

1999 ASSEMBLY BILL 849

March 7, 2000 – Introduced by Representatives URBAN, OLSEN, VRAKAS, LADWIG, HUEBSCH, KREIBICH, HAHN and MUSSER. Referred to Committee on Assembly Organization.

- 1 **AN ACT to create** 409.104 (12m), 421.202 (7m) and chapter 435 of the statutes;
2 **relating to:** regulating rental–purchase companies and granting rule–making
3 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 exempts certain consumer leases from the consumer act and creates a new chapter for the purpose of regulating these leases and the businesses that rent property to individuals under these leases. The primary aspects of the bill are as follows:

Scope

The bill regulates the activities of a rental–purchase company, which is defined in the bill as any person who regularly provides the use of personal property through

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rent-to-own agreements and to whom rental payments are initially payable under a particular rent-to-own agreement. With certain exceptions, an agreement qualifies as a rent-to-own agreement under the bill if, among other things, the rental property is to be used primarily for personal, family or household purposes; the agreement has an initial term of four months or less and is automatically renewable with each payment after the initial term; the agreement does not require the lessee to renew the agreement beyond the initial term; and the agreement permits, but does not require, the lessee to acquire ownership of the personal property. Under the bill, a rent-to-own agreement is not subject to any laws relating to a security interest or lease under the Uniform Commercial Code.

Certain transactions are specifically excluded, however, from the new chapter. These exclusions include a lease or bailment of personal property that is incidental to the lease of real property; a credit sale, as defined in the federal consumer credit protection laws; and a motor vehicle lease.

Administration

The bill requires every rental-purchase company doing business in this state to register with the department of financial institutions (department) and pay a registration fee. The bill permits the department to examine the books and records of a rental-purchase company to determine compliance with the new chapter. The department may suspend or revoke a rental-purchase company's registration if the rental-purchase company violates the new chapter and the violation is not isolated or inadvertent, if the rental-purchase company fails to pay the registration fee or if the department becomes aware of a fact that would be grounds for the department's refusal to honor the rental-purchase company's registration. If certain conditions are satisfied, a rental-purchase company may appeal an order of the department that suspends or revokes the rental-purchase company's registration.

Provisions of rent-to-own agreements

The bill requires every rent-to-own agreement to contain all of the following provisions, to the extent applicable:

- (1) A description of the rental property.
- (2) The cost of purchasing the rental property on the date on which the rent-to-own agreement is executed.
- (3) A statement indicating that it may cost less to purchase the rental property from a retailer other than the rental-purchase company.
- (4) The amount of the periodic rental payment.
- (5) The amount of any payment due when the rent-to-own agreement is executed or the rental property is delivered.
- (6) The total dollar amount, total number and timing of all rental payments necessary to acquire ownership of the rental property.
- (7) A statement indicating that the total dollar amount of all rental payments necessary to acquire ownership does not include other, separately identified, charges that the rental-purchase company may assess.
- (8) A summary of the lessee's early purchase option.
- (9) A description of the lessee's responsibility in the event of theft of or damage to the rental property.

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(10) A statement identifying the party that is responsible for service and maintenance of the rental property and a statement regarding any warranty that covers the rental property.

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

(12) A description of the lessee’s right to reinstate the rental–purchase agreement.

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

The bill also prohibits certain provisions from being placed in a rent–to–own agreement. For example, under the bill, a rent–to–own agreement may not include a confession of judgment, a provision granting the rental–purchase company a security interest in property other than the rental property, a provision granting the rental–purchase company permission to enter the lessee’s premises or commit a breach of the peace in repossessing the rental property, a waiver of any defense or counterclaim or any provision of the new chapter, a provision requiring rental payments totaling more than the total dollar amount of all rental payments necessary to acquire ownership or a provision requiring the purchase of insurance from the rental–purchase company to insure the rental property. Several of these prohibitions are similar to prohibitions contained in the consumer act.

Disclosure

All required provisions of a rent–to–own agreement must be clearly and conspicuously disclosed to the lessee in at least eight–point standard type on the face of the rent–to–own agreement. As under the consumer act, the bill requires the rental–purchase company to provide the lessee, or one lessee if there are multiple lessees under the same agreement, with a copy of the executed rent–to–own agreement. In addition, upon the request of a lessee, a rental–purchase company must provide the lessee with a receipt for any payment made by the lessee. Under the consumer act, a payment receipt must be provided without request, unless the method of payment itself is evidence of payment. With certain exceptions, upon the request of a lessee, a rental–purchase company must also provide the lessee or a person designated by the lessee with a copy of the lessee’s payment history.

Related transactions

Under the bill, a rental–purchase company must offer an early–purchase option to a lessee and may offer a liability waiver to a lessee. The terms of a liability waiver and the fact that the lessee is not required to purchase the waiver must be disclosed to the lessee in writing. The fee for the liability waiver may not equal more than 10% of the rental payment due under the rent–to–own agreement.

Marketing activities

With certain exceptions, the bill requires a rental–purchase company to display a card or tag on or next to any property offered for rent, indicating whether the property is new or used and indicating the cash price of the property, the amount of the rental payment and the term over which the rental payment must be made and the total number and total dollar amount of all rental payments necessary to acquire

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ownership of the property. In addition, a rental–purchase company must ensure that an advertisement for a rent–to–own agreement that refers to the amount of a payment for any property, and to the right to acquire ownership of that property, also states that the advertisement is for a rent–to–own agreement and that the lessee does not acquire ownership of the property if the lessee fails to make all rental payments necessary to acquire ownership. The advertisement must also include the total number and total dollar amount of all rental payments necessary to acquire ownership of the property. The provisions relating to advertising, however, do not apply to an in–store display or an advertisement published in the yellow pages or similar business directory. The consumer act does not contain a similar provision regulating the manner in which consumer credit is marketed, although the consumer act does prohibit false, misleading and deceptive advertising of certain products.

Similar to the consumer act, the bill prohibits a rental–purchase company from inducing an individual to enter into a rent–to–own agreement by giving or offering to give the individual a rebate or discount in consideration of the individual's giving the rental–purchase company the names of prospective lessees, if the earning of the rebate or discount is contingent upon the occurrence of any event that takes place after the time that the individual enters into the rent–to–own agreement. The bill, however, specifically allows a rental–purchase company to give or offer to give a rebate or discount to a current lessee, in consideration of the lessee's giving the rental–purchase company the names of prospective lessees.

Right to reduced amount of rental payments and right to reinstatement

Under the bill, if a lessee who has paid more than 50% of the total dollar amount of rental payments necessary to acquire ownership provides the rental–purchase company with reasonable evidence that the lessee's monthly income is reduced by at least 25% due to certain specified events, the rental–purchase company must reduce the amount of each rental payment by the same percentage that the lessee's monthly income is reduced or by 50%, whichever is less. The events that may trigger a reduced rental payment are pregnancy, disability, an involuntary job loss or an involuntary reduction in the amount of hours worked or wages earned by the lessee. The reduced rental payment must remain in effect until the lessee's monthly income is no longer reduced, except that the amount of each rental payment may be adjusted accordingly as the lessee's monthly income increases. A rental–purchase company may reasonably require continuing evidence of reduced monthly income. In order to compensate for the reduced amount of the rental payments, a rental–purchase company may increase the total number of rental payments necessary to acquire ownership of the rental property. A rental–purchase company may not, however, increase the total dollar amount of rental payments necessary to acquire ownership, or the amount of any single rental payment, to greater than the amount initially disclosed in the rent–to–own agreement. The consumer act does not contain any similar provisions.

The bill also grants a lessee the right to reinstate a terminated rent–to–own agreement, as long as the lessee returned the rental property within five days after termination and not more than 21 days have passed since the return date or, if the

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lessee paid at least two-thirds of the total number of rental payments necessary to acquire ownership, not more than 45 days have passed since the return date. A rental-purchase company may require the payment of a \$5 reinstatement fee, all past-due rental charges and any applicable late fees as a condition of reinstatement. Upon reinstatement, a rental-purchase company must provide a lessee with the same rental property, if available and in the same condition as when it was returned, or with comparable quality rental property.

Default and right to cure

The bill establishes a notice procedure similar to that contained in the consumer act that a rental-purchase company may follow if a lessee defaults under a rent-to-own agreement. The bill defines “default” as a material breach of the rent-to-own agreement or a failure to return rental property within seven days after the expiration of the term for which the last payment was made. Before giving a lessee a notice of default, a rental-purchase company may first request the lessee to voluntarily surrender the applicable rental property. Under the bill, as under the consumer act, with certain exceptions, in order to file an action against a lessee arising out of the lessee’s default, a rental-purchase company must give to the lessee a written notice of the default and of the lessee’s right, within 15 days after receiving the notice, to cure the default. Under the bill, the notice must specify, among other things, the actions required to cure the default, although, unlike the consumer act, the bill does not indicate what actions are required or permitted. As in the consumer act, if the lessee received a similar notice and cured the applicable default at least twice during the year preceding the current default, the bill permits a rental-purchase company to file an action without providing the written notice of default and right to cure as a condition of filing an action.

Collections practices

Under the bill, a rental-purchase company may not do any of the following in attempting to recover rental property or collect amounts owed under a rent-to-own agreement:

- (1) Use or threaten to use force or violence.
- (2) Disclose or threaten to disclose false information relating to the creditworthiness of the lessee.
- (3) Disclose or threaten to disclose a debt that is disputed by the lessee without disclosing the fact that the debt is disputed.
- (4) Harass or threaten the lessee or a relative of the lessee.
- (5) Use obscene language in communicating with the lessee or a relative of the lessee.
- (6) Threaten to enforce a right with knowledge that the right does not exist.
- (7) Use a communication that falsely simulates legal, judicial or governmental process.
- (8) Threaten to file an action against the lessee, unless the action is of a type that the rental-purchase company files in the regular course of business or unless the rental-purchase company intends to file the action.

In addition, a rental-purchase company may not threaten criminal prosecution, unless the rental-purchase company reasonably believes, in good faith,

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that the lessee has committed a crime and the rental–purchase company intends to seek the filing of criminal charges against the lessee. A rental–purchase company also may not communicate with a lessee’s employer, except to verify employment status or earnings, to determine whether the employer has established a debt counseling procedure or to give effect to an assignment of earnings. Similar provisions regarding debt collection are also contained in the consumer act, except that, with certain exceptions, the consumer act also prohibits a creditor from disclosing to another person information affecting a customer’s reputation, if the creditor knows or has reason to know that the person has no legitimate business need for the information.

Remedies, defenses and statute of limitations

With certain exceptions, a rental–purchase company that violates the new chapter is liable to a lessee damaged as a result of the violation for the greater of \$100; the amount of actual damages sustained as a result of the violation, including incidental and consequential damages; or an amount equal to 25% of the total amount of payments due in one month under the lessee’s rent–to–own agreement, up to \$1,000. A rental–purchase company is also liable for the costs of the action and reasonable attorney fees. If, however, a rental–purchase company includes a prohibited provision in a rent–to–own agreement, these remedies do not apply. In this case, the rental–purchase company must surrender to the lessee the rental property and any amounts paid under the rent–to–own agreement. With certain limited exceptions, multiple violations in connection with the same rent–to–own agreement only entitle the lessee to a single recovery. The bill also caps the total liability of a rental–purchase company under a class action at \$100,000 plus costs and reasonable attorney fees.

The bill establishes two defenses to a rental–purchase company’s liability. First, a rental–purchase company is not liable for any violation resulting from an error of the rental–purchase company if, within 60 days after discovering the error, the rental–purchase company notifies the lessee of the error and makes necessary adjustments to correct the error. Second, a rental–purchase company is not liable for any violation that the rental–purchase company shows, by a preponderance of the evidence, was unintentional and resulted from a bona fide error that the rental–purchase company has acted to correct and that took place notwithstanding the maintenance of procedures reasonably adopted to avoid the error. The bill specifies that a bona fide error includes a clerical error, an error in making calculations and an error due to computer malfunction or computer programming or a printing error. The consumer act does not contain similar defenses.

An action brought by a lessee for a violation of the new chapter must be commenced within one year after the date of the violation, two years after the date on which the rent–to–own agreement was entered into or one year after the date of the last payment, whichever is later. This statute of limitations is generally the same as the statute of limitations under the consumer act.

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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.** 409.104 (12m) of the statutes is created to read:

2 409.104 (**12m**) To a transfer of an interest under a rent-to-own agreement
3 under ch. 435; or

4 **SECTION 2.** 421.202 (7m) of the statutes is created to read:

5 421.202 (**7m**) A rent-to-own agreement under ch. 435;

6 **SECTION 3.** Chapter 435 of the statutes is created to read:

7 **CHAPTER 435**

8 **RENT-TO-OWN AGREEMENTS**

9 **SUBCHAPTER I**

10 **SCOPE**

11 **435.102 Scope. (1)** INAPPLICABILITY OF OTHER LAWS. A rent-to-own agreement
12 under this chapter is not governed by the laws relating to a security interest, as
13 defined in s. 401.201 (37), or a lease, as defined in s. 411.103 (1) (j), and is not
14 governed by chs. 421 to 427 and 429.

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

16 (a) A lease or bailment of personal property that is incidental to the lease of real
17 property.

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

19 (c) A credit sale, as defined in 15 USC 1602 (g) and in the regulations
20 promulgated under that section.

1 SUBCHAPTER II

2 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

23 SUBCHAPTER III

24 ADMINISTRATION

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

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

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

12 (c) The address of the rental–purchase company’s principal office.

13 (d) The addresses of all locations in this state at which the rental–purchase
14 company offers rent–to–own agreements to potential lessees.

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

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

19 **435.302 Registration fees. (1)** WHEN DUE. A rental–purchase company
20 required to register under s. 435.301 shall pay a registration fee to the department
21 when the rental–purchase company files the registration statement required under
22 s. 435.301.

23 **(2) AMOUNT.** The amount of the annual registration fee is \$50, plus \$25 for each
24 location in this state, in excess of 2, at which the rental–purchase company offers

1 rent-to-own agreements to potential lessees, subject to a maximum fee of \$750 per
2 year.

3 **435.303 Examination of books and records. (1) PURPOSE OF EXAMINATION.**

4 The department may examine the books and records of a rental-purchase company
5 for the purpose of determining compliance with this chapter.

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

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

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

22 **435.304 Suspension or revocation of registration. (1) GROUNDS.** The
23 department may issue an order suspending or revoking a rental-purchase
24 company's registration if any of the following conditions is met:

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

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

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

10 **(2) PROCEDURE.** The following procedure applies to every order of the
11 department that suspends or revokes a rental–purchase company’s registration:

12 (a) The department shall provide a written notice to the rental–purchase
13 company of the department’s intent to issue an order suspending or revoking the
14 rental–purchase company’s registration. The notice shall specify the grounds for and
15 the effective date of the proposed order.

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

22 (c) If a written response containing a request for a contested case hearing under
23 s. 227.42 is received by the department within the time provided under par. (b) and
24 if, in the opinion of the department, the matter satisfies all of the conditions under
25 s. 227.42 (1) (a) to (d), the matter shall be scheduled for a contested case hearing to

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1 commence within 60 days after the date on which the department receives the
2 written response.

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

SUBCHAPTER IV

RENT–TO–OWN AGREEMENTS

AND DISCLOSURE REQUIREMENTS

16 **435.401 General requirements of disclosure. (1)** FORM, LOCATION, SIZE AND
17 TIME OF DISCLOSURE. The information required under s. 435.402 shall satisfy all of the
18 following requirements:

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

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

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

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

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

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1 **(2) ACCURACY OF DISCLOSURE.** The information required under s. 435.402 must
2 be accurate as of the time that it is disclosed to the lessee. If any information
3 subsequently becomes inaccurate as a result of any act, occurrence or agreement by
4 the lessee, the resulting inaccuracy is not a violation of this chapter.

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

10 **435.402 Required provisions of rent-to-own agreement.** A
11 rental-purchase company shall include all of the following information, to the extent
12 applicable, in every rent-to-own agreement:

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

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

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

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1 **(4) UP-FRONT PAYMENT.** Any payment required of the lessee at the time that the
2 agreement is executed or at the time that the rental property is delivered, including
3 the initial rental payment, any application or processing charge, any delivery fee,
4 any charge for a liability damage waiver or for other optional services agreed to by
5 the lessee, and the applicable tax.

6 **(5) PAYMENT TO ACQUIRE OWNERSHIP.** The total number, total dollar amount and
7 timing of all periodic rental payments necessary to acquire ownership of the rental
8 property.

9 **(6) OTHER CHARGES AND FEES.** A statement that the total dollar amount of all
10 periodic rental payments necessary to acquire ownership of the rental property does
11 not include other charges or fees that a lessee may incur, such as application,
12 processing or delivery charges, or late payment, reinstatement, default or pickup
13 fees. These charges and fees shall be separately identified in the rental-purchase
14 agreement, and the amount of each charge and fee shall be disclosed.

15 **(7) SUMMARY OF EARLY-PURCHASE OPTION.** A statement summarizing the terms
16 of the lessee's option to acquire ownership of the rental property, including a
17 statement indicating that the lessee has the right to exercise an early purchase
18 option and indicating the price, or the formula or method for determining the price,
19 at which the rental property may be purchased under the early-purchase option.

20 **(8) RESPONSIBILITY FOR THEFT OR DAMAGE.** A statement that, unless otherwise
21 agreed, the lessee is responsible for the fair market value of the rental property,
22 determined according to the early-purchase option formula or method, if the rental
23 property is stolen, damaged or destroyed while in the possession of or subject to the
24 control of the lessee. The statement shall indicate that the fair market value will be

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1 determined as of the date on which the rental property is stolen, damaged or
2 destroyed.

3 **(9) SERVICE AND WARRANTY.** A statement identifying the party responsible for
4 maintaining or servicing the rental property during the term of the rent-to-own
5 agreement, together with a description of that responsibility, and a statement that
6 if any part of a manufacturer's express warranty covers the rental property when the
7 lessee acquires ownership of the rental property the manufacturer's express
8 warranty will be transferred to the lessee, if the transfer is allowed by the terms of
9 the manufacturer's express warranty.

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

13 **(11) RIGHT TO REINSTATE.** A brief explanation of the lessee's right to reinstate
14 a rent-to-own agreement under s. 435.602.

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

24 **(13) INFORMATION ABOUT RENTAL-PURCHASE COMPANY AND LESSEE.** The names of
25 the rental-purchase company and the lessee, the rental-purchase company's

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1 business address and telephone number, the lessee's address and the date on which
2 the rent-to-own agreement is executed.

3 **435.403 Prohibited provisions of rent-to-own agreement.** A
4 rental-purchase company may not include any of the following provisions in a
5 rent-to-own agreement:

6 (1) **CONFESSION.** A confession of judgment.

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

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

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

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

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

22 **435.404 Liability waiver.** A rental-purchase company may offer a liability
23 waiver to the lessee. The terms of the waiver shall be provided to the lessee in writing
24 and the face of the writing shall clearly disclose that the lessee is not required to

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1 purchase the waiver. The fee for the waiver may not exceed 10% of the periodic rental
2 payment due under the rent-to-own agreement.

3 **435.405 Early-purchase option.** An early-purchase option under a
4 rent-to-own agreement shall permit the lessee to purchase the rental property for
5 cash at any time after the initial periodic rental payment. As a condition of exercising
6 the early-purchase option, the rental-purchase company may require the lessee to
7 be current on the payments under the lessee's rent-to-own agreement or to pay any
8 past-due rental charges and other outstanding fees that are owed.

9 **435.406 Receipts and statements. (1) RECEIPTS DUE UPON REQUEST.** Upon
10 the request of a lessee, a rental-purchase company shall provide a written receipt
11 to the lessee for any payment made by the lessee.

12 **(2) STATEMENT DUE THE LESSEE.** Upon the request of a lessee, a rental-purchase
13 company shall provide a written statement to the lessee showing the lessee's
14 payment history under each rent-to-own agreement between the lessee and the
15 rental-purchase company. A rental-purchase company is not required to provide a
16 statement covering any rent-to-own agreement that terminated more than one year
17 prior to the date of the lessee's request. A rental-purchase company may provide a
18 single statement covering all rent-to-own agreements or separate statements for
19 each rent-to-own agreement, at the rental-purchase company's option.

20 **(3) STATEMENT DUE THE 3RD PARTY.** Upon the written request of a lessee, made
21 during the term of or no later than one year after the termination of a rent-to-own
22 agreement, a rental-purchase company shall provide a written statement to any
23 person designated by the lessee, showing the lessee's payment history under the
24 rent-to-own agreement.

SUBCHAPTER V

MARKETING

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

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

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

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

(d) Whether the property is new or used.

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

435.502 Advertising. (1) DISCLOSURE REQUIRED. Except as provided under sub. (2), if an advertisement for a rent–to–own agreement refers to or states the amount of a payment for any property and the right to acquire ownership of that property, the rental–purchase company shall ensure that the advertisement clearly and conspicuously states all of the following:

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

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

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

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

9 **435.503 Referral transactions. (1) PROHIBITED REFERRAL TRANSACTIONS.** No
10 rental-purchase company may induce any individual to enter into a rent-to-own
11 agreement by giving or offering to give a rebate or discount to the individual in
12 consideration of the individual's giving to the rental-purchase company the names
13 of prospective lessees, if the earning of the rebate or discount is contingent upon the
14 occurrence of any event that takes place after the time that the individual enters into
15 the rent-to-own agreement.

16 **(2) AUTHORIZED REFERRAL TRANSACTIONS.** After entering into a rent-to-own
17 agreement, a rental-purchase company may give or offer to give a rebate or discount
18 to the lessee under the rent-to-own agreement, in consideration of the lessee's giving
19 to the rental-purchase company the names of prospective lessees. A rebate or
20 discount under this subsection may be contingent upon the occurrence of any event
21 that takes place after the time that the names are given to the rental-purchase
22 company.

SUBCHAPTER VI

RENTAL PAYMENTS

AND COLLECTIONS

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1 **435.601 Late payment, grace period and late fees. (1) LATE FEE;**
2 GENERALLY. If a lessee fails to make a periodic rental payment when due under a
3 rent-to-own agreement or if, at the end of any rental term, the lessee fails to return
4 the rental property or to renew the rent-to-own agreement for an additional term,
5 the rental-purchase company may require the lessee to pay a late fee. Except as
6 provided under sub. (4), this subsection does not apply if the lessee's failure to return
7 the rental property or failure to renew the rent-to-own agreement at the end of the
8 rental term is due to the lessee's exercise of an early-purchase option under the
9 rent-to-own agreement or is due to the lessee making all periodic rental payments
10 necessary to acquire ownership of the rental property.

11 **(2) GRACE PERIODS.** The following grace periods shall apply to periodic rental
12 payments made with respect to a rental-purchase agreement:

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

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

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

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

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

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

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

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

6 **435.602 Reinstatement of terminated rent-to-own agreement. (1)**

7 REINSTATEMENT, GENERALLY. A lessee may reinstate a terminated rent-to-own
8 agreement without losing any rights or options previously acquired if all of the
9 following conditions apply:

10 (a) The lessee returned or surrendered the rental property within 5 days after
11 the termination of the rent-to-own agreement.

12 (b) Not more than 21 days have passed after the date on which the rental
13 property was returned to the rental-purchase company or, if the lessee has paid
14 two-thirds or more of the total number of periodic rental payments necessary to
15 acquire ownership of the rental property, not more than 45 days have passed since
16 the date on which the rental property was returned to the rental-purchase company.

17 **(2) AUTHORIZED CONDITIONS ON REINSTATEMENT.** As a condition of reinstatement
18 under this section, 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 periodic rental payment for an additional term.

21 **(3) EFFECT OF REPOSSESSION ON REINSTATEMENT.** Nothing in this section prohibits
22 a rental-purchase company from attempting to repossess rental property upon
23 termination of a rent-to-own agreement, but repossession efforts do not affect the
24 lessee's right to reinstate the rent-to-own agreement as long as the rental property

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1 is voluntarily returned or surrendered within 5 days after the termination of the
2 rent-to-own agreement.

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

8 **435.603 Reduced periodic rental payment due to reduced income. (1)**

9 REDUCTION IN AMOUNT OF PERIODIC RENTAL PAYMENTS; REQUIRED EVIDENCE. (a)
10 *Reduction in amount of periodic rental payments.* If a lessee's monthly income is
11 reduced by 25% or more due to pregnancy, disability, involuntary job loss or
12 involuntary reduction in the amount of hours worked or wages earned, the
13 rental-purchase company shall reduce the amount of each periodic rental payment
14 due under the rent-to-own agreement by the same percentage that the lessee's
15 monthly income is reduced or by 50%, whichever is less, for the period of time during
16 which the lessee's income is reduced. This subsection only applies if all of the
17 following conditions are satisfied:

18 1. The total dollar amount of periodic rental payments made by the lessee
19 under the rent-to-own agreement equals more than 50% of the total dollar amount
20 of periodic rental payments necessary to acquire ownership of the rental property.

21 2. The lessee has provided the rental-purchase company with reasonable
22 evidence of the amount and cause of the reduction in the lessee's monthly income.

23 (b) *Evidence of continued reduction in income.* At reasonable intervals after
24 reducing the amount of a periodic rental payment under par. (a), a rental-purchase
25 company may require the lessee to provide evidence of the lessee's monthly income

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1 and evidence that the cause of the reduction in the lessee's monthly income has not
2 abated.

3 (2) INCREASE IN NUMBER OF PERIODIC RENTAL PAYMENTS. Except as provided in
4 sub. (4), if a rental-purchase company reduces the amount of a periodic rental
5 payment under sub. (1) (a), the rental-purchase company may increase the total
6 number of periodic rental payments necessary to acquire ownership of the rental
7 property.

8 (3) INCREASE IN AMOUNT OF PERIODIC RENTAL PAYMENTS. Except as provided in
9 sub. (4), if a rental-purchase company reduces the amount of a periodic rental
10 payment under sub. (1) (a) and if, subsequently, the lessee's monthly income is
11 increased, the rental-purchase company may increase, by the same percentage that
12 the lessee's monthly income is increased, the amount of each periodic rental payment
13 due after the date on which the lessee's monthly income is increased.

14 (4) LIMITATION ON INCREASES. If a rental-purchase company, under sub. (2) or
15 (3), increases the amount or number of periodic rental payments due under a
16 rent-to-own agreement, the increase only affects the rights or duties of the lessee
17 to the extent authorized in sub. (2) or (3). No rental-purchase company, acting under
18 sub. (2) or (3), may increase the total dollar amount of periodic rental payments
19 necessary to acquire ownership of the rental property, or the amount of a periodic
20 rental payment, to greater than the amount disclosed in the rent-to-own agreement.

21 **435.604 Default and right to cure. (1) DEFAULT; GENERALLY.** A lessee is in
22 default under a rent-to-own agreement if any of the following applies:

23 (a) The lessee fails to return the rental property within 7 days after the date
24 on which the last term for which a periodic rental payment was made expires, unless

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1 the lessee has exercised an early-purchase option or has made all periodic rental
2 payments necessary to acquire ownership of the rental property.

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

5 **(2) DEFAULT; NECESSARY FOR LESSEE LIABILITY.** No cause of action shall accrue
6 against a lessee with respect to the lessee's obligations under a rent-to-own
7 agreement except upon default and the expiration of any applicable period of time
8 allowed for cure of the default.

9 **(3) NOTICE OF DEFAULT; GENERAL REQUIREMENT.** Except as provided in sub. (4),
10 as a condition precedent to bringing an action against a lessee arising out of the
11 lessee's default, a rental-purchase company shall provide a written notice of the
12 default and of the right to cure the default to the lessee. The notice shall specify the
13 default and the action required to cure the default and shall inform the lessee that
14 if the default is not cured within 15 days after the notice is given the rental-purchase
15 company will have the right to bring an action against the lessee.

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

21 (a) The lessee was in default.

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

24 (c) The lessee cured the default.

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1 **(5) REQUEST FOR VOLUNTARY SURRENDER OF PROPERTY.** A rental-purchase
2 company may request the voluntary return or surrender of rental property prior to
3 the declaration of a default and the sending of written notice of default and right to
4 cure. A request under this subsection is subject to the requirements of s. 435.605.

5 **435.605 Rental-purchase company collection practices.** In attempting
6 to recover possession of rental property or to collect past-due periodic rental
7 payments or other charges owed under a rent-to-own agreement, a rental-purchase
8 company may not do any of the following:

9 **(1) USE OF FORCE.** Use or threaten to use force or violence to cause physical harm
10 to the lessee or the lessee's property or to a person related to the lessee.

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

16 **(3) DISCLOSURE OF FALSE INFORMATION.** Disclose or threaten to disclose
17 information adversely affecting the lessee's reputation for creditworthiness with
18 knowledge or reason to know that the information is false.

19 **(4) COMMUNICATION WITH LESSEE'S EMPLOYER.** Initiate or threaten to initiate
20 communication with the lessee's employer prior to obtaining final judgment against
21 the lessee, except for the purpose of enforcing an assignment of earnings under s.
22 435.606. This subsection does not prohibit a rental-purchase company from
23 communicating with a lessee's employer solely to verify employment status or
24 earnings or to determine if the employer has an established debt counseling service
25 or procedure.

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

4 **(6) HARASSMENT.** Communicate with the lessee or a person related to the lessee
5 with such frequency or at such unusual hours or in such a manner as can reasonably
6 be expected to threaten or harass the lessee or engage in any other conduct that can
7 reasonably be expected to threaten or harass the lessee or a person related to the
8 lessee.

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

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

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

16 **(10) USE OF THREAT TO SUE.** Threaten to file a civil action against the lessee
17 unless the civil action is of a type that the rental-purchase company files in the
18 regular course of business or unless the rental-purchase company intends to file the
19 civil action against the lessee.

20 **435.606 Assignment of earnings.** No rental-purchase company may take
21 or arrange for an assignment of earnings of an individual for payment or as security
22 for payment of an obligation arising out of a rent-to-own agreement unless the
23 assignment is revocable at will by the individual.

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SUBCHAPTER VII

REMEDIES, DEFENSES

AND LIMITATIONS

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2
3
4 **435.701 Civil actions and defenses. (1) LIABILITY; GENERALLY.** Except as
5 provided under subs. (2) to (6), a rental–purchase company that violates any
6 provision of this chapter is liable to a lessee damaged as a result of that violation for
7 the costs of the action and, notwithstanding s. 814.01 (4), for reasonable attorney fees
8 as determined by the court, plus an amount equal to the greater of the following:

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

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

14 **(2) LIABILITY; CERTAIN VIOLATIONS.** Except as provided in subs. (4) and (5), if a
15 rental–purchase company violates s. 435.403, the lessee may retain the rental
16 property under the rent–to–own agreement without obligation to pay any amount
17 and may recover any amounts paid to the rental–purchase company under the
18 transaction.

19 **(3) CLASS ACTION.** In the case of a class action, a rental–purchase company that
20 violates this chapter is liable to the members of the class in an amount determined
21 by the court, except that the total recovery for all lessees whose recovery is computed
22 under sub. (1) (b) may not exceed \$100,000 plus the costs of the action and,
23 notwithstanding s. 814.01 (4), reasonable attorney fees as determined by the court.
24 In determining the amount to award under this subsection, the court shall consider,
25 among other relevant factors, the amount of actual damages sustained by the

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1 members of the class, the frequency and persistence of the violations by the
2 rental-purchase company, the resources of the rental-purchase company, the
3 number of persons damaged by the violation, the presence or absence of good faith
4 on the part of the rental-purchase company and the extent to which the violation was
5 intentional.

6 **(4) DEFENSE; ERROR NOTIFICATION AND CORRECTION.** A rental-purchase company
7 is not liable for a violation of this chapter resulting from an error by the
8 rental-purchase company if, within 60 days after discovering the error, the
9 rental-purchase company notifies the lessee of the error and makes any adjustments
10 necessary to correct the error.

11 **(5) DEFENSE; UNINTENTIONAL ERROR.** A rental-purchase company is not liable
12 for a violation of this chapter if the rental-purchase company shows by a
13 preponderance of the evidence that the violation was not intentional, that the
14 violation resulted from a bona fide error notwithstanding the maintenance of
15 procedures reasonably adopted to avoid the error and that the rental-purchase
16 company has acted to correct the error. A bona fide error under this subsection
17 includes a clerical error, an error in making calculations, an error due to computer
18 malfunction or computer programming or a printing error.

19 **(6) LIABILITY FOR MULTIPLE VIOLATIONS.** Multiple violations of this chapter in
20 connection with the same rent-to-own agreement shall only entitle the lessee to a
21 single recovery under sub. (1), except that a violation of s. 435.605 that occurs after
22 recovery has been granted with respect to that rent-to-own agreement may entitle
23 the lessee to an additional recovery under sub. (1).

24 **(7) NECESSARY PARTIES.** If more than one lessee is a party to the same
25 rent-to-own agreement, all of the lessees that are parties to the rent-to-own

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1 agreement shall be joined as plaintiffs in any action under sub. (1) and the lessees
2 are entitled to only a single recovery under sub. (1).

3 **435.702 Limitation on actions.** An action brought by a lessee under this
4 chapter shall be commenced within one year after the date on which the alleged
5 violation occurred, 2 years after the date on which the rent-to-own agreement was
6 entered into or one year after the date on which the last payment was made under
7 the rent-to-own agreement, whichever is later.

8 **SECTION 4. Nonstatutory provisions.**

9 (1) SUBMISSION OF PROPOSED RULES GOVERNING REGISTRATION OF RENTAL-PURCHASE
10 COMPANIES. No later than the first day of the 3rd month beginning after publication,
11 the department of financial institutions shall submit in proposed form the rules
12 governing registration of rental-purchase companies under section 435.301 (2) of
13 the statutes, as created by this act, to the legislative council staff under section
14 227.15 (1) of the statutes.

15 **SECTION 5. Initial applicability.**

16 (1) RENT-TO-OWN AGREEMENTS. The treatment of sections 409.104 (12m),
17 421.202 (7m), 435.102 to 435.201, 435.401 to 435.403 and 435.405 to 435.701 of the
18 statutes first applies to rent-to-own agreements entered into on the effective date
19 of this subsection.

20 (2) LIABILITY WAIVERS. The treatment of section 435.404 of the statutes first
21 applies to liability waivers entered into on the effective date of this subsection.

22 (3) REGISTRATION OF RENTAL-PURCHASE COMPANIES. The treatment of sections
23 435.301 to 435.304 of the statutes first applies to any person engaging in business
24 as a rental-purchase company on the effective date of this subsection.

