

TEXAS BUSINESS AND COMMERCE CODE
SUBCHAPTER F: RENTAL-PURCHASE AGREEMENTS

§ 35.71. DEFINITIONS.

In this subchapter:

- (1) "Advertisement" means a commercial message in any medium that directly or indirectly promotes or assists a rental-purchase agreement.
- (2) "Cash price" means the price for which the merchant would have sold the merchandise to the consumer for cash on the date of the rental-purchase agreement.
- (3) "Consumer" means an individual who leases personal property under a rental-purchase agreement.
- (3a) "Loss damage waiver" means a merchant's agreement not to hold a consumer liable for loss from all or part of any damage to merchandise.
- (4) "Merchandise" means the personal property that is the subject of a rental-purchase agreement.
- (5) "Merchant" means a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of merchandise under a rental-purchase agreement, and includes a person who is assigned an interest in a rental-purchase agreement.
- (6) "Rental-purchase agreement" means an agreement for the use of merchandise by a consumer for personal, family, or household purposes, for an initial period of four months or less that is automatically renewable with each payment after the initial period, and that permits the consumer to become the owner of the merchandise.

Added by Acts 1985, 69th Leg., ch. 209, § 1, eff. Sept. 1, 1985. Amended by Acts 2003, 78th Leg., ch. 816, § 24.001, eff. Sept. 1, 2003.

§ 35.72. FORM.

- (a) A rental-purchase agreement must be written in plain English and in any other language used by the merchant in an advertisement related to the rental-purchase agreement. Numerical amounts must be stated in figures.
- (b) Disclosures required by this subchapter must be printed or typed in each rental-purchase agreement in a size equal to at least 10-point bold-faced type. The attorney general shall provide a form agreement that may be used to satisfy the requirements of an agreement under this subchapter.
- (c) A rental-purchase agreement may not contain a provision:
 - (1) requiring a confession of judgment;
 - (2) authorizing a merchant or an agent of the merchant to commit a breach of the peace in the repossession of merchandise;
 - (3) waiving a defense, counterclaim, or right the consumer may have against the merchant or an agent of the merchant;

- (4) requiring the purchase of insurance or a loss damage waiver from the merchant to cover the merchandise;
 - (5) requiring the payment of a late charge or reinstatement fee unless a periodic payment is delinquent for more than seven days if the payment is due monthly, or is delinquent for more than three days if the payment is due more frequently than monthly, and the charge or fee is in an amount equal to not more than the lesser of 10 percent of the delinquent payment or \$10, and not less than \$5; or
 - (6) requiring a payment at the end of the scheduled rental-purchase term in excess of or in addition to a regular periodic payment in order to acquire ownership of the merchandise. In no event shall the consumer be required to pay a sum greater than the total amount to be paid to acquire ownership, as disclosed in Subsection (g)(3) of this section.
- (d) Only one late charge or reinstatement fee may be collected on a payment regardless of the period during which it remains in default.
- (e) A rental-purchase agreement must provide that:
- (1) a charge in addition to periodic payments, if any, must be reasonably related to the service performed; and
 - (2) a consumer who fails to make a timely payment may reinstate an agreement, without losing rights or options previously acquired, by taking the required action before the later of one week or half of the number of days in a regular payment period after the due date of the payment.
- (f) Notice of the right to reinstate an agreement must be disclosed in the agreement. This subchapter does not prevent a merchant from attempting repossession of merchandise during the reinstatement period, and the consumer's right to reinstate an agreement does not expire because of such a repossession. If the merchandise is returned during the applicable reinstatement period, other than through judicial process, the right to reinstate the agreement shall be extended for a period of not less than 30 days after the date of the return of the merchandise. On reinstatement, the merchant shall provide the consumer with the same merchandise or substitute merchandise of comparable quality and condition. If substitute merchandise is provided, the merchant shall provide the consumer with the disclosures required in Subsection (g) of this section.
- (g) A rental-purchase agreement must disclose:
- (1) whether the merchandise is new or used;
 - (2) the amount and timing of payments;
 - (3) the total number of payments necessary and the total amount to be paid to acquire ownership of the merchandise;
 - (4) the amount and purpose of any payment, charge, or fee in addition to the regular periodic payments;
 - (5) whether the consumer is liable for loss or damage to the merchandise, and if so the maximum amount for which the consumer may be liable;

- (6) that the consumer does not acquire ownership rights unless the consumer has complied with the ownership terms of the agreement; and
- (7) the cash price of the merchandise.

Added by Acts 1985, 69th Leg., ch. 209, § 1, eff. Sept. 1, 1985. Amended by Acts 2003, 78th Leg., ch. 816, § 24.002, eff. Sept. 1, 2003; and June 18, 2005, eff. Sept. 1, 2005

§ 35.721. LOSS DAMAGE WAIVER.

- (a) In addition to other charges permitted by this subchapter, a consumer may contract for a loss damage waiver. A loss damage waiver is not insurance.
- (b) A merchant may not sell a loss damage waiver unless the consumer agrees to the waiver in writing. A merchant may not impose or require the purchase of a loss damage waiver as a mandatory charge.
- (c) A loss damage waiver may exclude loss or damage to the merchandise that is caused by an unexplained disappearance or abandonment of the merchandise, or any other damage that is intentionally caused by the consumer or that results from the consumer's wilful or wanton misconduct.
- (d) A loss damage waiver agreement must include a statement of the total charge for the loss damage waiver.
- (e) A merchant may charge a periodic fee for a loss damage waiver that may not exceed 10 percent of the periodic rental payment.
- (f) A contract that offers a loss damage waiver must include the following notice:
 - “This contract offers an optional loss damage waiver for an additional charge to cover your responsibility for loss of or damage to the merchandise. You do not have to purchase this coverage. Before deciding whether or not to purchase this loss damage waiver, you may consider whether your homeowners’ or casualty insurance policy affords you coverage for loss of or damage to rental merchandise and the amount of the deductible you would pay under your policy.”
- (g) A merchant may not sell a loss damage waiver unless the form of the contract containing the waiver has been approved by the Texas Department of Licensing and Regulation.
- (h) The Texas Commission of Licensing and Regulation shall by rule:
 - (1) provide the method for annual submission of all contracts, including amendments to a contract, that contain a loss damage waiver, for review by the Texas Department of Licensing and Regulation; and
 - (2) set a reasonable fee to be paid by the merchant for the review of contract forms under Subdivision (1) and for the administration of this subchapter by the Texas Department of Licensing and Regulation.

Added by Acts 2003, 78th Leg., ch. 816, § 24.003, eff. Sept. 1, 2003.

§ 35.722. ENFORCEMENT; INVESTIGATION; HEARING.

- (a) In this section:
 - (1) "Commission" means the Texas Commission of Licensing and Regulation.
 - (2) "Department" means the Texas Department of Licensing and Regulation.
- (b) The department shall enforce Section 35.721 and may, as necessary, investigate a merchant who has one or more contracts that include a loss damage waiver.
- (c) A person may file a complaint alleging a violation of Section 35.721 with the department. The department shall investigate the alleged violation on receipt of the complaint, and may inspect any record relevant to the complaint.
- (d) If, as a result of an investigation, the department determines that a violation may have occurred, the commission shall provide an opportunity for a hearing in the manner provided for a contested case under Chapter 2001, Government Code.
- (e) If, after opportunity for hearing, the commission determines that the merchant has violated Section 35.721, the commission may:
 - (1) impose an administrative penalty under Chapter 51, Occupations Code; or
 - (2) award the complainant damages in an amount up to the amount of the contract price for the merchandise.

Added by Acts 2003, 78th Leg., ch. 816, § 24.003, eff. Sept. 1, 2003.

§ 35.73. ADVERTISEMENT.

An advertisement for a rental-purchase agreement that refers to or states the amount of a payment or the right to acquire ownership of any one particular item under the agreement must clearly and conspicuously state:

- (1) that the transaction advertised is a rental-purchase agreement;
- (2) the total amount and number of payments necessary to acquire ownership; and
- (3) that the consumer does not acquire ownership rights unless the merchandise is rented for a specified number of payment periods.

Added by Acts 1985, 69th Leg., ch. 209, § 1, eff. Sept. 1, 1985.

§ 35.74. ENFORCEMENT.

- (a) A consumer damaged by a violation of this subchapter by a merchant is entitled to recover from the merchant:
 - (1) actual damages;
 - (2) 25 percent of an amount equal to the total amount of payments required to obtain ownership of the merchandise involved, except that the amount recovered under this subdivision may not be less than \$250 nor more than \$1,000; and
 - (3) reasonable attorney's fees and court costs.
- (b) A merchant is not liable under this section for a violation of this subchapter caused by the merchant's error if before the 31st day after the date the merchant discovers the error, and before an action under this section is filed or written notice of the error is received by the merchant from the consumer, the merchant gives the consumer written notice of the error and makes adjustments in the consumer's account as necessary to assure that the consumer will not be required to pay an amount in excess of the amount disclosed and that the agreement otherwise complies with this subchapter.
- (c) A violation of this subchapter is a deceptive trade practice under Subchapter E of Chapter 17, Business & Commerce Code.

Added by Acts 1985, 69th Leg., ch. 209, § 1, eff. Sept. 1, 1985.

In addition to the above rental-purchase statutes in Texas, the following law amends the health and safety code in Texas. It is not part of the rental-purchase statute, but affects the rental-purchase industry in Texas nonetheless:

H.B. NO. 1752: AN ACT RELATING TO THE REGULATION OF GERMICIDAL TREATMENT OF CERTAIN BEDDING, MATERIALS, AND UPHOLSTERED ITEMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 345.0435(a), Health and Safety Code, is amended to read as follows:

- (a) The executive commissioner of the Health and Human Services Commission [Texas Board of Health] shall adopt rules necessary to implement this subchapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a permit issued under this subchapter.

SECTION 2. Subchapter C, Chapter 345, Health and Safety Code, is amended by adding Section 345.045 to read as follows:

Sec. 345.045. MINIMUM SANITARY STANDARDS FOR GERMICIDAL TREATMENT PERMIT.

- (a) The holder of a germicidal treatment permit must maintain the permit holder's place of business in a sanitary condition free from refuse, dirt contamination, insects, and vermin.
- (b) The executive commissioner of the Health and Human Services Commission, by rule, may establish additional requirements regulating the sanitary condition of a permit holder's place of

business. The holder of a germicidal treatment permit who germicidally treats not more than 10 items at the permit holder's place of business each week is exempt from any additional requirements regulating the sanitary condition of a permit holder's place of business adopted under this subsection.

SECTION 3. This Act takes effect September 1, 2005.

Signed by the Texas President of the Senate and the Texas Speaker of the House

I certify that H.B. No. 1752 was passed by the House on April 21, 2005, by a non-record vote. Signed by the Texas Chief Clerk of the House

I certify that H.B. No. 1752 was passed by the Senate on May 12, 2005, by the following vote: Yeas 31, Nays 0. Signed by the Texas Secretary of the Senate

Signed by the Texas Governor