

JUDICIARY AND JUDICIAL PROCEDURE (42 PA.C.S.) - OMNIBUS AMENDMENTS

Act of Jul. 11, 1996, P.L. 607, No. 104

Cl. 42

Session of 1996

No. 1996-104

SB 1374

AN ACT

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for the unauthorized practice of law and for reappointment of district justice; further providing for the Judicial Computer System Augmentation Account and for scope of chapter relating to limitation of time; providing for assignment to orphans' court; regulating rental purchase transactions; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2524(a) of Title 42 of the Pennsylvania Consolidated Statutes is amended and the section is amended by adding a subsection to read:

§ 2524. Penalty for unauthorized practice of law.

(a) General rule.--Except as provided in subsection (b), any person , **including, but not limited to, a paralegal or legal assistant**, who within this Commonwealth shall practice law, or who shall hold himself out to the public as being entitled to practice law, or use or advertise the title of lawyer, attorney at law, attorney and counselor at law, counselor, or the equivalent in any language, in such a manner as to convey the impression that he is a practitioner of the law of any jurisdiction, without being an attorney at law or a corporation complying with 15 Pa.C.S. Ch. 29 (relating to professional corporations), commits a misdemeanor of the third degree[.] **a first violation. A second or subsequent violation of this subsection constitutes a misdemeanor of the first degree.** upon

* * *

(c) Injunction.--In addition to criminal prosecution, unauthorized practice of law may be enjoined in any county court of common pleas having personal jurisdiction over the defendant. The party obtaining such an injunction may be awarded costs and expenses incurred, including reasonable attorney fees, against the enjoined party. A violation of subsection (a) is also a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

Section 2. Title 42 is amended by adding a section to read:

§ 3132.1. Reappointment of district justice.

Notwithstanding any provisions of this title to the contrary, a district justice who resigns from office may not be reappointed to his or her unexpired term.

Section 3. Section 3733 of Title 42 is amended by adding a

subsection to read:

§ 3733. Deposits into account.

* * *

(c) **Expiration of section.**--The provisions of this section shall expire when the sum of \$100,000,000 has been deposited into the Judicial Computer System Augmentation Account. The \$100,000,000 shall be the sum of all deposits into the Judicial Computer System Augmentation Account beginning on and after June 29, 1990.

Section 4. Section 5501 of Title 42 is amended to read:

§ 5501. Scope of chapter.

(a) **General rule.**--An action, proceeding or appeal must be commenced within the time specified in or pursuant to this chapter unless, in the case of a civil action or proceeding, a different time is provided by this title or another statute or a shorter time which is not manifestly unreasonable is prescribed by written agreement.

(b) **Uniform Commercial Code.**--The provisions of Title 13 (relating to commercial code), to the extent that they are inconsistent with this chapter, shall control over the provisions of this chapter.

(c) **Equitable matters.**--[This chapter is applicable to equitable matters, but nothing] **Nothing** in this chapter shall modify the principles of waiver, laches and estoppel and similar principles heretofore applicable in equitable matters.

Section 5. Section 6351 of Title 42 is amended by adding a subsection to read:

§ 6351. Disposition of dependent child.

* * *

(i) **Assignment to orphans' court.**--A judge who adjudicated the child dependent or who has conducted disposition review hearings or other dependency proceedings involving the child may be assigned to the orphans' court division for the purpose of hearing proceedings relating to any of the following:

(1) **Involuntary termination of parental rights of a parent of the dependent child under 23 Pa.C.S. Ch. 25 Subch. B (relating to involuntary termination).**

(2) **A petition to adopt the dependent child.**

Section 6. Title 42 is amended by adding a chapter to read:

CHAPTER 69

PARTICULAR RIGHTS AND IMMUNITIES

Sec.

6901. Short title of chapter.

6902. Definitions.

6903. Required disclosures in connection with rental-purchase agreement.

6904. Prohibited provisions of agreement.

6905. Lessee's right to acquire ownership.

6906. Lessee's right to reinstate agreement after termination.

6907. Rent reduction.

6908. Advertising and display of property.

6909. Lessor's liability for noncompliance.

6910. Limitations on lessor's liability.

6911. Conflict with other law.

§ 6901. Short title of chapter.

This chapter shall be known and may be cited as the Rental-Purchase Agreement Act.

§ 6902. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Advertisement." A written, visual or oral communication made to a lessee or prospective lessee by means of personal representation, newspaper, magazine, circular, billboard, direct mailing, sign, radio, television, telephone or other means of communication that aids, promotes or assists, directly or indirectly, a rental-purchase agreement.

"Cash price." The price at which the lessor would offer to sell in the ordinary course of business the same or similar property for cash on the day the lessee enters into a rental-purchase agreement.

"Lessee." A person who rents personal property pursuant to a rental-purchase agreement.

"Lessor." A person who, in the ordinary course of business, regularly offers to rent or arranges for personal property to be rented pursuant to a rental-purchase agreement. A lessor is a creditor as defined in 37 Pa. Code § 303.2 (relating to definitions) when owed or alleged to be owed a debt and is subject to 37 Pa. Code Ch. 303 (relating to debt collection trade practices).

"Personal property." Any property that is not real property under the laws of the state where it is located when it is offered or made available for a rental-purchase agreement.

"Rental-purchase agreement." An agreement for the use of personal property by an individual primarily for personal, family or household purposes for an initial period of four months or less that is automatically renewable with each rental payment after the initial period and that permits the lessee to acquire ownership of the property. It does not include nor is it subject to laws governing any of the following:

- (1) A lease for agricultural, business or commercial purposes.
- (2) A lease made to an organization.
- (3) A lease of money or intangible personal property.
- (4) A lease of a motor vehicle, motor home, mobile home or manufactured housing.
- (5) A home solicitation sale under section 7 of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.
- (6) A retail installment sale, retail installment contract or retail installment account as defined in the act of October 28, 1966 (1st Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act.
- (7) A security interest as defined in 13 Pa.C.S. § 1201 (relating to general definitions).

§ 6903. Required disclosures in connection with rental-purchase agreement.

(a) General rule.--A lessor shall disclose all of the following in a clear and conspicuous manner:

- (1) A brief description of the rented property

sufficient to identify it to the lessee and lessor and a statement as to whether the property is new, used or previously rented. If a rental is for multiple items of property, a description of each item may be provided in a separate statement incorporated by reference in the rental-purchase agreement or primary disclosure statement.

(2) The total amount of any initial payment, including any advance payment, delivery charge or any trade-in allowance, to be paid by the lessee at or before consummation of the rental-purchase agreement.

(3) The amount and timing of rental payments.

(4) The amount of all other charges, individually itemized, payable by the lessee to the lessor that are not included in the rental payments.

(5) The party who is liable for loss, damage in excess of normal wear and tear or destruction of the rented property.

(6) The right of the lessee to reinstate under section 6906 (relating to lessee's right to reinstate agreement after termination) and the amount of or method of determining the amount of the delinquency charges, reinstatement fee or delivery charge for reinstatement.

(7) The party responsible for maintaining or servicing the rental property and a brief description of the responsibility.

(8) The conditions upon which the lessee or lessor may terminate the rental agreement prior to the expiration of the rental term.

(9) The total of all initial payments, all rental payments and all other charges necessary to acquire ownership of the rented property.

(10) That the lessee has the option to purchase the rented property at any time and at what price or by what formula or method the purchase price will be determined.

(11) The cash price of the personal property that is the subject of the rental-purchase agreement.

(12) The cost of lease services, which is the difference between the total of payments disclosed under paragraph (9) and the cash price of the property disclosed under paragraph (11).

(13) That if any part of a manufacturer's warranty exists on the leased property when a lessee acquires ownership of the property, the warranty will be transferred to the lessee if permitted by the terms of the warranty.

(14) That the lessee is not required to purchase insurance or liability damage waiver for the property that is the subject of the rental agreement from the lessor or from any vendor owned or controlled by the lessor.

(b) Notice required.--Every primary disclosure statement shall include a notice in a prominent place in at least ten-point type in substantially the following form:

NOTICE

You are renting this property. You will not own it until you make all of the regularly scheduled payments or you use the early purchase option. You do not have the right

to keep the property if you do not make required payments or do not use the early purchase option. Subject to your grace periods and reinstatement rights, the lessor may repossess the property if you fail to make rental payments as scheduled. Your rights and responsibilities are fully explained in this rental-purchase agreement.

(c) Time of disclosure.--Every rental-purchase agreement shall be in writing. The information required by this section shall be disclosed by the lessor prior to the signing of the rental-purchase agreement by the lessee and shall be disclosed either in the rental-purchase agreement or on a dated, separate piece of paper that identifies the rental-purchase agreement and the parties to it.

(d) Manner of disclosure.--The disclosures required by subsection (a) (2), (3), (9), (11) and (12) shall be printed or typed in at least ten-point boldface type and grouped together. All other disclosures required by this section shall be printed or typed in at least eight-point type. All numerical amounts and percentages shall be stated in figures. All information required by this section shall be written, organized and designed so that it is easy to read and understand. The information shall be appropriately divided and captioned by its sections.

(e) Disclosure of additional information.--A lessor may disclose information that is not required by this section if the additional information is not stated, used or placed in a manner that will contradict, obscure or distract attention from the required information.

(f) Compliance with Federal law.--With respect to matters specifically governed by the Consumer Credit Protection Act (Public Law 90-321, 15 U.S.C. § 1601 et seq.), compliance with that act satisfies the requirements of this section.

§ 6904. Prohibited provisions of agreement.

A rental-purchase agreement or any document that the lessor requests the lessee to sign shall not contain any provision by which:

(1) A power of attorney is given to confess judgment in this Commonwealth or to appoint the lessor, its agents or its successors in interest as the lessee's agent in the collection of payments or the repossession of the rental property.

(2) The lessee authorizes the lessor or its agent to commit any breach of the peace in repossessing the rental property or to enter the lessee's dwelling or other premises without obtaining the lessee's consent at the time of entry.

(3) The lessor mandates that the lessee purchase insurance or liability waiver against loss or damage to the rental property from the lessor. This paragraph shall not, however, be construed to prohibit a lessor from offering insurance or a liability waiver to a lessee provided it is clearly disclosed that acceptance of the offer of insurance or a liability waiver is optional.

(4) The lessee waives or agrees to waive any defense, counterclaim or right the lessee may have against the lessor, its agent or its successor in interest.

(5) The lessee is required to pay a late fee unless the

rental payment is five days or more late under a rental-purchase agreement with payments made monthly or two days or more late under a rental-purchase agreement with payments made more frequently than monthly.

(6) A lessee is required to pay a late fee exceeding the greater of \$5 or 10% of the amount of the past due payment, regardless of how long the payment remains unpaid.

(7) The lessee is required to pay a fee in connection with retrieval of the property or the termination or rescission of the rental-purchase agreement.

(8) The lessee is charged a fee for in-home collection of a rental payment unless the amount of the fee is disclosed and the lessee expressly has agreed to pay the fee.

§ 6905. Lessee's right to acquire ownership.

(a) Limitation on cost of lease services.--The total amount charged by the lessor for the cost of lease services in a rental-purchase transaction shall not exceed the cash price of the property.

(b) Acquisition of ownership.--At any time after tendering an initial rental payment, a lessee may acquire ownership of the property that is the subject of the rental-purchase agreement by tendering an amount equal at a maximum to the amount by which the cash price of the leased property exceeds 50% of all rental payments made by the lessee.

§ 6906. Lessee's right to reinstate agreement after termination.

(a) General rule.--A lessee who fails to make a timely rental payment may reinstate the agreement without losing any rights or options which exist under the agreement by the payment of all of the following within seven days of the renewal date:

(1) All past due rental charges.

(2) The reasonable costs of retrieval and redelivery, if the property has been retrieved.

(3) Any applicable late fee.

(b) Extended reinstatement after return of property.--

(1) In the case of a lessee who has paid less than two-thirds of the total payments necessary to acquire ownership and where the lessee has returned or voluntarily surrendered the property, other than through judicial process, during the applicable reinstatement period set forth in subsection (a), the lessee may reinstate the agreement during a period of not less than 90 days after the date of the return of the property.

(2) In the case of a lessee who has paid two-thirds or more of the total of payments necessary to acquire ownership and where the lessee has returned or voluntarily surrendered the property, other than through judicial process, during the applicable period set forth in subsection (a), the lessee may reinstate the agreement during a period of not less than 120 days after the date of the return of the property.

(c) Right to reinstate following repossession.--Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but a repossession during the reinstatement period shall not affect the lessee's right to reinstate. Upon reinstatement, the lessor shall provide

the lessee with the same property or substitute property of comparable quality and condition.

§ 6907. Rent reduction.

(a) General rule.--If any lessee who has signed a rental-purchase agreement experiences an interruption or reduction of 25% or more of income due to involuntary job loss, involuntary reduced employment, illness, pregnancy or disability after two-thirds or more of the total amount of the rental payments necessary to acquire ownership under the agreement has been paid, the lessor shall reduce the amount of each rental payment by:

(1) the percentage of the reduction in the lessee's income; or

(2) fifty percent, whichever is less, for the period during which the lessee's income is interrupted or reduced.

(b) Number of payments.--If payments are reduced, the total dollar amount of payments necessary to acquire ownership shall not be increased, but the number of payments necessary to acquire ownership shall be increased accordingly and the rights and duties of the lessor and the lessee shall not otherwise be affected.

(c) Income restored.--When the lessee's income is restored, the lessor may increase the amount of rental payments, but in no event shall rental payments exceed the originally disclosed amount of rental payments.

§ 6908. Advertising and display of property.

(a) Advertisements.--

(1) An advertisement for a rental-purchase agreement shall not state that a rental of any specific property is available at a specific amount or on specific terms unless the lessor will rent the property at the amount or on the terms specified.

(2) An advertisement shall not state that a payment or a rental payment is due upon origination of a rental without disclosing all of the following:

(i) The payment due upon origination of the rental.

(ii) The rental payment.

(iii) The total number of rental payments necessary to obtain ownership of the property that is the subject of the rental-purchase agreement.

(b) Information on displays or offers.--All property displayed or offered under a rental-purchase agreement shall have stamped on or affixed to the property and clearly and conspicuously indicated in Arabic numerals that are readable and understandable by visual inspection all of the following:

(1) The amount of the rental payment.

(2) The cash price of the property.

(3) The total number and amount of rental payments necessary to acquire ownership of the property that is the subject of the rental-purchase agreement.

(4) The cost of lease services.

(c) Compliance with Federal law.--With respect to matters specifically governed by the Consumer Credit Protection Act (Public Law 90-321, 15 U.S.C. § 1601 et seq.), compliance with that act satisfies the requirements of this section.

§ 6909. Lessor's liability for noncompliance.

(a) Violation of other law.--A violation of this chapter shall constitute a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, and shall be subject to the enforcement provisions and private rights of action contained in that act, except as limited in this section.

(b) Recovery in class action limited.--Notwithstanding any other provision of this section or the Unfair Trade Practices and Consumer Protection Law, in any class action brought for violation of this chapter, the total recovery arising out of the same failure to comply shall not be more than the lesser of \$500,000 or an amount equal to 1% of the net worth of the lessor.

(c) Recovery of damages.--If a particular rental-purchase agreement has more than one lessee, only one recovery of damages is allowed for a violation of this chapter. Multiple violations in connection with a single rental-purchase agreement entitle the lessee or multiple lessees to only one recovery under this chapter.

(d) Commencement of class action.--A class action alleging a violation of this chapter may not be brought more than two years after the occurrence of the violation that is the subject of the suit or more than two years after the lessee made the last rental payment, whichever is later. This subsection does not bar a lessee from asserting a violation of this chapter as a matter of defense by recoupment or setoff in an action brought by a lessor more than two years after the date of the occurrence of the violation on an obligation arising from the rental-purchase agreement.

(e) Counteraction or defense.--A lessee may not take any action to offset any amount for which a lessor is potentially liable under the Unfair Trade Practices and Consumer Protection Law against any amount owed by the lessee unless the amount of the liability of the lessor has been determined by a judgment of a court of competent jurisdiction in an action in which the lessor was a party. This subsection does not bar a lessee in default on an obligation arising from the rental-purchase agreement from asserting a violation of this chapter in an original action or as a defense or counterclaim to an action brought by the lessor to collect amounts owed by the lessee under the rental-purchase agreement.

§ 6910. Limitations on lessor's liability.

(a) Right to correct errors.--A lessor is not liable for any violation of the requirements of this chapter if, within 60 days after discovering an error and before an action for damages is filed against the lessor under section 6909 (relating to lessor's liability for noncompliance) or written notice of the error is received from the lessee, the lessor notifies the lessee of the error and makes adjustments to the account of the lessee that are necessary to assure that the lessee is not required to pay an amount in excess of the amounts permitted by this chapter. This subsection applies whether the error was discovered through the lessor's own procedures or by any other means.

(b) Limitation in damages.--A lessor is not liable under subsection (a) for damages in excess of actual damage sustained by the lessee if the lessor shows by a preponderance of the evidence that the violation of this chapter resulted from a bona fide error, notwithstanding the maintenance by the lessor of procedures reasonably adopted to avoid the error.

(c) Definition.--As used in this section, the term "bona fide error" includes, but is not limited to, clerical or calculation mistakes, computer hardware or software malfunctions and programming and printing errors.

§ 6911. Conflict with other law.

In the event of a conflict between this chapter and the act of October 28, 1966 (1st Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act, the provisions of this chapter shall be controlling.

Section 7. Section 9730 heading and (b) of Title 42 are amended to read:

§ 9730. Payment of court costs , **restitution** and fines.

* * *

(b) Procedures regarding default.--

(1) If a defendant defaults in the payment of a fine [or] , court costs **or restitution** after imposition of sentence, the issuing authority [shall] **or a senior judge or senior district justice appointed by the president judge for the purposes of this section may** conduct a hearing to determine whether the defendant is financially able to pay.

(2) If the issuing authority , **senior judge or senior district justice** determines that the defendant is financially able to pay the fine or costs, the issuing authority , **senior judge or senior district justice** may turn the delinquent account over to a private collection agency or impose imprisonment for nonpayment , as provided by law.

(3) If the issuing authority , **senior judge or senior district justice** determines that the defendant is without the financial means to pay the fine or costs immediately or in a single remittance, the issuing authority , **senior judge or senior district justice** may provide for payment in installments. In determining the appropriate installments, the issuing authority , **senior judge or senior district justice** shall consider the defendant's financial resources, the defendant's ability to make restitution and reparations and the nature of the burden the payment will impose on the defendant. If the defendant is in default of a payment or advises the issuing authority , **senior judge or senior district justice** that default is imminent, the issuing authority , **senior judge or senior district justice** may schedule a rehearing on the payment schedule. At the rehearing the defendant has the burden of proving changes of financial condition such that the defendant is without the means to meet the payment schedule. The issuing authority , **senior judge or senior district justice** may extend or accelerate the schedule, leave it unaltered or sentence the defendant to a period of community service as the issuing authority , **senior judge or senior district justice** finds to be just and practicable under the circumstances.

(4) A decision of the issuing authority , **senior judge or senior district justice** under paragraph (2) or (3) is subject to section 5105 (relating to right to appellate review).

Section 8. Title 42 is amended by adding a section to read:

§ 9730.1. Collection of court costs, restitution and fines by private collection agency.

(a) **Generally.**--In accordance with section 9730(b) (1) and (2) (relating to payment of court costs, restitution and fines), an issuing authority may refer the collection of costs, fines and restitution of a defendant to a private collection agency upon the expiration of a defendant's maximum sentence or probationary term with or without holding a hearing pursuant to this section. Such collection agency shall adhere to accepted practices in accordance with applicable Federal and State law to collect such costs, fines and restitution.

(b) **Contracts with private collection agencies.**--

(1) The president judge of the judicial district, county commissioner or designee of either may contract with private collection agencies for the collection of fines, costs and restitution in accordance with the provisions of this section.

(2) The amount of the collection fee as negotiated between the president judge of the judicial district, county commissioner or designee of either and private collection agencies shall be added to the bill of costs to be paid by the defendant and shall not exceed 25% of the amount collected.

(3) The funds secured from the defendant by the private collection agency in connection with the collection of fines, costs and restitution shall be distributed as follows:

(i) The fee due the private collection agency shall be paid.

(ii) The balance shall be distributed in accordance with the original distribution of fines, costs and restitution as set forth in the order of the court sentencing the defendant.

(c) **Limitations on private collection agencies.**--For the purposes of this section, a private collection agency shall cease its efforts designed to collect fines, costs and restitution and so inform the court or the county commissioners upon the occurrence of any of the following:

(1) the private collection agency considers the amount owing noncollectible;

(2) a period of 180 days has elapsed since referral of the amount owing to the private collection agency and there has been no response by the defendant or collection of moneys; or

(3) upon demand of a judge of the court of common pleas having jurisdiction over the defendant.

(d) **Imprisonment.**--Nothing in this subchapter limits the ability of a judge to imprison a person for nonpayment, as provided by law; however, imprisonment for nonpayment shall not be imposed without a public hearing under section 9730(b) (1) .

(e) **Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this

subsection:

"Amount owing." The total amount owed by a defendant on fines, costs or restitution in accordance with the order of court sentencing the defendant and this section.

"Private collection agency." A person, company, partnership or other entity that uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another under the applicable laws of the United States and of this Commonwealth.

Section 9. Section 4 of the act of June 29, 1990 (P.L.257, No.59), entitled "An act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for deposits into the Judicial Computer System Augmentation Account; imposing additional fees; and making refunds," is repealed.

Section 10. This act shall take effect as follows:

(1) The addition of 42 Pa.C.S. § 3733(c) shall take effect immediately.

(2) Section 9 and this section shall take effect immediately.

(3) The remainder of this act shall take effect in 60 days.

APPROVED--The 11th day of July, A. D. 1996.

THOMAS J. RIDGE