cancel a
23 rental-purchase agreement, without penalty [or obligation if] WHETHER OR
24 NOT the consumer has not taken possession of the property. NOTICE OF
25 CANCELLATION NEED NOT TAKE THE FORM PRESCRIBED BY THE RENTAL PURCHASE
26 AGREEMENT AND SHALL BE SUFFICIENT IF IT INDICATES THE INTENTION OF THE
27 CONSUMER NOT TO BE BOUND.

28 S 5. Subdivisions 2, 3, 4, 5 and 6 of section 503 of the personal
29 property law are REPEALED and a new subdivision 2 is added to read as
30 follows:

31 2. A RENTAL-PURCHASE AGREEMENT IS A LOAN TRANSACTION AND AS SUCH A
32 MERCHANT MAY NOT CHARGE INTEREST WHICH SHALL MEAN FOR THE PURPOSES OF
33 THIS SECTION ANY FINANCE CHARGES OR FEES, AT A RATE THAT WOULD BE GREAT-
34 ER THAN PERMISSIBLE UNDER SECTION 5-501 OF THE GENERAL OBLIGATIONS LAW.

35 S 6. Section 507 of the personal property law is amended by adding a
36 new subdivision 8 to read as follows:

37 8. WHENEVER THERE SHALL BE A VIOLATION OF THIS ARTICLE AN APPLICATION
38 CAN ALSO BE MADE TO THE DEPARTMENT OF FINANCIAL SERVICES FOR INVESTI-
39 GATION AND RESOLUTION OF THE VIOLATIONS.

40 S 7. The personal property law is amended by adding a new section 509
41 to read as follows:

42 S 509. UNFAIR PRACTICES. A MERCHANT MAY NOT ENGAGE IN ANY UNFAIR
43 CONDUCT THE NATURAL CONSEQUENCE OF WHICH IS TO DECEIVE, HARASS, OPPRESS,
44 OR ABUSE ANY PERSON IN CONNECTION WITH A RENTAL PURCHASE AGREEMENT OR
45 THE COLLECTION OF DEBT. WITHOUT LIMITING THE GENERAL APPLICATION OF THE
46 FOREGOING, THE FOLLOWING CONDUCT IS A VIOLATION OF THIS ARTICLE:

47 1. THE USE OR THREAT OF USE OF VIOLENCE OR OTHER CRIMINAL MEANS TO
48 HARM THE PHYSICAL PERSON, REPUTATION, OR PROPERTY OF ANY PERSON.

49 2. THE USE OF OBSCENE OR PROFANE LANGUAGE OR LANGUAGE THE NATURAL
50 CONSEQUENCE OF WHICH IS TO ABUSE THE HEARER OR READER.

51 3. THE PUBLICATION OF A LIST OF CONSUMERS WHO ALLEGEDLY REFUSE TO PAY
52 DEBTS, EXCEPT TO A CONSUMER REPORTING AGENCY.

53 4. THE ADVERTISEMENT FOR SALE OF ANY DEBT TO COERCE PAYMENT OF THE
54 DEBT.

1 5. CAUSING A TELEPHONE TO RING OR ENGAGING ANY PERSON IN TELEPHONE
2 CONVERSATION REPEATEDLY OR CONTINUOUSLY WITH INTENT TO ANNOY, ABUSE, OR
3 HARASS ANY PERSON AT THE CALLED NUMBER.

4 6. THE PLACEMENT OF TELEPHONE CALLS WITHOUT MEANINGFUL DISCLOSURE OF
5 THE CALLER'S IDENTITY.

6 S 8. The personal property law is amended by adding a new section 510
7 to read as follows:

8 S 510. PRIVATE RIGHT OF ACTION. 1. THE CONSUMER WHO ENTERS INTO A
9 RENTAL-PURCHASE AGREEMENT PURSUANT TO THIS CHAPTER SHALL HAVE A PRIVATE
10 RIGHT OF ACTION AGAINST ANY MERCHANT DOING BUSINESS IN THIS STATE FOR
11 DAMAGES AS PROVIDED IN THIS SECTION UPON SUCH CONSUMER PROVING BY A
12 PREPONDERANCE OF THE EVIDENCE THAT SUCH MERCHANT HAS VIOLATED THIS
13 SECTION OF LAW.

14 2. THE COURT MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO
15 AN AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES UP TO ONE THOU-
16 SAND DOLLARS, IF THE COURT FINDS THE DEFENDANT WILLFULLY OR KNOWINGLY
17 VIOLATED THIS SECTION. THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO
18 A PREVAILING PLAINTIFF.

19 S 9. This act shall take effect on the ninetieth day after it shall
20 have become a law and shall apply to all agreements entered into or
21 offered on or after such date.