

TENNESSEE

RENTAL-PURCHASE AGREEMENT ACT

Tennessee Code Annotated, as amended.

Added by Laws 1987, Ch. 225, approved April 22, effective June 1, 1987

Sec. 47-18-601. Short title.

This part shall be known and may be cited as the "Tennessee Rental-Purchase Agreement Act."

Sec. 47-18-602. Legislative findings and purpose.

The legislature finds that a significant number of consumers have sought to acquire ownership of personal property through rental-purchase agreements. Often, these rental-purchase agreements have been offered without adequate cost disclosures. It is the purpose of this part to assure meaningful disclosure of the terms of rental-purchase agreements, to make consumers aware of the total cost attendant with such agreements to inform the consumer when ownership will transfer, and to assure accurate disclosures of rental-purchase terms in advertising.

Sec. 47-18-603. Definitions.

As used in this part the term:

- (1) "Advertisement" means a commercial message in any medium that aids promotes, or assists directly or indirectly a 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 rental-purchase agreement;
- (3) "Consumer" means a natural person who rents personal property under a rental-purchase agreement;
- (4) "Division" means the division of consumer affairs in the department of commerce and insurance;
- (5) "Consummation" means the time a consumer becomes contractually obligated on a

- rental-purchase agreement;
- (6) Lessor" means a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of property under a rental-purchase agreement; and
 - (7) "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 (whether or not there is any obligation beyond the initial period) that is automatically renewable with each payment and that permits the consumer to become the owner of the property. The term "rental-purchase agreement" shall not be construed to be, nor be governed by, any of the following:
 - (A) A lease or agreement which constitutes a credit sale as defined in 12 C.F.R. 226.2(a)(16) and Section 1602(g) of the Truth In Lending Act, 15 U.S.C. 1601 *et seq.*;
 - (B) A lease which constitutes a consumer lease as defined in 12 C.F.R. 213.2(a)(6);
 - (C) Any lease for agricultural, business, or commercial purposes;
 - (D) Any lease made to an organization;
 - (E) A lease or agreement which constitutes a retail installment contract or retail installment transaction as those terms are defined in §47-11-102;
 - (F) A security interest as defined in §47-1-201; or
 - (G) A home solicitation sale as that term is defined in §47-18-702.

Sec. 47-18-604. Required disclosures.

- (a) For each rental-purchase agreement, the lessor shall disclose the following items as applicable:
 - (1) A brief description of the leased property, sufficient to identify the property to the consumer and lessor;
 - (2) The number, amount, and timing of all lease payments necessary to acquire ownership of the property;

- (3) The maximum amount of all initial and periodic payments and other charges to acquire ownership of the property pursuant to the ownership provisions of the rental-purchase agreement.
 - (4) A statement that the consumer will not own the property until the consumer has made the number of payments and the total of payments necessary to acquire ownership;
 - (5) A statement that the total of payments does not include other charges such as late payment, default, pickup, and reinstatement fees, and that the consumer should see the contract for an explanation of these charges;
 - (6) If applicable, a statement that the consumer is responsible for the fair market value of the property if it is lost, stolen, damaged, or destroyed;
 - (7) A statement indicating whether the property is new or used; however, a statement that indicates new property is used is not a violation of this part;
 - (8) A statement of the cash price of the property. Where the agreement involves a lease for five (5) or more items, a statement of the aggregate cash price of all items shall satisfy this requirement;
 - (9) The total of initial payments required to be paid before consummation of the agreement or delivery of the property, whichever is later;
 - (10) A statement clearly summarizing the terms of the consumer's options to purchase;
 - (11) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with the description of that responsibility and a statement that, if any part of a manufacturer's express warranty covers the leased property at the time the consumer acquires ownership of the property, it will be transferred to the consumer, if allowed by the terms of the warranty; and
 - (12) The date of the transaction and the identifies of the lessor and consumer.
- (b) With respect to matters specifically governed by the federal Consumer Credit Protection Act, compliance with such act satisfies the requirements of this section.
- (c) Subsection (a) of this section does not apply to a lessor who complies with the disclosure requirements of Section 182 of the federal Consumer Credit Protection Act, 15 U.S.C. 1667a,

90 Stat. 258, with respect to a rental-purchase agreement entered into with a consumer.

Sec. 47-18-605. Form of disclosures.

- (a) The lessor shall disclose to the consumer the information required by this part. In a transaction involving more than one (1) consumer, a lessor need disclose only to one (1) of the consumers who are primarily obligated. In a transaction involving more than one (1) lessor, only one (1) lessor need make the required disclosures.
- (b) The disclosures required under this part shall be made no later than the time that the lessor delivers the merchandise to the consumer, or upon consummation of the rental-purchase agreement, whichever is earlier.
- (c)
 - (1) The disclosures shall be made using words and phrases of common meaning, in a form that the consumer may keep.
 - (2) The disclosures required under Section 47-18-604 may be made a part of the rental-purchase agreement or provided on a separate form.
 - (3) The required disclosures shall be set forth clearly and conspicuously. The disclosures shall be placed all together, on the front side of the rental-purchase agreement or on a separate form. The form setting forth the required disclosures must contain spaces for the consumers' signature and the date appearing immediately below the disclosures. The requirements of this section shall not have been complied with unless the consumer signs the statement and receives at the time disclosures are made a legible copy of the signed statement. The inclusion in the required disclosures of a statement that the consumer received a legible copy of those disclosures shall create a rebuttable presumption of receipt thereof.
- (d) Information required to be disclosed may be given in the form of estimates and shall be identified as such when the lessor does not know the exact information.
- (e) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement after delivery of the required disclosures, the resulting inaccuracy is not a violation of this part.
- (f) At the lessor's option, information in addition to that required by Section 47-18-604 may be disclosed if the additional information is not stated, utilized, or placed in a manner which will contradict, obscure, or distract attention from the required

information.

Sec. 47-18-606. Prohibited terms of agreement.

A rental-purchase agreement may not contain a provision:

- (1) Requiring a confession of judgment;
- (2) Requiring a garnishment of wages;
- (3) Granting authorization to the lessor or a person acting on a lessor's behalf to enter unlawfully upon the consumer's premises or to commit any breach of the peace in the repossession of goods;
- (4) Requiring the consumer to waive any defense, counterclaim or right of action against the lessor or a person acting on the lessor's behalf in collection of payment under the lease or in the repossession of goods; or
- (5) Requiring purchase of insurance from the lessor to cover the merchandise.

Sec. 47-18-607. Termination and reinstatement provisions.

- (a) Each rental-purchase agreement must:
 - (1) Provide that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the merchandise upon expiration of any lease term; and
 - (2) Contain a provision for reinstatement which, at a minimum;
 - (A) Permits a consumer who fails to make a timely rental payment to reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of all past due rental charges, the reasonable costs of pickup, redelivery, any refurbishing and any applicable late fee within five (5) days of the renewal date if the consumer pays monthly, or within two (2) days of the renewal date if the consumer pays more frequently than monthly;

(B) In the case where a consumer, at the request of the lessor or its agent, has returned or voluntarily surrendered the property, other than through judicial process, permits the consumer to reinstate the agreement during a period of not less than thirty (30) days after the date of the return of the property. In the event the consumer has paid not less than sixty (60%) percent of the amount called for under the contract to obtain ownership, the reinstatement period under this subsection shall be extended to a total of ninety (90) days after the date of the return of the property. In the event the consumer has paid not less than eighty (80%) percent of the amount called for under the contract to obtain ownership, the reinstatement period under this subsection shall be extended to a total of one hundred eighty (180) days after date of the return of the property.

(b) Nothing in this section prevents a lessor from attempting to repossess property during the reinstatement period, but such a repossession does not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

Sec. 47-18-608. Receipts for payments.

A lessor shall provide the consumer with a written receipt for each payment made by cash or money order.

Sec. 47-18-609. Renegotiation -- Extensions.

(a) A renegotiation occurs when an existing rental-purchase agreement is satisfied and replaced by a new lease agreement undertaken by the same consumer. A renegotiation is a new agreement requiring new disclosures. However, events such as the following shall not be treated as renegotiations:

- (1) The addition or return of property in a multiple item agreement or the substitution of lease property, if in either case the average payment allocable to payment period is not changed by more than twenty-five percent (25%);
- (2) A deferral or extension of one (1) or more periodic payments, or portions of periodic payment;

- (3) A reduction in charges in the agreement;
 - (4) An agreement involving a court proceeding; and
 - (5) Any other event described in regulations prescribed by the division.
- (b) No disclosures are required for any extension of a rental-purchase agreement.

Sec. 47-18-610. Advertisements.

- (a) If an advertisement for a rental-purchase agreement refers to or states the amount of any payment or the right to acquire ownership for any specific item, the advertisement also must state clearly and conspicuously the following items, as applicable:
- (1) That the transaction advertised is a rental-purchase agreement;
 - (2) The total of payments necessary to acquire ownership; and
 - (3) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.
- (b) 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.
- (c) Subsection (a) does not apply to an advertisement which does not refer to a specific item of merchandise. The disclosures also need not be made in an advertisement which does not refer to or state the amount of any payment, and which is published in the yellow pages of a telephone directory or any similar directory of business.
- (d) With respect to matter specifically governed by the federal Consumer Credit Protection Act, compliance with such act satisfies the requirements of this section.

Sec. 47-18-611. Civil liability.

- (a) (1) A lessor who fails to comply with a requirement imposed in §47-18-604 or §§47-18-606 -- 47-18-608 with respect to a consumer is liable to the consumer in an amount equal to the greater of:

- (A) The actual damages sustained by the customer as a result of the violation; or
 - (B)
 - (i) In the case of an individual action, twenty-five percent (25%) of the total of payments necessary to acquire ownership but not less than one hundred dollars (\$100) nor greater than one thousand (\$1,000);
 - (ii) In the case of a class action the amount the court determines to be appropriate with no minimum recovery as to each member. The total recovery in any class action or series of class actions arising out of the same violation may not be more than the lesser of five hundred thousand dollars (\$500,000) or one percent (1%) of the net worth of the lessor. In determining the amount of any award in a class action, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency and persistence of the violation, the lessor's resources, and the extent to which the lessor's violation was intentional.
- (2) Such a lessor is also liable to the consumer for the costs of the action and reasonable attorney's fees as determined by the court.
- (b) In the case of an advertisement, any lessor who fails to comply with the requirements of §47-18-610 with regard to any person is liable to that person for actual damages suffered from the violation, the costs of the action, and reasonable attorneys' fees.
 - (c) When there are multiple lessors, liability shall be imposed only on the lessor who made the disclosures. When no disclosures have been given, liability shall be imposed on all lessors.
 - (d) When there are multiple consumers in a rental-purchase agreement, there shall be only one (1) recovery of damages under subsection (a) for a violation of this part.
 - (e) Multiple violations in connection with a rental-purchase agreement entitle the consumer to a single recovery under this section.
 - (f) A consumer may not take any action to offset any amount for which a lessor is potentially liable under subsection (a) against any amount owed by the consumer, unless the amount to the lessor's liability has been determined by judgement 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 the obligation from asserting a violation of this act as an original action, or as a

defense or counterclaim to an action brought by lessor to collect amounts owed by the consumer.

- (g) In connection with any transaction covered under this part, the lessor shall preserve evidence of compliance with the provisions of this part for not less than two (2) years from the date of consummation of the agreement.

Sec. 47-18-612. Limitation of actions.

An action under this part may be brought in any court of competent jurisdiction within one (1) year of the date of the occurrence of any violation or within six (6) months of the time the rental-purchase agreement, together with any renewals or extensions thereof, ceases to be in effect, whichever is greater. Notwithstanding the above, an action under this part may be maintained by way of recoupment or counterclaim in an action brought against the consumer by the lessor or its assignee.

Sec. 47-18-613. Liability -- Good faith defenses.

- (a) A lessor is not liable under §47-18-612 for a violation of this part if the lessor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error even though the lessor maintained procedures reasonably adopted to avoid such an error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to requirements of this title is not a bona fide error.
- (b) A lessor is not liable under this part for any act done or omitted in good faith in conformity with any rule, regulation or interpretations promulgated by the attorney general or by the consumer affairs division or by an official duly authorized by the attorney general or by the consumer affairs division. This rule applies even if, after the act or omission has occurred, the rule, regulation or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Sec. 47-18-614. Criminal liability.

Any person who shall willfully and intentionally violate any provision of this part shall be guilty of a Class C misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars (\$500).

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