

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To provide protection for consumers under lease-purchase agreements; to specify the inapplicability of certain other laws; to identify certain exclusions; to establish general requirements for disclosure; to specify prohibited practices; to allow for reinstatement of lease-purchase agreements under certain conditions; to require provision of written receipts for payments made by cash or money order; to permit renegotiation and extension of lease-purchase agreements; to regulate advertising of lease-purchase agreements; and to impose penalties for violation of the act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Lease-Purchase Agreement Act of 2002".

Sec. 2. Definitions.

For the purposes of this act, the term:

- (1) "Advertisement" means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a lease-purchase agreement. The term "advertisement" shall not include in-store merchandising aids or window signs.
- (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 lease-purchase agreement.
- (3) "Consumer" means a natural person who rents personal property under a lease-purchase agreement to be used primarily for personal, family, or household purposes.
- (4) "Consummation" means the time a consumer becomes contractually obligated on a lease-purchase agreement.
- (5) "Department" means the Department of Consumer and Regulatory Affairs.
- (6) "Lessor" means a person who regularly provides the use of property through

lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement.

(7)(A) "Lease-purchase agreement" mean an agreement for the use of personal property:

(i) By a natural person primarily for personal, family, or household purposes;

(ii) For an initial period of 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 leasing or using the property beyond the initial period; and

(iii) That permits the consumer to become the owner of the property.

(B) A lease-purchase agreement shall not mean:

(i) A consumer transaction under Chapter 38 of Title 28 of the District of Columbia Official Code or Chapter 100 of Title 16 of the District of Columbia Municipal Regulations (16 DCMR § 100 *et seq.*);

(ii) A security interest as defined in Chapter 38 of Title 28 of the District of Columbia Official Code;

(iii) A loan, an instrument in writing for the payment of money at a future time, or interest under Chapter 38 of Title 28 of the District of Columbia Official Code;

(iv) A lease-purchase agreement primarily for business, commercial, agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;

(v) A lease of a safe deposit box;

(vi) 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;

(vii) A lease of an automobile; or

(viii) A lease or purchase of real property.

Sec. 3. Consumer rights.

(a) At consummation, the consumer shall have the right to choose, if the property is lost, stolen, damaged, or destroyed, whether to be responsible for either a stipulated valuation agreed to at the time the contract is entered into or the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed.

(b) At consummation, the consumer shall be provided an option to purchase the property in accordance with the disclosure required under section 5. The option shall include the consumer's 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.

(c) At consummation, the consumer shall be provided a statement that the lessor is responsible for maintaining or servicing the property while it is being leased, together with a 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 shall be transferred to the consumer, if allowed by the terms of the warranty.

(d) At consummation, the consumer shall be provided 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 lease term.

Sec. 4. General requirements of disclosures.

(a) The lessor shall disclose to the consumer the information required by section 5. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by the disclosures.

(b) The disclosures shall be made at or before consummation.

(c) The disclosures shall be made clearly and conspicuously in writing and a copy of the lease-purchase agreement shall be provided to the consumer. The disclosures required under section 5 shall be made on the face of the contract above the line for the consumer's signature.

(d) If a disclosure becomes inaccurate as the result of an action, occurrence, or agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy shall not be a violation of this act.

(e) The lease-purchase agreement shall include a statement indicating all fees that are charged under the lease-purchase agreement separately, including any other charges such as taxes, late payment fees, default fees, processing fees, pickup fees, fees for optional services or products, or reinstatement fees.

Sec. 5. Disclosures.

(a) For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

(1) The number, amount, and timing of all lease payments necessary to acquire ownership of the property;

(2) A statement that the consumer will not own the property until the consumer has made the total payment required to purchase under the lease-purchase agreement;

(3) A statement that the consumer is responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed;

(4) A brief description of the leased 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; provided, that a statement that indicates new property is used shall not be a violation of this act;

(5) A brief description of any damages to the leased property;

(6) The cash price of the property; provided, that if the lease-purchase agreement involves a lease of items as a set, a statement of the aggregate cash price of all items shall satisfy this requirement;

(7) The total of initial payments paid or required at or before consummation or delivery of the property, whichever is later;

(8) A statement that the total of lease payments does not include other charges, such as taxes, late payment fees, default fees, processing fees, pickup fees, fees for optional services or products, or reinstatement fees, which fees shall be separately disclosed in the contract;

(9) 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;

(10) A statement that the lessor is responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the lease property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed by the terms of the warranty;

(11) The date of the transaction and the identities of the lessor and consumer;

(12) 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 lease term; and

(13) Notice of the right to reinstate a lease-purchase agreement as provided in section 8.

(b) With respect to matters specifically governed by the Consumer Credit Protection Act, approved May 29, 1968 (88 Stat. 1511; 15 U.S.C. § 1601 *et seq.*), compliance with that Act shall satisfy the requirements of this section.

Sec. 6. Maintenance of the property.

During the rental term, the lessor shall maintain the property in good working condition, including repairing or replacing, if repair cannot be completed within a reasonable time, any property which fails to perform as a result of a defect in the property not caused by harmful conditions outside the merchant's or manufacturer's control or by improper use by the

consumer, as long as no other person has been permitted to repair it. The merchant may, but shall not be required, to repair or replace property which has been damaged by the negligent or intentional act of the consumer.

Sec. 7. Prohibited practices.

A lease-purchase agreement shall not contain:

- (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 under the lease-purchase agreement;
- (4) A wage assignment;
- (5) A waiver by the consumer of claims or defenses; or
- (6) A provision authorizing the lessor, or the lessor's agent, to enter upon the consumer's premises or to commit any breach of the peace in the repossession of goods.

Sec. 8. Reinstatement.

(a) 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:

- (1) All current and past due rental charges;
- (2) If the property has been picked up, the reasonable costs of pickup and re-delivery; and
- (3) Any applicable late fee, within 5 days of the renewal date if the consumer pays monthly, or within 2 days of the renewal date if the consumer pays more frequently than monthly.

(b) In the case of a consumer who has paid less than 2/3 of the total payments required to purchase under the lease-purchase agreement and who has returned, or voluntarily surrendered, the property, other than through judicial process, during the applicable reinstatement period set forth in subsection (a) of this section, the consumer may reinstate the agreement during a period of not less than 21 days after the date of the return of property.

(c) In the case of a consumer who has paid at least 2/3 of the total of payments and has

returned, or voluntarily surrendered, the property, other than through judicial process, during the applicable period set forth in subsection (a) of this section, the consumer may reinstate the agreement during a period of not less than 45 days after the date of the return of the property.

(d) Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but repossession shall 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. 9. Receipts and accounts.

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

Sec. 10. Renegotiations and extension.

(a) Renegotiation shall occur when an existing lease-purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and consumer. A renegotiation shall be considered a new agreement requiring new disclosures; provided, that renegotiation shall not include events of the following nature:

(1) The addition or return of property in a multiple-item agreement or the substitution of the lease property if the average payment allocable to the payment period is not changed by more than 25%;

(2) A deferral or extension of one or more periodic payments, or portions of a periodic payment;

(3) A reduction in charges in the lease or agreement; or

(4) A lease agreement involved in a court proceeding.

(b) No disclosures shall be required for an extension of a lease-purchase agreement.

Sec. 11. Advertising.

(a) If an advertisement for a lease-purchase agreement refers to, or states, the amount of any payment and the right to acquire ownership for any one specific item, the advertisement shall also clearly and conspicuously state the following items, as applicable:

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(1) That the transaction advertised is a lease-purchase agreement;
 (2) The total of payments necessary to acquire ownership; and
 (3) That the consumer acquires no ownership rights if the total amount required to purchase is not paid.

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 2002 Supp.
 West Group
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(b) An 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) 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.

New Chapter
 36A
 New Subtitle
 VII-A
 Title 42

Sec. 12. Price cards.

(a) Each item displayed or offered under a lease-purchase agreement shall bear a tag or card that indicates:

- (1) The cash price of the item;
- (2) The amount of the periodic payment;
- (3) The total number and total amount of periodic payments necessary to acquire ownership; and
- (4) Whether the item is new or previously rented.

New
 § 42-3671.01

(b) Notwithstanding the provisions of this section, a lessor may make the required disclosures in the form of a list or catalog which is readily available to a consumer if displaying a tag would be impractical due to the size of the merchandise. In addition, a lessor may make the required disclosures in the form of a list or catalog if the merchandise displayed can be purchased in a credit transaction or if the merchandise displayed represents only a sample of the merchandise available under a lease-purchase agreement.

Sec. 13. Civil remedies for consumers.

(a) A lessor who fails to comply with a requirement imposed by this act with respect to a consumer shall be liable to the consumer in an amount equal to the greater of :

- (1) The actual damages sustained by the consumer as a result of the violation, plus the costs of the action and reasonable attorneys' fees;
- (2) In the case of an individual action, 25% of the total of payments necessary to acquire ownership but not less than \$100 nor greater than \$ 1,000, plus the costs of the action and reasonable attorneys' fees; or
- (3) In the case of a class action, the amount that the court determines to be appropriate with no minimum recovery as to each member, plus the costs of the action and reasonable attorneys' fees. The total recovery in any class action or series of class actions arising out of the same violation shall not be more than the lesser of \$500,000, plus the costs of the action and reasonable attorneys' fees, or 1% of the net worth of the lessor, plus the costs of the

action and reasonable attorneys' fees. In determining the amount of an 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.

(b) In the case of an advertisement, a lessor who fails to comply with the requirements of section 11 shall be liable to a person for actual damages suffered from the violation, the costs of the action, and reasonable attorneys' fees.

(c) If there are multiple lessors, liability shall be imposed only on the lessor who made the disclosures. If no disclosures have been given, liability shall be imposed on all lessors.

(d) If there are multiple consumers in a rental-purchase agreement, there shall be only one recovery of damages under subsection (a) of this section.

(e) Multiple violations in connection with a rental-purchase agreement shall entitle the consumer to a single recovery under this section.

(f) A consumer shall not take any action to offset any amount for which a lessor is potentially liable under subsection (a) of this section 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 in which the lessor was a party.

Sec. 14. Limitation of actions.

A civil action under this act may be brought in any court of competent jurisdiction within the later of one year after the date of the occurrence of any violation or 6 months after the lease-purchase agreement, together with any renewals or extensions thereof, ceases to be in effect. Notwithstanding the above, a civil action may be maintained by way of recoupment or counterclaim in an action brought against the consumer by the lessor or its assignee.

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Sec. 15. Effect of unintentional violation and timely adjustment of error.

(a) A lessor shall not be liable under section 13 for a violation of this act if the lessor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, such as a clerical miscalculation, computer malfunctions, programming error, or printing error; provided, that the lessor maintained procedures reasonably designed to avoid the error. An error of legal judgment shall not be considered a bona fide error.

(b) A lessor shall not be liable under section 13 for any action performed or omitted in good faith in conformity with any administrative regulation or interpretation promulgated by the Office of the Corporation Counsel, by the Department, or by an official duly authorized by the Office of Corporation Counsel or the Department. This rule shall apply even if, after the act or omission has occurred, the regulation or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(c) A lessor shall not be liable under section 13 for any error if, before the 31st day after

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the date the lessor discovers the error and before an action against the lessor has been filed or written notice of the error received by the lessor, the lessor 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 lease-purchase agreement otherwise complies with this act.

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Sec. 16. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 17. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

New
§ 42-3671.04

Chairman
Council of the District of Columbia

Mayor
District of Columbia

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