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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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<b>2017 Senate Bill 637</b>	<b>Senate Substitute Amendment 2, and Senate Amendment 1 to Senate Substitute Amendment 2</b>
<i>Memo published: April 5, 2018</i>	<i>Contact: Julia Norsetter, Staff Attorney</i>

### **2017 SENATE BILL 637**

2017 Senate Bill 637 (the bill) creates a new statutory chapter to regulate “rental-purchase companies,” and exempts entities in compliance with the requirements of this new chapter from regulations under the Wisconsin Consumer Act (WCA) and the “secured transactions” chapter of the Uniform Commercial Code (UCC). The bill contains requirements related to provisions of a rental-purchase agreement, advertising, and penalties, among other requirements.

### **SENATE SUBSTITUTE AMENDMENT 2**

Senate Substitute Amendment 2 (the substitute amendment) retains the structure of the bill described above. The provisions of the substitute amendment are described in detail below.

#### **General Provisions and Definitions**

The substitute amendment exempts rental-purchase agreements entered into by a rental-purchase company from the WCA and security interest provisions of the UCC, if the rental-purchase company provided notice to the Department of Financial Institutions (DFI) as provided in the substitute amendment. The substitute amendment also specifies that a rental-purchase agreement subject to the substitute amendment may not be construed or regulated as a security interest, credit sale, retail installment sale, conditional sale, or any other form of consumer credit, nor considered to be the creation of a debt or extension of credit.

“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.” A “rental-purchase agreement” is an agreement between a rental-

purchase company and a lessee for the use of rental property<sup>1</sup>, subject to the following conditions:

- The rental property must be of the type typically used for personal, family, or household purposes.
- The agreement must have an initial term of four months or less and be renewable with each payment after the initial term.
- The agreement may not obligate or require the lessee to renew the agreement beyond the initial term.
- The agreement must permit, but not obligate, the lessee to acquire ownership of the rental property.

### **Required Agreement Provisions**

The substitute amendment requires a rental-purchase company to include specified information in every rental-purchase agreement, including those listed below, to the extent applicable. Certain formatting requirements apply to these provisions.

- A brief description, identification, and statement of condition of the rental property.
- The cash price<sup>2</sup> of the rental property.
- The total number of rental payments, total dollar amount of rental payments, and required timing of 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.
- The difference between the total dollar amount of rental payments necessary to acquire ownership of the rental property and the cash price of the property, along with a prescribed statement explaining this difference.
- The rental payment necessary to renew the rental-purchase agreement after the initial term, not including any applicable taxes and fees for optional services to which the lessee agrees.
- The total amount of the initial payment to be made by the lessee, including the initial rental payment, any application or processing charge, any delivery fee, and fees for other optional services to which the lessee agrees.

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<sup>1</sup> Under the substitute amendment, "rental property" does not include motor vehicles.

<sup>2</sup> "Cash price" means the price at which a rental-purchase company would sell rental property to the lessee of the rental property if the lessee were to pay for the rental property in full instead of entering into a rental-purchase agreement.

- An itemized description of any other charges or fees that the rental-purchase company may charge upon the occurrence of a contingency, such as a reinstatement fee, a charge-back fee<sup>3</sup> or insufficient funds fee,<sup>4</sup> as well as any applicable taxes, fees for optional services, application or processing charges, and delivery fees that are not included in the initial payment.
- A statement that the lessee has an early purchase option to purchase the property at any time during the period that the rental-purchase agreement is in effect, and the terms applicable to this option.
- A statement that, unless otherwise agreed, in the event the rental property is stolen, damaged, or destroyed while in the possession of or subject to the control of the lessee, the lessee is responsible to pay the company based on a formula in the substitute amendment.
- A general requirement that the company must service or replace the rental property and maintain it in good working condition, during the term of the rental-purchase agreement, if there are 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.
- The rights of the lessee to terminate the agreement.
- An explanation of the lessee's right to reinstate a rental-purchase agreement.<sup>5</sup>
- A prescribed statement explaining that the transaction is for the rental of the property, ownership will not vest unless the early purchase option is executed or all payments necessary to acquire ownership are made, and the company is entitled to immediate possession of the property if payments are not made.
- Specific information and disclosures related to any optional services.

### **Prohibited Agreement Provisions**

The substitute amendment prohibits all of the following in a rental-purchase agreement:

- A confession of judgment (a written acknowledgement of liability).

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<sup>3</sup> "Chargeback fee" means a charge or fee for a payment that is denied or dishonored by a credit card provider.

<sup>4</sup> "Insufficient funds fee" means a charge or fee for the return of each check, electronic funds transfer, or other payment instrument that is denied or dishonored.

<sup>5</sup> Under the substitute amendment, a lessee may reinstate a rental-purchase agreement within a certain time period without losing any rights or options under the agreement if the property was voluntarily returned or surrendered, if specified conditions are met.

- A provision authorizing a rental-purchase company to enter the lessee's residence without the lessee's permission or to commit a breach of the peace in the repossession of rental property.
- 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 a waiver of any provision of the substitute amendment relating to rental-purchase agreements.
- A provision requiring rental payments totaling more than the total dollar amount of all rental payments necessary to acquire ownership.
- A provision requiring the lessee to purchase insurance from the rental-purchase company to insure the rental property.

### **Display of Price Cards and Preagreement Disclosures**

Subject to certain exceptions, the substitute amendment generally requires a rental-purchase company to display, next to property offered for rent under a rental-purchase agreement, a card or tag that clearly and conspicuously states all of the following:

- The cash price that a lessee would pay to purchase the property.
- The amount and timing of the rental payments.
- The total number and total amount of all rental payments necessary to acquire ownership of the property under a rental-purchase agreement.
- Whether the property is new or used.

Specified disclosures are also required when property is "not displayed or offered primarily for rental-purchase," which is defined to mean rental property displayed or offered at a physical location that derives less than 50% of its revenues from rental-purchase agreements. Information that must be disclosed to a lessee includes the cash price of the property and, if a rental-purchase agreement is executed, that the lessee does not own the property.

### **Notice to DFI and Rule-Making Authority**

The substitute amendment requires a rental-purchase company to provide initial and annual notice of its locations to DFI, and pay an annual fee for each place of business as set forth in the substitute amendment. The substitute amendment also requires DFI to provide written notice to a rental-purchase company that fails to timely pay the annual fee, and permits DFI to order the rental-purchase company to cease operating until the annual fee is paid, if the company fails to pay within 30 days of the issuance of a notice by DFI.

The substitute amendment authorizes DFI to promulgate rules necessary to administer and enforce the requirements of the substitute amendment, including a model rental-purchase agreement that meets the requirements of the substitute amendment. However, DFI may not promulgate a rule that does any of the following: (1) requires disclosure not explicitly required

or permitted in the substitute amendment; (2) establishes a requirement for, or limitation on, the pricing offered to a consumer by a rental-purchase company; and (3) establishes any other requirement for, or limitation on, a rental-purchase agreement not explicitly required or permitted by the substitute amendment or that is more restrictive than the provisions of the substitute amendment.

## **Penalties**

### **Available Remedies**

The substitute amendment provides that the exclusive remedy for a violation of the requirements under the substitute amendment, a rule promulgated under the substitute amendment, or an order issued under the substitute amendment are all of the following:

- The penalties created under the substitute amendment.
- Certain statutory provisions relating to marketing and trade practices under chs. 100.18 and 100.20, Stats.

These remedies may not be available if the violation was unintentional<sup>6</sup> or if the rental-purchase company cures the noncompliance.<sup>7</sup> In addition, the substitute amendment does not preempt the application of laws other than those created under the substitute amendment that relate to a transaction governed by the substitute amendment, other than the express exclusion of the WCA and certain UCC provisions described above.

### **Monetary Damages**

In situations in which a violation occurs that was “intentional,” the company is liable to the lessee in an amount equal to the greater of the following if the violation is **not** brought as a class action:

- The actual damages sustained by the lessee as a result of the violation.
- Twenty-five 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.

If the violation is brought as a class action, the company is liable to the lessee in an amount equal to the greater of the following:

- The actual damages sustained by the lessee as a result of the violation.

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<sup>6</sup> If a 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, these penalties may not apply.

<sup>7</sup> To cure noncompliance, the substitute amendment requires a rental-purchase company to notify the consumer of its noncompliance and correct the noncompliance within 45 days of the earliest of any of the following: (1) the receipt of a written notice of the noncompliance from the consumer; or (2) the discovery of the noncompliance by the rental-purchase company.

- For all lessees in the class action, the amount the court determines to be appropriate, not to exceed \$500,000 or 1% of the net worth of the rental-purchase company, whichever is less.

If a court awards any monetary amount to a lessee under these penalty provisions, the rental-purchase company is also liable for the costs of the action and reasonable attorney fees.

## **Other Provisions**

### **Prohibited Fees**

The substitute amendment prohibits a rental-purchase company from charging a lessee any late fee in connection with any past-due rental charges or reinstatement of a rental-purchase agreement and may not charge a lessee any charge-back fee or insufficient funds fee that exceeds \$15 for each attempted payment that is denied or dishonored.

### **Advertising**

The substitute amendment provides that if an advertisement for a rental-purchase agreement states the amount of a payment for a specific item, the advertisement shall also clearly and conspicuously state all of the following:

- That the transaction advertised is a rental-purchase agreement.
- The total number and total dollar amount of all rental payments necessary to acquire ownership of the property.
- That the lessee does not acquire ownership of the property if the lessee fails to make all payments necessary to acquire ownership of the property.

### **Liability Damage Waiver**

The substitute amendment allows a rental-purchase company and a lessee to contract for a “liability damage waiver” for which a periodic fee may be charged, not to exceed 10% of the periodic rental payment. Certain requirements apply if a liability damage waiver will be sold, and such a waiver may only exclude loss or damage to the property caused by moisture, scratches, mysterious disappearance, vandalism, abandonment of the property, or any other damage intentionally caused by the lessee or that results from the lessee’s willful or wanton misconduct. The lessee is entitled to cancel the waiver at the end of any rental term, and the substitute amendment provides that such a waiver is not insurance.

### **Documentation of Payments and Statements**

The substitute amendment requires a rental-purchase company to provide a written receipt to the lessee for any payment made by the lessee in cash, and also requires a receipt to be provided for any other type of payment upon a request by the lessee. Also, a lessee is generally entitled to request one free written statement per year showing the lessee’s payment history in the previous year.

## **SENATE AMENDMENT 1**

Senate Amendment 1 provides that a lessee under a rental-purchase agreement may use the statutory small claims procedure in an action to recover damages under the penalties provision in the substitute amendment, including costs and attorney fees if applicable, regardless of the amount claimed in the action. Senate Amendment 1 also provides that the option to use the small claims procedure is not the exclusive procedure for these actions.

## **BILL HISTORY**

Senate Bill 637 was introduced on December 7, 2017, by Senator Moulton and others. On March 15, 2018, the Senate Committee on Agriculture, Small Business, and Tourism introduced Senate Substitute Amendment 2 and Senate Amendment 1 to Senate Substitute Amendment 2. That same day, the committee recommended adoption of Senate Amendment 1 to Senate Substitute Amendment 2, and recommended adoption of Senate Substitute Amendment 2, as amended, on votes of Ayes, 9; Noes, 0. Passage of the bill, as amended, was not recommended by the committee on a vote of Ayes, 4; Noes, 5.

JN:ksm