

**COLORADO RENTAL PURCHASE AGREEMENT ACT**  
**July 1, 2011**

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# **COLORADO RENTAL PURCHASE AGREEMENT ACT**

## **ARTICLE 10 RENTAL PURCHASE AGREEMENTS**

### **PART 1**

#### **GENERAL PROVISIONS**

##### **5-10-101. Short title.**

This article shall be known and may be cited as the "Colorado Rental Purchase Agreement Act".

##### **5-10-102. Legislative declaration.**

(1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are to:

(a) Simplify, clarify, and modernize the law governing rental purchase agreements;

(b) Provide certain disclosures to consumers who enter into rental purchase agreements and to promote consumer understanding of the terms of rental purchase agreements;

(c) To protect consumers against unfair practices by some rental purchase dealers, having due regard for the interest of legitimate and scrupulous rental dealers; and

(d) To permit and encourage the development of fair and economically sound rental purchase practices.

##### **5-10-103. Waiver - agreement to forego rights - prohibited.**

Except as otherwise provided in this article, a lessor or lessee, as those terms are defined in section 5-10-301, may not waive or agree to forego rights or benefits under this article, and any attempt to waive or agree to forego such rights or benefits is void.

##### **5-10-104. Effective date.**

Notwithstanding the provisions of section 5-9-101, this article shall take effect January 1, 1991.

##### **5-10-105. Supplementary general principles of law applicable.**

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

## **PART 2**

### **SCOPE OF ARTICLE**

#### **5-10-201. Application.**

(1) This article shall apply to a rental purchase agreement, or acts, practices, or conduct relating to a rental purchase agreement if:

(a) The rental purchase agreement is entered into in this state; or

(b) The lessee is a resident of this state at the time the lessor offering the rental purchase agreement solicits the rental purchase agreement or modification thereof, whether such solicitation is made personally, by mail, or by telephone.

(2) For the purposes of this article, the residence of the lessee is the address given by the lessee as the lessee's residence in any writing signed by the lessee in connection with the rental purchase agreement. Unless the lessee notifies the lessor in writing of a new or different residence address, the given residence address is presumed to be unchanged.

#### **5-10-202. Exclusions.**

(1) This article shall not apply to, and an agreement that complies with this article is not governed by the provision relating to:

(a) A "consumer credit sale" as that term is defined in section 5-1-301 (11);

(b) A "consumer lease" as that term is defined in section 5-1-301 (14);

(c) A "consumer loan" as that term is defined in section 5-1-301 (15);

(d) and (e) Repealed.

(f) A "home solicitation sale" as that term is defined in section 5-3-401;

(g) A "sale of goods" as that term is defined in section 5-1-301 (39);

(h) A "security interest" as that term is defined in section 4-1-201 (b) (35), C.R.S.;

(i) Any lease for agricultural, business, or commercial purposes;

(j) Any lease of money or intangible personal property.

## **PART 3**

### **DEFINITIONS**

#### **5-10-301. Definitions.**

(1) As used in this article, unless otherwise required by the context:

(a) "Administrator" means the administrator designated in section 5-6-103.

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

(c) "Cash price" means the price at which a lessor in the ordinary course of business would offer the property that is the subject of a rental purchase agreement to the lessee for cash on the date of the execution of the rental purchase agreement.

(d) "Consummate" means the act of the lessee in entering into a rental purchase agreement.

(e) "Lessee" means a natural person who rents personal property under a rental purchase agreement.

(f) "Lessor" means a person, firm, or corporation who in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of property under a rental purchase agreement.

(g) "Liability damage waiver" means a contract or contractual provision, whether separate from or a part of a rental purchase agreement, whereby the lessor agrees, for a charge, to waive any and all claims against the lessee for any damages to, or loss of, the property which is the subject of the rental purchase agreement during the term of the rental agreement.

(h) "Period" means a day, week, month, or other subdivision of the year.

(i) "Personal property" means any property which is made available for a rental purchase agreement and which is not considered real property under the laws of this state.

(j) "Rental purchase agreement" means 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, whether or not there is any obligation beyond the initial period, that is automatically renewable with each payment and that permits the lessee to become the owner of the property.

## **PART 4**

### **DISCLOSURES AND FORM OF WRITING**

#### **5-10-401. Disclosures.**

(1) A lessor shall disclose to a lessee in a rental purchase agreement the information required either by this part 4 or by the provisions of the federal "Consumer Credit Protection Act" if the federal "Consumer Credit Protection Act" is amended to cover disclosure in a rental purchase agreement. In a rental purchase agreement, the lessor shall disclose the following:

(a) A brief description of the leased property, sufficient to identify the property to the lessee and lessor;

(b) The total number of payments and the total amount of such payments necessary to acquire ownership;

(c) The number, amount, and timing of each payment, including taxes paid to or through the lessor;

(d) A statement that the lessee will not own the property until the lessee has made the total number of payments and the total amount of such payments necessary to acquire ownership;

(e) A statement of all other charges which the lessee may have to pay together with the amount of any such charge and the conditions under which any such charge shall be incurred;

(f) If applicable, a statement that the lessee is responsible for the fair market value of the property if and as of the time it is lost, stolen, damaged, or destroyed;

(g) A statement indicating whether the property is new or used; except that it is not a violation of this paragraph (g) to indicate that the property is used if it is actually new;

(h) A statement that, at any time after the first lease payment is made, the lessee may acquire ownership of the property, and a brief explanation of the price, formula, or other method for determining the price at which the property may be purchased;

(i) A brief explanation of the lessee's right to reinstate, and a description of the amount, or method of determining the amount, of any penalty or other charge for reinstatement as established in section 5-10-602;

(j) The cash price of the property subject to the rental purchase agreement; and

(k) A statement of the maintenance services, if any, the lessor will provide with respect to the property subject to the rental purchase agreement.

(2) In addition to the disclosures required pursuant to subsection (1) of this section, the lessor shall also make the following disclosure:

#### NOTICE TO LESSEE -- READ BEFORE SIGNING

(1) DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.

(2) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

(3) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

(4) YOU HAVE THE RIGHT TO EXERCISE ANY EARLY BUY-OUT OPTION AS PROVIDED IN THIS AGREEMENT. EXERCISE OF THIS

OPTION MAY RESULT IN A REDUCTION OF YOUR TOTAL COST TO ACQUIRE OWNERSHIP UNDER THIS AGREEMENT.

(5) IF YOU ELECT TO MAKE WEEKLY RATHER THAN MONTHLY PAYMENTS AND EXERCISE YOUR PURCHASE OPTION, YOU MAY PAY MORE FOR THE LEASED PROPERTY.

**5-10-402. Form requirements.**

(1) The information required by this part 4:

(a) Shall be disclosed in writing in a rental purchase agreement;

(b) Shall be set forth clearly and conspicuously, in not less than eight point standard type;

(c) Shall be set apart and not contain any information not directly related to the disclosures;

(d) Shall be stated using words and phrases of common meaning;

(e) Need not be contained in a single writing or made in the order set forth in this part 4; and

(f) May be supplemented by additional information or explanations supplied by the lessor, so long as the additional information is not stated, utilized, or placed in a manner which will confuse the lessee or contradict, obscure, or distract attention from the required information. The additional information or explanations shall not have the effect of circumventing, evading, or unduly complicating the information required to be disclosed.

(2) The lessor shall disclose all information required by this part 4 before the rental purchase agreement is consummated.

(3) Before any payment is due, the lessor shall furnish the lessee with an exact copy of the rental purchase agreement, which shall be signed by the lessee and which shall evidence the lessee's agreement. If there is more than one lessee in a rental purchase agreement, delivery of a copy of the rental purchase agreement to one of the lessees constitutes compliance with this subsection (3).

**5-10-403. Receipts.**

The lessor shall furnish the lessee a written receipt for each payment made in cash or by any other method of payment that does not provide evidence of payment when any such payment is delivered in person during normal working hours.

## **PART 5**

### **LIMITATION ON AGREEMENTS AND PRACTICES**

#### **5-10-501. Acquiring ownership.**

At any time after the first lease payment is made, the lessee may acquire ownership of the property under the terms specified in the rental purchase agreement.

#### **5-10-502. Prohibited provisions.**

(1) A rental purchase agreement shall not contain a provision requiring any of the following:

(a) Assignment of earnings. No lessor shall accept an assignment of earnings from the lessee for payment or as security for payment of a charge arising out of a rental purchase agreement. An assignment of earnings in violation of this paragraph (a) is unenforceable by the assignee of the earnings and revocable by the lessee. This paragraph (a) shall not prohibit a lessee from voluntarily authorizing deductions from his earnings if the authorization is revocable and otherwise permitted by law.

(b) Authorization to confess judgment. No lessor shall take or accept a power of attorney or other authorization from the lessee, or other person acting on his behalf, to confess judgment.

(c) Waivers. No lessor may require a lessee to waive service of process or to waive any defense, counterclaim, or right of action against the lessor, or a person acting on the lessor's behalf as the lessor's agent in collection of payments under the lease or in the repossession of the lease property.

(d) Breach of the peace. No lessor may require a lessee to authorize the lessor or a person acting on the lessor's behalf to enter unlawfully upon the lessee's premises or to commit any breach of the peace in the repossession of the lease property.

(e) Garnishment of wages. No lessor may require a lessee to authorize a prejudgment garnishment of the lessee's wages.

#### **5-10-503. Balloon payments.**

A lessee shall not be required to make a payment in addition to regular lease payments in order to acquire ownership of the lease property, nor shall the lessee be required to pay lease payments totaling more than the cost to acquire ownership, as provided in section 5-10-401 (1) (b).

#### **5-10-504. Prohibited charges.**

(1) A lessor shall not contract for or receive charges for any of the following:

(a) The purchase of insurance by the lessee from the lessor;

(b) A penalty for early termination of a rental purchase agreement or for the return of an item at any point, except for those charges authorized by sections 5-10-601 and 5-10-602; or



(c) A payment by a co-signer of the rental purchase agreement for any fees or charges which could not be imposed upon the lessee as part of the rental purchase agreement.

(2) No payment or obligation on the part of the lessee shall accrue when the property is being repaired or replaced unless a loaner is provided to the lessee.

## **PART 6**

### **LIMITATIONS ON CHARGES**

#### **5-10-601. Additional charges.**

(1) A lessor may contract for and receive an initial nonrefundable fee not to exceed ten dollars per contract. Should any security deposit be required by the lessor, the amount of such deposit and the conditions under which it will be returned shall be disclosed with the disclosures required by section 5-10-401.

(2) A lessor may contract for and receive an initial delivery charge per contract not to exceed fifteen dollars in the case of a rental purchase agreement covering five or fewer items and a delivery charge not to exceed forty-five dollars in the case of a rental purchase agreement covering more than five items, if, in either case, the lessor actually delivers the items to the lessee's dwelling and the delivery charge is disclosed with the disclosures required by section 5-10-401. Said delivery charge shall be assessed in lieu of and not in addition to the initial charge in subsection (1) of this section. A lessor may not contract for or receive a delivery charge on property redelivered after repair or maintenance.

(3) A lessor may contract for and receive a charge for picking up late payments from the lessee if the lessor is required to do so pursuant to the rental purchase agreement or is requested to visit the lessee to pick up a payment. In a rental purchase agreement with payment or renewal dates which are on a monthly basis, this charge may not be assessed more than three times in any six-month period. In rental purchase agreements with payments or renewal options on a weekly or biweekly basis, this charge may not be assessed more than six times in any six-month period. No charge assessed pursuant to this subsection (3) may exceed ten dollars. A pickup fee may be assessed pursuant to this subsection (3) only in lieu of and not in addition to any late charge assessed pursuant to subsection (4) of this section.

(4) (a) The parties may contract for late charges as follows:

(I) For rental purchase agreements with monthly renewal dates, a late charge not exceeding five dollars may be assessed on any payment not made within five days after payment is due, or return of the property is required.

(II) For rental purchase agreements with weekly or bi-weekly renewal dates, a late charge not exceeding three dollars may be assessed on any payments not made within three days after payment is due, or return of the property is required.

(b) A late charge on a rental purchase agreement may be collected only once on any accrued payment, no matter how long it remains unpaid. A late charge may be collected

at the time it accrues or at any time thereafter. A lessor may elect to waive imposition of a late charge due on an accrued payment in accordance with the terms of the rental purchase agreement; except that, such waiver shall be in writing and, once a late charge is waived for a specific payment, the lessor may not thereafter seek to impose a late fee for the accrued payment in question. No late charge may be assessed against a payment that is timely made, even though an earlier late charge has not been paid in full.

**5-10-602. Reinstatement fees.**

A reinstatement fee as provided for in section 5-10-701 shall equal the outstanding balance of any accrued missed payments and late charges plus an additional fee not to exceed five dollars.

**5-10-603. Liability damage waivers - fees.**

(1) In addition to the other charges permitted by this part 6, the parties may contract for a liability waiver fee not to exceed the greater of ten percent of any periodic lease payment due or two dollars in the case of any rental purchase agreement with weekly or biweekly renewal dates, and not to exceed the greater of ten percent of any periodic lease payment due or five dollars in the case of any rental purchase agreement with monthly renewal dates. The selling or offering for sale of a liability damage waiver pursuant to this article is subject to the following prohibitions and requirements:

(a) A lessor may not sell or offer to sell a liability damage waiver unless all restrictions, conditions, and exclusions are printed in the rental purchase agreement, or in a separate agreement, in eight-point type, or larger, or written in pen and ink or typewritten in or on the face of the rental purchase agreement in a blank space provided therefor. The liability damage waiver may exclude only loss or damage to the property which is the subject of the rental purchase agreement due to moisture, scratches, mysterious disappearance, vandalism, abandonment of the property, or due to any other damages caused intentionally by the lessee or which result from the lessee's willful or wanton misconduct.

(b) The liability damage waiver agreement must include a statement of the total charge for the liability damage waiver. The liability damage waiver agreement must display in eight-point boldface type the following notice:

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

(c) The restrictions, conditions, and exclusions of the liability damage waiver must be disclosed on a separate agreement, sheet, or handout given to the lessee prior to entering

into the rental purchase agreement. The separate contract, sheet, or handout must be signed, or otherwise acknowledged by the lessee as being received prior to entering into the rental purchase agreement.

#### **5-10-604. Taxes.**

In addition to those charges allowable by this part 6, the lessor may require the lessee to pay all applicable state sales and use taxes levied in connection with the rental purchase agreement.

### **PART 7**

#### **REMEDIES**

#### **5-10-701. Lessee's remedies - reinstatement.**

(1) A lessee who breaches any rental purchase agreement, including but not limited to the failure to make timely rental payments, has the right to reinstate the original rental purchase agreement without losing any rights or options previously acquired under the rental purchase agreement if both of the following apply:

(a) Subsequent to having failed to make a timely rental payment, the lessee has promptly surrendered the property to the lessor, in the manner as set forth in the rental purchase agreement, and if and when requested by lessor; and

(b) Not more than sixty days have passed since the lessee returned the lease property; except that if the lessee has made more than sixty percent of the total number of payments required under the rental purchase agreement to acquire ownership, such sixty-day period shall be extended to a one-hundred-twenty-day period.

(2) As a condition precedent to reinstatement of the rental purchase agreement, a lessor may collect a reinstatement fee as set forth in section 5-10-602, plus delivery charges allowable by section 5-10-601 (2) if redelivery of the item is necessary.

(3) If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with either the same item leased by the lessee prior to reinstatement or a substitute item of equivalent quality and condition. If a substitute item is provided, the lessor shall provide the lessee with all the information required by section 5-10-401.

#### **5-10-702. Limitations on lessor's remedies.**

With respect to a debt arising from a rental purchase agreement, regardless of where made, the lessor may not attach unpaid earnings of the debtor by garnishment or like proceedings prior to the entry of judgment in an action against the lessee arising from the said rental purchase agreement.

#### **5-10-703. Assignee liability.**

(1) With respect to a rental purchase agreement, an assignee of the rights of the lessor is subject to all claims and defenses of the lessee against the lessor arising from the lease of property or services, notwithstanding that the assignee is the holder in due course of a negotiable instrument issued in violation of the provisions prohibiting certain negotiable instruments.

(2) A claim or defense of a lessee specified in subsection (1) of this section may be asserted against the assignee under this section only to the extent of the amount owing and paid to the assignee and assignor.

(3) An agreement may not limit or waive the claims or defenses of a lessee under this section.

**5-10-704. Notice of assignment.**

The lessee is authorized to pay the original lessor until the lessee receives written notification that the rights to payment pursuant to a rental purchase agreement have been assigned to an assignee and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned shall be ineffective. If requested by the lessee, the assignee shall furnish reasonable proof that the assignment has been made, and, unless he does so, the lessee may pay the lessor.

**PART 8**

**ENFORCEMENT**

**5-10-801. Administrator responsibility.**

(1) The administrator shall enforce this article. To carry out this responsibility, the administrator shall be authorized to:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the administrator's own initiative;

(b) Issue and enforce cease and desist or other administrative enforcement orders in the same manner as set forth in section 5-6-109;

(c) Counsel persons and groups on their rights and duties under this article;

(d) Establish programs for the education of consumers with respect to rental purchase agreement practices and problems;

(e) Bring a civil action to restrain a person from violating this article and for other appropriate relief in the same manner as set forth in sections 5-6-111 to 5-6-114 and for a civil penalty of up to one thousand dollars per violation; and

(f) Use any of his enforcement powers to restrain or take other action against any person found to be making or enforcing rental purchase agreements which contain any unconscionable provisions or clauses.

**5-10-802. Lessor's records and investigations.**

(1) In administering this article and in order to determine compliance with this article, the administrator may examine the books and records of persons subject to the article and may make investigations of persons necessary to determine compliance. For this purpose, the administrator may administer oaths or affirmations, and, upon the administrator's own motion or upon request of any party, may subpoena witnesses,

compel their attendance, compel testimony, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of, any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence. If the administrator prevails in any civil action brought as a result of such an investigation, the court shall award the administrator costs and a reasonable attorney fee.

(2) If the person's records are located outside Colorado, the person shall, at the person's option, either make them available to the administrator at a convenient location in Colorado, or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

(3) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to a court for an order compelling compliance.

(4) The administrator may not make public the name or identity of a person whose acts or conduct the administrator investigates under this section or the facts disclosed in the investigation, but this subsection (4) shall not apply to disclosures in actions or enforcement proceedings under this article.

#### **5-10-803. Assurance of discontinuance.**

If it is claimed that a person has engaged in conduct subject to an order by the administrator or by a court under this article, the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance shall be evidence that before the assurance the person engaged in the conduct described in the assurance.

#### **5-10-804. Notification by lessors - contents.**

(1) A lessor shall file a notification as prescribed in subsection (2) of this section with the administrator:

(a) Within thirty days after soliciting or entering into a rental purchase agreement subject to this article; and

(b) Before February 1 in each subsequent year that the lessor solicits or enters into a rental purchase agreement subject to this article.

(2) The notification required under subsection (1) of this section shall state the following:

(a) The name of the lessor and, if different, the name in which business is transacted;

(b) The address of the lessor's principal office, which may be outside Colorado;

(c) The address of all offices or stores, if any, in Colorado at which rental purchase agreements are made;

(d) If rental purchase agreements are made in a place other than an office or store in Colorado, a brief description of the place and manner in which they are made; and

(e) The address of the registered agent upon whom service of process may be made in Colorado.

(3) If information in a notification becomes inaccurate after filing, no further notification is required until the lessor is required to file a subsequent notification pursuant to subsection (1) of this section.

#### **5-10-805. Fees.**

(1) A lessor required to file a notification with the administrator under section 5-10-804 shall pay to the administrator the following fees:

(a) Fifty dollars for each address listed in section 5-10-804 (2) (c) paid at the time of the filing of the initial notification with the administrator;

(b) Twenty-five dollars for each address listed in section 5-10-804 (2) (c) paid at the time of the filing of each annual notification subsequently filed with the administrator.

(2) In addition to the fees required under subsection (1) of this section, if the administrator examines the books and records of the lessor, the lessor shall pay to the administrator a fee of two hundred dollars for each day required for the administrator or the administrator's representative to conduct the examination. However, the sum of all fees collected from a lessor under this subsection (2) may not exceed one thousand dollars in any calendar year.

(3) Notwithstanding the amount specified for any fee in this section, the administrator by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the administrator by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

## **PART 9**

### **VIOLATIONS AND PENALTIES**

#### **5-10-901. Unlawful acts - fines - deceptive trade practice.**

(1) Any person who willfully and intentionally violates any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars.

(2) Any intentional violation of the provisions of this article shall constitute a deceptive trade practice and shall be subject to the provisions of article 1 of title 6, C.R.S.

**5-10-902. Remedies of lessee.**

(1) In case of a violation by a lessor of any provision of this article with respect to any rental purchase agreement, the lessee in such agreement may bring a suit in any court of competent jurisdiction to recover from such lessor or may set off or counterclaim in any action by such lessor actual damages. If the court finds that any such violation has occurred, it shall award a minimum recovery of two hundred fifty dollars or twenty-five percent of the total cost to acquire ownership under the rental purchase agreement, whichever is greater.

(2) The remedies specified in subsection (1) of this section are in addition to, and not in limitation of, any other remedies provided by law.

(3) In any action brought pursuant to this section, the court shall award the prevailing party the costs of the action and a reasonable attorney fee.

**5-10-903. Unconscionability.**

(1) With respect to a rental purchase transaction, if the court as a matter of law finds the transaction, the agreement, or any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the transaction, the agreement, or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making any such determination related to unconscionability.

(3) If, in an action in which unconscionability is claimed, the court finds unconscionability pursuant to this section, the court may award the costs of the action and a reasonable attorney fee to the lessee. If the court does not find unconscionability and does find that the lessee claiming unconscionability brought or maintained an action he knew to be groundless, the court may award the costs of the action and a reasonable attorney fee to the party against whom the claim was made. In determining such attorney fee, the amount of recovery claimed on behalf of the lessee shall not be controlling.

(4) The remedies of this section are in addition to remedies otherwise available for the same conduct authorized under law other than in this article, but double recovery of actual damages may not be had.

(5) For the purpose of this section, a charge or practice expressly permitted by this article is not in itself unconscionable.

**5-10-904. Effect of correction.**

Notwithstanding sections 5-10-801 and 5-10-902, any failure to comply with any provisions of this article resulting from a bona fide or clerical error may be corrected by

the lessor within sixty days after discovering an error and prior to the institution of any action under this article, or within sixty days of the receipt of written notice of the error after the date of execution of the rental purchase agreement by the lessee. If so corrected, neither the lessor nor any holder is subject to penalty under this section. A copy of any rental purchase agreement to which such a correction is made shall be promptly sent to the lessee.

**5-10-905. Statute of limitations.**

No action shall be brought by a lessee under this article more than three years after the lessee knew or should have known of the occurrence of the alleged violation. This section does not bar a person from asserting a violation of this article in any action to collect the debt which was brought more than three years from the date of the occurrence of the violation as a matter of defense by recoupment or setoff in such action.

**PART 10**

**ADVERTISING**

**5-10-1001. Advertising.**

(1) An advertisement for a rental purchase agreement shall not state or imply that a specific item is available at specific amounts or terms unless the lessor usually and customarily offers or will offer that item at those amounts or terms.

(2) If any advertisement for a rental purchase agreement refers to or states the amount of any payment or the right to acquire ownership for a specific item, the advertisement must also clearly and conspicuously state the following terms as applicable:

(a) That the transaction is a rental purchase agreement or rent-to-own agreement;

(b) The total number of payments and amount of such payments necessary to acquire ownership; and

(c) That the lessee will not own the property until the total of such payments is paid in full or is paid by prepayment.

(3) Advertising which complies with the "Federal Consumer Credit Protection Act" does not violate this section.

(4) With the exception of the lessor, this section imposes no liability on the owner or personnel of any medium in which an advertisement appears or through which it is disseminated.