

SB # 56

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Committee Substitute for
SENATE BILL NO. 56

(By Senator Humphreys)



PASSED February 18, 1994
In Effect 90 days from Passage

E N R O L L E D

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 56

(SENATOR HUMPHREYS, *original sponsor*)

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

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

Be it enacted by the Legislature of West Virginia:

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

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

§46B-1-5. General definitions.

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

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

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

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

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

33 (5) "Dealer" or "rent-to-own dealer" means a person
34 who, in the ordinary course of business, transfers or
35 offers to transfer the right to possession and use of
36 consumer goods to a consumer or acts as an agent to

37 transfer or offer to transfer the right to possession and
38 use of consumer goods to a consumer, pursuant to a
39 rental agreement.

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

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

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

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

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

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

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

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

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

86 (13) "Person related to" with respect to an individual
87 means: (A) The spouse of the individual; (B) a brother,
88 brother-in-law, sister or sister-in-law of the individual;
89 (C) an ancestor or lineal descendant of the individual or
90 his spouse; and (D) any other relative, by blood or
91 marriage, of the individual or his spouse who shares the
92 same home with the individual. "Person related to" with
93 respect to an organization, partnership or corporation
94 means: (A) A person directly or indirectly controlling,
95 controlled by or under common control with the
96 organization, partnership or corporation; (B) an officer or
97 director of the organization, partnership or corporation
98 or a person performing similar functions with respect to
99 the organization or to a person related to the
100 organization, partnership or corporation; (C) the spouse
101 of a person related to the organization, partnership or
102 corporation; and (D) a relative by blood or marriage of a
103 person related to the organization, partnership or
104 corporation shares the same home with him or her.

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

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

113 chapter.

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

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

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

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

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

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

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

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

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

142 (iii) All of the consumer goods which are the subject of
143 the rental agreement are either two-way telecom-
144 munications equipment, medical equipment or musical
145 instruments, and the rental agreement is subject to the
146 federal Truth in Lending Act or the federal Consumer
147 Leasing Act and the regulations promulgated pursuant
148 thereto; or

149 (iv) All of the goods which are the subject matter of the
150 rental agreement are primarily intended to be used for
151 agricultural purposes.

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

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

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

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

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

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

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

185 (C) Is under no compulsion to buy or to buy from a

186 particular seller.

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

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

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

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

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

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

ARTICLE 3. DEFAULT.

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

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

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

17 (c) When a consumer terminates a rent-to-own

18 transaction, the dealer may not require any further action
19 or payment by the consumer except:

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

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

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

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

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

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

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

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

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

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

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

50 (e) The dealer may request that the goods be
51 surrendered at any time after a consumer has failed to
52 timely make a periodic payment required under the

53 agreement.

54 (f) A rent-to-own agreement terminates when the
55 consumer surrenders the goods. The dealer shall provide
56 the consumer with a notice of reinstatement rights as
57 stated in subdivision (4), subsection (d) of this section.

§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 this
4 section, the dealer shall disclose the following
5 information with respect to the goods that are the subject
6 of the rental agreement in a clear, conspicuous and easily
7 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 previously
16 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 section
22 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 for
26 the goods when the amount of the periodic payment for
27 the item is included in the advertisement.

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

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

35 (f) A dealer may disclose information that is not
36 required by this section only when the additional
37 information is not stated, used or placed in a manner that
38 may contradict, obscure or distract attention from the
39 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 fees
5 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 to
9 public officials for perfecting title or ownership in the
10 consumer;

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

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

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

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

21 (7) Require a damage waiver, insurance or form of
22 insurance, insuring the consumer goods against loss or

23 damage, unless the dealer requires such insurance for all
24 goods of comparable type and value in every rent-to-own
25 agreement;

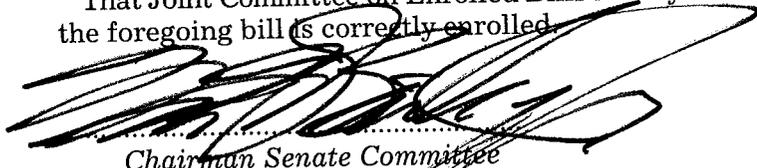
26 (8) Require damage waiver from a particular insurer;

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

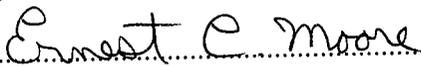
29 (10) Have an initial period which is more than one week
30 longer than any other rental period.

Enr. Com. Sub. for S. B. No. 56] 12

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill (s) correctly enrolled.



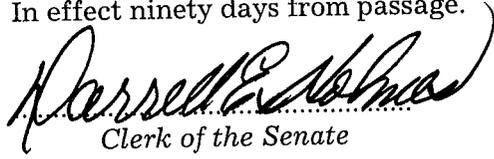
Chairman Senate Committee



Chairman House Committee

Originated in the Senate.

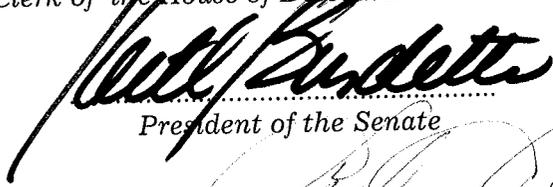
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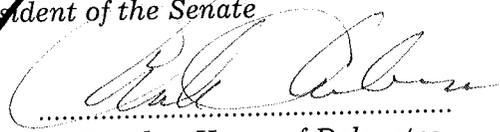
Clerk of the Senate



Clerk of the House of Delegates

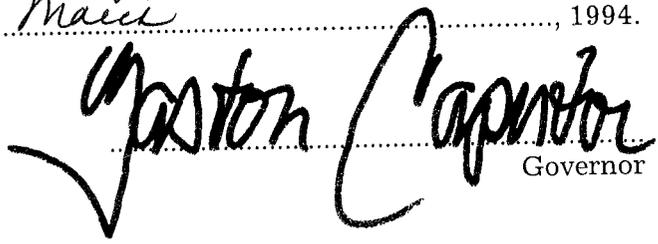


President of the Senate



Speaker House of Delegates

The within is approved this the 7th day of March, 1994.



Governor

PRESENTED TO THE

GOVERNOR

Date 2/25/94

Time 3:11 p