

ACT 248

S.B. NO. 141

A Bill for an Act Relating to Lease-Purchase Agreements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
LEASE-PURCHASE AGREEMENTS FOR PERSONAL PROPERTY**

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Advertisement” means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a lease-purchase agreement.

“Cash price” means the price at which retail sellers are selling and retail buyers are buying the same or similar property for cash in the same trade area in which the lessor’s place of business is located. Cash price may be evidenced by an amount no greater than twice the documented actual cost, including freight charges and applicable taxes, of the lease-purchase property from an unaffiliated wholesaler, distributor, or manufacturer. A lessor shall maintain records that establish that the price disclosed as the cash price in a lease-purchase agreement is the cash price as defined.

“Consummation” means the time a lessee becomes contractually obligated on a lease-purchase agreement.

“Lessee” means a natural person who rents personal property under a lease-purchase agreement.

“Lessor” means a person who regularly provides the use of property through lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement.

§ -2 **Lease-purchase agreement defined.** A lease-purchase agreement is an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of four months or less that:

- (1) Is automatically renewable with each payment after the initial period;

- (2) Does not obligate or require the lessee to continue leasing or using the property beyond the initial period; and
- (3) Permits the lessee to become the owner of the property.

§ **-3 Agreements exempt from other laws.** (a) Lease-purchase agreements are not subject to:

- (1) Chapter 476; and
 - (2) Article 2A or 9 of chapter 490.
- (b) This chapter does not apply to the following:
- (1) Lease-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;
 - (2) A lease of a safe deposit box;
 - (3) A lease or bailment of personal property which is incidental to the lease of real property, and which provides that the lessee has no option to purchase the leased property; or
 - (4) A lease of a motor vehicle.

§ **-4 Provisions prohibited in agreements.** A lease-purchase agreement may not contain:

- (1) A confession of judgment;
- (2) A negotiable instrument;
- (3) A security interest or any other claim of a property interest in any goods except those goods delivered by the lessor pursuant to the lease-purchase agreement;
- (4) A wage assignment;
- (5) A waiver by the consumer of claims or defenses; or
- (6) A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises or to commit any breach of the peace in the repossession of goods.

§ **-5 Limit on total lease payments.** (a) No lessor shall offer a lease-purchase agreement in which the total lease payments necessary to acquire ownership exceed twice the cash price of the rented property.

(b) When fifty per cent of all rental payments made by a lessee equals the cash price of the property disclosed to the lessee in the lease-purchase agreement, the lessee shall own the rented property and the lease-purchase agreement shall terminate.

§ **-6 Early termination.** The lessee shall have the right to acquire ownership of the property at any time after the initial payment by tendering to the lessor all past due payments and fees and an amount equal to the cash price stated in the lease-purchase agreement multiplied by a fraction that has as its numerator the number of periodic payments remaining under the agreement and that has as its denominator the total number of periodic payments.

§ **-7 Additional charges.** (a) A lessor may contract for and receive an initial nonrefundable fee not to exceed \$10 per contract. If the lessor requires a security deposit, the amount of the deposit and the conditions under which it will be returned shall be disclosed pursuant to section -13.

(b) A lessor may contract for and receive an initial delivery charge per contract not to exceed \$15 in the case of a lease-purchase agreement covering five or fewer items if, in either case, the lessor actually delivers the items to the lessee's dwelling and the delivery charge is disclosed pursuant to section -14. The

delivery charge shall be assessed in lieu of and not in addition to the initial charge in subsection (a). A lessor may not contract for or receive a delivery charge on property redelivered after repair or maintenance.

(c) A lessor may contract for and receive a charge for picking up late payments from the lessee if the lessor is required to do so pursuant to the rental purchase agreement or is requested to visit the lessee to pick up a payment. In a lease-purchase agreement with payment or renewal dates which are on a monthly basis, this charge may not be assessed more than three times in any six-month period. In lease-purchase agreements with payments or renewal options on a weekly or biweekly basis, this charge may not be assessed more than six times in any six-month period. No charge assessed pursuant to this subsection may exceed \$10. A pickup fee may be assessed pursuant to this subsection only in lieu of and not in addition to any late charge assessed pursuant to subsection (d).

(d) The parties may contract for late charges as follows:

- (1) For lease-purchase agreements with monthly renewal dates, a late charge not exceeding \$5 may be assessed on any payment not made within five days after payment is due, or return of the property is required; or
- (2) For lease-purchase agreements with weekly or biweekly renewal dates, a late charge not exceeding \$3 may be assessed on any payments not made within three days after payment is due, or return of the property is required.

A late charge on lease-purchase agreements may be collected only once on any accrued payment, no matter how long it remains unpaid. A late charge may be collected at the time it accrues or at any time thereafter. A lessor may elect to waive imposition of a late charge due on an accrued payment in accordance with the terms of the lease-purchase agreement; except that, the waiver shall be in writing and, once a late charge is waived for specific payment, the lessor may not seek to impose a late fee for the accrued payment in question. No late charge shall be assessed against a payment that is timely, even though an earlier late charge has not been paid in full.

§ -8 Assignee liability and notice of assignment. (a) With respect to a lease-purchase agreement, an assignee of the rights of the lessor is subject to all claims and defenses of the lessee against the lessor arising from the lease of property or services, notwithstanding that the assignee is the holder in due course of a negotiable instrument issued in violation of the provisions prohibiting certain negotiable instruments.

(b) A claim or defense of a lessee specified in subsection (a) may be asserted against the assignee under this section only to the extent of the amount owing and paid to the assignee and assignor.

(c) An agreement may not limit or waive the claims or defenses of a lessee under this section.

(d) The lessee is authorized to pay the original lessor until the lessee receives written notification that the rights to payment pursuant to a lease-purchase agreement have been assigned to an assignee and that payment is to be made to the assignee. A notification that does not reasonably identify the rights assigned shall be ineffective. If requested by the lessee, the assignee shall furnish reasonable proof that the assignment has been made, and unless the assignee does so, the lessee may pay the lessor.

§ -9 Unfair or deceptive acts or practices. Any person who violates this chapter shall be deemed to have engaged in an unfair or deceptive act or practice within the meaning of section 480-2.

§ -10 Remedies of lessee. (a) In case of a violation by a lessor of any provision of this chapter with respect to any lease-purchase agreement, the lessee may bring a suit in any court of competent jurisdiction to recover from the lessor or may set off or counterclaim in any action by the lessor actual damages. If the court finds that any violation has occurred, the court shall award a minimum recovery of \$250 or twenty-five per cent of the total cost to acquire ownership under the lease-purchase agreement, whichever is greater.

(b) The remedies specified in subsection (a) shall be in addition to any other remedies provided by law.

(c) In any action brought pursuant to this section, the court shall award the prevailing party the costs of the action and reasonable attorney fees.

§ -11 Unconscionability. (a) With respect to a lease-purchase transaction, if the court as a matter of law finds the transaction, agreement, or any clause of the agreement to have been unconscionable at the time it was made, the court may:

- (1) Refuse to enforce the agreement;
- (2) Enforce the remainder of the agreement without the unconscionable clause; or
- (3) Limit the application of any unconscionable clause to avoid any unconscionable result.

(b) If it is claimed or appears to the court that the transaction, agreement, or clause may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making a determination related to unconscionability.

(c) If, in an action in which unconscionability is claimed, the court finds unconscionability pursuant to this section, the court may award the costs of the action and reasonable attorney fees to the lessee. If the court does not find unconscionability and does find that the lessee claiming unconscionability brought or maintained an action that the lessee knew to be groundless, the court may award the costs of the action and reasonable attorney fees to the party against whom the claim was made. In determining attorney fees, the amount of recovery claimed on behalf of the lessee shall not be controlling.

(d) The remedies of this section shall be in addition to remedies otherwise available for the same conduct authorized under law other than in this chapter, but double recovery of actual damages shall be prohibited.

(e) For the purpose of this section, a charge or practice expressly permitted by this chapter shall not be unconscionable.

§ -12 Waivers. A lessor shall not require a lessee to waive:

- (1) Service of process;
- (2) Any defense;
- (3) Any counterclaim; or
- (4) Right of action against the lessor or a person acting on the lessor's behalf as the lessor's agent;

in collection of payments under the lease or in repossession of the lease property.

§ -13 Disclosure of information. The lessor shall disclose to the lessee the information required by this chapter. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by these disclosures. The disclosures shall be made before consummation of the lease-purchase agreement. The disclosures shall be made clearly and conspicuously in writing and a copy of the lease-purchase agreement provided to the lessee in not less than ten point standard type. All disclosures required by this chapter shall be printed or typed in a color or shade that clearly contrasts with the background. The

disclosures required under section -14 shall be made on the face of the contract above the line for the lessee's signature. Before any payment is due, the lessor shall furnish the lessee with an exact copy of the lease-purchase agreement, which shall be signed by the lessee and which shall evidence the lessee's agreement.

If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement by the lessee after delivery of the required disclosures, the resulting inaccuracy shall not be a violation of this chapter.

§ -14 Information required in disclosure. (a) For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

- (1) The total number, total amount, and timing of all payments necessary to acquire ownership of the property;
- (2) A statement that the lessee shall not own the property until the lessee has made the total payment necessary to acquire ownership;
- (3) A statement that the lessee shall be responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed;
- (4) A brief description of the leased property, sufficient to identify the property to the lessee and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used does not violate this chapter;
- (5) A brief description of any damages to the leased property;
- (6) A statement of the cash price of the property. If the agreement involves a lease of two or more items as a set, in one agreement, a statement of the aggregate cash price of all items is sufficient;
- (7) The total of initial payments paid or required at or before consummation of the agreement or delivery of the property whichever is later;
- (8) A statement that the total of payments shall not include other charges, such as delivery, taxes, late payment, pickup, and reinstatement fees, which fees shall be separately disclosed in the contract;
- (9) A statement clearly summarizing the terms of the lessee's option to purchase, including a statement that the lessee has the right to exercise an early-purchase option and the price, formula, or method for determining the price at which the property may be so purchased;
- (10) 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 express warranty covers the leased property at the time the lessee acquires ownership of the property, the warranty shall be transferred to the lessee, if allowed by the terms of the warranty;
- (11) The date of the transaction and the identities of the lessor and lessee;
- (12) A statement that the lessee may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair, ordinary wear and tear excepted, upon expiration of any lease term along with any past due rental payments; and
- (13) Notice of the right to reinstate an agreement as provided in this chapter.

(b) In addition to the disclosures required pursuant to this section, the lessor shall also make the following disclosure:

NOTICE TO LESSEE—READ BEFORE SIGNING

- (1) **DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.**

- (2) **DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.**
- (3) **YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.**
- (4) **YOU HAVE THE RIGHT TO EXERCISE ANY EARLY BUY-OUT OPTION AS PROVIDED IN THIS AGREEMENT. EXERCISE OF THIS OPTION MAY RESULT IN A REDUCTION OF YOUR TOTAL COST TO ACQUIRE OWNERSHIP UNDER THIS AGREEMENT.**
- (5) **IF YOU ELECT TO MAKE WEEKLY RATHER THAN MONTHLY PAYMENTS AND EXERCISE YOUR PURCHASE OPTION, YOU MAY PAY MORE FOR THE LEASED PROPERTY.**

(c) With respect to matters specifically governed by the Federal Consumer Credit Protection Act (15 U.S.C. 1601 to 1674), compliance with that Act satisfies the requirements of this section.

§ -15 Reinstatement of agreement and repossession. (a) A lessee who breaches any lease-purchase agreement, including but not limited to the failure to make timely rental payments, shall have the right to reinstate the original lease-purchase agreement without losing any rights or options previously acquired under the lease-purchase agreement if both of the following apply:

- (1) Subsequent to having failed to make a timely rental payment, the lessee has promptly surrendered the property to the lessor, in the manner as set forth in the lease-purchase agreement, and if and when requested by lessor; and
- (2) Not more than thirty days have passed since the lessee returned the lease property; except that if the lessee has made more than sixty per cent of the total number of payments required under the lease purchase agreement to acquire ownership, the thirty-day period shall be extended to a sixty-day period.

(b) As a condition precedent to reinstatement of the lease-purchase agreement, a lessor may collect a reinstatement fee as set forth in subsection (d).

(c) If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with either the same item leased by the lessee prior to reinstatement or a substitute item of equivalent quality and condition. If a substitute item is provided, the lessor shall provide the lessee with all the information required by section 14.

(d) A reinstatement fee as provided for in this section shall equal the outstanding balance of any accrued missed payments and late charges plus an additional fee not to exceed \$5.

§ -16 Written receipts for cash or money order. A lessor shall provide the lessee a written receipt for each payment made by cash or money order.

§ -17 Renegotiation for new agreement and extensions. A renegotiation shall occur when an existing lease-purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and lessee. A renegotiation shall be considered a new agreement requiring new disclosures. However, the following events shall not be treated as renegotiations:

- (1) The addition or return of property in a multiple-item agreement or in the substitution of the lease property, if in either case the average payment allocable to a payment period is not changed by more than twenty-five per cent;

- (2) A deferral or extension of one or more periodic payments, or portions of a periodic payment;
 - (3) A reduction in charges in the lease or agreement; and
 - (4) A lease or agreement involved in a court proceeding.
- No disclosures are required for any extension of a lease-purchase agreement.

§ **-18 Advertisement of lease-purchase agreement.** If an advertisement for a lease-purchase agreement refers to or states the dollar amount of any payment and the right to acquire ownership of any one specific item, the advertisement shall also clearly and conspicuously state the following items, as applicable:

- (1) That the transaction advertised is a lease-purchase agreement;
- (2) The total of payments necessary to acquire ownership; and
- (3) That the lessee acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated is not liable under this section.

This section shall not apply to an advertisement 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 in any similar directory of business.’’

SECTION 2. This Act shall take effect upon its approval.

(Approved June 17, 1997.)