

NORTH DAKOTA

*North Dakota Century Code, Laws 1993.
As added April 1, 1993, effective January 1, 1994*

Sec. 1. Definitions.

As used in this Act, unless the context or subject matter otherwise requires:

1. "Advertisement" means a commercial message in any medium that aids, promotes, or assists a consumer rental-purchase agreement.
2. "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the consumer rental-purchase agreement for the property.
3. "Consumer" means an individual who rents property under a consumer rental-purchase agreement.
4. "Consumer rental-purchase agreement" includes an agreement for the use of property by a consumer primarily for personal, family, or household purposes for an initial period of four months or less, regardless of whether there is any obligation beyond the initial period; which 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 which permits the consumer to become the owners of the property under the terms of the consumer rental-purchase agreement.
The term does not include:
 - a. A rental-purchase agreement primarily for business, commercial, or agricultural purposes, or an agreement with a governmental agency or instrumentality or organization.
 - b. A lease or agreement that constitutes an installment sale or installment contract as defined in section 51-13-01.
 - c. A lease of safe deposit box.
 - d. A lease or a bailment of personal property incidental to the lease of real property and which contains no provision for the consumer to have an option to purchase the leased property.
 - e. A lease of a motor vehicle.

- f. A hiring defined under chapter 47-15.
 - g. A security interest under chapter 41-09.
5. "Consummation" means the time at which a consumer becomes contractually obligated on a rental-purchase agreement.
6. "Lessor" includes a person who regularly provides the use of property through consumer rental-purchase agreements and to whom rental payments are initial payable on the face of a consumer rental-purchase agreement.

Sec. 2. Inapplicability of other laws.

Consumer rental-purchase agreements under this Act are not governed by the laws relating to a retail installment contract or a retail installment sale as define in section 51-13-01 or security interest as defined in section 41-01-11.

Sec. 3. Disclosure of information.

1. A lessor shall include in a consumer rental-purchase agreement:
- a. The total number, total amount, and timing of all payments necessary to acquire ownership of the property.
 - b. A statement that the consumer does not own the property until the consumer has made the total payments necessary to acquire ownership.
 - c. A statement that the consumer is responsible for the fair market value of the property at the time it is lost, stolen, damaged, or destroyed, if that is the intent of the lessor.
 - d. A description of the leased property sufficient to identify the property to the consumer and the lessor, including any identification numbers, if applicable, and a statement indicating whether the property is new or used. A statement indicating that the property is used when in fact it is new is not a violation of this Act.
 - e. A statement of the cash price of the property. If the agreement includes a lease of two or more items as a set, in one agreement, a statement of the aggregate cash price of all the items is sufficient.
 - f. The total of initial payments paid or required to be paid at or before consummation of the agreement or delivery of the property, whichever is

later.

- g. A statement that the total amount of a payment does not include other charges such as late payment penalties, default, pick-up, or reinstatement fees; and other fees which must 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 any early purchase options and the price or formula or method for determining the price at which the property may be purchased at any given time.
 - i. A statement identifying the party responsible for maintaining or servicing the property while the property is being leased, together with a description of that responsibility, and a statement that if any part of the manufacturer's express warranty covers the leased property at the time the consumer acquires ownership of the property, the warranty is transferred to the consumer, if allowed by the terms of the warranty.
 - j. The date of the transaction, the identification of the lessor and consumer, and the address where the property will be primarily located during the possession of the consumer under the commercial rental-purchase agreement.
 - k. A statement that the consumer may terminate the agreement at any time without penalty by voluntarily surrendering or returning the property in good repair, ordinary wear and tear excepted, along with any payment of any past due rent.
 - l. Notice of the right to reinstate an agreement as provided in this Act.
 - m. A statement that the lessor is required by law to provide the consumer a written receipt, upon request by the consumer at the lessor's place of business, for each payment made by cash or money order.
2. A consumer rental-purchase agreement must contain, immediately above or adjacent to the place for the signature of the consumer, a clear, conspicuous, printed or typewritten notice, in boldface, ten-point type, substantially the following language:

**NOTICE TO CONSUMER--READ BEFORE
SIGNING**

- a. **DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT, INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF TOLD YOU DO NOT NEED TO.**

- b. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
 - c. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
- 3. In a transaction involving more than one lessor, only one lessor is required to make the disclosures, but all lessors are bound by the disclosures. The disclosures must be made before the consumer rental-purchase agreement is executed. The disclosures must be made clearly and conspicuously in writing in at least eight-point type and a copy of the disclosures and the consumer rental-purchase agreement must be provided to the consumer. If a disclosure becomes inaccurate as a result of any act or occurrence caused by the consumer or by an agreement or consent entered into after delivery of the required disclosures, the resulting inaccuracy is not a violation of this Act.
- 4. Compliance with the Federal Leasing Act of 1976 regarding disclosures in consumer rental-purchase agreements satisfies the requirements of this section.

Sec. 4. Prohibited provisions and agreements.

A consumer rental-purchase agreement may not contain the following provisions, and, such included provision is not enforceable:

- 1. A confession of judgment.
- 2. A negotiable instrument.
- 3. A security interest or any other claim of a property interest in any goods except those goods delivered by the lessor pursuant to the consumer rental-purchase agreement.
- 4. A wage assignment.
- 5. A waiver by the consumer of claims or defenses.
- 6. A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises or to commit any breach of the peace in the repossession of the goods.

Sec. 5. Reinstatement of agreement--Repossession.

- 1. A consumer who fails to make a timely rental payment may reinstate the agreement without losing any right or option that exists under the agreement by the payment of:

- a. All past due rental charges;
 - b. The reasonable costs of repossession and redelivery if the property has been repossessed; and
 - c. Any applicable late fee within five days of the renewal date if the consumer pays monthly, or within two days of the renewal date if the consumer pays more frequently than monthly. A late fee may not be more than three dollars or five percent of the delinquent lease payment, whichever is greater.
2. If a consumer has paid less than two-thirds of the total amount of payments necessary to acquire ownership and the consumer has returned or voluntarily surrendered the property other than through judicial process during the applicable reinstatement period set forth in this section, the consumer may reinstate the agreement during a period of not less than thirty-one days after the date of the return of the property.
3. If a consumer has paid two-thirds or more of the total amount of payments necessary to acquire ownership and the consumer has returned or voluntarily surrendered the property other than through judicial process during the applicable period set forth in this section, the consumer may reinstate the agreement during a period of not less than forty-five days after the date of the return of the property.
4. This section does not prevent a lessor from attempting to repossess property during the reinstatement period. A repossession does not affect the consumer's right to reinstatement. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

Sec. 6. Renegotiation for new agreement --Extensions.

1. A renegotiation of an agreement occurs when an existing consumer rental-purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and consumer. A renegotiation is considered a new agreement requiring new disclosures. The following events may not be treated as a renegotiation:
 - a. The addition or return of property in a multiple-item agreement or the substitution of leased property if the average payment allocation to a payment is not changed by more than twenty-five percent.
 - b. A deferral or extension of one or more periodic payments or portions of a periodic payment.
 - c. A reduction in charges in the lease or agreement.

- d. A lease or agreement that has become the basis for a legal action.
2. No disclosure is required for any extension of a consumer rental-purchase agreement under the same terms as the original agreement except for the extension.

Sec. 7. Advertisement of consumer rental-purchase agreement.

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

Sec. 8. Penalties--Remedies--Lessor to preserve evidence.

1. A lessor who fails to comply with this Act is liable to the consumer for:
 - a. The greater of the actual damages sustained by the consumer as a result of the violation or, in the case of an individual action, twenty-five percent of the total payments necessary to acquire ownership, but not less than one hundred dollars nor more than one thousand dollars; and
 - b. The costs of the action and reasonable attorney's fees.
2. A lessor who violates section 7 of this Act is liable to the consumer for actual damages suffered from the violation, the costs of the action, and reasonable attorney's fees.
3. If there is more than one lessor, liability may be imposed only on the lessor who made the disclosures. When no disclosures have been made, liability must be imposed jointly and severally on all lessors.

4. When there is more than one consumer, there may be only one recovery of damages under subsection 1.
5. Multiple violations in connection with a single consumer rental-purchase agreement entitle a consumer to only one recovery under this section.
6. A consumer may not take any action to offset any amount for which a lessor is potentially liable under subsection 1 against any amount owed by the consumer unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action to which the lessor was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this Act as an original action or as a defense or counterclaim to an action brought by the lessor to collect an amount owed by the consumer.
7. In connection with any transaction under this Act, the lessor shall preserve evidence of compliance with this Act for not less than two years from the date of consummation of the agreement.

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