

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

04 AUG 10 P4:21

SENATE
S. B. No. **1695**

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Constitution, Article 2, Section 5 provides:

The maintenance of peace and order, the protection of life, liberty and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

There is a significant number of consumers engaged in rental-purchase transactions. Unfortunately in many instances, these transactions have taken place, without adequate disclosures and other protections to consumers.

Hence, this bill seeks to protect consumers by requiring meaningful disclosure of the terms of rental-purchase agreements and providing certain substantive rights to consumers who enter into rental-purchase agreements.


MIRIAM DEFENSOR SANTIAGO

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

04 AUG 10 PM '77

SENATE
S. B. No. **1695**

RECEIVED BY

Introduced by Senator Miriam Defensor Santiago

AN ACT
TO ASSURE MEANINGFUL DISCLOSURES OF THE TERMS OF RENTAL PURCHASE
AGREEMENTS, INCLUDING DISCLOSURES OF ALL COSTS TO CONSUMERS UNDER
SUCH AGREEMENTS AND TO PROVIDE CERTAIN SUBSTANTIVE RIGHTS TO
CONSUMERS UNDER SUCH AGREEMENTS

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* – This Act shall be known as the “Consumer Disclosure and Rental Purchase Agreement Act”.

SECTION 2. *Purpose.* – The purposes of this Act are –

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

(2) to provide certain substantive rights to consumers who enter into rent-purchase agreements.

SECTION 3. *Definition* – For purposes of this Act:

(1) The term “advertisement” means a commercial message in any medium that promotes, directly or indirectly, a rental-purchase agreement but does not include price tags, window signs, or other in-store merchandising aids.

(2) The term “agricultural purpose” includes:

(a) the production, harvest, exhibition, marketing, transformation, processing, or manufacture of agricultural products by a natural person who cultivates plants or propagates or nurtures agricultural products; and

(b) the acquisition of farmlands, real property with a farm residence, or personal property and services used primarily in farming.

(3) The term “consumer” means a natural person who is offered or enters into a rental-purchase agreement.

(4) The term “date of consummation” means the date on which a consumer becomes contractually obligated under a rental-purchase agreement.

(5) The term “merchant” means a person who provides the use of property through a rental-purchase agreement in the ordinary course of business and to whom a consumer’s initial obligation under the agreement is payable.

(6) The term “rental-purchase agreement” means a contract between a consumer and a merchant—

(a) under which the merchant agrees to provide the consumer the use of the personal property for an initial period of four (4) months or less;

(b) that is automatically renewable with each payment by the consumer; and

(c) that permits but does not obligate the consumer to become the owner of the property.

SECTION 4. *Exempted Transactions.* – This Act does not apply to rental-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with Government agencies or instrumentalities.

SECTION 5. *General Disclosure Requirements—*

(1) IN GENERAL - The merchant under a rental-purchase agreement shall disclose to the consumer under the agreement the information required by Sections 6, 7, and 8. In an agreement involving more than 1 merchant, only 1 merchant is required to make the disclosures.

(2) DISCLOSURE - The disclosures required under sections 6 and 7 and the agreement provisions required to be included under 8 shall be made or included—

(a) at or before the date of consummation of the rental-purchase agreement;

(b) clearly and conspicuously in writing and in a form that the consumer may keep; and

(c) in a case of disclosures required under Section 6, segregated from all other terms, data, or information provided to the consumer.

(3) INACCURACY- If a disclosure required to be made by a merchant to a consumer under section 6 becomes inaccurate as the result of any mutual written agreement between the merchant and such consumer occurring after delivery of the required disclosure to such consumer under this title, the resulting inaccuracy is not a violation of this Title.

SECTION 6. *Rental-Purchase Agreement Disclosures.* – For each rental-purchase agreement, the merchant shall disclose to the consumer, to the extent applicable, under the agreement the following:

(1) The amount of the first payment and the total amount of fees, taxes, or other charges which may be required at or before the date of consummation of the agreement;

(2) The amount and timing of rental payments;

(3) The total number and total amount of rental payments necessary to acquire ownership of the property;

(4) A statement that the consumer will not own the property until the consumer has paid the total amount necessary to acquire ownership;

(5) A disclosure, to the extent applicable, that the total dollar amount of payments does not include other fees or charges, such as a delivery fee, an initial processing fee, taxes, or other fees or charges which may be payable under the agreement. Such fees and charges shall be separately identified in the agreement;

(6) A statement that the consumer may be responsible for the fair market value of the property if it is lost, stolen, damaged, or destroyed;

(7) A statement indicating whether the property is new or used, except a statement indicating that new property is not a violation of this Title;

(8) A statement of—

(a) the manufacturer's suggested retail price, where applicable; or

(b) the price for which the property is available from the merchant in a cash sale.

(9) A clear statement of the terms of the consumer's option to acquire ownership;

(10) A statement—

(a) identifying the party responsible for maintaining or servicing the property while it is being rented;

(b) describing the responsibility for maintenance or service; and

(c) disclosing that if any part of a manufacturer's express warranty covers the property at the time the consumer acquires ownership of the property, the warranty will be transferred to the consumer if allowed by the terms of the warranty.

(11) The date of consummation of the transaction and the identities of the merchant and consumer;

(12) Late fees for past due rental charges.

SECTION 7. *Point-of-Rental Disclosures.* - (1) IN GENERAL - Except as provided in subsection (2), each item of property or each set of items, if offered as a set or displayed or offered in connection with a rental-purchase agreement, shall have displayed on or next to it a card, tag, or label that clearly and conspicuously discloses only the following:

(a) A brief description of the property;

(b) Whether the property is new or used;

(c) The cash price of the property;

(d) The amount of each rental payment;

(e) The total number of rental payments necessary to acquire ownership of the property;

(f) The total amount of rental payments necessary to acquire ownership of the property;

(2) EXCEPTION – A merchant may make the disclosure required by subsection (a) in the form of a list or catalog which is readily available to the customer if the merchandise is not displayed in the merchant's showroom or if displaying a tag would be impractical due to the size of the merchandise.

SECTION 8. *Agreement Provisions.* – (1) IN GENERAL – Each rental-purchase agreement shall—

(a) provide a statement of any obligation of the consumer and the merchant under the agreement to repair any defect or malfunction of the property covered by the agreement, and any limitation of those obligations;

(b) provided that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property covered by the agreement upon expiration of any term; and

(c) contain a provision for reinstatement of the agreement, which at a minimum—

(i) permits a consumer who fails to make a timely rental renewal payment to reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of all past due rental charges and any late fee and a payment for the next rental term within 7 business days after the renewal date if the consumer pays monthly, or within 3 business days after the renewal date if the consumer pays more frequently than monthly;

(ii) if the consumer returns or voluntarily surrenders the property covered by the agreement, other than through judicial process, during the applicable reinstatement period set forth in subparagraph (A), permits the consumer to reinstate the agreement during a period of at least 30 days after the date of the return or surrender of the property by the payment of all past due rental charges, and any applicable redelivery, repair, or late fees and a payment for the next rental term; and

(iii) if the consumer has paid 60 percent or more of the total amount of payments necessary to acquire ownership of the property, other than due to judicial process, during the applicable reinstatement period set forth in paragraph (a), permits the consumer to reinstate the agreement during a period of at least 9 days after the date of the return of the property by the payment of all past due

rental charges and any applicable redelivery, repair, or late fees and a payment for the next rental term.

(2) CONSTRUCTION – Subsection (1) shall not be construed to prevent a merchant from attempting to repossess property during the reinstatement period pursuant to subsection (1)(c)(i), but such a repossession does not affect the consumer's right to reinstate. Upon reinstatement, the merchant shall provide the consumer with the same property, if available; if it is not available the merchant shall substitute property of comparable quality and condition.

SECTION 9. *Prohibited Inclusion.* – A rental-purchase agreement may not contain—

- (1) a confession of judgement;
- (2) a negotiable instrument;
- (3) a security interest or any other claim of a property interest in any goods, except those goods the use of which is provided by the merchant pursuant to the agreement;
- (4) a wage assignment; or
- (5) a waiver by the consumer of a claim or defense.

SECTION 10. *Statement of Accounts.* – A merchant shall be required upon request by the consumer to provide a quarterly statement.

SECTION 11. *Renegotiations and Extensions.* – A renegotiation of a rental-purchase agreement is deemed to be a new agreement for purposes of this Act, requiring new disclosures under Section 6. A renegotiation shall be considered to occur when an existing rental purchase agreement is satisfied and replaced by a new agreement undertaken by the same merchant. Events such as the following shall not be treated as renegotiations:

- (1) The addition or return of property in a multiple-item agreement or the substitution of property, if in either case the average payment allocable to a payment period is not changed by more than twenty-five percent (25%).
- (2) A deferral or extension of one or more periodic payments, or portions of a periodic payment.

- (3) A reduction in charges in the agreement.
- (3) An agreement involving a court proceeding.
- (4) Any other event described in regulations prescribed by the Board.

SECTION 12. *Rental-Purchase Advertising.* –

(1) ADVERTISEMENTS – If an advertisement refers to or states the amount of any payment and the right to acquire ownership for any specific item, the merchant that makes the advertisement shall also clearly and conspicuously state in the advertisement the following items:

- (a) The transaction advertised is a rental-purchase agreement.
- (b) The total number and total amount of rental payments necessary to acquire ownership under the agreement.
- (c) The consumer acquires no ownership rights in the property if the total amount of rental payments necessary to acquire ownership is not paid.

(2) LIABILITY – The owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable for a violation of subsection (1).

(3) CONSTRUCTION – Subsection (1) does not apply to an advertisement which—

- (a) is published in the yellow pages of a telephone directory or in any similar directory of businesses, or
- (b) is displayed in the merchant's place of business.

SECTION 13. *Civil Liability.* –

(1) LIABILITY AMOUNT – Except as otherwise provided in this Act, a merchant who willfully violates this Act with respect to the consumer is liable to the consumer in an amount equal to the following:

- (a) In an action by an individual consumer, the sum of—
 - (i) actual damages sustained by the consumer as a result of the violation;
 - and
 - (ii) not less than Five thousand Pesos (P5,000.00).

(2) STATUTE OF LIMITATIONS –

(a) ACTIONS – an action may be brought in a court of competent jurisdiction at any time but not later than one year of the date of the occurrence of the violation.

(b) CONSTRUCTION – This subsection does not bar a consumer from asserting a violation of this title in an action to collect a debt brought more than one year after the date of the occurrence of the violation as a matter of defense by recoupment or set off, except otherwise provided by law.

(3) OFFSET –

(a) LIMITATION – A consumer may not take any action to offset any amount for which a merchant is potentially liable under subsection (a) against any amount owed by the consumer, unless the amount of the merchant's liability has been determined by judgement of a court of competent jurisdiction in an action which the merchant was a party.

(b) CONSTRUCTION – This subsection does not bar a consumer who is in default on the obligation from asserting a violation of this Act as an original action, or as a defense of counterclaim to an action brought by the merchant to collect amounts owed by the consumer.

SECTION 14. *Defenses.* – A merchant is not liable—

(1) under Section 13 for a violation of the requirements of Section 6 if within fifteen (15) days after first having knowledge of the violation, and before an action under Section 13 is filed or written notice of the violation and makes whatever adjustments in the account are necessary to assure that the consumer will not be required to pay an amount in excess of the amounts actually disclosed;

(2) under this Act for a violation if the merchant establishes, and at the time of the violation is implementing, procedures reasonably calculated to prevent the violation.

SECTION 15. *Liability of Assignees.* — (1) ASSIGNEES – For purposes of Sections 13 and 14 and this Section, the term “merchant” includes an assignee of a merchant. However, an action under Section 13 for a violation of this Act may be brought against an assignee only if the violation is apparent on the face of the rental-purchase agreement to which it relates. A violation

apparent in the face of a rental-purchase agreement includes a disclosure that can be determined to be incomplete or inaccurate from the face of the agreement. An assignee has no liability in a case in which the assignment is involuntary.

(2) CONSUMER ACKNOWLEDGEMENT – in any action by or against an assignee, the consumer's written acknowledgment of receipt of a disclosure shall be conclusive proof that the disclosure was made, if the assignee had no knowledge that the disclosure had not been made when the assignee acquired the rental-purchase agreement to which it relates.

SECTION 16. *Regulation and Enforcement.* – (1) IN GENERAL – The Secretary of Trade and Industry shall issue regulations to carry out the purposes of this Act, to prevent its circumvention, and to facilitate compliance with its requirements. The regulations may contain classification and differentiations and may provide for adjustments and exceptions for any class of transaction.

(2) MODELS – The department shall publish model disclosure forms and clauses to facilitate compliance with the disclosure requirements of this Act and to aid consumers in understanding transactions under rental-purchase agreements. In designing forms, the department shall consider the use by merchants of data processing of similar automated equipment. Use of the models shall be optional. A merchant who properly uses the model disclosure forms shall be deemed to be in compliance with the disclosure requirements.

(3) EFFECTIVE DATE OF REGULATIONS – Any regulation issued, or any amendment or interpretation thereof, shall not be effective before the October 1 that follows the date of promulgation by at least six (6) months. The Secretary may at its discretion lengthen that period of time to permit merchants to adjust their forms to accommodate new requirements. The Secretary may also shorten that period of time, notwithstanding the first sentence, if it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive practices. In any case, merchants may comply with any newly promulgated disclosure requirement prior to its effective date.

(4) ENFORCEMENT – The Department shall enforce the requirement of this Act. The authority of Section 10 shall apply with respect to the enforcement of such requirements.

SECTION 17. *Effect on Government Agencies.* – No civil liability or criminal penalty under this Act may be imposed on the government or any of its departments or agencies, or political subdivision.

SECTION 18. *Separability Clause.* - If any provision or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 19. *Repealing Clause.* - All laws, rules and regulations inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 20. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved.

/1915 PTMT