

State of Arkansas

76th General Assembly

Regular Session, 1987 AS ENGROSSED 3/2/87

HOUSE BILL 1694

By: Representative Shaver

"AN ACT TO PROVIDE MINIMUM STANDARDS FOR THE DISCLOSURE, USE AND ADVERTISEMENT OF RENTAL PURCHASE AGREEMENTS; TO PROVIDE A MEASURE OF DAMAGES FOR THE CONSUMER; TO PROVIDE A MEANS OF ENFORCEMENT; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. This Act shall be known and may be cited as the Rental Purchase Act".

SECTION 2. As used in this Act, the following words and phrases shall have the following meanings ascribed to them, unless the context clearly indicates otherwise:

(A) "Advertisement" means a commercial message in any medium that directly or indirectly promotes or assists a rental-purchase agreement, except for in-store merchandising aids.

(B) "Consumer" means a person who leases personal property under a rental-purchase agreement.

(C) "Merchandise" means the personal property that is the subject of a rental-purchase agreement.

(D) "Lessor" means a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of merchandise under a rental-purchase agreement, and includes a person who is assigned an interest in a rental-purchase agreement.

(E) "Person" means an individual, corporation, partnership, organization, or any other entity.

(F) "Reinstatement Period" means the period or time specified in Section 6 during which a consumer may either pay delinquent rent or return merchandise and thereby retain the right to have the rental-purchase agreement

reinstated.

(G) "Rental-purchase Agreement" means an agreement for the use of merchandise by a consumer for personal, family, household or business purposes, for an initial period of four months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue leasing or using the merchandise after the initial period, and that permits the consumer to become the owner of the merchandise but does not obligate the consumer to purchase or become the owner of the merchandise.

SECTION 3. An agreement which conforms with the definition as set forth in Section 2 (G) of this Act shall be a true lease and shall not constitute a credit sale, retail installment contract, agreement, or obligation or any other type of credit sale financing device or create a security interest as that term is defined in Arkansas Statutes Annotated 85-1-201 (37) (Repl. 1961). Until the lessor transfers title to the merchandise to the consumer, the relationship of the parties to a rental-purchase agreement shall be that of a lessor and lessee and not that of a seller and buyer and title to the merchandise shall remain vested with the lessor.

SECTION 4. A rental-purchase agreement shall not contain a provision:

- (A) Requiring a confession of judgment;
- (B) Authorizing a merchant or agent of the merchant to commit a breach of the peace while repossessing merchandise;
- (C) Waiving a defense, counterclaim, or right the consumer may have against the merchant or an agent of the merchant; or
- (D) Requiring the purchase of insurance from the merchant to cover the merchandise.

SECTION 5. Disclosures. A rental-purchase agreement must disclose:

- (A) Whether the merchandise is new or used;
- (B) The amount and timing of regular rental payments;
- (C) The total number of payments necessary and the total amount to be paid to acquire ownership;
- (D) The amounts and purpose of any other payment, charge, or fee in addition to the regular periodic rental payment;

(E) That the consumer does not acquire any ownership rights until the consumer has complied with the ownership terms of the agreement;

(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 held liable.

(G) Notice of the right to reinstate an agreement as herein provided.

SECTION 6. (A) A consumer who fails to make a timely rental payment may reinstate an agreement without losing any rights or options previously acquired, by either paying all rental and other charges due or returning the merchandise to the lessor within five (5) business days from the date of the last scheduled rental payment if the consumer pays rent monthly or within two (2) business days from the date of the last scheduled rental payment if the consumer pays more frequently than monthly.

(B) Nothing in this section shall prevent the accrual of any late charges or reinstatement fees charged by the lessor.

(C) Nothing in this section shall prevent the lessor from attempting to repossess the merchandise during the reinstatement period, but the consumer's right to reinstate an agreement shall not expire because of such repossession.

(D) If the merchandise is returned during the applicable reinstatement period, other than through judicial process, the right to reinstate shall be extended for a period of not less than 30 days after the date of the return of the merchandise.

(E) No consumer shall have the right to reinstate more than three times during the term of any one rental-purchase agreement.

(F) On reinstatement, the lessor shall provide the consumer with the same merchandise or substitute merchandise of comparable quality and condition; provided, however, the lessor shall not be required to provide new disclosures upon reinstatement.

SECTION 7. Any advertisement for a rental-purchase agreement must clearly and conspicuously state that the advertised transaction is a rental-purchase transaction.

SECTION 8. (A) A consumer damaged by a violation of this Act by a lessor is entitled to recover from the lessor:

(1) Actual damages;

(2) Twenty-five percent of an amount equal to the total amount of payments required to obtain ownership of the merchandise involved, except that the amount recovered under this subdivision may not be less than \$100.00 nor more than \$1,000.00; and

(3) Reasonable attorney's fees not to exceed 15% of the consumer's allowable recovery and court costs.

SECTION 9. If any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not effect the other provisions or any other application of this Act which can be given effect without the invalid provisions or application, and to this end all the provisions of this Act are declared to be severable.

/s/ Jim Shaver

