

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 ENGROSSED SENATE
5 BILL NO. 102

 By: Newberry and Marlatt of the
 Senate

6 and

7 McDaniel of the House

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10 An Act relating to consumer protection; prohibiting
11 automatic renewal provision in rental contracts;
12 providing exception; construing provision; amending
13 59 O.S. 2011, Section 1955, as amended by Section 3,
14 Chapter 278, O.S.L. 2016 (59 O.S. Supp. 2016, Section
 1955), which relates to the Oklahoma Rental-Purchase
 Act; modifying jurisdiction and venue for review;
 providing for codification; and providing an
 effective date.

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17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 222 of Title 15, unless there is
20 created a duplication in numbering, reads as follows:

21 No contract for the rental of goods or rental-related services
22 where all or substantially all of the contract terms are drafted by
23 the provider of such goods or services shall contain any automatic
24 renewal provision that extends the initial term of the contract for

1 any period longer than six (6) months, unless the contract provides
2 the nondrafting party with the ability to terminate at any time
3 during the renewal period without penalty by providing notice of not
4 more than sixty (60) days. Nothing in this section shall be
5 construed to prohibit the parties to the contract from entering into
6 a new contract at the end of the initial term of the contract or at
7 any time after an extension of the contract as provided by this
8 section.

9 SECTION 2. AMENDATORY 59 O.S. 2011, Section 1955, as
10 amended by Section 3, Chapter 278, O.S.L. 2016 (59 O.S. Supp. 2016,
11 Section 1955), is amended to read as follows:

12 Section 1955. A. A consumer damaged by a violation of the
13 Oklahoma Rental-Purchase Act by a lessor is entitled to recover from
14 the lessor:

15 1. Actual damages;

16 2. Twenty-five percent (25%) of an amount equal to the total
17 amount of payments required to obtain ownership of the merchandise
18 involved, except that the amount recovered under this section shall
19 not be less than One Hundred Dollars (\$100.00) nor more than One
20 Thousand Dollars (\$1,000.00), or in the case of a class action, an
21 amount the court may allow, except that as to each member of the
22 class no minimum recovery may be applicable and the total recovery
23 other than for actual damages in any class action or series of class
24 actions arising out of the same failure to comply by the same lessor

1 shall not be more than the lesser of Five Hundred Thousand Dollars
2 (\$500,000.00) or one percent (1%) of the net worth of the lessor;
3 and

4 3. Reasonable attorney fees and court costs.

5 B. In addition to the enforcement powers provided in Section 6-
6 102 of Title 14A of the Oklahoma Statutes, the Administrator of
7 Consumer Credit or a duly authorized representative of the
8 Administrator may investigate the books, accounts, papers,
9 correspondence and records of any lessor licensed under the Oklahoma
10 Rental-Purchase Act. For the purposes of this section, any person
11 who advertises for, solicits or holds himself or herself out as
12 willing to make rental-purchase transactions, shall be presumed to
13 be a rental-purchase lessor. Each lessor shall pay to the
14 Administrator an examination fee as prescribed by rule of the
15 Commission on Consumer Credit. The Administrator may require
16 payment of an examination fee either at the time of initial
17 application, renewal of the license, or after an examination has
18 been conducted.

19 C. The Administrator may promulgate rules and regulations
20 necessary for the enforcement of the Oklahoma Rental-Purchase Act
21 and consistent with all its provisions.

22 D. The Administrator shall appoint an independent hearing
23 examiner to conduct all administrative hearings involving alleged
24 violations of the Oklahoma Rental-Purchase Act. The independent

1 hearing examiner shall have authority to exercise all powers granted
2 by Article II of the Administrative Procedures Act in conducting
3 hearings. The independent hearing examiner shall have authority to
4 recommend penalties authorized by the Oklahoma Rental-Purchase Act
5 and issue proposed orders, with proposed findings of fact and
6 proposed conclusions of law, to the Administrator pursuant to
7 Article II of the Administrative Procedures Act. The Administrator
8 shall review the proposed order and issue a final agency order in
9 accordance with Article II of the Administrative Procedures Act.
10 Any person aggrieved by a final agency order of the Administrator
11 may obtain judicial review in accordance with the Administrative
12 Procedures Act. The jurisdiction and venue of any such action shall
13 be in the district court of Oklahoma County or the county of the
14 aggrieved. Hearing costs may be assessed against the respondent,
15 unless the respondent is the prevailing party.

16 E. After notice and hearing, the Administrator may decline to
17 renew a license, or suspend or revoke any license issued pursuant to
18 the Oklahoma Rental-Purchase Act for violating any provision of the
19 Oklahoma Rental-Purchase Act or any rules promulgated by the
20 Administrator, or in lieu of or in addition to such denial,
21 suspension or revocation, order the refund of any unlawful or
22 excessive fees, enter a cease and desist order or impose an
23 administrative fine in an amount not less than One Hundred Dollars
24 (\$100.00) nor more than Two Thousand Five Hundred Dollars

1 (\$2,500.00) for each violation of the Oklahoma Rental-Purchase Act,
2 not to exceed Five Thousand Dollars (\$5,000.00) for all violations
3 of a lessor.

4 F. Except as otherwise expressly provided in the Oklahoma
5 Rental-Purchase Act, the Administrative Procedures Act, Sections
6 250.3 through 323 of Title 75 of the Oklahoma Statutes, applies to
7 and governs all administrative actions and civil proceedings taken
8 by the Administrator pursuant to the Oklahoma Rental-Purchase Act.

9 G. Where there are multiple lessees to a rental-purchase
10 agreement, there shall be no more than one recovery under the
11 Oklahoma Rental-Purchase Act for a violation.

12 H. A lessor is not liable under the Oklahoma Rental-Purchase
13 Act for a violation thereof caused by the lessor's error if before
14 the sixtieth day after the date the lessor discovers the error, and
15 before an action under this section is filed or written notice of
16 the error is received by the lessor from the lessee, the lessor
17 gives the lessee written notice of the error and makes adjustments
18 in the lessee's account as necessary to ensure that the lessee will
19 not be required to pay an amount in excess of the amount disclosed
20 and that the agreement otherwise complies with this subsection. Nor
21 may a lessor be held liable in any action brought under the Oklahoma
22 Rental-Purchase Act for a violation of the Oklahoma Rental-Purchase
23 Act if the lessor shows by a preponderance of the evidence that the
24 violation was not intentional and resulted from a bona fide error

1 notwithstanding the maintenance of procedures reasonably adopted to
2 avoid the error. A bona fide error includes, but is not limited to,
3 a clerical, calculation, computer malfunction in programming, and
4 printing error, but not an error of legal judgment with respect to a
5 lessor's disclosure obligations under the Oklahoma Rental-Purchase
6 Act.

7 I. Any entity or individual offering to engage or engaged as a
8 rental-purchase lessor in this state without a license shall be
9 subject to an administrative fine not to exceed Five Thousand
10 Dollars (\$5,000.00).

11 J. The Administrator may impose an administrative fine as
12 prescribed in subsection I of this section, after notice and hearing
13 in accordance with Article II of the Administrative Procedures Act.
14 Any administrative order or settlement agreement may be enforced in
15 the same manner as civil judgments in this state. The Administrator
16 may file an application to enforce an administrative order or
17 settlement agreement in the district court of Oklahoma County or the
18 county of the aggrieved.

19 SECTION 3. This act shall become effective November 1, 2017.
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21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL AND
22 ENVIRONMENTAL, dated 04/04/2017 - DO PASS.
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