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To amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 1997

Mr. JONES (for himself, Mr. ACKERMAN, Mr. MANTON, and Mr. MCCOLLUM) introduced the following bill; which was referred to the Committee on Banking and Financial Services

A BILL

To amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, 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 “Consumer Disclosure
5 and Rental Purchase Agreement Act”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds that a significant
3 number of consumers engage in rental-purchase trans-
4 actions. These transactions have taken place, in many in-
5 stances, without adequate disclosures and other protec-
6 tions to consumers.

7 (b) PURPOSE.—The purpose of the amendment to the
8 Consumer Credit Protection Act is—

9 (1) to assure meaningful disclosure of the terms
10 of rental-purchase agreements, including disclosures
11 of all costs to consumers under such agreements,
12 and

13 (2) to provide certain substantive rights to con-
14 sumers who enter into rental-purchase agreements.

15 **SEC. 3. CONSUMER CREDIT PROTECTION ACT.**

16 The Consumer Credit Protection Act is amended by
17 adding at the end the following:

18 **“TITLE X—RENTAL PURCHASE**
19 **AGREEMENTS**

20 **“SEC. 1001. DEFINITIONS.**

21 “For purposes of this title:

22 “(1) The term ‘advertisement’ means a com-
23 mercial message in any medium that promotes, di-
24 rectly or indirectly, a rental-purchase agreement.

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

1 “(A) the production, harvest, exhibition,
2 marketing, transformation, processing, or man-
3 ufacture of agricultural products by a natural
4 person who cultivates plants or propagates or
5 nurtures agricultural products; and

6 “(B) the acquisition of farmlands, real
7 property with a farm residence, or personal
8 property and services used primarily in farm-
9 ing.

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

12 “(4) The term ‘consumer’ means a natural per-
13 son who is offered or enters into a rental-purchase
14 agreement.

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

18 “(6) The term ‘merchant’ means a person who
19 provides the use of property through a rental-pur-
20 chase agreement in the ordinary course of business
21 and to whom a consumer’s initial obligation under
22 the agreement is payable.

23 “(7) The term ‘personal property’ means prop-
24 erty that is not real property under the laws of the
25 State where the property is located when it is made

1 available under a rental-purchase agreement unless
2 otherwise stated.

3 “(8) The term ‘rental-purchase agreement’
4 means—

5 “(A) a contract between a consumer and a
6 merchant—

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

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

13 “(iii) that permits but does not obli-
14 gate the consumer to become the owner of
15 the property, and

16 “(B) does not include any credit sale as
17 defined in section 103(g).

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

22 **“SEC. 1002. EXEMPTED TRANSACTIONS.**

23 “This title does not apply to rental-purchase agree-
24 ments primarily for business, commercial, or agricultural

1 purposes, or those made with Government agencies or in-
2 strumentalities.

3 **“SEC. 1003. GENERAL DISCLOSURE REQUIREMENTS.**

4 “(a) IN GENERAL.—The merchant under a rental-
5 purchase agreement shall disclose to the consumer under
6 the agreement the information required by sections 1004,
7 1005, and 1006. In an agreement involving more than 1
8 merchant, only 1 merchant is required to make the disclo-
9 sures.

10 “(b) DISCLOSURE.—The disclosures required under
11 sections 1004 and 1005 and the agreement provisions re-
12 quired to be included under 1006 shall be made or in-
13 cluded—

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

16 “(2) clearly and conspicuously in writing and in
17 a form that the consumer may keep; and

18 “(3) in a case of disclosures required under sec-
19 tion 1004, segregated from all other terms, data, or
20 information provided to the consumer.

21 “(c) INACCURACY.—If a disclosure required to be
22 made by a merchant to a consumer under section 1004
23 becomes inaccurate as the result of any mutual written
24 agreement between the merchant and such consumer oc-
25 ccurring after delivery of the required disclosure to such

1 consumer under this title, the resulting inaccuracy is not
2 a violation of this title.

3 **“SEC. 1004. RENTAL-PURCHASE DISCLOSURES.**

4 “For each rental-purchase agreement, the merchant
5 shall disclose to the consumer, to the extent applicable,
6 under the agreement the following:

7 “(1) The amount of the first periodic payment
8 and the total amount of fees, taxes, or other charges
9 which may be required at or before the date of con-
10 summation of the agreement.

11 “(2) The amount and timing of rental pay-
12 ments.

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

16 “(4) A statement that the consumer will not
17 own the property until the consumer has paid the
18 total dollar amount necessary to acquire ownership.

19 “(5) A disclosure that the total dollar amount
20 payments does not include certain other charges.

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

24 “(7) A statement indicating whether the prop-
25 erty is new or used, except a statement indicating

1 that new property is used property is not a violation
2 of this title.

3 “(8) A statement of—

4 “(A) the manufacturer’s suggested retail
5 price, where applicable, or

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

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

10 “(10) A statement—

11 “(A) identifying the party responsible for
12 maintaining or servicing the property while it is
13 being rented;

14 “(B) describing the responsibility for main-
15 tenance or service; and

16 “(C) disclosing that if any part of a manu-
17 facturer’s express warranty covers the property
18 at the time the consumer acquires ownership of
19 the property, the warranty will be transferred
20 to the consumer if allowed by the terms of the
21 warranty.

22 “(11) The date of consummation of the trans-
23 action and the identities of the merchant and
24 consumer.

25 “(12) Late fees for past due rental charges.

1 **“SEC. 1005. POINT-OF-RENTAL DISCLOSURES.**

2 “Each item of property displayed or offered in con-
3 nection with a rental-purchase agreement shall have af-
4 fixed to it a card, tag, or label that clearly and conspicu-
5 ously discloses only the following:

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

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

8 “(3) The amount of each rental payment.

9 “(4) The total number of rental payments nec-
10 essary to acquire ownership of the property.

11 “(5) The total dollar amount of rental pay-
12 ments necessary to acquire ownership of the prop-
13 erty.

14 **“SEC. 1006. AGREEMENT PROVISIONS.**

15 “(a) IN GENERAL.—Each rental-purchase agreement
16 shall—

17 “(1) provide a statement of any obligation of
18 the consumer and the merchant under the agree-
19 ment to repair any defect or malfunction of the
20 property covered by the agreement, and any limita-
21 tion of those obligations;

22 “(2) provide that the consumer may terminate
23 the agreement without penalty by voluntarily surren-
24 dering or returning the property covered by the
25 agreement upon expiration of any rental term; and

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

3 “(A) permits a consumer who fails to make
4 a timely rental renewal payment to reinstate
5 the agreement, without losing any rights or op-
6 tions which exist under the agreement, by the
7 payment of all past due rental charges and any
8 late fee, within 7 business days after the re-
9 newal date if the consumer pays monthly, or
10 within 3 business days after the renewal date if
11 the consumer pays more frequently than month-
12 ly;

13 “(B) if the consumer returns or voluntarily
14 surrenders the property covered by the agree-
15 ment, other than through judicial process, dur-
16 ing the applicable reinstatement period set forth
17 in subparagraph (A), permits the consumer to
18 reinstate the agreement during a period of at
19 least 30 days after the date of the return or
20 surrender of the property by the payment of all
21 past due rental charges, and any applicable re-
22 delivery, repair, or late fees; and

23 “(C) if the consumer has paid 60 percent
24 or more of the total dollar amount of payments
25 necessary to acquire ownership of the property

1 under the agreement and returns or voluntarily
2 surrenders the property, other than through ju-
3 dicial process, during the applicable reinstatement
4 period set forth in subparagraph (A), permits
5 the consumer to reinstate the agreement
6 during a period of at least 90 days after the
7 date of the return of the property by the pay-
8 ment of all past due rental charges and any ap-
9 plicable redelivery, repair, or late fees.

10 “(b) CONSTRUCTION.—Subsection (a) shall not be
11 construed to prevent a merchant from attempting to re-
12 possess property during the reinstatement period pursuant
13 to subsection (a)(3)(A), but such a repossession does not
14 affect the consumer’s right to reinstate. Upon reinstatement,
15 the merchant shall provide the consumer with the
16 same property, if available; if it is not available the mer-
17 chant shall substitute property of comparable quality and
18 condition.

19 **“SEC. 1007. PROHIBITED INCLUSION.**

20 “A rental-purchase agreement may not contain—

21 “(1) a confession of judgment;

22 “(2) a negotiable instrument;

23 “(3) a security interest or any other claim of a
24 property interest in any goods, except those goods

1 the use of which is provided by the merchant pursu-
2 ant to the agreement;

3 “(4) a wage assignment; or

4 “(5) a waiver by the consumer of a claim de-
5 fense.

6 **“SEC. 1008. RECEIPTS AND ACCOUNTS.**

7 “A merchant shall provide the consumer a written re-
8 ceipt for each payment made by cash, check, or money
9 order, the date, the total number of rental payments made,
10 and the total number of payments necessary to acquire
11 ownership of the property.

12 **“SEC. 1009. RENEGOTIATIONS AND EXTENSIONS.**

13 “A renegotiation of a rental-purchase agreement is
14 deemed to be a new agreement for purposes of this title,
15 requiring new disclosures under section 1004. A renegoti-
16 ation shall be considered to occur when an existing rental
17 purchase agreement is satisfied and replaced by a new
18 agreement undertaken by the same merchant. Events such
19 as the following shall not be treated as renegotiations:

20 “(1) The addition or return of property in a
21 multiple-item agreement or the substitution of prop-
22 erty, if in either case the average payment allocable
23 to a payment period is not changed by more than 25
24 percent.

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

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

5 “(4) An agreement involving a court proceed-
6 ing.

7 “(5) Any other event described in regulations
8 prescribed by the Board.

9 **“SEC. 1010. RENTAL-PURCHASE ADVERTISING.**

10 “(a) ADVERTISEMENTS.—If an advertisement refers
11 to or states the amount of any payment or the right to
12 acquire ownership, the merchant that makes the advertise-
13 ment shall also clearly and conspicuously state in the ad-
14 vertisement the following items:

15 “(1) The transaction advertised is to occur
16 under a rental-purchase agreement.

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

20 “(3) The consumer acquires no ownership
21 rights in the property if the total dollar amount of
22 rental payments necessary to acquire ownership is
23 not paid.

24 “(b) LIABILITY.—The owner or personnel of any me-
25 dium in which an advertisement appears or through which

1 it is disseminated shall not be liable for a violation of sub-
2 section (a).

3 “(c) CONSTRUCTION.—Subsection (a) does not apply
4 to an advertisement which—

5 “(1) is published in the yellow pages of a tele-
6 phone directory or in any similar directory of busi-
7 nesses, or

8 “(2) is displayed in the merchant’s place of
9 business.

10 **“SEC. 1011. CIVIL LIABILITY.**

11 “(a) LIABILITY AMOUNT.—Except as otherwise pro-
12 vided in this title, a merchant who willfully violates this
13 title with respect to a consumer is liable to the consumer
14 in an amount equal to the following:

15 “(1) In an action by an individual consumer,
16 the sum of—

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

19 “(B) Not less than \$100.

20 “(2) In a class action, the amount the court de-
21 termines to be appropriate with no minimum recov-
22 ery as to each member. The total recovery in any
23 class action or series of class actions arising out of
24 the same violation shall not be more than the lesser

1 of \$500,000 or 1 percent of the net worth of the
2 merchant.

3 “(b) STATUTE OF LIMITATIONS.—

4 “(1) ACTIONS IN UNITED STATES CONSTITU-
5 TION.—An action under this section may be brought
6 in any United States district court of competent ju-
7 risdiction, but not later than one year of the date of
8 the occurrence of the violation.

9 “(2) CONSTRUCTION.—This subsection does not
10 bar a consumer from asserting a violation of this
11 title in an action to collect a debt brought more than
12 one year after the date of the occurrence of the vio-
13 lation as a matter of defense by recoupment or set
14 off, except as otherwise provided by State law.

15 “(c) OFFSET.—

16 “(1) LIMITATION.—A consumer may not take
17 any action to offset any amount for which a mer-
18 chant is potentially liable under subsection (a)
19 against any amount owed by the consumer, unless
20 the amount of the merchant’s liability has been de-
21 termined by judgment of a court of competent juris-
22 diction in an action in which the merchant was a
23 party.

24 “(2) CONSTRUCTION.—This subsection does not
25 bar a consumer who is in default on the obligation

1 from asserting a violation of this title as an original
2 action, or as a defense of counterclaim to an action
3 brought by the merchant to collect amounts owed by
4 the consumer.

5 **“SEC. 1012. DEFENSES.**

6 “A merchant is not liable—

7 “(1) under section 1011 for a violation of the
8 requirements of section 1004 if within 15 days after
9 first having knowledge of the violation, and before
10 an action under section 1011 is filed or written no-
11 tice of the violation is received from the consumer,
12 the merchant notifies the consumer of the violation
13 and makes whatever adjustments in the account are
14 necessary to assure that the consumer will not be re-
15 quired to pay an amount in excess of the amounts
16 actually disclosed;

17 “(2) under this title for any act done or omitted
18 good faith in conformity with any rule, regulation,
19 interpretation, or approval promulgated by the
20 Board or by an official duly authorized by the
21 Board; or

22 “(3) under this title for a violation if the mer-
23 chant establishes, and at the time of the violation is
24 implementing, procedures reasonably calculated to
25 prevent the violation.

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

5 **“SEC. 1013. LIABILITY OF ASSIGNEES.**

6 “(a) ASSIGNEES.—For purposes of sections 1011 and
7 1012 and this section, the term “merchant” includes an
8 assignee of a merchant. However, an action under section
9 1011 for a violation of this title may be brought against
10 an assignee only if the violation is apparent on the face
11 of the rental-purchase agreement to which it relates. A
12 violation apparent in the face of a rental purchase agree-
13 ment includes a disclosure that can be determined to be
14 incomplete or inaccurate from the face of the agreement.
15 An assignee has no liability in a case in which the assign-
16 ment is involuntary.

17 “(b) CONSUMER ACKNOWLEDGMENT.—In an action
18 by or against an assignee, the consumer’s written acknowl-
19 edgment of receipt of a disclosure shall be conclusive proof
20 that the disclosure was made, if the assignee had no
21 knowledge that the disclosure had not been made when
22 the assignee acquired the rental-purchase agreement to
23 which it relates.

1 **“SEC. 1014. REGULATIONS AND ENFORCEMENT.**

2 “(a) IN GENERAL.—The Board shall issue regula-
3 tions to carry out the purposes of this title, to prevent
4 its circumvention, and to facilitate compliance with its re-
5 quirements. The regulations may contain classification
6 and differentiations and may provide for adjustments and
7 exceptions for any class of transaction.

8 “(b) MODELS.—The Board shall publish model dis-
9 closure forms and clauses to facilitate compliance with the
10 disclosure requirements of this title and to aid consumers
11 in understanding transactions under rental-purchase
12 agreements. In designing forms, the Board shall consider
13 the use by merchants of data processing or similar auto-
14 mated equipment. Use of the models shall be optional. A
15 merchant who properly uses the model disclosure forms
16 shall be deemed to be in compliance with the disclosure
17 requirements.

18 “(c) EFFECTIVE DATE OF REGULATIONS.—Any reg-
19 ulation issued by the Board, or any amendment or inter-
20 pretation thereof, shall not be effective before the October
21 1 that follows the date of promulgation by at least 6
22 months. The Board may at its discretion lengthen that
23 period of time to permit merchants to adjust their forms
24 to accommodate new requirements. The Board may also
25 shorten that period of time, notwithstanding the first sen-
26 tence, if it makes a specific finding that such action is

1 necessary to comply with the findings of a court or to pre-
2 vent unfair or deceptive practices. In any case, merchants
3 may comply with any newly promulgated disclosure re-
4 quirement prior to its effective date.

5 “(d) ENFORCEMENT.—The Board shall enforce the
6 requirements of this title. The authority of section 108
7 shall apply with respect to the Board’s enforcement of
8 such requirements.

9 **“SEC. 1015. 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;

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

17 “(3) attempt to regulate rental-purchase trans-
18 actions as a credit, retail, conditional, or installment
19 sale.

20 **“SEC. 1016. EFFECT ON GOVERNMENT AGENCIES.**

21 “No civil liability or criminal penalty under this title
22 may be imposed on the United States or any of its depart-
23 ments or agencies, any State or political subdivision, or
24 any agency of a State or political subdivision.”.

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