WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994

ENROLLED

Committee Substitute for

SENATE BILL NO. 50

(By Senator Humphreys)

PASSED February 18, 1994
In Effect 90 days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 56

(SENATOR HUMPHREYS, original sponsor)

[Passed February 18, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact section five, article one, chapter forty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, seven and eight, article three of said chapter, all relating to the regulation of the rental of consumer goods under rent-to-own agreements; general definitions; disclosure requirements; and prohibitions for rent-to-own transactions.

Be it enacted by the Legislature of West Virginia:

That section five, article one, chapter forty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections three, seven and eight, article three of said chapter be amended and reenacted, all to read as follows:
ARTICLE 1. GENERAL PROVISIONS; PURPOSE AND INTENT; DEFINITIONS.

§46B-1-5. General definitions.

1. The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, unless the context in which such words or phrases are used elsewhere in this chapter clearly requires a different meaning:

   (1) “Agricultural purpose” means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. “Agricultural products” include agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

   (2) “Consumer” means a natural person who acquires, or seeks to acquire, the right to possession and use of consumer goods from a dealer.

   (3) “Consumer goods” or “goods” means goods intended to be used primarily for personal, family or household purposes.

   (4) “Damage waiver” means the voiding or disregard by the dealer of any obligation on the part of the consumer to pay the value of the consumer goods or to make payments pursuant to a rent-to-own agreement in the event of loss or damage to the consumer goods in excess of normal wear and tear or the insurance of the value of the consumer goods or of payments pursuant to the rent-to-own agreement in the event of loss or damage to the consumer goods in excess of normal wear and tear.

   (5) “Dealer” or “rent-to-own dealer” means a person who, in the ordinary course of business, transfers or offers to transfer the right to possession and use of consumer goods to a consumer or acts as an agent to
transfer or offer to transfer the right to possession and
use of consumer goods to a consumer, pursuant to a
rental agreement.

(6) "Debt collection" means any action, conduct or
practice of soliciting claims for collection or the
collection of a claim or claims owed or due or alleged to
be owed or due to a dealer by a consumer under a
rent-to-own agreement.

(7) "Debt collector" means any person or organization
engaging directly or indirectly in debt collection. The
term includes any person or organization who sells or
offers to sell forms which are, or are represented to be, a
collection system, device or scheme and are intended or
calculated to be used to collect claims.

(8) "Financial organization" means a corporation,
partnership, cooperative or association which:

(A) Is organized, chartered or holding an authorization
certificate under the laws of this state or of the United
States which authorizes the organization to make
consumer loans; and

(B) Is subject to supervision and examination with
respect to such loans by an official or agency of this state
or of the United States.

(9) "Ownership" means the right to enjoy, possess and
use consumer goods to the exclusion of other persons,
including the right to transfer legal title to such consumer
goods or to otherwise control, handle or dispose of such
consumer goods, whether or not indicia of such
ownership is established by, or otherwise required to be
evidenced by, a title-paper, letter, receipt or other
document or instrument.

(10) "Period" or "rental period" means a week, a month
or another specific length of time set forth in a
rent-to-own agreement, during which such period the
consumer has a right to continue possessing and using
consumer goods, after having made the periodic rental
payment for such period.
(11) "Periodic payment" means a payment required to be made by a consumer to have the right to possession and use of consumer goods during a specified time period. The periodic payment does not include any applicable sales, use, privilege, excise or documentary stamp taxes otherwise payable upon a transfer of consumer goods from a dealer to a consumer, except as provided for by the disclosure requirements or other applicable requirements set forth in this chapter.

(12) "Person" or "party" includes a natural person or an individual, an organization, partnership or corporation.

(13) "Person related to" with respect to an individual means: (A) The spouse of the individual; (B) a brother, brother-in-law, sister or sister-in-law of the individual; (C) an ancestor or lineal descendant of the individual or his spouse; and (D) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization, partnership or corporation means: (A) A person directly or indirectly controlling, controlled by or under common control with the organization, partnership or corporation; (B) an officer or director of the organization, partnership or corporation or a person performing similar functions with respect to the organization or to a person related to the organization, partnership or corporation; (C) the spouse of a person related to the organization, partnership or corporation; and (D) a relative by blood or marriage of a person related to the organization, partnership or corporation who shares the same home with him or her.

(14) "Premises" means a particular physical place of business opened to the public by a dealer.

(15) "Rental agreement" means the bargain, with respect to the rental of consumer goods under a rent-to-own agreement, of the dealer and the consumer as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this
chapter.

(16) "Rental contract" means the total legal obligation that results from the rental agreement as affected by this chapter and any other applicable rules of law.

(17) (A) "Rent-to-own agreement" means a rental agreement which:

(i) Transfers the right to possession and use of the rental property from the dealer to the consumer;

(ii) Obligates the consumer to pay successive periodic rental payments as each shall become due, in order to continue his or her right to possession and use of the rented consumer goods;

(iii) Is subject to termination by the consumer as permitted by this chapter, whereupon the consumer is not obligated to make payments for any period of time other than a period during which he or she choses to maintain possession and use of the rented consumer goods; and

(iv) Provides that upon compliance with the terms of the agreement the consumer shall become or has the option to become the owner of the property.

(B) The term "rent-to-own agreement" does not include a rental agreement in which:

(i) A financial organization is a party, if the rental agreement is subject to the federal Truth in Lending Act or the federal Consumer Leasing Act and the regulations promulgated pursuant thereto;

(ii) Any of the consumer goods which are the subject matter of the rental agreement are vehicles as defined in section one, article one, chapter seventeen-a of this code;

(iii) All of the consumer goods which are the subject of the rental agreement are either two-way telecommunications equipment, medical equipment or musical instruments, and the rental agreement is subject to the federal Truth in Lending Act or the federal Consumer Leasing Act and the regulations promulgated pursuant thereto; or
(iv) All of the goods which are the subject matter of the rental agreement are primarily intended to be used for agricultural purposes.

(18) "Retail value" or "fair market value" of particular consumer goods means the price at which goods of like type, quality and quantity would change hands between a willing seller and a willing buyer, at retail, for cash, in the particular market area at the time of the rent-to-own rental agreement, which price does not include any applicable sales, use, privilege, excise or documentary stamp taxes payable upon the transfer of such goods.

(19) "Rent-to-own charge", in connection with any rent-to-own agreement, means the sum of all charges in excess of the retail value which must be paid directly or indirectly by the consumer in order for the consumer to acquire ownership of the consumer goods without payment of further consideration.

(20) "Termination" means the cancellation of a rental agreement when the consumer determines that he or she no longer desires to pay periodic payments and retain the right to possession and use of the consumer goods or either party puts an end to the rental agreement for default by the other party in accordance with the provisions of this chapter.

(21) "Total of payments" means the total of all periodic payments specified in the written agreement which the consumer must pay in order to acquire ownership of the consumer goods without the payment of additional consideration to the dealer.

(22) "Willing buyer" means a person who:

(A) Buys consumer goods at retail for his or her personal use or for the use of his or her family or household;

(B) Has a reasonable knowledge of the relevant facts to be considered in ascertaining the fair market price of consumer goods which are offered to be sold at retail; and

(C) Is under no compulsion to buy or to buy from a
particular seller.

(23) "Willing seller" means a person other than a rent-to-own dealer who:

(A) In the ordinary course of business regularly sells or offers for sale consumer goods at retail;

(B) Has no direct or indirect ownership connection with any dealer;

(C) Has a reasonable knowledge of the relevant facts to be considered in fixing the fair market price of consumer goods which are offered to be sold at retail; and

(D) Is under no compulsion to sell or to sell to a particular buyer.

(24) "Written agreement" means a written document containing or evidencing the terms of a rent-to-own transaction, reduced to a tangible and legible form by printing, typewriting, computer print-out or any other intentional reduction.

ARTICLE 3. DEFAULT.

§46B-3-3. Termination of rent-to-own agreements.

(a) Upon the termination of a rent-to-own agreement by a consumer, all obligations that are still executory by both parties are discharged, but any right based on a failure of the dealer to maintain the consumer goods in accordance with the provisions of section six of this article, or any other right based on prior default or performance of the dealer survives, and the consumer retains any remedy or defense for such default. Rights and remedies available to the consumer for material misrepresentation or fraud by a dealer are not affected by a termination of the rental agreement by a consumer.

Termination of the rental agreement by a consumer shall not bar or be deemed inconsistent with a claim for damages or other right or remedy.

(b) A consumer may terminate a rent-to-own agreement at any time.

(c) When a consumer terminates a rent-to-own
transaction, the dealer may not require any further action
or payment by the consumer except:

(1) Payment of any unpaid periodic payments and
charges accrued before the consumer notified the dealer
of the termination of the transaction and made the
consumer goods available to be received by the dealer;
and

(2) Payment of any pickup charge provided for in the
rental agreement.

(d) A dealer may terminate a rent-to-own agreement
when the consumer fails to make a periodic payment as
it becomes due: Provided, That seven days prior to
terminating the rent-to-own agreement, the dealer shall
provide a written notice to the consumer informing him
or her:

(1) Of the amount of any periodic payment or payments
that the consumer has failed to make;

(2) That the consumer may voluntarily surrender
possession of the goods to the dealer at the location
where the goods are located;

(3) Of any late payment which has been or may be
assessed;

(4) Of the right to reinstate which shall include:

(A) The consumer's right to reinstate the agreement by
payment of amounts due when the goods are in the
possession of the consumer;

(B) The amount of time when the consumer has to
reinstate the agreement;

(C) That reinstatement will result in continuation of the
original agreement, including the provisions relating to
ownership of the goods; and

(D) The amount of fees to be paid for reinstatement.

(e) The dealer may request that the goods be
surrendered at any time after a consumer has failed to
timely make a periodic payment required under the
§46B-3-7. Disclosure requirements.

(a) The dealer shall make all disclosures required by this section.

(b) In all circumstances listed in subsection (c) of this section, the dealer shall disclose the following information with respect to the goods that are the subject of the rental agreement in a clear, conspicuous and easily understood manner:

(1) Retail value;

(2) Rent-to-own charge;

(3) Rental period;

(4) Number of periodic payments required for ownership;

(5) Amount of each periodic payment;

(6) Total of all payments; and

(7) Whether the goods are new or have been previously rented or are otherwise used.

(c) The dealer shall make the disclosures required in this section:

(1) On a label attached or posted on top of the goods displayed to any potential consumer;

(2) In any rent-to-own agreement as defined in section five, article one of this chapter;

(3) In any telephone communication with a potential consumer; and

(4) In any radio, television or printed advertisement for the goods when the amount of the periodic payment for the item is included in the advertisement.
(d) Any oral communications concerning the terms and conditions of the transaction shall be incorporated into a written agreement which shall govern the transaction.

(e) In any transaction involving more than one dealer, only one dealer may make the disclosures required by this article: Provided, That when the name of the dealer is required to be disclosed, all dealers shall be disclosed.

(f) A dealer may disclose information that is not required by this section only when the additional information is not stated, used or placed in a manner that may contradict, obscure or distract attention from the information required by this section.

§46B-3-8. Prohibitions for rent-to-own transactions.

1. No dealer may:

2. (1) Require any initial payment in any transaction except the payment for the first rental period, taxes, insurance or delivery fees and other disclosed fees or fees authorized by this chapter;

3. (2) Charge any fee at the time ownership of the consumer goods passes to the consumer, other than an applicable fee, if any, which actually is or will be paid to public officials for perfecting title or ownership in the consumer;

4. (3) Raise the amount of any payment or charge after the execution of the written agreement without both parties voluntarily entering into a second written agreement;

5. (4) Take any action to collect a payment which is prohibited by this chapter;

6. (5) Accept any cosigner other than a person who is in the household of the consumer and who is expected to use the consumer goods;

7. (6) Take any security interest in any property owned by the consumer;

8. (7) Require a damage waiver, insurance or form of insurance, insuring the consumer goods against loss or
damage, unless the dealer requires such insurance for all
goods of comparable type and value in every rent-to-own
agreement;
(8) Require damage waiver from a particular insurer;
(9) Seek to collect any charge not authorized by this
chapter and disclosed in a written agreement; or
(10) Have an initial period which is more than one week
longer than any other rental period.
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That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Passed

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the __________ day of __________, 1994.

Governor