

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 641
FINAL READING

Introduced by Landis, 46

Read first time January 16, 2001

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Consumer Rental Purchase Agreement Act;
2 to amend sections 69-2103 to 69-2105, 69-2108 to 69-2110,
3 69-2112, 69-2113, and 69-2115, Reissue Revised Statutes
4 of Nebraska; to define and redefine terms; to change
5 disclosure requirements; to change lessor liability; to
6 change provisions relating to fees and charges; to
7 authorize certain incidental contract provisions; to
8 harmonize provisions; and to repeal the original
9 sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 69-2103, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 69-2103. For purposes of the Consumer Rental Purchase
4 Agreement Act:

5 (1) Advertisement shall mean a commercial message in any
6 medium that aids, promotes, or assists directly or indirectly a
7 consumer rental purchase agreement but shall not include in-store
8 merchandising aids such as window signs and ceiling banners;

9 (2) Cash price shall mean the price at which the lessor
10 would have sold the property to the consumer for cash on the date
11 of the consumer rental purchase agreement for the property;

12 (3) Consumer shall mean a natural person who rents
13 property under a consumer rental purchase agreement;

14 (4) Consumer rental purchase agreement shall mean an
15 agreement which is for the use of property by a consumer primarily
16 for personal, family, or household purposes, which is for an
17 initial period of four months or less, whether or not there is any
18 obligation beyond the initial period, which is automatically
19 renewable with each payment, and which permits the consumer to
20 become the owner of the property. A consumer rental purchase
21 agreement in compliance with the act shall not be construed to be a
22 lease or agreement which constitutes a credit sale as defined in 12
23 C.F.R. 226.2(a)(16), as such regulation existed on the effective
24 date of this act, and ~~section 1602(g) of the Truth in Lending Act,~~
25 ~~15 U.S.C. 1601 et seq.~~ 15 U.S.C 1602(g), as such section existed
26 on the effective date of this act, or a lease which constitutes a
27 consumer lease as defined in 12 C.F.R. ~~213.2(a)(6)~~ 213.2(e), as
28 such regulation existed on the effective date of this act.

1 Consumer rental purchase agreement shall not include:

2 (a) Any lease for agricultural, business, or commercial
3 purposes;

4 (b) Any lease made to an organization;

5 (c) A lease or agreement which constitutes an installment
6 sale or installment contract as defined in section 45-335;

7 (d) A security interest as defined in section 1-201,
8 Uniform Commercial Code; and

9 (e) A home solicitation sale as defined in section
10 69-1601;

11 (5) Consummation shall mean the occurrence of an event
12 which causes a consumer to become contractually obligated on a
13 consumer rental purchase agreement;

14 (6) Department shall mean the Department of Banking and
15 Finance;

16 (7) Lease payment shall mean a payment to be made by the
17 consumer for the right of possession and use of the property for a
18 specific lease period but shall not include taxes imposed on such
19 payment;

20 (8) Lease period shall mean a week, month, or other
21 specific period of time, during which the consumer has the right to
22 possess and use the property after paying the lease payment and
23 applicable taxes for such period;

24 (9) Lessor shall mean a person who in the ordinary course
25 of business operates a commercial outlet which regularly leases,
26 offers to lease, or arranges for the leasing of property under a
27 consumer rental purchase agreement; and

28 ~~(8)~~ (10) Property shall mean any property that is not

1 real property under the laws of this state when made available for
 2 a consumer rental purchase agreement; and

3 (11) Total of payments to acquire ownership shall mean
 4 the total of all charges imposed by the lessor and payable by the
 5 consumer as a condition of acquiring ownership of the property.
 6 Total of payments to acquire ownership shall include lease payments
 7 and any initial nonrefundable administrative fee or required
 8 delivery charge but shall not include taxes, late charges,
 9 reinstatement fees, or charges for optional products or services.

10 Sec. 2. Section 69-2104, Reissue Revised Statutes of
 11 Nebraska, is amended to read:

12 69-2104. (1) Before entering into any consumer rental
 13 purchase agreement, the lessor shall disclose to the consumer the
 14 following items as applicable:

15 (a) A brief description of the leased property sufficient
 16 to identify the property to the consumer and lessor;

17 (b) The number, amount, and timing of all lease payments
 18 ~~necessary~~ included in the total of payments to acquire ownership;
 19 ~~of the property;~~

20 (c) The total amount of all initial and periodic of
 21 payments and other charges to acquire ownership; ~~of the property~~
 22 ~~pursuant to the ownership provisions of the consumer rental~~
 23 ~~purchase agreement;~~

24 (d) A statement that the consumer will not own the
 25 property until the consumer has paid ~~made the stated number of~~
 26 ~~payments and~~ the total dollar amount of payments necessary to
 27 acquire ownership plus applicable taxes;

28 (e) A statement that the total of payments to acquire

1 ownership does not include other charges such as late fees taxes,
2 late charges, reinstatement fees, or charges for optional products
3 or services the consumer may have elected to purchase and that the
4 consumer should see the ~~contract~~ rental purchase agreement for an
5 explanation of these charges;

6 (f) A statement that the consumer is responsible for the
7 fair market value, remaining rent, early purchase option amount, or
8 cost of repair of the property, whichever is less, if it is lost,
9 stolen, damaged, or destroyed;

10 (g) A statement indicating whether the property is new or
11 used. A statement that indicates that new property is used shall
12 not be a violation of the Consumer Rental Purchase Agreement Act;

13 (h) A statement of the cash price of the property. When
14 the agreement involves a lease for two or more items, a statement
15 of the aggregate cash price of all items shall satisfy the
16 requirement of this subdivision;

17 (i) The total amount of the ~~of~~ initial payments required
18 to be paid before consummation of the agreement or delivery of the
19 property, whichever occurs later, and an itemization of the
20 components of the initial payment, including any initial
21 nonrefundable administrative fee or delivery charge, lease payment,
22 taxes, or fee or charge for optional products or services;

23 (j) A statement clearly summarizing the terms of the
24 consumer's options to purchase, including a statement that at any
25 time after the first periodic payment is made the consumer may
26 acquire ownership of the property by tendering an amount which may
27 not exceed fifty-five percent of the difference between the total
28 of payments ~~necessary~~ to acquire ownership and the total of lease

1 payments the consumer has paid on the property at that time;

2 (k) A statement identifying the party responsible for
3 maintaining or servicing the property while it is being leased,
4 together with a description of that responsibility and a statement
5 that if any part of a manufacturer's warranty covers the leased
6 property at the time the consumer acquires ownership of the
7 property, such warranty shall be transferred to the consumer if
8 allowed by the terms of the warranty; and

9 (1) The date of the transaction and the names of the
10 lessor and the consumer.

11 (2) With respect to matters specifically governed by the
12 Consumer Credit Protection Act, 15 U.S.C. 1635 et seq., as such act
13 existed on the effective date of this act, compliance with such act
14 shall satisfy the requirements of this section.

15 (3) Subsection (1) of this section shall not apply to a
16 lessor who complies with the disclosure requirements of the
17 Consumer Credit Protection Act, 15 U.S.C. 1667a, as such section
18 existed on the effective date of this act, with respect to a
19 consumer rental purchase agreement entered into with a consumer.

20 Sec. 3. Section 69-2105, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 69-2105. (1) In a consumer rental purchase agreement
23 involving more than one consumer, a lessor need disclose the items
24 required by the Consumer Rental Purchase Agreement Act to only one
25 of the consumers who is primarily obligated. In a consumer rental
26 purchase agreement involving more than one lessor, only one lessor
27 need make the required disclosures.

28 (2) The disclosures required under the act shall be made

1 at or before consummation of the consumer rental purchase
2 agreement.

3 (3) The disclosures shall be made using words and phrases
4 of common meaning in a form that the consumer may keep. For
5 purposes of satisfying the disclosure requirements of the act, the
6 terms lease and rent shall be considered synonymous. The required
7 disclosures shall be set forth clearly and conspicuously. The
8 disclosures shall be placed all together on the front side of the
9 consumer rental purchase agreement or on a separate form. The form
10 setting forth the required disclosures shall contain spaces for the
11 consumer's signature and the date appearing immediately below the
12 disclosures. If the disclosures are made on more than one page,
13 each page shall be signed by the consumer. The requirements of
14 this section shall not have been complied with unless the consumer
15 signs the statement and receives at the time the disclosures are
16 made a legible copy of the signed statement. The inclusion in the
17 required disclosures of a statement that the consumer received a
18 legible copy of those disclosures shall create a rebuttable
19 presumption of receipt.

20 (4) Information required to be disclosed may be given in
21 the form of estimates. Estimates shall be identified as such.

22 (5) If a disclosure becomes inaccurate as the result of
23 any act, occurrence, or agreement after delivery of the required
24 disclosures, the resulting inaccuracy shall not be a violation of
25 the act.

26 (6) Information in addition to that required by section
27 69-2104 may be disclosed if the additional information is not
28 stated, utilized, or placed in a manner which will contradict,

1 obscure, or detract attention from the required information.

2 (7) The department shall adopt and promulgate rules and
3 regulations establishing requirements for the order, acknowledgment
4 by initialing, and conspicuous placement of the disclosures set
5 forth in section 69-2104. Such rules and regulations may allow the
6 disclosures to be made in accordance with model forms prepared by
7 the department.

8 (8) The terms of the consumer rental purchase agreement,
9 except as otherwise provided in the Consumer Rental Purchase
10 Agreement Act, shall be set forth in not less than eight-point
11 standard type or such similar type as prescribed in rules and
12 regulations adopted and promulgated by the department.

13 (9) Every consumer rental purchase agreement shall
14 contain, immediately above or adjacent to the place for the
15 signature of the consumer, a clear, conspicuous, printed or
16 typewritten notice, in boldface, ten-point type, in substantially
17 the following language:

18 NOTICE TO CONSUMER -- READ BEFORE SIGNING

19 a. DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT,
20 INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE
21 ADVISED.

22 b. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

23 c. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU
24 SIGN.

25 Sec. 4. Section 69-2108, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 69-2108. Each consumer rental purchase agreement shall:

28 (1) Provide that the consumer may terminate the agreement

1 without penalty by voluntarily surrendering or returning the
2 property upon expiration of any lease term; and

3 (2) Contain a provision for reinstatement which shall
4 include, but not be limited to:

5 (a) Permitting a consumer who fails to make a timely
6 lease rental payment to reinstate the agreement without losing any
7 rights or options which exist under the agreement by the payment of
8 all past-due lease rental charges, the reasonable costs of pickup,
9 redelivery, and any refurbishing, and any applicable late fee
10 within five business days of the renewal date of the agreement if
11 the consumer pays monthly or within three business days of the
12 renewal date of the agreement if the consumer pays more frequently
13 than monthly; and

14 (b) Permitting the consumer to reinstate the agreement
15 during a period of not less than thirty days after the date of the
16 return of the property if the consumer promptly returns or
17 voluntarily surrenders the property upon request by the lessor or
18 its agent. In the event the consumer has paid not less than sixty
19 percent and not more than eighty percent of the ~~amount called for~~
20 ~~under the contract to obtain~~ total of payments to acquire
21 ownership, the reinstatement period shall be extended to a total of
22 ninety days after the date of the return of the property. In the
23 event the consumer has paid eighty percent or more of the ~~amount~~
24 ~~called for under the contract to obtain~~ total of payments to
25 acquire ownership, the reinstatement period shall be extended to a
26 total of one hundred eighty days after the date of the return of
27 the property.

28 Nothing in this section shall prevent a lessor from

1 attempting to repossess property during the reinstatement period,
 2 but such repossession shall not affect the consumer's right to
 3 reinstate. Upon reinstatement, the lessor shall provide the
 4 consumer with the same property or substitute property of
 5 comparable quality and condition.

6 Sec. 5. Section 69-2109, Reissue Revised Statutes of
 7 Nebraska, is amended to read:

8 69-2109. A lessor shall not:

9 (1) Charge a penalty for early termination of a consumer
 10 rental purchase agreement or for the return of an item at any point
 11 except for those charges authorized by section 69-2110;

12 (2) Require payment by a cosigner of the consumer rental
 13 purchase agreement of any fees or charges which could not be
 14 imposed upon the consumer as part of the consumer rental purchase
 15 agreement; ~~or~~

16 (3) ~~Assess~~ Require payment of any charges unless ~~or~~
 17 ~~utilize forms which reference any charges except for charges~~
 18 ~~specifically authorized by subsection (1) of section 69-2110; or~~

19 (4) Increase the lease payment or the total of payments
 20 to acquire ownership as a result of a consumer's declining to
 21 purchase liability damage waiver.

22 Sec. 6. Section 69-2110, Reissue Revised Statutes of
 23 Nebraska, is amended to read:

24 69-2110. (1) The lessor may contract for and receive:

25 (a) An ~~an~~ initial nonrefundable administrative fee of not
 26 more than ten dollars;

27 (b) A ~~if~~ a security deposit, if ~~is~~ ~~required~~ ~~by~~ ~~the~~
 28 ~~lessor,~~ the amount of the deposit and the conditions under which

1 all or a part of the deposit will be returned ~~shall be~~ is disclosed
 2 with the disclosures required by sections 69-2104 and 69-2105; ~~+~~

3 ~~(c) A (2) The lesser may contract for and receive a~~
 4 delivery charge of not more than ten dollars or, in the case of a
 5 consumer rental purchase agreement covering more than five items, a
 6 delivery charge of not more than twenty-five dollars, ~~+~~ ~~A delivery~~
 7 ~~charge may be assessed only~~ if (i) the lessor actually delivers the
 8 items to the place designated by the consumer, (ii) ~~and~~ the
 9 delivery charge is disclosed with the disclosures required by
 10 sections 69-2104 and 69-2105, and (iii) such charge is ~~+~~ ~~The~~
 11 ~~delivery fee may be assessed~~ in lieu of and not in addition to the
 12 administrative fee in subsection (1) of this section; ~~+~~

13 ~~(d) Late (3) The parties may contract for late fees as~~
 14 follows:

15 ~~(a) (i)~~ For consumer rental purchase agreements with
 16 monthly renewal dates, a late fee of not more than five dollars may
 17 be assessed on any payment not made within five business days after
 18 the payment is due; ~~and~~

19 ~~(b) (ii)~~ For consumer rental purchase agreements with
 20 ~~weekly or biweekly more frequent than monthly~~ renewal dates, a late
 21 fee of not more than three dollars may be assessed on any payment
 22 not made within three business days after payment is due; and ~~+~~

23 (iii) A late fee on a consumer rental purchase agreement
 24 may be collected only once on any accrued payment no matter how
 25 long such payment remains unpaid, may be collected at the time it
 26 accrues or at any time thereafter, and shall not be assessed
 27 against a payment that is timely made even though an earlier late
 28 fee has not been paid in full; and ~~+~~

1 ~~(4) The lessor may contract for and receive a (e) In~~
2 ~~addition to any applicable late fee, a reinstatement fee of not~~
3 ~~more than five dollars which may be assessed only if the consumer~~
4 ~~exercises the reinstatement provision of the agreement. The~~
5 ~~reinstatement fee may be assessed in addition to any applicable~~
6 ~~late fee.~~

7 (2) The parties may contract for fees for liability
8 damage waiver or similar products or services if:

9 (a) Purchasing the product or service is optional and is
10 not a factor in the approval of the lessor of the consumer rental
11 purchase transaction and such facts are clearly disclosed in
12 writing to the consumer; and

13 (b) The consumer has signed or initialed an affirmative
14 written request to purchase the product or service after receiving
15 a written disclosure of the cost of such product or service.

16 (3) In addition to the requirements in subsection (2) of
17 this section a contract containing fees for liability damage waiver
18 shall include the following:

19 (a) For a consumer rental purchase agreement with
20 scheduled lease payments more frequent than monthly, the amount of
21 the liability damage waiver shall not exceed eight percent of any
22 lease payment or two dollars for each scheduled lease payment,
23 whichever is greater; and

24 (b) For a consumer rental purchase agreement with monthly
25 lease payments, the amount of the liability damage waiver shall not
26 exceed eight percent of any lease payment or five dollars for each
27 scheduled lease payment, whichever is greater.

28 (4) The parties may contract for other products or

1 services incidental to the consumer rental purchase transaction
2 which do not evade the provisions of the Consumer Rental Purchase
3 Agreement Act.

4 Sec. 7. Section 69-2112, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 69-2112. (1) Any advertisement for a consumer rental
7 purchase agreement which refers to or states the amount of any
8 payment or the right to acquire ownership for any specific item
9 shall also state clearly and conspicuously the following if
10 applicable:

11 (a) That the transaction advertised is a consumer rental
12 purchase agreement;

13 (b) The total ~~dollar amount~~ of payments ~~necessary~~ to
14 acquire ownership; and

15 (c) That the consumer acquires no ownership rights ~~if~~
16 until the total of payments dollar amount necessary to acquire
17 ownership is ~~not~~ paid.

18 (2) Any owner or employee of any medium in which an
19 advertisement appears or through which it is disseminated shall not
20 be liable under this section.

21 (3) Subsection (1) of this section shall not apply to an
22 advertisement which does not refer to a specific item of property,
23 which does not refer to or state the amount of any payment, or
24 which is published in the yellow pages of a telephone directory or
25 any similar directory of business.

26 (4) With respect to matters specifically governed by the
27 Consumer Credit Protection Act, 15 U.S.C. 1635 et seq., as such act
28 existed on the effective date of this act, compliance with such act

1 shall satisfy the requirements of this section.

2 Sec. 8. Section 69-2113, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 69-2113. (1) A lessor who fails to comply with the
5 requirements of sections 69-2104 to 69-2110 with respect to a
6 consumer shall be liable to the consumer for:

7 (a) The greater of the actual damages sustained by the
8 consumer as a result of the violation or, in the case of an
9 individual action, twenty-five percent of the total of payments
10 ~~necessary~~ to acquire ownership but not less than one hundred
11 dollars nor more than one thousand dollars; and

12 (b) The costs of the action and reasonable attorney's
13 fees.

14 (2) In the case of an advertisement, any lessor who fails
15 to comply with the requirements of section 69-2112 with regard to
16 any person shall be liable to that person for actual damages
17 suffered from the violation, the costs of the action, and
18 reasonable attorney's fees.

19 (3) When there is more than one lessor, liability shall
20 be imposed only on the lessor who made the disclosures. When no
21 disclosures have been made, liability shall be imposed jointly and
22 severally on all lessors.

23 (4) When there is more than one consumer, there shall be
24 only one recovery of damages under subsection (1) of this section
25 for a violation of the Consumer Rental Purchase Agreement Act.

26 (5) Multiple violations in connection with a single
27 consumer rental purchase agreement shall entitle the consumer to a
28 single recovery under this section.

1 (6) A consumer shall not take any action to offset any
2 amount for which a lessor is potentially liable under subsection
3 (1) of this section against any amount owed by the consumer unless
4 the amount of the lessor's liability has been determined by
5 judgment of a court of competent jurisdiction in an action to which
6 the lessor was a party. This subsection shall not bar a consumer
7 then in default on the obligation from asserting a violation of the
8 act as an original action or as a defense or counterclaim to an
9 action brought by the lessor to collect an amount owed by the
10 consumer.

11 (7) In connection with any transaction covered under the
12 act, the lessor shall preserve evidence of compliance with the
13 provisions of the act for not less than two years from the date of
14 consummation of the agreement.

15 Sec. 9. Section 69-2115, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 69-2115. (1) A lessor shall not be liable for a
18 violation under section 69-2113 if the lessor proves by a
19 preponderance of the evidence that the violation was not
20 intentional, that the violation resulted from a bona fide error,
21 and that the lessor maintained procedures reasonably adapted to
22 avoid such an error. A bona fide error shall include, but not be
23 limited to, clerical, calculation, computer malfunction and
24 programming, and printing errors. An error of legal judgment with
25 respect to requirements of the Consumer Rental Purchase Agreement
26 Act shall not be considered a bona fide error.

27 (2) A lessor shall not be liable under the act for any
28 act done or omitted in good faith in conformity with any rule,

1 regulation, or interpretation issued, adopted, or promulgated by
2 the Attorney General, by the department, or by an official duly
3 authorized by the Attorney General or the department even if after
4 the act or omission has occurred the rule, regulation, or
5 interpretation is amended, rescinded, or determined by judicial or
6 other authority to be invalid for any reason.

7 (3) With respect to the dollar amount of any disclosure
8 required by the act, a lessor shall not be liable if the dollar
9 amount actually disclosed is greater than the dollar amount
10 required to be disclosed by the act.

11 Sec. 10. Original sections 69-2103 to 69-2105, 69-2108
12 to 69-2110, 69-2112, 69-2113, and 69-2115, Reissue Revised Statutes
13 of Nebraska, are repealed.