

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 1016

4
5 By: Senator Madison
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For An Act To Be Entitled

8 AN ACT TO AMEND THE RENTAL PURCHASE ACT; AND FOR
9 OTHER PURPOSES.
10

Subtitle

11 TO AMEND THE RENTAL PURCHASE ACT.
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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
17

18 SECTION 1. Arkansas Code §§ 4-92-102 – 4-92-106 are amended to read as
19 follows:

20 4-92-102. Definitions.

21 As used in this chapter, ~~unless the context otherwise requires:~~

22 (1) "Advertisement" means a commercial message in any medium
23 that directly or indirectly promotes or assists a rental-purchase agreement,
24 except for in-store merchandising aids;

25 (2) "Cash price" means:

26 (A) The bona fide retail price for goods sold at retail by
27 a seller or a lessor as defined in this chapter to consumers that pay the
28 full price in one (1) payment before taking possession of the goods; and

29 (B) In the case of a seller or a lessor as defined in this
30 chapter that does not regularly engage in sales of retail goods, the average
31 cash retail price for the same or similar goods in the community;

32 ~~(2)(3)~~ (3) "Consumer" means a person ~~who~~ that leases personal
33 property under a rental-purchase agreement;

34 (4) "Late charges" means charges imposed for the late payment of
35 a periodic payment that:

36 (A) Are not imposed prior to the end of the third business



1 day after the payment was due for an agreement that is paid on a weekly basis
 2 or the end of the fifteenth day after the payment was due for an agreement
 3 that is paid on a monthly basis;

4 (B) Do not exceed five percent (5%) of the amount of a
 5 payment that is late; and

6 (C) Are not charged more than one (1) time for each
 7 payment that is late;

8 ~~(3) "Merchandise" means the personal property that is the~~
 9 ~~subject of a rental-purchase agreement;~~

10 ~~(4)~~(5) "Lessor" means a person ~~who~~ that, in the ordinary course
 11 of business, regularly leases, offers to lease, or arranges for the leasing
 12 of merchandise under a rental-purchase agreement and includes a person ~~who~~
 13 that is assigned an interest in a rental-purchase agreement;

14 (6) "Merchandise" means the personal property that is the
 15 subject of a rental-purchase agreement;

16 ~~(5)~~(7) "Person" means an individual, corporation, partnership,
 17 organization, or any other entity;

18 ~~(6)~~(8) "Reinstatement period" means the period of time specified
 19 in § 4-92-106 during which a consumer may either pay delinquent rent or
 20 return merchandise and thereby retain the right to have the rental-purchase
 21 agreement reinstated; ~~and~~

22 ~~(7)~~(9) "Rental-purchase agreement" means an agreement for the
 23 use of merchandise by a consumer for personal, family, household, or business
 24 purposes for an initial period of four (4) months or less that is
 25 automatically renewable with each payment after the initial period, but does
 26 not obligate or require the consumer to continue leasing or using the
 27 merchandise after the initial period, and that permits the consumer to become
 28 the owner of the merchandise, but does not obligate the consumer to purchase
 29 or become the owner of the merchandise; and

30 (10)(A) "Total cost" means the sum of all periodic payments and
 31 all other fees and charges, including, but not limited to, reinstatement
 32 fees, insurance charges, and fees for pick-up or delivery of the merchandise.

33 (B) "Total cost" does not include late charges as defined
 34 in subdivision (4) of this section.

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 36 4-92-103. Liability of lessor.

1 (a) A consumer damaged by a violation of this chapter by a lessor is
2 entitled to recover from the lessor:

3 (1) Actual damages;

4 (2) Twenty-five percent (25%) of an amount equal to the total
5 amount of payments required to obtain ownership of the merchandise involved.
6 However, the amount recovered under this subdivision (a)(2) may not be less
7 than one hundred dollars (\$100) nor more than ~~one thousand dollars (\$1,000)~~
8 two thousand dollars (\$2,000); and

9 (3) Reasonable attorney's fees ~~not to exceed fifteen percent~~
10 ~~(15%) of the consumer's allowable recovery and court costs~~ as determined by
11 the court.

12 (b)(1) Any execution or enforcement of a rental-purchase agreement in
13 violation of this chapter or any other violation of this chapter shall
14 constitute an unfair or deceptive act or practice as defined by the Deceptive
15 Trade Practices Act, § 4-88-101 et seq.

16 (2) All remedies, penalties, and authority granted to the
17 Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq.,
18 shall be available to the Attorney General for the enforcement of this
19 chapter.

20
21 4-92-104. Agreement - Nature.

22 (a) An agreement which conforms with the definition set forth in § 4-
23 92-102(7) § 4-92-102(9) and complies with all provisions of this chapter
24 shall be a true lease and shall not constitute a credit sale, retail
25 installment contract, agreement, obligation, or any other type of credit sale
26 financing device, nor shall it create a security interest as that term is
27 defined in § 4-1-201(37).

28 (b) Until the lessor transfers title to the merchandise to the
29 consumer, the relationship of the parties to a rental-purchase agreement
30 shall be that of a lessor and lessee and not that of a seller and buyer, and
31 title to the merchandise shall remain vested with the lessor.

32
33 4-92-105. Agreement - Provisions prohibited and required.

34 (a) A rental-purchase agreement shall not contain a provision:

35 (1) Requiring a confession of judgment;

36 (2) Authorizing a merchant or agent of the merchant to commit a

1 breach of the peace while repossessing merchandise;

2 (3) Waiving a defense, counterclaim, or right the consumer may
3 have against the merchant or an agent of the merchant; ~~or~~

4 (4) Requiring the purchase of insurance from the merchant to
5 cover the merchandise;

6 (5) Requiring periodic payments that result in a total cost of
7 more than one hundred fifty percent (150%) of the cash price of the
8 merchandise for the transfer of ownership of the merchandise to the consumer;
9 or

10 (6) Including any term or condition that upon the payment of the
11 total cost of the merchandise:

12 (A) Prevents the immediate transfer of ownership of the
13 merchandise to the consumer; or

14 (B) Does not terminate the agreement between the parties.

15 (b) A rental-purchase agreement must disclose:

16 (1) Whether the merchandise is new or used;

17 (2) The amount and timing of regular rental payments;

18 (3) The total number of payments necessary and the total ~~amount~~
19 cost to be paid to acquire ownership;

20 (4) The amounts and purpose of any other payment, charge, or fee
21 in addition to the regular periodic rental payment;

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

24 (6) Whether the consumer is liable for loss or damage to the
25 merchandise, and if so, the maximum amount for which the consumer may be held
26 liable; and

27 (7) Notice of the right to reinstate an agreement as provided in
28 § 4-92-106(a).

29
30 4-92-106. Agreement - Reinstatement.

31 (a)(1) A consumer ~~who~~ that fails to make a timely rental payment may
32 reinstate an agreement without losing any rights or options previously
33 acquired by either paying all rental and other charges due or returning the
34 merchandise to the lessor within ~~five (5)~~ thirty (30) business days from the
35 date of the last scheduled rental payment if the consumer pays rent monthly,
36 or within ~~two (2)~~ seven (7) business days from the date of the last scheduled

1 rental payment if the consumer pays more frequently than monthly.

2 (2) If a consumer has paid at least one-half (1/2) but less than
3 three-fourths (3/4) of the total of payments necessary to acquire ownership,
4 the right to reinstate the agreement shall be extended for a period of not
5 less than sixty (60) days after the date of the last scheduled payment.

6 (3) If a consumer has paid at least three-fourths (3/4) but not
7 all of the total of payments necessary to acquire ownership, the right to
8 reinstate the agreement shall be extended for a period of not less than one
9 hundred eighty (180) days after the last scheduled payment.

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

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

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

20 (e) No consumer shall have the right to reinstate more than three (3)
21 times during the term of any one (1) rental-purchase agreement.

22 (f)(1) On reinstatement, the lessor shall provide the consumer with
23 the same merchandise or shall substitute merchandise of comparable quality
24 and condition. ~~However, the lessor shall not be required to provide new~~
25 ~~disclosures upon reinstatement.~~

26 (2) If substitute merchandise is provided, the merchant shall
27 provide the consumer with the disclosures required in § 4-92-105(b).

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