

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1594, L.D. 2248, Bill, "An Act to Clarify Maine's Rent-to-own Laws"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'9-A MRSA Art. XI is enacted to read:

Article XI

RENTAL-PURCHASE PRACTICES

§11-101. Short title

This Article may be known and cited as the "Maine Consumer Credit Code - Rental-purchase Agreements."

§11-102. Purpose; rules of construction

1. This Article must be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this Article are to:

A. Simplify, clarify and modernize the law governing rental-purchase agreements;

B. Provide certain disclosures to consumers who enter into rental-purchase agreements and to promote consumer understanding of the terms of rental-purchase agreements;

C. Protect consumers against unfair practices by some rental-purchase dealers, having due regard for the interests of legitimate and scrupulous rental-purchase dealers; and

D. Permit and encourage the development of fair and economically sound rental-purchase practices.

2 §11-103. Supplementary general principles of law applicable

4 Unless displaced by the particular provisions of this
6 Article, the "Uniform Commercial Code" and the principles of law
8 and equity, including the law relative to capacity to contract,
10 principal and agent, estoppel, fraud, misrepresentation, duress,
12 coercion, mistake, bankruptcy or other validating or invalidating
14 cause, supplement the provisions of this Article.

16 §11-104. Application

18 This Article applies to rental-purchase agreements or acts,
20 practices or conduct related to a rental-purchase agreement if:

22 1. The rental-purchase agreement is entered into in this
24 State; or

26 2. The consumer is a resident of this State at the time the
28 merchant, wherever located, offering the rental-purchase
30 agreement solicits the rental-purchase agreement or modification
32 of the rental-purchase agreement, whether the solicitation is
34 made personally, by mail or by telephone.

36 For the purposes of this Article, the residence of the consumer
38 is the address given by the consumer as the consumer's residence
40 in any writing signed by the consumer in connection with the
42 rental-purchase agreement. Unless the consumer notifies the
44 merchant of a new or different residence address, the given
46 residence address is presumed to be unchanged.

48 §11-105. Definitions

As used in this Article, unless the context otherwise
indicates, the following terms have the following meanings.

1. "Administrator" means the administrator designated in
Article VI, section 6-103.

2. "Advertisement" means a commercial message in any medium
that directly or indirectly aids, promotes or assists a
rental-purchase agreement.

3. "Cash price" means the price for which the merchant
would sell the property to the consumer for cash on the date of
the rental-purchase agreement. The "cash price" must be
reasonably related to the fair market value of the property.

2 4. "Consumer" means an individual who rents personal
property under a rental-purchase agreement used primarily for
personal, family or household purposes.

4
6 5. "Consummation" means the time at which a consumer
becomes contractually obligated under a rental-purchase agreement
for personal property used primarily for personal, family or
8 household purposes.

10 6. "Merchant" means a person who regularly provides the use
of property through rental-purchase agreements and to whom rental
12 payments are initially payable on the face of the rental-purchase
agreement.

14
16 7. "Rental-purchase agreement" means an agreement for the
use of personal property by an individual primarily for personal,
18 family or household purposes for an initial period of 4 months or
less that is automatically renewable with each payment after the
20 initial period and that permits the consumer to become the owner
of the property, but does not obligate or require the consumer to
22 continue renting or using the property beyond the initial period.

24 **§11-106. Inapplicability of other laws; exempt transactions**

26 1. A rental-purchase agreement that complies with this
Article is not considered or governed by the laws related to:

28 A. A "home solicitation sale" as defined in section 3-501;

30 B. A "consumer credit sale" as defined in section 1-301,
32 subsection 11; except that the following sections of the
Maine Consumer Credit Code apply: section 1-107, waiver,
34 agreement to forego rights, settlement of claims; section
1-111, record retention; section 1-201, territorial
36 application; section 1-202, exclusions; section 1-203,
jurisdiction and service of process; section 2-507,
38 attorney's fees and collection costs; section 3-202, notice
to consumer; 3-203, notice of assignment; section 3-305, no
40 assignment of earnings; section 3-306, authorization to
confess judgment prohibited; section 3-307, certain
42 negotiable instruments prohibited; section 3-309, referral
sales; section 3-403, assignee subject to defenses; section
44 5-104, no garnishment before judgment; section 5-105,
limitation on garnishment; section 5-106, no discharge from
46 employment for garnishment; section 5-112, creditor's right
to take possession after default; section 5-113, venue;
48 section 5-114, stay of enforcement of judgment; section
5-115, misrepresentation; section 5-116, illegal, fraudulent
50 or unconscionable conduct in attempted collection of debts;
section 5-117, prohibited practices; section 5-201, effect

2 of violations on rights of parties; section 5-202, refunds
4 and penalties as setoff to obligation; section 5-301,
6 violations; Article VI in its entirety, except that the term
8 "original unpaid balances arising from consumer credit
10 transactions" described in section 6-203, subsection 2 means
12 "gross rental receipts from rental-purchase agreements" for
14 purposes of administration of this Article; section 8-104,
16 regulations, model forms; and section 8-402, regulation of
18 credit reports;

20 C. A "consumer lease" as defined in section 1-301,
22 subsection 13;

24 D. A "sale of goods" as defined in section 1-301,
26 subsection 33; or

28 E. A "security interest" as defined in Title 11, section
30 1-201, subsection (37).

32 2. This Article does not apply to:

34 A. A rental-purchase agreement made primarily for business,
36 commercial or agricultural purposes or made with a
38 governmental agency or instrumentality or with an
40 organization;

42 B. A lease of a safe-deposit box;

44 C. A lease or bailment of personal property that is
46 incidental to the lease of real property and does not
48 provide the consumer with an option to purchase the leased
50 property;

D. A lease of an automobile; or

E. A lease of real estate.

§11-107. General requirements of disclosure

40 1. The merchant shall disclose to the consumer the
42 information required by this Article. In a transaction involving
44 more than one merchant, only one merchant need make the
46 disclosure but all merchants are bound by the disclosure.

48 2. The disclosure must be made during or before
50 consummation of the rental-purchase agreement.

3. The disclosure must be made clearly and conspicuously,
in a clear and coherent manner, in writing, in type size not less
than 8-point standard type and appropriately divided and

2 captioned by various sections. A copy of the rental-purchase
3 agreement must be provided to the consumer. If more than one
4 consumer executes a rental-purchase agreement, the merchant shall
5 provide a copy of the agreement to each consumer. The disclosure
6 required under section 11-108 must be made on the face of the
7 contract above the line for the consumer's signature.

8 4. If a disclosure becomes inaccurate as a result of any
9 act, occurrence or agreement by the consumer after delivery of
10 the required disclosure, the inaccuracy is not a violation of
11 this Article.

12 **§11-108. Disclosure**

13 1. For each rental-purchase agreement, the merchant shall
14 disclose in the agreement the following items, as applicable:

15 A. The total number, total amount and timing of all
16 payments necessary to acquire ownership of the property;

17 B. A statement that the consumer does not acquire ownership
18 rights to the property until the consumer has made the total
19 payment necessary to acquire ownership;

20 C. A statement that the consumer is responsible for the
21 fair market value of the property if, and as of the time, it
22 is stolen, damaged or destroyed;

23 D. A brief description of the rented property sufficient to
24 identify the property to the consumer and the merchant,
25 including an identification number if applicable and a
26 statement indicating whether the property is new or used. A
27 statement that indicates new property is used is not a
28 violation of this Article;

29 E. A statement of the cash price of the property. A
30 statement of the aggregate cash price of all items involving
31 the rental of 2 or more items as a set satisfies this
32 requirement;

33 F. The total amount of initial payments paid at or required
34 before consummation of the agreement or delivery of the
35 property, whichever is later;

36 G. A statement that the total amount of payments does not
37 include other charges, such as late-payment and payment
38 pick-up fees. Late-payment and payment pick-up fees must be
39 separately disclosed in the agreement;

2 H. A statement clearly summarizing the terms of the
3 consumer's option to purchase, including a statement that
4 the consumer has the right to exercise an early-purchase
5 option, the price at which the property may be purchased and
6 the formula or method for determining that price;

7 I. A description of any damage to the property;

8
9 J. A statement identifying the merchant as the party
10 responsible for maintaining or servicing the property while
11 it is rented, together with a description of that
12 responsibility and a statement that, if any part of a
13 manufacturer's express warranty covers the rental property
14 at the time the consumer acquires ownership of the property,
15 that warranty is transferred to the consumer if allowed by
16 the terms of the warranty;

17 K. The date of the transaction and the identities of the
18 merchant and the consumer;

19
20 L. A statement that the consumer may terminate the
21 agreement without penalty by voluntarily surrendering or
22 returning the property in good repair upon expiration of any
23 rental term along with any past due rental payments;

24
25 M. Notice of the right to reinstate an agreement as
26 provided in this Article;

27
28 N. A description of what conditions constitute default by
29 the consumer; and

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31 O. A notice to the consumer pursuant to section 3-202.

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33 **§11-109. Prohibited practices**

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35 A rental-purchase agreement may not contain:

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37 1. A confession of judgment;

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39 2. A negotiable instrument;

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41 3. A security interest or any other claim of a property
42 interest in any goods except those goods delivered by the
43 merchant pursuant to the rental-purchase agreement;

44
45 4. A wage assignment;

46
47 5. A waiver by the consumer of claims or defenses;

2 6. A provision authorizing the merchant or a person acting
3 on the merchant's behalf to enter on the consumer's premises or
4 commit any breach of the peace in repossession of goods;

6 7. A provision requiring the purchase from the merchant of
7 a liability damage waiver or insurance for the merchandise;

8 8. A provision requiring the payment of a late charge
9 unless a rental payment is more than 3 days late for an agreement
10 that is renewed on a weekly basis or at least 5 days late for an
11 agreement that is renewed less frequently than on a weekly basis;

12 9. A provision requiring a payment at the end of the
13 rental-purchase agreement period in excess of or in addition to a
14 regular periodic payment in order for the consumer to acquire
15 ownership of the property or payment of rental payments in excess
16 of the total amount necessary to acquire ownership of the
17 property;

18 10. A penalty for early termination of a rental-purchase
19 agreement or for the return of an item at any time;

20 11. A provision for payment by a cosigner of the
21 rental-purchase agreement of any fees or charges that could not
22 be assessed to the consumer as part of the rental-purchase
23 agreement; or

24 12. An offer of insurance from the merchant to the consumer.

25 **§11-110. Calculation of late charges**

26 Any late charge assessed pursuant to section 11-109,
27 subsection 8 may not exceed the greater of 5% of the delinquent
28 payment amount or \$2. Only one late charge may be assessed on
29 any delinquent payment, regardless of how long the payment
30 remains unpaid.

31 **§11-111. Allowable charges**

32 In addition to rental payments, a merchant may contract for
33 and receive the following fees.

34 1. An initial fee not to exceed \$15 may be assessed only
35 once per consumer regardless of the number of rental-purchase
36 agreements entered into by the consumer and must be refunded to
37 the consumer if the rental agreement is not consummated.

38 2. An optional delivery charge may not exceed \$20 for 3 or
39 fewer items actually delivered or \$40 for 4 or more items
40 actually delivered.

2 3. An optional payment pick-up fee may not exceed \$5 and
3 may be assessed only once per payment.

4 4. A liability damage waiver fee may be contracted for and
5 received pursuant to section 11-115.

6 §11-112. Default; notice of default and right to cure

7 1. An agreement of the parties to a rental-purchase
8 agreement with respect to default on the part of the consumer is
9 enforceable only to the extent that the consumer fails to renew
10 an agreement and fails to return the rented property or make
11 arrangements for its return as provided for by the agreement.

12 2. In consumer rental-purchase agreements, after a consumer
13 is in default for 3 business days and does not voluntarily
14 surrender possession of the rented property, a merchant may give
15 the consumer the notice provided in this section. A merchant
16 gives the notice to the consumer under this section when the
17 merchant delivers notice in the same manner as a notice provided
18 under the Maine Consumer Credit Code, section 5-110.

19 3. The notice must be in writing and conspicuously state
20 the name, address and telephone number of the merchant to whom
21 payment is made, a brief identification of the transaction, the
22 consumer's right to cure the default, the amount of payment and
23 the date the payment must be made to cure the default. A notice
24 in substantially the following form complies with this subsection:

- 25 (Name, address and telephone number of merchant)
- 26 (Account number, if any)
- 27 (Brief identification of transaction)
- 28 (Date) is LAST DATE FOR PAYMENT
- 29 (Amount) is the AMOUNT NOW DUE

30 You have failed to renew your rental agreement(s). If you
31 pay the AMOUNT NOW DUE (above) by the LAST DATE FOR PAYMENT
32 (above), you may continue with the contract as though you
33 had renewed on time. If you do not pay by that date, we may
34 exercise our rights under the law. You may be required to
35 pay reasonable costs authorized by law.

36 PLEASE ALSO NOTE: As of the LAST DATE FOR PAYMENT (above)
37 you will owe the following additional payments:

<u>(date due)</u>	<u>(amount)</u>

2 In order to cure your account fully, the payment or payments
3 listed above must also be paid in full on or before the LAST
4 DATE FOR PAYMENT.

5 If you are late again within the next 6 months in making
6 your payments, we may exercise our rights without sending
7 you another notice. If you have questions, promptly write
8 or telephone (name of merchant).

10 4. With respect to consumer rental-purchase agreements with
11 payments or options to renew more frequently than monthly, after
12 default consisting of failure to renew or return the property, a
13 merchant may not initiate court action to recover rented property
14 until 3 business days after notice of the consumer's right to
15 cure is given. With respect to all other rental-purchase
16 agreements, after default consisting of failure to renew or
17 return the property, a merchant may not initiate court action to
18 recover rented property until 5 business days after notice of the
19 consumer's right to cure is given.

20 5. After notice is given and until expiration of the
21 minimum applicable period, a consumer may cure all defaults
22 consisting of failure to renew and failure to return the property
23 by tendering the amount of all unpaid sums due at the same time
24 of the tender.

25 6. This section and the provisions on waiver, agreements to
26 forego rights and settlement of claims do not prohibit a consumer
27 from voluntarily surrendering possession of goods that are rented
28 and a merchant from enforcing the security interest in the goods
29 at any time after default. In any enforcement proceeding, a
30 merchant shall affirmatively plead and prove either that the
31 notice to cure is not required or that the merchant has given the
32 required notice. The failure to plead does not invalidate any
33 action taken by the merchant that is otherwise lawful and if the
34 merchant had rightfully repossessed any collateral the
35 repossession does not constitute conversion.

36 7. Any repossession of rented property in violation of this
37 section is void and the merchant is liable for conversion.

38 **§11-113. Reinstatement**

39 1. A consumer who fails to make a timely rental payment but
40 has returned the merchandise, made arrangements for its return or
41 surrendered the property upon the merchant's request may
42 reinstate the agreement without losing any rights or options that
43 exist under the agreement by payment of:
44

2 A. All past due rental charges; and

4 B. Other charges expressly provided in this Article.

6 2. Whenever a consumer has paid less than 1/3 of the total
8 of payments necessary to acquire ownership and is in default or
10 the property has been returned other than through order of the
12 court, the consumer may reinstate the agreement during a period
14 of not less than 45 days after the date of the default or the
16 return of the property.

18 3. Whenever a consumer has paid more than 1/3 but less
20 than 2/3 of the total of payments necessary to acquire ownership
22 and is in default or the property has been returned other than
24 through order of the court, the consumer may reinstate the
26 agreement during a period of not less than 90 days after the date
28 of the default or the return of the property.

30 4. Whenever a consumer has paid more than 2/3 of the total
32 of payments necessary to acquire ownership and is in default or
34 the property has been returned other than through order of the
36 court, the consumer may reinstate the agreement during a period
38 of not less than 180 days after the date of the default or the
40 return of the property.

42 5. Nothing in this section prevents a merchant from
44 attempting to repossess property during the reinstatement period,
46 but such a repossession does not affect the consumer's right to
48 reinstate.

50 6. Upon reinstatement, the merchant shall provide the
52 consumer with the same property or substitute property of
comparable quality and condition.

§11-114. Consumer's right to acquire ownership when 50% of
payments equals cash price

1 1. The total number of rental payments necessary to acquire
3 ownership of the property under any rental-purchase agreement may
5 not exceed 2 times the cash price of the property. When 50% of
7 all rental payments made by a consumer equals the cash price of
9 the property disclosed to the consumer pursuant to section
11 11-108, subsection 1, paragraph E, the consumer acquires
13 ownership of the property and the rental-purchase agreement
15 terminates.

17 2. At any time after tendering an initial lease payment, a
19 consumer may acquire ownership of the property that is the
21 subject of the rental-purchase agreement by tendering an amount
23 equal to the amount by which the cash price of the rented
25 property exceeds 50% of all rental payments made by the consumer.

3. It is not a violation of this section for the merchant and the consumer to agree in writing to allow the consumer to acquire ownership of the property for a lesser amount than the maximum limits set forth in subsections 1 and 2.

§11-115. Liability damage waivers; fees

In addition to the other charges permitted by this Article, the parties may contract for a liability damage waiver. The fee for the liability damage waiver may not exceed the greater of 5% of any periodic rental payment due or \$2 in the case of any rental-purchase agreement with weekly or biweekly renewal dates or the greater of 5% of any periodic rental payment due or \$5 in the case of any rental-purchase agreement with monthly renewal dates. The selling or offering for sale of a liability damage waiver pursuant to this Article is subject to the following prohibitions and requirements.

1. The restrictions, conditions and exclusions of the liability damage waiver must be disclosed on a separate contract, sheet or handout given to the consumer prior to entering into the rental-purchase agreement. The separate contract, sheet or handout must be signed or otherwise acknowledged as received by the consumer prior to entering into the rental-purchase agreement.

2. A merchant may not sell or offer to sell a liability damage waiver unless all restrictions, conditions and exclusions are printed in the rental-purchase agreement or in a separate agreement in 8-point type or larger, written in ink or typewritten on the face of the rental-purchase agreement in a blank space provided. The liability damage waiver may exclude only loss or damage that is caused intentionally by the consumer or resulting from the consumer's willful or wanton misconduct to the property that is the subject of the rental-purchase agreement.

3. The liability damage waiver agreement must include a statement of the total charge for the liability damage waiver and must display in 8-point boldface type the following notice:

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A LIABILITY DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE PROPERTY. BEFORE DECIDING WHETHER TO PURCHASE THE LIABILITY DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR HOMEOWNERS OR CASUALTY INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL PROPERTY AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS LIABILITY DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED.

§11-116. Receipts and accounts

2 A merchant shall furnish the consumer a written receipt for
4 each payment made in cash or by any other method of payment that
6 does not provide evidence of payment when any such payment is
 made in person during normal working hours. The merchant shall
 provide the consumer with a written statement of account within 7
 days of the consumer's request.

8
10 §11-117. Renegotiations and extensions

12 1. A renegotiation occurs when an existing rental-purchase
14 agreement is satisfied and replaced by a new agreement undertaken
 by the same merchant and consumer. A renegotiation is considered
 a new agreement requiring new disclosures. The following are not
 considered renegotiations:

16 A. The addition or return of property in a multiple-item
18 agreement or the substitution of the rental property, if
 that addition, return or substitution does not affect the
20 total number, total amount or timing of all payments
 necessary to acquire ownership;

22 B. A deferral or extension of one or more periodic payments
24 or portions of a periodic payment;

26 C. A reduction in charges in the agreement; and

28 D. An agreement involved in a court proceeding.

30 2. Disclosures are not required for any extension of a
32 rental-purchase agreement.

34 §11-118. Advertising and point-of-sale disclosure

36 1. An advertisement for a rental-purchase agreement that
 refers to or states the dollar amount of any payment must state
 clearly and conspicuously:

38 A. That the transaction advertised is a rental-purchase
40 agreement;

42 B. The total amount of payments, including any initial fee,
 necessary to acquire ownership; and

44 C. That the consumer does not acquire ownership rights if
46 the total amount necessary to acquire ownership is not paid.

48 2. If any item of property is displayed for rent with a
50 point-of-sale placard that refers to or states the amount of any
 weekly or monthly payment, the point-of-sale placard must state,

in numerals and lettering at least as prominent as the payment price, the following:

A. The number of weekly or monthly payments necessary to acquire ownership of the item; and

B. The total amount of payments necessary to acquire ownership of the item.

3. An owner or the personnel of a medium in which an advertisement appears or through which an advertisement is disseminated is not liable under this section.

This section does not apply to an advertisement that does not refer to or state the amount of any payment.

§11-119. Collection activity

The Maine Fair Debt Collection Practices Act applies to the debt collection practices of merchants under this Article.

§11-120. Enforcement; penalties

A merchant who violates this Article or any rule issued by the administrator is subject to the following:

1. After notice and hearing, a cease and desist order and order of restitution from the administrator;

2. A civil action, by the administrator through the Attorney General, after which a court, upon a finding of repeated or willful violations or of violation of an assurance of discontinuance, may assess a civil penalty of not more than \$5,000; and

3. A civil action by an aggrieved consumer in which that consumer has the right to recover actual damages from a merchant in an amount determined by the court to be not less than \$250 nor more than \$1,000 plus costs of the action together with reasonable attorney's fees.

§11-121. Effective date

This Article takes effect January 1, 1993.

FISCAL NOTE

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This bill may result in an increase in the establishment of rent-to-own stores. The costs associated with any increase in regulatory responsibilities for the Bureau of Consumer Credit Protection can be covered through a corresponding increase in volume fees and reimbursement for examinations. The amount of dedicated revenue that could be generated and the allocations that may be required can not be determined at this time.'

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STATEMENT OF FACT

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This amendment replaces the original bill. The changes reflected in this amendment strengthen the consumer protection aspects of the bill placing strict limitations on rental purchase pricing and on other allowable charges associated with rental purchase agreements. The amendment applies specific sections of the Maine Consumer Credit Code to rental-purchase agreements and additionally applies the Maine Fair Debt Collection Practices Act, the Maine Revised Statutes, Title 32, chapter 109-A, subchapter I to the collection practices of rental-purchase merchants. The amendment also adds a fiscal note.

Reported by the Committee on Business Legislation
Reproduced and distributed under the direction of the Clerk of the House
3/4/92 (Filing No. H-1033)