

LEGISLATIVE BILL 111

Approved by the Governor March 22, 1993

Introduced by Lindsay, 9

AN ACT relating to the Consumer Rental Purchase Agreement Act; to amend sections 69-2101, 69-2103, 69-2109, and 69-2110, Reissue Revised Statutes of Nebraska, 1943; to redefine a term; to prohibit a lessor from assessing charges or utilizing forms as prescribed; to authorize a reinstatement fee; to provide for enforcement of the act; to provide powers and duties for the Director of Banking and Finance; to provide for appeals; to provide for personal jurisdiction; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 69-2101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

69-2101. Sections 69-2101 to 69-2115 and sections 5 to 8 of this act shall be known and may be cited as the Consumer Rental Purchase Agreement Act.

Sec. 2. That section 69-2103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

69-2103. For purposes of the Consumer Rental Purchase Agreement Act:

(1) Advertisement shall mean a commercial message in any medium that aids, promotes, or assists directly or indirectly a consumer rental purchase agreement;

(2) Cash price shall mean the price at which the lessor would have sold the property to the consumer for cash on the date of the consumer rental purchase agreement for the property;

(3) Consumer shall mean a natural person who rents property under a consumer rental purchase agreement;

(4) Consumer rental purchase agreement shall mean an agreement which is for the use of property by a consumer primarily for personal, family, or household purposes, which is for an initial period of four months or less, whether or not there is any obligation beyond the initial period, which is automatically renewable with each payment, and which permits the consumer to become the owner of the property. A consumer rental purchase agreement in compliance with the act shall not be construed to be a lease or agreement which constitutes a credit sale as defined in 12 C.F.R. 226.2(a)(16) and section 1602(g) of the Truth in Lending Act, 15 U.S.C. 1601 et seq., or a lease which constitutes a consumer lease as defined in 12 C.F.R. 213.2(a)(6). Consumer rental purchase agreement shall not include:

(a) Any lease for agricultural, business, or commercial

purposes;

- (b) Any lease made to an organization;
 - (c) A lease or agreement which constitutes an installment sale or installment contract as defined in section 45-335;
 - (d) A security interest as defined in section 1-201, Uniform Commercial Code; and
 - (e) A home solicitation sale as defined in section 69-1601;
- (5) Consummation shall mean the occurrence of an event which causes a consumer to become contractually obligated on a consumer rental purchase agreement;
- (6) Department shall mean the Department of Banking and Finance;
- (7) Lessor shall mean a person who in the ordinary course of business operates a commercial outlet which regularly leases, offers to lease, or arranges for the leasing of property under a consumer rental purchase agreement; and

(8) Property shall mean any property that is not real property under the laws of this state when made available for a consumer rental purchase agreement.

Sec. 3. That section 69-2109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

69-2109. A lessor shall not:

(1) Charge a penalty for early termination of a consumer rental purchase agreement or for the return of an item at any point except for those charges authorized by section 69-2110; ~~or~~

(2) Require payment by a cosigner of the consumer rental purchase agreement of any fees or charges which could not be imposed upon the consumer as part of the consumer rental purchase agreement; ~~or~~

(3) Assess charges or utilize forms which reference any charges except for charges specifically authorized by section 69-2110.

Sec. 4. That section 69-2110, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

69-2110. (1) The lessor may contract for and receive an initial nonrefundable administrative fee of not more than ten dollars. If a security deposit is required by the lessor, the amount of the deposit and the conditions under which all or a part of the deposit will be returned shall be disclosed with the disclosures required by sections 69-2104 and 69-2105.

(2) The lessor may contract for and receive a delivery charge of not more than ten dollars or, in the case of a consumer rental purchase agreement covering more than five items, a delivery charge of not more than twenty-five dollars. A delivery charge may be assessed only if the lessor actually delivers the items to the place designated by the consumer and the delivery charge is disclosed with the disclosures required by sections 69-2104 and 69-2105. The delivery fee may be assessed in lieu of and not in addition to the administrative fee in subsection (1) of this section.

(3) The parties may contract for late fees as follows:

(a) For consumer rental purchase agreements with monthly renewal dates, a late fee of not more than five dollars may be assessed on any payment not made within five business days after the payment is due; and

(b) For consumer rental purchase agreements with weekly or biweekly renewal dates, a late fee of not more than three dollars may be assessed on any payment not made within three business days after payment is due.

A late fee on a consumer rental purchase agreement may be collected only once on any accrued payment no matter how long such payment remains unpaid, may be collected at the time it accrues or at any time thereafter, and shall not be assessed against a payment that is timely made even though an earlier late fee has not been paid in full.

(4) The lessor may contract for and receive a reinstatement fee of not more than five dollars which may be assessed only if the consumer exercises the reinstatement provision of the agreement. The reinstatement fee may be assessed in addition to any applicable late fee.

Sec. 5. (1)(a) The Director of Banking and Finance in his or her discretion may make such investigations within or without this state as he or she deems necessary to determine whether any person has violated or is about to violate the Consumer Rental Purchase Agreement Act or to aid in the enforcement of the act or in the adopting and promulgating of rules, regulations, and forms under the act. In the discretion of the director, the actual expense of any such investigation may be charged to the person who is the subject of the investigation.

(b) The director may publish information concerning any violation of the act or any rule, regulation, or order of the director.

(c) For the purpose of any investigation or proceeding under the act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(2) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him or her to appear before the director or the officer designated by the director to produce documentary evidence if so ordered or to give evidence touching on the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court. The request for an order of compliance may be addressed to either (a) the district court of Lancaster County or the district court in the county where service may be obtained on the person refusing to testify or produce, if the person is within this state, or (b) the appropriate district court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

Sec. 6. (1) The Director of Banking and Finance may summarily order a lessor to cease and desist from the use of certain forms

or practices relating to consumer rental purchase agreements if he or she finds that (a) there has been a substantial failure to comply with any of the provisions of the Consumer Rental Purchase Agreement Act or (b) the continued use of certain forms or practices relating to consumer rental purchase agreements would constitute misrepresentation to or deceit or fraud on the consumer.

(2) If the director believes, whether or not based upon an investigation conducted under section 5 of this act, that any person or lessor has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Consumer Rental Purchase Agreement Act or any rule, regulation, or order under the act, the director may:

(a) Issue a cease and desist order;

(b) Impose a fine of not to exceed one thousand dollars per violation, in addition to costs of the investigation; or

(c) Initiate an action in any court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with the act or any order under the act.

(3) Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The director shall not be required to post a bond.

(4) Any fine and costs imposed pursuant to this section shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the director and remitted to the State Treasurer. Costs shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund. If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the director. Failure of the person to pay a fine and costs shall constitute a separate violation of the act.

(5) Upon entry of an order pursuant to this section, the director shall promptly notify all persons to whom such order is directed that it has been entered and of the reasons for such order and that any person to whom the order is directed may request a hearing in writing within fifteen business days of the issuance of the order. Upon a receipt of a written request, the matter shall be set down for hearing to commence within fifteen business days after the receipt unless the person requesting the hearing consents to a later date. If a hearing is not requested within fifteen business days and none is ordered by the director, the order shall automatically become final and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director after notice and hearing shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

(6) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(7) Any person aggrieved by a final order of the director

may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 7. To aid in the enforcement of the Consumer Rental Purchase Agreement Act, the Director of Banking and Finance may examine the books and records of any lessor at least once a year. The expense of the examination shall be assessed against such lessor.

Sec. 8. Leasing or offering to lease or arrange for a leasing of property under a consumer rental purchase agreement in this state shall constitute sufficient contact with this state for the exercise of personal jurisdiction over the lessor in any action arising under the Consumer Rental Purchase Agreement Act.

Sec. 9. That original sections 69-2101, 69-2103, 69-2109, and 69-2110, Reissue Revised Statutes of Nebraska, 1943, are repealed.