



What's really in HR 1701—
and why you should care
By Ed Winn III

The Hill is alive

WITH THE SOUND OF RTO

Industry-supported federal legislation has gained momentum in this Congress. Previous efforts had moved lethargically. This time around, however, there is considerable interest from friend and foe alike over HR 1701. Part of this interest stems from changes made to the bill prior to its reintroduction in this Congress and other changes by the House Subcommittee on Consumer Affairs, which held hearings on the bill last summer. Yet still more changes are being considered by the full House Committee on Financial Services this summer.

It would behoove every rental dealer to know just what HR 1701 does and does not do and what the changes are that have already been made to the bill and what the changes are that have been proposed. While the prospects for passage of the bill before the Congress adjourns in the fall cannot be predicted, responsible rental dealers need to be conversant with what is in the bill to measure how its passage may affect business practices, because some of the provisions will do just that.

An overview of the federal effort

The industry's efforts to enact federal legislation began as an attempt to enact bona fide consumer protection legislation while giving the industry protection from re-characterization (lease vs. sale) by Congress. Every version of an industry-supported bill has offered an advertising and contract disclosure scheme not unlike the state rental-purchase statutes that have been enacted around the country over the past 18 years.

The bills all offered a floor of consumer protections and specifically allowed the states to add more consumer protections as they might see fit. What these bills offered the industry was a definition of rental-purchase transactions as leases in federal consumer protection law (such a definition already exists in the Internal Revenue Code) and protection against any state attempting to regulate

Rental dealers must also clarify that damage waiver or leased property insurance coverage is optional.

The FTC also noted that few state rental-purchase statutes require that this amount be disclosed on price tags in the store or in advertising. The FTC reasoned that the sooner consumers have this information, the better able they would be to compare costs in the marketplace and make an informed decision about entering into a rental-purchase transaction. By the time a consumer is shown this information in a printed rental-purchase agreement ready for signing, it is often too late to shop around. To speak to this issue, HR 1701 requires that this "Rental-Purchase Cost" disclosure appear on price tags in the store and in certain advertising when rental rates are advertised.

Other changes from the older version of the bill to the current one include some new disclosures in the rental-purchase agreement, including a "Cost of Rental Services" disclosure, which is the difference between the total "Rental-Purchase Cost" and the cash price of the merchandise. This is a disclosure that is currently required in only a few states. Finally, the new bill would require the following statement to appear in boldface and in capital letters on each agreement: YOU ARE RENTING THE PROPERTY. TO ACQUIRE OWNERSHIP OF THE PROPERTY YOU MUST MAKE ALL PAYMENTS NECESSARY TO ACQUIRE OWNERSHIP.

HR 1634, in the previous Congress, vested enforcement authority in the Federal Reserve Board. HR 1701 gives the FRB the authority to draft model forms for use by rental dealers, but gives the FTC the authority to enforce the Act, since the FTC is the primary federal agency in charge of consumer protection matters generally and, in particular, unfair and deceptive acts and practices.

The old bill required a disclosure that the consumer may be liable for the fair market value of the rental property if it is lost, stolen, damaged or destroyed. The FTC was critical of this kind of provision. To address this, the new bill provides that a consumer may be held liable only for the lesser of the fair market value, the remaining rent, the early-purchase option amount or the cost of repair if the property is lost, stolen, damaged or destroyed.

These and a few other changes made HR 1701 more genuinely pro-consumer and allowed industry supporters to make that case persuasively to some new Democratic allies. HR 1701 is, in fact, co-sponsored by a Democrat and has a healthy mix of Democratic supporters among the 81 co-sponsors on the bill.

Changes in the subcommittee

The bipartisan nature of HR 1701 was evident during the subcommittee process last summer and fall, particularly during the subcommittee meetings when mem-

bers offered amendments to the bill. There were nearly 30 unfriendly amendments offered, but most were beaten down by substantial votes in the subcommittee. The final vote on the bill out of the subcommittee was 24-4.

One change that was agreed to during the subcommittee process involved the bill's preemption language. When HR 1701 was first introduced, some consumer advocates deliberately misread the preemption language as having the federal law overrule all state rental-purchase statutes. This was never the intent of the legislation, but this interpretation was reinforced when the subcommittee got a letter from the National Association of Attorneys General signed by all 50 state attorneys general urging the subcommittee not to pass any bill that would overrule state rental-purchase statutes.

The subcommittee voted on a change to clarify this language in the bill so that states merely are precluded from regulating rental-purchase transactions as credit transactions or requiring the disclosure of an annual percentage rate disclosure.

The subcommittee also agreed to extend the statute of limitations in the bill. Consumers still have one year to bring an action for a violation of the statute, but the one-year period begins to run from the date the last payment was made on the account instead of the date of the violation. The subcommittee also changed the damage waiver language and further clarified the voluntary nature of the charge. Consumers must affirmatively elect or decline coverage and must separately sign the election.

Changes proposed before the full committee

As of this writing, the bill is still before the full House committee. However, negotiations continue behind the scenes as proponents attempt to garner more support for the bill and opponents either attempt to derail the bill's momentum or get additional changes to the bill's language that will satisfy them.

In the past 30 days there have been at least 17 additional amendments proposed to HR 1701. Opponents have told the committee chairman that they intend to offer as many as 30 more amendments during the full committee mark-up on the bill. This is unusual, since normally, once a bill has been amended at the subcommittee level, the full committee votes for or against the bill without further amendments being offered. The number of amendments still pending before the committee is evidence of the contentiousness that surrounds HR 1701.

A number of proposed changes involve price controls. One proposal would set cash prices at no more than twice the rental dealer's acquisition cost. The industry has rejected this proposal as out of hand.

Another proposal was to allow the Federal Reserve Board to set the industry's cash prices by regulation, which has also been rejected.

A recent proposal is to require the industry to disclose

not only the dealer's cash price, but also require a disclosure of the Manufacturer's Suggested Retail Price where such prices exist, so that price tags and advertising would have both amounts on them.

Accompanying this attempt to limit cash prices are additional proposals to require an early-purchase option as a set percentage of remaining rent. The percentages have varied from 50 percent to 65 percent and, in some proposals, they change over the life of the agreement.

There is also a proposal to require all rental dealers to offer a "90 days same as cash" option in rental-purchase agreements. The industry countered with a proposal to submit to the "90 days same as cash" requirement and then have a required early-purchase option for the duration of the agreement of not less than a 25 percent discount off of the total of remaining rental payments. This offer was made in exchange for several important Democratic votes on the full committee, but as of this writing, has not been accepted.

Also on the table is an extension of reinstatement rights from the current maximum of 90 days to a maximum of 180 days after the consumer has paid 75 percent or more of the total rental-purchase price.

Another proposed amendment to HR 1701 is to require rental dealers to transfer any unexpired manufacturer's warranty to the consumer upon ownership. This is a requirement in a number of states. The industry has no objection to adding this language to the federal bill.

Another proposal is to add language that will limit charging more than one late fee for a missed payment no matter how long the payment goes unpaid. This provision is intended to prevent rental dealers from being able to assess late charges on late charges and is the law in most consumer transactions that are regulated either at the state or federal level. The industry will not object to the addition of this language.

There has been language proposed that would better define "clear and conspicuous," the current standard for making the disclosures called for in the bill. The new definition reads as follows: "information...shall be worded plainly and simply and appear in a type size, prominence and location as to be readily noticeable, readable and comprehensible to an ordinary consumer."

Unless rental dealers are deliberately trying to obscure information in their agreements or in their advertising, this new language should not require a change in current disclosure practices.

Another proposal is to tie the liability and penalties sections in HR 1701 to the liability and penalties sections in the Truth-In-Lending Act. This will not mean any substantive change in those sections as they are currently drafted, but will allow those sections, as they apply to rental dealers, to be amended automatically whenever TILA is amended in the future.

As a practical matter, all of the nation's banks, savings and loans, credit unions and other lending institutions are governed by TILA and have an acute interest in how

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the transaction as a credit transaction or requiring the disclosure of an annual percentage or other interest rate disclosure.

Despite the changes discussed below, the twin core provisions of the current bill, HR 1701, remain—a floor for contract and advertising disclosures and other consumer rights in rental-purchase transactions and a definition of the transaction as a lease for consumer protection purposes.

Changes from HR 1634 to HR 1701

In the 2000 Federal Trade Commission Survey of Rent-To-Own Customers, the FTC staff made several recommendations concerning consumer disclosures and how and when they should be made for maximum effect.

The FTC recommended that consumers be given the total cost of rental-purchase as early as possible in the transaction. Most state rental-purchase statutes only require that rental dealers disclose the total of the payments, which is the rental rate multiplied by the number of payments necessary for ownership. The FTC recommended that the total include all mandatory fees and charges. Accordingly, HR 1701 added a new disclosure labeled "Rental-Purchase Cost," which includes the total of rental payments plus all mandatory fees and charges.

that Act reads, especially the liability and penalties sections. It is no guarantee that one day those sections might not be amended, but it will be under the intense scrutiny of a lot of interested observers.

Other issues that have been raised and that the industry cannot accept include limits on liability damage waiver fees, late fees and all other fees that rental dealers charge. There have been specific dollar limit proposals as well as language that all fees for other charges “must be reasonably related to the cost of any services performed.”

There is a proposal to delete language in HR 1701 concerning a rental dealer’s ability to correct errors discovered before getting written notice of the error and before getting sued because of it.

There is a proposal to expose rental dealers to liability

“charges the consumer, including any service for which an additional charge is collected by inclusion in the amount required to be paid under the agreement when such amounts exceed that paid for like goods or services by other consumers in the ordinary course of business.”

There is a proposal to give consumers a right to rescind all agreements with an initial term longer than one week. Consumers could cancel within 48 hours of signing an agreement and get all of their money back. In addition, consumers would be able to get a completed rental-purchase agreement to take home and review for 24 hours.

There is a proposal to clarify that balloon payments are prohibited in rental-purchase agreements. There is a proposal to add an annual percentage rate disclosure to the bill. There is a proposal to exempt Vermont from coverage of the bill.

This is by no means an exhaustive listing of the kinds of changes various members of the full committee have either suggested or threatened during negotiations leading up to the full committee vote.

The industry is convinced that if its many supporters show up when HR 1701 is considered, there will be a substantial majority of committee members in favor of the bill and the handful of amendments that the industry has indicated are all right to make. The risk in politics is that the industry’s friends will have other commitments on the day of the vote and that opponents will be able to push through some of

the more objectionable amendments. Then the industry will be forced to try to amend the bill further on the floor of the House or attempt to scuttle the effort altogether.

It is a blood sport, politics, as all of the active participants in the process are well aware. There are full committee members who would like nothing better than to see the entire rental-purchase industry go out of business forever. They are, in fact, often more passionate about their position than industry supporters are about theirs. Passion can go a long way in politics. The industry maintains constant vigilance over the process because it must in order to ensure a proper and fair outcome.

The committee chairman has already canceled a vote on HR 1701 two times in the past two weeks. Another vote has been scheduled for late June. Rental dealers are urged to follow the progress of HR 1701 closely as it moves through Congress and to voice any concerns about language in the bill to APRO board members or staff. Copies of the current version of HR 1701 plus language concerning most of the amendments discussed above are available to APRO members upon request or can be found on APRO’s Web site at www.apro-rto.com/.

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Passion

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for advertising errors without proof of any actual damages. HR 1701 currently requires proof of actual damages before a consumer can recover for an advertising violation.

There is a proposal to add another disclosure concerning “any damages to the property” as part of the description of the property and a proposal to prohibit rental dealers from offering alternative payment schedules in the same rental-purchase agreement, presumably because it might confuse consumers.

HR 1701 currently limits the penalty for a violation of the disclosure requirements to an amount between \$100 and \$1,000. There are proposals to raise the floor from \$100 to \$250 and to eliminate the cap on the penalty. These amounts are in addition to any actual damages incurred by a consumer.

There is a proposal to prohibit rental dealers from threatening or invoking criminal prosecution of a rental customer without clear and convincing evidence of a crime. This language would effectively mean that unless the customer were convicted after being charged, the rental dealer would get sued for malicious prosecution and a violation of the federal law as well.

There is a proposal to prohibit a rental dealer from using the word “free” or otherwise indicate that something is available without charge if the rental dealer