

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: 06/18/99

Received By: rmarchan

Wanted: Soon

Identical to LRB:

For: Assembly Republican Caucus 6-1452

By/Representing: Tompach

This file may be shown to any legislator: NO

Drafter: rmarchan

May Contact:

Alt. Drafters:

Subject: Fin. Inst. - miscellaneous

Extra Copies:

Pre Topic:

ARC:.....Tompach - AM # 65,

Topic:

Rent-to-own agreements

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required.</u>
/1	rmarchan 06/22/99	gilfokm 06/22/99	mclark 06/23/99	_____	gretskl 06/23/99		

FE Sent For:

<END>

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1?	rmarchan	1-6-21-99 Kmg	MRC 6/22	MRC/IS 6/22			

FE Sent For:

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To Be Drafted

Agency	FinancialInst	Amendment#	65
ARC Analyst	Matt Tompach	LRB#	
		Tax Cut	<input type="checkbox"/>

Summary

Wisconsin's Consumer Act does not specifically mention rental purchase agreements, whereby after renting an item for a period of time, the customer may keep the item without making any more rental payments. Therefore, rental-purchase agreements are subject to attack in courts as being in violation of Wisconsin law.

This amendment licenses and regulates each rent to own merchant by the Department of Financial Institutions (DFI) under WI STAT 430.301 through 430.304. The license may be revoked by DFI if the merchant does not operate in accordance with CH 430. This amendment follows the central concepts of the Wisconsin Consumer Act.

Fiscal Impact

None

Statement of Intent

Financial Institutions. This amendment regulates the rent to own industry in Wisconsin.

Budget Amendments 1999- 2000

RJM
/2

Statement of Intent Financial Institutions. This amendment regulates the rent to own industry in Wisconsin.

Legislator Urban

Amendment#

Staff contact Sara

Status

Agency FinancialInst

Tax Cut

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Fiscal Impact None

ARC Analyst Matt Tompach

to office
6/16/99
OK 6/17

Urban Amendment #1

info

LEGISLATIVE SUMMARY
[March 1999]

The Rental-Purchase Industry

Rental-purchase merchants lease durable household merchandise -- such as furniture, major appliances and electronic goods -- on a short-term basis to customers, with the option to purchase. Nation-wide, stores are located not only in major cities, but small towns and rural communities. The industry generates annual sales of \$3.5 billion and purchases nearly 10% of all major appliance manufactured and sold at wholesale in the United States.

Industry data demonstrates that the majority of rental-purchase customers are homeowners with a high school diploma who have an annual household income of more than \$24,000. Typical customers include "blue collar" workers, men and women who are separating from spouses, students, business people who are traveling or relocating, families who want to avoid long-term credit obligations, or people recovering from previous financial difficulty.

In rental-purchase transactions, a customer may purchase items for cash, or may rent such items for a week or a month at a time. At the end of the week or month, the customer may return the item or renew the rental. After renting an item for a period of time, under the agreement the customer may keep the item without making any more rental payments. Unlike loans or credit sales, rental purchase agreements do not involve customer debt because there is no principal or balance to repay. As a result, there is no interest charged on the rented merchandise.

Regulation of the Industry Nation-Wide and in Wisconsin

To date, 44 of the 50 states has recognized that specialized legislation is necessary to both effectively regulate the industry and provide specific consumer protection. Thus, Wisconsin currently stands virtually alone in not specifically addressing the needs of both this industry and the Wisconsin customers of this industry.

The rental-purchase industry is a valid segment of the consumer marketplace, offering meaningful economic choices to a significant percentage of the consumer population. Accordingly, the legislation is designed to ensure that the industry's Wisconsin customers are (1) offered this economic option while (2) meaningfully protected from merchants who do not provide accurate rent-to-purchase information.

If Wisconsin chooses instead to do nothing, the rental-purchase industry will disappear in Wisconsin. Because existing laws, including the Wisconsin Consumer Act, do not specifically contemplate rental-purchase agreements, even commercially

reasonable and consumer-beneficial rental-purchase agreements are subject to attack in Wisconsin courts as being in violation of current Wisconsin law. Rental-purchase businesses cannot operate in that environment.

The situation of the rental-purchase industry is similar to the situation of the agricultural implement dealers. Act 302 was passed in 1998 to exempt agricultural purpose transactions from the Wisconsin Consumer Act because the Act failed to meet the needs of consumers and the industry. Wisconsin, like 47 other states responded to their unique needs.

The only way that the industry can operate in Wisconsin is if Wisconsin (like 44 other states) specifically addresses and clarifies the law with respect to this industry. Only then can there be true consumer choice.

Summary of Legislation

The legislation follows the central concepts of the Wisconsin Consumer Act while clarifying industry-specific issues. The legislation includes the following:

1. The heart of the legislation are the statutorily mandated disclosures contained in § 430.402. Such disclosures include:
 - names and addresses of merchant and customer
 - a description of the rented property and a statement as to whether the property is new or used.
 - the cash price of the property
 - the periodic rental rate for the property
 - a description of all initial rental payments, fees, and taxes
 - the total number, total dollar amount, and timing of rental payment necessary to acquire ownership of the property
 - a statement as to separately stated fees and charges
 - a statement that the consumer will not own the property until the total amount of payments necessary to acquire ownership have been made
 - a statement summarizing the consumer's option to purchase

- a statement that the consumer is responsible for the fair market value of the property if it is stolen, damaged or destroyed
- a statement regarding servicing the property and warranties
- a statement regarding the consumer's right to terminate the agreement
- an explanation of the consumer's right to reinstate the agreement
- a specific notice stating the following:

You are renting this property. You will not own it until you make all of the regularly scheduled payments or you exercise your early purchase option. If you do not make your rental payments as scheduled, the lessor may repossess the property. Your rights and responsibilities are fully explained in this agreement.

The purpose of such disclosures is to provide the customer with all of the information the customer needs to make an informed choice. At that point, the State has fulfilled its regulatory function and then allows individuals to make the choice which is best for them.

2. The statute requires under §430.401 that such disclosures be presented in a written format which is clear and readable. Each of the disclosure elements must be clear and conspicuous, in readable size, and on the face of the agreement above the customer's signature. This ensures that the required disclosures cannot be hidden on the back of the agreement in the small-print.
3. Conversely, certain merchant practices which are inherently deceptive or a violation of public policy are expressly prohibited under §430.403. The punishment for violating §430.403 is that the customer may both retain the leased item and recover any monies previously paid to the merchant.
4. Late payment fees are strictly regulated under § 430.404 both as to the time of imposition and amount (maximum of \$5.00 per late payment).
5. Consumers have additional statutory protections with respect to (a) reinstatement rights under § 430.405, (b) liability waivers under § 430.406, (c) early purchase options under §430.407, and (d) the requirement for receipts and statements under 430.409.
6. As additional safeguards to the consumer, under §430.501 merchants will be required to display price tags which clearly and conspicuously convey relevant

pricing information and under §430.502 merchants' advertising will have to clearly and conspicuously inform customers that the merchandise is being offered in a rental-purchase transaction.

7. Each rent-to own merchant must be licensed and regulated by the Department of Financial Institutions under the terms of § 430.301-430.304. Such license may be revoked or suspended by the Department if the merchant does not operate in accordance with Chapter 430. To assist the Department in making licensing decisions, the statute also requires each merchant to keep its books and records open and available to the Department, irrespective of whether the merchant is a Wisconsin resident or a non-Wisconsin resident.
8. Merchant's remedies and collection practices are limited under 430.601-430.602 to protect customers.

**COMPARISON OF LEGISLATION TO WISCONSIN CONSUMER ACT
[June 1999]**

Rental Purchase Act

WCA

Required Disclosures:

- ✓ • The names and addresses of merchant and customer.
- ✓ • A description of the rented property and a statement as to whether the property is new or used.
- ✓ • The property's cash price, periodic rental rate, initial fees, and taxes.
- ✓ • The total number, amounts, and timing of all payments and other charges, including tax and/or other fees associated with acquiring ownership of the property.
- ✓ • A statement that the customer will not own the property until the total amount of payments necessary to acquire ownership have been made.
- ✓ • A statement summarizing the customer's option to purchase.
- ✓ • A statement that the customer is responsible for the fair market value of the property if it is stolen, damaged or destroyed.
- ✓ • A statement regarding servicing the property and warranties.
- ✓ • A statement regarding the customer's right to terminate the agreement.
- ✓ • An explanation of the customer's right to reinstate the agreement.

The APR must be disclosed, even if there is no extension of credit or creation of a debt.

- * • A specific notice stating the following:

You are renting this property. You will not own it until you make all of the regularly scheduled payments or you exercise your early purchase option. If you do not make your rental payments as scheduled, the lessor may repossess the property. Your rights and responsibilities are fully explained in this agreement.

NOTE

Agreement Form:

- ✓ • Disclosure information must be presented in writing in a clear and conspicuous manner, in readable size, and on the face of the agreement above the customer's signature. Copy of agreement must be provided to customer.

The WCA contains essentially the same provisions, but written to apply to credit sales rather than rent-to-own agreements.

Business Practices:

- ✓ • Merchant practices which are inherently deceptive or a violation of public policy, such as assignment of earnings or other security, confession of judgment, or waiver of customer's statutory rights, are prohibited.
- ✓ • Maximum \$5.00 per payment late fee.

Similar provisions, except that the WCA allows certain of these practices (if they are revocable).

Maximum late payment fee is lesser of \$10 or 5% of unpaid amount of the installment.

- ✓ Grace period before imposition of late payment fee: 2 days if a weekly rental, 5 days if rental period longer than one week. 10 day grace period
- ✓ Customer has right to reinstate the agreement if property timely returned to merchant and 21 days (in some cases 45) days have not passed since return. No comparable provision
- ✓ Written receipts and statements provided to customer upon request. Written receipt for each cash payment must be furnished to customer, without request. Written statement of amounts and dates of payments and charges must be provided to customer upon written request. Written acknowledgment of payment in full and release of security interest must be sent.
- ✓ Merchant allowed to offer liability damage waiver to customer to cover customer's liability for any loss, destruction or damage of the rental property. Cost of liability damage waiver may not exceed 10% of the periodic rental payment. Terms of waiver must be in writing. Customer's purchase is entirely optional. No comparable provision, probably not allowed unless considered includable as part of the "finance charge."
- ✓ Merchants required to display price tags which clearly and conspicuously convey relevant pricing information and merchants' advertising will have to clearly and conspicuously inform customers that the merchandise is being offered in a rental-purchase transaction. No comparable provision.
- ✓ Merchants will not be allowed to induce a customer into a rent-to-own agreement by giving rebates or discounts in consideration of referrals. Referral payments otherwise permitted. Referral payments prohibited.
- NOTE* ✓ No action against a customer for a default (generally, where the customer has failed to return the property) unless customer provided with a written notice of default and 15 day right to cure. WCA provides there is no default unless an amount exceeding one full payment has remained unpaid for more than 10 days. In a weekly rental situation, that means that one payment will be 17 days later and the second 10 days late before a notice containing the 15 day cure provision can be sent.
- ✓ Merchant allowed to request voluntary return or surrender of property. If the property is considered "collateral" for purposes of the WCA, a surrender cannot be considered a voluntary surrender if made pursuant to a request by the merchant for the property.
- ✓ Merchant's remedies and collection practices are limited to protect customers, including proscriptions on the use or threat of force or violence, the threat of criminal prosecution, communicating with the customer's employer, or otherwise harassing or abusing the consumer. Written to apply to rent-to-own agreements rather than credit sales. The WCA contains essentially the same provisions, but written to apply to credit sales rather than rent-to-own agreements.

Inapplicable WCA Business Practice Provisions

- Industry practice is that customers may defer payments without charge. Any deferral agreement must be in writing and terms regulated.

- Inapplicable, as no debt is involved. Industry practice is to rewrite agreement at no charge if customer falls behind and still wants to rent. Customer pays no more than specified under original agreement.
- Inapplicable, as no debt is involved.
- Inapplicable, as title to the property doesn't pass unless customer later buys the property.
- Under the terms of a rent-to-own agreement, customer has right to purchase merchandise throughout the term of the rental at the price set forth in the agreement.
- Inapplicable for a rental, because there is no "unpaid balance." Under the typical agreement, the customer may purchase the merchandises at any point by paying the cash price less a percentage of the rent already paid.
- No provision, as the agreement requires flexibility to meet the needs of weekly renters.
- Inapplicable, given that the rent-to-own agreement terminates rather than defaults in that situation. Also, because the property is owned by the merchant, there is no need to recover costs for disposition of the property.
- No provision.

Finance charge for refinancing must be disclosed and maximum number of periods refigured.

Finance charge on consolidation must be disclosed and maximum number of periods refigured.

Advances from merchant to perform any of the obligations or agreements of buyer disclosed and regulated.

Customer has right to prepay based on the "unpaid balance."

Rebate upon prepayment is required, based upon the unearned portion of the finance charge.

Balloon payments prohibited.

Limitations placed on default charges.

Maximum periods of repayment.

✓ Regulation and Licensing

- Each rent-to own merchant must be licensed and regulated by the Department of Financial Institutions. Such license may be revoked or suspended by the Department if the merchant does not operate in accordance with applicable law. To assist the Department in making licensing decisions, each merchant required to keep its books and records open and available to the Department, irrespective of whether the merchant is a Wisconsin resident or a non-Wisconsin resident.

DFI regulates a variety of persons who are engaged in the business of extending credit in transactions which are subject to the WCA.

WISCONSIN RENTAL DEALERS ASSOCIATION, INC.

[DRAFT: MARCH 1999]

1 AN ACT to amend _____ ; and to create _____ and chapter 430 of the statutes; relating
2 to rent-to-own agreements, granting rule-making authority and providing a penalty.

3 *The people of the state of Wisconsin, represented in senate and assembly, do enact as*
4 *follows:*

5 Section 1. 409.104(12m) of the statutes is created to read:

6 409.104(12m) To a transfer of an interest under a rent-to-own agreement under
7 ch. 430; or

8 Section 2. 421.202(7) of the statutes is amended to read:

9 421.202(7) Transactions subject to ch. 428; or

10 Section 3. 421.202(7m) of the statutes is created to read:

11 421.202(7m) A rent-to-own agreement under ch. 430; or

12 Section 4. 421.301(9) of the statutes is amended to read:

13 421.301(9) "Consumer credit sale" means a sale of goods, services or an interest
14 in land to a customer on credit where the debt is payable in installments or a finance charge
15 is imposed and includes any agreement in the form of a bailment of goods or lease of goods
16 or real property if the bailee or lessee pays or agrees to pay as compensation for use a sum
17 substantially equivalent to or in excess of the aggregate value of the goods or real property
18 involved and it is agreed that the bailee or lessee will become, or for no other or a nominal
19 consideration has the option to become, the owner of the goods or real property upon full
20 compliance with the terms of the agreement. "Consumer credit sale" does not include a rent-

1 to-own agreement under ch. 430.

2 Section 5. 421.301(10) of the statutes is amended to read:

3 421.301(10) "Consumer credit transaction" means a consumer transaction between a
4 merchant and a customer in which real or personal property, services or money is acquired
5 on credit and the customer's obligation is payable in installments or for which a finance
6 charge is or may be imposed, whether such transaction is pursuant to an open-end credit plan
7 or is a transaction involving other than open-end credit. The term includes consumer credit
8 sales, consumer loans, consumer leases and transactions pursuant to open-end credit plans.

9 "Consumer credit transaction" does not include a rent-to-own agreement under ch. 430.

10 Section 6. 421.301(11) of the statutes is amended to read:

11 421.301(11) "Consumer lease" means a lease of goods which a merchant makes to a
12 customer for a term exceeding 4 months. "Consumer lease" does not include a rent-to-own
13 agreement under ch. 430.

14 Section 7. 423.201 of the statutes is amended to read:

15 423.201 Definitions. "Consumer approval transaction" means a consumer
16 transaction other than a sale or lease or listing for sale of real property, a sale of goods at
17 auction, the sale or lease of goods for an agricultural purpose or a loan made to finance the
18 sale of goods at auction for an agricultural purpose 1) which is initiated by face-to-face
19 solicitation away from a regular place of business of the merchant or by mail or telephone
20 solicitation directed to the particular customer and 2) which is consummated or in which the
21 customer's offer to contract or other writing evidencing the transaction is received by the
22 merchant away from a regular place of business of the merchant and involves the extension

1 of credit or is a cash transaction in which the amount the customer pays exceeds \$25.
2 "Consumer approval transaction" shall in no event include a catalog sale which is not
3 accompanied by any other solicitation or a consumer loan conducted and consummated
4 entirely by mail. "Consumer approval transaction" does not include a rent-to-own agreement
5 under ch. 430.

6 Section 8. Chapter 430 of the statutes is created to read:

7 **CHAPTER 430**

8 **RENT-TO-OWN AGREEMENTS**

9 430.101 **Short title.** This chapter shall be known and may be cited as
10 Wisconsin consumer act -- rent-to-own agreements.

11 430.102 **Scope.** This chapter applies to rent-to-own agreements.

12 430.103 **Inapplicability of other laws.** A rent-to-own agreement as defined in
13 this chapter is not governed by the laws relating to any of the following:

14 (1) A consumer approval transaction, as defined in s. 423.201.

15 (2) A consumer credit sale, as defined in s. 421.301(9).

16 (3) A consumer credit transaction, as defined in s. 421.301(10).

17 (4) A consumer lease, as defined in s. 421.301(11).

18 (5) A security interest, as defined in s. 401.201(37).

19 (6) A lease, as defined ins. 411.103(1)(j).

20 430.104 **Exclusions.** This chapter does not apply to any of the following:

21 (1) An agreement that is entered into by a governmental body, as defined in
22 s. 895.52(1)(a), by an organization, or by any person other than a consumer as defined in

1 s. 430.201(1).

2 (2) A lease or bailment of personal property if the property is intended to be used
3 primarily for business, commercial, or agricultural purposes.

4 (3) A lease or bailment of personal property which is incidental to the lease of real
5 property.

6 (4) A lease of an automobile.

7 (5) A credit sale, as defined in 15 USC 1602(g) and in the regulations
8 promulgated thereunder.

9 (6) A consumer lease, as defined in 15 USC 1667(1) and in the regulations
10 promulgated thereunder.

11 430.201 **Definitions.** In this chapter:

12 (1) "Secretary" means the secretary of financial institutions.

13 (2) "Consumer" means a natural person who rents personal property under a rent-
14 to-own agreement.

15 (3) "Merchant" means a person who regularly provides the use of property
16 through rent-to-own agreements and to whom rental payments are initially payable on the
17 face of the rent-to-own agreement.

18 (4) "Rent-to-own agreement" means an agreement between a merchant and a
19 consumer for the use of personal property primarily for personal, family or household
20 purposes for an initial period of four months or less that is automatically renewable with each
21 payment after the initial period but which does not obligate or require the consumer to renew
22 the agreement beyond the initial period and which permits, but does not obligate, the

1 consumer to acquire ownership of the property.

2 **430.301 Registration.**

3 (1) Any merchant doing business in this state must file a registration statement with
4 the secretary within 30 days after commencing business in this
5 state, and thereafter, on or before February 28 of each year. The registration statement shall
6 include the following information:

7 (a) The name of merchant.

8 (b) The name under which the merchant transacts business.

9 (c) The address of the merchant's principal office.

10 (d) The addresses of all stores or other retail locations in this state at which
11 rent-to-own agreements are offered to consumers.

12 (e) The address of the merchant's designated agent upon whom service of
13 process may be made in this state.

14 (2) The secretary shall adopt rules relating to form, verification and similar
15 matters pertaining to the registration.

16 **430.302 Registration Fees.**

17 (1) Any merchant required to register under s. 430.301 shall pay a registration fee
18 to the secretary when the merchant files the registration statement required under s. 430.301.

19 (2) The amount of the registration fee shall be \$25 per store or other retail
20 location in this state, with a minimum fee of \$50 and a maximum fee of \$750.

21 **430.303 Examination of books and records.**

22 (1) The secretary may examine the books and records of any merchant for the

1 purpose of determining compliance with this chapter.

2 (2) A merchant shall make its books and records reasonably available for
3 inspection by the secretary. If the merchant's books and records are located outside this state,
4 the merchant shall, at the merchant's option, either make them available to the secretary at a
5 convenient location in this state or pay the reasonable and necessary expenses for the
6 secretary to examine them at the place where they are maintained.

7 (3) A merchant shall use generally accepted accounting principles and practices in
8 keeping its books and records so that the secretary may determine if the merchant is in
9 compliance with this chapter.

10 (4) A merchant shall keep records relating to each rent-to-own agreement and the
11 payments made thereunder for at least 2 years after the date on which the agreement is
12 terminated.

13 430.304 License suspension or revocation.

14 (1) Grounds for Suspension or Revocation. The secretary may, after compliance
15 with the procedures of paragraph (2), suspend or revoke a license if any of the following
16 conditions are met:

17 (a) The merchant has violated any provision of this chapter, the violation is
18 not isolated or inadvertent, and the secretary determines that the violation justifies the
19 suspension or revocation of the license.

20 (b) The secretary becomes aware that any fact or condition exists which, if
21 it had existed at the time of the original license application, would have warranted the
22 secretary's refusal of the license.

1 (c) The merchant has failed to pay the annual license fee under s. 430.302.

2 (2) Appeal. The following procedures shall apply to a suspension or revocation
3 proceeding:

4 (a) The secretary, or the secretary's designated agent, shall serve a written
5 notice upon the merchant licensed under s. 430.301 of the secretary's intent to suspend or
6 revoke a license. The notice shall specify the basis for the proposed suspension or
7 revocation.

8 (b) The merchant shall have 20 days after service of the notice to file with
9 the secretary or the secretary's designee a written response to the allegations contained in the
10 notice. The merchant's response shall also contain a request for a contested case hearing
11 pursuant to s. 227.42 or the right to such a hearing is deemed waived.

12 (c) If a request for an s. 227.42 hearing is received and the secretary or
13 the secretary's designee deems the request is consistent with the standards of s. 227.42, the
14 proceeding shall then be transferred to the division of hearings and appeals within the
15 department of administration for final determination. The proceeding before the
16 administrative law judge of the division of hearings and appeals must commence within 60
17 days of the matter's referral by the secretary or the secretary's designee.

18 430.401 **General requirements of disclosure.**

19 (1) The disclosures required under s. 430.402 shall be made:

20 (a) Clearly and conspicuously;

21 (b) In writing;

22 (c) On the face of the rent-to-own agreement above the line for the

1 consumer's signature;

2 (d) In not less than 8-point standard type;

3 (e) At or before the time the consumer becomes legally obligated under the
4 rent-to-own agreement.

5 (2) The merchant shall furnish the consumer with a copy of the completed rent-to-
6 own agreement signed by the consumer and containing the disclosures required under
7 s. 430.402. If there is more than one consumer, delivery of a copy of the completed rent-to-
8 own agreement to one of them constitutes compliance with this subsection.

9 (3) The disclosures required under s. 430.402 must be accurate as of the time they
10 are made. If any disclosure subsequently becomes inaccurate as a result of any act,
11 occurrence or agreement by the consumer, the resulting inaccuracy is not a violation of this
12 chapter.

13 430.402 **Disclosures.** A merchant shall disclose the following items, to the
14 extent applicable, in a rent-to-own agreement:

15 (1) the names of the merchant and the consumer, the merchant's business address
16 and telephone number, the consumer's address and the date on which the agreement is
17 executed;

18 (2) a brief description of the rented property, sufficient to identify the property to
19 the consumer and the merchant, including an identification number, if applicable, and a
20 statement indicating whether the property is new or used, but a statement that incorrectly
21 indicates that new property is used is not a violation of this chapter;

22 (3) the cash price of the property;

- 1 (4) the weekly, monthly, or other periodic rental rate for the property;
- 2 (5) the payment required of the consumer at the time the agreement is executed or
3 the property is delivered, whichever is later, including the initial rental payment, any
4 application or processing charge, any delivery fee, any charge for a liability damage waiver
5 or other optional services agreed to by the consumer, and the applicable tax;
- 6 (6) the total number, total dollar amount, and timing of all rental payments
7 necessary to acquire ownership of the property;
- 8 (7) a statement that the total dollar amount of payments does not include other
9 charges that a consumer may incur, such as application, processing, or delivery charges, and
10 late payment, reinstatement, default, and pickup fees. Any such charges shall be separately
11 identified in the agreement and the amount of the fee disclosed.
- 12 (8) a statement that the consumer will not own the property until the consumer has
13 made the total amount of payments necessary to acquire ownership or has exercised the
14 consumer's early purchase option;
- 15 (9) a statement clearly summarizing the terms of the consumer's option to acquire
16 ownership, including a statement that the consumer has the right to exercise an early
17 purchase option and the price, formula or method for determining the price at which the
18 property may be so purchased;
- 19 (10) a statement that, unless otherwise agreed, the consumer is responsible for the
20 fair market value of the property, according to the early purchase option formula, if, and as
21 of the time, it is stolen, damaged or destroyed while in the possession of or subject to the
22 control of the consumer;

1 (11) a statement identifying the party responsible for maintaining or servicing the
2 property while it is being rented, together with a description of that responsibility, and a
3 statement that if any part of a manufacturer's express warranty covers the rental property at
4 the time the consumer acquires ownership of the property, it will be transferred to the
5 consumer;

6 (12) a statement that the consumer may terminate the agreement at any time without
7 penalty by voluntarily surrendering or returning the property in good repair along with any
8 past due rental payments, fees and charges;

9 (13) a brief explanation of the consumer's right to reinstate a rent-to-own
10 agreement pursuant to s. 430.405.

11 (14) a notice reading substantially as follows: "You are renting this property. You
12 will not own it until you make all of the regularly scheduled payments or you exercise your
13 early purchase option. If you do not make your rental payments as scheduled, the lessor
14 may repossess the property. Your rights and responsibilities are fully explained in this
15 agreement."

16 430.403 **Prohibited Provisions.**

17 (1) A rent-to-own agreement may not contain a provision:

18 (a) requiring a confession of judgment;

19 (b) granting the merchant a security interest in any property except
20 property delivered by the merchant pursuant to the rent-to-own agreement;

21 (c) authorizing a merchant or an agent of the merchant to enter the
22 consumer's premises or to commit a breach of the peace in the repossession of property

1 delivered by the merchant pursuant to the rent-to-own agreement;

2 (d) waiving a defense, counterclaim, or right the consumer may have
3 against the merchant or an agent of the merchant;

4 (e) requiring rental payments totaling more than the cost to acquire
5 ownership, as disclosed in the rental-purchase agreement;

6 (f) requiring purchase of insurance from the merchant to cover the
7 property; or

8 (g) waiving any provision of this chapter.

9 (2) In the event a rent-to-own agreement violates s. (1), the consumer shall,
10 instead of seeking compensation under s. 430.701, be entitled to (a) retain the personal
11 property which is the subject of such rent-to-own agreement without obligation to pay any
12 amount and (b) recover any sums paid to the merchant pursuant to the transaction.

13 430.404 Late Payment.

14 (1) If at the end of any rental term, the consumer fails either to return the rental
15 property or to renew the rent-to-own agreement for an additional term, the merchant may
16 require the consumer to pay a late fee.

17 (2) The following grace periods shall apply to rental payments made with respect
18 to a rental-purchase agreement:

19 (a) for an agreement that is renewed on a weekly basis, no late fee shall be
20 assessed for a payment that is made within two calendar days after the date the scheduled
21 payment is due;

22 (b) for an agreement that is renewed for a period longer than one week, no

1 late fee shall be assessed for a payment that is made within five calendar days after the date
2 the scheduled payment is due.

3 (3) Late fees are subject to the following limitations:

4 (a) A late fee may not exceed \$5 per late payment;

5 (b) A late fee may be collected only once on each rental payment due
6 however long it remains in default;

7 (c) Payments received shall be applied first to the payment of any rent that
8 is due and then to late fees and any other charges: and

9 (d) A late fee may be collected at the time it accrues or at any time
10 afterward.

11 (4) The merchant may require payment of any outstanding late fees before
12 transferring ownership of the property to the consumer.

13 430.405 Reinstatement Rights.

14 (1) A consumer shall have the right to reinstate a terminated rent-to-own
15 agreement without losing any rights or options previously acquired if the following conditions
16 are met:

17 (a) The consumer returned or surrendered the property within 5 days after
18 the termination of the agreement; and

19 (b) Not more than 21 days have passed since the property was returned to
20 the merchant; except that if the consumer has paid two-thirds or more of the total of rental
21 payments necessary to acquire ownership of the property, the reinstatement period shall be
22 extended to 45 days.

1 (2) As a condition of reinstatement under this section, the merchant may require
2 the payment of all past due rental charges, any applicable late fees, a reinstatement fee not to
3 exceed \$5, and the rental payment for an additional term.

4 (3) Nothing in this section shall prevent a merchant from attempting to repossess
5 property rented under a terminated rent-to-own agreement, but such efforts shall not affect
6 the consumer's right to reinstate so long as the property is voluntarily returned or
7 surrendered within 5 days after the termination of the agreement.

8 (4) Upon reinstatement, the merchant shall provide the consumer with the same
9 property if such property is available and is in the same condition as it was at the time it was
10 returned to the merchant or with substitute property of comparable quality and condition.

11 430.406 **Liability Waiver.** A merchant may offer a liability waiver to the
12 consumer. The terms of the waiver must be provided to the consumer in writing and the
13 face of the writing must clearly disclose that the consumer is not required to purchase the
14 waiver. The fee for the waiver may not exceed 10% of the periodic rental payment.

15 430.407 **Early Purchase Option.** A merchant must offer an early purchase
16 option to a consumer. The early purchase option must permit the consumer to purchase the
17 rental property for cash at any time after the initial payment. The merchant's formula or
18 method for determining the cash price for purposes of the early purchase option must be
19 disclosed in the rent-to-own agreement. As a condition of exercising the early purchase
20 option, the merchant may require the consumer to be current on the consumer's rent-to-own
21 agreement or to pay any past due rental charges and other outstanding fees that may be
22 owed.

1 430.408 **Referral Transactions.**

2 (1) No merchant shall induce any person to enter into a rent-to-own agreement by
3 giving or offering to give a rebate or discount to the person in consideration of the person's
4 giving to the merchant the names of prospective customers if the earning of the rebate or
5 discount is contingent upon the occurrence of an event subsequent to the time the person
6 enters into the rent-to-own agreement.

7 (2) If a person is a party to a rent-to-own agreement with the merchant, the
8 merchant may give or offer to give a rebate or discount to the person in consideration of the
9 person's giving to the merchant the names of prospective customers. The rebate or discount
10 provided to such a person may be dependent upon the occurrence of an event subsequent to
11 the time the names are given to the merchant.

12 430.409 **Receipts and Statements.**

13 (1) A merchant shall provide a written receipt to the consumer upon the
14 consumer's request for any payment made by the consumer.

15 (2) A merchant shall provide a written statement to the consumer upon the
16 consumer's request showing the consumer's payment history on the consumer's rent-to-own
17 agreements with the merchant, provided, the merchant is not required to provide a statement
18 covering any rent-to-own agreement that was terminated or completed more than one year
19 prior to the date of the consumer's request. The merchant may provide a single statement
20 covering all agreements or separate statements for each agreement at the merchant's option.

21 430.501 **Price Cards.**

22 (1) A card or tag that clearly and conspicuously states the following shall be

1 displayed on or next to any item of personal property displayed or offered under a rent-to-
2 own agreement:

- 3 (a) the cash price of the property;
- 4 (b) the dollar amount of the periodic payment and the payment period;
- 5 (c) the total number and total amount of rental payments that must be paid
6 in order to acquire ownership of the property under a rent-to-own agreement; and
- 7 (d) whether the property is new or used.

8 (2) If property is offered through a catalog or the size of the property is such that
9 displaying a card or tag on or next to the property would be impractical a merchant may
10 make the disclosures required by this section in a catalog or list, provided the catalog or list
11 is readily available to prospective consumers.

12 **430.502 Advertising.**

13 (1) If an advertisement for a rent-to-own agreement refers to or states the dollar
14 amount of any payment and right to acquire ownership for any one specific item, the
15 advertisement shall also clearly and conspicuously state the following information:

- 16 (a) that the transaction advertised is a rent-to-own agreement;
- 17 (b) the total number and total dollar amount of rental payments necessary
18 to acquire ownership; and
- 19 (c) that the consumer does not acquire ownership rights if the total dollar
20 amount of payments necessary to acquire ownership is not paid.

21 (2) An owner or agent of the medium in which an advertisement for a rental-
22 purchase agreement appears or through which it is disseminated shall not be liable pursuant

1 to this section.

2 (3) The provisions of this section shall not apply to an advertisement which does
3 not refer to or state the amount of any payment, or which is published in the yellow pages of
4 a telephone directory or in any similar directory of businesses, or to in-store displays.

5 430.601 **Default.**

6 (1) A consumer may be deemed in default under a rent-to-own agreement if any of
7 the following applies:

8 (a) The consumer has failed to return the property and the last rental term
9 for which a rental payment was made expired more than seven days previously; or

10 (b) The consumer has materially breached any other provision of the
11 agreement.

12 (2) No cause of action shall accrue against a consumer with respect to the
13 consumer's obligations under a rent-to-own agreement except by reason of a default.

14 (3) As a condition precedent to bringing an action against a consumer arising out
15 of the consumer's default, a merchant must provide a written notice of default and right to
16 cure to the consumer specifying the default and the action required to cure the default and
17 informing the consumer that if the default is not cured within 15 days after the notice is
18 given the merchant will have the right to bring an action against the consumer.

19 (4) A merchant shall not, however, be required to provide a notice of default and
20 right to cure as a condition precedent to bringing an action against a consumer if the
21 following occurred twice during the preceding 12 months with respect to the same rent-to-
22 own agreement:

- 1 (a) The consumer was in default;
- 2 (b) The merchant gave the consumer written notice of default and right to
- 3 cure; and
- 4 (c) The consumer cured the previous default.

5 (5) A merchant may request the voluntary return or surrender of the property
6 rented under a rent-to-own agreement prior to the declaration of a default and the sending of
7 written notice of default and right to cure. Any such request is subject to the requirements
8 of section 430.602.

9 430.602. **Collection Practices.** In attempting to recover possession of property
10 rented under a rent-to-own agreement or to collect past due rent or other charges owed under
11 a rent-to-own agreement, a merchant may not do any of the following:

12 (1) Use or threaten force or violence to cause physical harm to the consumer or
13 the consumer's dependents or property.

14 (2) Threaten criminal prosecution, unless the merchant has a reasonable, good
15 faith belief that the consumer has violated a criminal statute of this statute and the merchant
16 actually intends to seek the filing of criminal charges against the consumer.

17 (3) Disclose or threaten to disclose information adversely affecting the consumer's
18 reputation for credit worthiness with knowledge or reason to know that the information is
19 false.

20 (4) Initiate or threaten to initiate communication with the consumer's employer
21 prior to obtaining final judgment against the consumer except as permitted by statute,
22 including specifically section 422.404, but this paragraph does not prohibit a merchant from

1 communicating with the consumer's employer solely to verify employment status or earnings
2 or where an employer has an established debt counseling service or procedure.

3 (5) Disclose or threaten to disclose information concerning the existence of a
4 debt known to be reasonably disputed by the consumer without disclosing the fact that the
5 consumer disputes the debt.

6 (6) Communicate with the consumer or a person related to the consumer with such
7 frequency or at such unusual hours or in such a manner as can reasonably be expected to
8 threaten or harass the consumer.

9 (7) Engage in other conduct which can reasonably be expected to threaten or
10 harass the consumer or a person related to the consumer.

11 (8) Use obscene or threatening language in communicating with the consumer or a
12 person related to the consumer.

13 (9) Threaten to enforce a right with knowledge that the right does not exist.

14 (10) Use a communication which simulates legal or judicial process or which gives
15 the appearance of being authorized, issued or approved by a government, government
16 agency, or attorney-at-law when it is not.

17 (11) Threaten to file a civil action against the consumer unless such action is taken
18 in the regular course of business or is intended with respect to the consumer in question.

19 430.701 Civil actions and defenses.

20 (1) A rent-to-own company that violates any provision of this chapter is liable to a
21 consumer damaged as a result of that violation for the costs of the action and reasonable
22 attorney fees as determined by the court, plus an amount equal to the greater of:

1 (a) The actual damages, including any incidental and consequential
2 damages, sustained by the consumer as a result of the violation.

3 (b) An amount equal to 25% of the total amount of payments in a month
4 under the consumer's rent-to-own agreement, except that liability under this paragraph may
5 not be less than \$100 or greater than \$1,000.

6 (2) In the case of a class action, an amount determined by the court, except that
7 the total recovery for all consumers whose recovery is computed pursuant to subs. (1)(b),
8 may not exceed \$ 100,000 plus the costs of the action and reasonable attorneys' fees as
9 determined by the court. In determining the amount to award under this paragraph, the court
10 shall consider, among other relevant factors, the amount of actual damages sustained by
11 members of the class, the frequency and persistence of violations by the merchant, the
12 resources of the merchant, the number of persons damaged by the violation, the presence or
13 absence of good faith on the part of the merchant, and the extent to which the violation was
14 intentional.

15 (3) A merchant is not liable under this chapter for a violation resulting from an
16 error by the merchant if, within 60 days after discovering the error, the merchant notifies the
17 consumer of the error and makes any adjustments necessary to correct the error.

18 (4) A merchant is not liable for a violation of this chapter if the merchant shows
19 by a preponderance of the evidence that the violation was not intentional and resulted from a
20 bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid
21 such errors and that the merchant has acted to correct the error. A bona fide error may
22 include clerical error, errors in making calculations, errors due to computer malfunction or

1 computer programming, or printing errors.

2 (5) If more than one consumer is a party to a rent-to-own agreement, all of the
3 consumers shall be joined as plaintiffs in an action under sub. (1) and the consumers are
4 entitled to only a single recovery under sub. (1).

5 (6) Multiple violations of this chapter in connection with a rent-to-own agreement
6 shall entitle the consumer to only a single recovery under sub. (1), except that a violation of
7 s. 430.602 that occurs after recovery has been granted with respect to that rent-to-own
8 agreement may entitle the consumer to an additional recovery under sub. (1).

9 430.702. **Limitation on actions.** An action brought by a consumer under this
10 chapter shall be commenced within one year after the date of the alleged violation, 2 years
11 after the date the rent-to-own agreement was entered into, or one year after the date of the
12 last payment made under the agreement that was entered into, whichever is later.

13 Section 9. **Initial Applicability.** This act applies to rent-to-own agreements
14 entered into on or after the effective date of this act.

15 Section 10. **Effective date.** This act takes effect on the first day of the 2nd month
16 beginning after publication.

**WISCONSIN RENTAL DEALERS ASSOCIATION
POSITION STATEMENT
MAY 1998**

THE ASSOCIATION

The Wisconsin Rental Dealers Association (WRDA or "Association") is an association of merchants ("Merchant") who offer rental-purchase transactions (the "Transaction") in Wisconsin. The Association is dedicated to the improvement of the industry and works with the National Association of Progressive Rental Organizations to develop standards which promote consumer protection and ethical conduct. The Association supports the passage of legislation which would provide (1) standards for rental-purchase and (2) clear legal classification of the Transaction.

THE TRANSACTION

Rental-purchase provides high-quality merchandise to customers who want or need flexibility. The Transaction is "easy-in"/"easy-out" and provides features not offered by retail merchants.

The Transaction is typically initiated by a customer ("Customer") completing an application which asks for the Customer's residence, employer and five references. Most companies do not ask for credit information and do not perform a credit check.

If the Customer is approved, they are asked to pay a small processing fee and the first rental payment. The Customer can choose to rent by the week or by the month. The merchandise is then delivered to the Customer's home and set up, at no additional charge. The Customer can terminate the Transaction at the end of any weekly or monthly rental period, whereupon the merchandise is retrieved from the Customer's home -- again, at no additional charge. Typically, there are no security deposits or down payments.

Rental-purchase laws in most states give the Customer the right to reinstate the rental agreement where he or she left off, if the product is returned before ownership occurs. In addition, many companies have formal or informal programs which allow the Customer to keep rental merchandise during temporary periods of financial difficulty.

If the merchandise breaks down during the rental period, service is provided at no additional charge. If the merchandise must be removed from the Customer's home for service, a loaner item is provided, so that the Customer never has to "do without."

The rental-purchase agreement ("Agreement") typically allows the Customer to own the rental property if they rent it for the specified number of rental periods and pay a pre-designated purchase price option. In some instances, the dealer will finance the purchase price of the property.

On average, Customers choose to rent for a four-month period. Only 25 percent of our Customers rent the product long enough to gain ownership. On average, items are rented 2.5 times. After each rental, the product is refurbished. Because the Transaction offers more to consumers than a typical retail transaction, Dealers have higher costs than retail merchants.

THE CUSTOMER

Rental-purchase is an important alternative for a variety of Customers. Some common Customers include (1) professionals on temporary assignment, (2) professional athletes, (3) consumers who need to determine want and/or need for a product, (4) Customers uncertain about future finances, and (5) consumers who want to obtain high-quality merchandise but do not have immediate purchase power. The table (on the next page) illustrates the results of a 1994 industry survey conducted to identify the characteristics of rental-purchase customers.

Typically, the Customer (1) has made the decision to rent before entering the rental store, (2) is aware of the going retail price(s) and (3) has comparison-shopped other rental stores. Most rental merchants visually display the rental rate, number of weeks, amount of purchase option, total cost, and whether the merchandise is new or used. The industry relies heavily on repeat and referral business:

THE LEGAL ENVIRONMENT

Forty-five states have rental-purchase legislation which provides, in varying degrees, consumer protection, disclosure requirements, and a legal definition of the Transaction. The industry favors regulation of the Transaction that recognizes the unique character of rental-purchase.

Over the past several years, the industry has been involved in litigation concerning whether the Transaction is a "rental/lease" or a "sale," subject to the Wisconsin Consumer Act. The issue is still undecided. If the industry is ultimately successful in defending its position that the Transaction is a "rental/lease," it will continue largely unregulated. If the Transaction is held to be a "sale," the industry will not be able to continue to offer the easy access and flexibility that its Customers currently enjoy.

Throughout the years, the industry has engaged in discussions concerning how the Transaction should be regulated. The industry believes that the typical state rental-purchase legislation provides the best approach to providing consumers with the appropriate information to make an informed decision about renting and also providing appropriate legal treatment of the Transaction. Others have suggested that the Transaction should be treated as a consumer credit transaction under the Wisconsin Consumer Act (WCA).

The WCA was written to govern credit, not rental-purchase, transactions and, consequently, uses credit terms and concepts. The language is confusing, at best, when applied to the Transaction. Substantively, the provisions do not take into consideration the significant differences between credit and rental. Regardless of the position taken as to whether the Transaction is a lease or

Rental-Purchase Customer Profile

Age	Percentage
Under 25	10.14
25-30	25.09
35-44	25.83
45-54	16.07
55-64	9.02
65 and over	13.84
Household Income	Percentage
Under 6,000	2.2
6,000 - 14,999	10.0
15,000 - 23,999	25.2
24,000 - 35,999	20.8
36,000 - 49,999	18.9
50,000 - 74,999	18.1
75,000 and up	3.7
Ethnic Background	Percentage
Caucasian	74.78
African-American	21.88
Hispanic	2.47
Asian/Oriental	0.49
Education	Percentage
Less than High School	6.18
High School Graduate	45.12
Some College	28.18
College Graduate	18.05
Graduate School	2.22

[Statistics provided by America's Research Group, August 1994. Additional statistics provided by APRO 1996 Statistical Survey.]

a sale, there is no question that it is different from credit -- i.e., there is never an obligation to pay a remaining balance and no security interest is involved. Furthermore, the Customer is not subjected to credit checks and does not make a down payment.

It is our belief that legislation specifically designed to address the rental-purchase industry is the best approach to regulating the Transaction and its Merchants. The typical state's rental-purchase law addresses most of the issues covered by the WCA and, in many cases, provides more consumer protection than required by the WCA.

The main issues with applying the WCA to rental-purchase are generally whether an annual percentage rate should be required, whether the grace periods and amount of late fees are appropriate, whether restrictions on collections should apply, and whether the overall language of the act is appropriate for the Transaction. Following is a summary of issues related to specific sections of the act.

CHAPTER 421

421.301 General Definitions. This section, like most sections of the WCA, uses credit terminology, which is neither appropriate nor accurate for the Transaction. This makes application of the Act to rental-purchase difficult and confusing.

CHAPTER 422

422.204 Additional Charges. Many rental dealers offer a liability damage waiver which waives a Customer's obligation to pay for the property if it is damaged or destroyed by certain events, such as fire or theft. The Act does not appear to allow a like product, specifically suited for Transactions. The section is also written in credit terms limited to property in which a security interest is taken and would not apply to the Transaction. In addition, the section does not allow a processing fee.

422.203 Delinquency Charges. *Five percent (5%) or \$10.00, whichever is less, 10-day grace period.* Unlike the typical credit transaction, most Customers choose to rent by the week and have small payments. For example, a 19-inch color television set can rent for as low as \$5.99 per week. A late fee of 30 cents, as provided by the WCA, would be of minimal consequence to a Customer and would not approach adequately compensating the merchant's administrative expense. The Transaction does not require a great deal of money, up-front, for security. As a consequence, it is important for the Merchant to be paid on a timely basis. A 10-day grace period could, effectively, allow a Customer to always be more than one payment behind.

422.204 Deferral Charges. Rental-purchase customers are often allowed to defer payments, but are not charged a fee for doing so. Consequently "deferral charges" do not apply.

422.205 Finance Charge on Refinancing. The Merchant is traditionally amenable to

rewriting the Agreement if a Customer falls too far behind in their payments. There is no charge for the service and the Customer pays no more than specified under the original Agreement. In fact, if the Customer then terminates, after a deferral or rewrite, they are not charged for the deferred rent.

422.206 Finance Charge on Consolidation. Because the Transaction involves only a rental period and not debt amortization, consolidation is not an issue.

422.207 Advances to Perform Agreements of Customer. Typically, the Merchant does not require a Customer to purchase insurance. The decision to purchase a damage liability waiver is left solely to the discretion of the Customer.

422.208 Right to Prepay. The Customer has a continuing right to purchase the merchandise, at discount, throughout the terms of the Agreement. Therefore, the "security interest" terminology used in this section is not applicable to the Transaction.

422.209 Rebate on Prepayment. Because there is no "unpaid balance," *per se*, in a Transaction, this section is also difficult to apply. Under the typical Agreement, the Customer may purchase the merchandise, at any point, by paying the cash price less a percentage of rent already paid (typically about 50 percent).

422.301 Requirements of Federal Act. The Truth in Lending Act treats the Transaction as a "lease," which does not require credit disclosures. Further, this section does not apply to the Customer, who can terminate at any time during the Agreement. After a recent review of consumer leases, in general, the Federal Reserve Board took the position that requiring interest rate disclosures on lease agreements would be confusing. We agree. The Customer should not need this information to make an informed decision.

422.302 General Requirements and Provisions. Rental-purchase merchants in all states have voluntarily adopted standards of full disclosure of terms and pricing regarding the Agreement. Most merchants go even further than required by the WCA, in making full disclosure on the merchandise.

422.303 Form Requirements Other Than Open-End or Discount. With the exception of the "credit" terminology, the WRDA accepts the provisions of this section and voluntarily follows the provisions today.

422.305 Notice to Obligor. The Agreement does not call for this type of obligation and, therefore, is difficult to apply to the Transaction. Multiple parties to an Agreement should each receive their own copy.

422.402 Balloon Payments Prohibited. The Agreement requires flexibility. The Merchants typically schedule payments on a weekly or monthly basis, but allow the Customers to pay on whatever plan they choose. Many dealers allow Customers to pay for only a few days

in advance if necessary. Some dealers have also lowered the rental payment after a certain number of payments, so that, as the property depreciates, the rental is less. This encourages the Customer to continue to rent the same merchandise instead of updating to a newer product. This lowers costs for dealers and the savings is passed on to the Customer.

422.413 Limitation on Default Charges. The Agreement allows for the Customer to terminate, at no charge for "default." Similarly, because the merchandise is owned by the Merchant, there is no need to recover costs for disposition of the collateral.

422.414 Use of Multiple Agreements. This section prohibits using multiple agreements. It is not clear how this might apply to the Transaction. For purposes of the Transaction, individual Agreements are signed for each item rented to (1) address the differing lengths of terms for items and (2) protect the Customer's right to return an item at any time.

422.416 Referral Transactions Prohibited. The Industry relies on and profits from consumer referrals. Customers have, historically, been awarded monetarily for producing successful customer referrals. This practice has never been used to induce Customers into entering Agreements. Because the property can be returned at any time, at no charge to the Customer, there is no danger of harm to the consumer.

422.418 Security Interests. The Transaction does not involve security interests and, therefore, should not be subject to this provision.

422.419 Waivers Prohibited. The WRDA members voluntarily comply with this section.

CHAPTER 423

Consumer Approval Transaction -- Though most Transactions are completed at the Dealer's, there are situations in which the final Agreement is signed at the Customer's residence. In these situations, the Customer is, generally, familiar with the store and Transaction and calls in response to an advertisement or because of an immediate need (i.e., a broken appliance, etc.) for a product. On other occasions, Customers will order merchandise before they are approved and the Agreement is then executed along with the delivery of the rental property to the Customer's residence.

A three-day right to cancel is not desired or necessary in the Industry because the Agreements can be terminated at the end of one week. If this section were applied to the Industry, it would mean Customers could arrange for a television set for Superbowl weekend at, virtually, no cost!

CHAPTER 424

Generally, the Industry does not sell insurance. Many dealers offer optional products, such as liability damage waivers, extended warranties or club programs, which include a variety of goods and services. This section does not adequately address these products. This section is

also confusing when applied to rental-purchase in light of its "credit" terminology.

CHAPTER 425

425.103 Accrual of Cause of Action; "Default." The period before default is too long for rental-purchases. The definition of "default" found in this section does not take into consideration either (1) the typically-short rental period or (2) the fact that a Customer is not required to pay any money "up-front," such as a down payment, to take possession of the merchandise. Furthermore, unlike a credit transaction, a Customer can return the goods at any time without penalty and, under typical rental-purchase legislation, can reinstate without losing any rights. In a credit transaction, if a Customer can't make a payment, there is no choice but to default; in the Transaction, there is always the choice of reinstatement.

For example, the most common rental period is one week. Under this section, a Customer would have to be 17 days late before a default would occur. Pursuant to Section 105, a rental dealer would have to wait an additional 15 days -- or a total of 32 days -- before presenting the Customer with the option of returning the property. By that time, the Customer would be three payments behind and, most likely, not able to catch up. In the rental-purchase situation, the problem must be dealt with immediately, so that the Customer can stay on track or return the merchandise and reinstate at a later date.

425.104 Notice of Right to Cure. This section also fails to recognize the important differences between rental and credit transactions and, consequently, makes it too difficult for the rental dealer to repossess the property.

425.105 Cure of Default. (See above comments.)

425.107 Unconscionability. Due to the unique nature of the Transaction, a provision authorizing specific charges is necessary to avoid confusion.

425.204 Voluntary Surrender. The WRDA supports a reasonable grace period, but believes it is necessary to preserve the ability to present the Customer with the choice of continuing to rent or returning the property at any time after the grace period. The Agreement is set up to allow a Customer to obtain the use of property with a small rental payment and no credit check. The Customer is also allowed to return the property at any time without penalty. It is unreasonable to require the rental dealer to wait until the notice of right to cure default expires before it can present a Customer with the option under the contract of returning the property.

425.206 Nonjudicial Enforcement. (See comments above.)

425.208 Right to Redeem. The WRDA believes that the best way to handle this type of situation is to allow the Customer to reinstate an Agreement after returning the property.

425.209 Restrictions on Deficiency Judgments. Though there is no unpaid balance in a rental contract, there may be unpaid rent. The rental merchant should be allowed to collect any unpaid rent. As stated previously, since the Transaction requires no down payment or security deposit, the merchant has no protection against Customers who improperly keep the merchandise without paying rent.

CHAPTER 427

The WRDA supports the reasonable collection practices -- and its members have voluntarily adopted most or all of the standards -- contained in Chapter 427. The WRDA would like to see specific definitions concerning frequency of contacts.

LEGISLATIVE INITIATIVES

The WRDA would like to pursue balanced legislation, in cooperation with the Attorney General and the Department of Financial Institutions.

* * *

LEGISLATIVE SUMMARY

[March 1999]

The Rental-Purchase Industry

Rental-purchase merchants lease durable household merchandise -- such as furniture, major appliances and electronic goods -- on a short-term basis to customers, with the option to purchase. Nation-wide, stores are located not only in major cities, but small towns and rural communities. The industry generates annual sales of \$3.5 billion and purchases nearly 10% of all major appliance manufactured and sold at wholesale in the United States.

Industry data demonstrates that the majority of rental-purchase customers are homeowners with a high school diploma who have an annual household income of more than \$24,000. Typical customers include "blue collar" workers, men and women who are separating from spouses, students, business people who are traveling or relocating, families who want to avoid long-term credit obligations, or people recovering from previous financial difficulty.

In rental-purchase transactions, a customer may purchase items for cash, or may rent such items for a week or a month at a time. At the end of the week or month, the customer may return the item or renew the rental. After renting an item for a period of time, under the agreement the customer may keep the item without making any more rental payments. Unlike loans or credit sales, rental purchase agreements do not involve customer debt because there is no principal or balance to repay. As a result, there is no interest charged on the rented merchandise.

Regulation of the Industry Nation-Wide and in Wisconsin

To date, 44 of the 50 states has recognized that specialized legislation is necessary to both effectively regulate the industry and provide specific consumer protection. Thus, Wisconsin currently stands virtually alone in not specifically addressing the needs of both this industry and the Wisconsin customers of this industry.

The rental-purchase industry is a valid segment of the consumer marketplace, offering meaningful economic choices to a significant percentage of the consumer population. Accordingly, the legislation is designed to ensure that the industry's Wisconsin customers are (1) offered this economic option while (2) meaningfully protected from merchants who do not provide accurate rent-to-purchase information.

If Wisconsin chooses instead to do nothing, the rental-purchase industry will disappear in Wisconsin. Because existing laws, including the Wisconsin Consumer Act, do not specifically contemplate rental-purchase agreements, even commercially

reasonable and consumer-beneficial rental-purchase agreements are subject to attack in Wisconsin courts as being in violation of current Wisconsin law. Rental-purchase businesses cannot operate in that environment.

The situation of the rental-purchase industry is similar to the situation of the agricultural implement dealers. Act 302 was passed in 1998 to exempt agricultural purpose transactions from the Wisconsin Consumer Act because the Act failed to meet the needs of consumers and the industry. Wisconsin, like 47 other states responded to their unique needs.

The only way that the industry can operate in Wisconsin is if Wisconsin (like 44 other states) specifically addresses and clarifies the law with respect to this industry. Only then can there be true consumer choice.

Summary of Legislation

The legislation follows the central concepts of the Wisconsin Consumer Act while clarifying industry-specific issues. The legislation includes the following:

1. The heart of the legislation are the statutorily mandated disclosures contained in § 430.402. Such disclosures include:
 - names and addresses of merchant and customer
 - a description of the rented property and a statement as to whether the property is new or used.
 - the cash price of the property
 - the periodic rental rate for the property
 - a description of all initial rental payments, fees, and taxes
 - the total number, total dollar amount, and timing of rental payment necessary to acquire ownership of the property
 - a statement as to separately stated fees and charges
 - a statement that the consumer will not own the property until the total amount of payments necessary to acquire ownership have been made
 - a statement summarizing the consumer's option to purchase

- a statement that the consumer is responsible for the fair market value of the property if it is stolen, damaged or destroyed
- a statement regarding servicing the property and warranties
- a statement regarding the consumer's right to terminate the agreement
- an explanation of the consumer's right to reinstate the agreement
- a specific notice stating the following:

You are renting this property. You will not own it until you make all of the regularly scheduled payments or you exercise your early purchase option. If you do not make your rental payments as scheduled, the lessor may repossess the property. Your rights and responsibilities are fully explained in this agreement.

The purpose of such disclosures is to provide the customer with all of the information the customer needs to make an informed choice. At that point, the State has fulfilled its regulatory function and then allows individuals to make the choice which is best for them.

2. The statute requires under §430.401 that such disclosures be presented in a written format which is clear and readable. Each of the disclosure elements must be clear and conspicuous, in readable size, and on the face of the agreement above the customer's signature. This ensures that the required disclosures cannot be hidden on the back of the agreement in the small-print.
3. Conversely, certain merchant practices which are inherently deceptive or a violation of public policy are expressly prohibited under §430.403. The punishment for violating §430.403 is that the customer may both retain the leased item and recover any monies previously paid to the merchant.
4. Late payment fees are strictly regulated under § 430.404 both as to the time of imposition and amount (maximum of \$5.00 per late payment).
5. Consumers have additional statutory protections with respect to (a) reinstatement rights under § 430.405, (b) liability waivers under § 430.406, (c) early purchase options under §430.407, and (d) the requirement for receipts and statements under 430.409.
6. As additional safeguards to the consumer, under §430.501 merchants will be required to display price tags which clearly and conspicuously convey relevant

pricing information and under §430.502 merchants' advertising will have to clearly and conspicuously inform customers that the merchandise is being offered in a rental-purchase transaction.

7. Each rent-to own merchant must be licensed and regulated by the Department of Financial Institutions under the terms of § 430.301-430.304. Such license may be revoked or suspended by the Department if the merchant does not operate in accordance with Chapter 430. To assist the Department in making licensing decisions, the statute also requires each merchant to keep its books and records open and available to the Department, irrespective of whether the merchant is a Wisconsin resident or a non-Wisconsin resident.
8. Merchant's remedies and collection practices are limited under 430.601-430.602 to protect customers.



State of Wisconsin
1999 - 2000 LEGISLATURE

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LRBb0731
RJM1...
mg

SOD

PMR

NOTE

ARC:.....Tompach - AM # 65, Rent-to-own agreements

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 1359, line 21: after that line insert:

3 "SECTION 2818r. 409.104 (12m) of the statutes is created to read:

4 409.104 (12m) To a transfer of an interest under a rent-to-own agreement

5 ✓ under ch. 435; or".

6 ✓ 2. Page 1362, line 23: after that line insert:

7 "SECTION 2822^{no}. 421.202 (7m) of the statutes is created to read:

8 ✓ 421.202 (7m) A rent-to-own agreement under ch. 435;

9 SECTION 2822^{no}. 421.301 (9) of the statutes is amended to read:

nt

10 421.301 (9) "Consumer credit sale" means a sale of goods, services or an

11 interest in land to a customer on credit where the debt is payable in instalments or

1 a finance charge is imposed and includes any agreement in the form of a bailment
2 of goods or lease of goods or real property if the bailee or lessee pays or agrees to pay
3 as compensation for use a sum substantially equivalent to or in excess of the
4 aggregate value of the goods or real property involved and it is agreed that the bailee
5 or lessee will become, or for no other or a nominal consideration has the option to
6 become, the owner of the goods or real property upon full compliance with the terms
7 of the agreement. “Consumer credit sale” does not include a rent-to-own agreement
8 under ch. 435.

9 SECTION 2822^{nu}. 421.301 (10) of the statutes is amended to read:

10 421.301 (10) “Consumer credit transaction” means a consumer transaction
11 between a merchant and a customer in which real or personal property, services or
12 money is acquired on credit and the customer’s obligation is payable in instalments
13 or for which credit a finance charge is or may be imposed, whether such transaction
14 is pursuant to an open-end credit plan or is a transaction involving other than
15 open-end credit. The term includes consumer credit sales, consumer loans,
16 consumer leases and transactions pursuant to open-end credit plans. “Consumer
17 credit transaction” does not include a rent-to-own agreement under ch. 435.

18 SECTION 2822^{nv}. 421.301 (11) of the statutes is amended to read:

19 421.301 (11) “Consumer lease” means a lease of goods which a merchant makes
20 to a customer for a term exceeding 4 months. “Consumer lease” does not include a
21 rent-to-own agreement under ch. 435.”.

22 3. Page 1362, line 24: delete “2822o” and substitute “2822u”.

23 4. Page 1363, line 5: delete “2822p” and substitute “2822v”.

24 5. Page 1363, line 9: delete “2822t” and substitute “2822w”.

1 ✓ 6. Page 1363, line 15: after that line insert:

2 ✓ "SECTION 2822y. 423.201 of the statutes is amended to read:

3 423.201 Definition. "Consumer approval transaction" means a consumer
 4 transaction other than a sale or lease or listing for sale of real property or a sale of
 5 goods at auction 1) which is initiated by face-to-face solicitation away from a regular
 6 place of business of the merchant or by mail or telephone solicitation directed to the
 7 particular customer and 2) which is consummated or in which the customer's offer
 8 to contract or other writing evidencing the transaction is received by the merchant
 9 away from a regular place of business of the merchant and involves the extension of
 10 credit or is a cash transaction in which the amount the customer pays exceeds \$25.
 11 "Consumer approval transaction" shall in no event include a catalog sale which is not
 12 accompanied by any other solicitation or a consumer loan conducted and
 13 consummated entirely by mail. "Consumer approval transaction" does not include
 14 a rent-to-own agreement under ch. 435.

INSERT
3-15

15 SECTION 2822z. Chapter 435 of the statutes is created to read:

16 ✓ 7. Page 1511, line 23: after that line insert:

INSERT 3-16

17 ✓ 8. Page 1589, line 14: after that line insert:

INSERT 3-17 ✓

18 ✓ 9. Page 1608, line 19: after that line insert:

INSERT 3-18

19

(END)

INSERT 3-15

1 place of business of the merchant or by mail or telephone solicitation directed to the
2 particular customer and 2) which is consummated or in which the customer's offer
3 to contract or other writing evidencing the transaction is received by the merchant
4 away from a regular place of business of the merchant and involves the extension of
5 credit or is a cash transaction in which the amount the customer pays exceeds \$25.
6 "Consumer approval transaction" shall in no event include a catalog sale which is not
7 accompanied by any other solicitation or a consumer loan conducted and
8 consummated entirely by mail. "Consumer approval transaction" does not include
9 a rent-to-own agreement under ch. 435.

10 SECTION 7. Chapter 435 of the statutes is created to read:

11 CHAPTER 435

12 RENT-TO-OWN AGREEMENTS

13 **435.102 Scope. (1) INAPPLICABILITY OF OTHER LAWS.** A rent-to-own agreement
14 under this chapter is not governed by the laws relating to a security interest, as
15 defined in s. 401.201 (37), or a lease, as defined in s. 411.103 (1) (j).

16 (2) EXCLUSIONS. This chapter does not apply to any of the following:

17 (a) Any agreement between a rental-purchase company and any person other
18 than a lessee.

19 (b) A lease or bailment of personal property if the property is intended to be
20 used primarily for business, commercial or agricultural purposes.

21 (c) A lease or bailment of personal property which is incidental to the lease of
22 real property.

23 (d) A lease of a motor vehicle, as defined in s. 218.01 (1) (m).

24 (e) A credit sale, as defined in 15 USC 1602 (g) and in the regulations
25 promulgated under that section.

1 (f) A consumer lease, as defined in 15 USC 1667 (1) and in the regulations
2 promulgated under that section.

3 **435.201 Definitions.** In this chapter:

4 (1) "Department" means the department of financial institutions.

5 (2) "Lessee" means an individual who rents personal property under a
6 rent-to-own agreement.

7 (3) "Rental property" means property rented under a rent-to-own agreement.

8 (4) "Rental-purchase company" means a person who regularly provides the use
9 of property through rent-to-own agreements and to whom rental payments are
10 initially payable under the terms of a particular rent-to-own agreement.

11 (5) "Rent-to-own agreement" means an agreement between a
12 rental-purchase company and a lessee for the use of personal property if all of the
13 following conditions are met:

14 (a) The personal property is to be used primarily for personal, family or
15 household purposes.

16 (b) The agreement has an initial term of 4 months or less and is automatically
17 renewable with each payment after the initial term.

18 (c) The agreement does not obligate or require the lessee to renew the
19 agreement beyond the initial term.

20 (d) The agreement permits, but does not obligate, the lessee to acquire
21 ownership of the personal property.

REQUIREMENT; APPLICATION.

CS

22 **435.301 Registration.** (1) Every person engaging in business as a
23 rental-purchase company in this state shall file a registration statement with the
24 department within 30 days after the date on which the person commences business
25 in this state and no later than February 28 of each year thereafter. Except during

1 the first 30 days after the date on which the person commences business in this state,
2 no person may engage in business as a rental-purchase company in this state
3 without a valid unsuspended registration filed under this subsection. A registration
4 statement under this section shall include all of the following information:

5 (a) The name of the rental-purchase company.

6 (b) The name under which the rental-purchase company transacts business.

7 (c) The address of the rental-purchase company's principal office.

8 (d) The addresses of all stores or other retail locations in this state at which the
9 rental-purchase company offers rent-to-own agreements to potential lessees.

10 (e) The address of the rental-purchase company's designated agent upon whom
11 service of process may be made in this state.

12 (2) ^{RULES. ← SC ✓} The department shall promulgate rules and prescribe forms for the efficient
13 administration of this section. ^{WHEN DUE. ← SC ✓}

14 **435.302 Registration fees.** (1) Any rental-purchase company required to
15 register under s. 435.301 shall pay a registration fee to the department when the
16 rental-purchase company files the registration statement required under s.
17 435.301. ^{AMOUNT. ← SC ✓}

18 (2) The amount of the registration fee shall be \$25 per store or other retail
19 location in this state at which the rental-purchase company offers rent-to-own
20 agreements to potential lessees. However, the registration fee shall not be less than
21 \$50 nor more than \$750. ^{OF EXAMINATION → PURPOSE. ← SC ✓}

22 **435.303 Examination of books and records.** (1) The department may
23 examine the books and records of any rental-purchase company for the purpose of
24 determining compliance with this chapter.

AVAILABILITY OF BOOKS AND RECORDS. e sc ✓

1 (2) A rental-purchase company shall make its books and records reasonably
2 available for inspection by the department. If the rental-purchase company's books
3 and records are located outside of this state, the rental-purchase company shall, at
4 the rental-purchase company's option, either make the books and records available
5 to the department at a convenient location in this state or pay the reasonable and
6 necessary expenses for the department to examine the books and records at the
7 location where they are maintained. METHOD OF BOOKKEEPING. e sc ✓

8 (3) A rental-purchase company shall use generally accepted accounting
9 principles and practices in keeping its books and records so that the department may
10 determine if the rental-purchase company is in compliance with this chapter.

11 (4) DESTRUCTION OF RECORDS; WHEN AUTHORIZED. e sc ✓
A rental-purchase company shall keep records relating to each
12 rent-to-own agreement entered into by the rental-purchase company and the
13 payments made under each rent-to-own agreement for at least 2 years after the date
14 on which the rent-to-own agreement is terminated.

15 **435.304 Suspension or revocation of registration.** (1) **GROUND.** The
16 department may issue an order suspending or revoking a rental-purchase
17 company's registration if any of the following conditions is met:

18 (a) The rental-purchase company has violated any provision of this chapter,
19 the violation is not isolated or inadvertent, and the department determines that the
20 violation justifies the suspension or revocation of the registration.

21 (b) The department becomes aware that any fact or condition exists which, if
22 it had existed at the time that the rental-purchase company first filed the
23 registration statement, would have warranted the department's refusal to honor the
24 registration.

1 (c) The rental–purchase company has failed to pay the registration fee under
2 s. 435.302.

3 (2) PROCEDURE. The following procedure applies to every order of the
4 department that suspends or revokes a registration under this chapter:

5 (a) The department shall provide a written notice to the rental–purchase
6 company registered under s. 435.301 of the department’s intent to issue an order
7 suspending or revoking the rental–purchase company’s registration. The notice
8 shall specify the grounds for and the effective date of the proposed order.

9 (b) The rental–purchase company shall file with the department a written
10 response to the allegations contained in the notice within 20 days after receiving the
11 notice. The rental–purchase company’s written response may contain a request for
12 a hearing pursuant to s. 227.42. If the written response does not contain a request
13 for a hearing pursuant to s. 227.42, the right to a hearing is waived.

14 (c) If a written response containing a request for a hearing pursuant to s. 227.42
15 is received by the department within the time provided under par. (b) and if, in the
16 opinion of the department, the matter satisfies one of the conditions under s. 227.42
17 (1) (a) to (d), the matter shall be scheduled for a contested hearing to commence
18 within 60 days after the date on which the department receives the written response.

19 (d) If the rental–purchase company fails to file a written response within the
20 time provided under par. (b) or if the rental–purchase company files a timely written
21 response but fails to request a hearing pursuant to s. 227.42, the department may
22 issue an order suspending or revoking the rental–purchase company’s registration
23 under sub. (1). If the rental–purchase company files a timely written response
24 containing a request for a hearing pursuant to s. 227.42, any order of the department

1 suspending or revoking the rental-purchase company's registration shall be stayed
2 pending completion of proceedings under ch. 227.

SC -> FORM, LOCATION, SIZE AND TIME OF DISCLOSURE.

3 **435.401 General requirements of disclosure.** (1) All information required
4 under s. 435.402 shall satisfy all of the following:

5 (a) The information shall be clearly and conspicuously disclosed.

6 (b) The information shall be disclosed in writing.

7 (c) The information shall be disclosed on the face of the rent-to-own agreement
8 above the line for the lessee's signature.

9 (d) The information shall be disclosed in not less than 8-point standard type.

10 (e) The information shall be disclosed at or before the time that the lessee
11 becomes legally obligated under the rent-to-own agreement.

12 (3) ~~(1)~~ COPY OF RENT-TO-OWN AGREEMENT. ← SC
13 The rental-purchase company shall provide the lessee with a copy of the
14 completed rent-to-own agreement signed by the lessee. If more than one lessee is
15 legally obligated under the same rent-to-own agreement, delivery of a copy of the
16 completed rent-to-own agreement to one of the lessees shall satisfy this subsection.

16 (2) ACCURACY OF DISCLOSURE. ← SC
17 ~~(1)~~ All information required under s. 435.402 must be accurate as of the time
18 that it is disclosed. If any information subsequently becomes inaccurate as a result
19 of any act, occurrence or agreement by the lessee, the resulting inaccuracy is not a
20 violation of this chapter.

20 **435.402 Required provisions of rent-to-own agreement.** A
21 rental-purchase company shall include all of the following information, to the extent
22 applicable, in every rent-to-own agreement: DESCRIPTION. ← SC

23 (1) A brief description of the rental property, sufficient to identify the rental
24 property to the lessee and the rental-purchase company, including an identification
25 number, and a statement indicating whether the rental property is new or used. A

1 statement that incorrectly indicates that new rental property is used is not a
2 violation of this chapter. CASH PRICE. ← SC

3 (2) The price at which the rental-purchase company would have sold the rental
4 property to the lessee for cash on the date on which the rent-to-own agreement is
5 executed. RENTAL PAYMENT. ← SC

6 (3) The periodic rental payment for the rental property. UP-FRONT PAYMENT. SC ↓

7 (4) The payment required of the lessee at the time that the agreement is
8 executed or the rental property is delivered, whichever is later, including the initial
9 rental payment, any application or processing charge, any delivery fee, any charge
10 for a liability damage waiver or for other optional services agreed to by the lessee,
11 and the applicable tax. PAYMENT TO ACQUIRE OWNERSHIP. ← SC

12 (5) The total number, total dollar amount and due date of all rental payments
13 necessary to acquire ownership of the rental property. OTHER CHARGES. ← SC

14 (6) A statement that the total dollar amount of all rental payments necessary
15 to acquire ownership of the rental property does not include other charges that a
16 lessee may incur, such as application, processing or delivery charges, and late
17 payment, reinstatement, default and pickup fees. These charges shall be separately
18 identified in the rental-purchase agreement and the amount of each charge and fee
19 disclosed. RENTAL, NOT PURCHASE. ← SC

20 (7) A statement that the lessee will not own the rental property until the lessee
21 has made the total amount of payments necessary to acquire ownership or has
22 exercised the lessee's early-purchase option. SUMMARY OF EARLY PURCHASE SC ↓
OPTION.

23 (8) A statement summarizing the terms of the lessee's option to acquire
24 ownership of the rental property, including a statement indicating that the lessee has
25 the right to exercise an early purchase option and indicating the price, or the formula

1 or method for determining the price, at which the rental property may be purchased
2 under the early-purchase option. **RESPONSIBILITY FOR THEFT OR DAMAGE.** SC

3 (9) A statement that, unless otherwise agreed, the lessee is responsible for the
4 fair market value of the rental property, determined according to the early-purchase
5 option formula or method, if, and as of the time, the rental property is stolen,
6 damaged or destroyed while in the possession of or subject to the control of the lessee.

7 (10) **SERVICE AND WARRANTY.** ← SC
8 A statement identifying the party responsible for maintaining or servicing
9 the rental property during the term of the rent-to-own agreement, together with a
10 description of that responsibility, and a statement that if any part of a
11 manufacturer's express warranty covers the rental property when the lessee
12 acquires ownership of the rental property the manufacturer's express warranty will
13 be transferred to the lessee, if the transfer is allowed by the terms of the
14 manufacturer's express warranty. **TERMINATION AT OPTION OF LESSEE.** SC

14 (11) A statement that the lessee may terminate the agreement at any time
15 without penalty by voluntarily surrendering or returning the rental property in good
16 repair along with any past-due rental payments, fees and charges.

17 (12) **RIGHT TO REINSTATE.** ← SC
18 A brief explanation of the lessee's right to reinstate a rent-to-own
19 agreement under s. 435.405. **GENERAL NOTICE.** ← SC

19 (13) A notice reading substantially as follows: "You are renting this property.
20 You will not own the property until you make all of the regularly scheduled rental
21 payments necessary to acquire ownership or until you exercise your early-purchase
22 option. If you do not make your rental payments as scheduled or exercise your
23 early-purchase option, the lessor may repossess the property."

INFORMATION ABOUT RENTAL-PURCHASE COMPANY AND LESSEE.

1 (14) The names of the rental-purchase company and the lessee, the
2 rental-purchase company's business address and telephone number, the lessee's
3 address and the date on which the rent-to-own agreement is executed.

4 **435.403 Prohibited provisions of rent-to-own agreement.** A
5 rent-to-own agreement may not contain any of the following:

6 (1) A confession of judgment.

CONFESSION. ← SC

7 (2) A provision granting the rental-purchase company a security interest in
8 any property except rental property delivered by the rental-purchase company
9 pursuant to the rent-to-own agreement.

SECURITY. ← SC

REPOSSESSION. ← SC

10 (3) A provision authorizing a rental-purchase company or an agent of the
11 rental-purchase company to enter the lessee's premises or to commit a breach of the
12 peace in the repossession of rental property delivered by the rental-purchase
13 company pursuant to the rent-to-own agreement.

WAIVER. ← SC

14 (4) A waiver of a defense or counterclaim or a waiver of any right to assert any
15 claim that the lessee may have against the rental-purchase company or an agent of
16 the rental-purchase company.

OVERPAYMENT. ← SC

OR a waiver of any provision of this chapter

17 (5) A provision requiring rental payments totaling more than the total dollar
18 amount of all rental payments necessary to acquire ownership, as disclosed in the
19 rental-purchase agreement.

INSURANCE.

20 (6) A provision requiring the purchase of insurance from the rental-purchase
21 company to cover the rental property.

22 ~~(7) A waiver of any provision of this chapter~~

LATE FEE, GENERALLY

23 **435.404 Late payment, grace period and late fees.** (1) If a lessee fails to
24 make any payment when due under a rent-to-own agreement or if, at the end of any
25 rental term, the lessee fails to return the rental property or to renew the rent-to-own

1 agreement for an additional term, the rental-purchase company may require the
2 lessee to pay a late fee. However, except as provided under sub. (4), this subsection
3 does not apply if the lessee's failure to return rental property or failure to renew the
4 rent-to-own agreement at the end of the rental term is due to the lessee's exercise
5 of an early-purchase option under the rent-to-own agreement or due to the lessee's
6 making all payments necessary to acquire ownership of the rental property.

7 (2) ^{GRACE PERIODS. ← SC} The following grace periods shall apply to rental payments made with
8 respect to a rental-purchase agreement:

9 (a) For an agreement that is renewed on a weekly basis, no late fee may be
10 assessed for a payment that is made within 2 days after the date on which the
11 scheduled payment is due.

12 (b) For an agreement that is renewed for a term that is longer than one week,
13 no late fee may be assessed for a payment that is made within 5 days after the date
14 on which the scheduled payment is due. ^{SC} COLLECTION, RECORDING AND LIMITATION OF LATE FEES.

15 (3) Late fees are subject to all of the following limitations:

16 (a) A late fee may not exceed \$5 for each past-due rental payment.

17 (b) A late fee may be collected only once on each rental payment due, regardless
18 of how long the payment remains past due.

19 (c) Payments received shall be applied first to the payment of any rent that is
20 due and then to late fees and any other charges.

21 (d) A late fee may be collected at the time that the late fee accrues or at any time
22 afterward. ^{SC} EFFECT OF OUTSTANDING LATE FEE ON TRANSFER OF OWNERSHIP.

23 (4) A rental-purchase company may require payment of any outstanding late
24 fees before transferring ownership of rental property to a lessee.

REINSTATEMENT, GENERALLY.

1

435.405 Reinstatement of terminated rent-to-own agreement. (1) A

2 lessee shall have the right to reinstate a terminated rent-to-own agreement without
3 losing any rights or options previously acquired if all of the following conditions
4 apply:

5 (a) The lessee returned or surrendered the rental property within 5 days after
6 the termination of the agreement.

7 (b) Not more than 21 days have passed after the date that the rental property
8 was returned to the rental-purchase company or, if the lessee has paid two-thirds
9 or more of the total of rental payments necessary to acquire ownership of the rental
10 property, not more than 45 days have passed since the date that the rental property
11 was returned to the rental-purchase company.

AUTHORIZED CONDITIONS ON REINSTATEMENT.

12

(2) As a condition of reinstatement under this section, the rental-purchase
13 company may require the payment of all past-due rental charges, any applicable late
14 fees, a reinstatement fee not to exceed \$5, and the rental payment for an additional
15 term.

EFFECT OF REPOSSESSION ON REINSTATEMENT.

16

(3) Nothing in this section shall prevent a rental-purchase company from
17 attempting to repossess rental property upon termination of a rent-to-own
18 agreement, but such efforts shall not affect the lessee's right to reinstate as long as
19 the rental property is voluntarily returned or surrendered within 5 days after the
20 termination of the rent-to-own agreement.

PROPERTY AVAILABLE UPON REINSTATEMENT.

21

(4) Upon reinstatement, the rental-purchase company shall provide the lessee
22 with the same rental property, if the property is available and is in the same condition
23 as when it was returned to the rental-purchase company, or with substitute property
24 of comparable quality and condition.

1 **435.406 Liability waiver.** A rental-purchase company may offer a liability
2 waiver to the lessee. The terms of the waiver must be provided to the lessee in writing
3 and the face of the writing must clearly disclose that the lessee is not required to
4 purchase the waiver. The fee for the waiver may not exceed 10% of the periodic rental
5 payment.

6 **435.407 Early-purchase option.** A rental-purchase company shall offer an
7 early-purchase option to every lessee who enters into a rent-to-own agreement with
8 the rental-purchase company. The early-purchase option shall permit the lessee to
9 purchase the rental property for cash at any time after the initial payment. As a
10 condition of exercising the early-purchase option, the rental-purchase company
11 may require the lessee to be current on the lessee's rent-to-own agreement or to pay
12 any past-due rental charges and other outstanding fees that are owed.

13 **435.408 Referral transactions.** (1) No rental-purchase company may
14 induce any individual to enter into a rent-to-own agreement by giving or offering
15 to give a rebate or discount to the individual in consideration of the individual's
16 giving to the rental-purchase company the names of prospective lessees if the
17 earning of the rebate or discount is contingent upon the occurrence of any event that
18 takes place after the time that the individual enters into the rent-to-own agreement.

19 (2) ~~A rental-purchase company may give or offer to give a rebate or discount~~
20 to a lessee who rents personal property from the rental-purchase company in
21 consideration of the lessee's giving to the rental-purchase company the names of
22 prospective lessees. A rebate or discount under this subsection may be contingent
23 upon the occurrence of any event that takes place after the time that the names are
24 given to the rental-purchase company.

PROHIBITED
REFERRAL TRANSACTIONS.

AUTHORIZED REFERRAL TRANSACTIONS, SC

RECEIPTS DUE UPON REQUEST. ← SC

1 **435.409 Receipts and statements.** (1) Upon the request of a lessee, a
2 rental-purchase company shall provide a written receipt to the lessee for any
3 payment made by the lessee. STATEMENT DUE UPON REQUEST. ← SC

4 (2) Upon the request of a lessee, a rental-purchase company shall provide a
5 written statement to the lessee showing the lessee's payment history on each
6 rent-to-own agreement between the lessee and the rental-purchase company. A
7 rental-purchase company is not required to provide a statement covering any
8 rent-to-own agreement that was terminated or completed more than one year prior
9 to the date of the lessee's request. A rental-purchase company may provide a single
10 statement covering all rent-to-own agreements or separate statements for each
11 rent-to-own agreement, at the rental-purchase company's option. PRICE CARDS, GENERALLY. SC

12 **435.501 Price cards displayed.** (1) A card or tag that clearly and
13 conspicuously states all of the following shall be displayed on or next to any property
14 displayed or offered by a rental-purchase company for rent under a rent-to-own
15 agreement:

16 (a) The price of the property if purchased in cash.

17 (b) The amount of the periodic rental payment and the term over which the
18 payment must be made.

19 (c) The total number and total amount of rental payments that must be paid
20 in order to acquire ownership of the property under a rent-to-own agreement.

21 (d) Whether the property is new or used. EXCEPTIONS.

22 (2) If property is offered for rent under a rent-to-own agreement through a
23 catalog or if the size of the property is such that displaying a card or tag on or next
24 to the property would be impractical, a rental-purchase company may make the

1 disclosures required by this section in a catalog or list, if the catalog or list is readily
2 available to prospective lessees. DISCLOSURE REQUIRED. ← SC

3 **435.502 Advertising.** (1) Except as provided under sub. (2) if an
4 advertisement for a rent-to-own agreement refers to or states the amount of a
5 payment for any property and the right to acquire ownership of that property, the
6 advertisement shall also clearly and conspicuously state all of the following:

- 7 (a) That the transaction advertised is a rent-to-own agreement.
- 8 (b) The total number and total dollar amount of rental payments that must be
9 paid to acquire ownership.
- 10 (c) That the lessee does not acquire ownership of the property if the total dollar

11 amount of payments necessary to acquire ownership is not paid.

12 (3) ADVERTISER NOT LIABLE. ← SC An owner or agent of the medium in which an advertisement for a
13 rent-to-own agreement appears or through which an advertisement for a
14 rent-to-own agreement is disseminated shall not be liable for any violation of sub.

15 (1). EXCEPTION.

16 (2) Subsection (1) does not apply to any in-store display or any advertisement
17 that is published in the yellow pages of a telephone directory or in any similar
18 directory of businesses. DEFAULT; GENERALLY. ← SC

19 **435.601 Default and right to cure.** (1) A lessee is in default under a
20 rent-to-own agreement if any of the following applies:

- 21 (a) The lessee fails to return rental property within 7 days after the date that
- 22 the last rental term for which a rental payment was made expires, unless the lessee
- 23 has exercised an early-purchase option or has made all payments necessary to
- 24 acquire ownership of the rental property.

1 (b) The lessee materially breaches any other provision of the rent-to-own
2 agreement.

DEFAULT, NECESSARY FOR LESSEE LIABILITY. SC

3 (2) No cause of action shall accrue against a lessee with respect to the lessee's
4 obligations under a rent-to-own agreement except by reason of a default.

NOTICE OF DEFAULT; GENERAL REQUIREMENT. SC

5 (3) As a condition precedent to bringing an action against a lessee arising out
6 of the lessee's default, a rental-purchase company shall provide a written notice of
7 the default and of the right to cure the default to the lessee. The notice shall specify
8 the default and the action required to cure the default and shall inform the lessee
9 that if the default is not cured within 15 days after the notice is given the
10 rental-purchase company will have the right to bring an action against the lessee.

NOTICE OF DEFAULT; EXCEPTION.

11 (4) Notwithstanding sub. (3), a rental-purchase company is not required to
12 provide a notice of default and right to cure as a condition precedent to bringing an
13 action against a lessee if each of the following occurred twice during the 12 months
14 before the date of the current default with respect to the same rent-to-own
15 agreement:

16 (a) The lessee was in default.

17 (b) The rental-purchase company gave the lessee written notice of the default
18 and of the lessee's right to cure under sub. (3).

19 (c) The lessee cured the default.

REQUEST FOR VOLUNTARY SURRENDER.

20 (5) A rental-purchase company may request the voluntary return or surrender
21 of rental property prior to the declaration of a default and the sending of written
22 notice of default and right to cure. A request under this subsection is subject to the
23 requirements of s. 435.602.

OF PROPERTY

24 **435.602 Rental-purchase company collection practices.** In attempting
25 to recover possession of rental property or to collect past-due rental payments or

1 other charges owed under a rent-to-own agreement, a rental-purchase company
2 may not do any of the following: USE OF FORCE. ← SC

3 (1) Use or threaten to use force or violence to cause physical harm to the lessee
4 or the lessee's dependents or property. CRIMINAL PROSECUTION. ← SC

5 (2) Threaten criminal prosecution, unless the rental-purchase company
6 reasonably believes, in good faith, that the lessee has violated a law of this state and,
7 as a result of the violation, is subject to penalties including a fine or imprisonment
8 or both and the rental-purchase company intends to seek the ^{FALSE} filing of criminal
9 charges against the lessee. DISCLOSURE OF INFORMATION. ← SC

10 (3) Disclose or threaten to disclose information adversely affecting the lessee's
11 reputation for credit worthiness with knowledge or reason to know that the
12 information is false. COMMUNICATION WITH LESSEE'S EMPLOYER. ← SC

13 (4) Initiate or threaten to initiate communication with the lessee's employer
14 prior to obtaining final judgment against the lessee, except as permitted by statute,
15 including specifically s. 422.404. This subsection does not prohibit a
16 rental-purchase company from communicating with a lessee's employer solely to
17 verify employment status or earnings or to determine if the employer has an
18 established debt counseling service or procedure. DISCLOSURE OF INFORMATION REGARDING
A DISPUTED DEBT. ← SC

19 (5) Disclose or threaten to disclose information concerning the existence of a
20 debt known to be reasonably disputed by the lessee without disclosing the fact that
21 the lessee disputes the debt. HARASSMENT. ← SC

22 (6) Communicate with the lessee or a person related to the lessee with such
23 frequency or at such unusual hours or in such a manner as can reasonably be
24 expected to threaten or harass the lessee. WDO: [Combine with next page]

or engage

- 1 ~~engage~~ in any other conduct which can reasonably be expected to threaten
- 2 or harass the lessee or a person related to the lessee. USE OF OBSCENE OR THREATENING LANGUAGE. ← SC
- 3 ~~Use~~ obscene or threatening language in communicating with the lessee or
- 4 a person related to the lessee. USE OF THREAT TO ENFORCE FALSE RIGHT. ← SC
- 5 ~~Threaten to enforce~~ a right with knowledge that the right does not exist. USE OF FALSE PROCESS. ← SC
- 6 ~~Use~~ a communication which simulates legal or judicial process or which
- 7 gives the appearance of being authorized, issued or approved by a government,
- 8 government agency or attorney-at-law when it is not. USE OF THREAT TO SUE. ← SC
- 9 ~~Threaten to file~~ a civil action against the lessee unless such action is taken
- 10 in the regular course of business or is intended with respect to the lessee in question.

435.701 Civil actions and defenses. (1) LIABILITY, GENERALLY. ← SC Except as provided under sub. (2),

a a rental-purchase company that violates any provision of this chapter is liable to a lessee damaged as a result of that violation for the costs of the action and for reasonable attorney fees as determined by the court, plus an amount equal to the greater of the following:

(a) The actual damages, including any incidental and consequential damages, sustained by the lessee as a result of the violation.

(b) An amount equal to 25% of the total amount of payments due in one month under the lessee's rent-to-own agreement, except that liability under this paragraph may not be less than \$100 nor more than \$1,000.

(2) LIABILITY, CERTAIN VIOLATIONS. ← SC If a rent-to-own agreement violates s. 435.403, the lessee shall be entitled to retain the rental property without obligation to pay any amount and to recover any sums paid to the rental-purchase company pursuant to the transaction.

(3) CLASS ACTION. ← SC In the case of a class action, a rental-purchase company that violates this chapter is liable to the members of the class in an amount determined by the court,

1 except that the total recovery for all lessees whose recovery is computed pursuant to
2 sub. (1) (b) may not exceed \$100,000 plus the costs of the action and reasonable
3 attorney fees as determined by the court. In determining the amount to award under
4 this subsection, the court shall consider, among other relevant factors, the amount
5 of actual damages sustained by members of the class, the frequency and persistence
6 of violations by the rental-purchase company, the resources of the rental-purchase
7 company, the number of persons damaged by the violation, the presence or absence
8 of good faith on the part of the rental-purchase company, and the extent to which the
9 violation was intentional. DEFENSE; ERROR NOTIFICATION AND CORRECTION. ← SC

10 (4) A rental-purchase company is not liable for a violation of this chapter
11 resulting from an error by the rental-purchase company if, within 60 days after
12 discovering the error, the rental-purchase company notifies the lessee of the error
13 and makes any adjustments necessary to correct the error. DEFENSE; UNINTENTIONAL ERROR. SC ↓

14 (5) A rental-purchase company is not liable for a violation of this chapter if the
15 rental-purchase company shows by a preponderance of the evidence that the
16 violation was not intentional, that the violation resulted from a bona fide error
17 notwithstanding the maintenance of procedures reasonably adapted to avoid these
18 errors and that the rental-purchase company has acted to correct the error. A bona
19 fide error under this subsection includes a clerical error, an error in making
20 calculations, an error due to computer malfunction or computer programming, or a
21 printing error. NECESSARY PARTIES. ← SC

22 (6) If more than one lessee is a party to the same rent-to-own agreement, all
23 of the lessees that are parties to the rent-to-own agreement shall be joined as
24 plaintiffs in any action under sub. (1) and the lessees are entitled to only a single
25 recovery under sub. (1).

LIABILITY FOR MULTIPLE VIOLATIONS.

SC
↓

1 (7) Multiple violations of this chapter in connection with the same rent-to-own
2 agreement shall only entitle the lessee to a single recovery under sub. (1), except that
3 a violation of s. 435.602 that occurs after recovery has been granted with respect to
4 that rent-to-own agreement may entitle the lessee to an additional recovery under
5 sub. (1).

6 **435.702 Limitation on actions.** An action brought by a lessee under this
7 chapter shall be commenced within one year after the date on which the alleged
8 violation occurred, 2 years after the date on which the rent-to-own agreement was
9 entered into, or one year after the date on which the last payment was made under
10 the rent-to-own agreement, whichever is later."

INSERT 3-16 ✓

~~SECTION 8 Non-statutory provisions.~~

11
12 ~~3~~ ~~22~~ SUBMISSION OF PROPOSED RULES GOVERNING REGISTRATION OF RENTAL-PURCHASE
13 COMPANIES. No later than the first day of the 3rd month beginning after publication,
14 the department of financial institutions shall submit in proposed form the rules
15 governing registration of rental-purchase companies under section 435.301 of the
16 statutes, as created by this act, to the legislative council staff under section 227.15
17 (1) of the statutes."

~~SECTION 9 Initial applicability.~~

INSERT 3-17 ✓

18
19 ~~22~~ RENT-TO-OWN AGREEMENTS. The treatment of sections 409.104 (12m),
20 421.202 (7m), 421.301 (9), (10) and (11) 423.201, 435.102 to 435.201, 435.303 and
21 435.401 to 435.702 of the statutes first applies to rent-to-own agreements entered
22 into on the effective date of this subsection.

23 ~~22U~~ REGISTRATION OF RENTAL-PURCHASE COMPANIES. The treatment of sections
24 435.301, 435.302 and 435.304 of the statutes first applies to any person engaging in
25 business as a rental-purchase company on the effective date of this subsection."

INSERT 3-18

22t

22u

1

~~SECTION 10. Effective dates. This act takes effect on the day after publication,~~

2

~~except as follows:~~

RENT-TO-OWN AGREEMENTS

ESC

9319 (a) and (b)

3

The treatment of sections 409.104 (12m), 421.202 (7m), 421.301 (9), (10) and

4

(11) and 423.201 and chapter 435 of the statutes and SECTION ~~10~~ of this act

5

take effect on the first day of the 6th month beginning after publication.

6

(END)

22

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0731/dn 1

RJM: King

Matt Tompach:

✓ 1. Attached is the amendment that you requested governing rent-to-own agreements. The motion that I was provided did not contain enough specific information to allow me to draft this request. With your permission, I contacted Rep. Urban's office, which directed me to the lobbyist for the Wisconsin Rental Dealer's Association, Inc. I have based this amendment on a draft provided to me by this lobbyist, with certain modifications. Please review the amendment carefully and contact me with any questions or suggested changes.

✓ 2. The effect of this draft is to treat rent-to-own agreements as unique agreements that are not subject to the Wisconsin consumer act. In order to avoid confusion, I have placed the draft in a new ch. 435 rather than create ch. 430. Please let me know if this placement is not consistent with your intent.

✓ 3. Please review the treatment of proposed s. 435.102 (2) (a). In my opinion, this treatment accomplishes the same result as the language that was submitted by the lobbyist; however, the current treatment is easier to understand.

✓ 4. The language that was submitted by the lobbyist excluded automobile leases from this new chapter. I assume that the intent was to exclude all motor vehicle leases rather than just automobile leases. See proposed s. 435.102 (2) (d). Please let me know if I was incorrect in this assumption.

✓ 5. The language submitted by the lobbyist defined and referred to the terms "merchant" and "consumer". Because the terms "merchant" and "consumer" are currently defined terms in the Wisconsin consumer act, this draft uses the terms "rental-purchase company" and "lessee". Although this chapter is not part of the Wisconsin consumer act, the use of identical terms may otherwise lead to confusion. Please let me know if you do not agree.

6. ~~The~~ registration procedure contained in the language submitted by the lobbyist allows a rental-purchase company to conduct business in Wisconsin for 30 days before registering with the department of financial institutions. See proposed s. 435.301. I have not changed this registration procedure, although the 30-day grace period may make the registration requirement difficult to enforce. It is more typical to require registration before a company is allowed to conduct business. This draft does clarify that, other than during this 30-day grace period, a rental-purchase company must be

The motion indicates that rental-purchase companies will be licensed by the department of financial institutions. However, the language submitted by the lobbyist establishes a registration, rather than a licensing requirement. In addition, the

registered in order to conduct business in this state. Please let me know if you intend any changes to this procedure.

7. The submitted language was unclear regarding the method for obtaining a hearing on a proposed suspension or revocation. It was unclear whether the intent was to require a hearing under s. 227.42 or 227.43. This draft requires a hearing under s. 227.42, if the hearing is properly requested. Please review proposed s. 435.304 (2) and let me know if you intend something different.

8. In proposed s. 435.304 (2) (d), any order of suspension or revocation is stayed pending determination of the rental-purchase company's appeal. This provision was not specified in the submitted language. Please call if this provision is not consistent with your intent.

9. I clarified the notice required under proposed s. 435.402 (13). Please review this provision to ensure that it is consistent with your intent. In addition, the language submitted by the lobbyist included a statement that "your rights and responsibilities are fully explained in this agreement". I eliminated this statement from the notice because it is possible that a particular agreement would not fully explain a person's rights and responsibilities. Again, let me know if you disapprove.

10. I clarified in proposed s. 435.404 (1) that a late fee does not apply if the customer purchases the rental property or makes all payments necessary to acquire ownership of the rental property. See also proposed s. 435.601 (1) (a), regarding default. The language submitted by the lobbyist was ambiguous on this issue and I assume this treatment is consistent with your intent. Let me know if you desire any changes.

11. This draft includes a delay of six months before the substantive provisions become effective, in order to allow the department of financial institutions time to promulgate rules governing the registration of rental-purchase companies. An eight-month or twelve-month delay would be more feasible. The language submitted by the lobbyist allowed only a two-month delay. Please let me know if you intend any changes.

12. Please let me know if you desire a specific penalty to apply for rental-purchase companies that engage in business without a valid registration. Without a specific provision, this violation is subject to a forfeiture of up to \$200 under s. 939.61, stats.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb0731/1dn
RJM:kmg:mrc

June 22, 1999

Matt Tompach:

1. Attached is the amendment that you requested governing rent-to-own agreements. The motion that I was provided did not contain enough specific information to allow me to draft this request. With your permission, I contacted Rep. Urban's office, which directed me to the lobbyist for the Wisconsin Rental Dealer's Association, Inc. I have based this amendment on a draft provided to me by this lobbyist, with certain modifications. Please review the amendment carefully and contact me with any questions or suggested changes.

2. The effect of this draft is to treat rent-to-own agreements as unique agreements that are not subject to the Wisconsin Consumer Act. In order to avoid confusion, I have placed the draft in a new ch. 435 rather than create ch. 430. Please let me know if this placement is not consistent with your intent.

3. Please review the treatment of proposed s. 435.102 (2) (a). In my opinion, this treatment accomplishes the same result as the language that was submitted by the lobbyist; however, the current treatment is easier to understand.

4. The language that was submitted by the lobbyist excluded automobile leases from this new chapter. I assume that the intent was to exclude all motor vehicle leases rather than just automobile leases. See proposed s. 435.102 (2) (d). Please let me know if I was incorrect in this assumption.

5. The language submitted by the lobbyist defined and referred to the terms "merchant" and "consumer". Because the terms "merchant" and "consumer" are currently defined terms in the Wisconsin Consumer Act, this draft uses the terms "rental-purchase company" and "lessee". Although this chapter is not part of the Wisconsin Consumer Act, the use of identical terms may otherwise lead to confusion. Please let me know if you do not agree.

6. The motion indicates that rental-purchase companies will be licensed by the department of financial institutions. However, the language submitted by the lobbyist establishes a registration, rather than a licensing, requirement. In addition, the registration procedure contained in the language submitted by the lobbyist allows a rental-purchase company to conduct business in Wisconsin for 30 days before registering with the department of financial institutions. See proposed s. 435.301. I have not changed this registration procedure, although the 30-day grace period may

make the registration requirement difficult to enforce. It is more typical to require registration before a company is allowed to conduct business. This draft does clarify that, other than during this 30-day grace period, a rental-purchase company must be registered in order to conduct business in this state. Please let me know if you intend any changes to this procedure.

7. The submitted language was unclear regarding the method for obtaining a hearing on a proposed suspension or revocation. It was unclear whether the intent was to require a hearing under s. 227.42 or 227.43. This draft requires a hearing under s. 227.42, if the hearing is properly requested. Please review proposed s. 435.304 (2) and let me know if you intend something different.

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12. Please let me know if you desire a specific penalty to apply for rental-purchase companies that engage in business without a valid registration. Without a specific provision, this violation is subject to a forfeiture of up to \$200 under s. 939.61, stats.

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0731/1
RJM:kmg:mrc

ARC:.....Tompach – AM # 65, Rent-to-own agreements

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1359, line 21: after that line insert:

3 **"SECTION 2818r.** 409.104 (12m) of the statutes is created to read:

4 409.104 (12m) To a transfer of an interest under a rent-to-own agreement

5 under ch. 435; or".

6 **2.** Page 1362, line 23: after that line insert:

7 **"SECTION 2822no.** 421.202 (7m) of the statutes is created to read:

8 421.202 (7m) A rent-to-own agreement under ch. 435;

9 **SECTION 2822nt.** 421.301 (9) of the statutes is amended to read:

1 421.301 (9) “Consumer credit sale” means a sale of goods, services or an
2 interest in land to a customer on credit where the debt is payable in instalments or
3 a finance charge is imposed and includes any agreement in the form of a bailment
4 of goods or lease of goods or real property if the bailee or lessee pays or agrees to pay
5 as compensation for use a sum substantially equivalent to or in excess of the
6 aggregate value of the goods or real property involved and it is agreed that the bailee
7 or lessee will become, or for no other or a nominal consideration has the option to
8 become, the owner of the goods or real property upon full compliance with the terms
9 of the agreement. “Consumer credit sale” does not include a rent-to-own agreement
10 under ch. 435.

11 **SECTION 2822nu.** 421.301 (10) of the statutes is amended to read:

12 421.301 (10) “Consumer credit transaction” means a consumer transaction
13 between a merchant and a customer in which real or personal property, services or
14 money is acquired on credit and the customer’s obligation is payable in instalments
15 or for which credit a finance charge is or may be imposed, whether such transaction
16 is pursuant to an open-end credit plan or is a transaction involving other than
17 open-end credit. The term includes consumer credit sales, consumer loans,
18 consumer leases and transactions pursuant to open-end credit plans. “Consumer
19 credit transaction” does not include a rent-to-own agreement under ch. 435.

20 **SECTION 2822nv.** 421.301 (11) of the statutes is amended to read:

21 421.301 (11) “Consumer lease” means a lease of goods which a merchant makes
22 to a customer for a term exceeding 4 months. “Consumer lease” does not include a
23 rent-to-own agreement under ch. 435.”.

24 **3.** Page 1363, line 15: after that line insert:

1 (c) A lease or bailment of personal property which is incidental to the lease of
2 real property.

3 (d) A lease of a motor vehicle, as defined in s. 218.01 (1) (m).

4 (e) A credit sale, as defined in 15 USC 1602 (g) and in the regulations
5 promulgated under that section.

6 (f) A consumer lease, as defined in 15 USC 1667 (1) and in the regulations
7 promulgated under that section.

8 **435.201 Definitions.** In this chapter:

9 (1) “Department” means the department of financial institutions.

10 (2) “Lessee” means an individual who rents personal property under a
11 rent-to-own agreement.

12 (3) “Rental property” means property rented under a rent-to-own agreement.

13 (4) “Rental-purchase company” means a person who regularly provides the use
14 of property through rent-to-own agreements and to whom rental payments are
15 initially payable under the terms of a particular rent-to-own agreement.

16 (5) “Rent-to-own agreement” means an agreement between a
17 rental-purchase company and a lessee for the use of personal property if all of the
18 following conditions are met:

19 (a) The personal property is to be used primarily for personal, family or
20 household purposes.

21 (b) The agreement has an initial term of 4 months or less and is automatically
22 renewable with each payment after the initial term.

23 (c) The agreement does not obligate or require the lessee to renew the
24 agreement beyond the initial term.

1 (d) The agreement permits, but does not obligate, the lessee to acquire
2 ownership of the personal property.

3 **435.301 Registration. (1) REQUIREMENT; APPLICATION.** Every person engaging
4 in business as a rental–purchase company in this state shall file a registration
5 statement with the department within 30 days after the date on which the person
6 commences business in this state and no later than February 28 of each year
7 thereafter. Except during the first 30 days after the date on which the person
8 commences business in this state, no person may engage in business as a
9 rental–purchase company in this state without a valid unsuspended registration
10 filed under this subsection. A registration statement under this section shall include
11 all of the following information:

12 (a) The name of the rental–purchase company.

13 (b) The name under which the rental–purchase company transacts business.

14 (c) The address of the rental–purchase company's principal office.

15 (d) The addresses of all stores or other retail locations in this state at which the
16 rental–purchase company offers rent–to–own agreements to potential lessees.

17 (e) The address of the rental–purchase company's designated agent upon whom
18 service of process may be made in this state.

19 (2) RULES. The department shall promulgate rules and prescribe forms for the
20 efficient administration of this section.

21 **435.302 Registration fees. (1) WHEN DUE.** Any rental–purchase company
22 required to register under s. 435.301 shall pay a registration fee to the department
23 when the rental–purchase company files the registration statement required under
24 s. 435.301.

1 (2) AMOUNT. The amount of the registration fee shall be \$25 per store or other
2 retail location in this state at which the rental–purchase company offers
3 rent–to–own agreements to potential lessees. However, the registration fee shall not
4 be less than \$50 nor more than \$750.

5 **435.303 Examination of books and records. (1) PURPOSE OF EXAMINATION.**
6 The department may examine the books and records of any rental–purchase
7 company for the purpose of determining compliance with this chapter.

8 (2) AVAILABILITY OF BOOKS AND RECORDS. A rental–purchase company shall make
9 its books and records reasonably available for inspection by the department. If the
10 rental–purchase company’s books and records are located outside of this state, the
11 rental–purchase company shall, at the rental–purchase company’s option, either
12 make the books and records available to the department at a convenient location in
13 this state or pay the reasonable and necessary expenses for the department to
14 examine the books and records at the location where they are maintained.

15 (3) METHOD OF BOOKKEEPING. A rental–purchase company shall use generally
16 accepted accounting principles and practices in keeping its books and records so that
17 the department may determine if the rental–purchase company is in compliance
18 with this chapter.

19 (4) DESTRUCTION OF RECORDS; WHEN AUTHORIZED. A rental–purchase company
20 shall keep records relating to each rent–to–own agreement entered into by the
21 rental–purchase company and the payments made under each rent–to–own
22 agreement for at least 2 years after the date on which the rent–to–own agreement
23 is terminated.

1 **435.304 Suspension or revocation of registration.** (1) **GROUND**S. The
2 department may issue an order suspending or revoking a rental–purchase
3 company’s registration if any of the following conditions is met:

4 (a) The rental–purchase company has violated any provision of this chapter,
5 the violation is not isolated or inadvertent, and the department determines that the
6 violation justifies the suspension or revocation of the registration.

7 (b) The department becomes aware that any fact or condition exists which, if
8 it had existed at the time that the rental–purchase company first filed the
9 registration statement, would have warranted the department’s refusal to honor the
10 registration.

11 (c) The rental–purchase company has failed to pay the registration fee under
12 s. 435.302.

13 **(2) PROCEDURE.** The following procedure applies to every order of the
14 department that suspends or revokes a registration under this chapter:

15 (a) The department shall provide a written notice to the rental–purchase
16 company registered under s. 435.301 of the department’s intent to issue an order
17 suspending or revoking the rental–purchase company’s registration. The notice
18 shall specify the grounds for and the effective date of the proposed order.

19 (b) The rental–purchase company shall file with the department a written
20 response to the allegations contained in the notice within 20 days after receiving the
21 notice. The rental–purchase company’s written response may contain a request for
22 a hearing pursuant to s. 227.42. If the written response does not contain a request
23 for a hearing pursuant to s. 227.42, the right to a hearing is waived.

24 (c) If a written response containing a request for a hearing pursuant to s. 227.42
25 is received by the department within the time provided under par. (b) and if, in the

1 opinion of the department, the matter satisfies one of the conditions under s. 227.42
2 (1) (a) to (d), the matter shall be scheduled for a contested hearing to commence
3 within 60 days after the date on which the department receives the written response.

4 (d) If the rental–purchase company fails to file a written response within the
5 time provided under par. (b) or if the rental–purchase company files a timely written
6 response but fails to request a hearing pursuant to s. 227.42, the department may
7 issue an order suspending or revoking the rental–purchase company’s registration
8 under sub. (1). If the rental–purchase company files a timely written response
9 containing a request for a hearing pursuant to s. 227.42, any order of the department
10 suspending or revoking the rental–purchase company’s registration shall be stayed
11 pending completion of proceedings under ch. 227.

12 **435.401 General requirements of disclosure.** (1) FORM, LOCATION, SIZE AND
13 TIME OF DISCLOSURE. All information required under s. 435.402 shall satisfy all of the
14 following:

15 (a) The information shall be clearly and conspicuously disclosed.

16 (b) The information shall be disclosed in writing.

17 (c) The information shall be disclosed on the face of the rent–to–own agreement
18 above the line for the lessee’s signature.

19 (d) The information shall be disclosed in not less than 8–point standard type.

20 (e) The information shall be disclosed at or before the time that the lessee
21 becomes legally obligated under the rent–to–own agreement.

22 (2) ACCURACY OF DISCLOSURE. All information required under s. 435.402 must
23 be accurate as of the time that it is disclosed. If any information subsequently
24 becomes inaccurate as a result of any act, occurrence or agreement by the lessee, the
25 resulting inaccuracy is not a violation of this chapter.

1 **(3) COPY OF RENT-TO-OWN AGREEMENT.** The rental-purchase company shall
2 provide the lessee with a copy of the completed rent-to-own agreement signed by the
3 lessee. If more than one lessee is legally obligated under the same rent-to-own
4 agreement, delivery of a copy of the completed rent-to-own agreement to one of the
5 lessees shall satisfy this subsection.

6 **435.402 Required provisions of rent-to-own agreement.** A
7 rental-purchase company shall include all of the following information, to the extent
8 applicable, in every rent-to-own agreement:

9 **(1) DESCRIPTION.** A brief description of the rental property, sufficient to identify
10 the rental property to the lessee and the rental-purchase company, including an
11 identification number, and a statement indicating whether the rental property is
12 new or used. A statement that incorrectly indicates that new rental property is used
13 is not a violation of this chapter.

14 **(2) CASH PRICE.** The price at which the rental-purchase company would have
15 sold the rental property to the lessee for cash on the date on which the rent-to-own
16 agreement is executed.

17 **(3) RENTAL PAYMENT.** The periodic rental payment for the rental property.

18 **(4) UP-FRONT PAYMENT.** The payment required of the lessee at the time that the
19 agreement is executed or the rental property is delivered, whichever is later,
20 including the initial rental payment, any application or processing charge, any
21 delivery fee, any charge for a liability damage waiver or for other optional services
22 agreed to by the lessee, and the applicable tax.

23 **(5) PAYMENT TO ACQUIRE OWNERSHIP.** The total number, total dollar amount and
24 due date of all rental payments necessary to acquire ownership of the rental property.

1 **(6) OTHER CHARGES.** A statement that the total dollar amount of all rental
2 payments necessary to acquire ownership of the rental property does not include
3 other charges that a lessee may incur, such as application, processing or delivery
4 charges, and late payment, reinstatement, default and pickup fees. These charges
5 shall be separately identified in the rental–purchase agreement and the amount of
6 each charge and fee disclosed.

7 **(7) RENTAL, NOT PURCHASE.** A statement that the lessee will not own the rental
8 property until the lessee has made the total amount of payments necessary to acquire
9 ownership or has exercised the lessee’s early–purchase option.

10 **(8) SUMMARY OF EARLY–PURCHASE OPTION.** A statement summarizing the terms
11 of the lessee’s option to acquire ownership of the rental property, including a
12 statement indicating that the lessee has the right to exercise an early purchase
13 option and indicating the price, or the formula or method for determining the price,
14 at which the rental property may be purchased under the early–purchase option.

15 **(9) RESPONSIBILITY FOR THEFT OR DAMAGE.** A statement that, unless otherwise
16 agreed, the lessee is responsible for the fair market value of the rental property,
17 determined according to the early–purchase option formula or method, if, and as of
18 the time, the rental property is stolen, damaged or destroyed while in the possession
19 of or subject to the control of the lessee.

20 **(10) SERVICE AND WARRANTY.** A statement identifying the party responsible for
21 maintaining or servicing the rental property during the term of the rent–to–own
22 agreement, together with a description of that responsibility, and a statement that
23 if any part of a manufacturer’s express warranty covers the rental property when the
24 lessee acquires ownership of the rental property the manufacturer’s express

1 warranty will be transferred to the lessee, if the transfer is allowed by the terms of
2 the manufacturer's express warranty.

3 (11) TERMINATION AT OPTION OF LESSEE. A statement that the lessee may
4 terminate the agreement at any time without penalty by voluntarily surrendering
5 or returning the rental property in good repair along with any past-due rental
6 payments, fees and charges.

7 (12) RIGHT TO REINSTATE. A brief explanation of the lessee's right to reinstate
8 a rent-to-own agreement under s. 435.405.

9 (13) GENERAL NOTICE. A notice reading substantially as follows: "You are
10 renting this property. You will not own the property until you make all of the
11 regularly scheduled rental payments necessary to acquire ownership or until you
12 exercise your early-purchase option. If you do not make your rental payments as
13 scheduled or exercise your early-purchase option, the lessor may repossess the
14 property."

15 (14) INFORMATION ABOUT RENTAL-PURCHASE COMPANY AND LESSEE. The names of
16 the rental-purchase company and the lessee, the rental-purchase company's
17 business address and telephone number, the lessee's address and the date on which
18 the rent-to-own agreement is executed.

19 **435.403 Prohibited provisions of rent-to-own agreement.** A
20 rent-to-own agreement may not contain any of the following:

21 (1) CONFESSION. A confession of judgment.

22 (2) SECURITY. A provision granting the rental-purchase company a security
23 interest in any property except rental property delivered by the rental-purchase
24 company pursuant to the rent-to-own agreement.

1 (3) REPOSSESSION. A provision authorizing a rental-purchase company or an
2 agent of the rental-purchase company to enter the lessee's premises or to commit a
3 breach of the peace in the repossession of rental property delivered by the
4 rental-purchase company pursuant to the rent-to-own agreement.

5 (4) WAIVER. A waiver of a defense or counterclaim, or a waiver of any right to
6 assert any claim that the lessee may have against the rental-purchase company or
7 an agent of the rental-purchase company or a waiver of any provision of this chapter.

8 (5) OVERPAYMENT. A provision requiring rental payments totaling more than
9 the total dollar amount of all rental payments necessary to acquire ownership, as
10 disclosed in the rental-purchase agreement.

11 (6) INSURANCE. A provision requiring the purchase of insurance from the
12 rental-purchase company to cover the rental property.

13 **435.404 Late payment, grace period and late fees. (1) LATE FEE;**
14 **GENERALLY.** If a lessee fails to make any payment when due under a rent-to-own
15 agreement or if, at the end of any rental term, the lessee fails to return the rental
16 property or to renew the rent-to-own agreement for an additional term, the
17 rental-purchase company may require the lessee to pay a late fee. However, except
18 as provided under sub. (4), this subsection does not apply if the lessee's failure to
19 return rental property or failure to renew the rent-to-own agreement at the end of
20 the rental term is due to the lessee's exercise of an early-purchase option under the
21 rent-to-own agreement or due to the lessee's making all payments necessary to
22 acquire ownership of the rental property.

23 (2) GRACE PERIODS. The following grace periods shall apply to rental payments
24 made with respect to a rental-purchase agreement:

1 (a) For an agreement that is renewed on a weekly basis, no late fee may be
2 assessed for a payment that is made within 2 days after the date on which the
3 scheduled payment is due.

4 (b) For an agreement that is renewed for a term that is longer than one week,
5 no late fee may be assessed for a payment that is made within 5 days after the date
6 on which the scheduled payment is due.

7 (3) COLLECTION, RECORDING AND LIMITATION OF LATE FEES. Late fees are subject
8 to all of the following limitations:

9 (a) A late fee may not exceed \$5 for each past-due rental payment.

10 (b) A late fee may be collected only once on each rental payment due, regardless
11 of how long the payment remains past due.

12 (c) Payments received shall be applied first to the payment of any rent that is
13 due and then to late fees and any other charges.

14 (d) A late fee may be collected at the time that the late fee accrues or at any time
15 afterward.

16 (4) EFFECT OF OUTSTANDING LATE FEE ON TRANSFER OF OWNERSHIP. A
17 rental-purchase company may require payment of any outstanding late fees before
18 transferring ownership of rental property to a lessee.

19 **435.405 Reinstatement of terminated rent-to-own agreement. (1)**
20 REINSTATEMENT, GENERALLY. A lessee shall have the right to reinstate a terminated
21 rent-to-own agreement without losing any rights or options previously acquired if
22 all of the following conditions apply:

23 (a) The lessee returned or surrendered the rental property within 5 days after
24 the termination of the agreement.

1 (b) Not more than 21 days have passed after the date that the rental property
2 was returned to the rental–purchase company or, if the lessee has paid two–thirds
3 or more of the total of rental payments necessary to acquire ownership of the rental
4 property, not more than 45 days have passed since the date that the rental property
5 was returned to the rental–purchase company.

6 (2) AUTHORIZED CONDITIONS ON REINSTATEMENT. As a condition of reinstatement
7 under this section, the rental–purchase company may require the payment of all
8 past–due rental charges, any applicable late fees, a reinstatement fee not to exceed
9 \$5, and the rental payment for an additional term.

10 (3) EFFECT OF REPOSSESSION ON REINSTATEMENT. Nothing in this section shall
11 prevent a rental–purchase company from attempting to repossess rental property
12 upon termination of a rent–to–own agreement, but such efforts shall not affect the
13 lessee’s right to reinstate as long as the rental property is voluntarily returned or
14 surrendered within 5 days after the termination of the rent–to–own agreement.

15 (4) PROPERTY AVAILABLE UPON REINSTATEMENT. Upon reinstatement, the
16 rental–purchase company shall provide the lessee with the same rental property, if
17 the property is available and is in the same condition as when it was returned to the
18 rental–purchase company, or with substitute property of comparable quality and
19 condition.

20 **435.406 Liability waiver.** A rental–purchase company may offer a liability
21 waiver to the lessee. The terms of the waiver must be provided to the lessee in writing
22 and the face of the writing must clearly disclose that the lessee is not required to
23 purchase the waiver. The fee for the waiver may not exceed 10% of the periodic rental
24 payment.

1 **435.407 Early-purchase option.** A rental-purchase company shall offer an
2 early-purchase option to every lessee who enters into a rent-to-own agreement with
3 the rental-purchase company. The early-purchase option shall permit the lessee to
4 purchase the rental property for cash at any time after the initial payment. As a
5 condition of exercising the early-purchase option, the rental-purchase company
6 may require the lessee to be current on the lessee's rent-to-own agreement or to pay
7 any past-due rental charges and other outstanding fees that are owed.

8 **435.408 Referral transactions. (1) PROHIBITED REFERRAL TRANSACTIONS.** No
9 rental-purchase company may induce any individual to enter into a rent-to-own
10 agreement by giving or offering to give a rebate or discount to the individual in
11 consideration of the individual's giving to the rental-purchase company the names
12 of prospective lessees if the earning of the rebate or discount is contingent upon the
13 occurrence of any event that takes place after the time that the individual enters into
14 the rent-to-own agreement.

15 **(2) AUTHORIZED REFERRAL TRANSACTIONS.** A rental-purchase company may give
16 or offer to give a rebate or discount to a lessee who rents personal property from the
17 rental-purchase company in consideration of the lessee's giving to the
18 rental-purchase company the names of prospective lessees. A rebate or discount
19 under this subsection may be contingent upon the occurrence of any event that takes
20 place after the time that the names are given to the rental-purchase company.

21 **435.409 Receipts and statements. (1) RECEIPTS DUE UPON REQUEST.** Upon
22 the request of a lessee, a rental-purchase company shall provide a written receipt
23 to the lessee for any payment made by the lessee.

24 **(2) STATEMENT DUE UPON REQUEST.** Upon the request of a lessee, a
25 rental-purchase company shall provide a written statement to the lessee showing

1 the lessee's payment history on each rent-to-own agreement between the lessee and
2 the rental-purchase company. A rental-purchase company is not required to
3 provide a statement covering any rent-to-own agreement that was terminated or
4 completed more than one year prior to the date of the lessee's request. A
5 rental-purchase company may provide a single statement covering all rent-to-own
6 agreements or separate statements for each rent-to-own agreement, at the
7 rental-purchase company's option.

8 **435.501 Price cards displayed. (1) PRICE CARDS; GENERALLY.** A card or tag
9 that clearly and conspicuously states all of the following shall be displayed on or next
10 to any property displayed or offered by a rental-purchase company for rent under a
11 rent-to-own agreement:

12 (a) The price of the property if purchased in cash.

13 (b) The amount of the periodic rental payment and the term over which the
14 payment must be made.

15 (c) The total number and total amount of rental payments that must be paid
16 in order to acquire ownership of the property under a rent-to-own agreement.

17 (d) Whether the property is new or used.

18 **(2) EXCEPTIONS.** If property is offered for rent under a rent-to-own agreement
19 through a catalog or if the size of the property is such that displaying a card or tag
20 on or next to the property would be impractical, a rental-purchase company may
21 make the disclosures required by this section in a catalog or list, if the catalog or list
22 is readily available to prospective lessees.

23 **435.502 Advertising. (1) DISCLOSURE REQUIRED.** Except as provided under
24 sub. (2), if an advertisement for a rent-to-own agreement refers to or states the
25 amount of a payment for any property and the right to acquire ownership of that

1 property, the advertisement shall also clearly and conspicuously state all of the
2 following:

3 (a) That the transaction advertised is a rent-to-own agreement.

4 (b) The total number and total dollar amount of rental payments that must be
5 paid to acquire ownership.

6 (c) That the lessee does not acquire ownership of the property if the total dollar
7 amount of payments necessary to acquire ownership is not paid.

8 (2) EXCEPTION. Subsection (1) does not apply to any in-store display or any
9 advertisement that is published in the yellow pages of a telephone directory or in any
10 similar directory of businesses.

11 (3) ADVERTISER NOT LIABLE. An owner or agent of the medium in which an
12 advertisement for a rent-to-own agreement appears or through which an
13 advertisement for a rent-to-own agreement is disseminated shall not be liable for
14 any violation of sub. (1).

15 **435.601 Default and right to cure. (1) DEFAULT; GENERALLY.** A lessee is in
16 default under a rent-to-own agreement if any of the following applies:

17 (a) The lessee fails to return rental property within 7 days after the date that
18 the last rental term for which a rental payment was made expires, unless the lessee
19 has exercised an early-purchase option or has made all payments necessary to
20 acquire ownership of the rental property.

21 (b) The lessee materially breaches any other provision of the rent-to-own
22 agreement.

23 (2) DEFAULT; NECESSARY FOR LESSEE LIABILITY. No cause of action shall accrue
24 against a lessee with respect to the lessee's obligations under a rent-to-own
25 agreement except by reason of a default.

1 (3) NOTICE OF DEFAULT; GENERAL REQUIREMENT. As a condition precedent to
2 bringing an action against a lessor arising out of the lessee's default, a
3 rental-purchase company shall provide a written notice of the default and of the
4 right to cure the default to the lessee. The notice shall specify the default and the
5 action required to cure the default and shall inform the lessee that if the default is
6 not cured within 15 days after the notice is given the rental-purchase company will
7 have the right to bring an action against the lessee.

8 (4) NOTICE OF DEFAULT; EXCEPTION. Notwithstanding sub. (3), a rental-purchase
9 company is not required to provide a notice of default and right to cure as a condition
10 precedent to bringing an action against a lessee if each of the following occurred twice
11 during the 12 months before the date of the current default with respect to the same
12 rent-to-own agreement:

13 (a) The lessee was in default.

14 (b) The rental-purchase company gave the lessee written notice of the default
15 and of the lessee's right to cure under sub. (3).

16 (c) The lessee cured the default.

17 (5) REQUEST FOR VOLUNTARY SURRENDER OF PROPERTY. A rental-purchase
18 company may request the voluntary return or surrender of rental property prior to
19 the declaration of a default and the sending of written notice of default and right to
20 cure. A request under this subsection is subject to the requirements of s. 435.602.

21 **435.602 Rental-purchase company collection practices.** In attempting
22 to recover possession of rental property or to collect past-due rental payments or
23 other charges owed under a rent-to-own agreement, a rental-purchase company
24 may not do any of the following:

1 (1) **USE OF FORCE.** Use or threaten to use force or violence to cause physical harm
2 to the lessee or the lessee's dependents or property.

3 (2) **CRIMINAL PROSECUTION.** Threaten criminal prosecution, unless the
4 rental-purchase company reasonably believes, in good faith, that the lessee has
5 violated a law of this state and, as a result of the violation, is subject to penalties
6 including a fine or imprisonment or both and the rental-purchase company intends
7 to seek the filing of criminal charges against the lessee.

8 (3) **DISCLOSURE OF FALSE INFORMATION.** Disclose or threaten to disclose
9 information adversely affecting the lessee's reputation for credit worthiness with
10 knowledge or reason to know that the information is false.

11 (4) **COMMUNICATION WITH LESSEE'S EMPLOYER.** Initiate or threaten to initiate
12 communication with the lessee's employer prior to obtaining final judgment against
13 the lessee, except as permitted by statute, including specifically s. 422.404. This
14 subsection does not prohibit a rental-purchase company from communicating with
15 a lessee's employer solely to verify employment status or earnings or to determine
16 if the employer has an established debt counseling service or procedure.

17 (5) **DISCLOSURE OF INFORMATION REGARDING A DISPUTED DEBT.** Disclose or threaten
18 to disclose information concerning the existence of a debt known to be reasonably
19 disputed by the lessee without disclosing the fact that the lessee disputes the debt.

20 (6) **HARASSMENT.** Communicate with the lessee or a person related to the lessee
21 with such frequency or at such unusual hours or in such a manner as can reasonably
22 be expected to threaten or harass the lessee or engage in any other conduct which can
23 reasonably be expected to threaten or harass the lessee or a person related to the
24 lessee.

1 (7) USE OF OBSCENE OR THREATENING LANGUAGE. Use obscene or threatening
2 language in communicating with the lessee or a person related to the lessee.

3 (8) USE OF THREAT TO ENFORCE FALSE RIGHT. Threaten to enforce a right with
4 knowledge that the right does not exist.

5 (9) USE OF FALSE PROCESS. Use a communication which simulates legal or
6 judicial process or which gives the appearance of being authorized, issued or
7 approved by a government, government agency or attorney-at-law when it is not.

8 (10) USE OF THREAT TO SUE. Threaten to file a civil action against the lessee
9 unless such action is taken in the regular course of business or is intended with
10 respect to the lessee in question.

11 **435.701 Civil actions and defenses. (1) LIABILITY; GENERALLY.** Except as
12 provided under sub. (2), a rental-purchase company that violates any provision of
13 this chapter is liable to a lessee damaged as a result of that violation for the costs of
14 the action and for reasonable attorney fees as determined by the court, plus an
15 amount equal to the greater of the following:

16 (a) The actual damages, including any incidental and consequential damages,
17 sustained by the lessee as a result of the violation.

18 (b) An amount equal to 25% of the total amount of payments due in one month
19 under the lessee's rent-to-own agreement, except that liability under this
20 paragraph may not be less than \$100 nor more than \$1,000.

21 (2) LIABILITY; CERTAIN VIOLATIONS. If a rent-to-own agreement violates s.
22 435.403, the lessee shall be entitled to retain the rental property without obligation
23 to pay any amount and to recover any sums paid to the rental-purchase company
24 pursuant to the transaction.

1 **(3) CLASS ACTION.** In the case of a class action, a rental–purchase company that
2 violates this chapter is liable to the members of the class in an amount determined
3 by the court, except that the total recovery for all lessees whose recovery is computed
4 pursuant to sub. (1) (b) may not exceed \$100,000 plus the costs of the action and
5 reasonable attorney fees as determined by the court. In determining the amount to
6 award under this subsection, the court shall consider, among other relevant factors,
7 the amount of actual damages sustained by members of the class, the frequency and
8 persistence of violations by the rental–purchase company, the resources of the
9 rental–purchase company, the number of persons damaged by the violation, the
10 presence or absence of good faith on the part of the rental–purchase company, and
11 the extent to which the violation was intentional.

12 **(4) DEFENSE; ERROR NOTIFICATION AND CORRECTION.** A rental–purchase company
13 is not liable for a violation of this chapter resulting from an error by the
14 rental–purchase company if, within 60 days after discovering the error, the
15 rental–purchase company notifies the lessee of the error and makes any adjustments
16 necessary to correct the error.

17 **(5) DEFENSE; UNINTENTIONAL ERROR.** A rental–purchase company is not liable
18 for a violation of this chapter if the rental–purchase company shows by a
19 preponderance of the evidence that the violation was not intentional, that the
20 violation resulted from a bona fide error notwithstanding the maintenance of
21 procedures reasonably adapted to avoid these errors and that the rental–purchase
22 company has acted to correct the error. A bona fide error under this subsection
23 includes a clerical error, an error in making calculations, an error due to computer
24 malfunction or computer programming, or a printing error.

1 **(6) NECESSARY PARTIES.** If more than one lessee is a party to the same
2 rent-to-own agreement, all of the lessees that are parties to the rent-to-own
3 agreement shall be joined as plaintiffs in any action under sub. (1) and the lessees
4 are entitled to only a single recovery under sub. (1).

5 **(7) LIABILITY FOR MULTIPLE VIOLATIONS.** Multiple violations of this chapter in
6 connection with the same rent-to-own agreement shall only entitle the lessee to a
7 single recovery under sub. (1), except that a violation of s. 435.602 that occurs after
8 recovery has been granted with respect to that rent-to-own agreement may entitle
9 the lessee to an additional recovery under sub. (1).

10 **435.702 Limitation on actions.** An action brought by a lessee under this
11 chapter shall be commenced within one year after the date on which the alleged
12 violation occurred, 2 years after the date on which the rent-to-own agreement was
13 entered into, or one year after the date on which the last payment was made under
14 the rent-to-own agreement, whichever is later.”.

15 **4.** Page 1511, line 23: after that line insert:

16 “(2z) SUBMISSION OF PROPOSED RULES GOVERNING REGISTRATION OF
17 RENTAL-PURCHASE COMPANIES. No later than the first day of the 3rd month beginning
18 after publication, the department of financial institutions shall submit in proposed
19 form the rules governing registration of rental-purchase companies under section
20 435.301 of the statutes, as created by this act, to the legislative council staff under
21 section 227.15 (1) of the statutes.”.

22 **5.** Page 1589, line 14: after that line insert:

23 “(2zt) RENT-TO-OWN AGREEMENTS. The treatment of sections 409.104 (12m),
24 421.202 (7m), 421.301 (9), (10) and (11) 423.201, 435.102 to 435.201, 435.303 and

1 435.401 to 435.702 of the statutes first applies to rent-to-own agreements entered
2 into on the effective date of this subsection.

3 (2zu) REGISTRATION OF RENTAL-PURCHASE COMPANIES. The treatment of sections
4 435.301, 435.302 and 435.304 of the statutes first applies to any person engaging in
5 business as a rental-purchase company on the effective date of this subsection.”.

6 **6.** Page 1608, line 19: after that line insert:

7 “(2z) RENT-TO-OWN AGREEMENTS. The treatment of sections 409.104 (12m),
8 421.202 (7m), 421.301 (9), (10) and (11) and 423.201 and chapter 435 of the statutes
9 and SECTION 9319 (2zt) and (2zu) of this act take effect on the first day of the 6th
10 month beginning after publication.”.

11 (END)