

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2019

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HOUSE BILL 962

Short Title: Lease-Purchase Agreement Act.

(Public)

Sponsors: Representative Szoka.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary, if favorable, State and Local Government, if favorable, Rules, Calendar, and Operations of the House

April 26, 2019

1 **A BILL TO BE ENTITLED**

2 **AN ACT TO ENACT THE LEASE-PURCHASE AGREEMENT ACT.**

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.(a)** The General Statutes are amended by adding a new Chapter to read:
5 **"Chapter 25D."**

6 **"North Carolina Lease-Purchase Agreement Act.**

7 **"§ 25D-1. Title.**

8 This Chapter shall be known and may be cited as the "North Carolina Lease-Purchase
9 Agreement Act."

10 **"§ 25D-2. Definitions.**

11 As used in this Chapter, the following definitions apply:

12 (1) Advertisement. – A commercial message in any medium that directly aids,
13 promotes, or assists a lease-purchase agreement.

14 (2) Cash price. – The price at which the property is offered for sale by the lessor
15 to a consumer for cash in the ordinary course of business, measured on the
16 date of the lease-purchase agreement.

17 (3) Consumer. – An individual who rents personal property under a
18 lease-purchase agreement to be used primarily for personal, family, or
19 household purposes.

20 (4) Consummation. – The point in time when a consumer becomes contractually
21 obligated via a lease-purchase agreement.

22 (5) Lease-purchase agreement. – An agreement for the use of personal property
23 by a consumer for an initial period of four months or less that contains all of
24 the following characteristics:

- 25 a. Automatic periodic renewal with each payment after the initial period.
26 b. Contains no provision obligating the consumer to continue use of the
27 property beyond the initial period.
28 c. A provision permitting the consumer to become the owner of the
29 property.

30 (6) Lessor. – A person who regularly provides the use of property through
31 lease-purchase agreements and to whom lease payments are initially payable
32 on the face of the lease-purchase agreement.

33 **"§ 25D-3. Applicability of Chapter.**

34 (a) The provisions of this Chapter do not apply to the following:



- 1 (1) A lease-purchase agreement entered into primarily for business, commercial,
2 or agricultural purposes, or those entered into with governmental entities.
 - 3 (2) A lease of a safe-deposit box.
 - 4 (3) A lease or bailment of personal property which is incidental to the lease of
5 property and which does not provide the consumer an option to purchase the
6 leased property.
 - 7 (4) A lease of an automobile.
- 8 (b) A lease-purchase agreement meeting the requirements of this Chapter shall not be
9 governed by the statutes relating to any of the following:
- 10 (1) A home solicitation sale, as defined in G.S. 25A-38.
 - 11 (2) A closed-end installment loan.
 - 12 (3) A security interest, as defined in G.S. 25-1-201(35).
 - 13 (4) A consumer credit sale, as defined in G.S. 25A-2.

"§ 25D-4. Disclosures.

15 (a) The lessor shall disclose to the consumer in the lease-purchase agreement all of the
16 following, if applicable:

- 17 (1) The total number, full amount, and timing of all payments necessary to acquire
18 ownership of the property.
 - 19 (2) A statement that the consumer will not own the property until the consumer
20 has satisfied all payment requirements necessary to acquire ownership.
 - 21 (3) A statement that the consumer is responsible for the fair market value of
22 property lost, stolen, damaged, or destroyed, measured at the time the property
23 is lost, stolen, damaged, or destroyed.
 - 24 (4) A brief description of the property, sufficient to identify the property to the
25 consumer and the lessor, and a statement indicating whether the property is
26 new or used. A statement that indicates that the property is used, if
27 subsequently found to be false, shall not constitute a violation of this Chapter.
 - 28 (5) A statement of the cash price of the property.
 - 29 (6) The total amount of payments to be paid prior to consummation of the
30 agreement or delivery of the property, whichever is later.
 - 31 (7) A statement that the total amount of payments does not include other charges,
32 including late payment, default, pickup, and reinstatement fees.
 - 33 (8) A statement clearly summarizing the terms of the consumer's option to
34 purchase, including a statement that the consumer has the right to exercise an
35 early purchase option. The terms shall list the formula or method used to
36 determine the price of the purchase of the property.
 - 37 (9) A statement (i) identifying the party responsible for maintaining or servicing
38 the property during the term of the lease, (ii) providing a description of the
39 maintenance or service responsibility, and (iii) notifying the consumer that
40 any applicable express warranties covering the lease property at the time the
41 consumer acquires ownership of the property shall be transferred to the
42 consumer, if the terms of the warranty allow.
 - 43 (10) The date of the transaction and the identities of the lessor and consumer.
 - 44 (11) A statement that the consumer may terminate the agreement without penalty
45 by voluntarily surrendering or returning the property in good repair upon
46 expiration of any lease term along with any past-due rental payments and fees
47 owed.
 - 48 (12) Notice of the right to reinstate an agreement.
- 49 (b) For transactions involving more than one lessor, the disclosures required pursuant to
50 this section may be made by a single lessor, however, all lessors shall be bound by those
51 disclosures.

1 (c) All disclosures shall be made (i) at or before consummation of the agreement, (ii)
2 clearly and conspicuously, (iii) in writing, (iv) on the face of the agreement, and (v) above the
3 consumer's signature line. A copy of the lease-purchase agreement shall be provided to the
4 consumer.

5 (d) If a disclosure subsequently becomes inaccurate as the result of any act, occurrence,
6 or agreement by the consumer, the inaccuracy shall not constitute a violation of this Chapter.

7 (e) Compliance with the disclosure requirements of the federal Consumer Credit
8 Protection Act 15 U.S.C. § 1667, et seq., as amended, shall be deemed to meet the disclosure
9 requirements of this section.

10 "**§ 25D-5. Prohibited practices.**

11 (a) A lease-purchase agreement may not contain any of the following:

12 (1) A confession of judgment.

13 (2) A negotiable instrument.

14 (3) A security interest or any other claim of a property interest in any goods except
15 those goods delivered by the lessor to the consumer pursuant to the terms of
16 the lease-purchase agreement.

17 (4) A wage assignment.

18 (5) A waiver of claims or defenses by the consumer.

19 (6) An authorization for the lessor or the lessor's agent to enter upon the
20 consumer's premises, or to commit any breach of the peace, in the
21 repossession of goods.

22 (b) No fees, charges, or penalties shall be chargeable to the consumer in conjunction with
23 a lease-purchase agreement unless those fees, costs, or penalties are disclosed in the agreement.

24 "**§ 25D-6. Reinstatement.**

25 (a) A consumer who fails to make a timely rental payment shall be entitled to reinstate
26 the agreement without losing any rights or options that exist under the terms of the agreement,
27 provided that the consumer pays all past-due payments, fees, charges, and penalties within five
28 days of the renewal date, if the consumer pays monthly, or within two days of the renewal date,
29 if the consumer pays more frequently than monthly.

30 (b) If a consumer has (i) returned or voluntarily surrendered the property, other than
31 through judicial process, during the reinstatement period and (ii) paid less than two-thirds of the
32 total payments necessary to acquire ownership pursuant to the lease-purchase agreement, then
33 the consumer shall be entitled to reinstate the agreement for a period of at least 21 days after the
34 date the property was returned or voluntarily surrendered.

35 (c) If a consumer has (i) returned or voluntarily surrendered the property, other than
36 through judicial process, during the reinstatement period and (ii) paid two-thirds or more of the
37 total payments necessary to acquire ownership pursuant to the lease-purchase agreement, then
38 the consumer shall be entitled to reinstate the agreement for a period of at least 45 days after the
39 date the property was returned or voluntarily surrendered.

40 (d) Nothing in this section shall prohibit a lessor from repossessing the property pursuant
41 to the lease-purchase agreement. However, upon reinstatement by the consumer, the lessor shall
42 provide the consumer with the same property or substitute property of comparable quality and
43 condition.

44 "**§ 25D-7. Receipts and accounts.**

45 A lessor shall provide the consumer with a written receipt for each payment made by cash or
46 money order.

47 "**§ 25D-8. Renegotiations and extensions.**

48 (a) A lessor and consumer may renegotiate an existing lease-purchase agreement. A
49 renegotiated agreement shall satisfy and replace the prior agreement and shall be considered a
50 new lease-purchase agreement, subject to all of the terms of this Chapter.

51 (b) The following are not considered a renegotiation:

1 (1) The addition or return of property in an agreement covering multiple items of
2 property or the substitution of the property; provided, however, that the
3 average payment allocable to a payment period is not changed by more than
4 twenty-five percent (25%).

5 (2) A deferral or extension of one or more periodic payments or a portion of a
6 periodic payment.

7 (3) A reduction of charges in the agreement.

8 (4) A lease or agreement involved in a court proceeding.

9 (c) Disclosures shall not be required for an extension of a lease-purchase agreement.

10 **"§ 25D-9. Advertising.**

11 (a) If an advertisement for a lease-purchase agreement refers to or states the dollar
12 amount of any payment and the right to acquire ownership of any one specific item, the
13 advertisement shall clearly and conspicuously state all of the following, as applicable:

14 (1) The advertised transaction is a lease-purchase agreement.

15 (2) The total amount of payments necessary to acquire ownership.

16 (3) A consumer acquires no ownership rights if the total amount necessary to
17 acquire ownership is not paid.

18 (b) Nothing in this section shall be construed to impose liability on any entity, or its
19 employees, that serves as a medium in which an advertisement appears or is disseminated.

20 (c) A listing in a telephone, electronic, or other similar business directory is not
21 considered an advertisement for the purposes of this section.

22 (d) With respect to matters specifically governed by the Federal Consumer Credit
23 Protection Act, 15 U.S.C. § 1601, et seq., as amended, compliance with that act shall satisfy the
24 requirements of this section.

25 **"§ 25D-10. Civil liability.**

26 (a) A lessor who fails to comply with a requirement imposed with respect to a consumer
27 in G.S. 25D-4 through G.S. 25D-6 is liable to the consumer as follows:

28 (1) An amount equal to the greater of (i) the actual damages sustained by the
29 customer as a result of the violation or (ii) in the case of an individual action,
30 twenty-five percent (25%) of the total amount of payments necessary to
31 acquire ownership of the property. The total amount calculated under this
32 subdivision cannot be less than one hundred dollars (\$100.00) or more than
33 one thousand dollars (\$1,000).

34 (2) The costs of any legal action in connection with a violation described by this
35 subsection and reasonable attorneys' fees as determined by the court.

36 (b) A lessor who fails to comply with the requirements for advertising in G.S. 25D-9,
37 with regard to any person, is liable to that person for actual damages sustained by the person as
38 a result of the violation and the costs of any legal action in connection with a violation described
39 by this subsection and reasonable attorneys' fees as determined by the court.

40 (c) When there are multiple lessors in a lease-purchase agreement, liability shall be
41 imposed only on the lessor who made the disclosures. Where no disclosures have been given,
42 liability shall be imposed on all lessors.

43 (d) When there are multiple consumers in a lease-purchase agreement, there shall be only
44 one recovery of damages for a cause of action under subsection (a) of this section.

45 (e) Multiple violations in connection with a lease-purchase agreement shall entitle a
46 consumer to a single recovery under this section.

47 (f) A consumer may not take any action to offset any amount for which a lessor is
48 potentially liable under subsection (a) of this section against any amount owed to the lessor by
49 the consumer, unless the amount of the liability has been determined by judgment of a court of
50 competent jurisdiction in an action in which the lessor was a party. Nothing in this subsection
51 shall be deemed to bar a consumer that is in default under a lease-purchase agreement from

1 asserting a violation of this Chapter as an original action or as a defense or counterclaim to an
2 action brought by a lessor to collect amounts owed by the consumer.

3 (g) In connection with any transaction covered under this Chapter, the lessor shall
4 preserve evidence of compliance with this Chapter for at least two years from the date the
5 lease-purchase agreement was executed.

6 "**§ 25D-11. Limitation on actions.**

7 (a) Notwithstanding any provision of law to the contrary, an action under this Chapter
8 must be commenced in a court of competent jurisdiction within one year of the date of the
9 occurrence of a violation of this Chapter, or within six months of the date the lease-purchase
10 agreement, together with any renewals or extensions thereof, cease to be in effect, whichever is
11 greater.

12 (b) Notwithstanding subsection (a) of this section, an action under this Chapter may be
13 commenced by way of recoupment or counterclaim in an action brought against the consumer by
14 the lessor or its assignee.

15 "**§ 25D-12. Liability; good-faith defenses.**

16 (a) A lessor shall not be liable for a violation of this Chapter if the lessor shows by a
17 preponderance of the evidence that the violation was not intentional and resulted from a bona
18 fide error, even though the lessor maintained procedures reasonably adapted to avoid such an
19 error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer
20 malfunction and programming, and printing errors. An error of legal judgment with respect to
21 requirements of this Chapter is not a bona fide error.

22 (b) A lessor shall not be liable under this Chapter for any act or omission done in good
23 faith in conformity with any rule, regulation, or interpretation promulgated by the Attorney
24 General, the Department of Justice, or by an official duly authorized by the Attorney General or
25 the Department of Justice, even if, after the act or omission has occurred, the rule, regulation, or
26 interpretation is amended, rescinded, or determined by judicial or other authority to be invalid
27 for any reason."

28 **SECTION 2.(a)** There is established the Consumer Lease-Purchase Information
29 Fund within the Office of Consumer Protection of the Department of Justice as a special fund
30 which shall be used to enable the Office of Consumer Protection to provide information and
31 education to consumers regarding the disclosure obligations created by the North Carolina
32 Lease-Purchase Agreement Act.

33 **SECTION 2.(b)** There is appropriated from the General Fund the sum of twenty-five
34 thousand dollars (\$25,000) in nonrecurring funds for the 2019-2020 fiscal year to the Consumer
35 Lease-Purchase Information Fund established in this section.

36 **SECTION 3.** Section 1 of this act becomes effective January 1, 2020, and applies to
37 lease-purchase agreements advertised or entered into on or after that date. Section 2(b) of this act
38 becomes effective July 1, 2019. The remainder of this act is effective when it becomes law.