

# SENATE, No. 554

## STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Senator NIA H. GILL**

**District 34 (Essex and Passaic)**

**SYNOPSIS**

Regulates certain rental-purchase agreements.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



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  
11 section 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;

- 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 a  
44 necessary repair cannot be completed within a reasonable time, the  
45 merchant shall provide replacement property for the consumer to  
46 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.

48 (2) The merchant shall provide the consumer with a written

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

7  
8 9. A merchant may require a consumer to pay a late fee if, at  
9 the end of any rental term, the consumer fails to voluntarily  
10 surrender or return the rented property to the merchant or renew the  
11 rental-purchase agreement for an additional term, subject to the  
12 following limitations:

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

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

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

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

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

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

28  
29 10. a. A consumer who has terminated a rental-purchase  
30 agreement and voluntarily surrendered or returned the property to  
31 the merchant shall have the right to reinstate the terminated  
32 agreement without losing any rights or options previously acquired  
33 if the following conditions are met:

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

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

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

48 c. Nothing in this section shall prevent a merchant from

1 attempting to repossess the property or from bringing an action to  
2 recover possession of the property, but such action may not be made  
3 or brought until more than seven days after termination of the  
4 rental-purchase agreement. A consumer's right to reinstate an  
5 agreement shall not expire because of the repossession or action to  
6 recover possession.

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

12  
13 11. a. The cash price of new rented property offered under a  
14 rental-purchase agreement shall not exceed the greater of the  
15 following:

16 (1) The manufacturer's list or suggested retail price,

17 (2) The published or advertised selling price of the same  
18 property in the same trade area within the 90-day period preceding  
19 the date of the rental purchase agreement; or

20 (3) The merchant's documented cost, including freight costs,  
21 multiplied by the following factors;

22 (a) For appliances, the applicable factor shall be 1.75;

23 (b) For electronics, other than computers, having a merchant  
24 cost of less than \$150, the applicable factor shall be 1.75;

25 (c) For electronics, other than computers, having a merchant  
26 cost of greater than or equal to \$150, the applicable factor shall be  
27 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.

47  
48 14. a. A merchant in communication with any person other than

1 the consumer for the purpose of acquiring information as to the  
2 location of a consumer shall:

3 (1) Identify the merchant and state that the merchant is  
4 confirming or correcting location information concerning the  
5 consumer;

6 (2) Not communicate by postcard;

7 (3) Not use any language or symbol on any envelope or in the  
8 contents of any communication that indicates that the  
9 communication relates to the recovery or repossession of the  
10 property; and

11 (4) Not communicate with any person other than the consumer's  
12 attorney, after the merchant knows the consumer is represented by  
13 an attorney with regard to the rental-purchase agreement and has  
14 knowledge of, or can readily ascertain, the attorney's name and  
15 address, unless the attorney consents to direct communication from  
16 the merchant to the consumer.

17 b. Without the prior consent of the consumer given directly to  
18 the merchant or the express permission of a court of competent  
19 jurisdiction, a merchant shall not communicate with a consumer in  
20 connection with the recovery or repossession of property:

21 (1) At the consumer's place of employment; or

22 (2) At any unusual time or place or a time or place known or  
23 which should have been known to be inconvenient to the consumer.  
24 In the absence of knowledge of circumstances to the contrary, a  
25 merchant shall assume that the convenient time for communicating  
26 with a consumer is after 8:00 a.m. or before 9:00 p.m., local time, at  
27 the consumer's location.

28 c. A merchant shall not communicate in connection with a  
29 rental-purchase agreement with any person other than the consumer,  
30 the consumer's attorney, or the merchant's attorney, except:

31 (1) as reasonably necessary to acquire the location information  
32 concerning the consumer as provided under subsection a. of this  
33 section;

34 (2) with the express prior consent of the consumer; or

35 (3) upon express permission of a court of competent  
36 jurisdiction, or as reasonably necessary to effectuate a postjudgment  
37 judicial remedy.

38 d. If a consumer notifies the merchant in writing that the  
39 consumer wishes the merchant to cease further communication with  
40 the consumer, the merchant shall not communicate further with the  
41 consumer with respect to the rental-purchase agreement, except:

42 (1) To advise the consumer that the merchant's further efforts  
43 are being terminated;

44 (2) To notify the consumer that the merchant shall invoke  
45 specified remedies available by law which are ordinarily invoked by  
46 the merchant; or

47 (3) To effectuate, where necessary, any postjudgment judicial  
48 remedy.

- 1 e. A merchant may not harass, oppress, or abuse any person in  
2 connection with a rental-purchase agreement. The following  
3 conduct is a violation of this section:
- 4 (1) The use or threat of violence or any criminal means to harm  
5 the physical person, reputation, or property of any person;  
6 (2) The use of obscene, profane, or abusive language;  
7 (3) Causing a telephone to ring, or engaging any person in  
8 telephone conversation repeatedly or continuously with intent to  
9 annoy, abuse, or harass the person;  
10 (4) The placement of telephone calls without disclosure of the  
11 caller's identity; and  
12 (5) Attempting to repossess the property before 7 a.m. or after  
13 11 p.m.  
14
- 15 15. a. A renegotiation occurs when an existing rental-purchase  
16 agreement is satisfied and replaced by a new agreement undertaken  
17 by the same merchant and consumer. A renegotiation shall be  
18 considered a new agreement requiring new disclosures pursuant to  
19 this act. The following events are not renegotiations and do not  
20 require new disclosures:
- 21 (1) The addition or return of property in a multiple-item  
22 agreement, or the substitution of property, so long as the periodic  
23 rental payment allocable to the rental term is not changed by more  
24 than 15%;  
25 (2) A deferral or extension of one or more renewal payments or  
26 portions thereof;  
27 (3) A reduction in the charges in an agreement; and  
28 (4) An agreement involved in a court proceeding.
- 29 b. No new disclosures are required for any extension of a  
30 rental-purchase agreement effectuated by an automatic renewal  
31 upon payments made after the initial term.
- 32 c. With respect to a rental payment made on a rental-purchase  
33 agreement after additional property items have been added, the  
34 payment shall be considered as allocated among each of the  
35 separate property items included, in full to the property item  
36 included under the agreement earliest in time, and such allocated  
37 portions of that payment shall be apportioned toward the rental-  
38 purchase fee and the cash price for that item of property. The  
39 merchant, before repossessing or attempting to repossess any  
40 property under any such agreement, shall actually allocate in such  
41 manner all such payments made to him by the consumer. When the  
42 amount owing on any separate purchase has been fully paid, the  
43 property so paid for shall become the absolute property of the  
44 consumer and shall not be subject to repossession for any  
45 subsequent default on the agreement. The consumer may, at his  
46 option, choose to allocate payments among multiple items under a  
47 rental-purchase agreement in a different manner, provided that such  
48 agreement is in writing signed by the consumer and states in plain

1 language that the consumer understands that failure to pay an  
2 installment may result in forfeiture of the property item included  
3 under the agreement earliest in time, regardless of the amount of  
4 money the consumer has paid toward ownership of that item.

5  
6 16. a. If an advertisement for a rental-purchase agreement refers  
7 to or states the dollar amount of any payment and the right to  
8 acquire ownership of any one specific item, the advertisement shall  
9 also clearly and conspicuously disclose the following information,  
10 as applicable:

11 (1) That the advertised transaction is a rental-purchase  
12 agreement;

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

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

17 (4) The cost of lease services;

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

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

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

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

26 (2) The dollar amount of periodic payment and the payment  
27 period;

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

30 (4) The cost of lease services;

31 (5) An identification number or model number of the property;  
32 and

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

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

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

45 e. Notwithstanding the provisions of this section, a merchant  
46 may make the required disclosures in the form of a list or catalogue  
47 that is readily available to consumers if displaying a price tag would  
48 be impractical due to the size or nature of the merchandise.

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

5  
6 17. a. A merchant creates an express warranty to a consumer by  
7 any of the following:

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

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

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

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

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

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

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

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

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

33  
34 18. a. If a court as a matter of law finds a rental-purchase  
35 agreement or any clause of a rental-purchase agreement to be  
36 unconscionable, the court may:

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

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

40 (3) Limit the application of any unconscionable clause to avoid  
41 an unconscionable result.

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

47 c. For the purpose of this section, a rental payment, charge or  
48 practice expressly permitted by this act is not in itself

1 unconscionable.

2

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

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

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

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

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

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

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

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

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

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

38

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

42

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

## STATEMENT

This bill protects consumers and clarifies the rights and responsibilities of consumers and merchants by defining and regulating rental-purchase agreements involving personal property used for personal, family, or household purposes. The bill further defines rental-purchase agreements by providing that rental-purchase agreements are not governed by certain other statutes, including usury statutes.

The bill requires a merchant to disclose in writing certain items at or prior to the time the rental-purchase agreement is executed by the consumer. These disclosures include the cash price of the rented property and the total dollar amount of all periodic payments necessary for the consumer to acquire ownership of the property.

The bill prohibits the inclusion of certain provisions in rental-purchase agreements. It also provides, in certain instances, for a consumer's right to reinstatement of the rental-purchase agreement and for a lowering of payments if a consumer suffers an involuntary loss of or reduction in income. The bill also regulates permissible late fees and defines renegotiations of rental-purchase agreements.

In addition, the bill prohibits a merchant from offering a rental-purchase agreement in which the total payments necessary to acquire ownership of the rented property exceed twice the property's cash price. As defined in the bill, "cash price" means the price for which the merchant would sell the rented property to a consumer for cash on the date of the rental-purchase agreement, subject to certain limitations applicable to new rented property and used rented property, as provided in the bill.

During the term of the rental-purchase agreement, the bill requires merchants to maintain the rented property in good condition, provide written receipts for cash or money order payments and provide comparable replacement property in certain circumstances.

The bill also regulates a merchant's debt collection and repossession practices, creates express and implied warranties as to the rental property and provides that a court can find all or part of a rental-purchase agreement to be unconscionable and unenforceable.

The bill provides options for recovery in damages for a consumer who suffers a loss due to a violation of the bill's provisions, including individual actions and class actions, and recovery under the "Consumer Fraud Act." Finally, the bill requires the Director of the Division of Consumer Affairs to promulgate regulations necessary to effectuate the purposes of the act.