State of Wisconsin
2005 – 2006 LEGISLATURE

LRB–0288/3
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2005 BILL

AN ACT ***to amend*** 220.02 (2) (b), 220.02 (3), 421.301 (7) (intro.), 421.301 (9), 421.301 (10), 421.301 (11), 421.301 (12), 421.301 (20) (intro.), 421.301 (21), 421.301 (34), 421.301 (40), 426.102 (1), 426.110 (14) and 427.102; ***to repeal and recreate*** 422.102; and ***to create*** subchapter XI of chapter 218 [precedes 218.60], 409.109 (4) (n), 421.301 (37t), 421.301 (37u), 421.301 (37v), subchapter VI of chapter 422 [precedes 422.601] and 425.312 of the statutes; **relating to:** regulation of rental–purchase agreements and granting rule–making authority.

Analysis by the Legislative Reference Bureau

Under current law, a consumer credit transaction that is entered into for personal, family, or household purposes is generally subject to the Wisconsin Consumer Act (consumer act). The consumer act grants consumers certain rights and remedies and contains notice and disclosure requirements and prohibitions relating to consumer credit transactions. Currently, a consumer lease that has a term of more than four months is among the consumer credit transactions that are subject to the consumer act. In addition, the consumer act applies to any other consumer lease, if the lessee pays or agrees to pay at least an amount that is substantially equal to the value of the leased property and if the lessee will become,

or for not more than a nominal additional payment has the option to become, the owner of the leased property.

As discussed below, this bill amends the consumer act to create requirements that specifically apply to certain consumer leases that the bill defines as rental–purchase agreements.

Scope

The bill regulates the activities of a rental–purchase company, which is defined in the bill as a person engaged in the business of entering into rental–purchase agreements or acquiring or servicing rental–purchase agreements that are entered into in this state. With certain exceptions, an agreement qualifies as a rental–purchase agreement under the bill if, among other things, the rental property is to be used primarily for personal, family, or household purposes; the rental property is not a motor vehicle; the agreement has an initial term of four months or less and is automatically renewable with each payment after the initial term; the agreement does not require the lessee to renew the agreement beyond the initial term; and the agreement permits, but does not require, the lessee to acquire ownership of the rental property. Under the bill, a rental–purchase agreement is not subject to any laws relating to a security interest under the Uniform Commercial Code.

Administration

The bill requires a person that operates a rental–purchase company to obtain a license from the division of banking in the Department of Financial Institutions (division), pay an annual license fee, and make annual reports to the division. A license is not assignable and must be posted in a conspicuous place at the location of the rental–purchase company. The bill permits the division to examine the books and records of a rental–purchase company to determine compliance with the bill's requirements. In addition, the bill specifically authorizes the division to issue orders and conduct investigations and examinations. The division may suspend or revoke a rental–purchase company's license if, among other things, the rental–purchase company violates the bill's requirements, the rental–purchase company fails to pay the license fee, or the division becomes aware of a fact that would be grounds for refusing to grant the rental–purchase company a license. Also, the bill prohibits a person granted a license from changing the place of business of the rental–purchase company without the prior approval of the division.

Rental–purchase agreements

The bill requires every rental–purchase agreement to contain certain provisions, including the following, to the extent applicable:

1. A description of the rental property.

2. The price at which the rental–purchase company would sell the property, if paid in full on the date on which the rental–purchase agreement is executed. The bill refers to this price as the "cash price" of the rental property.

3. A statement indicating that the rental property may be available at a lower cost from another retailer.

4. The total amount of the rental payments necessary to acquire ownership of the property.

5. The difference between the amount described under item 4 and the cash price of the rental property.

6. The amount of any payment due when the rental–purchase agreement is executed or the rental property is delivered.

7. The total dollar amount and an itemization of all taxes, liability damage waiver fees, fees for optional services, processing and application fees, and delivery charges that the lessee would incur if the lessee were to rent the property until the lessee acquires ownership.

8. An itemization and description of any other charges or fees the rental–purchase company may charge the lessee.

9. The total amount of all charges necessary to acquire ownership of the rental property.

10. A summary of the lessee's early–purchase option.

11. A description of the lessee's responsibility in the event of theft of or damage to the rental property.

12. A statement indicating that, with certain exceptions, the rental–purchase company is required to service the rental property to maintain it in good working condition.

13. A statement that the lessee may terminate the rental–purchase agreement at any time, without penalty, by surrendering the rental property in good repair.

14. A description of the lessee's right to reinstate the rental–purchase agreement.

15. A statement indicating that the lessee does not own the rental property and will not own the property until exercising an early–purchase option or making all rental payments necessary to acquire ownership.

The bill also prohibits the inclusion of certain provisions in a rental–purchase agreement. The prohibited provisions include the following: (1) a confession of judgment; (2) a provision granting the rental–purchase company a security interest in property other than the rental property; (3) a provision granting the rental–purchase company permission to enter the lessee's premises or commit a breach of the peace in repossessing the rental property; (4) a waiver of any defense or counterclaim or any provision of the bill's requirements; (5) a provision requiring rental payments totaling more than the total dollar amount of all rental payments necessary to acquire ownership; (6) a provision requiring the lessee to purchase insurance from the rental–purchase company to insure the rental property; and (7) a provision requiring the lessee to pay attorney fees. Several of these prohibitions are similar to prohibitions contained in the consumer act.

The bill imposes other requirements on rental–purchase agreements, including the following: (1) the bill limits the cash price of the rental property to no more than twice the amount paid by the rental–purchase company to the wholesaler or manufacturer; (2) the bill limits total charges for rental services in a transaction to no more than the cash price of the rental property; and (3) the bill regulates the amount and timing of late fees that may be charged to a lessee.

Disclosures

All required provisions of a rental–purchase agreement must be clearly and conspicuously disclosed to the lessee on the face of the rental–purchase agreement in at least eight–point standard type, except for certain provisions that must be disclosed in at least ten–point boldface type. The lessee's payment obligations must be evidenced by a single, dated instrument that includes the signatures of the rental–purchase company and lessee. As under the consumer act, the bill requires the rental–purchase company to provide the lessee, or one lessee if there are multiple lessees under the same agreement, with a copy of the executed rental–purchase agreement. In addition, a rental–purchase company must provide the lessee with a receipt for any payment made by the lessee in cash, or upon request, for any other type of payment. With certain exceptions, upon the request of a lessee, a rental–purchase company must also provide the lessee or a person the lessee designates with a copy of the lessee's payment history. The rental–purchase company may charge a fee if a lessee or designated person requests more than one copy in any 12–month period.

Related transactions

Under the bill, a rental–purchase company must offer an early–purchase option to a lessee and may offer a liability waiver to a lessee. The bill includes a formula for determining the maximum that may be charged for early purchase. The terms of a liability waiver and the fact that the lessee is not required to purchase the waiver must be disclosed to the lessee in writing. The fee for the liability waiver may not equal more than 10 percent of the rental payment due under the rental–purchase agreement. The bill permits a lessee to cancel a liability waiver at the end of any rental term.

Marketing and advertising

The bill provides that advertising for rental–purchase agreements is subject to the consumer act's prohibitions and remedies regarding false, misleading, or deceptive advertising. The bill also creates requirements for advertising rental–purchase agreements. With certain exceptions, the bill requires a rental–purchase company to display a card or tag on or next to any property offered for rent, indicating whether the property is new or used and indicating the cash price of the property, the amount of the rental payment, and the term over which the rental payment must be made, and the total number and total dollar amount of all rental payments necessary to acquire ownership of the property. In addition, a rental–purchase company must ensure that an advertisement for a rental–purchase agreement that refers to the amount of a payment for a specific item of property also states that the advertisement is for a rental–purchase agreement and that the lessee does not acquire ownership of the property if the lessee fails to make all rental payments necessary to acquire ownership. The advertisement must also include the total number and total dollar amount of all rental payments necessary to acquire ownership of the property.

The bill also allows a rental–purchase company to give or offer to give a rebate or discount to a current lessee, in consideration of the lessee's giving the rental–purchase company the names of prospective lessees.

Right to reduced amount of rental payments and right to reinstatement

Under the bill, a lessee has the right to reinstate a terminated rental–purchase agreement, as long as the lessee returned the rental property within seven days after termination and not more than 60 days have passed since the return date or, if the lessee paid at least two–thirds of the total number of rental payments necessary to acquire ownership, not more than 120 days have passed since the return date. A rental–purchase company may require the payment of a $5 reinstatement fee, all past–due rental charges, the rental payment for the next term, and any applicable late fees as a condition of reinstatement. Upon reinstatement, a rental–purchase company must provide a lessee with the same rental property, if available and in the same condition as when it was returned, or with comparable quality rental property.

Default and right to cure

The bill establishes a notice procedure that a rental–purchase company must, with certain exceptions, follow if a lessee defaults under a rental–purchase agreement. The bill defines "default" as either (1) a breach of the rental–purchase agreement that materially impairs the condition, value, or protection of the rental property, or (2) a failure to return rental property within seven days after the expiration of the term for which the last payment was made.

Before giving a lessee a notice of default, a rental–purchase company may first request the lessee to surrender voluntarily the applicable rental property. Before filing an action against a lessee arising out of the lessee's default, a rental–purchase company must give to the lessee a written notice of the default and of the lessee's right, within 15 days after receiving the notice, to cure the default. The notice must specify, among other things, the actions required to cure the default. If the lessee received a similar notice and cured the applicable default at least twice during the year preceding the current default, the bill allows a rental–purchase company to file an action without providing the written notice.

Collection practices

Under the bill, rental–purchase companies are subject to the same prohibitions regarding collection practices that apply to other consumer transactions under the consumer act. As a result, rental–purchase companies are prohibited from doing the following in attempting to recover rental property or collect amounts owed under a rental–purchase agreement:

1. Using or threatening to use force or violence.

2. Disclosing or threatening to disclose false information relating to the creditworthiness of the lessee.

3. Harassing or threatening the lessee or a relative of the lessee.

4. Using obscene language in communicating with the lessee or a relative of the lessee.

5. Using a communication that falsely simulates legal, judicial, or governmental process.

6. Threatening to file an action against the lessee, unless the action is of a type that the rental–purchase company files in the regular course of business or unless the rental–purchase company intends to file the action.

7. Threatening criminal prosecution.

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8. With certain exceptions, communicating with the lessee's employer.
9. Engaging in other specified conduct.

Penalties and remedies

A rental–purchase company that willfully and knowingly violates the bill's requirements is subject to a fine of not more than $2,000, which is the penalty under current law that applies to willful and knowing violations of the consumer act.

The bill also generally provides that a rental–purchase company that violates the bill's requirements is liable to a lessee damaged as a result of the violation for the amount of actual damages sustained as a result of the violation, including incidental and consequential damages, as well as for the costs of the action and reasonable attorney fees. In addition, the lessee is entitled to recover an amount equal to 25 percent of the total amount of payments necessary to acquire ownership under the rental–purchase agreement. This additional recovery is subject to a $100 minimum and a $1,000 maximum. However, if a rental–purchase company includes a prohibited provision in a rental–purchase agreement, these remedies do not apply. Instead, the rental–purchase company must surrender to the lessee the rental property and any amounts paid under the rental–purchase agreement.

The bill also provides that class actions based on violations of the bill are, with one exception, subject to the same requirements that apply to class actions for violations of the consumer act under current law. The exception is that, for certain willful and knowing violations of the bill's requirements, the total liability of a rental–purchase company is subject to a limit of $500,000 (plus costs and attorney fees), instead of the $100,000 limit (plus costs and attorneys fees) that applies under current law.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. Subchapter XI of chapter 218 [precedes 218.60] of the statutes is created to read:

CHAPTER 218

SUBCHAPTER XI

~~ADMINISTRATION AND LICENSING~~

~~RELATED TO~~ COMPANIES

RENTAL–PURCHASE ~~AGREEMENTS~~

218.60 Definitions. In this subchapter:

~~(1) "Administrator" means the administrator of the division.~~

(2) "Division" means the division of banking in the department of financial institutions.

(3) "Rental–purchase agreement" has the meaning given in s. 421.301 (37u).

(4) "Rental–purchase company" has the meaning given in s. 421.301 (37v).

218.61 License required. No person may operate as a rental–purchase company without a valid license issued by the division under this subchapter.

218.62 Application for license; fees; bond. **(1)** APPLICATION. (a) An application for a license under this subchapter shall be made to the division, in writing, in the form prescribed by the division. In addition to any other information that may be required by the division, an application for a license under this subchapter shall include all of the following:

1. If the applicant is an individual, the applicant's social security number.

2. If the applicant is not an individual, the applicant's federal employer identification number.

(b) The division may not disclose any information received under par. (a) 1. or 2. to any person except as follows:

1. The division may disclose the information to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

2. The division may disclose the information to the department of workforce development in accordance with a memorandum of understanding entered into under s. 49.857.

(2) APPLICATION FEES. At the time of applying to the division for a license under this subchapter, the applicant shall pay any applicable fee specified by the ~~administrator~~ division by rule.

(3) BOND. The division may require an applicant or licensee to file with the division and maintain in force a bond, in a form prescribed by and acceptable to the division, and in an amount determined by the division.

218.63 Issuance or denial of license. (1) INVESTIGATION. Upon the filing of an application under s. 218.62 (1) and the payment of any applicable fee, the division shall perform an investigation. Except as provided in sub. (3), if the division finds that the character, general fitness, and financial responsibility of the applicant; the members of the applicant, if the applicant is a partnership, limited liability company, or association; and the officers and directors of the applicant, if the applicant is a corporation warrant the belief that the business will be operated in compliance with any provision of chs. 421 to 427 relating to rental–purchase agreements, the division shall issue a license to the applicant.

(2) DENIAL; NOTICE; HEARING. Except as provided in sub. (3), the division may deny an application made under s. 218.62 (1) by providing written notice to the applicant stating the grounds for the denial. Except as provided in sub. (3), a person whose application is denied may request a hearing under s. 227.44 within 30 days after the date of denial. The division may appoint a hearing examiner under s. 227.46 to conduct the hearing.

(3) DENIAL; CHILD OR FAMILY SUPPORT OR TAX DELINQUENCY. The division may not issue a license under this chapter if any of the following applies:

(a) The applicant fails to provide the information required under s. 218.62 (1) (a).

(b) The department of revenue certifies under s. 73.0301 that the applicant is liable for delinquent taxes. An applicant for whom a license is not issued under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

(c) The applicant fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or is delinquent in making court–ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An applicant whose application is denied under this paragraph for delinquent payments is entitled to a notice and hearing under s. 49.857, but is not entitled to any other notice or hearing under this section.

218.64 Licenses; other business. (1) LICENSED LOCATIONS. A license issued under this subchapter shall specify the location at which the licensee is permitted to conduct business. A separate license shall be required for each place of business maintained by the licensee.

(2) ASSIGNMENT. A license issued under this subchapter is not assignable.

(3) POSTING. A licensee shall post its license in a conspicuous place at the location specified in the license.

(4) TERM OF LICENSE; FEE. Every license shall remain in force until suspended or revoked in accordance with this subchapter or surrendered by the licensee. Every licensee shall, on or before June 1 of each year, pay to the division an annual license

fee specified by the division by rule and, if required by the division, provide a rider or endorsement to increase the amount of any bond required under s. 218.62 (3).

(5) OTHER BUSINESS PROHIBITED. No licensee may conduct business as a rental–purchase company within any office, room, or place of business in which any other business is solicited or engaged in, unless the licensee is authorized to do so, in writing, by the division. For the purpose of this subsection, the division may not unreasonably withhold any such authorization.

218.65 Revocation, suspension, and restriction of license. (1) DISCRETIONARY SUSPENSION OR REVOCATION. The division may issue an order suspending or revoking a license issued under this subchapter if the division finds that any of the following applies:

(a) The licensee has violated any provision of chs. 421 to 427 relating to rental–purchase agreements, any rules promulgated under any such provision, or any lawful order of the division under s. 218.68 (1).

(b) A fact or condition exists that, if it had existed at the time of the original application for the license, would have warranted the division's refusing to issue the license.

(c) The licensee has made a material misstatement in an application for a license or in any information furnished to the division.

(d) The licensee has failed to pay the annual license fee required under s. 218.64 (4) or has failed to maintain in effect any bond required under s. 218.62 (3).

(e) The licensee has failed to provide any additional information, data, or records required by the division, within the time period prescribed under s. 218.66 (2).

(f) The licensee has failed to pay any penalties due under s. 425.312, 425.401, or 426.301 within 30 days after receiving notice, by certified mail, that the penalties are due.

(2) MANDATORY RESTRICTION OR SUSPENSION; CHILD OR FAMILY SUPPORT. The division shall restrict or suspend a license issued under this subchapter if the division finds that the licensee is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court–ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. A licensee whose license is restricted or suspended under this subsection is entitled to a notice and hearing only as provided in a memorandum of understanding entered into under s. 49.857 and is not entitled to any other notice or hearing under this section.

(3) MANDATORY REVOCATION; DELINQUENT TAXES. The division shall revoke a license issued under this subchapter if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is revoked under this subsection for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

(4) REVOCATION AND SUSPENSION PROCEDURE. Except as provided in subs. (2) and (3), no license shall be revoked or suspended except after a hearing under this subchapter. A complaint stating the grounds for suspension or revocation together with a notice of hearing shall be delivered to the licensee at least 5 days in advance

of the hearing. In the event the licensee cannot be found, the complaint and notice of hearing may be left at the place of business stated in the license and this shall be considered the equivalent of delivering the notice of hearing and complaint to the licensee.

218.66 Modification of license. (1) CHANGE IN PLACE OF BUSINESS. No licensee may change its place of business to another location without the prior approval of the division, which approval shall not be unreasonably withheld. A licensee shall provide the division with at least 15 days' prior written notice of a proposed change under this section and shall pay any applicable fees specified by the division by rule. Upon approval by the division of the new location, the division shall issue an amended license, specifying the date on which the amended license is issued and the new location.

(2) OTHER CHANGES. Except as provided in sub. (1), a licensee shall notify the division of any material change to the information provided in the licensee's original application for a license under this subchapter or provided in a previous notice of change filed by the licensee with the division under this subsection. A licensee shall provide the notice required under this subsection within 10 days after the change. The licensee shall provide any additional information, data, and records about the change to the division within 20 days after the division requests the information, data, or records. The division shall determine the cost of investigating and processing the change. The licensee shall pay the division's cost within 30 days after the division demands payment.

(3) DIVISION APPROVAL OF OTHER CHANGES. Any change that is subject to the notice requirement under sub. (2) is subject to the approval of the division. In

reviewing the change, the division shall apply the same criteria as the criteria for approval of an original license application.

218.67 Annual report; records. **(1)** ANNUAL REPORT. On or before March 31 of each year, a licensee shall file a report with the division giving such reasonable and relevant information as the division may require concerning the business and operations conducted by the licensee. The licensee shall make the report in the form prescribed by the division.

(2) BOOKS AND RECORDS. A licensee shall keep such books and records in the licensed location as, in the opinion of the division, will enable the division to enforce any provision of chs. 421 to 427 relating to rental–purchase agreements. Every licensee shall preserve its records of a rental–purchase agreement for at least 2 years after making any final entry with respect to the rental–purchase agreement.

218.68 Powers and duties of division; administration. **(1)** ORDERS. The division may issue any general order or special order in execution of or supplementary to any provision in chs. 421 to 427 relating to rental–purchase agreements, but any such order may not conflict with any such provision.

(2) INVESTIGATIONS AND EXAMINATIONS. For the purpose of discovering violations of any provision in chs. 421 to 427 relating to rental–purchase agreements, the division may investigate or examine the business of a licensee transacted under any provision of chs. 421 to 427 relating to rental–purchase agreements. The place of business, books of accounts, papers, records, safes, and vaults of the licensee shall be open to the division for the purpose of an investigation or examination, and the division has authority to examine under oath all persons whose testimony is required for an investigation or examination. The division shall determine the cost of an investigation or examination. The licensee shall pay the cost of an investigation or

examination. The licensee shall pay the cost of any hearing held for the purpose of this subsection, including witness fees, unless the division or a court finds that the licensee has not violated any provision of chs. 421 to 427 relating to rental–purchase agreements. The licensee shall pay all costs owing under this subsection within 30 days after the division demands payment. The state may maintain an action for the recovery of any costs owing under this subsection.

(3) VERIFIED COMPLAINT; MANDATORY INVESTIGATION. If 5 or more persons file a verified complaint with the ~~administrator~~ division alleging that a rental–purchase company has engaged in an act that is subject to action by the ~~administrator~~ division, ~~he or she~~ the division shall immediately commence an investigation pursuant to sub. (2).

(4) RULES. The ~~administration~~ division may promulgate rules for the administration of any provision in ~~chs. 421 to 427~~ this subchapter relating to rental–purchase agreements.

(5) TESTIMONIAL POWERS AND POWERS TO SECURE EVIDENCE. The division has the same power to conduct hearings, take testimony, and secure evidence as is provided to the division in ss. 217.17 and 217.18.

(6) ENFORCEMENT. The division may investigate any provision in chs. 421 to 427 relating to rental–purchase agreements or any lawful orders issued under sub. (1) to determine if any such provision or lawful order is being violated. The division may report any such violations to the attorney general or the district attorney of the proper county for prosecution.

SECTION 2. 220.02 (2) (b) of the statutes is amended to read:

220.02 **(2)** (b) The lending of money under s. 138.09 or those relating to finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges, rental–purchase companies licensed under subch. IV of ch. 426, and collection agencies under ch. 218.

SECTION 3. 220.02 (3) of the statutes is amended to read:

220.02 **(3)** It is the intent of sub. (2) to give the division jurisdiction to enforce and carry out all laws relating to banks or banking in this state, including those relating to state banks, savings banks, savings and loan associations, and trust company banks, and ~~also~~ all laws relating to small loan companies or other loan companies or agencies, finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges, rental–purchase companies licensed under ~~subch. IV of ch. 426,~~ and collection agencies and those relating to sellers of checks under ch. 217, whether doing business as corporations, individuals, or otherwise, but to exclude laws relating to credit unions.

SECTION 4. 409.109 (4) (n) of the statutes is created to read:

409.109 **(4)** (n) The transfer of an interest under a rental–purchase agreement, as defined in s. 421.301 (37u).

SECTION 5. 421.301 (7) (intro.) of the statutes is amended to read:

421.301 **(7)** (intro.) "Cash price" means in chs. 421 to 427, other than subch. VI of ch. 422, the price at which property or services are offered, in the ordinary course of business, for sale for cash, and may include:

SECTION 6. 421.301 (9) of the statutes is amended to read:

421.301 **(9)** "Consumer credit sale" means a sale of goods, services or an interest in land to a customer on credit where the debt is payable in installments or a finance charge is imposed and includes any agreement in the form of a bailment of goods or lease of goods or real property if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods or real property involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to

become, the owner of the goods or real property upon full compliance with the terms of the agreement. "Consumer credit sale" does not include a rental–purchase agreement.

SECTION 7. 421.301 (10) of the statutes is amended to read:

421.301 **(10)** "Consumer credit transaction" means a consumer transaction between a merchant and a customer in which real or personal property, services or money is acquired on credit and the customer's obligation is payable in installments or for which credit a finance charge is or may be imposed, whether such transaction is pursuant to an open–end credit plan or is a transaction involving other than open–end credit. The term includes consumer credit sales, consumer loans, consumer leases and transactions pursuant to open–end credit plans. "Consumer credit transaction" does not include a rental–purchase agreement.

SECTION 8. 421.301 (11) of the statutes is amended to read:

421.301 **(11)** "Consumer lease" means a lease of goods which a merchant makes to a customer for a term exceeding 4 months, but does not include a rental–purchase agreement.

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

421.301 **(12)** "Consumer loan" means a loan made by a lender to a customer which is payable in installments or for which a finance charge is or may be imposed, and includes transactions pursuant to an open–end credit plan other than a seller credit card, but does not include a transaction relating to a rental–purchase agreement.

SECTION 10. 421.301 (20) (intro.) of the statutes is amended to read:

421.301 **(20)** (intro.) "Finance charge" means the sum of all charges, payable directly or indirectly by the customer as an incident to or as a condition of the

extension of credit, whether paid or payable by the customer, the creditor or any other person on behalf of the customer to the creditor or to a 3rd party unless the creditor had no notice or knowledge of the charges paid or payable to the 3rd party. The term does not include any charge with respect to a motor vehicle consumer lease or to a rental–purchase agreement. The term includes the following types of charges to the extent they are not permitted additional charges under s. 422.202, delinquency charges under s. 422.203 or deferral charges under s. 422.204:

SECTION 11. 421.301 (21) of the statutes is amended to read:

421.301 **(21)** "Goods" has the meaning given in s. 409.102 (1) (ks) and includes goods not in existence at the time the transaction is entered into and goods which are or are to become fixtures, but does not include any goods under a rental–purchase agreement.

SECTION 12. 421.301 (34) of the statutes is amended to read:

421.301 **(34)** "Personal property" includes but is not limited to goods, and does not include rental property.

SECTION 13. 421.301 (37t) of the statutes is created to read:

421.301 **(37t)** "Rental property" means property rented under a rental–purchase agreement but does not include any motor vehicle, as defined in s. 340.01 (35).

SECTION 14. 421.301 (37u) of the statutes is created to read:

421.301 **(37u)** "Rental–purchase agreement" means an agreement between a rental–purchase company and a lessee for the use of rental property if all of the following apply:

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

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

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

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

SECTION 15. 421.301 (37v) of the statutes is created to read:

421.301 **(37v)** "Rental–purchase company" means a person engaged in the business of entering into rental–purchase agreements in this state or acquiring or servicing rental–purchase agreements that are entered into in this state.

SECTION 16. 421.301 (40) of the statutes is amended to read:

421.301 **(40)** "Security interest" means a real property mortgage, deed of trust, seller's interest in real estate under a land contract, any interest in property which secures payment or performance of an obligation under ch. 409 or any other consensual or confessed lien whether or not recorded, but does not include an interest in any property relating to a rental–purchase agreement.

SECTION 17. 422.102 of the statutes is repealed and recreated to read:

422.102 Scope. (1) Subchapters I to V apply to consumer credit transactions.

(2) Subchapter VI applies to rental–purchase agreements.

SECTION 18. Subchapter VI of chapter 422 [precedes 422.601] of the statutes is created to read:

CHAPTER 422

SUBCHAPTER VI

RENTAL–PURCHASE AGREEMENTS

422.601 Scope. This subchapter applies only to rental–purchase agreements.

422.602 General requirements of disclosure. (1) FORM, LOCATION, SIZE, AND TIME OF DISCLOSURE. The information that is required to be disclosed under s. 422.603 shall satisfy all of the following:

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

(b) The information shall be disclosed in writing.

(c) The information shall be disclosed on the face of the rental–purchase agreement above the line for the lessee's signature.

(d) Except as provided in par. (f), the information shall be disclosed in not less than 8–point standard type.

(e) The information shall be disclosed before the time that the lessee becomes legally obligated under the rental–purchase agreement.

(f) The disclosures required by s. 422.603 (2), (6), (7), and (8) shall be printed in at least 10–point boldface type, and shall be grouped together in a box, in the form and order prescribed by the ~~division of banking in the department of financial institutions.~~ administrator.

(2) ACCURACY OF DISCLOSURE. The information required under s. 422.603 must be accurate as of the time that it is disclosed to the lessee. If any information subsequently becomes inaccurate as a result of any act, occurrence, or agreement by the lessee, the resulting inaccuracy is not a violation of any provision of chs. 421 to 427 relating to rental–purchase agreements.

(3) COPY OF RENTAL–PURCHASE AGREEMENT. The rental–purchase company shall provide the lessee with a copy of the completed rental–purchase agreement signed by the lessee. If more than one lessee is legally obligated under the same rental–purchase agreement, delivery of a copy of the completed rental–purchase agreement to one of the lessees shall satisfy this subsection.

(4) SINGLE INSTRUMENT. In a rental–purchase agreement, the lessee's rental payment obligations shall be evidenced by a single instrument, which shall include the signature of the rental–purchase company, the signature of the lessee, and the date on which the instrument is signed.

422.603 Required provisions of rental–purchase agreement. A rental–purchase company shall include all of the following information, to the extent applicable, in every rental–purchase agreement:

(1) DESCRIPTION. A brief description of the rental property, sufficient to identify the rental property to the lessee and the rental–purchase company, including any identification number, and a statement indicating whether the rental property is new or used.

(2) CASH PRICE. The price at which the rental–purchase company would sell the rental property to the lessee if the lessee were to pay for the rental property in full on the date on which the rental–purchase agreement is executed, along with a statement that, if the lessee intends to acquire ownership of the rental property and is able to pay for the property in full or is able to obtain credit to finance the purchase, the lessee may be able to purchase similar property from a retailer at a lower cost.

(3) RENTAL PAYMENTS TO ACQUIRE OWNERSHIP. The total number, total dollar amount, and timing of all rental payments necessary to acquire ownership of the rental property.

(4) COST OF RENTAL SERVICES. The difference between the total dollar amount of payments necessary to acquire ownership of the rental property disclosed under sub. (3) and the cash price of the property disclosed under sub. (2). The rental–purchase company shall also include a statement substantially similar to the following: "The cost of rental services is the amount you will pay in addition to the

cash price if you acquire ownership of the rented goods by making all payments necessary to acquire ownership."

(5) RENTAL PAYMENT. The periodic rental payment for the rental property, including any applicable taxes, liability damage waiver fees, and fees for optional services.

(6) UP–FRONT PAYMENT. Any payment required of the lessee at the time that the agreement is executed or the rental property is delivered, including the initial rental payment, any application or processing charge, any delivery fee, and any charge for a liability damage waiver or for other optional services to which the lessee agrees.

(7) OTHER CHARGES AND FEES TO ACQUIRE OWNERSHIP. The dollar amount, both itemized and in total, of all taxes, liability damage waiver fees, fees for optional services, processing fees, application fees, and delivery charges that the lessee would incur if the lessee were to rent the rental property until the lessee acquires ownership, assuming that the lessee does not add or decline the liability damage waiver or optional services after signing the rental–purchase agreement.

(8) TOTAL PAYMENTS TO ACQUIRE OWNERSHIP. The total of all charges required to be paid by the lessee to acquire ownership of the rental property, which shall consist of the total dollar amount of all rental payments disclosed under sub. (3), and the total dollar amount of all other charges and fees disclosed under sub. (7), along with a statement that this is the amount a lessee will pay to acquire ownership of the rental property if the tax rates do not change and if the lessee does not add or decline the liability damage waiver or optional services after signing the rental–purchase agreement.

(9) OTHER CHARGES. An itemized description of any other charges or fees that the rental–purchase company may charge the lessee that are not otherwise disclosed in the rental–purchase agreement.

(10) SUMMARY OF EARLY–PURCHASE OPTION. A statement summarizing the terms of the lessee's options to acquire ownership of the rental property as provided in s. 422.607.

(11) RESPONSIBILITY FOR THEFT OR DAMAGE. A statement that, unless otherwise agreed, the lessee is responsible for the fair market value of the rental property, determined according to the early–purchase option formula under sub. (10), if the rental property is stolen, damaged, or destroyed while in the possession of or subject to the control of the lessee. The statement shall indicate that the fair market value will be determined as of the date on which the rental property is stolen, damaged, or destroyed.

(12) SERVICE AND WARRANTY. A statement that during the term of the rental–purchase agreement, the rental–purchase company is required to service the rental property and maintain it in good working condition, as long as no other person has serviced the rental property. In lieu of servicing the rental property, the rental–purchase company may, at its option, replace the rental property. The rental–purchase company's obligation to provide service is limited to defects in the property not caused by improper use or neglect by the lessee or harmful conditions outside the control of the rental–purchase company or manufacturer.

(13) TERMINATION AT OPTION OF LESSEE. A statement that the lessee may terminate the agreement at any time without penalty by voluntarily surrendering or returning the rental property in good repair.

(14) RIGHT TO REINSTATE. A brief explanation of the lessee's right to reinstate a rental–purchase agreement under s. 422.614.

(15) RENTAL, NOT PURCHASE. A statement that the lessee will not own the rental property until the lessee has made all payments necessary to acquire ownership or has exercised the lessee's early–purchase option. The rental–purchase company shall also include a notice reading substantially as follows: "You are renting this property. You will not own the property until you make all payments necessary to acquire ownership or until you exercise your early–purchase option. If you do not make your payments as scheduled or exercise your early–purchase option, the rental–purchase company may repossess the property."

(16) INFORMATION ABOUT RENTAL–PURCHASE COMPANY AND LESSEE. The names of the rental–purchase company and the lessee, the rental–purchase company's business address and telephone number, the lessee's address, and the date on which the rental–purchase agreement is executed.

(17) OPTIONAL SERVICES. Space for a specific, separately signed, affirmative, written indication of the lessee's desire for any optional service for which a charge is assessed. The lessee's request must be obtained after a written disclosure of the cost of the optional service is made, and the cost and term of such service must be listed at or near the signature space.

422.604 Prohibited provisions of rental–purchase agreements. (1) A rental–purchase agreement may not contain any of the following:

(a) *Confession.* A confession of judgment.

(b) *Security.* A provision granting the rental–purchase company a security interest in any property, except rental property delivered by the rental–purchase company under the rental–purchase agreement.

(c) *Repossession.* A provision authorizing a rental–purchase company, or an agent of the rental–purchase company, to enter the lessee's premises without the lessee's contemporaneous permission, or to commit a breach of the peace in the repossession of rental property provided by the rental–purchase company under the rental–purchase agreement.

(d) *Waiver.* A waiver of a defense or counterclaim, a waiver of any right to assert any claim that the lessee may have against the rental–purchase company or an agent of the rental–purchase company, or a waiver of any provision of chs. 421 to 427 relating to rental–purchase agreements.

(e) *Overpayment.* A provision requiring rental payments totaling more than the total dollar amount of all rental payments necessary to acquire ownership, as disclosed in the rental–purchase agreement.

(f) *Insurance.* A provision requiring the lessee to purchase insurance from the rental–purchase company to insure the rental property.

(g) *Attorney fees.* A provision requiring the lessee to pay any attorney fees.

(2) A violation of this section is subject to s. 425.305.

422.605 Liability waiver. A rental–purchase company may offer a liability waiver to the lessee. The terms of the waiver must be provided to the lessee in writing, incorporated into the rental–purchase agreement or on a separate document. The face of the writing shall clearly disclose that the lessee is not required to purchase the waiver. The fee for the waiver may not exceed 10 percent of the rental payment due under the rental–purchase agreement. The lessee shall be entitled to cancel the waiver at the end of any rental term.

422.606 Price and cost limitations. (1) LIMITS ON CASH PRICES. The cash price for rental property may not exceed an amount equal to twice the actual

INSERT 25-5

purchase price of the rental property, including any applicable freight charges, paid by the rental–purchase company to a manufacturer or wholesaler.

(2) LIMITS ON COST OF RENTAL SERVICES. The total amount charged by the rental–purchase company for the cost of rental services in a rental–purchase transaction shall not exceed the cash price of the property.

422.607 Acquisition of ownership. At any time after the initial rental period, a lessee may acquire ownership of the property that is the subject of the rental–purchase agreement by tendering an amount not to exceed an amount equal to the cash price of the rental property multiplied by a fraction that has as its numerator the number of periodic rental payments remaining under the rental–purchase agreement and that has as its denominator the total number of periodic rental payments. A rental–purchase company may also require the lessee to pay any accrued unpaid rental payments and fees.

422.608 Receipts and statements. (1) RECEIPTS. A rental–purchase company shall provide a written receipt to the lessee for any payment made by the lessee in cash or, upon the request of the lessee, for any other type of payment.

(2) STATEMENT DUE TO LESSEE. Subject to sub. (4), upon the request of a lessee, a rental–purchase company shall provide a written statement to the lessee showing the lessee's payment history on each rental–purchase agreement between the lessee and the rental–purchase company. A rental–purchase company is not required to provide a statement covering any rental–purchase agreement that was terminated more than one year prior to the date of the lessee's request. A rental–purchase company may provide a single statement covering all rental–purchase agreements or separate statements for each rental–purchase agreement, at the rental–purchase company's option.

(3) STATEMENT DUE TO OTHER PARTIES. Subject to sub. (4), upon the written request of a lessee, made during the term of or no later than one year after the termination of a rental–purchase agreement, a rental–purchase company shall provide a written statement to any person the lessee designates, showing the lessee's payment history under the rental–purchase agreement.

(4) FEE FOR STATEMENT. A lessee or, if appropriate, a lessee's designee, is entitled to receive one statement under subs. (2) and (3) without charge once every 12 months. A rental–purchase company shall provide an additional statement if the lessee pays the rental–purchase company's reasonable costs of preparing and furnishing the statement.

422.609 Advertising disclosure required. If an advertisement for a rental–purchase agreement refers to or states the amount of a payment for a specific item of property, the advertisement shall also clearly and conspicuously state all of the following:

(1) That the transaction advertised is a rental–purchase agreement.

(2) The total number and total dollar amount of all rental payments necessary to acquire ownership of the property.

(3) That the lessee does not acquire ownership of the property if the lessee fails to make all rental payments or other payments necessary to acquire ownership of the property.

422.610 Price cards displayed. (1) PRICE CARDS GENERALLY. Except as provided in sub. (2), a card or tag that clearly and conspicuously states all of the following shall be displayed on or next to any property displayed or offered by a rental–purchase company for rent under a rental–purchase agreement:

(a) The cash price that a lessee would pay to purchase the property.

(b) The amount and timing of the rental payments.

(c) The total number and total amount of all rental payments necessary to acquire ownership of the property under a rental–purchase agreement.

(d) The cost of rental services under a rental–purchase agreement.

(e) Whether the property is new or used.

(2) EXCEPTIONS. If property is offered for rent under a rental–purchase agreement through a catalog, or if the size of the property is such that displaying a card or tag on or next to the property would be impractical, a rental–purchase company may make the disclosures required under sub. (1) in a catalog or list, if the catalog or list is readily available to prospective lessees.

422.611 Authorized referral transactions. Notwithstanding any other provision in chs. 421 to 427, after entering into a rental–purchase agreement, a rental–purchase company may give or offer to give a rebate or discount to a lessee under the rental–purchase agreement in consideration of the lessee's giving to the rental–purchase company the names of prospective lessees. A rebate or discount under this section may be contingent upon the occurrence of any event that takes place after the time that the names are given to the rental–purchase company.

422.612 Termination of rental–purchase agreement. The termination date of a rental–purchase agreement is the earlier of the following:

(1) The day specified in the rental–purchase agreement as the day on which the rental term ends, ~~unless a different day has been established under the rental–purchase agreement.~~

(2) The date on which the lessee voluntarily surrenders the rental property.

422.613 Late payment, grace period, and late fees. (1) LATE FEE GENERALLY. If a lessee fails to make any payment when due under a rental–purchase

agreement or if, at the end of any rental term, the lessee fails to return the rental property or to renew the rental–purchase agreement for an additional term, the rental–purchase company may require the lessee to pay a late fee. Except as provided in sub. (4), this subsection does not apply if the lessee's failure to return rental property or failure to renew the rental–purchase agreement at the end of the rental term is due to the lessee's exercise of an early–purchase option under the rental–purchase agreement or is due to the lessee's making all payments necessary to acquire ownership of the rental property.

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

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

(b) For an agreement that is renewed for a term that is longer than one week, no late fee may be assessed for a payment that is made within 7 days after the date on which the scheduled payment is due.

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

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

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

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

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

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

422.614 Reinstatement of terminated rental–purchase agreement. (1) REINSTATEMENT GENERALLY. A lessee may reinstate a terminated rental–purchase agreement without losing any rights or options previously acquired if all of the following apply:

(a) The lessee returned or surrendered the rental property within 7 days after the termination of the rental–purchase agreement.

(b) Not more than 60 days have passed after the date on which the rental property was returned to the rental–purchase company or, if the lessee has paid two–thirds or more of the total number of rental payments necessary to acquire ownership of the rental property, not more than 120 days have passed since the date on which the rental property was returned to the rental–purchase company.

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

(3) EFFECT OF REPOSSESSION ON REINSTATEMENT. Subject to s. 422.616, nothing in this section prohibits a rental–purchase company from attempting to repossess rental property upon termination of a rental–purchase agreement, but such efforts do not affect the lessee's right to reinstate as long as the rental property is repossessed, voluntarily returned, or surrendered within 7 days after the termination of the rental–purchase agreement.

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

422.615 Default and right to cure. (1) DEFAULT GENERALLY. A lessee is in default under a rental–purchase agreement if any of the following applies:

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

(b) The lessee breaches any other provision of the rental–purchase agreement and such breach materially impairs the condition, value, or protection of the rental property.

(2) DEFAULT; NECESSARY FOR LESSEE LIABILITY. No cause of action shall accrue against a lessee with respect to the lessee's obligations under a rental–purchase agreement except upon default and the expiration of any applicable period of time allowed for cure of the default.

(3) NOTICE OF DEFAULT; GENERAL REQUIREMENT. Except as provided in sub. (4), as a condition precedent to bringing an action against a lessee arising out of the lessee's default, a rental–purchase company shall provide a written notice of the default and of the right to cure the default to the lessee. The notice shall specify the default and shall inform the lessee that the lessee may cure the default by tendering an amount equal to all unpaid and due rental payments, fees, and taxes, and the next periodic rental payment, within 15 days after the notice is given. The act of curing

a default restores to the lessee the lessee's rights under the agreement as though no default had occurred.

(4) NOTICE OF DEFAULT; EXCEPTION. A rental–purchase company is not required to provide a notice of default and right to cure as a condition precedent to bringing an action against a lessee if the lessee breaches the agreement and if each of the following occurred twice during the 12 months before the date of the current default with respect to the same rental–purchase agreement:

(a) The lessee was in default.

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

(c) The lessee cured the default.

422.616 Surrender and repossession. (1) REQUEST FOR VOLUNTARY SURRENDER OF PROPERTY. A rental–purchase company may request the voluntary return or surrender of rental property prior to the declaration of a default and the sending of written notice of default and right to cure under s. 422.615. A request under this subsection is subject to sub. (2) and s. 427.104.

(2) DIRECT CONTACT FOR PURPOSES OF REPOSSESSION. (a) In this subsection, "reasonable effort" means any of the following:

1. Provided written notice, by certified mail, to the last–known address of the lessee.

2. Engaged in a telephone conversation with the lessee.

3. Attempted at least once on each of 2 consecutive days occurring after the most recent rental payment due date to engage in a telephone conversation with the lessee. Each attempt shall be made to the last–known telephone number at the lessee's address. If the rental–purchase company attempts to engage in such a

telephone conversation and discovers that the telephone number is disconnected, the rental–purchase company need only have made the initial attempt to engage in a telephone conversation with the lessee.

(b) 1. Except as provided in subd. 2., no rental–purchase company may take or attempt to take possession of rental property under a rental–purchase agreement by any means other than the legal process specified in s. 422.615 or by return or voluntary surrender of the rental property by the lessee until at least 48 hours have lapsed after the rental–purchase company has made a reasonable effort to contact the lessee and request the return or voluntary surrender of the rental property.

2. If the rental–purchase company has attempted to engage in a telephone conversation with the lessee and the telephone number at the lessee's address has been disconnected, the 48–hour requirement under subd. 1. does not apply.

(c) The rental–purchase company shall maintain all necessary records to verify compliance with this subsection.

SECTION 19. 425.312 of the statutes is created to read:

425.312 Rental–purchase companies. (1) A rental–purchase company that violates any provision of chs. 421 to 427 relating to rental–purchase agreements is liable to a lessee that is damaged as a result of that violation for the costs of the action and, notwithstanding s. 814.04 (1), for reasonable attorney fees as determined by the court, plus an amount equal to the sum of the following:

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

(b) An amount equal to 25 percent of the total amount of periodic rental payments necessary to acquire ownership of the rental property under the lessee's

INSERT 32-14

INSERT 33-8

rental–purchase agreement, except that liability under this paragraph may not be less than $100 nor more than $1,000.

(2) This section applies to all violations regarding rental–purchase agreements for which no other remedy is specifically provided.

SECTION 20. 426.102 (1) of the statutes is amended to read:

426.102 **(1)** Make or solicit consumer approval transactions (s. 423.201) ~~or~~, consumer credit transactions, or rental–purchase agreements, or modifications thereof.

(1) (6)

SECTION 21. 426.110 (14) of the statutes is amended to read:

426.110 **(14)** A merchant shall not be liable in a class action for specific penalties under s. 425.302 (1) (a), 425.303 (1), 425.304 (1), 425.305 (1), 425.312, or 429.301 (1) for which it would be liable in individual actions by reason of violations of chs. 421 to 427 and 429 or of conduct prescribed in sub. (2) unless it is shown by a preponderance of the evidence that the violation was a willful and knowing violation of chs. 421 to 427 and 429. No recovery in an action under this subsection may exceed $100,000, except that in an action involving a rental–purchase agreement, no recovery may exceed $500,000.

SECTION 22. 427.102 of the statutes is amended to read:

427.102 Scope. This chapter applies to conduct and practices in connection with the collection of obligations arising from consumer transactions, including transactions that are primarily for an agricultural purpose, and to transactions in connection with rental–purchase agreements.

SECTION 23. Initial applicability.

(1) This act first applies to rental–purchase agreements, and conduct pursuant to those agreements, that are entered into on the effective date of this subsection.

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SECTION 24. Effective date.

(1) This act takes effect on the 90th day after publication.

(END)

INSERT 6A:

Unconscionable conduct

The bill requires the division to promulgate rules that prohibit conduct regarding rental–purchase agreements that the division declares to be unconscionable. In promulgating the rules, the division must consider factors under current law that the division must consider for declaring conduct in consumer credit transactions to be unconscionable. The bill also allows a court to void a provision of rental–purchase agreement that the court finds to be unconscionable. This authority is similar to a court's authority under current law with respect to consumer credit transactions, except that if a rental–purchase company complies with the bill's limits on cash prices, a court may not find that the price of goods under a rental–purchase agreement is unconscionable.

INSERT 25–5:

(3) A court may not find that a rental–purchase transaction that complies with this section is unconscionable under s. 425.107 (3) (c).

INSERT 32–14:

SECTION ~~1~~. 423.201 (2) of the statutes is amended to read:

423.201 **(2)** "Consumer approval transaction" does not include a catalog sale that is not accompanied by any other solicitation ~~or~~, a consumer loan conducted and consummated entirely by mail, or a rental–purchase agreement.

History: 1971 c. 239; 1983 a. 389; 1997 a. 302; 1999 a. 32.

SECTION ~~2~~. 423.301 of the statutes is amended to read:

423.301 False, misleading or deceptive advertising. No merchant shall advertise, print, display, publish, distribute or broadcast or cause to be advertised, printed, displayed, published, distributed or broadcast, in any manner any statement or representation with regard to ~~the extension of~~ a consumer credit transaction or rental–purchase agreement including the rates, terms or conditions for the ~~extension of such credit~~ transaction or agreement, which is false, misleading, or deceptive, or which omits to state material information with respect to the

~~extension of credit~~ transaction or agreement that is necessary to make the statements therein not false, misleading or deceptive. With respect to matters specifically governed by the federal consumer credit protection act, compliance with such act satisfies the requirements of this section.

History: 1971 c. 239.

SECTION 3. 423.302 of the statutes is amended to read:

423.302 Remedies and penalty. In addition to any other remedy provided by law, a customer who has been induced to consummate a consumer credit transaction or a rental–purchase agreement as a result of advertising in violation of s. 423.301 shall be entitled to a recovery from the merchant in accordance with s. 425.305.

History: 1971 c. 239.

SECTION 4. 423.401 (1) of the statutes is amended to read:

423.401 **(1)** LIMITATION. Except as provided in sub. (2), a merchant may not record a customer's address, telephone number or any other identification information as a condition for accepting a credit card as payment for a consumer credit transaction or a rental–purchase agreement.

History: 1991 a. 158.

SECTION 5. 425.102 of the statutes is amended to read:

425.102 Scope. This subchapter applies to actions or other proceedings brought by a creditor to enforce rights arising from consumer credit transactions and to extortionate extensions of credit under s. 425.108. Section 425.107 also applies to rental–purchase agreements.

History: 1971 c. 239.

SECTION 6. 425.107 (1) of the statutes is amended to read:

425.107 **(1)** With respect to a consumer credit transaction or rental–purchase agreement, if the court as a matter of law finds that any aspect of the transaction or

agreement, any conduct directed against the customer by a party to the transaction or agreement, or any result of the transaction or agreement is unconscionable, the court shall, in addition to the remedy and penalty authorized in sub. (5), either refuse to enforce the transaction or agreement against the customer, or so limit the application of any unconscionable aspect or conduct to avoid any unconscionable result.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

SECTION 7. 425.107 (3) (intro.) of the statutes is amended to read:

425.107 **(3)** (intro.) Without limiting the scope of sub. (1), the court may consider, among other things, any of the following as pertinent to the issue of unconscionability:

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

SECTION 8. 425.107 (3) (a) of the statutes is amended to read:

425.107 **(3)** (a) That the practice unfairly takes advantage of the lack of knowledge, ability, experience or capacity of customers;.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

SECTION 9. 425.107 (3) (b) of the statutes is amended to read:

425.107 **(3)** (b) That those engaging in the practice know of the inability of customers to receive benefits properly anticipated from the goods or services involved;.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

SECTION 10. 425.107 (3) (c) of the statutes is amended to read:

425.107 **(3)** (c) ~~That~~ Except as provided in s. 422.606 (3), that there exists a gross disparity between the price of goods or services and their value as measured by the price at which similar goods or services are readily obtainable by other customers, or by other tests of true value;.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

SECTION 11. 425.107 (3) (d) of the statutes is amended to read:

425.107 **(3)** (d) That the practice may enable merchants to take advantage of the inability of customers reasonably to protect their interests by reason of physical or mental infirmities, illiteracy or inability to understand the language of the agreement, ignorance or lack of education or similar factors~~;~~.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

SECTION ~~12.~~ 425.107 (3) (e) of the statutes is amended to read:

425.107 **(3)** (e) That the terms of the transaction or agreement require customers to waive legal rights~~;~~.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

SECTION ~~13.~~ 425.107 (3) (f) of the statutes is amended to read:

425.107 **(3)** (f) That the terms of the transaction or agreement require customers to unreasonably jeopardize money or property beyond the money or property immediately at issue in the transaction~~;~~ or agreement.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

SECTION ~~14.~~ 425.107 (3) (g) of the statutes is amended to read:

425.107 **(3)** (g) That the natural effect of the practice would reasonably cause or aid in causing customers to misunderstand the true nature of the transaction or agreement or their rights and duties thereunder~~;~~.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

SECTION ~~15.~~ 425.107 (3) (h) of the statutes is amended to read:

425.107 **(3)** (h) That the writing purporting to evidence the obligation of the customer in the transaction or agreement contains terms or provisions or authorizes practices prohibited by law~~; and~~.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

SECTION ~~16.~~ 425.107 (5) of the statutes is amended to read:

425.107 **(5)** In addition to the protections afforded in sub. (1), the customer shall be entitled upon a finding of unconscionability to recover from the ~~creditor~~

merchant or the person responsible for the unconscionable conduct a remedy and penalty in accordance with s. 425.303.

History: 1971 c. 239; 1979 c. 89; 1985 a. 329.

SECTION 17. 425.301 (1) of the statutes is amended to read:

425.301 **(1)** The remedies provided by this subchapter shall be liberally administered to the end that the customer as the aggrieved party shall be put in at least as good a position as if the ~~creditor~~ merchant had fully complied with chs. 421 to 427. Recoveries under chs. 421 to 427 shall not in themselves preclude the award of punitive damages in appropriate cases.

History: 1971 c. 239; 1975 c. 407; 1979 c. 89; 1985 a. 256; 1999 a. 31.

INSERT 33–8:

SECTION 18. 426.108 (intro.) of the statutes is amended to read:

426.108 Unconscionable conduct. (intro.) The administrator shall promulgate rules declaring specific conduct in consumer credit transactions and rental–purchase agreements and the collection of debts arising from ~~consumer credit~~ such transactions and agreements to be unconscionable and prohibiting the use of those unconscionable acts. In promulgating rules under this section, the administrator shall consider, among other things, all of the following:

History: 1971 c. 239; 1999 a. 85.

SECTION 19. 426.108 (5) of the statutes is amended to read:

426.108 **(5)** That the terms of the transaction or agreement require customers to waive legal rights.

History: 1971 c. 239; 1999 a. 85.

SECTION 20. 426.108 (6) of the statutes is amended to read:

426.108 **(6)** That the terms of the transaction or agreement require customers to unreasonably jeopardize money or property beyond the money or property immediately at issue in the transaction.

History: 1971 c. 239; 1999 a. 85.

SECTION 21. 426.108 (7) of the statutes is amended to read:

426.108 **(7)** That the natural effect of the practice is to cause or aid in causing customers to misunderstand the true nature of the transaction or agreement or their rights and duties under the transaction or agreement.

History: 1971 c. 239; 1999 a. 85.

SECTION 22. 426.108 (8) of the statutes is amended to read:

426.108 **(8)** That the writing purporting to evidence the obligation of the customers in the transaction or agreement contains terms or provisions or authorizes practices prohibited by law.

History: 1971 c. 239; 1999 a. 85.

SECTION 23. 426.110 (2) (intro.) of the statutes is amended to read:

426.110 **(2)** (intro.) Actions may be maintained under this section against any person who in making, soliciting or enforcing consumer credit transactions or rental–purchase agreements engages in any of the following kinds of conduct:

History: 1971 c. 239; 1975 c. 407; 1979 c. 89; 1985 a. 256; 1991 a. 316; 1995 a. 27, 225, 329; 1999 a. 85.

SECTION 24. 426.110 (2) (a) of the statutes is amended to read:

426.110 **(2)** (a) Making or enforcing unconscionable terms or provisions of consumer credit transactions; or rental–purchase agreements.

History: 1971 c. 239; 1975 c. 407; 1979 c. 89; 1985 a. 256; 1991 a. 316; 1995 a. 27, 225, 329; 1999 a. 85.

SECTION 25. 426.110 (2) (b) of the statutes is amended to read:

426.110 **(2)** (b) False, misleading, deceptive, or unconscionable conduct in inducing customers to enter into consumer credit transactions; or rental–purchase agreements.

History: 1971 c. 239; 1975 c. 407; 1979 c. 89; 1985 a. 256; 1991 a. 316; 1995 a. 27, 225, 329; 1999 a. 85.

SECTION 26. 426.110 (2) (c) of the statutes is amended to read:

426.110 **(2)** (c) False, misleading, deceptive, or unconscionable conduct in enforcing debts or security interests arising from consumer credit transactions or rental–purchase agreements.

History: 1971 c. 239; 1975 c. 407; 1979 c. 89; 1985 a. 256; 1991 a. 316; 1995 a. 27, 225, 329; 1999 a. 85.

INSERT 33–17:

SECTION ~~27.~~ 426.201 (1) (a) of the statutes is amended to read:

426.201 **(1)** (a) Make or solicit consumer credit transactions or rental–purchase agreements, except a person who engages in consumer credit transactions solely through honoring credit cards issued by 3rd parties not related to such person.

History: 1971 c. 239; 1975 c. 407; 1979 c. 10 s. 24; 1979 c. 89; 1979 c. 162 s. 38 (3); 1979 c. 168 s. 21; 1979 c. 341 s. 12 (2); 1989 a. 303; 1995 a. 27, 328, 329; 2001 a. 16.

SECTION ~~28.~~ 426.202 (1m) (c) of the statutes is amended to read:

426.202 **(1m)** (c) *Amount of registration fee.* The amount of the registration fee shall be determined in accordance with rates set by the administrator. In setting these rates, the administrator shall consider the costs of administering chs. 421 to 427 and 429, including the costs of enforcement, education and seeking voluntary compliance with chs. 421 to 427 and 429. ~~The~~ For consumer credit transactions, the registration fee for a person shall be based on the person's year–end balance for the reporting period.

History: 1971 c. 239; 1973 c. 116 s. 6; 1975 c. 407; 1979 c. 168 s. 21; 1991 a. 316; 1995 a. 27, 329; 2001 a. 16.

SECTION ~~29.~~ 426.201 (2m) (b) 3. of the statutes is created to read:

426.201 **(2m)** (b) 3. This paragraph does not apply to a rental–purchase company.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–0288/4dn
MDK:../:...
WLJ

Sen. Brown:

This version of the bill makes the changes requested by Paul Egide of DFI. Please note the following:

1. ~~Please note my~~ I made changes to the suggested language for s. 422.606 (3).

2. This version amends s. 425.107 (5) to refer to "merchant" instead of "creditor". Is that okay?

3. I made a few other changes to conform to our current drafting style.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266–0131
E–mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–0288/4dn
MDK:wlj:rs

April 18, 2005

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Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266–0131
E–mail: mark.kunkel@legis.state.wi.us

add to file for -0288

Kunkel, Mark

From: Mnuk, Katie
Sent: Wednesday, June 29, 2005 11:17 AM
To: Kunkel, Mark
Cc: Dake, Marsha
Subject: Drafting modifications to LRB 0288/4

Mark, we've found two additional modifications that need to be made to Sen. Brown's draft LRB 0288/4, as described below. Could you please give me a call if you have any questions regarding these changes?

I know there's a lot going on right now but since I know I'll be asked, so could you give me a general ETA for when you think we'll receive the /5 version?

Thanks for all of you help!!

Katie Mnuk

Chief of Staff
Ofc. of Sen. Ron Brown
office: (608) 266-8546
toll-free: (877) 763-6636

Page 21, Section 422.603(3), where the term "Rental Payments to Acquire Ownership" is defined, needs to be changed as follows (underlined text is new):

"RENTAL PAYMENTS TO ACQUIRE OWNERSHIP. The total number, total dollar amount, and timing of all rental payments necessary to acquire ownership of the rental property, excluding any applicable taxes, application or processing charge, delivery fee, liability damage waiver fee, and fees for optional services."

Page 25, Section 422.606 (2), needs to be changed as follows (underlined text is new):

LIMITS ON COST OF RENTAL SERVICES AND OTHER CHARGES. The total amount charged by the rental-purchase company for the cost of rental services and all required charges or fees, excluding applicable taxes, in a rental-purchase transaction shall not exceed the cash price of the property."