

106TH CONGRESS
1ST SESSION

H. R. 1634

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

APRIL 29, 1999

Mr. JONES of North Carolina 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 but
25 does not include price tags, window signs, or other
26 in-store merchandising aids.

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

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

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

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

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

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

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

24 “(7) The term ‘personal property’ means prop-
25 erty that is not real property under the laws of the

1 State where the property is located when it is made
2 available under a rental-purchase agreement unless
3 otherwise stated.

4 “(8) The term ‘rental-purchase agreement’
5 means a contract between a consumer and a
6 merchant—

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

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

13 “(C) that permits but does not obligate the
14 consumer to become the owner of the property.

15 Such term does not include a credit sale as defined
16 in section 103(g) of the Truth in Lending Act (15
17 U.S.C. 1602(g)), a consumer lease as defined in sec-
18 tion 181(1) of the Truth in Lending Act (15 U.S.C.
19 1667(1)), or a transaction giving rise to a debt in-
20 curred in connection with the business of lending
21 money or a thing of value.

22 “(9) The term ‘State’ means any State, the
23 District of Columbia, the Commonwealth of Puerto
24 Rico, and any territory or possession of the United
25 States.

1 **“SEC. 1002. EXEMPTED TRANSACTIONS.**

2 “This title does not apply to rental-purchase agree-
3 ments primarily for business, commercial, or agricultural
4 purposes, or those made with Government agencies or in-
5 strumentalities.

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

7 “(a) IN GENERAL.—The merchant under a rental-
8 purchase agreement shall disclose to the consumer under
9 the agreement the information required by sections 1004,
10 1005, and 1006. In an agreement involving more than 1
11 merchant, only 1 merchant is required to make the disclo-
12 sures.

13 “(b) DISCLOSURE.—The disclosures required under
14 sections 1004 and 1005 and the agreement provisions re-
15 quired to be included under 1006 shall be made or
16 included—

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

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

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

24 “(c) INACCURACY.—If a disclosure required to be
25 made by a merchant to a consumer under section 1004
26 becomes inaccurate as the result of any mutual written

1 agreement between the merchant and such consumer oc-
2 ccurring after delivery of the required disclosure to such
3 consumer under this title, the resulting inaccuracy is not
4 a violation of this title.

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

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

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

13 “(2) The amount and timing of rental pay-
14 ments.

15 “(3) The total number and total dollar amount
16 of rental payments necessary to acquire ownership of
17 the property.

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

21 “(5) A disclosure, to the extent applicable, that
22 the total dollar amount of payments does not include
23 other fees or charges, such as a delivery fee, an ini-
24 tial processing fee, taxes, or other fees or charges
25 which may be payable under the agreement. Such

1 fees and charges shall be separately identified in the
2 agreement.

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

6 “(7) A statement indicating whether the prop-
7 erty is new or used, except a statement indicating
8 that new property is used property is not a violation
9 of this title.

10 “(8) A statement of—

11 “(A) the manufacturer’s suggested retail
12 price, where applicable, or

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

15 “(9) A clear statement of the terms of the con-
16 sumer’s option to acquire ownership.

17 “(10) A statement—

18 “(A) identifying the party responsible for
19 maintaining or servicing the property while it is
20 being rented;

21 “(B) describing the responsibility for main-
22 tenance or service; and

23 “(C) disclosing that if any part of a manu-
24 facturer’s express warranty covers the property
25 at the time the consumer acquires ownership of

1 the property, the warranty will be transferred
 2 to the consumer if allowed by the terms of the
 3 warranty.

4 “(11) The date of consummation of the trans-
 5 action and the identities of the merchant and con-
 6 sumer.

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

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

9 “(a) IN GENERAL.—Except as provided in subsection
 10 (b), each item of property or each set of items, if offered
 11 as a set or displayed or offered in connection with a rental-
 12 purchase agreement, shall have displayed on or next to
 13 it a card, tag, or label that clearly and conspicuously dis-
 14 closes only the following:

15 “(1) A brief description of the property.

16 “(2) Whether the property is new or used.

17 “(3) The cash price of the property.

18 “(4) The amount of each rental payment.

19 “(5) The total number of rental payments nec-
 20 essary to acquire ownership of the property.

21 “(6) The total dollar amount of the rental pay-
 22 ments necessary to acquire ownership of the prop-
 23 erty.

24 “(b) EXCEPTION.—A merchant may make the disclo-
 25 sure required by subsection (a) in the form of a list or

1 catalog which is readily available to the customer if the
2 merchandise is not displayed in the merchant's showroom
3 or if displaying a tag would be impractical due to the size
4 of the merchandise.

5 **“SEC. 1006. AGREEMENT PROVISIONS.**

6 “(a) IN GENERAL.—Each rental-purchase agreement
7 shall—

8 “(1) provide a statement of any obligation of
9 the consumer and the merchant under the agree-
10 ment to repair any defect or malfunction of the
11 property covered by the agreement, and any limita-
12 tion of those obligations;

13 “(2) provide that the consumer may terminate
14 the agreement without penalty by voluntarily surren-
15 dering or returning the property covered by the
16 agreement upon expiration of any rental term; and

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

19 “(A) permits a consumer who fails to make
20 a timely rental renewal payment to reinstate
21 the agreement, without losing any rights or op-
22 tions which exist under the agreement, by the
23 payment of all past due rental charges and any
24 late fee and a payment for the next rental term
25 within 7 business days after the renewal date if

1 the consumer pays monthly, or within 3 busi-
2 ness days after the renewal date if the con-
3 sumer pays more frequently than monthly;

4 “(B) if the consumer returns or voluntarily
5 surrenders the property covered by the agree-
6 ment, other than through judicial process, dur-
7 ing the applicable reinstatement period set forth
8 in subparagraph (A), permits the consumer to
9 reinstate the agreement during a period of at
10 least 30 days after the date of the return or
11 surrender of the property by the payment of all
12 past due rental charges, and any applicable re-
13 delivery, repair, or late fees and a payment for
14 the next rental term; and

15 “(C) if the consumer has paid 60 percent
16 or more of the total dollar amount of payments
17 necessary to acquire ownership of the property
18 under the agreement and returns or voluntarily
19 surrenders the property, other than through ju-
20 dicial process, during the applicable reinstate-
21 ment period set forth in subparagraph (A), per-
22 mits the consumer to reinstate the agreement
23 during a period of at least 90 days after the
24 date of the return of the property by the pay-
25 ment of all past due rental charges and any ap-

1 plicable redelivery, repair, or late fees and a
2 payment for the next rental term.

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

12 **“SEC. 1007. PROHIBITED INCLUSION.**

13 “A rental-purchase agreement may not contain—

14 “(1) a confession of judgment;

15 “(2) a negotiable instrument;

16 “(3) a security interest or any other claim of a
17 property interest in any goods, except those goods
18 the use of which is provided by the merchant pursu-
19 ant to the agreement;

20 “(4) a wage assignment; or

21 “(5) a waiver by the consumer of a claim or de-
22 fense.

23 **“SEC. 1008. STATEMENT OF ACCOUNTS.**

24 “A merchant shall be required upon request by the
25 consumer to provide a quarterly statement.

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

2 “A renegotiation of a rental-purchase agreement is
3 deemed to be a new agreement for purposes of this title,
4 requiring new disclosures under section 1004. A renegoti-
5 ation shall be considered to occur when an existing rental
6 purchase agreement is satisfied and replaced by a new
7 agreement undertaken by the same merchant. Events such
8 as the following shall not be treated as renegotiations:

9 “(1) The addition or return of property in a
10 multiple-item agreement or the substitution of prop-
11 erty, if in either case the average payment allocable
12 to a payment period is not changed by more than 25
13 percent.

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

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

18 “(4) An agreement involving a court pro-
19 ceeding.

20 “(5) Any other event described in regulations
21 prescribed by the Board.

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

23 “(a) ADVERTISEMENTS.—If an advertisement refers
24 to or states the amount of any payment and the right to
25 acquire ownership for any specific item, the merchant that

1 makes the advertisement shall also clearly and conspicu-
2 ously state in the advertisement the following items:

3 “(1) The transaction advertised is a rental-pur-
4 chase agreement.

5 “(2) The total number and total dollar amount
6 of rental payments necessary to acquire ownership
7 under the agreement.

8 “(3) The consumer acquires no ownership
9 rights in the property if the total dollar amount of
10 rental payments necessary to acquire ownership is
11 not paid.

12 “(b) LIABILITY.—The owner or personnel of any me-
13 dium in which an advertisement appears or through which
14 it is disseminated shall not be liable for a violation of sub-
15 section (a).

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

18 “(1) is published in the yellow pages of a tele-
19 phone directory or in any similar directory of busi-
20 nesses, or

21 “(2) is displayed in the merchant’s place of
22 business.

23 **“SEC. 1011. CIVIL LIABILITY.**

24 “(a) LIABILITY AMOUNT.—Except as otherwise pro-
25 vided in this title, a merchant who willfully violates this

1 title with respect to a consumer is liable to the consumer
2 in an amount equal to the following:

3 “(1) In an action by an individual consumer,
4 the sum of—

5 “(A) actual damages sustained by the con-
6 sumer as a result of the violation; and

7 “(B) Not less than \$100.

8 “(2) In a class action, the amount the court de-
9 termines to be appropriate with no minimum recov-
10 ery as to each member. The total recovery in any
11 class action or series of class actions arising out of
12 the same violation shall not be more than the lesser
13 of \$500,000 or 1 percent of the net worth of the
14 merchant.

15 “(b) STATUTE OF LIMITATIONS.—

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

21 “(2) CONSTRUCTION.—This subsection does not
22 bar a consumer from asserting a violation of this
23 title in an action to collect a debt brought more than
24 one year after the date of the occurrence of the vio-

1 lation as a matter of defense by recoupment or set
2 off, except as otherwise provided by State law.

3 “(c) OFFSET.—

4 “(1) LIMITATION.—A consumer may not take
5 any action to offset any amount for which a mer-
6 chant is potentially liable under subsection (a)
7 against any amount owed by the consumer, unless
8 the amount of the merchant’s liability has been de-
9 termined by judgment of a court of competent juris-
10 diction in an action in which the merchant was a
11 party.

12 “(2) CONSTRUCTION.—This subsection does not
13 bar a consumer who is in default on the obligation
14 from asserting a violation of this title as an original
15 action, or as a defense of counterclaim to an action
16 brought by the merchant to collect amounts owed by
17 the consumer.

18 **“SEC. 1012. DEFENSES.**

19 “A merchant is not liable—

20 “(1) under section 1011 for a violation of the
21 requirements of section 1004 if within 15 days after
22 first having knowledge of the violation, and before
23 an action under section 1011 is filed or written no-
24 tice of the violation is received from the consumer,
25 the merchant notifies the consumer of the violation

1 and makes whatever adjustments in the account are
2 necessary to assure that the consumer will not be re-
3 quired to pay an amount in excess of the amounts
4 actually disclosed;

5 “(2) under this title for any act done or omitted
6 in good faith in conformity with any rule, regulation,
7 interpretation, or approval promulgated by the
8 Board or by an official duly authorized by the
9 Board; or

10 “(3) under this title for a violation if the mer-
11 chant establishes, and at the time of the violation is
12 implementing, procedures reasonably calculated to
13 prevent the violation.

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

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

19 “(a) ASSIGNEES.—For purposes of sections 1011 and
20 1012 and this section, the term “merchant” includes an
21 assignee of a merchant. However, an action under section
22 1011 for a violation of this title may be brought against
23 an assignee only if the violation is apparent on the face
24 of the rental-purchase agreement to which it relates. A
25 violation apparent in the face of a rental purchase agree-

1 ment includes a disclosure that can be determined to be
2 incomplete or inaccurate from the face of the agreement.
3 An assignee has no liability in a case in which the assign-
4 ment is involuntary.

5 “(b) CONSUMER ACKNOWLEDGMENT.—In an action
6 by or against an assignee, the consumer’s written acknowl-
7 edgment of receipt of a disclosure shall be conclusive proof
8 that the disclosure was made, if the assignee had no
9 knowledge that the disclosure had not been made when
10 the assignee acquired the rental-purchase agreement to
11 which it relates.

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

13 “(a) IN GENERAL.—The Board shall issue regula-
14 tions to carry out the purposes of this title, to prevent
15 its circumvention, and to facilitate compliance with its re-
16 quirements. The regulations may contain classification
17 and differentiations and may provide for adjustments and
18 exceptions for any class of transaction.

19 “(b) MODELS.—The Board shall publish model dis-
20 closure forms and clauses to facilitate compliance with the
21 disclosure requirements of this title and to aid consumers
22 in understanding transactions under rental-purchase
23 agreements. In designing forms, the Board shall consider
24 the use by merchants of data processing or similar auto-
25 mated equipment. Use of the models shall be optional. A

1 merchant who properly uses the model disclosure forms
2 shall be deemed to be in compliance with the disclosure
3 requirements.

4 “(c) EFFECTIVE DATE OF REGULATIONS.—Any reg-
5 ulation issued by the Board, or any amendment or inter-
6 pretation thereof, shall not be effective before the October
7 1 that follows the date of promulgation by at least 6
8 months. The Board may at its discretion lengthen that
9 period of time to permit merchants to adjust their forms
10 to accommodate new requirements. The Board may also
11 shorten that period of time, notwithstanding the first sen-
12 tence, if it makes a specific finding that such action is
13 necessary to comply with the findings of a court or to pre-
14 vent unfair or deceptive practices. In any case, merchants
15 may comply with any newly promulgated disclosure re-
16 quirement prior to its effective date.

17 “(d) ENFORCEMENT.—The Board shall enforce the
18 requirements of this title. The authority of section 108
19 shall apply with respect to the Board’s enforcement of
20 such requirements.

21 **“SEC. 1015. RELATION TO STATE LAWS.**

22 “Except as provided in section 129 of the Truth in
23 Lending Act (15 U.S.C. 1639) nothing in this title shall
24 be construed to annul, alter, affect, or exempt any person
25 subject to this title from complying with the laws of any

1 State relating to rental-purchase agreement, except to the
2 extent that those laws—

3 “(1) are inconsistent with this title;

4 “(2) attempt to regulate rental-purchase trans-
5 actions as consumer credit, retail installment, or
6 conditional sales; or

7 “(3) attempt to impute to such transactions the
8 creation of debt or an extension of credit or require
9 the disclosure of a time-price differential, annual
10 percentage rate, or other similar disclosures which
11 might suggest the existence of a debt, and extension
12 of credit, or the payment of interest.

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

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

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