

103^D CONGRESS
1ST SESSION

H. R. 2803

To amend the Consumer Credit Protection Act to improve disclosures made to consumers who enter into rental-purchase transactions, to set standards for collection practices, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1993

Mr. LAROCO introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

A BILL

To amend the Consumer Credit Protection Act to improve disclosures made to consumers who enter into rental-purchase transactions, to set standards for collection practices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rental-Purchase Re-
5 form Act of 1993”.

1 **SEC. 2. REQUIREMENTS FOR RENTAL-PURCHASE TRANS-**
2 **ACTIONS.**

3 The Consumer Credit Protection Act (15 U.S.C.
4 1601 et seq.) is amended by adding at the end the follow-
5 ing new title:

6 **“TITLE X—RENTAL-PURCHASE**
7 **TRANSACTIONS**

8 **“§ 1001. Short title**

9 “This title may be cited as the ‘Rental-Purchase Re-
10 form Act of 1993’.

11 **“§ 1002. Findings and purposes**

12 “(a) The Congress finds that a significant number
13 of consumers engage in rental-purchase transactions.
14 These transactions have taken place, in many instances,
15 without provision of adequate disclosures and other pro-
16 tections to consumers.

17 “(b) The purposes of this title are the following:

18 “(1) To assure meaningful disclosure of the
19 terms of rental-purchase agreements, including dis-
20 closure of all costs to consumers under those agree-
21 ments.

22 “(2) To regulate the collection practices of rent-
23 al-purchase merchants.

24 “(3) To provide certain substantive rights to
25 consumers under rental purchase agreements.

1 **“§ 1002. Definitions**

2 “(a) For purposes of this title:

3 “(1) The term ‘advertisement’ means a com-
4 mercial message in any medium intended to aid, pro-
5 mote, or assist, directly or indirectly, a rental-pur-
6 chase agreement.

7 “(2) The term ‘agricultural purpose’ includes—

8 “(A) the production, harvest, exhibition,
9 marketing, transportation, processing, or manu-
10 facture of agricultural products by a natural
11 person who cultivates plants or propagates or
12 nurtures agricultural products; and

13 “(B) the acquisition of farmlands, real
14 property with a farm residence, or personal
15 property and services used primarily in farm-
16 ing.

17 “(3) The term ‘Board’ means the Board of
18 Governors of the Federal Reserve System.

19 “(4) The term ‘consumer’ means an individual
20 that, as a party to a rental-purchase agreement, is
21 provided use of personal property.

22 “(5) The term ‘date of consummation’ means
23 the date on which a consumer becomes contractually
24 obligated under a rental-purchase agreement.

25 “(6) The term ‘merchant’ means a person who
26 provides the use of property through a rental-pur-

1 chase agreement and to whom a consumer's initial
2 obligation under the agreement is payable.

3 “(7) The term ‘personal property’ means prop-
4 erty that is not real property under the laws of the
5 State where the property is located when it is made
6 available under a rental-purchase agreement.

7 “(8) The term ‘rental-purchase agreement’—

8 “(A) means an agreement between a
9 consumer and a merchant—

10 “(i) under which the merchant agrees
11 to provide to the consumer the use of per-
12 sonal property for an initial period of 4
13 months or less,

14 “(ii) that is automatically renewable
15 with each payment by the consumer, and

16 “(iii) that permits but does not obli-
17 gate the consumer to become the owner of
18 the property; and

19 “(B) does not include any credit sale (as
20 that term is defined in section 103(g)).

21 “(9) The term ‘State’ means any State, the
22 District of Columbia, the Commonwealth of Puerto
23 Rico, and any territory or possession of the United
24 States.

1 “(b) REFERENCES TO REGULATIONS.—Any ref-
2 erence to any provision of this title shall be considered
3 to include reference to the regulations prescribed by the
4 Board under this title.

5 **“§ 1004. Exempted transactions**

6 “‘This title does not apply to rental-purchase agree-
7 ments primarily for business, commercial, or agricultural
8 purposes, or those made with government agencies or in-
9 strumentalities or with organizations.

10 **“§ 1005. General disclosure requirements**

11 “(a) The merchant under a rental-purchase agree-
12 ment shall disclose to the consumer under the agreement
13 the information required by this title. In a transaction in-
14 volving more than 1 merchant, only 1 merchant is required
15 to make the disclosures.

16 “(b) The disclosures required under this title shall
17 be made—

18 “(1) at or before the date of consummation of
19 the rental-purchase agreement;

20 “(2) clearly and conspicuously in writing, in a
21 form that the consumer may keep; and

22 “(3) in the case of disclosures required under
23 section 1006, segregated from all other terms, data,
24 or information provided to the consumer.

1 “(c) If a disclosure required to be made by a mer-
2 chant under this title becomes inaccurate as the result of
3 any act, occurrence, or agreement occurring after delivery
4 of the required disclosure, the resulting inaccuracy is not
5 a violation of this title.

6 **“§ 1006. Rental-purchase disclosures**

7 “For each rental-purchase agreement, the merchant
8 shall disclose to the consumer under the agreement the
9 following, as applicable:

10 “(1) The amount of the initial rental payment,
11 including any fees, taxes, or other charges which
12 may be required at or before the date of consumma-
13 tion of the agreement.

14 “(2) The amount and timing of rental renewal
15 payments.

16 “(3) The total number and the total dollar
17 amount of rental payments and other charges nec-
18 essary to acquire ownership of the property.

19 “(4) A statement that the consumer will not
20 own the property until the consumer has made the
21 total dollar amount necessary to acquire ownership.

22 “(5) A statement that the total dollar amount
23 of payments does not include other charges, such as
24 late payment or reinstatement fees, and that the
25 consumer should examine the rental-purchase agree-

1 ment for an explanation of these charges, if applica-
2 ble.

3 “(6) A statement that the consumer may be re-
4 sponsible for the fair market value of the property
5 if it is lost, stolen, damaged, or destroyed.

6 “(7) A statement indicating whether the prop-
7 erty is new or used, except that a statement that in-
8 dicates that new property is used property is not a
9 violation of this title.

10 “(8) A statement of—

11 “(A) the manufacturer’s suggested retail
12 price, where applicable, or

13 “(B) the price for which the property is
14 available from the merchant in a cash sale.

15 “(9) A clear statement of the terms of the con-
16 sumer’s option to purchase.

17 “(10) A statement—

18 “(A) identifying the party that is respon-
19 sible for maintaining or servicing the property
20 while it is being rented;

21 “(B) describing that responsibility; and

22 “(C) disclosing that if any part of a manu-
23 facturer’s express warranty covers the property
24 at the time the consumer acquires ownership of
25 the property, the warranty will be transferred

1 to the consumer if allowed by the terms of the
2 warranty.

3 “(11) The date of consummation of the trans-
4 action and the identities of the merchant and
5 consumer.

6 **“§ 1007. Point-of-sale disclosures**

7 “Each item of property displayed or offered pursuant
8 to a rental-purchase agreement shall have affixed to it a
9 point-of-sale card, tag, or label that clearly and conspicu-
10 ously discloses only the following:

11 “(1) Whether the property is new or used.

12 “(2) The price of the property in a cash sale.

13 “(3) The amount of each rental payment under
14 the agreement.

15 “(4) The total number of rental payments nec-
16 essary to acquire ownership of the property under
17 the agreement.

18 “(5) The total dollar amount of rental pay-
19 ments necessary to acquire ownership of the prop-
20 erty under the agreement.

21 **“§ 1008. Prohibited practices**

22 “(a) A rental-purchase agreement may not contain—

23 “(1) a confession of judgment;

24 “(2) a negotiable instrument;

1 “(3) a security interest or any other claim of a
2 property interest in any goods except those goods
3 the use of which is provided by the merchant pursu-
4 ant to the agreement;

5 “(4) a wage assignment; or

6 “(5) a waiver by the consumer of a claim or de-
7 fense.

8 “(b) Each rental-purchase agreement shall—

9 “(1) provide a statement of any obligation of
10 the consumer and the merchant under the agree-
11 ment to repair any defect or malfunction of the
12 property covered by the agreement, and any limita-
13 tion of those obligations;

14 “(2) provide that the consumer may terminate
15 the agreement without penalty by voluntarily surren-
16 dering or returning the property covered by the
17 agreement upon expiration of any rental term; and

18 “(3) contain a provision for reinstatement of
19 the agreement, which at a minimum—

20 “(A) permits a consumer who fails to make
21 a timely rental renewal payment to reinstate
22 the agreement, without losing any rights or op-
23 tions which exist under the agreement, by the
24 payment of all past due rental charges and any
25 late fee, within 7 days after the renewal date;

1 “(B) if the consumer returns or voluntarily
2 surrenders the property covered by the agree-
3 ment, other than through judicial process, dur-
4 ing the applicable reinstatement period set forth
5 in subparagraph (A), permits the consumer to
6 reinstate the agreement during a period of at
7 least 30 days after the date of the return or
8 surrender of the property by the payment of all
9 past due rental charges, and any applicable re-
10 delivery, repair, or late fees; and

11 “(C) if the consumer has paid 60 percent
12 or more of the total dollar amount of payments
13 necessary to acquire ownership of the property
14 under the agreement and returns or voluntarily
15 surrenders the property, other than through ju-
16 dicial process, during the applicable reinstate-
17 ment period set forth in subparagraph (A), per-
18 mits the consumer to reinstate the agreement
19 during a period of at least 90 days after the
20 date of the return of the property by the pay-
21 ment of all past due rental charges, and any
22 applicable redelivery, repair, or late fees.

23 “(c) Subsection (b) shall not be construed to prevent
24 a merchant from attempting to repossess property during
25 the reinstatement period, but such a repossession does not

1 affect the consumer's right to reinstate. Upon reinstate-
2 ment, the merchant shall provide the consumer with the
3 same property, or substitute property of comparable qual-
4 ity and condition.

5 **“§ 1009. Collection practices**

6 “(a) A merchant under a rental-purchase agreement,
7 in communicating with any person other than the
8 consumer for the purpose of acquiring information as to
9 the location of a consumer—

10 “(1) shall identify himself or herself and state
11 that he or she is confirming or correcting location
12 information concerning the consumer;

13 “(2) shall not communicate with any person
14 more than once, unless—

15 “(A) requested to do so by the person, or

16 “(B) the merchant reasonably believes that
17 the earlier response is erroneous or incomplete
18 and that the person now has correct or com-
19 plete location information;

20 “(3) shall not communicate by postcard;

21 “(4) shall not use any language or symbol on
22 any envelope or in the contents of any communica-
23 tion which indicates that the communication relates
24 to the recovery or repossession of property; and

1 “(5) shall not communicate with any person
2 other than the consumer’s attorney, after the mer-
3 chant knows the consumer is represented by an at-
4 torney with regard to the rental-purchase agreement
5 and has knowledge of, or can readily ascertain, the
6 attorney’s name and address, unless the attorney
7 fails to respond within a reasonable period of time
8 to communication from the merchant or unless the
9 attorney consents to direct communication with the
10 consumer.

11 “(b)(1) Without the prior consent of the consumer
12 given directly to the merchant or the express permission
13 of a court of competent jurisdiction, a merchant shall not
14 communicate with a consumer in connection with the re-
15 covery or repossession of property—

16 “(A) at the consumer’s place of employment;

17 “(B) at any unusual time or place or a time; or

18 “(C) at any place known or which should be
19 known to be inconvenient to the consumer.

20 “(2) In the absence of knowledge of circumstances
21 to the contrary, a merchant shall assume that the conven-
22 ient time for communicating with a consumer is after 8:00
23 a.m. and before 9:00 p.m., local time at the consumer’s
24 location.

1 “(c) A merchant may not communicate, in connection
2 with a rental-purchase agreement, with any person other
3 than the consumer, the consumer’s attorney, or the mer-
4 chant’s attorney, except—

5 “(1) as reasonably necessary to acquire location
6 information concerning the consumer in accordance
7 with subsection (a);

8 “(2) after receiving prior consent from the
9 consumer given directly to the merchant;

10 “(3) after receiving express permission of a
11 court of competent jurisdiction; or

12 “(4) as reasonably necessary to effectuate a
13 post-judgment judicial remedy.

14 “(d) If a consumer notifies the merchant in writing
15 that the consumer desires the merchant to cease further
16 communication with the consumer, the merchant shall not
17 communicate further with the consumer with respect to
18 the rental-purchase agreement, except—

19 “(1) to advise the consumer that the mer-
20 chant’s further efforts to communicate are being ter-
21 minated;

22 “(2) to notify the consumer that the merchant
23 may invoke specified remedies allowable under law
24 which are ordinarily invoked by the merchant; or

1 “(3) as necessary to effectuate any post-judg-
2 ment remedy.

3 “(e) A merchant shall not—

4 “(1) use or threaten to use violence or criminal
5 means to harm the physical person, reputation, or
6 property of any person;

7 “(2) use obscene, profane, or abusive language;

8 “(3) cause a telephone to ring, or engage any
9 person in telephone conversation, repeatedly or con-
10 tinuously with intent to annoy, abuse, or harass any
11 person;

12 “(4) place any telephone call without disclosing
13 the caller’s identity; or

14 “(5) perform any other act intended to harass
15 or abuse a consumer.

16 **“§ 1010. Receipts and accounts**

17 “A merchant shall provide the consumer a written re-
18 ceipt for each payment made by cash or money order.

19 **“§ 1011. Renegotiations and extensions**

20 “A renegotiation of a rental-purchase agreement is
21 deemed to be a new agreement for purposes of this title,
22 requiring new disclosures. A renegotiation shall be consid-
23 ered to occur when an existing rental-purchase agreement
24 is satisfied and replaced by a new agreement undertaken

1 by the same merchant. Events such as the following shall
2 not be treated as renegotiations:

3 “(1) The addition or return of property in a
4 multiple-item agreement or the substitution of prop-
5 erty, if in either case the average payment allocable
6 to a payment period is not changed by more than 25
7 percent.

8 “(2) A deferral or extension of one or more
9 periodic payments, or portions of a periodic pay-
10 ment.

11 “(3) A reduction in charges in the agreement.

12 “(4) An agreement involving a court proceed-
13 ing.

14 “(5) Any other event described in regulations
15 prescribed by the Board.

16 **“§ 1012. Rental-purchase advertising**

17 “(a) If an advertisement refers to or states the
18 amount of any payment or the right to acquire ownership,
19 the merchant that makes the advertisement shall also
20 clearly and conspicuously state in the advertisement the
21 following items, as applicable:

22 “(1) That the transaction advertised is to occur
23 under a rental-purchase agreement.

1 “(2) The total number and total dollar amount
2 of rental payments necessary to acquire ownership
3 under the agreement.

4 “(3) That the consumer acquires no ownership
5 rights in the property if the total dollar amount of
6 rental payments necessary to acquire ownership is
7 not paid.

8 “(b) The owner or personnel of any medium in which
9 an advertisement appears or through which it is dissemi-
10 nated shall not be liable for a violation of this section.

11 “(c) Subsection (a) does not apply to an advertise-
12 ment which—

13 “(1) does not refer to or state the amount of
14 any payment,

15 “(2) is published in the yellow pages of a tele-
16 phone directory or in any similar directory of busi-
17 nesses, or

18 “(3) is displayed in the merchant’s place of
19 business.

20 **“§ 1013. Administrative enforcement**

21 “(a) The requirements imposed by this title shall be
22 enforced by the Board.

23 “(b) All of the functions and powers of the Board
24 under this Act are available to the Board to enforce com-

1 pliance by any person with the requirements imposed by
2 this title.

3 **“§ 1014. Civil liability**

4 “(a) Except as otherwise provided in this title, a mer-
5 chant who willfully violates this title with respect to a
6 consumer is liable to the consumer in an amount equal
7 to the following:

8 “(1) In an action by an individual consumer,
9 the sum of—

10 “(A) actual damages sustained by the
11 consumer as a result of the violation; and

12 “(B) not less than \$100.

13 “(2) In a class action, the amount the court de-
14 termines to be appropriate with no minimum recov-
15 ery as to each member.

16 “(b)(1) An action under this section may be brought
17 in any United States district court of competent jurisdic-
18 tion, by not later than one year of the date of the occur-
19 rence of the violation.

20 “(2) This subsection does not bar a consumer from
21 asserting a violation of this title in an action to collect
22 a debt brought more than one year after the date of the
23 occurrence of the violation as a matter of defense by
24 recoupment or set off, except as otherwise provided by
25 State law.

1 “(c)(1) A consumer may not take any action to offset
2 any amount for which a merchant is potentially liable
3 under subsection (a) against any amount owed by the
4 consumer, unless the amount of the merchant’s liability
5 has been determined by judgment of a court of competent
6 jurisdiction in an action in which the merchant was a
7 party.

8 “(2) This subsection does not bar a consumer who
9 is in default on the obligation from asserting a violation
10 of this title as an original action, or as a defense or coun-
11 terclaim to an action brought by the merchant to collect
12 amounts owed by the consumer.

13 **“§ 1015. Defenses**

14 “(a) A merchant is not liable under section 1014 for
15 a violation of the requirements of section 1006 if within
16 15 days after first having knowledge of the violation, and
17 before an action under section 1014 is filed or written no-
18 tice of the violation is received from the consumer, the
19 merchant notifies the consumer of the violation and makes
20 whatever adjustments in the account are necessary to as-
21 sure that the consumer will not be required to pay an
22 amount in excess of the amounts actually disclosed.

23 “(b)(1) A merchant is not liable under this title for
24 any act done or omitted in good faith in conformity with
25 any rule, regulation, interpretation, or approval promul-

1 gated by the Board or by an official duly authorized by
2 the Board.

3 “(2) Paragraph (1) applies even if, after the act or
4 omission has occurred, the rule, regulation, interpretation,
5 or approval is amended, rescinded, or determined by judi-
6 cial or other authority to be invalid for any reason.

7 “(c) A merchant is not liable under this title for a
8 violation if the merchant establishes, and at the time of
9 the violation is implementing, procedures reasonably cal-
10 culated to prevent the violation.

11 **“§ 1016. Liability of assignees**

12 “(a) For purposes of sections 1014 and 1015, the
13 term ‘merchant’ includes an assignee of a merchant. How-
14 ever, an action under section 1014 for a violation of this
15 title may be brought against an assignee only if the viola-
16 tion is apparent on the face of the rental-purchase agree-
17 ment to which it relates. A violation apparent on the face
18 of a rental-purchase agreement includes a disclosure that
19 can be determined to be incomplete or inaccurate from the
20 face of the agreement. An assignee has no liability in a
21 case in which the assignment is involuntary.

22 “(b) In an action by or against an assignee, the con-
23 sumer’s written acknowledgement of receipt of a disclosure
24 shall be conclusive proof that the disclosure was made, if
25 the assignee had no knowledge that the disclosure had not

1 been made when the assignee acquired the rental-purchase
2 agreement to which it relates.

3 **“§ 1017. Regulations**

4 “(a) The Board shall issue regulations to carry out
5 the purposes of this title, to prevent its circumvention, and
6 to facilitate compliance with its requirements. The regula-
7 tions may contain classifications and differentiations and
8 may provide for adjustments and exceptions for any class
9 of transaction.

10 “(b) The Board shall publish model disclosure forms
11 and clauses to facilitate compliance with the disclosure re-
12 quirements of this title and to aid consumers in under-
13 standing transactions under rental-purchase agreements.
14 In designing forms, the Board shall consider the use by
15 merchants of data processing or similar automated equip-
16 ment. Use of the models shall be optional. A merchant
17 who properly uses the model disclosure forms shall be
18 deemed to be in compliance with the disclosure require-
19 ments.

20 “(c) Any regulation issued by the Board, or any
21 amendment or interpretation thereof, that requires a dis-
22 closure different from the disclosures previously required
23 by regulations of the Board shall not be effective before
24 the October 1 that follows the date of promulgation by
25 at least 6 months. The Board may at its discretion length-

1 en that period of time to permit merchants to adjust their
2 forms to accommodate new requirements. The Board may
3 also shorten that period of time, notwithstanding the first
4 sentence, if it makes a specific finding that such action
5 is necessary to comply with the findings of a court or to
6 prevent unfair or deceptive practices. In any case, mer-
7 chants may comply with any newly promulgated disclosure
8 requirement prior to its effective date.

9 **“§ 1018. Relation to state laws**

10 “This title does not annul, alter, affect, or exempt
11 any person subject to this title from complying with the
12 laws of any State with respect to a matter covered by this
13 title, except to the extent that those laws—

14 “(1) are inconsistent with this title; and

15 “(2) provide a lesser degree of protection for
16 consumers.

17 **“§ 1019. Effect on government agencies**

18 “No civil liability under this title may be imposed on
19 the United States or any of its departments or agencies,
20 any State or political subdivision, or any agency of a State
21 or political subdivision.”.

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