STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SUBCOMMITTEE
RECOMMENDATION
FOR ENGROSSED
SENATE BILL NO. 944 By: Thompson of the Senate

and

Osborn of the House

SUBCOMMITTEE RECOMMENDATION

An Act relating to rental-purchase; amending 59 O.S. 2011, Sections 1951, 1954 and 1955, which relate to the Oklahoma Rental-Purchase Act; defining term; modifying sequence of defined terms; deleting prohibited agreement provisions; prohibiting provision requiring fee in excess of customarily charged fees; permitting rents and fees to be held from payment or accrued; requiring separate disclosures for property not displayed or offered primarily for rental-purchase; providing for signed Acknowledgement of Rental-Purchase Transaction; describing contents of Acknowledgement; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2011, Section 1951, is amended to read as follows:

Section 1951. As used in the Oklahoma Rental-Purchase Act:

1. "Administrator" means the Administrator of the Department of Consumer Credit as designated in Section 6-501 of Title 14A of the Oklahoma Statutes;

2. "Advertisement" means any commercial message in any medium that promotes, directly or indirectly, a consumer rental-purchase agreement;

3. "Consummation" means the time a lessee becomes contractually obligated on a consumer rental-purchase agreement;

4. "Displayed or offered primarily for rental-purchase" means personal property displayed or offered at a physical location which derives fifty percent (50%) or more of its revenue from rental-purchase agreements;

5. "Initial fee" means any fee charged to initiate a contract however designated;

6. "Initial period" means from the date of inception to the first scheduled renewal payment;

7. "Lessee" means a natural person who rents personal property under a consumer rental-purchase agreement;

~~5.~~ 8. "Lessor" means a person who regularly provides the use of property through consumer rental-purchase agreement; and

~~6.~~ 9. "Rental-purchase agreement" means an agreement for the use of personal property by a consumer for personal, family, or household purposes, for an initial period of four (4) months or less, that is renewable with each payment after the initial period,

and that permits the consumer to become the owner of the property. An agreement that complies with this definition is not a consumer credit sale as defined in Section 2-104 of Title 14A of the Oklahoma Statutes, or a consumer loan as defined in Section 3-104 of Title 14A of the Oklahoma Statutes, or a refinancing or consolidation thereof, or a consumer lease as defined in Section 2-106 of Title 14A of the Oklahoma Statutes, or a lease or agreement which constitutes a security interest as defined in paragraph ~~(37)~~ (35) of subsection (b) of Section 1-201 of Title 12A of the Oklahoma Statutes or a lease or agreement which constitutes a sale of goods as defined in subsection (4) of Section 2-105 of Title 14A of the Oklahoma Statutes~~;~~

~~7. "Initial period" means from the date of inception to the first scheduled installment; and~~

~~8. "Initial fee" means any fee charged to initiate a contract however designated~~.

SECTION 2. AMENDATORY 59 O.S. 2011, Section 1954, is amended to read as follows:

Section 1954. A. The disclosures required by the Oklahoma Rental-Purchase Act:

1. Shall be made clearly and conspicuously;

2. Shall be in writing, a copy of which shall be delivered to the lessee;

3. May use terminology different from that employed in the Oklahoma Rental-Purchase Act if it conveys substantially the same meaning;

4. May be supplemented by additional information or explanations supplied by the lessor;

5. Shall comply with the provisions of the Oklahoma Rental-Purchase Act although rendered inaccurate by any act, occurrence, or agreement, subsequent to the required disclosure;

6. Shall be made to the person who signs the rental-purchase agreement, except that in a transaction involving more than one lessee, a disclosure statement or a copy of the agreement need not be given to more than one of the lessees; and

7. Shall be made by the lessor specified on the rental-purchase license.

B. A rental-purchase agreement shall disclose the following items, as applicable:

1. Whether the property is new or used;

2. The period and amount of payments;

3. The total number of payments necessary and the total amounts to be paid to acquire ownership of the merchandise;

4. The amount and purpose of any other payment, charge or fee in addition to the regular periodic payments;

5. Whether the consumer is liable for loss or damage to the rental property, and if so, the maximum amount for which the consumer may be liable;

6. The amount of any deposit required by lessor and the conditions under which it shall be refundable or nonrefundable;

7. If applicable, that the lessee may purchase from the lessor insurance to cover the property or a waiver of liability for damage to or destruction of the property, and the amount of any such charge or fee. The insurance or waiver of liability coverage may be offered to the lessee at any time during the term of the rental-purchase agreement; and

8. That the consumer does not acquire ownership rights unless the consumer has complied with the ownership terms of the agreement.

C. A rental-purchase agreement may not contain a provision:

1. Requiring a confession of judgment;

2. Authorizing a lessor or an agent of the lessor to commit a breach of the peace in the repossession of rental property;

3. Waiving any defense, counterclaim, or right the lessee may have against the lessor or an agent of the lessor;

4. Requiring the purchase of insurance from the lessor to cover the rental property; provided, however, that the lessor may offer to the lessee any such insurance if it is clearly and conspicuously disclosed on the face of the agreement of insurance, in print not less than 8-point ~~bold face~~ boldface type, that the purchase of any

such insurance by the lessee from the lessor is optional. Lessors offering any such insurance must comply with the rules and regulations governing the offering for sale and sale of insurance in the State of Oklahoma, and the offering for sale and sale of such insurance shall be governed and regulated by the State of Oklahoma Commissioner of Insurance; and

5. Requiring the purchase of a waiver of liability from the lessor for damage to or destruction of the property; provided, however, that the lessor may offer to the lessee any such waiver of liability if it is clearly and conspicuously disclosed on the face of the waiver of liability agreement, in print not less than 8-point ~~bold face~~ boldface type, that the purchase of any such waiver of liability by the lessee from the lessor is optional~~. The charge for any waiver of liability shall not exceed five percent (5%) of the rental payment or One Dollar ($1.00), whichever is greater~~; and

6. ~~Requiring the payment of a late charge or reinstatement fee of more than Five Dollars ($5.00); provided, the total of both the late charge and the reinstatement fee for any one payment missed does not exceed Five Dollars ($5.00) if payments are monthly, or Three Dollars ($3.00) if payments are weekly or bi-weekly. If the payment is not paid by the close of business on the due date, such payment shall be considered missed. Late charges, pickup charges, delivery charges, rent due and reinstatement fees may be held from the payment or may be accrued and collected when possible;~~

~~7. Requiring the payment of a delivery charge of more than Fifteen Dollars ($15.00) for delivery of an item or items within fifteen (15) miles of the business location, or Thirty Dollars ($30.00) for delivery of an item or items more than fifteen (15) miles from the business location. However, in the event a lessor delivers more than five (5) items to a lessee's dwelling, the delivery charge shall not exceed Forty-five Dollars ($45.00) regardless of the delivery distance. Delivery charges are allowed only if the lessor actually delivers merchandise to the dwelling of the lessee;~~

~~8. Requiring the payment of a charge exceeding Fifteen Dollars ($15.00) on any insufficient funds check;~~

~~9. Requiring a nonrefundable initial fee exceeding Ten Dollars ($10.00). An initial fee may be charged only once on an agreement;~~

~~10. Requiring a pickup charge exceeding Ten Dollars ($10.00) on late payments. If payments are monthly, a maximum of three pickup charges may be assessed in a six-month period. If payments are more frequent than monthly, a maximum of six pickup charges may be assessed in a six-month period. The pickup charges may be assessed and paid when the consumer makes the next scheduled payment or such charges may be accrued; and~~

~~11.~~ Requiring the payment of any ~~other additional charges of any nature whatsoever, other than those specified~~ fee in an amount that is in excess of the range of fees usually or customarily

charged by providers of similar services or products. Any rent due and charges or fees assessed may be held from the payment or may be accrued and collected when possible.

D. A rental-purchase agreement shall provide reinstatement rights as follows:

1. A consumer who fails to make a timely payment may reinstate a rental-purchase agreement without losing rights or options previously acquired, by arranging with the lessor to make the past due payments, within two (2) days after the due date of the payment and by arranging to pay any fees due or by returning the property within two (2) days if the lessor so requests. Provided, nothing herein shall prevent the lessor from modifying payment arrangements to allow the consumer to make the account current and to accrue any charges due or any rent due to be paid at some future agreed upon date. Partial payment agreements shall provide for the rent to be prorated with notice to the consumer of the next due date~~.~~; and

2. If the rental property is returned during the reinstatement period, other than through judicial process, the right to reinstate the agreement shall be extended for a period of not less than thirty (30) days after the date of the return of the property. Upon reinstatement, the lessor shall provide the lessee with the same rental property or substitute property of comparable quality and condition. If substitute property is provided, the lessor shall provide the lessee with the disclosures required in subsection B of

this section. Notice of the right to reinstate shall be disclosed in the agreement.

E. An advertisement for a rental-purchase agreement that states the amount of a payment and the right to acquire ownership of any one particular item must clearly and conspicuously state:

1. That the transaction advertised is a rental-purchase agreement; and

2. The total amount and the number of payments necessary to acquire ownership.

F. Any consumer neglect of the merchandise resulting in reasonable repairs will be the responsibility of the consumer and charges for such repair may be received in payments agreed upon by the lessor according to an agreed upon payment schedule.

G. When property that is not displayed or offered primarily for rental-purchase is offered for rental-purchase, the following shall be separately disclosed prior to the disclosures required by subsection B of this section:

1. The cash price of the property;

2. The amount of the periodic rental payment; and

3. The total number and amount of periodic rental payments necessary to acquire ownership of the property.

H. In addition to the disclosures required by subsections B and G of this section, if the property that is the subject of a rental-purchase agreement was not displayed or offered primarily for

rental-purchase prior to the rental-purchase transaction, the following additional disclosures shall be made on a separate page titled "Acknowledgment of Rental-Purchase Transaction" and signed by the lessee:

1. That the agreement is a rental-purchase agreement and the lessee does not own the merchandise but can obtain ownership by using ownership options provided in the agreement;

2. That the agreement is not a credit transaction;

3. That the lessee has the right to return the merchandise to the lessor without additional charge or penalty at any time and will owe nothing further except unpaid rent charges and fees;

4. That if the lessee returns the property, the agreement offers reinstatement rights which allow the lessee to get the property back if the lessee has complied with the agreement and the law;

5. That the lessee has been advised of and reviewed the lessor's cash price of the property, the amount of any periodic payment and the total number and amount of periodic payments necessary to acquire ownership of the property; and

6. That the lessee has reviewed and acknowledged the terms of the agreement, including the purchase option rights and the total cost if all scheduled payments are made.

SECTION 3. AMENDATORY 59 O.S. 2011, Section 1955, is amended to read as follows:

Section 1955. A. A consumer damaged by a violation of the Oklahoma Rental-Purchase Act by a lessor is entitled to recover from the lessor:

1. Actual damages;

2. Twenty-five percent (25%) 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 section shall not be less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or in the case of a class action, an amount the court may allow, except that as to each member of the class no minimum recovery may be applicable and the total recovery other than for actual damages in any class action or series of class actions arising out of the same failure to comply by the same lessor shall not be more than the lesser of Five Hundred Thousand Dollars ($500,000.00) or one percent (1%) of the net worth of the lessor; and

3. Reasonable attorney fees and court costs.

B. In addition to the enforcement powers provided in Section 6-102 of Title 14A of the Oklahoma Statutes, the Administrator of Consumer Credit or a duly authorized representative of the Administrator may investigate the books, accounts, papers, correspondence and records of any lessor licensed under the Oklahoma Rental-Purchase Act. For the purposes of this section, any person who advertises for, solicits or holds himself <u>or herself</u> out as

willing to make rental-purchase transactions, shall be presumed to be a rental-purchase lessor. Each lessor shall pay to the Administrator an examination fee as prescribed by rule of the Commission on Consumer Credit. The Administrator may require payment of an examination fee either at the time of initial application, renewal of the license, or after an examination has been conducted.

C. The Administrator may promulgate rules and regulations necessary for the enforcement of the Oklahoma Rental-Purchase Act and consistent with all its provisions.

D. The Administrator shall appoint an independent hearing examiner to conduct all administrative hearings involving alleged violations of the Oklahoma Rental-Purchase Act. The independent hearing examiner shall have authority to exercise all powers granted by Article II of the Administrative Procedures Act in conducting hearings. The independent hearing examiner shall have authority to recommend penalties authorized by the Oklahoma Rental-Purchase Act and issue proposed orders, with proposed findings of fact and proposed conclusions of law, to the Administrator pursuant to Article II of the Administrative Procedures Act. The Administrator shall review the proposed order and issue a final agency order in accordance with Article II of the Administrative Procedures Act. ~~A final order issued by the Administrator shall be appealable by all parties to the district court as provided in Article II of~~ Any

person aggrieved by a final agency order of the Administrator may obtain judicial review in accordance with the Administrative Procedures Act. The ~~costs of the hearing examiner~~ jurisdiction and venue of any such action shall be in the district court of Oklahoma County. Hearing costs may be assessed ~~by the hearing examiner~~ against the respondent, unless the respondent is the prevailing party.

E. After notice and hearing, the Administrator may decline to renew a license, or suspend or revoke any license issued pursuant to the Oklahoma Rental-Purchase Act for violating any provision of the Oklahoma Rental-Purchase Act or any rules promulgated by the Administrator, or in lieu of or in addition to such denial, suspension or revocation, order the refund of any unlawful ~~charges,~~ or excessive fees, enter a cease and desist order or impose an administrative fine in an amount not less than One Hundred Dollars ($100.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00) for each violation of the Oklahoma Rental-Purchase Act, not to exceed Five Thousand Dollars ($5,000.00) for all violations of a lessor.

F. Except as otherwise expressly provided in the Oklahoma Rental-Purchase Act, the Administrative Procedures Act, Sections ~~301~~ 250.3 through ~~326~~ 323 of Title 75 of the Oklahoma Statutes, applies to and governs all administrative actions and civil proceedings

taken by the Administrator pursuant to the Oklahoma Rental-Purchase Act.

G. Where there are multiple lessees to a rental-purchase agreement, there shall be no more than one recovery under the Oklahoma Rental-Purchase Act for a violation.

H. A lessor is not liable under the Oklahoma Rental-Purchase Act for a violation thereof caused by the lessor's error if before the sixtieth day after the date the lessor discovers the error, and before an action under this section is filed or written notice of the error is received by the lessor from the lessee, the lessor gives the lessee written notice of the error and makes adjustments in the lessee's account as necessary to ensure that the lessee will not be required to pay an amount in excess of the amount disclosed and that the agreement otherwise complies with this subsection. Nor may a lessor be held liable in any action brought under the Oklahoma Rental-Purchase Act for a violation of the Oklahoma Rental-Purchase Act if the lessor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. A bona fide error includes, but is not limited to, a clerical, calculation, computer malfunction in programming, and printing error, but not an error of legal judgment with respect to a lessor's disclosure obligations under the Oklahoma Rental-Purchase Act.

I. Any entity or individual offering to engage or engaged as a rental-purchase lessor in this state without a license shall be subject to ~~a civil penalty~~ an administrative fine not to exceed Five Thousand Dollars ($5,000.00).

J. The Administrator may impose ~~a civil penalty~~ an administrative fine as prescribed in subsection I of this section, after notice and hearing in accordance with Article II of the Administrative Procedures Act. Any administrative order or settlement agreement ~~imposing a civil penalty pursuant to this section~~ may be enforced in the same manner as civil judgments in this state. The Administrator may file an application to enforce an administrative order or settlement agreement ~~imposing a civil penalty~~ in the district court of Oklahoma County.

SECTION 4. This act shall become effective November 1, 2016.

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