



## 2011 ASSEMBLY BILL 582

February 17, 2012 – Introduced by Representatives PETRYK, BERNIER, LITJENS, STONE and SUDER, cosponsored by Senator MOULTON. Referred to Committee on Financial Institutions.

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,

**ASSEMBLY BILL 582**

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 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 and any late fees or reinstatement fees, 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 must not 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

**ASSEMBLY BILL 582**

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.

The bill allows DFI to promulgate rules relating to rental-purchase company disclosure requirements and requirements for rental-purchase companies to maintain records and make reports to DFI. The bill also requires DFI to administer and 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 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:

**ASSEMBLY BILL 582****SECTION 2**

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

**ASSEMBLY BILL 582**

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. If a  
5 rental-purchase company fails to timely pay the annual fee, the department shall  
6 order the rental-purchase company to cease operating until the annual fee is paid.

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

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

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

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

20 (3) ACQUISITION OF OWNERSHIP. At any time after the initial rental period under  
21 a rental-purchase agreement, if a lessee affirmatively elects an early-purchase  
22 option, the lessee may acquire ownership of the rental property by tendering an  
23 amount not to exceed 55 percent of the difference between the total of rental  
24 payments necessary to acquire ownership of the rental property and the total  
25 amount of rental payments paid for use of the rental property at that time, plus

**ASSEMBLY BILL 582****SECTION 2**

1 applicable taxes, except that the lessee's early-purchase option amount may not be  
2 less than the amount of one rental payment. Before a lessee acquires ownership of  
3 the rental property as provided under this subsection, a rental-purchase company  
4 may first require the lessee to pay any accrued unpaid rental payments and fees.

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

9 **420.04 Reinstatement of a rental-purchase agreement. (1)**

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

13 (a) The lessee voluntarily returned or surrendered the rental property within  
14 7 days after the expiration of the rental-purchase agreement.

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

17 (2) AUTHORIZED CONDITIONS ON REINSTATEMENT. As a condition of reinstatement  
18 under sub. (1), the rental-purchase company may require the payment of all  
19 past-due rental charges, any applicable late fees, a reinstatement fee not to exceed  
20 \$5, and the rental payment for the next term.

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

**ASSEMBLY BILL 582**

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

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

10           **420.05 Rule making; enforcement. (1) RULE MAKING.** The department may  
11 promulgate rules relating to rental-purchase company disclosure requirements in  
12 connection with rental-purchase agreements as well as rules relating to any  
13 requirement by the department for rental-purchase companies to maintain records  
14 and make reports to the department.

15           **(2) ENFORCEMENT.** The department shall administer and enforce this chapter,  
16 and any rule promulgated under, or order issued under, this chapter.

17           **420.06 Penalties. (1) AWARD OF DAMAGES.** Subject to sub. (3), a  
18 rental-purchase company that violates any provision of this chapter, rule  
19 promulgated under this chapter, or order issued under this chapter pertaining to a  
20 lessee is liable to the lessee in an amount equal to the greater of the following:

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

22           (b) If the action is not brought as a class action, 25 percent of the total payments  
23 necessary for the lessee to acquire ownership of the rental property, but not less than  
24 \$100 nor more than \$1,000.

**ASSEMBLY BILL 582****SECTION 2**

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

3 (2) DAMAGE LIMITATIONS IN CLASS ACTIONS. The total recovery by all lessees in  
4 any class action or series of class actions arising out of the same violation may not  
5 be more than the lesser of \$500,000 or 1 percent of the net worth of the  
6 rental-purchase company. In determining the amount of any award in a class action,  
7 the court shall consider, among other relevant factors, the amount of actual damages  
8 awarded, the frequency and persistence of the violation, the rental-purchase  
9 company's resources, and the extent to which the rental-purchase company's  
10 violation was intentional.

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

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

20 **420.07 Inapplicability of Consumer Act and ch. 409.** A rental-purchase  
21 company that has filed notice as provided under s. 420.02 (1) is not subject to the  
22 Wisconsin consumer act, chs. 421 to 427, or any related rule or order adopted under  
23 chs. 421 to 427, or to any provision of ch. 409, and any rental-purchase agreement  
24 entered into by such a rental-purchase company may not be construed or regulated  
25 as a security interest, credit sale, retail installment sale, conditional sale, or any



**ASSEMBLY BILL 582**

1 other form of consumer credit, nor considered to be the creation of a debt or extension  
2 of credit.

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

4 421.202 (11) Any rental-purchase company that has filed notice as provided  
5 under s. 420.02 (1) and any rental-purchase agreement entered into by a such a  
6 rental-purchase company.

7 **SECTION 4. Initial applicability.**

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

10 **SECTION 5. Effective date.**

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

12

(END)