

Nebraska State Statutes - **Consumer Rental Purchase Agreement Act**

Act, how cited.

69-2101. Sections 69-2101 to 69-2119 shall be known and may be cited as the Consumer Rental Purchase Agreement Act.

Legislative findings.

69-2102. The Legislature finds that a significant number of consumers have sought to acquire ownership of personal property through consumer rental purchase agreements. Often consumer rental purchase agreements have been offered without adequate cost disclosures. It is the purpose of the Consumer Rental Purchase Agreement Act to assure meaningful disclosure of the terms of consumer rental purchase agreements, to make consumers aware of the total cost attendant with such agreements, to inform the consumer when ownership will transfer, and to assure accurate disclosures of rental purchase terms in advertising.

Terms, defined.

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.

Lessor; disclosures required.

69-2104. (1) Before entering into any consumer rental

purchase agreement, the lessor shall disclose to the consumer the

following items as applicable:

(a) A brief description of the leased property sufficient to identify the property to the consumer and lessor;

(b) The number, amount, and timing of all lease payments necessary to acquire ownership of the property;

(c) The total amount of all initial and periodic payments and other charges to acquire ownership of the property

rental pursuant to the ownership provisions of the consumer

purchase agreement;

(d) A statement that the consumer will not own the property until the consumer has made the stated number of

payments and the total dollar amount of payments necessary to

acquire ownership;

(e) A statement that the total of payments does not include other charges such as late fees and that the consumer

should see the contract for an explanation of these charges;

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

(g) A statement indicating whether the property is new or used. A statement that indicates that new property is used shall not be a violation of the Consumer Rental Purchase Agreement Act;

(h) A statement of the cash price of the property. When the agreement involves a lease for two or more items, a statement of the aggregate cash price of all items shall satisfy the requirement of this subdivision;

(i) The total of initial payments required to be paid before consummation of the agreement or delivery of the property, whichever occurs later;

(j) A statement clearly summarizing the terms of the consumer's options to purchase, including a statement that at any time after the first periodic payment is made the consumer may acquire ownership of the property by tendering fifty-five percent of the difference between the total of payments necessary to acquire ownership and the total of lease payments the consumer has paid on the property at that time;

(k) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility and a statement that if any part of a manufacturer's warranty covers the leased property at the time the consumer acquires ownership of the property, such warranty shall be transferred to the consumer if allowed by the terms of the warranty; and

(1) The date of the transaction and the names of the lessor and the consumer.

(2) With respect to matters specifically governed by the Consumer Credit Protection Act, 15 U.S.C. 1635 et seq., compliance with such act shall satisfy the requirements of this section.

(3) Subsection (1) of this section shall not apply to a lessor who complies with the disclosure requirements of the Consumer Credit Protection Act, 15 U.S.C. 1667a, with respect to a consumer rental purchase agreement entered into with a consumer.

Disclosures; how made; rules and regulations; agreement; contents.

69-2105. (1) In a consumer rental purchase agreement involving more than one consumer, a lessor need disclose the items required by the Consumer Rental Purchase Agreement Act to only one of the consumers who is primarily obligated. In a consumer rental purchase agreement involving more than one lessor, only one lessor need make the required disclosures.

(2) The disclosures required under the act shall be made at or before consummation of the consumer rental purchase agreement.

(3) The disclosures shall be made using words and phrases of common meaning in a form that the consumer may keep.

The required disclosures shall be set forth clearly and conspicuously. The disclosures shall be placed all together on the front side of the consumer rental purchase agreement or on a separate form. The form setting forth the required disclosures shall contain spaces for the consumer's signature and the date appearing immediately below the disclosures. The requirements of this section shall not have been complied with unless the consumer signs the statement and receives at the time the disclosures are made a legible copy of the signed statement. The

inclusion in the required disclosures of a statement that the consumer received a legible copy of those disclosures shall create a rebuttable presumption of receipt.

(4) Information required to be disclosed may be given in the form of estimates. Estimates shall be identified as such.

(5) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement after delivery of the required disclosures, the resulting inaccuracy shall not be a violation of the act.

(6) Information in addition to that required by section 69-2104 may be disclosed if the additional information is not stated, utilized, or placed in a manner which will contradict, obscure, or detract attention from the required information.

(7) The department shall adopt and promulgate rules and regulations establishing requirements for the order, acknowledgment by initialing, and conspicuous placement of the disclosures set forth in section 69-2104. Such rules and regulations may allow the disclosures to be made in accordance with model forms prepared by the department.

(8) The terms of the consumer rental purchase agreement, except as otherwise provided in the Consumer Rental Purchase Agreement Act, shall be set forth in not less than eight-point standard type or such similar type as prescribed in

rules and regulations adopted and promulgated by the department.

(9) Every consumer rental purchase agreement shall contain, immediately above or adjacent to the place for the signature of the consumer, a clear, conspicuous, printed or typewritten notice, in boldface, ten-point type, in substantially

the following language:

NOTICE TO CONSUMER -- READ BEFORE SIGNING

a. DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT, INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF

OTHERWISE ADVISED.

b. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

c. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

Written receipt; required; when.

69-2106. The lessor shall furnish the consumer upon request with an itemized written receipt for payment in cash or any other method of payment which itself does not provide evidence of payment.

Agreements; prohibited provisions.

69-2107. A consumer rental purchase agreement may not contain a provision:

- (1) Requiring a confession of judgment;
- (2) Requiring a garnishment of wages;
- (3) Granting authorization to the lessor or a person acting on the lessor's behalf to enter unlawfully upon the consumer's premises or to commit any breach of the peace in the repossession of property;
- (4) Requiring the consumer to waive any defense, counterclaim, or right of action against the lessor or a person acting on the lessor's behalf in collection of payment under the consumer rental purchase agreement or in the repossession of property; or
- (5) Requiring purchase of insurance from the lessor to cover the property.

Agreement; contents.

69-2108. Each consumer rental purchase agreement shall:

- (1) Provide that the consumer may terminate the agreement without penalty by voluntarily surrendering or

returning the property upon expiration of any lease term; and

(2) Contain a provision for reinstatement which shall include, but not be limited to:

(a) Permitting a consumer who fails to make a timely rental 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, the reasonable costs of pickup, redelivery, and any refurbishing, and any applicable late fee within five business days of the renewal date of the agreement if the consumer pays monthly or within three business days of the renewal date of the agreement if the consumer pays more frequently than monthly;

(b) Permitting the consumer to reinstate the agreement during a period of not less than thirty days after the date of the return of the property if the consumer promptly returns or voluntarily surrenders the property upon request by the lessor or its agent. In the event the consumer has paid not less than sixty percent and not more than eighty percent of the amount called for under the contract to obtain ownership, the reinstatement period shall be extended to a total of ninety days after the date of the return of the property. In the event the consumer has paid eighty percent or more of the amount called for under the contract to obtain ownership, the reinstatement period

shall be extended to a total of one hundred eighty days after the date of the return of the property.

Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

Lessor; prohibited acts.

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;

(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.

Fees; deposits; charges.

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.

Renegotiation; when; extension; effect.

69-2111. (1) A renegotiation shall be deemed to occur when an existing consumer rental purchase agreement is satisfied and replaced by a new agreement undertaken by the same consumer.

A renegotiation shall be considered a new agreement requiring new disclosures. Renegotiation shall not include:

(a) The addition or return of property in a

multiple-item agreement or the substitution of leased property if in either case the average payment allocable to a payment period is not changed by more than twenty-five percent;

(b) Deferral or extension of one or more periodic payments or portions of a periodic payment;

(c) A reduction in charges in the agreement;

(d) An agreement involving a court proceeding; and

(e) Any other event described in rules and regulations adopted and promulgated by the department.

(2) No disclosures shall be required for any extension of a consumer rental purchase agreement.

Advertisement; requirements.

69-2112. (1) Any advertisement for a consumer rental purchase agreement which refers to or states the amount of any payment or the right to acquire ownership for any specific item shall also state clearly and conspicuously the following if applicable:

(a) That the transaction advertised is a consumer rental purchase agreement;

(b) The total dollar amount of payments necessary to acquire ownership; and

(c) That the consumer acquires no ownership rights if

the total dollar amount necessary to acquire ownership is not paid.

(2) Any owner or employee of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(3) Subsection (1) of this section shall not apply to an advertisement which does not refer to a specific item of property, which does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or any similar directory of business.

(4) With respect to matters specifically governed by the Consumer Credit Protection Act, 15 U.S.C. 1635 et seq., compliance with such act shall satisfy the requirements of this section.

Lessor; liability; offset, not permitted; lessor; preserve evidence.

69-2113. (1) A lessor who fails to comply with the requirements of sections 69-2104 to 69-2110 with respect to a consumer shall be liable to the consumer for:

(a) The greater of the actual damages sustained by the consumer as a result of the violation or, in the case of an individual action, twenty-five percent of the total of payments

necessary to acquire ownership but not less than one hundred dollars nor more than one thousand dollars; and

(b) The costs of the action and reasonable attorney's fees.

(2) In the case of an advertisement, any lessor who fails to comply with the requirements of section 69-2112 with regard to any person shall be liable to that person for actual damages suffered from the violation, the costs of the action, and reasonable attorney's fees.

(3) When there is more than one lessor, liability shall be imposed only on the lessor who made the disclosures. When no disclosures have been made, liability shall be imposed jointly and severally on all lessors.

(4) When there is more than one consumer, there shall be only one recovery of damages under subsection (1) of this section for a violation of the Consumer Rental Purchase Agreement Act.

(5) Multiple violations in connection with a single consumer rental purchase agreement shall entitle the consumer to a single recovery under this section.

(6) A consumer shall not take any action to offset any amount for which a lessor is potentially liable under subsection (1) of this section against any amount owed by the consumer

unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action to which the lessor was a party. This subsection shall not bar a consumer then in default on the obligation from asserting a violation of the act as an original action or as a defense or counterclaim to an action brought by the lessor to collect an amount owed by the consumer.

(7) In connection with any transaction covered under the act, the lessor shall preserve evidence of compliance with the provisions of the act for not less than two years from the date of consummation of the agreement.

Actions; statute of limitations.

69-2114. An action under the Consumer Rental Purchase Agreement Act may be brought in any court of competent jurisdiction within one year of the date of the occurrence of any violation or within six months of the time the consumer rental purchase agreement and any renewal or extension of the agreement

cease to be in effect, whichever occurs later. Notwithstanding the provisions of this section, an action under the act may be maintained by way of recoupment or counterclaim in an action brought against the consumer by the lessor or the lessor's assignee.

Lessor; not liable; when.

69-2115. (1) A lessor shall not be liable for a violation under section 69-2113 if the lessor proves by a preponderance of the evidence that the violation was not intentional, that the violation resulted from a bona fide error, and that the lessor maintained procedures reasonably adapted to avoid such an error. A bona fide error shall include, but not be limited to, clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to requirements of the Consumer Rental Purchase Agreement Act shall not be considered a bona fide error.

(2) A lessor shall not be liable under the act for any act done or omitted in good faith in conformity with any rule, regulation, or interpretation issued, adopted, or promulgated by the Attorney General, by the department, or by an official duly authorized by the Attorney General or the department even if after the act or omission has occurred the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Director of Banking and Finance; investigations; other proceedings; powers.

69-2116. (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.

Director of Banking and Finance; violations; powers; duties; appeal.

69-2117. (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 69-2116, 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.

Examination of books and records.

69-2118. 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.

Personal jurisdiction over lessor.

69-2119. 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.