

## CHAPTER 209

## H.B. No. 2119

An Act relating to rental-purchase agreements; providing a penalty.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Chapter 35, Business & Commerce Code, is amended by adding Subchapter F to read as follows:

**SUBCHAPTER F. RENTAL-PURCHASE AGREEMENTS**

*Sec. 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.

(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.

*Sec. 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 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 and the charge or fee is in an amount equal to not more than the lesser of five percent of the delinquent payment or \$5, and not less than \$2; 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.

Sec. 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.

Sec. 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.

**SECTION 2.** Article 6.01(f), Title 79, Revised Statutes (Article 5069-6.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(f) "Retail installment contract" means an instrument (other than a retail charge agreement or an instrument reflecting a sale made pursuant thereto) entered into in this State evidencing a retail installment transaction (whether secured or unsecured). The term "retail installment contract" may include a chattel mortgage, a security agreement, a conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease. A rental-purchase agreement that complies with the requirements of Subchapter F, Chapter 35, Business & Commerce Code, is not a retail installment contract.

**SECTION 3.** This Act takes effect September 1, 1985.

**SECTION 4.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 1, 1985, by a non-record vote; passed by the Senate on May 15, 1985, by a viva-voce vote.

Approved: May 24, 1985

Effective: September 1, 1985