

2011 DRAFTING REQUEST

Bill

Received: **09/16/2011**

Received By: **agary**

Wanted: **As time permits**

Companion to LRB:

For: **Warren Petryk (608) 266-0660**

By/Representing: **Marcie**

May Contact:

Drafter: **agary**

Subject: **Fin. Inst. - int. rates/loans**
Fin. Inst. - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Petryk@legis.wi.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Rental purchase companies and 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>
/?				_____			State
/P1	agary 10/06/2011	kfollett 10/10/2011	phenry 10/10/2011	_____	lparisi 10/10/2011		State
/P2	agary 10/18/2011	kfollett 10/18/2011	phenry 10/19/2011	_____	ggodwin 10/19/2011		State
/P3	agary 01/25/2012	kfollett 01/25/2012	rschluet 01/25/2012	_____	lparisi 01/25/2012		State

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/1	agary 01/26/2012	kfollett 01/26/2012	rschluet 01/26/2012	_____	lparisi 01/26/2012	ggodwin 02/06/2012	

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*At into
01/17/2012*

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10/18
2/18
ph
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FE Sent For:

<END>

Gary, Aaron

From: Gallagher, Michael
Sent: Friday, September 16, 2011 3:18 PM
To: Gary, Aaron
Subject: FW: Rent-to-Own legislation

Attachments: Rent to Own drafting information.pdf

Aaron, I spoke briefly with Marcie regarding this request, but I don't know anything beyond what's in the attachment. I believe it probably falls to you. Assuming it is yours, can you contact her to let her know that?

Thanks.

Mike

From: Malszycki, Marcie
Sent: Friday, September 16, 2011 3:06 PM
To: Gallagher, Michael
Subject: Rent-to-Own legislation

Mike,

Thanks for taking a look at this information.



Rent to Own
drafting informati..

Marcie Malszycki
Office of Representative Warren Petryk
608-266-0660
306 North, State Capitol

RENTAL-PURCHASE AGREEMENTS

Wisconsin is one of the few states without a specific law recognizing rent-to-own transactions. Instead, rent-to-own transactions are currently regulated under the Wisconsin Consumer Act (the "WCA") and, through a series of court cases in 1990s, are treated the same as traditional consumer credit sales. As a direct result, rent-to-own businesses are unable to operate in Wisconsin.

There are a number of significant differences between a rent-to-own transaction and traditional consumer credit sales:

- **Obligated Sales v. At Will, Terminable Leases** – The WCA was designed to regulate a transaction in which the consumer is obligated to pay all of the payments under a purchase contract. Rent-to-own is a transaction that can be terminated by the consumer at will. Rent-to-own dealers cannot offer a transaction in which consumers can walk away without penalty when those same dealers are required to comply with WCA regulations designed for an obligated sale with consequences for consumers who do not make all payments.
- **Obligated Payment Plan v. Week-to-Week Purchase of a Program** – Rent-to-own is the purchase of a bundle of merchandise and services, on a week-to-week or month-to-month basis. Consumers make a periodic rental payment and obtain the use of the merchandise as well as delivery and set up, product maintenance, a loaner if the merchandise breaks down, the option to acquire ownership, the right to make a no-penalty return, reinstatement rights and other benefits nonexistent in a traditional consumer credit sale. For example, consumers may choose to make rent-to-own payments weekly, semi-monthly, or monthly. The WCA is designed solely toward the regulation of monthly payments under a traditional consumer credit sale.
- **Annual Percentage Rates v. Indefinite, No-Obligation Rental Period** – The WCA requires an annual percentage rate ("APR") disclosure. Such a disclosure is consistent with credit sales that have definite payment periods and finance charges to purchase merchandise over a set period of time. In these credit sales, the difference between the cash price and the total amount that must be paid is interest, pure and simple.

A rent-to-own transaction, however, is for an indefinite time period. How long financing will occur depends entirely on the consumer's circumstances and desires at any given time. Because of this uncertain time period, no APR finance charge can be calculated, much less disclosed. Only if false presumptions are made (such as presumptions that the consumer is obligated to make all payments and that the payment is entirely a finance charge) can APR be calculated. These presumptions, of course, are inaccurate and misleading and do not permit consumers to make informed choices about credit terms.

Because of these differences, rent-to-own transactions and traditional consumer credit sales warrant separate and distinct regulatory frameworks. Otherwise, without its own regulatory framework, rent-to-own businesses cannot operate in Wisconsin.

To standardize the activities and practices of rent-to-own business while protecting Wisconsin consumers, state law would be updated by adopting a law that directly regulates rent-to-own transactions. The proposed amendment would:

- Create a new state law that specifically recognizes and regulates rental-purchase agreements and rental-purchase companies.
 - A rental-purchase company would be required to file with the Department of Financial Institutions (“DFI”) within 30 days of commencing business in Wisconsin.
 - A \$1,000 per location annual filing fee would be paid to DFI.
- Given that rent-to-own transactions are not the same as traditional consumer credit sales, more appropriate and precise regulations would apply to rental-purchase agreements instead of the WCA.
- Certain price and cost limitations would be required under state law.
 - The cash price for rental property would be limited to twice the rental-purchase company’s purchase price or the current market price for such property – whichever amount is greater.
 - The total amount charged would also be limited to twice the rental-purchase company’s purchase price or the current market price for such property – whichever amount is greater.
 - The acquisition price of the rental property could not exceed 55 percent of the difference between total of rental payments necessary to acquire ownership and the total amount of rental payments paid for use of the rental property at that time.
- In the event that any rental property is returned or surrendered by a consumer, consumers would have certain reinstatement rights and rental-purchase companies would be required to provide written notice of such rights.
- DFI would have enforcement authority to act on consumer complaints and ensure compliance with state law.
- Violations would subject rental-purchase companies to a range of statutory penalties, including payment of a consumer’s reasonable attorneys’ fees in bringing an action.

Wisconsin law clearly needs to be modernized to better regulate rent-to-own transactions. 47 other states already have such laws in place, consistent with federal consumer and tax laws. By adopting the proposed amendment, Wisconsin will join these other states and establish its own regulatory framework for rent-to-own transactions so that these businesses may operate in Wisconsin.

Section 1. Chapter 420 of the statutes is created to read:

Chapter 420 Rental-Purchase Agreements

NOTES: Because of the unique nature of rent-to-own transactions, a new section of the statutes is created that recognizes the unique nature of rent-to-own transactions and avoids subjecting these transactions to Wisconsin laws regulating traditional consumer credit sales.

Section 2. 420.01 of the statutes is created to read:

420.01 Definitions. Except as otherwise provided, in this chapter:

- (1) "Department" means the department of financial institutions.
- (2) "Rental property" means property rented under a rental-purchase agreement but does not include any motor vehicle, as defined in s. 340.01(35).
- (3) "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 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.
- (4) "Rental-purchase company" means a person engaged in the business of entering into rental-purchase agreements in this state or acquiring rental-purchase agreements that are entered into in this state.

NOTES: Given that current Wisconsin law does not recognize rent-to-own transactions, new definitions must be introduced into state law, including that such transactions will be regulated by DFI. "Rental-purchase agreement" is defined in a limited manner so that only a very specific type of transaction will be covered under this statute. For example, the rental property is only that used for "personal, family or household purposes" and the initial term of the agreement cannot exceed four months.

Section 3. 420.02 of the statutes is created to read:

420.02 Notice to the department. (1) A rental-purchase company shall notify the department within 30 days after commencing business in this state. A separate notification shall be provided for each place of business maintained by the rental-purchase company.

(2) Any person required to provide notice under sub. (1) shall pay a \$1,000 annual fee to the department.

(3) A rental-purchase company that has provided notice to the department shall not be subject to the Wisconsin consumer act in chs. 421 to 427 or any related rule or order adopted under chs. 421 to 427 and any rental-purchase agreements entered into by a rental-purchase company shall not be construed or regulated as a security interest, credit sale, retail installment sale, conditional sale or any other form of consumer credit, nor governed by laws that impute to a rental-purchase agreement the creation of a debt or extension of credit. No rental-purchase company or rental-purchase agreement shall be required to disclose a percentage rate calculation, including a time-price differential, an annual percentage rate, or an effective annual percentage rate.

NOTES: Within 30 days of commencing business in Wisconsin, a rental-purchase company must file a notice with DFI and, each year, pay a \$1,000 fee to the agency. Once that notice has been filed and fee paid, the rental-purchase company's agreements will be regulated under this new statute and not the Wisconsin Consumer Act or other laws that apply to traditional consumer credit sales, including any APR disclosures. These existing laws simply do not regulate the significant differences between the two types of transactions and need for two separate and distinct regulatory frameworks.

Section 4. 420.03 of the statutes is created to read:

420.03 Regulation.

(1) DISCLOSURE RULEMAKING. To the extent the department's responsibility under this chapter requires, the department may issue rules with respect to disclosure obligations to be imposed upon rental-purchase companies and related to rental-purchase agreements.

NOTES: Because of the specialized nature of rent-purchase agreements and the need for expertise in regulating these products, disclosure requirements will be developed by DFI through rulemaking after the agency receives public input and studies the experiences in other states. The result of such rulemaking would lead to disclosure by regulation that must be included in each rental-purchase agreement, advertisement and in-store display.

(2) PRICE AND COST LIMITATIONS. (a) Limits on cash prices. The cash price for rental property may not exceed the greater of the following: 1. An amount equal to twice the actual purchase price of the rental property, including any applicable freight charges, paid by the rental-purchase company. 2. The price at which property of like type and quality is offered, in the ordinary course of business, for sale for cash in the market area of the rental-purchase store where the property is offered for rental purchase.

(b) Limits on cost of rental services and other charges. The total amount charged by the rental-purchase company for all required charges or fees, excluding applicable taxes, in a rental-purchase transaction shall not exceed twice the maximum cash price of the property as determined under par. (a).

(c) Acquisition of ownership. At any time after the initial rental period, a lessee may acquire ownership of the rental property by tendering an amount not to exceed 55 percent of the difference between the total of rental payments necessary to acquire ownership of the rental property and the total amount of rental payments paid for use of the rental property at that time, plus applicable taxes. A lessee must affirmatively elect an early purchase option, but a lessee's early purchase option amount may not be less

than the amount of one rental payment. A rental-purchase company may first require the lessee to pay any accrued unpaid rental payments and fees.

NOTES: Each of these provisions imposes price and cost limitations on amounts charged consumers under a rental-purchase agreement. The limitations are imposed on the cash prices for the rental property, the overall cost of rental services and other charges, and the price charged for the consumer to acquire ownership of the property.

(3) REINSTATEMENT OF A RENTAL-PURCHASE AGREEMENT. (a) Reinstatement Generally. A lessee may reinstate a rental-purchase agreement that has ended without losing any rights or options previously acquired if all of the following apply: 1. The lessee voluntarily returned or surrendered the rental property within 7 days after the expiration of the rental-purchase agreement. 2. Not more than 120 days have passed after the date on which the rental-purchase agreement ended.

(b) 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.

(c) Effect of Repossession on Reinstatement. Subject to sub (4), nothing in this subsection prohibits a rental-purchase company from attempting to repossess rental property when a rental-purchase agreement ends, but such efforts do not affect the lessee's right to reinstate as long as the rental property is voluntarily returned or surrendered within 7 days after the rental-purchase agreement ends.

(d) 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.

(4) NOTICE OF REINSTATEMENT RIGHTS. If the lessee is entitled to reinstatement under sub. (3), within 15 days of repossession or voluntary return or surrender, the rental-purchase company shall provide written notice to the lessee of the lessee's rights and obligations under sub. (3).

NOTES: If a rental-purchase agreement ends, the consumer may reinstate the agreement without losing any rights or options previously acquired if the consumer returned or surrendered the rental property within seven days after the rental-purchase agreement expired and not more than 120 days have passed after the date the agreement ended. Any consumer eligible for reinstatement must be notified in writing by the rental-purchase company of his or her reinstatement rights.

(5) ENFORCEMENT. Compliance with the requirements under this chapter or any related rule or order adopted under it shall be enforced by the department.

NOTES: As with other financial transactions in Wisconsin, DFI will have responsibility for enforcing this new law.

(6) PENALTIES. (a) A rental-purchase company that fails to comply with any provision of this chapter or any related rule or order adopted under it with respect to a lessee is liable to the lessee in an amount equal to the greater of: 1. the actual damages sustained by the lessee as a result of the violation; or, 2. a.) in the case of an individual action, 25 percent of the total payments necessary to acquire ownership but not less than \$100 nor more than \$1,000, or b.) in the case of a class action, the amount the court determines to be appropriate with no minimum recovery as to each member. The total recovery in any class action or series of class actions arising out of the same violation may not be more than the lesser of \$500,000 or 1 percent of the net worth of the rental-purchase company. In determining the amount of any award in a class action, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency and persistence of the violation, the rental-purchase company's resources, and the extent to which the rental-purchase company's violation was intentional. (b) A rental-purchase company that is assessed a penalty under par. (a) is also liable to a lessee for the costs of the action and reasonable attorneys' fees as determined by the court. (c) A rental-purchase company is not liable for a failure to comply with any provision of this chapter if the rental-purchase company shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, even though the rental-purchase company maintained procedures reasonably adapted to avoid such an error.

NOTES: Except in situations resulting from an unintentional and bona fide error, rental-purchase companies that violate the new state law will be subject to range of statutory penalties including: 1) Liability to the individual consumer for actual damages or up to a \$1,000 penalty, whichever amount is greater; 2) Exposure to class action litigation on behalf of a group of consumers; and, 3) Liability for attorneys' fees necessary in bringing an action against a rental-purchase company.



Wanted
by Tues.
10/11
end of day



kgf

in 10/6

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

Gen

1 AN ACT ...; relating to: regulation of rental-purchase agreements and granting
2 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.

This bill creates requirements that specifically apply to rental-purchase agreements, imposes requirements on rental-purchase companies, and exempts rental-purchase companies and rental-purchase agreements from the scope of the consumer act and from provisions of the Uniform Commercial Code relating to security interests. The bill defines a "rental-purchase agreement" as an agreement between a rental-purchase company and a lessee for the use of rental property if all of the following apply: 1) The rental property is to be used primarily for personal, family, or household purposes; 2) The agreement has an initial term of four months or less and is renewable with each payment after the initial term; 3) The agreement

X
X
X

does not obligate or require the lessee to renew the agreement beyond the initial term; and 4) The agreement permits, but does not obligate, the lessee to acquire ownership of the rental property. A "rental-purchase company" is defined as a person engaged in the business of entering into rental-purchase agreements in this state or acquiring rental-purchase agreements that are entered into in this state.

The bill requires a rental-purchase company to file notice with the Department of Financial Institutions (DFI) within 30 days after commencing business in this state. A separate notice is required for each place of business maintained by the rental-purchase company. In addition, the rental-purchase company must pay to DFI an annual fee of \$1,000 for each location for which a notice is filed.

Under the bill, the total amount charged by a rental-purchase company for all required charges or fees, excluding applicable taxes, in a rental-purchase transaction may not exceed twice the maximum cash price of the rental property. The maximum cash price of rental property may not exceed the greater of the following:

- 1) An amount equal to twice the actual purchase price of the rental property, including any applicable freight charges, paid by the rental-purchase company; or
- 2) The price at which property of like type and quality is offered, in the ordinary course of business, for sale for cash in the market area of the rental-purchase store where the property is offered for rental purchase. The bill also limits the maximum amount that a lessee must pay to acquire ownership of the property if the lessee elects an early-purchase option after the initial rental period. This maximum amount to acquire ownership under an early-purchase option is the greater of the following:
 - 1) An amount not to exceed 55 percent of the difference between the total of rental payments necessary to acquire ownership of the rental property and the total amount of rental payments paid for use of the rental property at that time, plus applicable taxes; or
 - 2) The amount of one rental payment. Before a lessee acquires ownership of the rental property under an early-purchase option, the rental-purchase company may require the lessee to pay any accrued unpaid rental payments and fees.

The bill specifies that a rental-purchase company is not required to disclose, in a rental-purchase agreement or otherwise, any percentage rate calculation, including an annual percentage rate.

Under the bill, a lessee may reinstate a rental-purchase agreement that has ended without losing any rights or options previously acquired if all of the following apply: 1) The lessee voluntarily returned or surrendered the rental property within 7 days after the expiration of the rental-purchase agreement; and 2) Not more than 120 days have passed after the date on which the rental-purchase agreement ended. As a condition of reinstatement, 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. Upon reinstatement, the rental-purchase company must provide the lessee with the same rental property or with substitute property of comparable quality and condition. A rental-purchase company must provide written notice to a lessee of the lessee's rights and obligations relating to reinstatement of the rental-purchase agreement within 15 days of

seven

repossession or voluntary return or surrender of the rental property, if the lessee is entitled to reinstatement.

X Under the bill, a rental-purchase company that violates any of these provisions, or any applicable rule or order of DFI, pertaining to a lessee is liable to the lessee in an amount equal to the greater of the following: 1) The actual damages sustained by the lessee as a result of the violation; 2) If the action is not brought as a class action, 25 percent of the total payments necessary for the lessee to acquire ownership of the rental property, but not less than \$100 nor more than \$1,000; or 3) X If the action is brought as a class action, the amount the court determines to be appropriate. However, there are two limitations on such an award of damages. First, a rental-purchase company is not liable for any violation if the rental-purchase company shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, and the rental-purchase company maintained procedures reasonably adapted to avoid such an error. Second, in a class action or series of class actions, the total recovery by all lessees arising out of the same violation may not be more than the lesser of \$500,000 or 1 percent of the net worth of the rental-purchase company. If a court awards any monetary amount of damages to a lessee, the rental-purchase company is also liable to the lessee for the costs of the action and reasonable attorney fees.

The bill requires DFI to promulgate rules relating to rental-purchase company disclosure requirements in connection with rental-purchase agreements and requires DFI to enforce the provisions of the bill.

For further information see the *state* 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:

1 SECTION 1. 409.109 (4) (n) of the statutes is created to read:

2 409.109 (4) (n) Any rental-purchase company that has filed notice as provided
3 under s. 420.02 (1) and any rental-purchase agreement entered into by a such a
4 rental-purchase company.

5 SECTION 2. Chapter 420 of the statutes is created to read:

6 CHAPTER 420

7 RENTAL-PURCHASE COMPANIES

8 420.01 Definitions. In this chapter:

1 (1) "Cash price" means the price at which a rental-purchase company would
2 sell rental property to the lessee of the rental property if the lessee were to pay for
3 the rental property in full on the date on which the rental-purchase agreement is
4 executed.

5 (2) "Department" means the department of financial institutions.

6 (3) "Rental property" means property rented under a rental-purchase
7 agreement but does not include any motor vehicle, as defined in s. 340.01 (35).

8 (4) "Rental-purchase agreement" means an agreement between a
9 rental-purchase company and a lessee for the use of rental property if all of the
10 following apply:

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

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

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

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

19 (5) "Rental-purchase company" means a person engaged in the business of
20 entering into rental-purchase agreements in this state or acquiring rental-purchase
21 agreements that are entered into in this state.

22 **420.02 Notice to the department.** (1) NOTICE REQUIRED. A rental-purchase
23 company shall file notice with the department, in the form and manner prescribed
24 by the department, within 30 days after commencing business in this state. A

1 separate notice is required for each place of business maintained by the
2 rental-purchase company.

3 (2) FEE. For each location for which a notice is filed under sub. (1), the
4 rental-purchase company shall pay to the department an annual fee of \$1,000.

5 **420.03 Price and cost limitations.** (1) LIMITS ON CASH PRICES. The cash price
6 for rental property offered by a rental-purchase company may not exceed the greater
7 of the following:

8 (a) An amount equal to twice the actual purchase price of the rental property,
9 including any applicable freight charges, paid by the rental-purchase company.

10 (b) The price at which property of like type and quality is offered, in the
11 ordinary course of business, for sale for cash in the market area of the
12 rental-purchase store where the property is offered for rental purchase.

13 (2) LIMITS ON COST OF RENTAL SERVICES AND OTHER CHARGES. The total amount
14 charged by the rental-purchase company for all required charges or fees, excluding
15 applicable taxes, in a rental-purchase transaction shall not exceed twice the
16 maximum cash price of the property as determined under sub. (1).

17 (3) ACQUISITION OF OWNERSHIP. At any time after the initial rental period under
18 a rental-purchase agreement, if a lessee affirmatively elects an early-purchase
19 option, the lessee may acquire ownership of the rental property by tendering an
20 amount not to exceed 55 percent of the difference between the total of rental
21 payments necessary to acquire ownership of the rental property and the total
22 amount of rental payments paid for use of the rental property at that time, plus
23 applicable taxes, except that the lessee's early-purchase option amount may not be
24 less than the amount of one rental payment. Before a lessee acquires ownership of

1 the rental property as provided under this subsection, a rental-purchase company
2 may first require the lessee to pay any accrued unpaid rental payments and fees.

3 (4) ANNUAL PERCENTAGE RATE DISCLOSURE NOT REQUIRED. A rental-purchase
4 company is not required to disclose, in a rental-purchase agreement or otherwise,
5 any percentage rate calculation, including a time-price differential, an annual
6 percentage rate, or an effective annual percentage rate.

7 **420.04 Reinstatement of a rental-purchase agreement. (1)**

8 REINSTATEMENT GENERALLY. Subject to sub. (2), a lessee may reinstate a
9 rental-purchase agreement that has ended without losing any rights or options
10 previously acquired if all of the following apply:

11 (a) The lessee voluntarily returned or surrendered the rental property within
12 7 days after the expiration of the rental-purchase agreement.

13 (b) Not more than 120 days have passed after the date on which the
14 rental-purchase agreement ended.

15 (2) AUTHORIZED CONDITIONS ON REINSTATEMENT. As a condition of reinstatement
16 under sub. (1), the rental-purchase company may require the payment of all
17 past-due rental charges, any applicable late fees, a reinstatement fee not to exceed
18 \$5, and the rental payment for the next term.

19 (3) EFFECT OF REPOSSESSION ON REINSTATEMENT. Nothing in this section prohibits
20 a rental-purchase company from attempting to repossess rental property when a
21 rental-purchase agreement ends, but such efforts do not affect the lessee's right to
22 reinstate as long as the rental property is voluntarily returned or surrendered within
23 7 days after the rental-purchase agreement ends.

24 (4) PROPERTY AVAILABLE UPON REINSTATEMENT. Upon reinstatement, the
25 rental-purchase company shall provide the lessee with the same rental property, if

1 the property is available and is in the same condition as when it was returned to the
2 rental-purchase company, or with substitute property of comparable quality and
3 condition.

4 (5) NOTICE OF REINSTATEMENT RIGHTS. If the lessee is entitled to reinstatement
5 under subs. (1) and (2), within 15 days of repossession or voluntary return or
6 surrender of the rental property, the rental-purchase company shall provide written
7 notice to the lessee of the lessee's rights and obligations under this section.

8 **420.05 Rulemaking; enforcement.** (1) RULEMAKING. The department may
9 promulgate rules relating to rental-purchase company disclosure requirements in
10 connection with rental-purchase agreements.

11 (2) ENFORCEMENT. The department shall enforce this chapter, and any rule
12 promulgated under, or order issued under, this chapter.

13 **420.06 Penalties.** (1) AWARD OF DAMAGES. Subject to sub. (3), a
14 rental-purchase company that violates any provision of this chapter, rule
15 promulgated under this chapter, or order issued under this chapter pertaining to a
16 lessee is liable to the lessee in an amount equal to the greater of the following:

17 (a) The actual damages sustained by the lessee as a result of the violation.

18 (b) If the action is not brought as a class action, 25 percent of the total payments
19 necessary for the lessee to acquire ownership of the rental property, but not less than
20 \$100 nor more than \$1,000.

21 (c) If the action is brought as a class action, the amount the court determines
22 to be appropriate, subject to sub. (2).

23 (2) DAMAGE LIMITATIONS IN CLASS ACTIONS. The total recovery by all lessees in
24 any class action or series of class actions arising out of the same violation may not
25 be more than the lesser of \$500,000 or 1 percent of the net worth of the

1 rental-purchase company. In determining the amount of any award in a class action,
 2 the court shall consider, among other relevant factors, the amount of actual damages
 3 awarded, the frequency and persistence of the violation, the rental-purchase
 4 company's resources, and the extent to which the rental-purchase company's
 5 violation was intentional.

6 (3) UNINTENTIONAL VIOLATIONS. A rental-purchase company is not liable for any
 7 violation of this chapter if the rental-purchase company shows by a preponderance
 8 of the evidence that the violation was not intentional and resulted from a bona fide
 9 error, and the rental-purchase company maintained procedures reasonably adapted
 10 to avoid such an error.

11 (4) COSTS AND ATTORNEY FEES. If a court awards any monetary amount under
 12 sub. (1) to a lessee, the rental-purchase company shall also be liable to the lessee for
 13 the costs of the action and, notwithstanding s. 814.04 (1), for reasonable attorney fees
 14 as determined by the court.

15 SECTION 3. 421.202 (11) of the statutes is created to read:

16 421.202 (11) Any rental-purchase company that has filed notice as provided
 17 under s. 420.02 (1) and any rental-purchase agreement entered into by a such a
 18 rental-purchase company.

19 SECTION 4. Initial applicability.

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

22 SECTION 5. Effective date.

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

24 (END)

A handwritten note "D-Note" is circled in black ink in the bottom right corner of the page.

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

LRB-2924/P1dn

ARG:.....
gf

Date

ATTN: Marcie Malszycki

Please review the attached draft carefully to ensure that it is consistent with your intent.

In the attached draft, I have tried to incorporate the suggested language into created s. 420.04 (1), (3), and (5), for the most part, but I find these provisions, when read together, very confusing and perhaps even inconsistent. If rental property is repossessed, how could it also be voluntarily returned or surrendered? That is, I don't see how reinstatement rights could arise under s. 420.04 (1) if there is a repossession.

This bill requires DFI to enforce the provisions of chapter 420, but it is unclear to me what enforcement authority DFI would actually have. There is no express authority in the bill (or elsewhere in the statutes, as far as I can tell) for DFI to inspect the records or premises of a rental-purchase company, investigate suspected violations, impose administrative penalties for violations, or refer violations for prosecution. In addition, there is no requirement for rental-purchase companies to maintain records or make reports to DFI.

What happens if a rental-purchase company fails to pay the annual fee to DFI? Since rental-purchase companies are not actually licensed, DFI cannot suspend or revoke the company's license. Moreover, DFI seems to lack any other enforcement authority under this draft, so it does not appear that there would be any ramification under this bill for a rental-purchase company that chooses not to pay its annual fee as required. The same is true for DFI enforcement of its own rules. The bill allows a lessee to seek damages, but does not seem to give DFI any authority of its own to enforce violations of its rules.

The annual fee for rental-purchase companies will be deposited by DFI in its appropriation under s. 20.144 (1) (g). I assume that the full amount of the fees deposited (not just 88%) will be available to DFI for general program operations.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

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

LRB-2924/P1dn
ARG:kjf:ph

October 10, 2011

ATTN: Marcie Malszycki

Please review the attached draft carefully to ensure that it is consistent with your intent.

In the attached draft, I have tried to incorporate the suggested language into created s. 420.04 (1), (3), and (5), for the most part, but I find these provisions, when read together, very confusing and perhaps even inconsistent. If rental property is repossessed, how could it also be voluntarily returned or surrendered? That is, I don't see how reinstatement rights could arise under s. 420.04 (1) if there is a repossession.

This bill requires DFI to enforce the provisions of chapter 420, but it is unclear to me what enforcement authority DFI would actually have. There is no express authority in the bill (or elsewhere in the statutes, as far as I can tell) for DFI to inspect the records or premises of a rental-purchase company, investigate suspected violations, impose administrative penalties for violations, or refer violations for prosecution. In addition, there is no requirement for rental-purchase companies to maintain records or make reports to DFI.

What happens if a rental-purchase company fails to pay the annual fee to DFI? Since rental-purchase companies are not actually licensed, DFI cannot suspend or revoke the company's license. Moreover, DFI seems to lack any other enforcement authority under this draft, so it does not appear that there would be any ramification under this bill for a rental-purchase company that chooses not to pay its annual fee as required. The same is true for DFI enforcement of its own rules. The bill allows a lessee to seek damages, but does not seem to give DFI any authority of its own to enforce violations of its rules.

The annual fee for rental-purchase companies will be deposited by DFI in its appropriation under s. 20.144 (1) (g). I assume that the full amount of the fees deposited (not just 88 percent) will be available to DFI for general program operations.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us



State of Wisconsin
2011 - 2012 LEGISLATURE

in 10/18



LRB-2924/1 PZ

ARG:kjf:ph

Wanted
by 10/21
A.M.

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

- 1 AN ACT *to create* 409.109 (4) (n), chapter 420 and 421.202 (11) of the statutes;
- 2 relating to: regulation of rental-purchase agreements and granting
- 3 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.

This bill creates requirements that specifically apply to rental-purchase agreements, imposes requirements on rental-purchase companies, and exempts rental-purchase companies and rental-purchase agreements from the scope of the consumer act and from provisions of the Uniform Commercial Code relating to security interests. The bill defines a "rental-purchase agreement" as an agreement between a rental-purchase company and a lessee for the use of rental property if all of the following apply: 1) the rental property is to be used primarily for personal, family, or household purposes; 2) the agreement has an initial term of four months

and any late fees or
reinstatement fees

or less and is renewable with each payment after the initial term; 3) the agreement does not obligate or require the lessee to renew the agreement beyond the initial term; and 4) the agreement permits, but does not obligate, the lessee to acquire ownership of the rental property. A "rental-purchase company" is defined as a person engaged in the business of entering into rental-purchase agreements in this state or acquiring rental-purchase agreements that are entered into in this state.

The bill requires a rental-purchase company to file notice with the Department of Financial Institutions (DFI) within 30 days after commencing business in this state. A separate notice is required for each place of business maintained by the rental-purchase company. In addition, the rental-purchase company must pay to DFI an annual fee of \$1,000 for each location for which a notice is filed.

Under the bill, the total amount charged by a rental-purchase company for all required charges or fees, excluding applicable taxes, in a rental-purchase transaction may not exceed twice the maximum cash price of the rental property. The maximum cash price of rental property may not exceed the greater of the following: 1) an amount equal to twice the actual purchase price of the rental property, including any applicable freight charges, paid by the rental-purchase company; or 2) the price at which property of like type and quality is offered, in the ordinary course of business, for sale for cash in the market area of the rental-purchase store where the property is offered for rental purchase. The bill also limits the maximum amount that a lessee must pay to acquire ownership of the property if the lessee elects an early-purchase option after the initial rental period. This maximum amount to acquire ownership under an early-purchase option is the greater of the following: 1) an amount not to exceed 55 percent of the difference between the total of rental payments necessary to acquire ownership of the rental property and the total amount of rental payments paid for use of the rental property at that time, plus applicable taxes; or 2) the amount of one rental payment. Before a lessee acquires ownership of the rental property under an early-purchase option, the rental-purchase company may require the lessee to pay any accrued unpaid rental payments and fees.

The bill specifies that a rental-purchase company ~~is not required to~~ disclose, in a rental-purchase agreement or otherwise, any percentage rate calculation, including an annual percentage rate.

Under the bill, a lessee may reinstate a rental-purchase agreement that has ended without losing any rights or options previously acquired if all of the following apply: 1) the lessee voluntarily returned or surrendered the rental property within seven days after the expiration of the rental-purchase agreement; and 2) not more than 120 days have passed after the date on which the rental-purchase agreement ended. As a condition of reinstatement, 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. Upon reinstatement, the rental-purchase company must provide the lessee with the same rental property or with substitute property of comparable quality and condition. A rental-purchase company must provide written notice to a lessee of the lessee's rights and obligations relating to reinstatement of the rental-purchase agreement within 15 days of

repossession or voluntary return or surrender of the rental property, if the lessee is entitled to reinstatement.

Under the bill, a rental-purchase company that violates any of these provisions, or any applicable rule or order of DFI, pertaining to a lessee is liable to the lessee in an amount equal to the greater of the following: 1) the actual damages sustained by the lessee as a result of the violation; 2) if the action is not brought as a class action, 25 percent of the total payments necessary for the lessee to acquire ownership of the rental property, but not less than \$100 nor more than \$1,000; or 3) if the action is brought as a class action, the amount the court determines to be appropriate. However, there are two limitations on such an award of damages. First, a rental-purchase company is not liable for any violation if the rental-purchase company shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, and the rental-purchase company maintained procedures reasonably adapted to avoid such an error. Second, in a class action or series of class actions, the total recovery by all lessees arising out of the same violation may not be more than the lesser of \$500,000 or 1 percent of the net worth of the rental-purchase company. If a court awards any monetary amount of damages to a lessee, the rental-purchase company is also liable to the lessee for the costs of the action and reasonable attorney fees.

allows

The bill ~~requires~~ DFI to promulgate rules relating to rental-purchase company disclosure requirements ~~in connection with rental-purchase agreements~~ and requires DFI to enforce the provisions of the bill.

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ANAL

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

administer and

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

1 SECTION 1. 409.109 (4) (n) of the statutes is created to read:

2 409.109 (4) (n) Any rental-purchase company that has filed notice as provided
3 under s. 420.02 (1) and any rental-purchase agreement entered into by such a
4 rental-purchase company.

5 SECTION 2. Chapter 420 of the statutes is created to read:

6 CHAPTER 420

7 RENTAL-PURCHASE COMPANIES

8 420.01 Definitions. In this chapter:

1 (1) "Cash price" means the price at which a rental-purchase company would
2 sell rental property to the lessee of the rental property if the lessee were to pay for
3 the rental property in full on the date on which the rental-purchase agreement is
4 executed.

5 (2) "Department" means the department of financial institutions.

6 (3) "Rental property" means property rented under a rental-purchase
7 agreement but does not include any motor vehicle, as defined in s. 340.01 (35).

8 (4) "Rental-purchase agreement" means an agreement between a
9 rental-purchase company and a lessee for the use of rental property if all of the
10 following apply:

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

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

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

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

19 (5) "Rental-purchase company" means a person engaged in the business of
20 entering into rental-purchase agreements in this state or acquiring rental-purchase
21 agreements that are entered into in this state.

22 **420.02 Notice to the department.** (1) NOTICE REQUIRED. A rental-purchase
23 company shall file notice with the department, in the form and manner prescribed
24 by the department, within 30 days after commencing business in this state. A

1 separate notice is required for each place of business maintained by the
2 rental-purchase company.

3 (2) FEE. For each location for which a notice is filed under sub. (1), the
4 rental-purchase company shall pay to the department an annual fee of \$1,000.

5 **420.03 Price and cost limitations.** (1) LIMITS ON CASH PRICES. The cash price
6 for rental property offered by a rental-purchase company may not exceed the greater
7 of the following:

8 (a) An amount equal to twice the actual purchase price of the rental property,
9 including any applicable freight charges, paid by the rental-purchase company.

10 (b) The price at which property of like type and quality is offered, in the
11 ordinary course of business, for sale for cash in the market area of the
12 rental-purchase store where the property is offered for rental purchase.

13 (2) LIMITS ON COST OF RENTAL SERVICES AND OTHER CHARGES. The total amount
14 charged by the rental-purchase company for all required charges or fees, excluding
15 applicable taxes, *and any late fees or reinstatement fees* in a rental-purchase transaction shall not exceed twice the
16 maximum cash price of the property as determined under sub. (1).

17 (3) ACQUISITION OF OWNERSHIP. At any time after the initial rental period under
18 a rental-purchase agreement, if a lessee affirmatively elects an early-purchase
19 option, the lessee may acquire ownership of the rental property by tendering an
20 amount not to exceed 55 percent of the difference between the total of rental
21 payments necessary to acquire ownership of the rental property and the total
22 amount of rental payments paid for use of the rental property at that time, plus
23 applicable taxes, except that the lessee's early-purchase option amount may not be
24 less than the amount of one rental payment. Before a lessee acquires ownership of

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5-4

1 the rental property as provided under this subsection, a rental-purchase company
2 may first require the lessee to pay any accrued unpaid rental payments and fees.

3 (4) ANNUAL PERCENTAGE RATE DISCLOSURE NOT REQUIRED. A rental-purchase
4 company ^{shall} ~~is not required to~~ disclose, in a rental-purchase agreement or otherwise,
5 any percentage rate calculation, including a time-price differential, an annual
6 percentage rate, or an effective annual percentage rate.

7 **420.04 Reinstatement of a rental-purchase agreement. (1)**

8 REINSTATEMENT GENERALLY. Subject to sub. (2), a lessee may reinstate a
9 rental-purchase agreement that has ended without losing any rights or options
10 previously acquired if all of the following apply:

11 (a) The lessee voluntarily returned or surrendered the rental property within
12 7 days after the expiration of the rental-purchase agreement.

13 (b) Not more than 120 days have passed after the date on which the
14 rental-purchase agreement ended.

15 (2) AUTHORIZED CONDITIONS ON REINSTATEMENT. As a condition of reinstatement
16 under sub. (1), the rental-purchase company may require the payment of all
17 past-due rental charges, any applicable late fees, a reinstatement fee not to exceed
18 \$5, and the rental payment for the next term.

19 (3) EFFECT OF REPOSSESSION ON REINSTATEMENT. Nothing in this section prohibits
20 a rental-purchase company from ^{repossessing or} attempting to repossess rental property when a
21 rental-purchase agreement ends, but such efforts do not affect the lessee's right to
22 reinstate as long as the rental property is voluntarily returned or surrendered within
23 7 days after the rental-purchase agreement ends.

24 (4) PROPERTY AVAILABLE UPON REINSTATEMENT. Upon reinstatement, the
25 rental-purchase company shall provide the lessee with the same rental property, if

1 the property is available and is in the same condition as when it was returned to the
2 rental-purchase company, or with substitute property of comparable quality and
3 condition.

4 (5) NOTICE OF REINSTATEMENT RIGHTS. If the lessee is entitled to reinstatement
5 under subs. (1) and (2), within 15 days of repossession or voluntary return or
6 surrender of the rental property, the rental-purchase company shall provide written
7 notice to the lessee of the lessee's rights and obligations under this section.

8 **420.05 Rule making; enforcement.** (1) RULE MAKING. The department may
9 promulgate rules relating to rental-purchase company disclosure requirements in
10 connection with rental-purchase agreements.

11 (2) ENFORCEMENT. The department shall enforce this chapter, and any rule
12 promulgated under, or order issued under, this chapter.

13 **420.06 Penalties.** (1) AWARD OF DAMAGES. Subject to sub. (3), a
14 rental-purchase company that violates any provision of this chapter, rule
15 promulgated under this chapter, or order issued under this chapter pertaining to a
16 lessee is liable to the lessee in an amount equal to the greater of the following:

17 (a) The actual damages sustained by the lessee as a result of the violation.

18 (b) If the action is not brought as a class action, 25 percent of the total payments
19 necessary for the lessee to acquire ownership of the rental property, but not less than
20 \$100 nor more than \$1,000.

21 (c) If the action is brought as a class action, the amount the court determines
22 to be appropriate, subject to sub. (2).

23 (2) DAMAGE LIMITATIONS IN CLASS ACTIONS. The total recovery by all lessees in
24 any class action or series of class actions arising out of the same violation may not
25 be more than the lesser of \$500,000 or 1 percent of the net worth of the

1 rental-purchase company. In determining the amount of any award in a class action,
2 the court shall consider, among other relevant factors, the amount of actual damages
3 awarded, the frequency and persistence of the violation, the rental-purchase
4 company's resources, and the extent to which the rental-purchase company's
5 violation was intentional.

6 (3) UNINTENTIONAL VIOLATIONS. A rental-purchase company is not liable for any
7 violation of this chapter if the rental-purchase company shows by a preponderance
8 of the evidence that the violation was not intentional and resulted from a bona fide
9 error, and the rental-purchase company maintained procedures reasonably adapted
10 to avoid such an error.

11 (4) COSTS AND ATTORNEY FEES. If a court awards any monetary amount under
12 sub. (1) to a lessee, the rental-purchase company shall also be liable to the lessee for
13 the costs of the action and, notwithstanding s. 814.04 (1), for reasonable attorney fees
14 as determined by the court.

15 SECTION 3. 421.202 (11) of the statutes is created to read:

16 421.202 (11) Any rental-purchase company that has filed notice as provided
17 under s. 420.02 (1) and any rental-purchase agreement entered into by a such a
18 rental-purchase company.

19 SECTION 4. Initial applicability.

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

22 SECTION 5. Effective date.

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

24 (END)

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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ARG:.....

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INSERT ANAL:

(no ¶) and requirements for rental-purchase companies to maintain records and make reports to DFI. The bill also

2

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INSERT 5-4:

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(no ¶) If a rental-purchase company fails to timely pay the annual fee, the department shall order the rental-purchase company to cease operating until the annual fee is paid.

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INSERT 7-10:

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(no ¶) as well as rules relating to any requirement by the department for rental-purchase companies to maintain records and make reports to the department.

10

11

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13

Gary, Aaron

From: Malszycki, Marcie
Sent: Monday, October 17, 2011 9:30 AM
To: Gary, Aaron
Subject: Rental Purchase Agreements

Attachments: Rent To Own Edits from Peterson.pdf

Aaron,

Thank you for the draft and for your notes. I ran your notes passed our workgroup and here is their response. Please let me know if you have more questions or concerns for us. We want to ensure that this legislation is drafted properly.

Thank you again for your time.

Marcie Malszycki

Office of Representative Warren Petryk
608-266-0660
306 North, State Capitol



Rent To Own
Edits from Peterson.

We have reviewed the draft legislation on the proposed regulation of rental-purchase companies (LRB-2924/P1) (the “Draft Bill”) as well as the drafter’s note that accompanied it. Based on this review, attached is a mark-up with our suggested edits to the Draft Bill and we offer the following:

Notice to the Department of Financial Institutions – Pages 4-5

To make clear that rental-purchase companies are subject to the Department of Financial Institution’s (“DFI”) oversight and enforcement authority, language has been added to this section. With this additional language it should be even more clear that a rental-purchase company that does not pay an annual fee may not remain open for business.

The full amount of any fees deposited in this section should be available to DFI.

Given the unique nature of a rent-to-own transaction and its differences with a traditional consumer credit sale, a suggested edit to the Draft Bill is made to make clear that a rental-purchase company and rental-purchase agreements are not subject to the Wisconsin Consumer Act.

Price and Cost Limitations – Page 5

The Draft Bill is edited to make clear that “cash price” does not include any late fees or reinstatement fees.

Given the indefinite time-period of a rent-to-own transaction, the Draft Bill is edited to make clear that a rental-purchase company “shall not disclose” any APR finance charge information.

Reinstatement and the Effect of Repossession on Reinstatement – Pages 6-7

After carefully considering its wording and the day-to-day practices of rental-purchase companies, the

reinstatement section remains unchanged but for one minor edit. If it would assist in this process, we would be available to speak to the drafting attorney and go through this section line-by-line to ensure that it is consistent and drafted with clarity.

Recordkeeping and Reporting Obligations – Page 7

Language has been added to the rulemaking and enforcement section making clear that, through rulemaking, rental-purchase companies may be required to maintain certain records or make reports to DFI.

1 (1) "Cash price" means the price at which a rental-purchase company would
2 sell rental property to the lessee of the rental property if the lessee were to pay for
3 the rental property in full on the date on which the rental-purchase agreement is
4 executed.

5 (2) "Department" means the department of financial institutions.

6 (3) "Rental property" means property rented under a rental-purchase
7 agreement but does not include any motor vehicle, as defined in s. 340.01 (35).

8 (4) "Rental-purchase agreement" means an agreement between a
9 rental-purchase company and a lessee for the use of rental property if all of the
10 following apply:

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

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

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

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

19 (5) "Rental-purchase company" means a person engaged in the business of
20 entering into rental-purchase agreements in this state or acquiring rental-purchase
21 agreements that are entered into in this state.

22 **420.02 Notice to the department.** (1) NOTICE REQUIRED. A rental-purchase
23 company shall file notice with the department, in the form and manner prescribed
24 by the department, within 30 days after commencing business in this state. A

Insert #1

(2) ... If the annual fee is not paid, the department shall order a rental-purchase company to cease operating until such annual fees are paid-in-full.

Insert #2

420.02 Notice to the department.

(3) OVERSIGHT AND ENFORCEMENT. Rental-purchase companies and rental-purchase agreements are subject to the department's oversight and enforcement authority provided that a rental-purchase company that has provided notice to the department shall not be subject to the Wisconsin consumer act in chs. 421 to 427 or any related rule or order adopted under chs. 421 to 427 and any rental-purchase agreements entered into by a rental-purchase company shall not be construed or regulated as a security interest, credit sale, retail installment sale, conditional sale or any other form of consumer credit, nor governed by laws that impute to a rental-purchase agreement the creation of a debt or extension of credit.

Insert #3

(1) ... as well as rules relating to any requirements by the department for rental-purchase companies to maintain records and make reports to the department.

1 separate notice is required for each place of business maintained by the
2 rental-purchase company.

3 (2) FEE. For each location for which a notice is filed under sub. (1), the
4 rental-purchase company shall pay to the department an annual fee of \$1,000.

5 **(3) 420.03 Price and cost limitations.** (1) LIMITS ON CASH PRICES. The cash price
6 for rental property offered by a rental-purchase company may not exceed the greater
7 of the following:

8 (a) An amount equal to twice the actual purchase price of the rental property,
9 including any applicable freight charges, paid by the rental-purchase company.

10 (b) The price at which property of like type and quality is offered, in the
11 ordinary course of business, for sale for cash in the market area of the
12 rental-purchase store where the property is offered for rental purchase.

13 (2) LIMITS ON COST OF RENTAL SERVICES AND OTHER CHARGES. The total amount
14 charged by the rental-purchase company for all required charges or fees, excluding
15 applicable taxes, *and any late fees or reinstatement fees,* in a rental-purchase transaction shall not exceed twice the
16 maximum cash price of the property as determined under sub. (1).

17 **(3) ACQUISITION OF OWNERSHIP.** At any time after the initial rental period under
18 a rental-purchase agreement, if a lessee affirmatively elects an early-purchase
19 option, the lessee may acquire ownership of the rental property by tendering an
20 amount not to exceed 55 percent of the difference between the total of rental
21 payments necessary to acquire ownership of the rental property and the total
22 amount of rental payments paid for use of the rental property at that time, plus
23 applicable taxes, except that the lessee's early-purchase option amount may not be
24 less than the amount of one rental payment. Before a lessee acquires ownership of

Insert #2

Insert #1

*

permitted

shall not

1 the rental property as provided under this subsection, a rental-purchase company
2 may first require the lessee to pay any accrued unpaid rental payments and fees.

3 (4) ANNUAL PERCENTAGE RATE DISCLOSURE NOT REQUIRED. A rental-purchase
4 company ~~is not required to~~ disclose, in a rental-purchase agreement or otherwise,
5 any percentage rate calculation, including a time-price differential, an annual
6 percentage rate, or an effective annual percentage rate.

7 **420.04 Reinstatement of a rental-purchase agreement. (1)**

8 REINSTATEMENT GENERALLY. Subject to sub. (2), a lessee may reinstate a
9 rental-purchase agreement that has ended without losing any rights or options
10 previously acquired if all of the following apply:

11 (a) The lessee voluntarily returned or surrendered the rental property within
12 7 days after the expiration of the rental-purchase agreement.

13 (b) Not more than 120 days have passed after the date on which the
14 rental-purchase agreement ended.

repossessing or

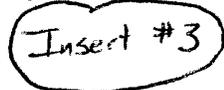
15 (2) AUTHORIZED CONDITIONS ON REINSTATEMENT. As a condition of reinstatement
16 under sub. (1), the rental-purchase company may require the payment of all
17 past-due rental charges, any applicable late fees, a reinstatement fee not to exceed
18 \$5, and the rental payment for the next term.

19 (3) EFFECT OF REPOSSESSION ON REINSTATEMENT. Nothing in this section prohibits
20 a rental-purchase company from attempting to repossess rental property when a
21 rental-purchase agreement ends, but such efforts do not affect the lessee's right to
22 reinstate as long as the rental property is voluntarily returned or surrendered within
23 7 days after the rental-purchase agreement ends.

24 (4) PROPERTY AVAILABLE UPON REINSTATEMENT. Upon reinstatement, the
25 rental-purchase company shall provide the lessee with the same rental property, if

1 the property is available and is in the same condition as when it was returned to the
2 rental-purchase company, or with substitute property of comparable quality and
3 condition.

4 (5) NOTICE OF REINSTATEMENT RIGHTS. If the lessee is entitled to reinstatement
5 under subs. (1) and (2), within 15 days of repossession or voluntary return or
6 surrender of the rental property, the rental-purchase company shall provide written
7 notice to the lessee of the lessee's rights and obligations under this section.

8 **420.05 Rule making; enforcement.** (1) RULE MAKING. The department may
9 promulgate rules relating to rental-purchase company disclosure requirements in
10 connection with rental-purchase agreements. 

11 (2) ENFORCEMENT. The department shall enforce this chapter, and any rule
12 promulgated under, or order issued under, this chapter.

13 **420.06 Penalties.** (1) AWARD OF DAMAGES. Subject to sub. (3), a
14 rental-purchase company that violates any provision of this chapter, rule
15 promulgated under this chapter, or order issued under this chapter pertaining to a
16 lessee is liable to the lessee in an amount equal to the greater of the following:

17 (a) The actual damages sustained by the lessee as a result of the violation.

18 (b) If the action is not brought as a class action, 25 percent of the total payments
19 necessary for the lessee to acquire ownership of the rental property, but not less than
20 \$100 nor more than \$1,000.

21 (c) If the action is brought as a class action, the amount the court determines
22 to be appropriate, subject to sub. (2).

23 (2) DAMAGE LIMITATIONS IN CLASS ACTIONS. The total recovery by all lessees in
24 any class action or series of class actions arising out of the same violation may not
25 be more than the lesser of \$500,000 or 1 percent of the net worth of the

1 rental-purchase company. In determining the amount of any award in a class action,
2 the court shall consider, among other relevant factors, the amount of actual damages
3 awarded, the frequency and persistence of the violation, the rental-purchase
4 company's resources, and the extent to which the rental-purchase company's
5 violation was intentional.

6 (3) UNINTENTIONAL VIOLATIONS. A rental-purchase company is not liable for any
7 violation of this chapter if the rental-purchase company shows by a preponderance
8 of the evidence that the violation was not intentional and resulted from a bona fide
9 error, and the rental-purchase company maintained procedures reasonably adapted
10 to avoid such an error.

11 (4) COSTS AND ATTORNEY FEES. If a court awards any monetary amount under
12 sub. (1) to a lessee, the rental-purchase company shall also be liable to the lessee for
13 the costs of the action and, notwithstanding s. 814.04 (1), for reasonable attorney fees
14 as determined by the court.

15 SECTION 3. 421.202 (11) of the statutes is created to read:

16 421.202 (11) Any rental-purchase company that has filed notice as provided
17 under s. 420.02 (1) and any rental-purchase agreement entered into by a such a
18 rental-purchase company.

19 SECTION 4. Initial applicability.

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

22 SECTION 5. Effective date.

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

24 (END)