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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

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## ENROLLED

*Committee Substitute for*  
SENATE BILL NO. 108

(By Senator *Summers, et al.*)

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PASSED *April 10,* 1993  
In Effect *90 days from* Passage

**E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 108**

(SENATORS HUMPHREYS, YODER, GRUBB, WALKER,  
HOLLIDAY, WEHRLE, CHERNENKO, BLATNIK AND  
MACNAUGHTAN, *original sponsors*)

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[Passed April 10, 1993; in effect ninety days from passage.]

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AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter forty-six-b; and to amend and reenact section thirty-two, article three, chapter sixty-one of said code, all relating to regulating the rental of consumer goods under rent-to-own agreements; creating the West Virginia consumer goods rental protection act; setting forth the short title of the act; stating the scope or application of the act; providing for the applicability of the law of this state with respect to goods rented to a resident of this state; setting forth legislative purpose and intent; defining certain terms used throughout the act; establishing a statute of frauds applicable to rental agreements; limiting the enforcement of unconscionable agreements; providing for the creation of express warranties; establishing implied warranties of merchantability and fitness for particular purpose; prescribing the effect of any manufacturers' or

suppliers' warranties and requiring the transfer of such warranties under certain circumstances; prohibiting the disclaimer of warranties and remedies; extending warranties to third-party beneficiaries; allocating the risk of loss of consumer goods; describing the effect of default under a rental agreement and procedure to be followed upon default; providing for notice after default; providing for the termination of rent-to-own agreements; prescribing the terms for reinstatement of written rental agreement; providing for a consumer's right to ownership of the goods upon satisfying certain conditions; requiring maintenance of goods; setting forth disclosure requirements for rent-to-own transactions; prohibiting certain acts by rent-to-own dealers; establishing limitations on charges and fees; authorizing the attorney general to promulgate legislative rules governing rent-to-own transactions; prohibiting extortionate conduct in rent-to-own transactions; prohibiting rebates or discounts under certain conditions; prohibiting practice of law by debt collectors; prohibiting collections through threats or coercion; prohibiting oppression and abuse; prohibiting unreasonable publication; prohibiting fraudulent, deceptive or misleading representations; prohibiting the use of unfair or unconscionable means by debt collectors; prohibiting postal violations; requiring notice of assignment; requiring receipts for payments; providing for statements of account and evidence of payment in full; requiring filing of notification with state tax department; limiting the assignment of earnings; prohibiting confession of judgment; prohibiting garnishment before judgment; limiting garnishment; prohibiting discharge or reprisal because of garnishment; establishing personal property exemptions; authorizing service of process on certain nonresidents; providing for enforcement of the act; providing for injunctions against unconscionable agreements and fraudulent or unconscionable conduct; authorizing civil actions by the attorney general; defining certain criminal offenses for the removal out of the county of property securing a claim, the fraudulent sale or disposition of personal property in possession by virtue of a lease or secreting or converting

property subject to a lease; and making such proscribed conduct larceny of such property and thus subject to the applicable criminal penalties therefor.

*Be it enacted by the Legislature of West Virginia:*

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new chapter, designated chapter forty-six-b; and that section thirty-two, article three, chapter sixty-one of said code be amended and reenacted, all to read as follows:

**CHAPTER 46B. REGULATION OF THE RENTAL  
OF CONSUMER GOODS UNDER  
RENT-TO-OWN AGREEMENTS.**

**ARTICLE 1. GENERAL PROVISIONS; PURPOSE AND INTENT;  
DEFINITIONS.**

**§46B-1-1. Short title.**

1 This chapter shall be known and may be cited as the  
2 "West Virginia Consumer Goods Rental Protection  
3 Act".

**§46B-1-2. Scope.**

1 This chapter applies to any transaction, regardless of  
2 form, which creates a rental agreement for the rental  
3 of consumer goods, unless such transaction is specifi-  
4 cally exempted from the application of this chapter by  
5 an express provision contained herein.

**§46B-1-3. Applicability of the law of this state.**

1 With respect to consumer goods rented to a resident  
2 of this state under a rent-to-own agreement, com-  
3 pliance and the effect of compliance or noncompliance  
4 with the provisions of this chapter are governed by the  
5 law of this state.

**§46B-1-4. Legislative purpose and intent.**

1 The underlying purposes and intent of this chapter  
2 are as follows:

3 (1) To simplify and clarify the law governing con-  
4 tracts for the rental of consumer goods;

5 (2) To assure an adequate means for consumers to  
6 enter into contracts for the rental of consumer goods  
7 at an affordable price, so that consumers are financial-  
8 ly able to comply with the terms of such contracts;

9 (3) To further consumer understanding of the terms  
10 of agreements which involve the purchase or rental of  
11 consumer goods;

12 (4) To foster competition among dealers or rent-to-  
13 own dealers who supply consumer goods under rental  
14 agreements, so that consumers may rent such consu-  
15 mer goods at a reasonable cost;

16 (5) To protect consumers against unfair practices by  
17 some dealers, while having due regard for the inter-  
18 ests of legitimate and scrupulous dealers; and

19 (6) To permit and encourage the development and  
20 use of fair and economically sound business practices  
21 on the part of dealers, as well as promoting the  
22 practice of thrift and the exercise of good judgment by  
23 consumers prior to their entering into agreements for  
24 the purchase or rental of consumer goods.

**§46B-1-5. General definitions.**

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

6 (1) "Agricultural purpose" means a purpose related  
7 to the production, harvest, exhibition, marketing,  
8 transportation, processing or manufacture of agricul-  
9 tural products by a natural person who cultivates,  
10 plants, propagates or nurtures the agricultural pro-  
11 ducts. "Agricultural products" include agricultural,  
12 horticultural, viticultural and dairy products, livestock,  
13 wildlife, poultry, bees, forest products, fish and shell-  
14 fish and any products thereof, including processed and  
15 manufactured products, and any and all products  
16 raised or produced on farms and any processed or  
17 manufactured products thereof.

18 (2) "Consumer" means a natural person who  
19 acquires, or seeks to acquire, the right to possession  
20 and use of consumer goods by entering into a rent-to-  
21 own agreement with a dealer.

22 (3) "Consumer goods" or "goods" means goods  
23 intended to be used primarily for personal, family or  
24 household purposes.

25 (4) "Damage waiver" means the voiding or disregard  
26 by the dealer of any obligation on the part of the  
27 consumer to pay the value of the consumer goods or  
28 to make payments pursuant to a rent-to-own agree-  
29 ment in the event of loss or damage to the consumer  
30 goods in excess of normal wear and tear or the  
31 insurance of the value of the consumer goods or of  
32 payments pursuant to the rent-to-own agreement in  
33 the event of loss or damage to the consumer goods in  
34 excess of normal wear and tear.

35 (5) "Dealer" or "rent-to-own dealer" means a  
36 person who, in the ordinary course of business,  
37 transfers or offers to transfer the right to possession  
38 and use of consumer goods to a consumer or acts as an  
39 agent to transfer or offer to transfer the right to  
40 possession and use of consumer goods to a consumer,  
41 pursuant to a rental agreement.

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

47 (7) "Debt collector" means any person or organiza-  
48 tion engaging directly or indirectly in debt collection.  
49 The term includes any person or organization who  
50 sells or offers to sell forms which are, or are repre-  
51 sented to be, a collection system, device or scheme and  
52 are intended or calculated to be used to collect claims.

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

55 (A) Is organized, chartered or holding an authoriza-  
56 tion certificate under the laws of this state or of the

57 United States which authorizes the organization to  
58 make consumer loans; and

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

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

70 (10) "Period" or "rental period" means a week, a  
71 month or another specific length of time set forth in  
72 a rent-to-own agreement, during which such period  
73 the consumer has a right to continue possessing and  
74 using consumer goods, after having made the periodic  
75 rental payment for such period.

76 (11) "Periodic payment" means a payment required  
77 to be made by a consumer to have the right to  
78 possession and use of consumer goods during a speci-  
79 fied time period. The periodic payment does not  
80 include any applicable sales, use, privilege, excise or  
81 documentary stamp taxes otherwise payable upon a  
82 transfer of consumer goods from a dealer to a consu-  
83 mer, except as provided for by the disclosure require-  
84 ments or other applicable requirements set forth in  
85 this chapter.

86 (12) "Person" or "party" includes a natural person  
87 or an individual, an organization, partnerships and  
88 corporations.

89 (13) "Person related to" with respect to an individ-  
90 ual means: (A) The spouse of the individual; (B) a  
91 brother, brother-in-law, sister or sister-in-law of the  
92 individual; (C) an ancestor or lineal descendant of the  
93 individual or his spouse; and (D) any other relative, by  
94 blood or marriage, of the individual or his spouse who  
95 shares the same home with the individual. "Person

96 related to" with respect to an organization, partner-  
97 ship or corporation means: (A) A person directly or  
98 indirectly controlling, controlled by or under common  
99 control with the organization, partnership or corpora-  
100 tion; (B) an officer or director of the organization,  
101 partnership or corporation or a person performing  
102 similar functions with respect to the organization or to  
103 a person related to the organization, partnership or  
104 corporation; (C) the spouse of a person related to the  
105 organization, partnership or corporation; and (D) a  
106 relative by blood or marriage of a person related to the  
107 organization, partnership or corporation shares the  
108 same home with him or her.

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

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

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

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

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

125 (ii) Obligates the consumer to pay successive period-  
126 ic rental payments as each shall become due, in order  
127 to continue his or her right to possession and use of  
128 the rented consumer goods;

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



135 (iv) Provides that upon compliance with the terms of  
136 the agreement the consumer shall become or has the  
137 option to become the owner of the property for no  
138 additional fee, except as permitted by this chapter.

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

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

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

149 (iii) All of the consumer goods which are the subject  
150 of the rental agreement are either two-way telecom-  
151 munications equipment, medical equipment or musi-  
152 cal instruments, and the rental agreement is subject to  
153 the federal Truth in Lending Act or the federal  
154 Consumer Leasing Act and the regulations promulgat-  
155 ed pursuant thereto; or

156 (iv) All of the goods which are the subject matter of  
157 the rental agreement are primarily intended to be  
158 used for agricultural purposes.

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

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

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

181 (21) "Total of payments" means the total of all  
182 periodic payments specified in the written agreement  
183 which the consumer must pay in order to acquire  
184 ownership of the consumer goods without the pay-  
185 ment of additional consideration to the dealer.

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

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

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

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

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

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

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

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

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

208 (24) "Written agreement" means a written docu-  
209 ment containing or evidencing the terms of a rent-to-  
210 own transaction, reduced to a tangible and legible

211 form by printing, typewriting, computer print-out or  
212 any other intentional reduction.

**ARTICLE 2. FORMATION AND CONSTRUCTION OF AGREEMENTS  
FOR THE RENTAL OF CONSUMER GOODS.**

**§46B-2-1. Statute of frauds.**

1 (a) A rental agreement is not enforceable by a dealer  
2 by way of action or defense unless there is a writing,  
3 signed by both the dealer or his agent or employee and  
4 the consumer, sufficient to indicate that a rent-to-own  
5 agreement has been made between the parties, rea-  
6 sonably identifying and describing the consumer goods  
7 to be rented. Any purported rent-to-own agreement  
8 entered into without a written agreement may be  
9 voided by the consumer, who may return the consu-  
10 mer goods and be refunded all amounts previously  
11 paid to the dealer under the purported rental  
12 agreement.

13 (b) A rental agreement is not enforceable by a  
14 dealer against a consumer unless the written agree-  
15 ment contains all disclosures required by the provi-  
16 sions of this chapter, and unless a copy of the written  
17 agreement is delivered to the consumer contempo-  
18 raneously with the execution of the written agree-  
19 ment. Any written agreement executed by a consumer  
20 which does not comply with the requirements of this  
21 subsection may be voided by the consumer.

22 (c) The fair market value for any single item which  
23 is the subject of a rent-to-own agreement may not be  
24 more than ten thousand dollars.

**§46B-2-2. Unconscionability.**

1 (a) If the court as a matter of law finds a rental  
2 agreement or any clause of a rental agreement to have  
3 been unconscionable at the time it was made, the  
4 court may refuse to enforce the rental agreement, or  
5 it may enforce the remainder of the rental agreement  
6 without the unconscionable clause, or it may so limit  
7 the application of any unconscionable clause as to  
8 avoid any unconscionable result.

9 (b) With respect to a consumer rental agreement, if  
10 the court as a matter of law finds that a rental  
11 agreement or any clause of a rental agreement has  
12 been induced by unconscionable conduct or that  
13 unconscionable conduct has occurred in the collection  
14 of a claim arising from a rental agreement, the court  
15 may grant appropriate relief.

16 (c) Before making a finding of unconscionability  
17 under subsections (a) or (b) of this section, the court,  
18 on its own motion or that of a party, shall afford the  
19 parties a reasonable opportunity to present evidence as  
20 to the setting, purpose and effect of the rental agree-  
21 ment or clause thereof, or of the conduct.

22 (d) In an action in which the consumer claims  
23 unconscionability with respect to a rental agreement:

24 (1) If the court finds unconscionability under subsec-  
25 tion (a) or (b) of this section, the court shall award  
26 reasonable attorney's fees to the consumer.

27 (2) If the court does not find unconscionability and  
28 the consumer claiming unconscionability has brought  
29 or maintained an action he or she knew to be ground-  
30 less, the court shall award reasonable attorney's fees  
31 to the dealer against whom the claim is made.

32 (3) In determining attorney's fees, the amount of the  
33 recovery on behalf of the claimant under subsections  
34 (a) and (b) of this section is not controlling.

**§46B-2-3. Express warranties.**

1 (a) Express warranties by the dealer are created as  
2 follows:

3 (1) Any affirmation of fact or promise made by the  
4 dealer to the consumer which relates to the consumer  
5 goods is part of the basis of the bargain and creates an  
6 express warranty that the consumer goods will con-  
7 form to the affirmation or promise;

8 (2) Any description of the consumer goods is part of  
9 the basis of the bargain and creates an express  
10 warranty that the consumer goods will conform to the  
11 description;

12 (3) Any sample or model exhibited to the consumer  
13 by the dealer is part of the basis of the bargain and  
14 creates an express warranty that the consumer goods  
15 actually delivered to the consumer will conform to the  
16 sample or model.

17 (b) It is not necessary to the creation of an express  
18 warranty that the dealer use formal words, such as  
19 "warrant" or "guarantee", or that the dealer have a  
20 specific intention to make a warranty, but an affirma-  
21 tion merely of the value of the consumer goods or a  
22 statement purporting to be merely the dealer's opinion  
23 or commendation of the consumer goods does not  
24 create a warranty.

**§46B-2-4. Implied warranty of merchantability.**

1 (a) A warranty that the consumer goods will be  
2 merchantable is implied in every contract for the  
3 rental of consumer goods if the dealer is a merchant  
4 with respect to consumer goods of that kind.

5 (b) Consumer goods to be merchantable must be at  
6 least such as:

7 (1) Pass without objection in the trade under the  
8 description in the rental agreement;

9 (2) Are fit for the ordinary purposes for which  
10 consumer goods of that type are used; and

11 (3) Conform to any promises or affirmations of fact  
12 made on the container or label.

13 (c) Other implied warranties may arise from course  
14 of dealing or usage of trade.

**§46B-2-5. Implied warranty of fitness for particular purpose.**

1 If the dealer, at the time the rental contract is made,  
2 has reason to know of any particular purpose for  
3 which the consumer goods are required and that the  
4 consumer is relying on the dealer's skill or judgment  
5 to select or furnish suitable consumer goods, there is  
6 in the rental contract an implied warranty that the  
7 consumer goods will be fit for that purpose.

**§46B-2-6. Manufacturers' warranties; transfer of warranties.**

1 When consumer goods that are subjects of a rent-to-

2 own transaction are warranted by a manufacturer's or  
3 supplier's warranty or other warranty that may either  
4 be retained by the dealer or transferred to the consu-  
5 mer, the warranty shall be retained by the dealer so  
6 long as the dealer is responsible for maintaining the  
7 consumer goods. At such time as maintenance of the  
8 goods becomes the responsibility of the consumer  
9 through a transfer of ownership or otherwise, such  
10 warranty shall be transferred to the consumer. The  
11 dealer shall advise, orally and in writing, the consu-  
12 mer of any manufacturer's or supplier's warranty that  
13 may apply to the consumer goods and any details  
14 regarding the warranty and the transfer of the  
15 warranty.

**§46B-2-7. Disclaimer of warranties and remedies prohibited.**

1 (a) Notwithstanding any other provision of law to  
2 the contrary with respect to consumer goods which  
3 are the subject of or are intended to become the  
4 subject of a rental contract subject to the provisions of  
5 this chapter, all warranties available to the consumer,  
6 express or implied, are cumulative and not exclusive,  
7 and the consumer shall have the benefit of any or all  
8 such warranties. No dealer, manufacturer, supplier or  
9 other merchant shall:

10 (1) Exclude, modify or otherwise attempt to limit  
11 any warranty, express or implied, including the  
12 warranties of merchantability and fitness for a partic-  
13 ular purpose; or

14 (2) Exclude, modify or attempt to limit any remedy  
15 provided by law, including the measure of damages  
16 available, for a breach of warranty, express or implied.

17 (b) Any exclusion, modification or attempted limita-  
18 tion of a warranty, express or implied, shall be void.  
19 Words or conduct relevant to the creation of an  
20 express warranty and words or conduct tending to  
21 negate or limit a warranty must be construed as  
22 inconsistent with each other.

23 (c) It is unlawful in a rental contract subject to the  
24 provisions of this chapter to attempt to exclude,

25 modify or otherwise attempt to limit any implied  
26 warranty of merchantability or any part of it, or to  
27 attempt to exclude, modify or otherwise attempt to  
28 limit any implied warranty of fitness.

**§46B-2-8. Third-party beneficiaries of express and implied warranties.**

1 A warranty to or for the benefit of a consumer  
2 under this chapter, whether express or implied,  
3 extends to any natural person who is in the family or  
4 household of the consumer or who is a guest in the  
5 consumer's home if it is reasonable to expect that such  
6 person may use or be affected by the consumer goods  
7 and who is injured in person by breach of the warran-  
8 ty. This section does not displace principles of law and  
9 equity that extend a warranty to or for the benefit of  
10 a consumer to other persons. The operation of this  
11 section may not be excluded, modified or limited.

**§46B-2-9. Risk of loss.**

1 Risk of loss is retained by the dealer and does not  
2 pass to the consumer until such time as the consumer  
3 receives the goods.

**ARTICLE 3. DEFAULT.**

**§46B-3-1. Default; procedure.**

1 (a) Whether the dealer or the consumer is in default  
2 under a rental contract is determined by the rental  
3 agreement and this chapter.

4 (b) If the dealer or the consumer is in default under  
5 the rental contract, the party seeking enforcement has  
6 rights and remedies as provided in this chapter and,  
7 except as limited by this chapter, as provided in the  
8 rental agreement.

9 (c) If the dealer or the consumer is in default under  
10 the rental contract, the party seeking enforcement  
11 may reduce the party's claim to judgment or other-  
12 wise enforce the rental contract by self-help or any  
13 available judicial procedure or nonjudicial procedure:  
14 *Provided*, That consumer goods may only be repos-  
15 sessed by a dealer without judicial process when such

16 repossession can be effected without a breach of the  
17 peace.

18 (d) Except as otherwise provided in this chapter or  
19 the rental agreement, the rights and remedies  
20 referred to in subsections (b) and (c) are cumulative.

**§46B-3-2. Notice after default.**

1 Except as otherwise provided in this chapter, the  
2 dealer or consumer in default under the rental con-  
3 tract is not entitled to notice of default or notice of  
4 enforcement from the other party to the rental  
5 agreement.

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

1 (a) Upon the termination of a rent-to-own agree-  
2 ment by a consumer, all obligations that are still  
3 executory by both parties are discharged, but any  
4 right based on a failure of the dealer to maintain the  
5 consumer goods in accordance with the provisions of  
6 section six of this article, or any other right based on  
7 prior default or performance of the dealer survives,  
8 and the consumer retains any remedy or defense for  
9 such default. Rights and remedies available to the  
10 consumer for material misrepresentation or fraud by  
11 a dealer are not affected by a termination of the rental  
12 agreement by a consumer. Termination of the rental  
13 agreement by a consumer shall not bar or be deemed  
14 inconsistent with a claim for damages or other right or  
15 remedy.

16 (b) A consumer may terminate a rent-to-own agree-  
17 ment at any time.

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

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

26 (2) Payment of any pickup charge provided for in



27 the rental agreement.

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

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

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

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

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

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

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

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

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

51 (e) The dealer may request that the goods be  
52 surrendered at any time after a consumer has failed to  
53 timely make a periodic payment required under the  
54 agreement. When the consumer surrenders the goods,  
55 the transaction is terminated. The dealer shall provide  
56 the consumer the notice required by this section.

**§46B-3-4. Reinstatement of written rental agreement.**

1 (a) The consumer may reinstate the transaction at  
2 any time until the consumer is served, in a manner  
3 pursuant to rule four of the rules of civil procedure,  
4 with a civil complaint arising out of the transaction.

5 (b) When a consumer fails to timely make one or

6 more periodic payments, he or she may reinstate the  
7 original rent-to-own transaction, without losing any  
8 right or option of the consumer under the rental-  
9 purchase agreement, within sixty days after the  
10 expiration of the last period for which the consumer  
11 made a timely payment: *Provided*, That if a consumer  
12 has made more than forty percent of the regular  
13 payments required to obtain ownership of the goods,  
14 pursuant to the rent-to-own transaction, the consumer  
15 shall have ninety days to reinstate a rent-to-own  
16 transaction: *Provided, however*, That when a dealer  
17 seeks to repossess the goods and has lawfully repos-  
18 sessed the goods two previous times during the same  
19 transaction, the consumer may not reinstate the  
20 transaction.

21 (c) If reinstatement occurs pursuant to this section,  
22 the dealer shall provide the consumer with the same  
23 goods leased by the consumer prior to the reinstate-  
24 ment or if those goods are not available to the dealer,  
25 substitute property that is of no less quality and  
26 condition. When substitute property is provided, the  
27 dealer shall make all disclosures required by this  
28 chapter. When consumer goods have been repossessed  
29 or returned to the possession of the dealer prior to  
30 reinstatement, the dealer may charge a nominal  
31 reinstatement fee, not to exceed five dollars.

**§46B-3-5. Consumer's right to ownership of the goods.**

1 When the consumer has paid all periodic payments  
2 required by a rent-to-own transaction together with  
3 any other charges authorized by law which have been  
4 lawfully imposed in the transaction, he or she shall  
5 have exclusive ownership of the goods: *Provided*, That  
6 the consumer, after the initial payment, may obtain  
7 ownership before the scheduled end of the rent-to-  
8 own transaction by paying:

9 (1) A portion of the periodic payments, which have  
10 not yet become payable, subject to any limitation  
11 provided by this chapter;

12 (2) All periodic payments and other charges autho-  
13 rized by law which have already become due and

14 which may be lawfully imposed in the transaction; and

15 (3) The amount of any documentary or other fee  
16 charged by a governmental entity to transfer owner-  
17 ship or proof of ownership.

**§46B-3-6. Maintenance of goods.**

1 A dealer shall maintain the goods that are the  
2 subject of any rent-to-own transaction in working  
3 order and usable condition until such time as the  
4 consumer obtains ownership of the goods.

**§46B-3-7. Disclosure requirements.**

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

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

8 (1) Retail value;

9 (2) Rent-to-own charge;

10 (3) Rental period;

11 (4) Number of periodic payments required for  
12 ownership;

13 (5) Amount of each periodic payment;

14 (6) Total of all payments; and

15 (7) Whether the goods are new or have been pre-  
16 viously rented or are otherwise used.

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

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

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

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

25 (4) In any radio, television or printed advertisement  
26 for the goods when the price for the item is included  
27 in the advertisement.

28 Any oral communications concerning the terms and  
29 conditions of the transaction shall be incorporated into  
30 a written agreement which shall govern the  
31 transaction.

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

37 (e) A dealer may disclose information that is not  
38 required by this section only when the additional  
39 information is not stated, used or placed in a manner  
40 that may contradict, obscure or distract attention from  
41 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  
3 except the payment for the first rental period, taxes,  
4 insurance or delivery fees and other disclosed fees or  
5 fees authorized by this chapter;

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

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

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

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

20 (6) Take any security interest in any property owned  
21 by the consumer;

22 (7) Require a damage waiver, insurance or form of  
23 insurance, insuring the consumer goods against loss or  
24 damage, unless the dealer requires such insurance for  
25 all goods of comparable type and value in every rent-  
26 to-own agreement;

27 (8) Require damage waiver from a particular insurer;

28 (9) Seek to collect any charge not authorized by this  
29 chapter and disclosed in a written agreement; or

30 (10) Have an initial period which is more than one  
31 rental period longer than any other rental period.

**§46B-3-9. Limitations on charges and fees.**

1 (a) Any consumer seeking to fulfill obligations  
2 pursuant to section five of this article may be charged  
3 a fee no greater than the retail value divided by the  
4 total of payments multiplied by the amount of the  
5 periodic payments which have not yet become due.

6 (b) A dealer may not charge a fee for delivery or  
7 pickup unless the charge is provided for in the written  
8 agreement, the parties agree that the dealer shall  
9 deliver or pick up the goods; and the charge is  
10 reasonably related to the costs of delivery: *Provided*,  
11 That no delivery or pick up charge may be assessed in  
12 any transaction when the transaction took place in any  
13 place other than the premises of the dealer.

14 (c) Any late fee imposed by a dealer may not exceed  
15 five percent of the periodic payment or fifteen dollars,  
16 whichever is less. Only one late charge may be  
17 imposed for any payment for which a late charge may  
18 be charged. Under a rental agreement in which  
19 periodic payments are due weekly, a late charge may  
20 not be imposed until the payment is three days late.  
21 Otherwise, a late charge may not be imposed until the  
22 payment is five days late.

23 (d) The total of payments in a rent-to-own transac-  
24 tion shall not be greater than two hundred forty  
25 percent of the retail value.

**§46B-3-10. Attorney general; promulgation of rules.**

1 The attorney general may adopt, amend and repeal  
2 such reasonable rules and regulations, in accordance  
3 with the provisions of chapter twenty-nine-a of this  
4 code, as are necessary and proper to effectuate the  
5 purposes of this chapter and to prevent circumvention  
6 or evasion thereof. In addition, the attorney general  
7 shall adopt, amend and repeal such reasonable rules  
8 and regulations, in accordance with the provisions of  
9 said chapter, as are necessary and proper to determine  
10 formula or method of ascertaining retail value as  
11 defined in this article and as are necessary and proper  
12 to detail the requirements for disclosure set forth in  
13 this article.

**ARTICLE 4. PROHIBITED CONDUCT.**

**§46B-4-1. Extortionate conduct in rent-to-own transaction.**

1 If the court finds as a matter of fact that it was the  
2 understanding of the dealer and the consumer at the  
3 time a rental agreement for a rent-to-own transaction  
4 was made that delay in making a payment could result  
5 in the use of violence or other criminal means to cause  
6 harm to the person, reputation or property of any  
7 person, the agreement of the extension of credit is  
8 unenforceable through civil judicial process against  
9 the dealer and the consumer, at his or her option, may  
10 rescind the agreement and retain the goods without  
11 any obligation to pay for them.

**§46B-4-2. Referral sales or leases.**

1 With respect to a rent-to-own transaction, the dealer  
2 may not give or offer to give a rebate or discount or  
3 otherwise pay or offer to pay value to the consumer as  
4 an inducement for a sale or lease in consideration of  
5 his giving to the dealer the names of prospective  
6 purchasers or consumers, or otherwise aiding the  
7 dealer in making a lease to another person, if the  
8 earning of the rebate, discount or other value is  
9 contingent upon the occurrence of an event subse-  
10 quent to the time the consumer agrees to lease. If a  
11 consumer is induced by a violation of this section to

12 enter into a rent-to-own transaction, the agreement is  
13 unenforceable against the consumer, who at his or her  
14 option may rescind the agreement and retain the  
15 goods without any obligation to pay for them.

**§46B-4-3. Practice of law by debt collectors.**

1 Unless a licensed attorney in this state, no debt  
2 collector shall engage in conduct deemed the practice  
3 of law. Without limiting the general application of the  
4 foregoing, the following conduct is deemed the prac-  
5 tice of law:

6 (1) The performance of legal services, furnishing of  
7 legal advice or false representation, direct or by  
8 implication, that any person is an attorney;

9 (2) Any communication with consumers in the name  
10 of an attorney or upon stationery or other written  
11 matter bearing an attorney's name; and

12 (3) Any demand for or payment of money constitut-  
13 ing a share of compensation for services performed or  
14 to be performed by an attorney in collecting a claim.

**§46B-4-4. Threats or coercion.**

1 No debt collector shall collect or attempt to collect  
2 any money alleged to be due and owing by means of  
3 any threat, coercion or attempt to coerce. Without  
4 limiting the general application of the foregoing, the  
5 following conduct is deemed to violate this section:

6 (1) The use, or express or implicit threat of use, of  
7 violence or other criminal means to cause harm to the  
8 person, reputation or property of any person;

9 (2) The accusation or threat to accuse any person of  
10 fraud, any crime or any conduct which, if true, would  
11 tend to disgrace such other person or in any way  
12 subject him to ridicule or any conduct which, if true,  
13 would tend to disgrace such other person or in any  
14 way subject him to ridicule or contempt of society;

15 (3) False accusations made to another person, includ-  
16 ing any credit reporting agency, that a consumer is  
17 willfully refusing to pay a just debt or the threat to so

18 make false accusations;

19 (4) The threat to sell or assign to another the  
20 obligation of the consumer with an attending repre-  
21 sentation or implication that the result of such sale or  
22 assignment would be that the consumer would lose  
23 any defense to the claim or would be subjected to  
24 harsh, vindictive or abusive collection attempts;

25 (5) The threat that nonpayment of an alleged claim  
26 will result in the:

27 (A) Arrest of any person; or

28 (B) Garnishment of any wages of any person or the  
29 taking of other action requiring judicial sanction,  
30 without informing the consumer that there must be in  
31 effect a judicial order permitting such garnishment or  
32 such other action before it can be taken; and

33 (6) The threat to take any action prohibited by this  
34 chapter or other law regulating the debt collector's  
35 conduct.

**§46B-4-5. Oppression and abuse.**

1 No debt collector shall unreasonably oppress or  
2 abuse any person in connection with the collection of  
3 or attempt to collect any claim alleged to be due and  
4 owing by that person or another. Without limiting the  
5 general application of the foregoing, the following  
6 conduct is deemed to violate this section:

7 (1) The use of profane or obscene language or  
8 language that is intended to unreasonably abuse the  
9 hearer or reader;

10 (2) The placement of telephone calls without disclo-  
11 sure of the caller's identity and with the intent to  
12 annoy, harass or threaten any person at the called  
13 number;

14 (3) Causing expense to any person in the form of  
15 long distance telephone tolls, telegram fees or other  
16 charges incurred by a medium of communication, by  
17 concealment of the true purpose of the communica-  
18 tion; and



19 (4) Causing a telephone to ring or engaging any  
20 person in telephone conversation repeatedly or contin-  
21 uously, or at unusual times or at times known to be  
22 inconvenient, with intent to annoy, abuse, oppress or  
23 threaten any person at the called number.

**§46B-4-6. Unreasonable publication.**

1 No debt collector shall unreasonably publicize infor-  
2 mation relating to any alleged indebtedness of consu-  
3 mer. Without limiting the general application of the  
4 foregoing, the following conduct is deemed to violate  
5 this section:

6 (1) The communication to any employer or his agent  
7 before judgment has been rendered of any informa-  
8 tion relating to an employee's indebtedness other than  
9 through proper legal action, process or proceeding;

10 (2) The disclosure, publication or communication of  
11 information relating to a consumer's indebtedness to  
12 any relative or family member of the consumer if  
13 such person is not residing with the consumer, except  
14 through proper legal action or process or at the  
15 express and unsolicited request of the relative or  
16 family member;

17 (3) The disclosure, publication or communication of  
18 any information relating to a consumer's indebtedness  
19 to any other person other than a credit reporting  
20 agency, by publishing or posting any list of consumers,  
21 commonly known as "deadbeat lists"; and

22 (4) The use of any form of communication to the  
23 consumer, which ordinarily may be seen by any other  
24 persons, that displays or conveys any information  
25 about the alleged claim other than the name, address  
26 and phone number of the debt collector.

**§46B-4-7. Fraudulent, deceptive or misleading rep-  
resentations.**

1 No debt collector shall use any fraudulent, deceptive  
2 or misleading representation or means to collect or  
3 attempt to collect claims or to obtain information  
4 concerning consumers. Without limiting the general

5 application of the foregoing, the following conduct is  
6 deemed to violate this section:

7 (1) The use of any business, company or organization  
8 name while engaged in the collection of claims, other  
9 than the true name of the debt collector's business,  
10 company or organization;

11 (2) The failure to clearly disclose in all communica-  
12 tions made to collect or attempt to collect a claim or  
13 to obtain or attempt to obtain information about a  
14 consumer, that the debt collector is attempting to  
15 collect a claim and that any information obtained will  
16 be used for that purpose;

17 (3) Any false representation that the debt collector  
18 has in his possession information or something of  
19 value for the consumer that is made to solicit or  
20 discover information about the consumer;

21 (4) The failure to clearly disclose the name and full  
22 business address of the person to whom the claim has  
23 been assigned for collection, or to whom the claim is  
24 owed, at the time of making any demand for money;

25 (5) Any false representation or implication of the  
26 character, extent or amount of a claim against a  
27 consumer or of its status in any legal proceeding;

28 (6) Any false representation or false implication that  
29 any debt collector is vouched for, bonded by, affiliated  
30 with or an instrumentality, agent or official of this  
31 state or any agency of the federal, state or local  
32 government;

33 (7) The use or distribution or sale of any written  
34 communication which simulates or is falsely repre-  
35 sented to be a document authorized, issued or approved  
36 by a court, an official or any other legally constituted  
37 or authorized authority, or which creates a false  
38 impression about its source, authorization or approval;

39 (8) Any representation that an existing obligation of  
40 the consumer may be increased by the addition of  
41 attorney's fees, investigation fees, service fees or any  
42 other fees or charges when in fact such fees or charges

43 may not legally be added to the existing obligation;  
44 and

45 (9) Any false representation or false impression  
46 about the status or true nature of or the services  
47 rendered by the debt collector or his business.

**§46B-4-8. Unfair or unconscionable means.**

1 No debt collector shall use unfair or unconscionable  
2 means to collect or attempt to collect any claim.  
3 Without limiting the general application of the forego-  
4 ing, the following conduct is deemed to violate this  
5 section:

6 (1) The seeking or obtaining of any written state-  
7 ment or acknowledgment in any form that specifies  
8 that a consumer's obligation is one incurred for  
9 necessities of life where the original obligation was  
10 not in fact incurred for such necessities;

11 (2) The seeking or obtaining of any written state-  
12 ment or acknowledgment in any form containing an  
13 affirmation of any obligation by a consumer who has  
14 been declared bankrupt without clearly disclosing the  
15 nature and consequences of such affirmation and the  
16 fact that the consumer is not legally obligated to make  
17 such affirmation;

18 (3) The collection or the attempt to collect from the  
19 consumer all or any part of the debt collector's fee or  
20 charge for services rendered;

21 (4) The collection of or the attempt to collect any  
22 interest or other charge, fee or expense incidental to  
23 the principal obligation unless such interest or inci-  
24 dental fee, charge or expense is expressly authorized  
25 by the written rental agreement and by statute; and

26 (5) Any communication with a consumer whenever  
27 it appears that the consumer is represented by an  
28 attorney and the attorney's name and address are  
29 known, or could be easily ascertained, unless the  
30 attorney fails to answer correspondence, return phone  
31 calls or discuss the obligation in question or unless the  
32 attorney consents to direct communication.

**§46B-4-9. Postal violations.**

1 No debt collector shall use, distribute, sell or prepare  
2 for use any written communication which violates or  
3 fails to conform to United States postal laws and  
4 regulations.

**ARTICLE 5. ASSIGNMENT AND RECEIPT OF PAYMENT.**

**§46B-5-1. Notice of assignment.**

1 A consumer is authorized to pay the original dealer  
2 until he receives notification of assignment of rights to  
3 payment pursuant to a rent-to-own transaction and  
4 that payment is to be made to the assignee. A notifi-  
5 cation which does not reasonably identify the rights  
6 assigned is ineffective. If requested by the consumer,  
7 the assignee must seasonably furnish reasonable proof  
8 that the assignment has been made and unless he does  
9 so the consumer may pay the original dealer.

**§46B-5-2. Receipts; statements of account; evidence of  
payment.**

1 (a) The dealer shall deliver or mail to the consumer,  
2 without request, a written receipt for each payment  
3 by coin or currency on an obligation pursuant to a  
4 written rental agreement. A periodic statement show-  
5 ing a payment received complies with this subsection.

6 (b) Upon written request of a consumer, the dealer  
7 shall provide a written statement of the dates and  
8 amounts of payments made within the past twelve  
9 months and the total amount unpaid. The requested  
10 statement shall be provided without charge once  
11 during each year of the term of the agreement. If  
12 additional statements are requested, the creditor may  
13 charge not in excess of three dollars for each addition-  
14 al statement.

15 (c) After a consumer has fulfilled all obligations with  
16 respect to a rent-to-own transaction, the dealer shall,  
17 upon the request of the consumer, deliver or mail to  
18 the consumer written evidence acknowledging pay-  
19 ment in full of all obligations with respect to the  
20 transaction.

**§46B-5-3. Notification.**

1 (a) Every person engaged in this state in making  
2 rent-to-own transactions and every person having an  
3 office or place of business in this state who takes  
4 assignments of and undertakes direct collection of  
5 payments from or enforcement of rights against  
6 debtors arising from such transactions shall file  
7 notification with the state tax department within  
8 thirty days after commencing business in this state,  
9 and, thereafter, on or before the thirty-first day of  
10 January of each year. A notification shall be deemed  
11 to be in compliance with this section if the information  
12 hereinafter required is given in an application for a  
13 business registration certificate provided for in section  
14 four, article twelve, chapter eleven of this code. The  
15 state tax commissioner shall make any information  
16 required by this section available to the attorney  
17 general or commissioner upon request. The notifica-  
18 tion shall state:

19 (1) Name of the person;

20 (2) Name in which business is transacted if different  
21 from subdivision (1) of this subsection;

22 (3) Address of principal office, which may be outside  
23 this state;

24 (4) Address of all offices or retail stores, if any, in  
25 this state at which rent-to-own transactions are made  
26 or, in the case of a person taking assignments of  
27 obligations, the offices or places of business within this  
28 state at which business is transacted; and

29 (5) Address of designated agent upon whom service  
30 of process may be made in this state.

31 (b) If information in a notification becomes inaccu-  
32 rate after filing, accurate information must be filed  
33 within thirty days.

**ARTICLE 6. LIMITATIONS ON COLLECTIONS AND RELATED PROVISIONS.**

**§46B-6-1. Assignment of earnings.**

1 (a) The maximum part of the aggregate disposable  
2 earnings of an individual for any workweek which  
3 may be subjected to any one or more assignments of  
4 earnings for the payment of a debt or debts arising  
5 from one or more rent-to-own transactions, may not  
6 exceed twenty-five percent of his disposable earnings  
7 for that week.

8 (b) As used in this section:

9 (1) "Disposable earnings" means that part of the  
10 earnings of an individual remaining after the deduc-  
11 tion from those earnings of amounts required by law  
12 to be withheld; and

13 (2) "Assignment of earnings" includes all forms of  
14 assignments, deductions, transfers or sales of earnings  
15 to another, either as payment or as security and  
16 whether stated to be revocable or nonrevocable and  
17 includes any deductions authorized under the provi-  
18 sions of section three, article five, chapter twenty-one  
19 of this code, except deductions for union or club dues,  
20 pension plans, payroll savings plans, charities, stock  
21 purchase plans and hospitalization and medical  
22 insurance.

23 (c) Any assignment of earnings and any deduction  
24 under section three, article five, chapter twenty-one of  
25 this code shall be revocable by the employee at will at  
26 any time, notwithstanding any provision to the  
27 contrary.

28 (d) The priority of multiple assignments of earnings  
29 shall be according to the date and time of each such  
30 assignment.

**§46B-6-2. Authorization to confess judgment prohibited.**

1 A consumer may not authorize any person to confess  
2 judgment on a claim arising out of a rent-to-own  
3 transaction. An authorization in violation of this  
4 section is void. The provisions of this section shall not  
5 be construed as in any way impliedly authorizing a  
6 confession of judgment in any other type of transaction.

**§46B-6-3. No garnishment before judgment.**

1 Prior to entry of judgment in an action against the  
2 consumer for debt arising from a rent-to-own transac-  
3 tion, the dealer may not attach unpaid earnings of the  
4 consumer by garnishment or like proceedings. The  
5 provisions of this section shall not be construed as in  
6 any way impliedly authorizing garnishment before  
7 judgment in any other type of transaction.

**§46B-6-4. Limitation on garnishment.**

1 (a) For the purposes of the provisions in this chapter  
2 relating to garnishment:

3 (1) "Disposable earnings" means that part of the  
4 earnings of an individual remaining after the deduc-  
5 tion from those earnings of amounts required by law  
6 to be withheld; and

7 (2) "Garnishment" means any legal or equitable  
8 procedure through which the earnings of an individual  
9 are required to be withheld for payment of a debt.

10 (b) The maximum part of the aggregate disposable  
11 earnings of an individual for any workweek which is  
12 subjected to garnishment to enforce payment of a  
13 judgment arising from a rent-to-own transaction may  
14 not exceed the lesser of:

15 (1) Twenty percent of his disposable earnings for  
16 that week;

17 (2) The amount by which his disposable earnings for  
18 that week exceed thirty times the federal minimum  
19 hourly wage prescribed by Section 6(a)(1) of the "Fair  
20 Labor Standards Act of 1938", U.S.C. Title 19, Section  
21 206(a)(1), in effect at the time the earnings are  
22 payable; or

23 (3) In the case of earnings for a pay period other  
24 than a week, the commissioner shall prescribe by rule  
25 a multiple of the federal minimum hourly wage  
26 equivalent in effect to that set forth in subdivision (2)  
27 of this subsection.

28 (c) No court may make, execute or enforce an order  
29 or process in violation of this section. Any time after  
30 a consumer's earnings have been executed upon

31 pursuant to article five-a or five-b, chapter thirty-eight  
32 of this code by a creditor resulting from a rent-to-own  
33 transaction, such consumer may petition any court  
34 having jurisdiction of such matter or the circuit court  
35 of the county wherein he resides to reduce or tempo-  
36 rarily or permanently remove such execution upon his  
37 earnings on the grounds that such execution causes or  
38 will cause undue hardship to him or his family. When  
39 such fact is proved to the satisfaction of such court, it  
40 may reduce or temporarily or permanently remove  
41 such execution.

42 (d) No garnishment governed by the provisions of  
43 this section will be given priority over a voluntary  
44 assignment of wages to fulfill a support obligation, a  
45 garnishment to collect arrearages in support payments  
46 or a notice of withholding from wages of amounts  
47 payable as support, notwithstanding the fact that the  
48 garnishment in question or the judgment upon which  
49 it is based may have preceded the support-related  
50 assignment, garnishment or notice of withholding in  
51 point of time or filing.

**§46B-6-5. No discharge or reprisal because of garnishment.**

1 No employer shall discharge or take any other form  
2 of reprisal against an employee for the reason that a  
3 creditor of the employee has subjected or attempted to  
4 subject unpaid earnings of the employee to garnish-  
5 ment or like proceedings directed to the employer for  
6 the purpose of paying a judgment arising from a rent-  
7 to-own transaction.

**§46B-6-6. Personal property exemptions.**

1 Any consumer residing in this state may set apart  
2 and hold personal property to be exempt from execu-  
3 tion or other judicial process resulting from rent-to-  
4 own transactions, except for the purchase money due  
5 on such property, in such amounts as follows: Clothing  
6 and other wearing apparel of the consumer, his spouse  
7 and any dependents of such consumer, not to exceed  
8 the fair market value of two hundred dollars; furni-  
9 ture, appliances, furnishings and fixtures regularly  
10 used for family purposes in the consumer's residence,



11 to the extent of the fair market value of one thousand  
12 dollars; children's books, pictures, toys and other such  
13 personal property of children; all medical health  
14 equipment used for health purposes by the consumer,  
15 his or her spouse and any dependent of such consu-  
16 mer; tools of trade, including any income-producing  
17 property used in the consumer's principal occupation,  
18 to the extent of the fair market value of one thousand  
19 dollars; and any policy of life or endowment insurance  
20 which is payable to the spouse or children of the  
21 insured consumer or to a trustee for their benefit,  
22 except the cash value of any accrued dividends there-  
23 on. When a consumer claims personal property as  
24 exempt under the provisions of this section, he shall  
25 deliver a list containing all the personal property  
26 owned or claimed by him and all items of such  
27 property he claims as exempt hereunder, with the  
28 value of each separate item listed according to his best  
29 knowledge, to the officer holding the execution or  
30 other such process. Such list shall be sworn to by  
31 affidavit. If the value of the property named in such  
32 list exceeds the amounts specified in this section, the  
33 consumer shall state at the foot thereof what part of  
34 such property he claims as exempt. If such value does  
35 not exceed the amounts specified in this section, the  
36 claim of exemption shall be held to extend to the  
37 whole thereof without stating more and, if no  
38 appraisement is demanded, the property so claimed  
39 shall be set aside as exempt. Where the consumer  
40 owning exempt property is absent or incapable of  
41 acting or neglects or declines to act hereunder, the  
42 claim of exemption may be made, the list delivered  
43 and the affidavit made by his spouse with the same  
44 effect as if the consumer had done so. Upon receipt of  
45 such a list, the officer to whom it is given shall  
46 immediately exhibit such list to the dealer or his agent  
47 or attorney. The rights granted and procedures provid-  
48 ed for in article eight, chapter thirty-eight of this code  
49 shall apply to any proceeding under this section,  
50 except that the provisions of sections one and three of  
51 such article shall not apply.

**ARTICLE 7. NONRESIDENT DEFENDANTS.****§46B-7-1. Service of process on certain nonresidents.**

1 Any nonresident person, except a nonresident cor-  
2 poration authorized to do business in this state pur-  
3 suant to the provisions of chapter thirty-one of this  
4 code, who takes or holds any negotiable instrument,  
5 non-negotiable instrument, or contract or other writ-  
6 ing, arising from a rent-to-own lease which is subject  
7 to the provisions of this chapter, shall be conclusively  
8 presumed to have appointed the secretary of state as  
9 his attorney-in-fact with authority to accept service of  
10 notice and process in any action or proceeding brought  
11 against him arising out of such rent-to-own transac-  
12 tion. A person shall be considered a nonresident  
13 hereunder if he is a nonresident at the time such  
14 service of notice and process is sought. No act of such  
15 person appointing the secretary of state shall be  
16 necessary. Immediately after being served with or  
17 accepting any such process or notice, of which process  
18 or notice two copies for each defendant shall be  
19 furnished the secretary of state with the original  
20 notice or process, together with a fee of two dollars,  
21 the secretary of state shall file in his office a copy of  
22 such process or notice, with a note thereon endorsed  
23 of the time of service or acceptance, as the case may  
24 be, and transmit one copy of such process or notice by  
25 registered or certified mail, return receipt requested,  
26 to such person at his address, which address shall be  
27 stated in such process or notice: *Provided*, That such  
28 return receipt shall be signed by such person or an  
29 agent or employee of such person if a corporation, or  
30 the registered or certified mail so sent by said secre-  
31 tary of state is refused by the addressee and the  
32 registered or certified mail is returned to said secre-  
33 tary of state, or to his office, showing thereon the  
34 stamp of the U.S. postal service that delivery thereof  
35 has been refused, and such return receipt or regis-  
36 tered or certified mail is appended to the original  
37 process or notice and filed therewith in the clerk's  
38 office of the court from which such process or notice  
39 was issued. But no process or notice shall be served on

40 the secretary of state or accepted fewer than ten days  
41 before the return date thereof. The court may order  
42 such continuances as may be reasonable to afford each  
43 defendant opportunity to defend the action or  
44 proceeding.

45 The provisions for service of process or notice herein  
46 are cumulative and nothing herein contained shall be  
47 construed as a bar to the plaintiff in any action from  
48 having process or notice in such action served in any  
49 other mode and manner provided by law.

**ARTICLE 8. ENFORCEMENT AND REMEDIES.**

**§46B-8-1. Enforcement.**

1 For a violation of or a failure to comply with the  
2 provisions of this article by a dealer, a consumer is  
3 entitled to recover from the dealer the consumer's  
4 actual damages, reasonable attorney's fees and court  
5 costs and a civil penalty in an amount not less than  
6 one hundred dollars nor more than one thousand  
7 dollars for each violation.

**§46B-8-2. Injunctions against unconscionable agreements  
and fraudulent or unconscionable conduct.**

1 (a) The attorney general may bring a civil action to  
2 restrain a dealer or a person acting in his behalf from  
3 engaging in a course of:

4 (1) Making or enforcing unconscionable terms or  
5 provisions of rent-to-own transactions;

6 (2) Fraudulent or unconscionable conduct in induc-  
7 ing consumers to enter into rent-to-own transactions;  
8 or

9 (3) Fraudulent or unconscionable conduct in the  
10 collection of payments arising from rent-to-own  
11 transactions.

12 (b) In an action brought pursuant to this section the  
13 court may grant relief only if it finds:

14 (1) That the respondent has made unconscionable  
15 agreements or has engaged or is likely to engage in a  
16 course of fraudulent or unconscionable conduct;

17 (2) That the agreements or conduct of the respon-  
18 dent have caused or are likely to cause injury to  
19 consumers; and

20 (3) That the respondent has been able to cause or  
21 will be able to cause the injury primarily because the  
22 transactions involved are rent-to-own transactions.

23 (c) In applying this section, consideration shall be  
24 given to each of the following factors, among others:

25 (1) Belief by the dealer at the time rent-to-own  
26 transactions are made that there was no reasonable  
27 probability of payment in full of the obligation by the  
28 consumer;

29 (2) Knowledge by the dealer at the time of the sale  
30 of the inability of the consumer to receive substantial  
31 benefits from the transaction;

32 (3) Gross disparity between the price of the property  
33 or services sold that are the subject of the transaction  
34 and the value of the property measured by the price  
35 at which similar property are readily obtainable in  
36 rent-to-own transactions by like consumers;

37 (4) The fact that the dealer contracted for or  
38 received separate charges for insurance with respect  
39 to the goods with the effect of making the sales or  
40 loans, considered as a whole, unconscionable; and

41 (5) The fact that the respondent has knowingly taken  
42 advantage of the inability of the consumer reasonably  
43 to protect his interests by reason of physical or mental  
44 infirmities, ignorance, illiteracy or inability to under-  
45 stand the language of the agreement or similar factors.

46 (d) In an action brought pursuant to this chapter, a  
47 charge or practice expressly permitted by this chapter  
48 is not unconscionable.

**§46B-8-3. Civil actions by attorney general.**

1 (a) After demand, the attorney general may bring a  
2 civil action against a dealer for making or collecting  
3 charges in excess of those permitted by this chapter. If  
4 the court finds that an excess charge has been made,

5 the court shall order the respondent to refund to the  
6 consumer the amount of the excess charge. If a dealer  
7 has made an excess charge in a deliberate violation of  
8 or in reckless disregard for this chapter or if a dealer  
9 has refused to refund an excess charge within a  
10 reasonable time after demand by the consumer or the  
11 attorney general, the court may also order the respon-  
12 dent to pay to the consumer a civil penalty in an  
13 amount determined by the court not in excess of ten  
14 times the amount of the excess charge. Refunds and  
15 penalties to which the consumer is entitled pursuant  
16 to this subsection may be set off against the consu-  
17 mer's obligation. If a consumer brings an action  
18 against a dealer to recover an excess charge or civil  
19 penalty, an action by the attorney general to recover  
20 for the same excess charge shall be stayed while the  
21 consumer's action is pending and shall be dismissed if  
22 the consumer's action is dismissed with prejudice or  
23 results in a final judgment granting or denying the  
24 consumer's claim. No action pursuant to this subsec-  
25 tion may be brought more than one year after the  
26 time the excess charge was made. If the dealer  
27 establishes by a preponderance of evidence that a  
28 violation is unintentional or the result of a bona fide  
29 error, no liability to pay a penalty shall be imposed  
30 under this subsection.

31 (b) The attorney general may bring a civil action  
32 against a dealer to recover a civil penalty for willfully  
33 violating this chapter and if the court finds that the  
34 defendant has engaged in a course of repeated and  
35 willful violations of this chapter, it may assess a civil  
36 penalty of no more than five thousand dollars. No civil  
37 penalty pursuant to this subsection may be imposed  
38 for violations of this chapter occurring more than four  
39 years before the action is brought.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-32. Removal out of county of property securing claim;  
penalties; fraudulent disposition of personal  
property in possession by virtue of lease;**

**notice to return; failure to return; penalty;  
right to immediate possession.**

1 (a) Any debtor under any security instrument  
2 conveying personal property, who retains possession of  
3 such personal property, and who, without the consent  
4 of the owner of the claim secured by such security  
5 instrument, and with intent to defraud, removes or  
6 causes to be removed any of the property securing  
7 such claim out of the county where it is situated at the  
8 time it became security for such claim or out of a  
9 county to which it was removed by virtue of a former  
10 consent of the owner of the claim under this section,  
11 or, with intent to defraud, secretes or sells the same,  
12 or converts the same to his own use, shall be guilty of  
13 a misdemeanor, and, upon conviction thereof, be fined  
14 not more than five hundred dollars, or imprisoned not  
15 more than six months, or both, in the discretion of the  
16 court.

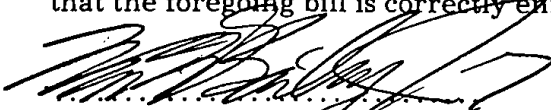
17 (b) Any person in possession or control of any  
18 personal property by virtue of or subject to a written  
19 lease who, with intent to defraud and without written  
20 consent of the owner, disposes of such property by sale  
21 or transfer, or, after receiving a written notice to  
22 return the property or otherwise make the property  
23 available to the lessor, secretes or converts such  
24 property to his own use and in so doing places the  
25 property in a location other than the locations de-  
26 scribed in the written lease, or removes or causes to be  
27 removed such property from the state shall be deemed  
28 guilty of the larceny of such property.

29 In any prosecution under the provisions of this  
30 subsection, written notice may be mailed by certified  
31 mail, addressed to the consumer at the address of the  
32 consumer stated in the lease, and served on the  
33 consumer within ten days of the expiration of the  
34 lease, which notice shall state that the lease has  
35 expired and that consumer has ten days from receipt  
36 of such notice to return the leased property. Proof that  
37 the consumer failed to return the property within ten  
38 days of receiving such notice shall in any prosecution  
39 under this subsection constitute prima facie evidence

40 that the consumer intended to defraud the owner.

41 Whenever the consumer is a resident of the county  
42 in which the lease was contracted, the dealer, after  
43 written notice to the consumer within ten days after  
44 the expiration of the lease, has the right to immediate  
45 possession of the leased property, without formal  
46 process to secure return and possession of the leased  
47 property, if this can be done without breach of the  
48 peace. The dealer is not liable to the consumer for any  
49 damages for any action taken that is reasonable,  
50 necessary and incidental to the reclaiming or taking  
51 possession of the leased property.

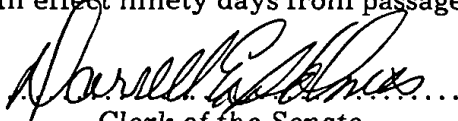
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

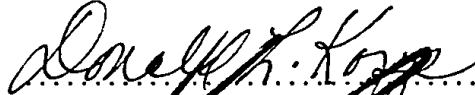
  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

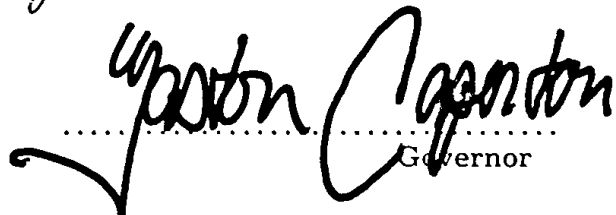
  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved.....this the *6th*  
*May*  
day of ....., 1993.

  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date

4/27/03

Time

3:41 pm