

## CHAPTER 527—S.F.No. 1499

*An act relating to consumer protection; regulating certain rental-purchase agreements; prescribing the rights and duties of all parties; requiring disclosures; regulating advertising; providing remedies; proposing coding for new law in Minnesota Statutes, chapter 325F.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[325F.84] DEFINITIONS.**

Subdivision 1. APPLICABILITY. As used in sections 1 to 14, the following terms have the meanings given them.

Subd. 2. ADVERTISEMENT. “Advertisement” means a commercial message in any medium, including signs, window displays, and price tags, that promotes, directly or indirectly, a rental-purchase agreement.

Subd. 3. CASH PRICE. “Cash price” means an amount equal to the equivalent fair market value for goods offered under a consumer credit sale as provided under section 325G.15.

Subd. 4. CONSUMMATION. “Consummation” means the time at which the lessee enters into a rental-purchase agreement.

Subd. 5. LESSEE. “Lessee” means a natural person who rents personal property under a rental-purchase agreement for personal, family, or household use.

Subd. 6. LESSOR. “Lessor” means a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of property under a rental-purchase agreement.

Subd. 7. PERSONAL PROPERTY. “Personal property” means property that is not real property under the laws of this state when it is made available for a rental-purchase agreement.

Subd. 8. RENTAL-PURCHASE AGREEMENT. “Rental-purchase agreement” means an agreement for the use of personal property in which all of the following apply:

(1) the lessor is regularly engaged in the rental-purchase business;

(2) the agreement is for an initial period of four months or less, whether or not there is any obligation beyond the initial period, that is automatically renewable with each payment and that permits the lessee to become the owner of the property;

(3) the lessee is a person other than an organization; and

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(4) the lessee takes under the rental-purchase agreement primarily for a personal, family, or household purpose.

**Sec. 2. [325F.85] APPLICATION OF OTHER LAW.**

If the consumer protection provisions of sections 1 to 14 conflict with sections 325G.15 and 325G.16, sections 1 to 14 apply to a rental-purchase agreement and supersede sections 325G.15 and 325G.16.

**Sec. 3. [325F.86] DISCLOSURES.**

In a rental-purchase agreement, the lessor shall disclose the following items, as applicable:

(a) The total of payments necessary to acquire ownership of the property accompanied by an explanation that this term means the "total dollar amount of payments you will have to make to acquire ownership."

(b) The total number, amounts, and timing of all payments and other charges including taxes or official fees paid to or through the lessor that are necessary to acquire ownership of the property.

(c) The difference between the amount disclosed under paragraph (a) and the cash price of the leased property, using the term "cost of lease services" to mean the difference between these amounts.

(d) Any initial or advance payment such as a delivery charge or trade-in allowance.

(e) A statement that the lessee will not own the property until the lessee has made the total of payments necessary to acquire ownership of the property.

(f) A statement that the total of payments does not include additional charges such as late payment charges, and a separate listing and explanation of these charges as applicable.

(g) A statement that the lessee is liable for loss or damage to the property and the maximum amount for which the lessee is liable, which in the case of loss shall in no event be greater than the price the lessee would have paid to exercise an early purchase option. In the case of damage to the property other than normal wear and tear, the lessee shall be liable for the lesser of the price the lessee would have paid to exercise an early purchase option or the cost of repair as reasonably determined by the lessor.

(h) A statement that the lessee is not required to purchase a liability damage waiver from the lessor.

(i) A description of the goods or merchandise including model numbers as applicable and a statement indicating whether the property is new or used. It is not a violation of this subdivision to indicate that the property is used if it is actually new.

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(j) A statement that the lessee has the option to purchase the leased property during the terms of the rental-purchase agreement and at what price, formula, or by what method the price is to be determined.

(k) The cash price of the merchandise.

(l) A statement of the following lessee rights: reinstatement rights under section 7, default notice under section 6, and consumer warranties under sections 325G.17 to 325G.20.

The commissioner of commerce may prescribe the disclosure form by rule.

#### Sec. 4. [325F.87] FORM REQUIREMENTS.

Subdivision 1. GENERALLY. The disclosure information required by section 3 must be disclosed in a rental-purchase agreement, and must:

(1) be made clearly and conspicuously with items appearing in logical order and segregated as appropriate for readability and clarity;

(2) be made in writing;

(3) need not be contained in a single writing or made in the order set forth in section 3; and

(4) may be supplemented by additional information or explanations supplied by the lessor, but none shall be stated, used, or placed so as to mislead or confuse the lessee, or to contradict, obscure, or detract attention from the information required by section 3, and so long as the additional information or explanations do not have the effect of circumventing, evading, or unduly complicating the information required to be disclosed by section 3.

Subd. 2. TIMING. The lessor shall disclose all information required by section 3 before the rental-purchase agreement is executed. These disclosures must be made on the face of the writing evidencing the rental-purchase agreement.

Subd. 3. COPY TO LESSEE. Before any payment is due, the lessor shall furnish the lessee with an exact copy of each rental-purchase agreement. The agreement shall be signed by the lessee and is evidence of the lessee's agreement. If there is more than one lessee in a rental-purchase agreement, delivery of a copy of the rental-purchase agreement to one of the lessees constitutes compliance with this subdivision; however, a lessee not signing the agreement is not liable under it.

Subd. 4. TYPE SIZE. The terms of the rental-purchase agreement, except as otherwise provided in this section, must be set forth in not less than eight-point standard type.

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Subd. 5. BLANK SPACES. All blank spaces on the rental-purchase agreement form must be filled in before the rental-purchase agreement is executed. Blank spaces that are provided for items or terms not applicable to the agreement must be crossed out.

**Sec. 5. [325F.88] ADVERTISING.**

Subdivision 1. PROHIBITION. An advertisement for a rental-purchase agreement shall not state or imply that a specific item is available at specific amounts or terms unless the lessor usually and customarily offers or will offer that item at those amounts or terms.

Subd. 2. DISCLOSURES. (a) If an advertisement for a rental-purchase agreement refers to or states the amount of any payment, or the right to acquire ownership, for a specific item, the advertisement must also clearly and conspicuously state the following terms as applicable:

(1) that the transaction advertised is a rental-purchase agreement;

(2) the total of payments necessary to acquire ownership; and

(3) that the lessee will not own the property until the total amount necessary to acquire ownership is paid in full or by prepayment as provided for by law.

(b) Every item displayed or offered under a rental-purchase agreement shall have clearly and conspicuously indicated in Arabic numerals, so as to be readable and understandable by visual inspection, each of the following affixed to the item:

(1) the cash price of the item; and

(2) the amount of the lease payment and the total of lease payments required for ownership.

Subd. 3. NONAPPLICATION. This section does not apply to the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

**Sec. 6. [325F.89] DEFAULT.**

Subdivision 1. ENFORCEABILITY. An agreement of the parties to a rental-purchase agreement with respect to default is enforceable only to the extent that one of the following apply:

(1) the lessee both fails to renew an agreement and also fails to return the property or make arrangements for its return as provided in the agreement; or

(2) the prospect of payment, performance, or return of the property is materially impaired due to a breach of the rental-purchase agreement, with the burden of establishing the prospect of material impairment on the lessor.

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Subd. 2. AUTHORIZATION. If a lessee has been in default for three business days, the lessor may give the lessee a default notice and request surrender of the property as provided under subdivision 3. Mailing written notice to the last known address of the lessee meets the requirement of giving written notice under subdivision 3.

Subd. 3. DEFAULT NOTICE. The first default notice and a subsequent default notice that is sent more than 12 months after sending the last written notice must be in writing and conspicuously state the following:

(1) the name, address, and telephone number of the lessor to whom payment is to be made;

(2) a brief identification of the transaction;

(3) the lessee's right to cure the default;

(4) the amount of payment and date by which payment must be made to cure the default;

(5) a statement of the lessee's reinstatement rights as provided under section 7; and

(6) a request to voluntarily surrender the property if the payment is not made.

A subsequent default notice given within the 12 months after a written default notice may be given orally and constitutes proper notice under this section.

Subd. 4. PROPERTY RECOVERY. A lessor may not bring a court action to recover the property until seven days after a proper default notice has been given.

Subd. 5. VOLUNTARY SURRENDER OF PROPERTY. This section does not prohibit a lessee from voluntarily surrendering possession of the property or the lessor from enforcing a past due obligation which the lessee may have at any time after default.

Subd. 6. COMPLIANCE. If the lessee cures the default by taking the action required in the default notice, a breach of the agreement is considered as not having occurred.

#### **Sec. 7. [325F.90] LESSEE'S REINSTATEMENT RIGHTS.**

Subdivision 1. GENERALLY. A lessee who fails to make timely lease payments may reinstate the original rental-purchase agreement without losing any rights or options previously acquired under the rental-purchase agreement if both of the following apply:

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(1) after having failed to make a timely payment, the lessee has surrendered the property to the lessor within seven days of a request to surrender the property made by the lessor as provided in section 6; and

(2) in the case of a lessee that has paid less than 60 percent of the total of payments necessary to acquire ownership of the property, not more than 60 days have passed since the lessee returned the property. If the lessee has paid more than 60 percent of the total of payments necessary to acquire ownership of the property, the lessee's rights to reinstate shall be extended for a period of not less than 180 days after the lessee has returned the property.

Subd. 2. CHARGES. As a condition to reinstating a rental-purchase agreement, a lessor may charge the outstanding balance of any accrued payments; a reinstatement fee not to exceed \$5 for each reinstatement; and a delivery charge not to exceed \$15 for five items or less or \$30 for more than five items, if redelivery of the item is necessary.

Subd. 3. SUBSTITUTE ITEMS. If reinstatement occurs as provided in this section, the lessor shall provide the lessee with the same item, if available, leased by the lessee before reinstatement. If the same item is not available, a substitute item of comparable worth, quality, and condition may be used. If a substitute item is provided, the lessor shall provide the lessee with all the information required by section 3.

#### Sec. 8. [325F.91] PROHIBITED PRACTICES.

Subdivision 1. PROHIBITED RENTAL AGREEMENT PROVISIONS. A rental-purchase agreement may not contain a provision:

(1) requiring a confession of judgment;

(2) authorizing a lessor or an agent of the lessor to commit a breach of the peace in the repossession of property;

(3) waiving a defense, counterclaim, or right the lessee may have against the lessor or an agent of the lessor;

(4) requiring the payment of a late charge unless a lease payment is delinquent for more than two business days for a weekly lease or three business days for a monthly lease, and the charge or fee shall not be in an amount more than the greater of five percent of the delinquent lease payment or \$3;

(5) requiring a separate payment in addition to lease payments in order to acquire ownership of the property, other than by exercising an early purchase option pursuant to section 10; and

(6) authorizing a lessor to charge a penalty for early termination of a rental-purchase agreement.

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Subd. 2. CASH PRICE LIMITS RULES. The commissioner of commerce shall adopt rules governing cash price limits for rental-purchase agreements. Notwithstanding section 14.18, the rules are effective 45 working days after the notice of adoption is published in the State Register.

Subd. 3. DELIVERY CHARGES; SECURITY DEPOSITS; COLLECTION FEES. A lessor may not charge a delivery charge that is greater than \$15 for five items or less or \$30 for more than five items. A lessor may not charge a security deposit. A lessor may contract for and receive a charge for picking up payments from the lessee if the lessor is required or requested to visit the lessee's dwelling to pick up a payment. In a consumer rental-purchase agreement with payment or renewal dates which are more frequent than monthly, this charge shall not be assessed more than three times in any three-month period. In consumer rental-purchase agreements with payments or renewal options which are at least monthly, this charge shall not be assessed more than three times in any six-month period. A charge assessed pursuant to this subdivision shall not exceed \$7. This charge is in lieu of a late charge assessed for the applicable payment period.

**Sec. 9. [325F.92] LESSOR'S COMMUNICATIONS CONCERNING LESSEE.**

Subdivision 1. LOCATION INFORMATION. A lessor in communication with any person other than the lessee for the purpose of acquiring information as to the location of a lessee shall:

(1) identify the lessor and state that the lessor is confirming or correcting location information concerning the lessee;

(2) not communicate with any person more than once unless requested to do so by the person or unless the lessor reasonably believes that the earlier response is erroneous or incomplete and that the person now had correct or complete location information;

(3) not communicate by postcard;

(4) not use any language or symbol on any envelope or in the contents of any communication that indicates that the communication relates to the recovery or repossession of property; and

(5) not communicate with any person other than the lessee's attorney, after the lessor knows the lessee is represented by an attorney with regard to the rental-purchase agreement and has knowledge of, or can readily ascertain, the attorney's name and address, unless the attorney fails to respond within a reasonable period of time to communication from the lessor or unless the attorney consents to direct communication with the lessee.

Subd. 2. TIME AND PLACE. Without the prior consent of the lessee given

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directly to the lessor or the express permission of a court of competent jurisdiction, a lessor may not communicate with a lessee in connection with the recovery or repossession of property:

(1) at the lessee's place of employment; or

(2) at any unusual time or place or a time or place known or which should be known to be inconvenient to the lessee. In the absence of knowledge of circumstances to the contrary, a lessor shall assume that the convenient time for communicating with a lessee is after 8:00 a.m. and before 9:00 p.m., local time at the lessee's location.

**Subd. 3. AUTHORIZED COMMUNICATIONS.** A lessor may not communicate, in connection with the rental-purchase agreement, with any person other than the lessee, the lessee's attorney, or the lessor's attorney, except as reasonably necessary to acquire location information concerning the lessee as provided under subdivision 1, or upon prior consent of the lessee given directly to the lessor, or upon express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post-judgment judicial remedy.

**Subd. 4. CEASING COMMUNICATION.** If a lessee notifies the lessor in writing that the lessee wishes the lessor to cease further communication with the lessee, the lessor shall not communicate further with the lessee with respect to the rental-purchase agreement, except:

(1) to advise the lessee that the lessor's further efforts are being terminated;

(2) to notify the lessee that the lessor may invoke specified remedies allowable by law which are ordinarily invoked by the lessor; or

(3) where necessary to effectuate any post-judgment remedy.

**Subd. 5. HARASSMENT OR ABUSE.** A lessor may not harass, oppress, or abuse any person in connection with a rental-purchase agreement. The following conduct is a violation of this subdivision:

(1) the use or threat of use of violence or the criminal means to harm the physical person, reputation, or property of any person;

(2) the use of obscene, profane, or abusive language;

(3) causing a telephone to ring, or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person; and

(4) the placement of telephone calls without disclosure of the caller's identity.

**Sec. 10. [325F.93] EARLY PURCHASE OPTION.**

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At any time after the first periodic payment is made, the lessee may acquire ownership of the property by tendering 55 percent of the difference between the total of scheduled payments and the total amount paid on the account.

Sec. 11. [325F.94] CLAIMS AND DEFENSES.

An assignee of the contract or obligation relating to the rental-purchase lease transaction is subject to all claims and defenses of the lessee against the lessor arising from the rental-purchase lease transaction, notwithstanding any agreement to the contrary.

Sec. 12. [325F.95] LIABILITY; LIABILITY DAMAGE WAIVER.

Subdivision 1. LIABILITY OF LESSEE. The lessee is liable for loss, destruction, or damage of the rental property during the term of the rental agreement. The amount for which the lessee may be held liable in the case of loss or destruction of the property may not exceed the price that the lessee would have paid to exercise an early purchase option. In the case of damage to the property other than normal wear and tear, the lessee is liable for the price that the lessee would have paid to exercise an early purchase option or the cost of repair as reasonably determined by the lessor, whichever is less.

Subd. 2. LIABILITY DAMAGE WAIVER. (a) The lessor must offer a liability damage waiver to the lessee to cover the lessee's liability for any loss, destruction, or damage of the rental property. The cost of the liability damage waiver may not exceed ten percent of the lessee's lease payment.

(b) The lessor must inform the lessee of the following options available to the lessee regarding the property subject to a rental-purchase agreement:

(1) furnish insurance coverage on the property through an existing insurance policy that is owned by the lessee;

(2) purchase insurance coverage on the property through any insurer authorized to transact business in this state;

(3) purchase liability damage waiver coverage from the lessor; or

(4) decline to furnish or purchase insurance coverage or liability damage waiver coverage.

Sec. 13. [325F.96] EXEMPTED TRANSACTION.

Sections 1 to 14 do not apply to agreements for the rental of property in which the person who rents the property has no legal right to become the owner of the rented property at the end of the rental period.

Sec. 14. [325F.97] PENALTIES AND REMEDIES.

Subdivision 1. DISCLOSURE PENALTIES AND REMEDIES. A lessor who is found to have violated sections 3 to 5 is subject to the penalties and remedies provided in section 8.31.

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Subd. 2. APPLICATION OF OTHER LAW. A violation of section 7, 8, or 10 shall be treated as a violation of section 325F.69. The remedies provided by section 7, 8, or 10 are cumulative and shall not be construed as restricting any remedy that is otherwise available.

Subd. 3. OFFSETS LIMITED. A lessee may not take any action to offset any amount for which a lessor is potentially liable under this section against any amount owed by the lessee, unless the amount of the liability of the lessor has been determined by a judgment of a court of competent jurisdiction in an action in which the lessor was a party. This section does not bar a lessee in default on an obligation arising from the rental-purchase agreement from asserting a violation of this chapter in an original action, or as defense or counterclaim to an action brought by the lessor to collect amounts owed by the lessee pursuant to the rental-purchase agreement.

Subd. 4. LESSOR'S RIGHT TO CORRECT ERROR. A lessor is not liable under this section for a violation of sections 1 to 13 if, within 60 days after discovering an error and before an action for damages is filed against the lessor pursuant to this section or written notice of the error is received from the lessee, the lessor notifies the lessee of the error and makes adjustments to the account of the lessee that are necessary to assure that the lessee is not required to pay an amount in excess of the amounts actually disclosed. This subdivision applies whether the error was discovered through the lessor's own procedures or by any other means.

Subd. 5. LIMITATION OF LIABILITY. A lessor is not liable under this section for damages in excess of the actual damage sustained by the lessee if the lessor shows by a preponderance of the evidence that the violation of sections 1 to 13 resulted from a bona fide error notwithstanding the maintenance by the lessor of procedures reasonably adopted to avoid the error. As used in this subdivision, "bona fide error" includes, but is not limited to: clerical, calculation, computer malfunction and programming, and printing errors.

#### Sec. 15. [325F.98] LEGISLATIVE RECOMMENDATIONS.

The commissioner of commerce shall review and may make recommendations concerning the cost of liability damage waivers required under section 12, subdivision 2, to the legislature.

Presented to the governor April 24, 1990

Signed by the governor April 26, 1990, 10:02 p.m.

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