

ASSEMBLY, No. 695

STATE OF NEW JERSEY

213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblywoman L. GRACE SPENCER
District 29 (Essex and Union)

Co-Sponsored by:

Assemblyman Green, Assemblywoman Oliver, Assemblymen Prieto, Vas, Wisniewski, Assemblywoman Quigley, Assemblymen Johnson, McKeon, Burzichelli, Roberts, Connors and Assemblywoman Evans

SYNOPSIS

Regulates certain rental-purchase agreements.

CURRENT VERSION OF TEXT

As reported by the Assembly Consumer Affairs Committee with technical review.



(Sponsorship Updated As Of: 2/27/2008)

1 AN ACT concerning rental-purchase agreements and supplementing
2 P.L.1960, c.39 (C.56:8-1 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "New Jersey
8 Rental-Purchase Consumer Protection Act."

9

10 2. The Legislature finds and declares:

11 a. There is a need for consumers to be able to rent personal
12 property for personal, family, and household purposes, with the
13 option of returning the property at the end of any rental period or
14 acquiring ownership of the property after renting it for a period of
15 time.

16 b Consumers who are interested in entering into rental-
17 purchase agreements are entitled to know the terms and conditions
18 on which the property is being offered and, to that end, appropriate
19 disclosures regarding the nature, cost and other terms of these
20 transactions should be required in advertisements, on price cards
21 and in rental-purchase agreements.

22 c. Consumers who choose to enter into rental-purchase
23 agreements are further entitled to certain substantive rights, services
24 and protections as part of that transaction, including the right to
25 reduced rental payments if the consumer's income is reduced, the
26 right to maintenance and service of the property during the rental
27 term, grace periods for late payments and the right to reinstate
28 terminated agreements without losing the benefit of rental payments
29 previously made.

30 d. Consumers and merchants alike will benefit from legislation
31 clarifying their respective rights and responsibilities in rental-
32 purchase transactions.

33

34 3. As used in this act:

35 "Cash price" means the price for which the merchant would sell
36 the rented property to a consumer for cash on the date of the rental-
37 purchase agreement, subject to the limits established in section 11
38 of this act.

39 "Consumer" means a natural person who rents personal property
40 under a rental-purchase agreement.

41 "Director" means the Director of the Division of Consumer
42 Affairs in the Department of Law and Public Safety.

43 "Merchant" means a person who regularly provides the use of
44 property through rental-purchase agreements and to whom rental
45 payments are initially payable on the face of the rental-purchase
46 agreement.

47 "Rental-purchase agreement" means an agreement between a
48 merchant and a consumer for the use of personal property primarily

1 for personal, family, or household purposes, for an initial period of
2 four months or less, that is automatically renewable with each
3 payment after the initial rental period, and which permits but does
4 not obligate the consumer to renew the agreement beyond the initial
5 term or to acquire ownership of the property. A rental-purchase
6 agreement shall not be construed to be, nor governed by the laws
7 relating to:

8 (1) A retail installment contract as defined in subsection (b) of
9 section 1 of P.L.1960, c.40 (C.17:16C-1);

10 (2) A retail charge account as defined in subsection (r) of section
11 1 of P.L.1960, c.40 (C.17:16C-1);

12 (3) A retail installment sale of goods or retail installment
13 contract for the sale of goods pursuant to P.L.1968, c.223
14 (C.17:16C-61.1 et seq.);

15 (4) A security interest as defined in subsection (37) of
16 N.J.S.12A:1-201;

17 (5) A loan of money or other property, a forbearance of debt, an
18 extension of credit, or any other transaction governed under
19 N.J.S.2C:21-19; or

20 (6) A loan of money or other property, a forbearance of debt, an
21 extension of credit, or any other transaction governed under
22 R.S.31:1-1 et seq.

23
24 4. A rental-purchase agreement shall be in writing, shall
25 contain all terms and conditions of the agreement in a single
26 document, and shall be subject to all terms and conditions of this
27 act. A merchant shall disclose the following items, as applicable, in
28 each rental purchase agreement:

29 a. The name and address of the consumer, the name, business
30 address and telephone number of the merchant, and the date on
31 which the agreement is executed;

32 b. A brief description of the rented property, sufficient to
33 identify the property to the consumer and the merchant, including
34 an identification number or model number, if applicable;

35 c. Whether the rented property is new or previously rented. If
36 the property is new, the model year, or, if not known, the date that
37 the merchant originally acquired the property; if the property is
38 used, the age or the model year.

39 d. The amount of any initial payment required of the consumer
40 at the time the agreement is executed or the rented property is
41 delivered, whichever is later, including any application or
42 processing charge or fee, insurance premium or liability waiver fee,
43 or fees for other optional services agreed to by the consumer and
44 any applicable tax, each of which shall be separately stated;

45 e. The amount of each periodic payment for the rented property
46 and the timing of each periodic payment under the rental-purchase
47 agreement;

48 f. The cash price of the rented property;

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1 g. The periodic payment total, which shall specify the total
2 number and total dollar amount of all periodic payments necessary
3 to acquire ownership of the rented property if the consumer makes
4 all regularly scheduled periodic payments;

5 h. The difference between the cash price of the rented property
6 and the total dollar amount of all periodic payments necessary to
7 acquire ownership of the rented property, which amount shall be
8 identified as "cost of lease services";

9 i. A statement that the total dollar amount of periodic
10 payments necessary to acquire ownership of the rented property
11 does not include other charges that a consumer may incur, such as
12 late payment fees, processing fees, default, pickup and
13 reinstatement fees or charges and applicable taxes, which charges
14 shall be separately identified in the rental-purchase agreement, and
15 the dollar amount of each such charge disclosed;

16 j. A statement that the consumer will not acquire ownership of
17 the rented property unless the consumer has paid the total dollar
18 amount of periodic payments necessary to acquire ownership of the
19 rented property or has exercised the consumer's early purchase
20 option.

21 The statement shall include the following notice:

22 "NOTICE: You are renting this property. You will not own it
23 until you make all of the regularly scheduled payments or you use
24 the early purchase option. You do not have the right to keep the
25 property if you do not make the required payments or do not use the
26 early purchase option. If you miss a payment, the merchant can
27 repossess the property, but you may have the right to the return of
28 the same or similar property. This agreement explains your rights
29 and responsibilities. Read it carefully.";

30 k. A statement that the consumer may have cash or credit
31 purchase options that may result in a lower cost to acquire
32 ownership of the rented goods;

33 l. A statement clearly explaining the consumer's options for
34 acquiring ownership of the rented property, including a statement
35 that the consumer has the right to exercise an early purchase option
36 pursuant to section 12 of this act. The statement shall include a
37 clear summary of the terms of the early purchase option and shall
38 be accompanied by a statement or a chart showing the amount
39 required to exercise the consumer's early purchase option after each
40 periodic payment is made pursuant to the rental-purchase
41 agreement;

42 m. A statement that the consumer has the right to request a
43 written receipt for each payment made by cash or money order and
44 a written statement of account.

45 n. Whether the consumer is liable for loss or damage to the
46 merchandise and, if so, the maximum amount for which the
47 consumer may be liable, which in the case of loss shall in no event
48 exceed the lesser of the fair market value of the rented property at

1 the time of the loss or the amount the consumer would have paid to
2 exercise an early purchase option pursuant to section 12 of this act.
3 In the case of damage to the merchandise, other than normal wear
4 and tear, the consumer shall be liable for the lesser of the amount
5 the consumer would have paid to exercise an early purchase option
6 pursuant to section 12 of this act or the cost of the repair as
7 determined by the merchant;

8 o. A statement identifying the merchant as the party
9 responsible for maintaining and servicing the rented property while
10 it is being rented, a description of that responsibility;

11 p. A statement that, if any part of a manufacturer's express
12 warranty covers the rented property at the time the consumer
13 acquires ownership, it shall be transferred to the consumer if
14 permitted by the terms of the warranty;

15 q. A statement that the consumer may terminate the rental-
16 purchase agreement at any time without penalty by voluntarily
17 surrendering or returning the rented property to the merchant in
18 good repair, normal wear and tear excepted, upon the expiration of
19 any rental term, along with the payment of any past due rental
20 payments and accrued fees or charges;

21 r. The consumer's right to reinstate a terminated agreement
22 pursuant to section 10 of this act;

23 s. The grace periods and late payment fees that may apply to
24 late payments pursuant to section 9 of this act; and

25 t. The following notice, clearly and conspicuously displayed in
26 a prominent place in type not smaller than 10-point type:

27 "NOTICE: THIS AGREEMENT IS REGULATED BY STATE
28 LAW AND MAY BE ENFORCED BY THE DIVISION OF
29 CONSUMER AFFAIRS OR BY PRIVATE LEGAL ACTION."

30

31 5. a. A merchant shall disclose the information required by
32 section 4 of this act to the consumer prior to the time the rental-
33 purchase agreement is executed by the consumer.

34 b. The rental-purchase agreement and the disclosures required
35 by section 4 of this act shall be contained in a single written
36 document on a form, the format and wording of which may be
37 prescribed by the director by regulation, consistent with and limited
38 to the requirements of section 4 of this act. A merchant may, at its
39 option, disclose more information than is required by section 4 of
40 this act, so long as the additional disclosures are made clearly and
41 conspicuously in writing as part of the rental-purchase agreement
42 and do not obscure the information that is required to be disclosed.

43 c. In a transaction involving more than one merchant, only one
44 merchant shall make the disclosures required by section 4 of this
45 act, but all merchants involved in a rental-purchase agreement shall
46 be bound by those disclosures.

47 d. At the time the rental purchase agreement is signed by the
48 consumer, the merchant shall:

1 (1) disclose to the consumer, orally or in a writing separate from
2 the agreement, that the consumer has a right to receive from the
3 merchant a written receipt for each payment made by cash or money
4 order and a written statement of account; and

5 (2) disclose to the consumer, in a writing separate from the
6 agreement, the consumer's rights provided for in section 8 of
7 P.L. , c. (C.) (now pending before the Legislature as this
8 bill);

9 e. Upon the request of the consumer, the merchant shall
10 provide the information as required by section 4 in an exemplar of
11 the rental-purchase agreement covering the property specified by
12 the consumer and shall provide the consumer with a copy of the
13 proposed rental-purchase agreement prior to its execution. The
14 consumer may take this copy from the merchant's premises.

15 f. The merchant shall not obtain the consumer's signature on a
16 rental purchase agreement that contains blank spaces to be filled in
17 after such agreement has been signed.

18
19 6. a. The merchant shall deliver to the consumer a copy of the
20 completed rental-purchase agreement at the time that it is signed by
21 the consumer. The rental-purchase agreement shall not be
22 enforceable against the consumer until the consumer has received a
23 signed copy.

24 b. If a merchant advertises in a language other than English, or
25 if a language other than English is used in any oral sales
26 presentation or in negotiations leading to the execution of a rental-
27 purchase agreement, the merchant shall offer a rental-purchase
28 agreement written in the language used in the advertisement, oral
29 sales presentation, or negotiations.

30 c. Except as otherwise required by this section, a rental-
31 purchase agreement shall be written in plain English.

32 d. Nothing in this section shall be construed to prohibit the use
33 of an agreement or notice written in both English and another
34 language so long as the agreement or notice otherwise complies
35 with the requirements of this act.

36
37 7. During the term of any rental-purchase agreement, a
38 merchant shall:

39 a. Upon request by a consumer, provide a written receipt for
40 each payment made by cash or money order;

41 b. Upon request by a consumer, provide a written statement of
42 account within seven days of the consumer's request;

43 c. Maintain the rented property in good working condition. If
44 a necessary repair cannot be completed within a reasonable time,
45 the merchant shall provide replacement property for the consumer
46 to use until the original property can be repaired. A merchant is not
47 required to repair or replace property that has been damaged as a
48 result of improper use or a negligent or intentional act of the

1 consumer. All replacement property shall be comparable in quality,
2 age, condition, and warranty coverage to the replaced property;

3 d. Deliver and pick up the property at no additional charge to
4 the consumer if the property is too large to be hand carried by the
5 consumer; and

6 e. Upon written request by a consumer, during the term of a
7 rental-purchase agreement and for a period of 12 months after the
8 consumer made the last payment, provide a copy of the consumer's
9 payment history to a financial institution, consumer credit reporting
10 agency or other third person designated by the consumer.

11

12 8. a. If a consumer experiences an interruption or reduction of
13 25% or more of income due to involuntary job loss, involuntary
14 reduced employment, illness, pregnancy, or disability, the merchant
15 shall reduce the amount of each rental payment by the same
16 percentage that the consumer's income has been diminished, up to
17 50% of the rental payment, for the period during which the
18 consumer's income is interrupted or reduced, but only if:

19 (1) The rental payments that have actually been made by the
20 consumer are equal to or greater than one-half the total of payments
21 necessary to acquire ownership of the rented property; and

22 (2) The consumer requests the reduction in rental payment
23 amount and provides the merchant with reasonable evidence as to
24 the amount and cause of the interruption or reduction in income.

25 b. (1) If the amount of each rental payment is reduced pursuant
26 to this section, the number of payments necessary to acquire
27 ownership may be increased, provided that the total dollar amount
28 of payments necessary to acquire ownership of the rented property
29 shall not be increased and the rights and duties of the consumer and
30 merchant shall not otherwise be affected.

31 (2) The merchant shall provide the consumer with a written
32 statement of the amount of each reduced rental payment and the
33 number of periodic payments at that reduced amount that would be
34 necessary to acquire ownership of the rented property under the
35 reduced payment schedule, which statement shall supersede the
36 payment schedule established in the original rental-purchase
37 agreement but shall be subject to revision and supersession in
38 accordance with paragraph (2) of subsection d. of this section.

39 c. At reasonable intervals following the initial reduction in
40 rental payments pursuant to this section, the merchant may require
41 the consumer to provide evidence of the consumer's income, and
42 that the cause of the interruption or reduction in income still exists.

43 d. (1) If the consumer's income is restored, the merchant may
44 increase the amount of each rental payment, but in no event shall
45 the amount of a rental payment or the total dollar amount of
46 payments necessary to acquire ownership of the rented property
47 exceed the amounts disclosed in the rental-purchase agreement.

1 (2) The merchant shall provide the consumer with a written
2 statement of the amount of each revised rental payment and the
3 number of periodic payments at that revised amount that would be
4 necessary to acquire ownership of the rented property under the
5 revised payment schedule, which statement shall supersede the
6 reduced payment schedule established pursuant to paragraph (2) of
7 subsection b. of this section.

8

9 9. A merchant may require a consumer to pay a late fee if, at
10 the end of any rental term, the consumer fails to voluntarily
11 surrender or return the rented property to the merchant or renew the
12 rental-purchase agreement for an additional term, subject to the
13 following limitations:

14 a. For rental-purchase agreements with weekly renewal terms,
15 no late fee shall be assessed until the payment is made more than
16 two calendar days past due;

17 b. For rental-purchase agreements with renewal terms longer
18 than one week, no late fee shall be assessed until the payment is
19 more than five calendar days past due;

20 c. Late fees assessed pursuant to this section shall not exceed
21 \$5;

22 d. Only one late fee may be assessed on each renewal payment,
23 regardless of how long the payment remains past due;

24 e. Payments received shall be applied first to the payment of
25 the past due renewal payment, then to applicable late fees and other
26 charges; and

27 f. A late fee may be collected at the time it accrues, or at any
28 time thereafter.

29

30 10. a. A consumer who has terminated a rental-purchase
31 agreement and voluntarily surrendered or returned the property to
32 the merchant shall have the right to reinstate the terminated
33 agreement without losing any rights or options previously acquired
34 if the following conditions are met:

35 (1) The consumer voluntarily surrendered or returned the
36 property to the merchant within seven days of the termination of the
37 agreement; and

38 (2) Not more than 90 days have passed since the property was
39 voluntarily surrendered or returned to the merchant; except that if
40 the consumer has paid an amount equal to or greater than one-half
41 of the total amount of payments necessary to acquire ownership of
42 the rented property, the reinstatement period shall be extended to
43 one year following voluntary surrender or return of the property.

44 b. The merchant may require the payment of all unpaid past
45 due renewal payments for periods when the consumer retained the
46 property, any applicable late fees, other accrued fees or charges,
47 and a reinstatement fee not to exceed \$5, prior to reinstatement
48 pursuant to subsection a. of this section.

1 c. Nothing in this section shall prevent a merchant from
2 attempting to repossess the property or from bringing an action to
3 recover possession of the property, but such action may not be made
4 or brought until more than seven days after termination of the
5 rental-purchase agreement. A consumer's right to reinstate an
6 agreement shall not expire because of the repossession or action to
7 recover possession.

8 d. Upon reinstatement, the merchant shall provide the
9 consumer with the same property, if available, and in the same
10 condition as when it was voluntarily surrendered or returned to the
11 merchant, or with substitute property of comparable quality and
12 condition.

13
14 11. a. The cash price of new rented property offered under a
15 rental-purchase agreement shall not exceed the greater of the
16 following:

- 17 (1) The manufacturer's list or suggested retail price,
18 (2) The published or advertised selling price of the same
19 property in the same trade area within the 90-day period preceding
20 the date of the rental purchase agreement; or
21 (3) The merchant's documented cost, including freight costs,
22 multiplied by the following factors;
23 (a) For appliances, the applicable factor shall be 1.75;
24 (b) For electronics, other than computers, having a merchant cost
25 of less than \$150, the applicable factor shall be 1.75;
26 (c) For electronics, other than computers, having a merchant cost
27 of greater than or equal to \$150, the applicable factor shall be 2.00;
28 (d) For computers, the applicable factor shall be 1.85;
29 (e) For furniture, the applicable factor shall be 2.25; and
30 (f) For items not listed in subparagraphs (a) through (e) of this
31 paragraph, the applicable factor shall be 2.00.

32 b. The cash price of used rented property offered pursuant to a
33 rental-purchase agreement shall not exceed the maximum permitted
34 cash price of the rented property when new, as determined pursuant
35 to subsection a. of this section, and shall be decreased in accordance
36 with an adjustment for the following relevant factors:

- 37 (1) The frequency and duration of prior rentals and whether the
38 rented property has been repaired one or more times; and
39 (2) The condition of the rented property.

40 c. A merchant shall maintain records that establish that the
41 price disclosed as the cash price complies with the requirements of
42 this section for a period of at least four years following the
43 termination of the agreement.

44
45 12. a. A merchant shall not offer a rental purchase agreement in
46 which the total dollar amount of payments necessary to acquire
47 ownership of the rented property exceeds twice the cash price of the
48 property. Upon payment of the total dollar amount of payments

1 necessary to acquire ownership of the rented property, the consumer
2 shall automatically acquire ownership of the rented property, the
3 rental-purchase transaction shall terminate, and the merchant shall
4 provide the consumer with written acknowledgment of the transfer
5 of ownership to the consumer. Any rental payments made to the
6 merchant that exceed the total amount of payments necessary to
7 acquire ownership of the rented property shall be refunded to the
8 consumer.

9 b. At any time after the initial rental payment, a consumer may
10 purchase the rented property that is the subject of the rental-
11 purchase agreement by tendering an amount equal to the original
12 cash price of the rented property, minus at least 50% of all rental
13 payments previously made by the consumer.

14
15 13. a. A rental-purchase agreement may not contain a provision:

16 (1) Requiring a confession of judgment or giving a power of
17 attorney to confess judgment;

18 (2) Requiring a garnishment of wages or an assignment of
19 wages;

20 (3) Granting the merchant a security interest, or other claim to a
21 property interest, in any property except the rented property
22 delivered by the merchant pursuant to the rental-purchase
23 agreement;

24 (4) Authorizing a merchant or an agent of a merchant to
25 unlawfully enter upon the consumer's premises or to commit a
26 breach of the peace during recovery of possession of the property;

27 (5) Waiving a defense, counterclaim, or right the consumer may
28 have against a merchant or an agent of a merchant;

29 (6) Requiring a balloon payment in addition to regular rental
30 payments in order to acquire ownership of the rented property, or
31 requiring payments in excess of the total of payments necessary to
32 acquire ownership of the rented property as disclosed in the rental-
33 purchase agreement;

34 (7) Requiring the purchase of insurance or liability waiver from
35 the merchant to cover the rented property;

36 (8) Waiving any provision of this act or the regulations that may
37 be promulgated hereunder;

38 (9) Requiring a consumer to pay attorneys fees and costs or any
39 collection or repossession charges in excess of those allowable
40 under this act and applicable court rules; or

41 (10) Stating that mere failure to return the rented property
42 constitutes probable cause for a criminal action.

43 b. A provision in a rental-purchase agreement that is prohibited
44 by this act shall be void and unenforceable and a violation of this
45 act. A rental-purchase agreement that contains any provision that is
46 prohibited by this act shall be voidable by the consumer.

- 1 14. a. A merchant in communication with any person other than
2 the consumer for the purpose of acquiring information as to the
3 location of a consumer shall:
- 4 (1) Identify the merchant and state that the merchant is
5 confirming or correcting location information concerning the
6 consumer;
- 7 (2) Not communicate by postcard;
- 8 (3) Not use any language or symbol on any envelope or in the
9 contents of any communication that indicates that the
10 communication relates to the recovery or repossession of the
11 property; and
- 12 (4) Not communicate with any person other than the consumer's
13 attorney, after the merchant knows the consumer is represented by
14 an attorney with regard to the rental-purchase agreement and has
15 knowledge of, or can readily ascertain, the attorney's name and
16 address, unless the attorney consents to direct communication from
17 the merchant to the consumer.
- 18 b. Without the prior consent of the consumer given directly to
19 the merchant or the express permission of a court of competent
20 jurisdiction, a merchant shall not communicate with a consumer in
21 connection with the recovery or repossession of property:
- 22 (1) At the consumer's place of employment; or
- 23 (2) At any unusual time or place or a time or place known or
24 which should have been known to be inconvenient to the consumer.
25 In the absence of knowledge of circumstances to the contrary, a
26 merchant shall assume that the convenient time for communicating
27 with a consumer is after 8:00 a.m. or before 9:00 p.m., local time, at
28 the consumer's location.
- 29 c. A merchant shall not communicate in connection with a
30 rental-purchase agreement with any person other than the consumer,
31 the consumer's attorney, or the merchant's attorney, except:
- 32 (1) as reasonably necessary to acquire the location information
33 concerning the consumer as provided under subsection a. of this
34 section;
- 35 (2) with the express prior consent of the consumer; or
- 36 (3) upon express permission of a court of competent jurisdiction,
37 or as reasonably necessary to effectuate a postjudgment judicial
38 remedy.
- 39 d. If a consumer notifies the merchant in writing that the
40 consumer wishes the merchant to cease further communication with
41 the consumer, the merchant shall not communicate further with the
42 consumer with respect to the rental-purchase agreement, except:
- 43 (1) To advise the consumer that the merchant's further efforts are
44 being terminated;
- 45 (2) To notify the consumer that the merchant shall invoke
46 specified remedies available by law which are ordinarily invoked by
47 the merchant; or

1 (3) To effectuate, where necessary, any postjudgment judicial
2 remedy.

3 e. A merchant may not harass, oppress, or abuse any person in
4 connection with a rental-purchase agreement. The following
5 conduct is a violation of this section:

6 (1) The use or threat of violence or any criminal means to harm
7 the physical person, reputation, or property of any person;

8 (2) The use of obscene, profane, or abusive language;

9 (3) Causing a telephone to ring, or engaging any person in
10 telephone conversation repeatedly or continuously with intent to
11 annoy, abuse, or harass the person;

12 (4) The placement of telephone calls without disclosure of the
13 caller's identity; and

14 (5) Attempting to repossess the property before 7 a.m. or after 11
15 p.m.

16

17 15. a. A renegotiation occurs when an existing rental-purchase
18 agreement is satisfied and replaced by a new agreement undertaken
19 by the same merchant and consumer. A renegotiation shall be
20 considered a new agreement requiring new disclosures pursuant to
21 this act. The following events are not renegotiations and do not
22 require new disclosures:

23 (1) The addition or return of property in a multiple-item
24 agreement, or the substitution of property, so long as the periodic
25 rental payment allocable to the rental term is not changed by more
26 than 15%;

27 (2) A deferral or extension of one or more renewal payments or
28 portions thereof;

29 (3) A reduction in the charges in an agreement; and

30 (4) An agreement involved in a court proceeding.

31 b. No new disclosures are required for any extension of a
32 rental-purchase agreement effectuated by an automatic renewal
33 upon payments made after the initial term.

34 c. With respect to a rental payment made on a rental-purchase
35 agreement after additional property items have been added, the
36 payment shall be considered as allocated among each of the
37 separate property items included, in full to the property item
38 included under the agreement earliest in time, and such allocated
39 portions of that payment shall be apportioned toward the rental-
40 purchase fee and the cash price for that item of property. The
41 merchant, before repossessing or attempting to repossess any
42 property under any such agreement, shall actually allocate in such
43 manner all such payments made to him by the consumer. When the
44 amount owing on any separate purchase has been fully paid, the
45 property so paid for shall become the absolute property of the
46 consumer and shall not be subject to repossession for any
47 subsequent default on the agreement. The consumer may, at his
48 option, choose to allocate payments among multiple items under a

1 rental-purchase agreement in a different manner, provided that such
2 agreement is in writing signed by the consumer and states in plain
3 language that the consumer understands that failure to pay an
4 installment may result in forfeiture of the property item included
5 under the agreement earliest in time, regardless of the amount of
6 money the consumer has paid toward ownership of that item.

7
8 16. a. If an advertisement for a rental-purchase agreement refers
9 to or states the dollar amount of any payment and the right to
10 acquire ownership of any one specific item, the advertisement shall
11 also clearly and conspicuously disclose the following information,
12 as applicable:

13 (1) That the advertised transaction is a rental-purchase
14 agreement;

15 (2) The cash price of the advertised property;

16 (3) The minimum rental period, and the total number and total
17 dollar amount of payments necessary to acquire ownership of the
18 rented property;

19 (4) The cost of lease services;

20 (5) A statement that the consumer will not acquire ownership of
21 the advertised property unless the total amount of payments
22 necessary to acquire ownership of the rented property is paid; and

23 (6) Whether the property is new or used.

24 b. Any personal property displayed or offered under a rental-
25 purchase agreement shall bear a tag that clearly and conspicuously
26 discloses the following information:

27 (1) The cash price of the displayed property;

28 (2) The dollar amount of periodic payment and the payment
29 period;

30 (3) The total dollar amount and the total number of payments
31 necessary to acquire ownership of the property;

32 (4) The cost of lease services;

33 (5) An identification number or model number of the property;
34 and

35 (6) Whether the displayed property is new or used and if the
36 property is new, the model year, or, if not known, the date that the
37 merchant originally acquired the property; if the property is used,
38 the age or the model year.

39 c. An owner or agent of any medium in which an advertisement
40 for a rental-purchase agreement appears or is disseminated shall not
41 be liable under this act.

42 d. The disclosure requirements of subsection a. of this section
43 do not apply to any advertisement that does not refer to or state the
44 amount of any periodic payment, or that is published in the business
45 pages of a telephone directory, or in any similar directory of
46 businesses.

47 e. Notwithstanding the provisions of this section, a merchant
48 may make the required disclosures in the form of a list or catalogue

1 that is readily available to consumers if displaying a price tag would
2 be impractical due to the size or nature of the merchandise.

3 f. An advertisement for a rental-purchase agreement shall not
4 state that a specific lease of any property at specific amounts or
5 terms is available unless the merchant usually and customarily
6 leases or will lease the property at those amounts or terms.

7

8 17. a. A merchant creates an express warranty to a consumer by
9 any of the following:

10 (1) Any affirmation of fact or promise made by the dealer to the
11 consumer which relates to the property creates an express warranty
12 that the property will conform to the affirmation or promise;

13 (2) Any description of the property creates an express warranty
14 that the property will conform to the description; or

15 (3) Any sample or model exhibited to the consumer by the
16 merchant creates an express warranty that the property actually
17 delivered to the consumer will conform to the sample or model.

18 b. A warranty that the property will be merchantable is implied
19 in every rental-purchase contract. For property to be merchantable,
20 the property shall be at least such as:

21 (1) Pass without objection in the trade under the description in
22 the rental-purchase agreement;

23 (2) Are fit for the ordinary purposes for which property of that
24 type is used; and

25 (3) Conform to any promises or affirmation of fact made on the
26 property, container, or label.

27 c. In addition to any other implied warranties provided by law
28 or by this act, a merchant creates an implied warranty that property
29 will be fit for the purpose for which it is intended, if at the time the
30 rental-purchase agreement is made, the merchant knows or
31 reasonably should have known that the consumer is relying on the
32 merchant's skill or judgment to select or furnish suitable property.

33 d. Any exclusion, modification or limitation of a warranty,
34 express or implied, shall be void.

35

36 18. a. If a court as a matter of law finds a rental-purchase
37 agreement or any clause of a rental-purchase agreement to be
38 unconscionable, the court may:

39 (1) Refuse to enforce the rental-purchase agreement;

40 (2) Enforce the remainder of the rental-purchase agreement
41 without the unconscionable clause; or

42 (3) Limit the application of any unconscionable clause to avoid
43 an unconscionable result.

44 b. If it is claimed or appears to the court that a rental-purchase
45 agreement or any clause of the rental-purchase agreement may be
46 unconscionable, the parties shall be afforded a reasonable
47 opportunity to present evidence as to the agreement's setting,
48 purpose and effect to aid the court in the determination.

1 c. For the purpose of this section, a rental payment, charge or
2 practice expressly permitted by this act is not in itself
3 unconscionable.

4
5 19. a. A merchant that fails to comply with the requirements of
6 this act shall be liable to a consumer actually damaged by a
7 violation of this act in an amount equal to the greater of the
8 following:

9 (1) The actual damages sustained by the consumer as the result
10 of the merchant's failure to comply with this act; or

11 (2) (a) In the case of an individual action, 25% of the total of
12 payments necessary to acquire ownership, but not less than \$100
13 nor more than \$1,000.

14 (b) In the case of a class action, the amount the court determines
15 to be appropriate, except that as to each member of the class no
16 minimum recovery is applicable.

17 A merchant found liable under this act shall also be liable to the
18 consumer for the costs of the action and reasonable attorneys' fees,
19 as determined by the court.

20 b. No consumer shall offset any amount for which a merchant
21 is potentially liable under this section against any amount owed by
22 the consumer, unless the amount of the merchant's liability has been
23 determined by judgment of a court of competent jurisdiction in an
24 action in which the merchant was a party. The provisions of this
25 subsection do not bar a consumer then in default under the terms of
26 a rental-purchase agreement from asserting a violation of this act as
27 an original action, or as a defense or counterclaim to an action
28 brought by the merchant.

29 c. An action under this section shall not be brought in any
30 court of competent jurisdiction more than four years after the date
31 of the occurrence of a violation that is the subject of the suit.

32 d. If a merchant assigns or transfers a rental-purchase
33 agreement to a third party, all of the consumer's rights created by
34 the rental-purchase agreement and this act are preserved.

35 e. It is an unlawful practice and a violation of P.L.1960, c.39
36 (C.56:8-1 et seq.) to violate any provision of this act.

37 f. A consumer shall not recover damages under both
38 subsections a. and e. of this section, in the same action brought for a
39 violation of a provision of this act.

40
41 20. The director may promulgate rules and regulations pursuant
42 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
43 1 et seq.), as may be necessary to effectuate the purposes of this act.

44
45 21. This act shall take effect on the first day of the fourth month
46 after enactment.