

MISSISSIPPI

RENTAL-PURCHASE AGREEMENT ACT

Mississippi Code, 1972, as amended.

Added by Laws 1995, H.B. 719, approved March 28, 1995, effective July 1, 1995.

Sec. 1.

This act shall be known and may be cited as the Mississippi Rental-Purchase Agreement Act.

Sec. 2.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

- (a) "Advertisement" means a commercial message in any medium that aids, promotes or assists, directly or indirectly, a rental-purchase agreement.
- (b) "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the rental-purchase agreement.
- (c) "Consumer" means a natural person who rents personal property under a rental-purchase agreement to be used primarily for personal, family or household purposes.
- (d) "Consummation" means the time a consumer becomes contractually obligated on a rental-purchase agreement.
- (e) "Lessor" means a person who regularly provide the use of property through rental-purchase agreements and to whom periodic rental payments are initially payable on the face of the rental-purchase agreement.
- (f) "Rental-Purchase Agreement" means an agreement for the use of personal property by a natural person primarily for personal, family or household purposes, for an initial period of four (4) months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue renting or using the property beyond the initial period, and that permits the consumer to become the owner of the property.

Sec. 3.

- (1) Rental-purchase agreements as defined in this act are not governed by the laws relating to:
 - (a) A consumer credit rate as defined in Section 75-66-1(2);
 - (b) Loans, interest, finance charges, credit or installment sales as those terms are used in Mississippi statutes;
 - (c) A security interest as defined in Section 75-1-201 of the Uniform Commercial Code.
- (2) This act does not apply to the following:
 - (a) Rental-purchase agreements primarily for business, commercial or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;
 - (b) A lease of a safe deposit box;
 - (c) A lease or bailment of personal property which is incidental to the lease of real property and which provides that the consumer has no option to purchase the leased property ; or
 - (d) A lease of an automobile.

Sec. 4.

- (1) The lessor shall disclose to the consumer the information required by this act. In a transaction involving more than one lessor, only one (1) lessor need make the disclosures, but all lessors shall be bound by such disclosures.
- (2) The disclosures shall be made at or before consummation of the rental-purchase agreement.
- (3) The disclosures shall be made clearly and conspicuously in writing and a copy of the rental-purchase agreement provided to the consumer. The disclosures required under section 5 of this act shall be made on the face of the contract above the line for the consumer's signature.
- (4) If a disclosure becomes inaccurate as the result of any act, occurrence or agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of this act.

Sec. 5.

For each rental-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

- (a) Whether the periodic payment is weekly, monthly or otherwise, the dollar amount of each payment, and the total number and dollar amount of all periodic payments necessary to acquire ownership of the property.
- (b) A statement that the consumer will not own the property until the consumer has paid the total amount necessary to acquire ownership;
- (c) A statement advising the consumer whether the consumer is liable for loss or damage to the property, and, if so, a statement that such liability will not exceed the fair market value of the property as of the time it is lost or damaged;
- (d) A brief description of the rental property, sufficient to identify the property to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used is not a violation of this act;
- (e) A statement of the cash price of the property. Where the agreement involves a rental of two (2) or more items as a set, in one (1) agreement, a statement of the aggregate cash price of all items shall satisfy this requirement;
- (f) The total of initial payments paid or required at or before consummation of the agreement or delivery of the property, whichever is later.
- (g) A statement that the total of payments does not include other charges, such as delivery, in-home collection, pickup and reinstatement fees, which fees shall be separately disclosed in the contract;
- (h) A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option and the price, formula or method for determining the price at which the property may be so purchased;
- (i) A statement identifying the party responsible for maintaining or servicing the property while it is being rented, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the rental property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed

by the term of the warranty;

- (j) The date of the transaction and the identities of the lessor and consumer;
- (k) A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair upon expiration of any rental term along with any past due rental payments; and
- (l) Notice of the right to reinstate an agreement as herein provided.

Sec. 6.

A rental-purchase agreement may not contain:

- (a) A confession of judgment;
- (b) A negotiable instrument;
- (c) A security interest or any other claim of a property interest in any property except that property delivered by the lessor pursuant to the rental-purchase agreement;
- (d) A wage assignment;
- (e) A waiver by the consumer of claims or defenses;
- (f) A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises without permission or to commit any breach of the peace in the repossession of property;
- (g) A provision for a late charge or any other type of charge or penalty for reinstating a rental-purchase agreement in addition to a reinstatement fee; however, a lessor may use the term "late charge" or a similar term to refer to a reinstatement fee; or
- (h) A provision for more than one (1) reinstatement fee on any one periodic payment regardless of the period of time for which it remains unpaid.

Sec. 7.

- (1) A consumer who fails to make a timely rental payment may reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of the following charges within five (5) days of the renewal date of an agreement with monthly periodic payments or within two (2) days of the renewal date of the agreement with periodic payments more frequently than monthly:
 - (a) All past due rental charges;
 - (b) If the goods have been picked up, the reasonable cost of picked up and redelivery; and
 - (c) Any applicable reinstatement fees.
- (2) In the case of a consumer who has paid less than two-thirds (2/3) of the total of payments necessary to acquire ownership and where the consumer has returned or voluntarily surrendered the goods within the applicable reinstatement period, other than through judicial process, the consumer may reinstate the agreement during a period of not less than twenty-one (21) days after the date of the return of the property.
- (3) In the case of a consumer who had paid two-thirds (2/3) or more of the total of payments necessary to acquire ownership, and where the consumer had returned or voluntarily surrendered the goods within the applicable reinstatement period, other than through judicial process, the consumer may reinstate the agreement during a period of not less than forty-five (45) days after the date of the return of the property.
- (4) Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property, if available, or with substitute property of comparable quality and condition.

Sec. 9.

- (1) A renegotiation occurs when any term of rental-purchase agreement that is required to be disclosed by Section 5 of this act is changed by agreement between the lessor and consumer. A renegotiation is considered to be a new rental-purchase agreement requiring the lessor to give all the disclosures required by Section 5 of this act.
- (2) A renegotiation shall not include any of the following:

- (a) Reinstatement of a rental-purchase agreement in accordance with Section 7 of this act;
- (b) A lessor's waiver or failure to assert any claim against the consumer;
- (c) A deferral, extension or waiver of a portion of a periodic payment or of one or more periodic payments; or
- (d) A change, made at the consumer's request, of the date of the week or month on which periodic payments are to be made.

Sec. 10.

- (1) If an advertisement for a rental-purchase agreement refers to or states the dollar amount of the periodic payment for a specific item and refers to or states that the consumer has the right to acquire ownership of that item, the advertisement shall also clearly and conspicuously state the following, as applicable:
 - (a) That the transaction advertised is a rental-purchase agreement;
 - (b) The total number of payments necessary to acquire ownership of the item; and
 - (c) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.
- (2) Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.
- (3) The provision of subsection (1) of this section shall not apply to an advertisement which does not refer to or state the amount of any payment or which is published in the yellow pages of a telephone directory or in any similar directory of business.

Sec. 11.

- (1) A lessor who fails to comply with the requirements of this act is liable to the consumer damaged thereby in an amount equal to the greater of:
 - (a) The actual damages sustained by the consumer as a result of the lessor's failure to comply with this act;
 - (b) Twenty-five percent (25%) of the total of payments necessary to acquire ownership, but not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1000.00); or

- (c) Such lessor is also liable to the consumer for the cost of the action and reasonable attorney's fees as determined by the court.
- (2) A consumer may not take any action to offset the amount for which a lessor is potentially liable under subsection (1) of this section against any amount owed by the consumer, unless the amount of the lessor's liability had been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This subsection does not bar a consumer then in default on an obligation from asserting a violation of this act as an original action, or as a defense or counterclaim, to an action brought by a lessor against the consumer.
- (3) The provisions of this act are cumulative with any other rights or remedies available in this state.
- (4) No action under this section may be brought in any court of competent jurisdiction more than one (1) year after the date the consumer made his last rental payment or more than one (1) year after the date of the occurrence of the violation that is the subject of the suit, whichever is later.

Sec. 12.

- (1) If a lessor establishes by a preponderance of evidence that a violation of this act was unintentional or the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, no penalty as specified in Section 11 of this act may be imposed and validity of the transaction is not affected. Examples of bona fide errors are clerical errors, calculation errors, errors due to unintentionally improper computer programming or data entry and printing errors but do not include an error of legal judgment with respect to a lessor's obligations under this act.

Sec. 13.

Each provision of a contract under this act shall contain a provision to be signed or initialed by the lessee.

Sec. 14.

This act shall take effect and be in force from and after July 1, 1995.