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February 21, 2017

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 102

By: Newberry

An Act relating to consumer protection; amending 59 O.S. 2011, Section 1955, as amended by Section 3, Chapter 278, O.S.L. 2016 (59 O.S. Supp. 2016, Section 1955), which relates to the Oklahoma Rental-Purchase Act; modifying jurisdiction and venue for review; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 1955, as amended by Section 3, Chapter 278, O.S.L. 2016 (59 O.S. Supp. 2016, 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

1 amount the court may allow, except that as to each member of the
2 class no minimum recovery may be applicable and the total recovery
3 other than for actual damages in any class action or series of class
4 actions arising out of the same failure to comply by the same lessor
5 shall not be more than the lesser of Five Hundred Thousand Dollars
6 (\$500,000.00) or one percent (1%) of the net worth of the lessor;
7 and

8 3. Reasonable attorney fees and court costs.

9 B. In addition to the enforcement powers provided in Section 6-
10 102 of Title 14A of the Oklahoma Statutes, the Administrator of
11 Consumer Credit or a duly authorized representative of the
12 Administrator may investigate the books, accounts, papers,
13 correspondence and records of any lessor licensed under the Oklahoma
14 Rental-Purchase Act. For the purposes of this section, any person
15 who advertises for, solicits or holds himself or herself out as
16 willing to make rental-purchase transactions, shall be presumed to
17 be a rental-purchase lessor. Each lessor shall pay to the
18 Administrator an examination fee as prescribed by rule of the
19 Commission on Consumer Credit. The Administrator may require
20 payment of an examination fee either at the time of initial
21 application, renewal of the license, or after an examination has
22 been conducted.

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

4 D. The Administrator shall appoint an independent hearing
5 examiner to conduct all administrative hearings involving alleged
6 violations of the Oklahoma Rental-Purchase Act. The independent
7 hearing examiner shall have authority to exercise all powers granted
8 by Article II of the Administrative Procedures Act in conducting
9 hearings. The independent hearing examiner shall have authority to
10 recommend penalties authorized by the Oklahoma Rental-Purchase Act
11 and issue proposed orders, with proposed findings of fact and
12 proposed conclusions of law, to the Administrator pursuant to
13 Article II of the Administrative Procedures Act. The Administrator
14 shall review the proposed order and issue a final agency order in
15 accordance with Article II of the Administrative Procedures Act.
16 Any person aggrieved by a final agency order of the Administrator
17 may obtain judicial review in accordance with the Administrative
18 Procedures Act. The jurisdiction and venue of any such action shall
19 be in the district court of Oklahoma County or the county of the
20 aggrieved. Hearing costs may be assessed against the respondent,
21 unless the respondent is the prevailing party.

22 E. After notice and hearing, the Administrator may decline to
23 renew a license, or suspend or revoke any license issued pursuant to
24 the Oklahoma Rental-Purchase Act for violating any provision of the

1 Oklahoma Rental-Purchase Act or any rules promulgated by the
2 Administrator, or in lieu of or in addition to such denial,
3 suspension or revocation, order the refund of any unlawful or
4 excessive fees, enter a cease and desist order or impose an
5 administrative fine in an amount not less than One Hundred Dollars
6 (\$100.00) nor more than Two Thousand Five Hundred Dollars
7 (\$2,500.00) for each violation of the Oklahoma Rental-Purchase Act,
8 not to exceed Five Thousand Dollars (\$5,000.00) for all violations
9 of a lessor.

10 F. Except as otherwise expressly provided in the Oklahoma
11 Rental-Purchase Act, the Administrative Procedures Act, Sections
12 250.3 through 323 of Title 75 of the Oklahoma Statutes, applies to
13 and governs all administrative actions and civil proceedings taken
14 by the Administrator pursuant to the Oklahoma Rental-Purchase Act.

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

18 H. A lessor is not liable under the Oklahoma Rental-Purchase
19 Act for a violation thereof caused by the lessor's error if before
20 the sixtieth day after the date the lessor discovers the error, and
21 before an action under this section is filed or written notice of
22 the error is received by the lessor from the lessee, the lessor
23 gives the lessee written notice of the error and makes adjustments
24 in the lessee's account as necessary to ensure that the lessee will

1 not be required to pay an amount in excess of the amount disclosed
2 and that the agreement otherwise complies with this subsection. Nor
3 may a lessor be held liable in any action brought under the Oklahoma
4 Rental-Purchase Act for a violation of the Oklahoma Rental-Purchase
5 Act if the lessor shows by a preponderance of the evidence that the
6 violation was not intentional and resulted from a bona fide error
7 notwithstanding the maintenance of procedures reasonably adopted to
8 avoid the error. A bona fide error includes, but is not limited to,
9 a clerical, calculation, computer malfunction in programming, and
10 printing error, but not an error of legal judgment with respect to a
11 lessor's disclosure obligations under the Oklahoma Rental-Purchase
12 Act.

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

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

SECTION 2. This act shall become effective November 1, 2017.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
February 21, 2017 - DO PASS AS AMENDED