

**1999 DRAFTING REQUEST**

**Bill**

Received: **01/14/2000**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Charles Chvala (608) 266-9170**

By/Representing: **doug**

This file may be shown to any legislator: NO

Drafter: **rmarchan**

May Contact:

**Alt.** Drafters:

Subject: **Fin. Inst. - miscellaneous**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Rent to own companies

**Instructions:**

See Attached. Rental purchase company provisions from Assembly budget amendment, with changes.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
/?	rmarchan 01/28/2000	gilfokm 02/14/2000		_____			State
/1	rmarchan 02/16/2000	gilfokm 02/16/2000	hhagen 02/14/2000	_____			State
/2	rmarchan 02/23/2000	gilfokm 02/23/2000	hhagen 02/16/2000	_____	lrb-docadmin 02/16/2000		State
/3	rmarchan 03/01/2000	gilfokm 03/01/2000	j frantze 02/24/2000	_____	lrb-docadmin 02/24/2000	lrb_docadminState 02/28/2000 lrb-docadmin 02/28/2000	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
14			martykr 03/01/2000	_____ _____	lrb-docadmin 03101/2000	lrb-docadmin 03/01/2000	

FE Sent For: **02/28/2000.**

<END>

**1999 DRAFTING REQUEST**

**Bill**

Received: **01/14/2000**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Charles Chvala (608) 266-9170**

By/Representing: **doug**

This file may be shown to any legislator: NO

Drafter: **rmarchan**

May Contact:

**Alt. Drafters:**

Subject: **Fin. Inst. - miscellaneous**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Rent to own companies

**Instructions:**

See Attached. Rental purchase company provisions from Assembly budget amendment, with changes.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rmarchan 01/28/2000	gilfokm 02/14/2000		_____			State
/1	rmarchan 02/16/2000	gilfokm 02/16/2000	hhagen 02/14/2000	_____			State
/2	rmarchan 02/23/2000	gilfokm 02/23/2000	hhagen 02/16/2000	_____	lrb-docadmin 02/16/2000		State
/3		<i>1/4-3-1-2000</i> Kmg	jfrantze 02/24/2000 <i>for 3</i> 1	_____	lrb-docadmin 02/24/2000	lrb-docadmin 02/28/2000 lrb-docadmin 02/28/2000	

Vers.      Drafted      Reviewed      **Typed**      Proofed      Submitted      Jacketed      Reaired

**FE Sent For:02/28/2000.**

**<END>**

**1999 DRAFTING REQUEST**

**Bill**

Received: **01/14/2000**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Charles Chvala (608) 266-9170**

By/Representing: **doug**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Alt. Drafters:

Subject: **Fin. Inst. - miscellaneous**

Extra Copies:

*Jacket for A*

**Pre Topic:**

No specific pre topic given

**Topic:**

Rent to own companies


**Instructions:**

See Attached. Rental purchase company provisions from Assembly budget amendment, with changes.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
I?	rmarchan 0 1/28/2000	gilfokm 02/14/2000		_____			State
/1	rmarchan 02/16/2000	gilfokm 02/16/2000	hhagen 02/14/2000	_____			State
/2	rmarchan 02/23/2000	gilfokm 02/23/2000	hhagen 02/16/2000	_____	lrb-docadmin 02/16/2000		State
/3			jfrantze 02/24/2000	_____	lrb-docadmin 02/24/2000	lrb-docadmin 02/28/2000	

FE Sent For (02/28/2000.  
"13")



<END>

**1999 DRAFTING REQUEST**

**Bill**

Received: **01/14/2000**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Charles Chvala (608) 266-9170**

By/Representing: **doug**

This tile may be shown to any legislator: NO

Drafter: **rmarchan**

May Contact:

Alt. Drafters:

Subject: **Fin. Inst. - miscellaneous**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Rent to own companies

**Instructions:**

See Attached. Rental purchase company provisions from Assembly budget amendment, with changes.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
I?	rmarchan 01/28/2000	gilfokm 02/14/2000		_____			State
/1	rmarchan 02/16/2000	gilfokm 02/16/2000	hhagen 02/14/2000	_____			State
/2	rmarchan 02/23/2000	gilfokm 02/23/2000	hhagen 02/16/2000	_____	lrb-docadmin 02/16/2000		State
/3			jfrantze 02/24/2000	_____	lrb_docadmin 02/24/2000		

FE Sent For:

**<END>**



1999 DRAFTING REQUEST

**Bill**

Received: **01/14/2000**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Charles Chvala (608) 266-9170**

By/Representing: **doug**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Alt. Drafters:

Subject: **Fin. Inst. - miscellaneous**

Extra Copies: **KMG**

*Representative Urban*

**Pre Topic:**

No specific pre topic given

**Topic:**

Rent to own companies

**Instructions:**

See Attached. Rental purchase company provisions from Assembly budget amendment, with changes.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reaired</u>
I?	rmarchan 01/28/2000	gilfokm 02/14/2000		_____			State
/1	rmarchan 02/16/2000	gilfokm 02/16/2000	hhagen 02/14/2000	_____			State
/2		<i>13-2-23-2000 KMG</i>	hhagen 02/16/2000	_____	lrb_docadmin 02/16/2000		

FE Sent For:

*6/24* *[Signature]*  
**<END>**

**1999 DRAFTING REQUEST**

**Bill**

Received: **01/14/2000**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Charles Chvala (608) 266-9170**

By/Representing: **doug**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Alt. Drafters:

Subject: **Fin. Inst. - miscellaneous**

Extra Copies: *KMG*

**Pre Topic:**

No specific pre topic given

**Topic:**

Rent to own companies

**Instructions:**

See Attached. Rental purchase company provisions from Assembly budget amendment, with changes.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rmarchan 01/28/2000	lrb_editor <i>1-2-3-2000 KMG</i>	<i>hdsf 2/14</i>	<i>hdsf 2/14</i>			
FE Sent For:			<i>h2116</i>	<i>h2116 2/14</i>			

**<END>**



State Senator  
**Chuck Chvala**  
SENATE MAJORITY LEADER

**FAX COVER SHEET**

TO: Rob Marchant

FROM: Doug Burnett

RE: per our discussion

PAGES: 2 (Including Cover)

DATE: 1-11-00

NOTES

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Long 1991  
252-9355

**Additional Statutory Language**  
**12/14/99**

In addition to the 14 specific disclosures in §435.402, add the following disclosure requirement:

- 11-18 (15) a statement that if the intention of the consumer is to own the property which is the subject of the rent-to-own agreement and the consumer can obtain credit for that purchase, purchasing the property from a retailer may be a less expensive option.

Add as §435.410. **Payment History:**

16-7 During the term of a rent-to-own agreement, a rental purchase company shall upon a written request made by the consumer during the term of a rent-to-own agreement, or for a period of 12 months thereafter, provide a copy of the consumer's payment history to any financial institution, consumer credit reporting agency or other third person designated by the consumer.

Add as ~~§435.602~~<sup>2</sup> **Payment Reduction:**

- 20-7 (1) If any consumer who has signed a rent-to-own agreement experiences an interruption or reduction of 25 percent or more of income due to involuntary job loss, involuntary reduced employment, illness, pregnancy, or disability, the rental purchase company shall reduce the amount of each rental payment by the same percentage that the consumer's income has been reduced or 50 percent, whichever is less, for the period during which the consumer's income is interrupted or reduced if
- (a) the rental payments made by the consumer total more than one half of the total of payments necessary to acquire ownership; and
  - (b) the consumer provides the rental purchase company with reasonable evidence as to the amount and cause of the interruption or reduction in income.
- (2) **If the** amount of each rental payment is reduced pursuant to sub. (1), the number of payments necessary to acquire ownership may be increased, but the total **dollar** amount of payments necessary to acquire ownership shall not be increased and the rights and duties of the rental purchase company and the consumer shall not otherwise be affected.
- (3) If the consumer's income is restored, the rental purchase company may increase the amount of each rental payment, but in no event may the amount of a rental payment or the total dollar amount of payments necessary to acquire ownership exceed the amounts disclosed in the rent-to-own agreement.
- (4) At reasonable intervals after the initial reduction in rental payments pursuant to sub. (1), the rental purchase company may require the consumer to provide evidence of the consumer's income and that the **cause** of the interruption or reduction in income is still in existence.

Reinstatement - 60 days to 180 days -  
auto reinstatement or .

Palacios : rent-to-own = "consumer credit sale" subject to correct  
consumer act if lease payments to pay value of goods or > value of goods  
- must disclose finance charge (cons. credit transaction subj. to ch. 422)  
- must abide by prohibition re: collection practices, etc

Lebanon " 20 month lease; provides a go ren @ any time  
for f.m.v. AND provides option @ end of lease  
term for removal payment = BOTTA cons. credit  
sale AND consumer lease

223 W2 582  
181 W2 243  
123 W2 79

II

14 Citing References

Citations to: Palacios v. ABC TV & Stereo Rental of Milwaukee Inc., 123 Wis. 2d 79, 365 N.W.2d 882 (1985)

Restricted: No Restrictions

Wisconsin

LeBakken Rent-To-Own v. **Warnell**, 223 Wis. 2d 582  
P.589, Headnote: 4

Rent-A-Center Inc. v. Hall, 181 Wis. 2d 243  
P.249

Decade's Monthly Income and Appreciation Fund v. Whyte & Hirschboeck S.C., 164 Wis. 2d 227

P.230, Headnote: 2  
LeBakken Rent-To-Own v. **Warnell**, 589 N.W.2d 425  
P.428, Headnote: 4

Rent-A-Center Inc. v. Hall, 510 N.W.2d 789  
P.792

Decade's Monthly Income and Appreciation Fund v. Whyte & Hirschboeck S.C., 474 N.W.2d 766

P.767, Headnote: 2  
LeBakken Rent-To-Own v. **Warnell**, 1998 Wisc. App. LEXIS 1396  
Headnote: 4

7th Circuit

Burney v. Thorn Am., Inc., 970 F. Supp. 668  
P.671

Burney v. Thorn Ams. Inc., 944 F. Supp. 762  
Followed P.767

Burney v. Thorn Am., Inc., 1997 U.S. Dist. LEXIS 9738

Burney v. Thorn Am., Inc., 33 U.C.C. Rep. Serv. 2d (CBC) 29  
P.31

Burney v. Thorn Ams. Inc., 30 U.C.C. Rep. Serv. 2d (CBC) 1058  
Followed P.1064

New Jersey

Green v. Continental Rentals, 292 N.J. Super. 241  
Followed P.251

Green v. Continental Rentals, 678 A.2d 759  
Followed P.763

---

**Rent-A-Center, Inc. v. Hall**  
**181 WIS. 2D 243,510 N.W.2D 789 (1993)**

**Rent-A-Center, Inc., Plaintiff-Appellant,@ v Flora Hall, Defendant-Respondent.**

**Court of Appeals**

*No. 92-2650.*

*Oral argument October 21, 1993.--Decided December 21, 1993.*

**(Also reported in 510 N.W.2d 789.)**

**HEADNOTES**

**1. Judgments § 123.50-summary judgment-review-de novo.**

Appellate court's review of trial court's summary judgment determination is de novo.

**2. Consumer Protection § 6-consumer credit sale-applicable law.**

Consumer credit sale as defined by statute is subject to Wisconsin Consumer Act (Stats § 421.301(9)).

**3. Appeal and Error § 635contract-interpretation-legal issue-de novo.**

Interpretation of contract is legal issue that appellate court decides de novo.

**4. Contracts § 177-unambiguous-enforcement-as written.**

Contracts that are unambiguous must be enforced as they are written.

**5. Contracts § 173-ambiguity-defined. <Pg. 244>**

Contractual language is ambiguous only when it is reasonably or fairly susceptible of more than one construction.

**6. Appeal and Error § 632-findings of fact-standard of overturning.**

Trial court's findings of fact will not be overturned on appeal unless findings are clearly erroneous (Stats § 805.17(2)).

**7. Contracts § 173-construction-substance extolled over form.**

Cutting through form of transaction to get to its substance is consistent with Wisconsin law.

**8. Consumer Protection § 6-consumer credit sale-rental agency agreement-option payment nominal.**

Trial court properly ruled plaintiff consumer's rental agreement with defendant appliance rental agency to be "consumer credit sale" under statutory definition, where option payment to gain ownership at end of rental term was nominal (Stats § 421.301(9)).

Schudson, J., concurs.

**SUMMARY**

APPEAL from a judgment of the circuit court for Milwaukee county: CHRISTOPHER R. FOLEY, Judge.

Affirmed.

**COUNSEL**

On behalf of the plaintiff-appellant, the cause was submitted on the briefs of **Thomas L. Shriner, Jr.**, and **James M. Caragher** of **Foley & Lurdner** of Milwaukee. There was oral argument by **Thomas L. Shriner, Jr.**

On behalf of the defendant-respondent, the cause was submitted on the briefs of **Patricia M. Cavey**, **James A. Walrath**, and **James M. Brennan** of **Legal Aid Society of Milwaukee, Inc.**, of Milwaukee; and **Stephen E. Meili** of **Centerfor Public Representation, Inc.**, of <Pg. 245> Madison. There was oral argument by **Jeffery R. Myer** of **Legal Action of Wisconsin** of Milwaukee.

Amicus Curiae brief **was** filed by **James E. Doyle**, attorney general, and **David J. Gilles**, assistant attorney general, for the Wisconsin Department of Justice and the Commissioner



of Banking of the State of Wisconsin.

Amicus Curiae brief was filed by *Jeffery R. Myer of Legal Action of Wisconsin, Inc.*, of Milwaukee, and *Robert Hobbs of National Consumer Law Center, Inc.*, of Boston, Massachusetts, for Carolyn L. Boyd.

Before Wedemeyer, P.J., Fine and Schudson, JJ.

## OPINION

### FINE, J.

This is an appeal from a judgment dismissing a small-claims replevin action brought against Flora Hall by Rent-A-Center, Inc. After a bench trial, the trial court held that the transaction underlying the replevin action violated the Wisconsin Consumer Act, chapters 421 to 427 of the Wisconsin Statutes, see sec. 421.101, Stats. We affirm.<sup>1</sup>

### I.

Rent-A-Center rents appliances and other merchandise to customers who, generally, cannot afford to <Pg. 246> purchase the items when they are new. William A. Ritter, Jr., Rent-A-Center's zone manager for the company's seven stores on Milwaukee's north side, explained to the trial court that many of the company's customers "don't have an opportunity to own nice merchandise . . . [s]o their option is to either go without or to rent from Rent-A-Center."

On April 6, 1991, Hall signed a rental agreement and a lease disclosure statement with Rent-A-Center by which she agreed to rent a new washer and a new dryer for one month. The agreement was renewable, monthly, at Hall's option. The monthly payment expense was set at \$77.96, exclusive of sales tax and a liability-waiver fee.<sup>2</sup> Her agreement with Rent-A-Center gave Hall the option to purchase the appliances after "19 months of successive renewals" at their "then fair market value" not to exceed \$1619.11, or a total, excluding tax and the liability-waiver fee, of no more than \$1643.15.<sup>3</sup>

Hall stopped making monthly payments to Rent-A-Center in April of 1992, and her agreement terminated on May 6, 1992. According to Ritter's testimony, Hall told Rent-A-Center that she felt she had paid enough for the appliances. <Pg. 247>

Hall testified that she stopped paying rent in April of 1992 because she thought that she was only obligated to pay for twelve months in order to own the appliances. She related to the trial court what happened when she called Rent-A-Center to tell the company that she would pay no more:

Then when I took all my receipts out and added up what I had paid I saw I had over paid.

[sic] I had [paid] \$1,069. I called the store and told them that I'm finished paying for the washer and dryer. They say oh, good, let me check. And so they checked their -- no you're not. You supposed to pay for 21 months. And I said I never agreed to 21 months. I can't afford 21 months.<sup>4</sup>

Hall told the trial court that she needed the washer and dryer and "was renting to own, not just to rent." According to her calculations, twenty-one monthly payments would have equalled \$1,839.60 even though, according to her testimony, a washer and dryer should cost no more than approximately \$600. Although a paragraph of the lease disclosure statement indicates that the option to purchase can only be exercised after "19 months of successive renewals" (upper case and strikeouts omitted), a handwritten insertion above that entry reads: "+ 2 = 21 months." Ritter explained the insertion:

The reason we do that is to help the customer understand the option to purchase. Typically they have, as I said earlier, there is a specified [sic] timeframe [sic] for them to continue making [monthly] renewal payments. At the end of that <Pg. 248> timeframe [sic] they enter into an option to purchase. A lot of customers don't realize what that means. So we kind of simplify it by explaining to them that it's equivalent to two months worth of rental payments.

Hall's agreement with Rent-A-Center warned her that purchasing the property by renting it would be more expensive than purchasing the property outright from alternative sources:

**THIS IS A RENTAL AGREEMENT ONLY. AGREEMENT IS FOR RENTAL OF THE PROPERTY ONLY. YOU WONT ACOUIRE ANY EQUITY IN THE PROPERTY BY MAKING RENTAL PAYMENTS. YOU HAVE NOT AGREED TO PURCHASE THIS PROPERTY, BUT YOU MAY CHOOSE TO PURCHASE IT IN THE FUTURE IF YOU MEET THE CONDITIONS OF THE OPTION. IF YOU WANT TO PURCHASE THIS OR SIMILAR PROPERTY NOW, YOU MAY BE ABLE TO GET CASH OR CREDIT TERMS FROM OTHER SOURCES WHICH WILL RESULT IN A LOWER TOTAL COST THAN THE RENTAL PAYMENTS. PLUS THE PURCHASE OPTION PRICE PROVIDED FOR ABOVE.**

(Bolding, capitalization and underlining in original).<sup>5</sup> <Pg. 249>

[1] The trial court concluded that Rent-A-Center's agreement was a consumer credit sale and was governed by, but did not comply with, the Wisconsin Consumer Act. Our review of the trial court's conclusion is *de novo*. *Palacios v. ABC TV & Stereo Rental*, 123 Wis. 2d 79, 83, 365 N.W.2d 882,885 (Ct. App. 1985).

## II.

Rent-A-Center concedes that its agreement with Hall did not comply with the Wisconsin Consumer Act but argues that compliance was not required because its agreement with Hall was not a "consumer credit sale" subject to the Act. Accordingly, we must decide

whether the agreement is governed by that Act. We conclude that it is.

[2] A “consumer credit sale” is defined by the Wisconsin Consumer Act as a “sale of goods . . . to a customer on credit where the debt is payable in instalments [sic] . . . and includes any agreement in the form of a . . . lease of goods . . . if the . . . lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods <Pg. 250> . . . involved and it is agreed that the . . . lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods . . . upon full compliance with the terms of the agreement.” Section 421.301(9), Stats. A “consumer credit sale” as thus defined is subject to the Wisconsin Consumer Act. *Palacios*, 123 Wis. 2d at 84,365 N.W.2d at 885.

For the purposes of this case, there are two prerequisites to the applicability of section 421.301(9), Stats., and, therefore, the Wisconsin Consumer Act, to the agreement between Rent-A-Center and Hall. First, Hall must have either paid or agreed to pay “a sum substantially equivalent to or in excess of the aggregate value of the goods.” This is conceded by Rent-A-Center.<sup>6</sup> Second, the agreement must provide that Hall, as phrased by the subsection, “will become, or for no other or a nominal consideration has the option to become, the owner of the goods . . . upon full compliance with the terms of the agreement.” This is not conceded by Rent-A-Center.

The trial court concluded that the agreement between Hall and Rent-A-Center gave Hall the option to own the appliance “for no other or a nominal consideration.” It based this conclusion on two alternative rationales. First, the trial court determined that the handwritten notation on the lease disclosure statement that “+ 2 = 21 months” “appears to indicate that upon payment of 21 installments of rent Ms. Hall gained ownership” of the appliances without further payment. (Uppercase omitted.) If so, the agreement is a “consumer credit sale” and is governed by the Wisconsin <Pg. 251> Consumer Act. See *Palacios*, 123 Wis. 2d at 84,365 N.W.2d at 885. Second, the trial court decided that if the agreement between Hall and Rent-A-Center “is interpreted to call for 19 installments of rent with an option to purchase at the conclusion of those payments,” the \$161.91 option payment was, in the context of the case, “nominal consideration.”

[3-5] The interpretation of a contract is a legal issue that we decide de *novo*. See *Borchardt v. Wilk*, 156 Wis. 2d 420, 427, 456 N.W.2d 653,656 (Ct. App. 1990). Contracts that are unambiguous must be enforced as they are written. *Dykstra v. Arthur G. McKee & Co.*, 92 Wis. 2d 17, 38, 284 N.W.2d 692, 702-703 (Ct. App. 1979), *aff'd*, 100 Wis. 2d 120,301 N.W.2d 201 (1981). Contractual language is ambiguous only when it is “reasonably or fairly susceptible of more than one construction.” *Borchardt*, 156 Wis. 2d at 427,456 N.W.2d at 656. Here, Hall’s base monthly payment for the nineteen-month term was \$77.96. Two additional months at this rate would have equalled \$155.92, not \$161.91. Adding in the sales tax of \$4.29 for which she was responsible, results in a monthly payment of, as previously explained in footnote 2, \$82.25. Accordingly, irrespective of whether Hall’s monthly payments are calculated to

include or exclude sales tax, the agreement did not permit Hall to become owner of the appliances in return for twenty-one payments of her monthly rent. Indeed, had Hall exercised the option by paying the \$161.91 at the end of the "19 months of successive renewals," she would have owned the washer and dryer immediately--she would not have had to wait for the expiration of a twenty-one month period as implicitly assumed by the trial court. Our conclusion that Hall could not have become the owner of the appliances in <Pg. 252> return for twenty-one monthly payments, however, does not end our analysis; the Wisconsin Consumer Act governs the transaction if the \$161.91 payment is "nominal consideration." See sec. 421.301(9), Stats.

**[6]** A trial court's findings of fact will not be overturned on appeal unless those findings are "clearly erroneous," Section ~~805.17(2)~~ Stats. A trial court found that Hall wanted to ultimately own the appliances, rather than to merely rent them for a term, and her testimony in that regard is uncontested. The trial court also found that if Hall had made all of the payments and exercised her option, her total cost for the appliances of \$1,643.15, exclusive of sales tax and fees, would have been, according to Hall's uncontroverted testimony, approximately three times their retail price when new. The trial court concluded, alternatively, either (1) that after having made the nineteen monthly payments Hall would have had no sensible alternative but to pay the additional \$161.91, and that, therefore, the cost of exercising the option was "nominal"; or (2) that the additional \$161.91 was "nominal" because it permitted Hall to own the appliances for only 11% percent of the monthly rental-payment total of \$1,481.

**[7, 8]** No Wisconsin case has decided whether the Hall/Rent-A- Center type of transaction is a lease, or a credit sale as defined by section 421.301(9), Stats. Under a provision similar to section 421.301(9) that appeared in the Uniform Commercial Code prior to a 1987 amendment, however, leases that were, functionally, credit sales were held to be "governed by the same rules that apply to other security interests." See *In re Marhoefer Packing Co.*, 674 F.2d 1139, 1142 (7th Cir. <Pg. 253>1982).<sup>7</sup> Cutting through the form of a transaction to get to its substance is consistent with Wisconsin law. See *Bush v. National Sch. Studios*, 139 Wis. 2d 635, 651, 653, 655- 656, 407 N.W.2d 883, 890, 891-893 (1987) (court must look at core of agreement). The Uniform Commercial Code clause provided:

Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

U.C.C. § 1-201(37) (1978); 1 U.L.A. 68-69 (1989).<sup>8</sup> Under the pre-1987 version of section 1- 201(37), the general view was that whether an option payment was <Pg. 255> "nominal" did not depend merely on the payment's relationship to the goods' fair market

value. See *National Equip. Rental, Ltd. v. Priority Elecs. Corp.*, 435 F. Supp. 236,239 (E.D.N.Y. 1977) (“[T]he Code talks in terms of ‘nominal consideration’ regardless of whether the consideration represents the fair market value or not.”). Among the other factors were: the relationship between the option price and the total rentals, see *id.*, 435 F. Supp. at 238 (citing cases); the relationship between the option price and the original price of the goods, see *FMA Financial Corp. v. Pro-Printers*, 590 P.2d 803,805 & n. 1 (Utah 1979) (citing cases); and whether the lessee has any sensible alternative to exercising the option, see *id.*, 590 P.2d at 806 & n.2 (citing cases).<sup>9</sup> Application of these factors, which are equally applicable here, leads us to conclude, as did the trial court, that the agreement between Hall and Rent- A-Center <Pg. 256> was a “consumer credit sale,” as the term is defined by section 421.301(9), Stats.

There is no evidence in the record as to what the fair market value of the washer and dryer was at the end of the nineteen-month lease term. We thus have no way of pegging that value.<sup>10</sup> The record tells us, however, that in order to be in “full compliance with the terms of the agreement,” sec. 421.301(9), Stats., Hall would have had to pay \$1481.24 for the appliances over the nineteen-month period. \$161.91 is “nominal” when compared to that sum.<sup>11</sup> Although the \$161.91 is not “nominal” when compared to the only original value given for the washer and dryer in the record--Hall’s estimate of what comparable products would have cost from more traditional outlets--it is clear on this record at least that anyone seeking to purchase the appliances, as was Hall, and who has paid \$1481.24 already, would have “no sensible alternative” but to pay an additional \$161.91 to become their owner.

By the *Court.* -- Judgment affirmed.

### SCHUDSON, J.

(*Concurring*). Given the uncertain facts of this case, I discern no basis to conclude that <Pg. 257> Hall had “no sensible alternative” but to pay \$161.91 for the washer/dryer, or that, on any other basis, \$161.91 is “nominal.”

Tracing the factors mentioned by the majority, see majority slip op. at 255, we see that this record reveals very little information about: (1) the original price of the goods; (2) the fair market value of the goods nineteen months later; and (3) the *relationship* between the option price and the original price or the fair market value. In fact, although we do know the total rental payments, even the *relationship* between the option price and the rental payments remains very much in doubt without information about what percentage of rental went to the maintenance and other ancillary services for which Hall and Rent-A-Center contracted.

Even using Hall’s estimate that “a washer and dryer should cost no more than approximately \$600,” see *id.* at 247, the record reveals nothing further about: (1) how much less than \$600 this washer/dryer would have cost; and (2) how much this

washer/dryer was worth after nineteen months (even if worth as much as \$600 originally). Without this information, as well as information about the cost of new and used washer/dryers, comments on Hall's "sensible alternatives" are purely speculative. Indeed, depending on facts absent from this record, paying \$161.91 for this nineteen month old washer/dryer might have been a most foolish alternative.

Nevertheless, I concur in the result because, unlike the majority, I believe that the record adequately supports the trial court's conclusion: "On its face, as modified, the contract appears to indicate that upon payment of 21 installments of rent Ms. Hall <Pg. 258> gained ownership and the transaction is clearly a consumer sale . . ." <Pg. 259>

#### FOOTNOTE Ø

Petition to review denied.

#### FOOTNOTE 1

Amici briefs have been filed, in a consolidated submission, by the Wisconsin Department of Justice and the Office of Commissioner of Banking, and, separately, by Legal Action of Wisconsin, Inc., and National Consumer Law Center, Inc., on behalf of Carolyn L. Boyd. Boyd's motion for leave to file her brief characterizes her as "a low-income consumer who currently has a rent-to-own contract" with a company other than Rent-A-Center, but whose contract, according to her motion, is identical in all material respects to the Rent-A-Center's contract with Hall.

#### FOOTNOTE 2

The lease disclosure statement listed the sales tax at \$4.29 per month. There was also a liability-waiver fee, in return for which Rent-A-Center would not hold Hall liable if the property was damaged or lost because of fire, lightning, windstorm, flood, smoke, or theft. The liability-waiver fee was \$5.35 per month, and was discontinued in October of 1991 at Hall's insistence. Her monthly payments, which had been \$87.60 per month, fell to \$82.25.

#### FOOTNOTE 3

The nineteen monthly payments, exclusive of tax and the liability-waiver fee, would have equalled \$1,481.24.

#### FOOTNOTE 4

As will be seen, a Rent-A-Center employee explained to Hall that the option to purchase was the equivalent of two additional monthly payments.

#### FOOTNOTE 5

Hall testified that she never read the various forms she signed, although she acknowledged that some of the documents at least, or parts of them, were read to her.

She also claimed that when she signed the documents they did not disclose that she would have to rent the appliances for nineteen months before being able to exercise the purchase option, and that the documents did not specify the total amount she would be paying. Although finding that Hall “could not read and did not understand the contract” when she signed the papers, the trial court made no findings as to whether the lease term or the total payments had been added after Hall signed the documents. Each numbered paragraph on each of the documents has a companion box for customers to initial indicating that they read and understood the paragraph. Hall initialed all of the paragraphs. It is the “firmly fixed” law in this state that, absent fraud, a person may not avoid the clear terms of a signed contract by claiming that he or she did not read or understand the contract. *Knight & Bostwick v. Moore*, 203 Wis. 540, 542-543, 234 N.W. 902,903 (1931); see also *Bank of Sun Prairie v. Esser*, 155 Wis. 2d 724, 732-734, 456 N.W.2d 585, 588-590 (1990).

#### FOOTNOTE 6

At oral argument before the trial court, counsel for Rent-A-Center indicated that the company was “not disputing in this case that she paid the -- that she paid the equivalent of the value of the goods.”

#### FOOTNOTE 7

Purchases were often disguised as leases. See *Marhoefer*, 674 F.2d at 1145 (arrangement was a true lease because, among other reasons, “the total amount of rent Marhoefer was to pay under the lease was substantially less than” what Marhoefer would have had to pay if it had financed the purchase); see also *In re Fashion Optical, Ltd.*, 653 F.2d 1385, 1390 (10th Cir. 1981) (the excess of rental payments over the cost to purchase the property is “one factor tending to indicate interest payments in a financed installment sale”).

#### FOOTNOTE 8

U.C.C. § 1-201(37) was amended in 1987 to provide, *inter alia*, that:

A transaction does not create a security interest merely because it provides that

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(c) the lessee has an option to renew the lease or to become the owner of the goods,

(d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(e) the lessee has an option to become the owner of the goods for a fixed price that is

equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

(x) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;.

U.C.C. § 1-201(37); 1 U.L.A. 67-68 (1989). Wisconsin adopted this amendment, effective July 1, 1992. 1992 Wis. Act 148 §§ 23-24, 62. The amendment was part of the creation of a new chapter of the Uniform Commercial Code dealing with leases, Article 2A, and was designed to accommodate the needs of sophisticated merchants in light of what the Official Comment terms “the rather considerable change in the federal, state and local tax laws and accounting rules as they relate to leases of goods” over the years. 1 U.L.A. 73. Indeed, one court has opined that the “1987 version of 1-201(37) may well be appropriate for \$500,000 draglines, \$ 100,000 equipment, etc. but not for consumer rentals of small items of household goods.” *In re Burton*, 128 B.R. 807,815 (Bankr. N.D. Ala. 1989), *aff'd*, 128 B.R. 820 (N.D. Ala. 1989). Article 2A was adopted in Wisconsin by 1992 Wis. Act 148 § 48, and appears in the Wisconsin Statutes as chapter 411. Although the legislature also modified the Wisconsin Consumer Act to bring it into conformity with the new Uniform Commercial Code chapter, see 1992 Wis. Act 148 §§ 49-55, it left intact the act's definition of “consumer credit sale.” This indicates legislative intent not to narrow the broad reach of the consumer act. We reject the suggestion by Rent-A-Center that we should usurp the legislative function and engraft onto section 421.301(9), Stats., the new Uniform Commercial Code provisions.

#### FOOTNOTE 9

The “sensible alternative” factor often requires an analysis of the others: if the option price is minimal when compared to either the cost of the goods, their fair market value, or what has already been paid for their use, the “economic reality” is that no lessee in a “right mind” would “fail to exercise the purchase option.” *Burton*, 128 B.R. at 813. This is especially true where, as here, the lessee is using the rental payments to purchase the property.

#### FOOTNOTE 10

We may not estimate their value based on our own personal experiences. See *In re the Estate of Friedli*, 164 Wis. 2d 178, 189-190, 473 N.W.2d 604,608 (Ct. App. 1991)



(judge's personal knowledge improper basis for judicial notice).

FOOTNOTE 11

Rent-A- Center argues that its cost of repairing and, if necessary, replacing the washer and dryer if they malfunctioned was included in the monthly rental fee. There is no evidence in the record, however, of any value for this service. It may very well be that if the cost of Rent-A-Center's obligation to repair and replace defective merchandise was significant so that the rental payments reflected use rather than purchase the result of this case might be different.

---

**Palacios v. ABC TV & Stereo Rental**  
**123 WIS. 2D 79,365 N.W.2D 882 (1985)**

**Tomasa Palacios, Plaintiff-Respondent, v ABC TV & Stereo Rental of Milwaukee,  
Inc., a/k/a Colortyme TV Rental, Defendant-Appellant. @**

**Court of Appeals**

***No. 84-506.***

***Submitted on briefs December 10, 1984.--Decided February 1, 1985.***

**(Also reported in 365 N.W.2d 882.)**

**HEADNOTES**

**1. Judgments §101-summary judgments-propriety.**

Summary judgment is appropriate where there is no genuine issue as to any material facts and party is entitled to judgment as matter of law.

**2. Judgments §123.50-summary judgments-review-standards.**

When called upon to review granting or denial of summary judgment, appellate court applies same standards, and in same manner, as trial court.

**3. Judgments §106-summary judgments-procedure.**

If moving party has made prima facie case for summary judgment, court examines affidavits and other proof of opposing party to determine whether there are disputed immaterial facts or undisputed material facts from which reasonable alternative inferences may be drawn sufficient to entitle opposing party to trial. <Pg. 80>

**4. Judgments § 101.50~summary judgments-disputed issues-mixed questions of fact and law.**

Whether statutory concept embraces particular set of factual circumstances presents mixed question of fact and law.

**5. Consumer Protection § 6-consumer credit sales-definition-contractual obligations-requirement.**

Statute defining consumer sale does not require that customer be contractually obligated to make installment payments, since, in context of bailment or lease of goods, consumer credit sale takes place where bailee or lessee either agrees to pay or, in fact, pays as compensation for use, sum substantially equal to, or greater than, value of goods (Stats § 421.301(9)).

**6. Consumer Protection § 11; Judgments § 120.5summary judgments-consumer credit sales-propriety of remedy.**

Trial court did not err in granting summary judgment in favor of plaintiff in action for violation of Wisconsin Consumer Act where defendant's submitted affidavits denying that transaction involved any obligation to make payments did not raise any material issue of fact and where affidavit of defendant's collection manager concerning difference between rental payments, which was subject of action, and installment payments did not raise any issues of fact.

**SUMMARY**

APPEAL from a judgment of the circuit court for Milwaukee county: LAURENCE C. GRAM, JR., Judge, and WILLIAM J. HAESE, Judge.

*Affirmed.*

**COUNSEL**

For the defendant-appellant the cause was submitted on the briefs of *Stupar, Gollin & Schuster, S. C.*, with *Herbert Levine, Esq.*, of counsel, of Milwaukee.

For the plaintiff-respondent the cause was submitted on the briefs of *Legal Action of Wisconsin, Inc.*, with *Steven A. Taterka* of counsel, of Milwaukee.

Before Wedemeyer, P.J., Moser and Sullivan, JJ.

**OPINION**

**SULLIVAN, J.**

ABC TV & Stereo Rental of Milwaukee, Inc., a/k/a Colortyme TV Rental (Colortyme), appeals from a summary judgment in favor of Tomasa <Pg. 81> Palacios (Palacios) on her claim that Colortyme violated the Wisconsin Consumer Act<sup>1</sup> in an installment transaction involving a television. Colortyme contends the transaction was not a “consumer credit sale” under the act but only a rental agreement terminable at will. We conclude the transaction was a consumer credit sale within the meaning of sec. 421.301(9), Stats., and that the transaction violated the Wisconsin Consumer Act. We therefore affirm.

The material facts are undisputed. Palacios and Colortyme entered into a television-stereo “rental” agreement on February 7, 1979, providing that Palacios would receive the use and possession of a color television-stereo combination at a fee of \$23 per week. The agreement further provided that Palacios had the option to purchase the television-stereo by making seventy-eight consecutive weekly installment payments. Hand-written in the upper left corner of the agreement was the notation, “18 MONTHS TO OWN,” and the date on which ownership could be achieved, “8/7/80.” The agreement also contained a termination clause allowing the renter to return the set at any time, with no further obligation than to make any payments due on or during the week of termination.

Palacios’ children made approximately fifteen weekly payments; thereafter, Palacios made the weekly payments. It is undisputed that Palacios and her children made at least \$1,652 in payments. The estimated retail value of the television-stereo on the date the parties entered into the agreement was \$800.

Palacios ceased to make payments and refused to return the set. She then filed a complaint against Colortyme alleging that the so-called rental transaction constituted a consumer credit sale under sec. 421.301(9), Stats., and that Colortyme violated the following provisions <Pg. 82> of the Wisconsin Consumer Act: secs. 422.301 and 422.303(1), Stats., requiring disclosure of, *inter alia*, the amount of the finance charge imposed; sec. 422.303(3), requiring a “Notice to Customer” disclosure to appear on the agreement; sec. 422.405, Stats., prohibiting an authorization in the agreement to confess judgment; sec. 422.419(1)(a) and (b), Stats., prohibiting a waiver in the agreement authorizing the merchant to enter the customer’s dwelling to take possession of the property upon default and further waiving any right of action against the merchant that may accrue from the repossession; and sec. 422.203(1), Stats., prohibiting agreement to a delinquency charge exceeding three percent of the amount of an unpaid installment. Palacios further alleged that the transaction was unconscionable in violation of sec. 425.107(3)(a)-(h), Stats. As a second alternative cause of action, Palacios alleged comparable violations of the Wisconsin Consumer Act under the theory that the transaction was a “consumer lease” within the meaning of sec. 421.301(1), Stats. Finally, Palacios alleged, as a third alternative cause of action, that the agreement was

unconscionable under common law and the Uniform Commercial Code.

On December 21, 1982, the trial court granted Palacios' motion for summary judgment, concluding as a matter of law that the transaction constituted a consumer credit sale under the Wisconsin Consumer Act. The summary judgment was interlocutory, with no finding made as to the amount of liability. After transfer of the case to another judge, the parties stipulated in writing to a liquidated amount of damages and penalties. This sum was reduced to judgment with the proviso that Colortyme would have the right to appeal the issue of its liability under the Wisconsin Consumer Act. It was agreed that the stipulated damages and penalties would stand if the liability issue were affirmed on appeal. <Pg. 83>

Colortyme presents two alternative arguments on this appeal: (1) the subject transaction was not covered by the Wisconsin Consumer Act and the action must be dismissed, or (2) at the very least, there are material issues of fact in dispute such that summary judgment was inappropriate.

[1-3] Summary judgment is appropriate where there is no genuine issue as to any material fact and a party is entitled to judgment as a matter of law. Sec. 802.08(2), Stats. When called upon to review the granting or denial of a summary judgment, an appellate court applies the same standards, and in the same manner, as the trial court. **Heck & Paetow Claim Service, Inc. v. Heck**, 93 Wis. 2d 349, 356, 286 N.W.2d 83 1,834 (1980). If the moving party has made a prima facie case for summary judgment, the court examines the affidavits and other proof of the opposing party to determine whether there are disputed material facts or undisputed material facts from which reasonable alternative inferences may be drawn sufficient to entitle the opposing party to a trial. **Grams v. Boss**, 97 Wis. 2d 332, 338, 294 N.W.2d 473,477 (1980).

[4] Whether a statutory concept embraces a particular set of factual circumstances presents a mixed question of fact and law. **See United Way, Inc. v. DILHR**, 105 Wis. 2d 447, 453-54, 313 N.W.2d 858, 861- 62 (Ct. App. 1981). What sec. 421.301(9), Stats., means by "consumer credit sale," i.e., what elements it comprises, is a question of law; what the parties did presents questions of fact; and whether the elements of a "consumer credit sale" are present in the instant case is a question of law.

The trial court determined that no dispute existed as to any of the factual elements necessary for application of sec. 421.301(9), Stats. Before we can make the same <Pg. 84> determination, we must address Colortyme's challenge to the trial court's interpretation of what elements comprise a consumer credit sale under sec. 421.301(9).

#### CONSUMER CREDIT SALE

Section 421.301(9), Stats., defines a "consumer credit sale" as follows:

"Consumer credit sale" means a sale of goods, services or an interest in land to a customer on credit where the debt is payable in instalments or a finance charge is

imposed and includes any agreement in the form of a bailment of goods or lease of goods or real property if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods or real property involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods or real property upon full compliance with the terms of the agreement.

Any “consumer credit sale” is also a “consumer credit transaction” under sec. 421.301(10), Stats., and thus subject to the strictures of ch. 422, Stats., which regulates consumer credit transactions.

For purposes of this case, the salient language of sec. 421.301(9), Stats., is that pertaining to an agreement in the form of a “bailment” or “lease” of goods. That type of transaction constitutes a consumer credit sale if the bailee or lessee “pays or agrees to pay” an amount “substantially equivalent to or in excess of the . . . value of the goods,” and the bailee or lessee “for no other or a nominal consideration has the option to become . . . the owner of the goods” upon full compliance with the agreement.

The trial court determined (1) that the instant agreement was in the form of a “lease of goods,” (2) that <Pg. 85> Palacios, in fact, paid an amount substantially in excess of the value of the goods, (3) that the amount was paid as compensation for use, and (4) that the agreement provided that Palacios would become the owner of the goods upon full compliance with the agreement. The trial court concluded that all requisite elements were present and that the instant transaction was a consumer credit sale.

The thrust of Colortyme’s argument is that there is an additional element set forth in sec. 421.301(9), Stats., which is not present here--namely, that the customer be obligated under the agreement to make the installment payments. Colortyme submits that, in the absence of any obligation to make payments for an express period of time, a transaction such as the one in this case cannot be a consumer credit sale pursuant to sec. 421.301(9).

Colortyme argues that the federal Truth-in-Lending Act<sup>2</sup> and the Wisconsin Consumer Act are similar and that, therefore, cases under Truth-in-Lending are highly relevant. See *First Wisconsin National Bank v. Nicolaou*, 113 Wis. 2d 524, 531-32, 335 N.W.2d 390, 394 (1983). Colortyme ignores the crucial difference in language between the two acts and ignores, too, cases under Truth-in-Lending which run counter to its position.

The Truth-in-Lending Act defines a “credit sale” as one in which the customer “contracts to pay” a sum equivalent to, or exceeding, the value of the subject goods. 15 U.S.C. § 1601(m). 421.301(9), Stats., on the other hand, characterizes a transaction as a “consumer credit sale” if the customer “pays or agrees to pay” the equivalent of, or more than, the value of the goods. Thus, under the Wisconsin act, a transaction can be a credit sale where the customer agrees to pay the equivalent, or more, of the value of the goods *or* where the customer, in fact, *pays* the equivalent, or more, <Pg. 86> of the value of the goods. The language of the section could not be plainer. There is no need to resort to

extrinsic aids or even to the rule of liberal construction set forth in sec. 421.102(1), Stats.

Colortyme correctly points out that one of the underlying policies of the Wisconsin Consumer Act is to “coordinate the regulation of consumer credit transactions with the policies of the federal consumer credit protection act.” Sec. 421.102(2)(d), Stats. However, there is a split of authority in case law interpreting the Truth-in-Lending Act as to whether “rental” agreements such as the one in this case are “credit sales” under the act. Compare, e.g., *Smith v. ABC Rental Systems*, 618 F.2d 397 (5th Cir 1980) (per curiam) (affirming a district court holding that a television rent-to-own transaction did not constitute a credit sale), with *Clark v. Rent-Zt Corp.*, 685 F.2d 245 (8th Cir. 1982), cert. denied, 459 U.S. 1225 (1983) (holding that it was error to dismiss a consumer’s complaint without giving him the opportunity to show that a rent-to-own transaction was a credit sale). Compare, also, *Stewart v. Remco Enterprises, Inc.*, 487 F. Supp. 361 (D. Neb. 1980) (holding that a television rent-to-own transaction was not a credit sale), with *Waldron v. Best T.V. & Stereo Rentals, Inc.*, 485 F. Supp. 718 (D. Md. 1979) (holding that a television rent-to-own transaction was a credit sale). Thus, we do not violate the underlying policy of “coordinat[ion]” with the federal act when we interpret the Wisconsin act to embrace transactions in which the customer has no contractual obligation to continue to make installment payments.

Likewise, the Maine and Maryland state court cases cited by Colortyme are inapposite. Both cases interpreted state statutes in which the definition of credit sale or installment sale was limited to transactions where the customer was contractually obligated to pay a sum <Pg. 87> equaling or exceeding the value of the goods. See *Hawkes Television, Inc. v. Maine Bureau of Consumer Credit Protection*, 462 A.2d 1167 (Me. 1983); *State v. Action TV Rentals, Inc.*, 467 A.2d 1000 (Md. Ct. App. 1983).

Colortyme asserts that sec. 421.301(10), Stats., helps to clarify the meaning of sec. 421.301(9), and that the requirement of an “obligation” to make installment payments is expressed in the former subsection. Section 421.301(10) defines “consumer credit transaction,” a term which includes “consumer credit sale.” “[C]onsumer credit transaction” is defined as a consumer transaction between a merchant and customer in which real or personal property, services or money “is acquired on credit and the customer’s obligation is payable in instalments or for which credit a finance charge is or may be imposed . . .”

We do not agree that to bring a transaction which clearly falls under sub. (9) under the aegis of the consumer act, we must also separately rationalize it under the language of sub. (10). Subsection (10) expressly provides that a consumer credit sale is also a consumer credit transaction. Thus, a transaction which, for example, clearly contains all the elements of the bailment/lease variety of consumer credit sale, as expressed in sub. (9), is also a consumer credit transaction. The former is a species of the latter because the legislature so provided.

In any event, we have no difficulty placing the instant transaction in either category.

Assuming, without deciding, that the word “obligation,” as used in sub. (lo), connotes a contractual duty or liability, a customer’s “obligation” to make installment payments is still not a prerequisite to the existence of a consumer credit transaction. A consumer credit transaction also exists where property is acquired on credit, “for which credit a finance <Pg. 88> charge is or may be imposed.” “Finance charge” is defined in sec. 421.301(20), Stats., as “the sum of all charges, payable directly or indirectly by the customer as an incident to or as a condition of the extension of credit . . .” The term includes a “time price differential.” Sec. 421,301(20)(a). In the instant transaction a time-price differential was built into the agreement. The time-price differential was the difference between the fair market value of the television-stereo and the amount which a consumer who made weekly payments over an eighteen month period would ultimately pay to Colortyme.

[5] For all of the foregoing reasons, we conclude that sec. 421.301(9), Stats., defining a consumer credit sale, does not require that the customer be contractually obligated to make installment payments. In the context of a bailment or lease of goods, a consumer credit sale takes place where the bailee or lessee either agrees to pay or, in fact, pays as compensation for use a sum substantially equal to, or greater than, the value of the goods. We conclude that the trial court correctly analyzed the requirements of sec. 421.301(9). We reject Colortyme’s argument that this action must be dismissed for “lack of coverage” under the Wisconsin Consumer Act.

[6] We turn then to Colortyme’s alternate argument that, because issues of fact exist, summary judgment was inappropriate. Colortyme asserts that a fact issue exists as to whether Palacios had any “obligation” to continue to rent the television-stereo. We have already determined that coverage under sec. 421.301(9), Stats., does not depend on the consumer’s having been obligated to make installment payments. Colortyme’s submitted affidavits denying that the transaction involved any obligation to make payments do not raise any material issue of fact. <Pg. 89>

Additionally, Colortyme argues that a factual issue is raised by the affidavit of Dan Chaudoir, Colortyme’s collection manager. Chaudoir’s legal conclusions concerning the difference between rental payments and installment payments do not raise any issues of fact.

Colortyme has shown no material issues of fact entitling it to a trial. We, therefore, reject its argument that summary judgment was inappropriate.

In summary, we conclude that the rent-to-own transaction between Palacios and Colortyme was a consumer credit sale within the meaning of sec. 421.301(9), Stats. We affirm the judgment of the trial court.

*By the Court.*--Judgment affirmed.

FOOTNOTE Ø



Petition to review denied.

FOOTNOTE 1

Chs. 421-427, Stats.

FOOTNOTE 2

15 U.S.C. § 1601 etseq.



State of Wisconsin  
1999 - 2000 LEGISLATURE

1  
LRB-4219/7

RJM: [Handwritten initials]

[Handwritten initials]

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Due 2/15 a.m.

1 AN ACT *for. cat* relating to: ~~2000~~

*amending chapter regulating rental-purchase companies and granting rule-making authority.*

Analysis by the Legislative Reference Bureau

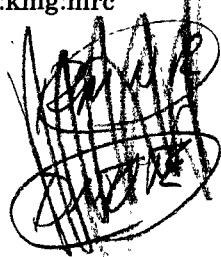
The people of the state of Wisconsin, represented in senate and assembly, do, enact as follows:

INSERT ANALYSES

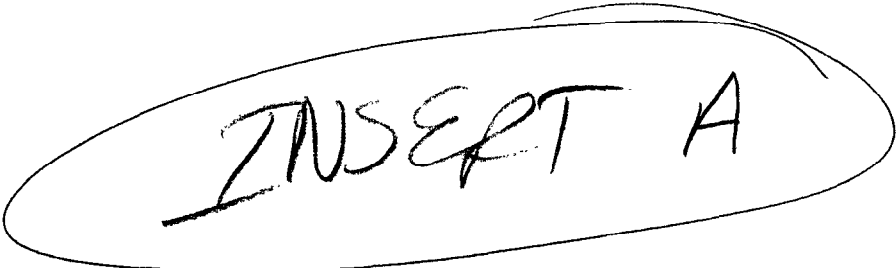
INSERT A

2


(END)

4/2/99  



ARC:.....Tompach – AM # 65, Rent-to-own agreements  
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION  
CAUCUS AMENDMENT  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1999 ASSEMBLY BILL 133



1 At the locations indicated, amend the substitute amendment as follows:

2  1. Page 1359, line 21: after that line insert:


3 ~~SECTION 2818.~~ SECTION 409.104 (12m) of the statutes is created to read:

4 409.104 (12m) To a transfer of an interest under a rent-to-own agreement  
5 under ch. 435; or 

6  2. Page 1362, line 23: after that line insert:

7 ~~SECTION 2822a.~~ SECTION 421.202 (7m) of the statutes is created to read:

8 421.202 (7m) A rent-to-own agreement under ch. 435;

9  ~~SECTION 2822a.~~ ~~SECTION 421.301(9) of the statutes is amended to read:~~

1 421.301 (9) "Consumer credit sale" means a sale of goods, services or an  
 2 interest in land to a customer on credit where the debt is payable in instalments or  
 3 a finance charge is imposed and includes any agreement in the form of a bailment  
 4 of goods or lease of goods or real property if the bailee or lessee pays or agrees to pay  
 5 as compensation for use a sum substantially equivalent to or in excess of the  
 6 aggregate value of the goods or real property involved and it is agreed that the bailee  
 7 or lessee will become, or for no other or a nominal consideration has the option to  
 8 become, the owner of the goods or real property upon full compliance with the terms  
 9 of the agreement. "Consumer credit sale" does not include a rent-to-own agreement  
 10 under ch. 435.

11 **#** SECTION ~~2822a~~. 421.301 (10) of the statutes is amended to read:

12 421.301 (10) "Consumer credit transaction" means a consumer transaction  
 13 between a merchant and a customer in which real or personal property, services or  
 14 money is acquired on credit and the customer's obligation is payable in instalments  
 15 or for which credit a finance charge is or may be imposed, whether such transaction  
 16 is pursuant to an open-end credit plan or is a transaction involving other than  
 17 open-end credit. The term includes consumer credit sales, consumer loans,  
 18 consumer leases and transactions pursuant to open-end credit plans. "Consumer  
 19 credit transaction" does not include a rent-to-own agreement under ch. 435.

20 **#** SECTION ~~2822b~~. 421.301 (11) of the statutes is amended to read:

21 421.301 (11) "Consumer lease" means a lease of goods which a merchant makes  
 22 to a customer for a term exceeding 4 months. "Consumer lease" does not include a  
 23 rent-to-own agreement under ch. 435.

24 ~~8. Page 1363, line 15: after that line insert:~~

1 ~~SECTION 2822y.~~ SECTION 423.201 of the statutes is amended to read:

2 **423.201 Definition.** "Consumer approval transaction" means a consumer  
3 transaction other than a sale or lease or listing for sale of real property or a sale of  
4 goods at auction 1) which is initiated by face-to-face solicitation away from a regular  
5 place of business of the merchant or by mail or telephone solicitation directed to the  
6 particular customer and 2) which is consummated or in which the customer's offer  
7 to contract or other writing evidencing the transaction is received by the merchant  
8 away from a regular place of business of the merchant and involves the extension of  
9 credit or is a cash transaction in which the amount the customer pays exceeds \$25.  
10 "Consumer approval transaction" shall in no event include a catalog sale which is not  
11 accompanied by any other solicitation or a consumer loan conducted and  
12 consummated entirely by mail. "Consumer approval transaction" does not include  
13 a rent-to-own agreement under ch. 435.

14 ~~SECTION 2822z.~~ SECTION Chapter 435 of the statutes is created to read:

15 **CHAPTER 435**

16 **RENT-TO-OWN AGREEMENTS**

SUBCHAPTER 1  
SCOPE

17 **435.102 Scope. (1) INAPPLICABILITY OF OTHER LAWS.** A rent-to-own agreement  
18 under this chapter is not governed by the laws relating to a security interest, as  
19 defined in s. 401.201 (37), or a lease, as defined in s. 411.103 (1) (j).

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

21 (a) Any agreement between a rental-purchase company and any person other  
22 than a lessee.

23 (b) A lease or bailment of personal property if the property is intended to be  
24 used primarily for business, commercial or agricultural purposes.

- 4 -  
SUBCHAPTER II  
DEFINITIONS

1 (d)<sup>a</sup> A lease or bailment of personal property which is incidental to the lease of  
2 real property.

3 (d)<sup>b</sup> A lease of a motor vehicle, as defined in s. 218.01 (1) (m).

4 (e)<sup>c</sup> A credit sale, as defined in 15 USC 1602 (g) and in the regulations  
5 promulgated under that section.

6 (f) A consumer lease, as defined in 15 USC 1667 (1) and in the regulations  
7 promulgated under that section.

8 435.201 **Definitions.** In this chapter:

9 (1) "Department" means the department of financial institutions.

10 (2) "Lessee" means an individual who rents personal property under a  
11 rent-to-own agreement.

12 (3) "Rental property" means <sup>personal</sup> property rented under a rent-to-own agreement.

13 (4) "Rental-purchase company" means a person who regularly provides the use  
14 <sup>personal</sup> of property through rent-to-own agreements and to whom rental payments are  
15 initially payable under the terms of a particular rent-to-own agreement.

16 (5) ✓ "Rent-to-own agreement" means an agreement between a  
17 rental-purchase company and a lessee for the use of personal property if all of the  
18 following conditions are met:

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

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

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

- 5 -  
SUBCHAPTER III  
ADMINISTRATION

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

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

12 (a) The name of the rental-purchase company.

13 (b) The name under which the rental-purchase company transacts business.

14 (c) The address of the rental-purchase company's principal office.

15 (d) The addresses of all ~~stores or other~~ locations in this state at which the  
16 rental-purchase company offers rent-to-own agreements to potential lessees.

17 (e) The address of the rental-purchase company's designated agent upon whom  
18 service of process may be made in this state.

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

21 **435.302 Registration fees. (1) WHEN DUE.** ~~Any~~ <sup>✓</sup> rental-purchase company  
22 required to register under s. 435.301 shall pay a registration fee to the department  
23 when the rental-purchase company files the registration statement required under  
24 s. 435.301.

for each

1 (2) **AMOUNT.** The amount of the registration fee shall be \$25 ~~per store or other~~  
2 ~~rental~~ location in this state at which the rental-purchase company offers  
3 rent-to-own agreements to potential lessees. However, the registration fee shall not  
4 be less than \$50 nor more than \$750.

5 **435.303 Examination of books and records. (1) PURPOSE OF EXAMINATION.**

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

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

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

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



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

4           (a) The rental-purchase company has violated any provision of this chapter,  
5 the violation is not isolated or inadvertent, and the department determines that the  
6 violation justifies the suspension or revocation of the registration.

7           (b) The department becomes aware that any fact or condition exists which, if  
8 it had existed at the time that the rental-purchase company first filed <sup>its</sup> ~~the~~  
9 registration statement, would have warranted the department's refusal to honor the  
10 registration.

11           (c) The rental-purchase company has failed to pay the registration fee under  
12 s. 435.302.

13           (2) **PROCEDURE.** The following procedure applies to every order of the  
14 department that suspends or revokes a ~~registration under this chapter:~~ <sup>rental-purchase company's</sup>

15           (a) The department shall provide a written notice to the rental-purchase  
16 company ~~registered under s. 435.301~~ of the department's intent to issue an order  
17 suspending or revoking the rental-purchase company's registration. The notice  
18 shall specify the grounds for and the effective date of the proposed order.

19           (b) The rental-purchase company shall file with the department a written  
20 response to the allegations contained in the notice within 20 days after receiving the  
21 notice. The rental-purchase company's written response may contain a request for

22 a hearing <sup>under</sup> pursuant to s. 227.42. If the written response <sup>case</sup> does not contain a request  
23 for a hearing <sup>under</sup> pursuant to s. 227.42, the right to a hearing <sup>contested</sup> is waived. <sup>under</sup>

24           (c) If a written response containing a request for a hearing <sup>contested</sup> pursuant to s. 227.42  
25 is received by the department within the time provided under par. (b) and if, in the

cont. case

22  
23

contested  
under

or files a timely written response requesting a hearing but, in the opinion of the department, the matter fails to satisfy all of the conditions under s. 227.42 (1) (a) to (d)

contested case

all

case

comma

contested case

under

proper

contested case

under

The

to the lessee

WPO: hard return

AND

SUBCHAPTER IV  
RENT-TO-OWN AGREEMENTS, DISCLOSURE, REQUIREMENTS

1 opinion of the department, the matter satisfies ~~one~~ all of the conditions under s. 227.42  
2 (1) (a) to (d), the matter shall be scheduled for a contested hearing to commence  
3 within 60 days after the date on which the department receives the written response.

4 (d) If the rental-purchase company fails to file a written response within the  
5 time provided under par. (b) ~~if the rental-purchase company~~ files a timely written  
6 response but fails to request a hearing pursuant to s. 227.42, the department may  
7 issue an order suspending or revoking the rental-purchase company's registration  
8 under sub. (1). If the rental-purchase company files a timely written response  
9 containing a request for a hearing pursuant to s. 227.42, any order of the department  
10 suspending or revoking the rental-purchase company's registration shall be stayed  
11 pending completion of proceedings under ch. 227.

12 **435.401 General requirements of disclosure. (1) FORM, LOCATION, SIZE AND**  
13 **TIME OF DISCLOSURE.** ~~All~~ <sup>(The)</sup> information required under s. 435.402 shall satisfy all of the  
14 following:

- 15 (a) The information shall be clearly and conspicuously disclosed.
- 16 (b) The information shall be disclosed in writing.
- 17 (c) The information shall be disclosed on the face of the rent-to-own agreement  
18 above the line for the lessee's signature.
- 19 (d) The information shall be disclosed in not less than B-point standard type.
- 20 (e) The information shall be disclosed at or before the time that the lessee  
21 becomes legally obligated under the rent-to-own agreement.

22 (2) **ACCURACY OF DISCLOSURE.** ~~All~~ information required under s. 435.402 must  
23 be accurate as of the time that it is disclosed <sup>to the lessee</sup>. If any information subsequently  
24 becomes inaccurate as a result of any act, occurrence or agreement by the lessee, the  
25 resulting inaccuracy is not a violation of this chapter.

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

6           **435.402 Required provisions of rent-to-own agreement.** A  
 7 rental-purchase company shall include all of the following information, to the extent  
 8 applicable, in every rent-to-own agreement:

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

14           **(2) CASH PRICE.** The price at which the rental-purchase company would <sup>would pay</sup> ~~have~~  
 15 <sup>sell</sup> ~~sold~~ the rental property to the lessee <sup>for cash</sup> ~~for cash~~ on the date on which the rent-to-own  
 16 agreement is executed. <sup>if the lessee ~~repays~~ for the rental property in full</sup>  
 17           **INSERT 9-16** ✓

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

18           **(4) UP-FRONT PAYMENT.** <sup>any</sup> ~~The~~ payment required of the lessee at the time that the  
 19 agreement is executed <sup>at the time that</sup> ~~or~~ the rental property is delivered, ~~whichever is later~~  
 20 including the initial rental payment, any application or processing charge, any  
 21 delivery fee, any charge for a liability damage waiver or for other optional services  
 22 agreed to by the lessee, and the applicable tax.

23           **(5) PAYMENT TO ACQUIRE OWNERSHIP.** The total number, total dollar amount and  
 24 due date of all <sup>Q - u -</sup> rental payments necessary to acquire ownership of the rental property.

periodic

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

"KA"  
move text  
to 11-9

7 (12) (7) **RENTAL, NOT PURCHASE.** A statement that the lessee will not own the rental  
 8 property until the lessee has made the total amount of payments necessary to acquire  
 9 ownership or has exercised the lessee's early-purchase option.

all of the periodic rental

10 (7) (8) **SUMMARY OF EARLY-PURCHASE OPTION.** A statement summarizing the terms  
 11 of the lessee's option to acquire ownership of the rental property, including a  
 12 statement indicating that the lessee has the right to exercise an early purchase  
 13 option and indicating the price, or the formula or method for determining the price,  
 14 at which the rental property may be purchased under the early-purchase option.

15 (8) (9) **RESPONSIBILITY FOR THEFT OR DAMAGE.** A statement that, unless otherwise  
 16 agreed, the lessee is responsible for the fair market value of the rental property,  
 17 determined according to the early-purchase option formula or method, if, and as of

18 ~~the time,~~ the rental property is stolen, damaged or destroyed while in the possession  
 19 of or subject to the control of the lessee.

The statement shall indicate that the fair market value will be determined as of the date that the rental property is stolen, damaged or destroyed.

20 (9) (10) **SERVICE AND WARRANTY.** A statement identifying the party responsible for  
 21 maintaining or servicing the rental property during the term of the rent-to-own  
 22 agreement, together with a description of that responsibility, and a statement that  
 23 if any part of a manufacturer's express warranty covers the rental property when the  
 24 lessee acquires ownership of the rental property the manufacturer's express

1 warranty will be transferred to the lessee, if the transfer is allowed by the terms of  
2 the manufacturer's express warranty.

3 **10** ~~(10)~~ **TERMINATION AT OPTION OF LESSEE.** A statement that the lessee may  
4 terminate the agreement at any time without penalty by voluntarily surrendering  
5 or returning the rental property in good repair along with any past-due rental  
6 payments, fees and charges.

"KAM  
INSERT  
TEXT FROM  
10-7"

7 **11** ~~(12)~~ **RIGHT TO REINSTATE.** A brief explanation of the lessee's right to reinstate  
8 a rent-to-own agreement under s. 435.61914. <sup>b0a</sup>

The rental-purchase company shall also include a

9 ~~(13)~~ **GENERAL NOTICE** A notice reading substantially as follows: "You are  
10 renting this property. You will not own the property until you make all of the  
11 ~~regularly scheduled~~ <sup>periodic</sup> rental payments necessary to acquire ownership until you  
12 exercise your early-purchase option. If you do not make your <sup>periodic</sup> rental payments as  
13 scheduled or exercise your early-purchase option, the lessor may repossess the  
14 property."

15 ~~(14)~~ **INFORMATION ABOUT RENTAL-PURCHASE COMPANY AND LESSEE.** The names of  
16 the rental-purchase company and the lessee, the rental-purchase company's  
17 business address and telephone number, the lessee's address and the date on which  
18 the rent-to-own agreement is executed.

19 **435.403 Prohibited provisions of rent-to-own agreement.** A

20 ~~rental-purchase company~~ ~~rent-to-own agreement~~ may not <sup>include</sup> contain any of the following. <sup>in a rent-to-own agreement</sup>

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

22 **(2) SECURITY.** A provision granting the rental-purchase company a security  
23 interest in any property except rental property delivered by the rental-purchase  
24 company pursuant to the rent-to-own agreement.

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

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

8           **(5) OVERPAYMENT.** A provision requiring <sup>periodic</sup> rental payments totaling more than  
 9 the total dollar amount of all <sup>periodic</sup> rental payments necessary to acquire ownership, as  
 10 disclosed in the rental-purchase agreement.

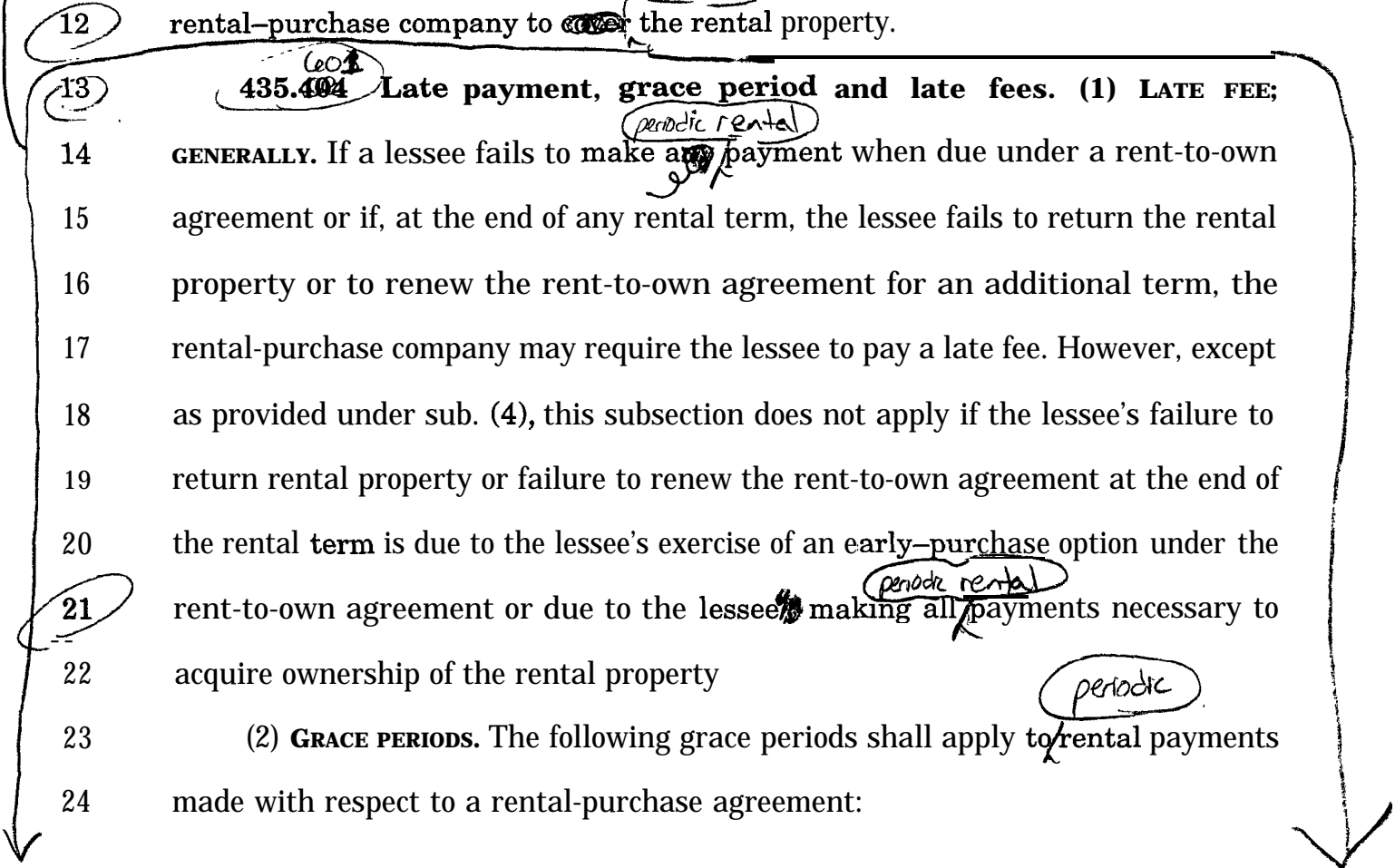
11           **(6) INSURANCE.** A provision requiring the purchase of insurance from the  
 12 rental-purchase company to <sup>insure</sup> ~~cover~~ the rental property.

13           <sup>601</sup> ~~435.404~~ **Late payment, grace period and late fees. (1) LATE FEE;**

14 **GENERALLY.** If a lessee fails to make <sup>periodic rental</sup> any payment when due under a rent-to-own  
 15 agreement or if, at the end of any rental term, the lessee fails to return the rental  
 16 property or to renew the rent-to-own agreement for an additional term, the  
 17 rental-purchase company may require the lessee to pay a late fee. However, except  
 18 as provided under sub. (4), this subsection does not apply if the lessee's failure to  
 19 return rental property or failure to renew the rent-to-own agreement at the end of  
 20 the rental term is due to the lessee's exercise of an early-purchase option under the  
 21 rent-to-own agreement or due to the lessee's <sup>periodic rental</sup> making all payments necessary to  
 22 acquire ownership of the rental property

23           **(2) GRACE PERIODS.** The following grace periods shall apply to <sup>periodic</sup> rental payments  
 24 made with respect to a rental-purchase agreement:

Handwritten notes in a circle: "11/15/11" and "12-15"



[moved text]

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

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

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

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

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

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

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

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

19 <sup>602</sup> ~~435.405~~ **Reinstatement of terminated rent-to-own agreement. (1)**

20 **REINSTATEMENT, GENERALLY.** A lessee ~~shall have the right to~~ <sup>may</sup> reinstate a terminated  
21 rent-to-own agreement without losing any rights or options previously acquired if  
22 all of the following ~~conditions~~ apply:

23 (a) The lessee returned or surrendered the rental property within 5 days after  
24 the termination of the agreement.

rent-to-own

[moved text]

↑

1 (b) Not more than 21 days have passed after the date that the rental property  
2 was returned to the rental-purchase company or, if the lessee has paid two-thirds  
3 or more of the total of rental payments necessary to acquire ownership of the rental  
4 property, not more than 45 days have passed since the date that the rental property  
5 was returned to the rental-purchase company.

6 (2) AUTHORIZED CONDITIONS ON REINSTATEMENT. As a condition of reinstatement  
7 under this section, the rental-purchase company may require the payment of all  
8 past-due rental charges, any applicable late fees, a reinstatement fee not to exceed  
9 \$5, and the periodic rental payment for an additional term.

10 (3) EFFECT OF REPOSSESSION ON REINSTATEMENT. Nothing in this section ~~shall~~  
11 prohibits ~~prevent~~ a rental-purchase company from attempting to repossess rental property  
12 upon termination of a rent-to-own agreement, but repossession ~~shall~~ do not affect the  
13 lessee's right to reinstatement ~~as long as~~ the rental property is voluntarily returned or  
14 surrendered within 5 days after the termination of the rent-to-own agreement.

end of 11 KA  
moved

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

- . . I -

20 404 ~~435,406~~ **Liability waiver.** A rental-purchase company may offer a liability  
21 waiver to the lessee. The terms of the waiver must be provided to the lessee in writing  
22 and the face of the writing must clearly disclose that the lessee is not required to  
23 purchase the waiver. The fee for the waiver may not exceed 10% of the periodic rental  
24 payment due under the rent-to-own agreement



405

1

**435.407 Early-purchase option.** A rental-purchase company shall offer an

2

early-purchase option to every lessee who enters into a rent-to-own agreement with

3

~~the rental-purchase company.~~ The early-purchase option shall permit the lessee to

4

purchase the rental property for cash at any time after the periodic rental initial payment. As a

5

condition of exercising the early-purchase option, the rental-purchase company

6

may require the lessee to be current on the lessee's rent-to-own agreement or to pay

7

any past-due rental charges and other outstanding fees that are owed.

✓  
11/24/04  
MAY 17-14

503

8

**435.408 Referral transactions. (1) PROHIBITED REFERRAL TRANSACTIONS. No**

9

rental-purchase company may induce any individual to enter into a rent-to-own

10

agreement by giving or offering to give a rebate or discount to the individual in

11

consideration of the individual's giving to the rental-purchase company the names

12

of prospective lessees if the earning of the rebate or discount is contingent upon the

13

occurrence of any event that takes place after the time that the individual enters into

14

the rent-to-own agreement.

15

(2) **AUTHORIZED REFERRAL TRANSACTIONS.** A rental-purchase company may give

16

or offer to give a rebate or discount to a lessee who ~~owns personal property from the~~

17

rental-purchase company in consideration of the lessee's giving to the

18

rental-purchase company the names of prospective lessees. A rebate or discount

19

under this subsection may be contingent upon the occurrence of any event that takes

20

place after the time that the names are given to the rental-purchase company.

21

406

**435.409 Receipts and statements. (1) RECEIPTS DUE UPON REQUEST.** Upon

22

the request of a lessee, a rental-purchase company shall provide a written receipt

23

to the lessee for any payment made by the lessee.

24

(2) **STATEMENT DUE UPON REQUEST.** Upon the request of a lessee, a

25

rental-purchase company shall provide a written statement to the lessee showing

SUBCHAPTER V  
MARKETING

under

1 the lessee's payment history ~~of~~ each rent-to-own agreement between the lessee and  
2 the rental-purchase company. A rental-purchase company is not required to  
3 provide a statement covering any rent-to-own agreement that & terminated ~~or~~  
4 ~~completed~~ more than one year prior to the date of the lessee's request. A  
5 rental-purchase company may provide a single statement covering all rent-to-own  
6 agreements or separate statements for each rent-to-own agreement, at the  
7 rental-purchase company's option.

INSERT  
16-7-16

rental-purchase company shall display

8 **435.501 Price cards displayed.** (1) PRICECARDS; GENERALLY. A card or tag

9 that clearly and conspicuously states all of the following ~~shall be displayed~~  
10 to any property displayed or offered by a rental-purchase company for rent under a  
11 rent-to-own agreement:

That an individual would pay to purchase

on the date that the individual reads the card or tag

- 12 (a) The price ~~of~~ the property ~~is purchased in~~ cash.
- 13 (b) The amount of the ~~periodic~~ rental payment and the term over which the  
14 payment must be made.
- 15 (c) The total number and total amount of rental payments ~~that must be paid~~  
16 ~~in order to~~ acquire ownership of the property under a rent-to-own agreement.
- 17 (d) Whether the property is new or used.

dollar

all periodic

necessary to

18 (2) EXCEPTIONS. If property is offered for rent under a rent-to-own agreement  
19 through a catalog or if the size of the property is such that displaying a card or tag  
20 on or next to the property ~~would be~~ <sup>is</sup> impractical, a rental-purchase company may  
21 make the disclosures required by this section in a catalog or list, ~~if the catalog or list~~  
22 <sup>that</sup> is readily available to prospective lessees.

23 **435.502 Advertising.** (1) DISCLOSURE REQUIRED. Except as provided under  
24 sub. (2), if an advertisement for a rent-to-own agreement refers to or states the  
25 amount of a payment for any property and the right to acquire ownership of that

*the rental-purchase company shall ensure that*

*states*

1 property, the advertisement shall also clearly and conspicuously state all of the  
2 following:

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

4 (b) The total number and total dollar amount of <sup>all periodic</sup> rental payments ~~that must be~~  
5 <sup>necessary to</sup> ~~paid to~~ acquire ownership <sup>of the property</sup> ~~if~~ <sup>the lessee fails to make</sup>

6 (c) That the lessee does not acquire ownership of the property if ~~the total dollar~~  
7 <sup>all periodic rental</sup> ~~amount of~~ <sup>or other payments</sup> ~~payments necessary to acquire ownership is not made~~ <sup>of the property</sup>

8 (2) EXCEPTION. Subsection (1) does not apply to any in-store display or <sup>to</sup> ~~an~~  
9 advertisement that is published in the yellow pages of a telephone directory or in a ~~any~~  
10 similar directory of businesses.

11 (3) ADVERTISER NOT LIABLE. An owner or agent of the medium in which an  
12 advertisement for a rent-to-own agreement appears or through which an  
13 advertisement for a rent-to-own agreement is disseminated shall not be liable for  
14 any violation of sub. (1).

*HKD  
INSERT  
FROM  
15-8*

*INSERT  
17-15*

15 ~~435.601~~ <sup>604</sup> Default and right to cure. (1) DEFAULT; GENERALLY. A lessee is in  
16 default under a rent-to-own agreement if any of the following applies:

17 (a) The lessee fails to return rental property within 7 days after the date that  
18 the last ~~rental~~ <sup>periodic</sup> term for which a rental payment was made expires, unless the lessee  
19 has exercised an early-purchase option or has made all <sup>periodic rental</sup> payments necessary to  
20 acquire ownership of the rental property.

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

23 (2) DEFAULT; NECESSARY FOR LESSEE LIABILITY. No cause of action shall accrue  
24 against a lessee with respect to the lessee's obligations under a rent-to-own  
25 agreement except <sup>upon</sup> ~~by reason of a~~ default.

*and the expiration of any applicable period of time allowed for cure of the default*

*HKD  
INSERT  
FROM  
12-13*

*SUBCHAPTER VI AND RENTAL PAYMENTS/ COLLECTIONS*

*wpo: hand return*

Except as provided  
in sub. (4),

1 (3) **NOTICE OF DEFAULT; GENERAL REQUIREMENT.** <sup>I</sup> ~~As~~ a condition precedent to  
2 bringing an action against a lessee arising out of the lessee's default, a  
3 rental-purchase company shall provide a written notice of the default and of the  
4 right to cure the default to the lessee. The notice shall specify the default and the  
5 action required to cure the default and shall inform the lessee that if the default is  
6 not cured within 15 days after the notice is given the rental-purchase company will  
7 have the right to bring an action against the lessee.

8 (4) **NOTICE OF DEFAULT; EXCEPTION.** ~~Notwithstanding sub. (3),~~ a rental-purchase  
9 company is not required to provide a notice of default and right to cure as a condition  
10 precedent to bringing an action against a lessee if each of the following occurred twice  
11 during the 12 months before the date of the current default with respect to the same  
12 rent-to-own agreement:

- 13 (a) The lessee was in default.
- 14 (b) The rental-purchase company gave the lessee written notice of the default  
15 and of the lessee's right to cure under sub. (3).
- 16 (c) The lessee cured the default.

17 (5) **REQUEST FOR VOLUNTARY SURRENDER OF PROPERTY.** A rental-purchase  
18 company may request the voluntary return or surrender of rental property prior to  
19 the declaration of a default and the sending of written notice of default and right to  
20 cure. A request under this subsection is subject to the requirements of s. 435.60.

21 ~~435.60~~ **Rental-purchase company collection practices.** In attempting  
22 to recover possession of rental property or to collect <sup>periodic</sup> past-due/rental payments or  
23 other charges owed under a rent-to-own agreement, a rental-purchase company  
24 may not do any of the following:

5 ✓

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

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

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

11 (4) **COMMUNICATION WITH LESSEE'S EMPLOYER.** Initiate or threaten to initiate  
12 communication with the lessee's employer prior to obtaining final judgment against  
13 the lessee, except as permitted by statute including specifically under s. 435.606. This  
14 subsection does not prohibit a rental-purchase company from communicating with  
15 a lessee's employer solely to verify employment status or earnings or to determine  
16 if the employer has an established debt counseling service or procedure.

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

20 (6) **HARASSMENT.** Communicate with the lessee or a person related to the lessee  
21 with such frequency or at such unusual hours or in such a manner as can reasonably  
22 be expected to threaten or harass the lessee or engage in any other conduct which can  
23 reasonably be expected to threaten or harass the lessee or a person related to the  
24 lessee.

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

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

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

7 (10) USE OF THREAT TO SUE. Threaten to file a civil action against the lessee  
8 the civil action is of a type that the rental-purchase company files  
9 unless such action is taken in the regular course of business or is intended with  
10 respect to the lessee in question.

unless the rental-purchase company intends to file the civil action against the lessee.

11 **435.701 Civil actions and defenses.** (1) LIABILITY; GENERALLY Except as  
12 provided under sub. (2), a rental-purchase company that violates any provision of  
13 this chapter is liable to a lessee damaged as a result of that violation for the costs of  
14 the action and for reasonable attorney fees as determined by the court, plus an  
15 amount equal to the greater of the following:

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

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

Except as provided in subs. (4) and (5)

21 (2) LIABILITY; CERTAIN VIOLATIONS. If a rent-to-own agreement violates s.  
22 435.403, the lessee shall be entitled to retain the rental property without obligation  
23 to pay any amount and to recover any sums paid to the rental-purchase company  
24 pursuant to the transaction.

rental-purchase company

wpo: hard return

SUBCHAPTER VII  
REMEDIES, DEFENSES AND LIMITATIONS

INSET  
20-10

Handwritten bracket and arrows connecting lines 10-12, 12-15, and 15-24.

1 (3) **CLASS ACTION.** In the case of a class action, a rental-purchase company that  
2 violates this chapter is liable to the members of the class in an amount determined  
3 by the court, except that the total recovery for all lessees whose recovery is computed  
4 pursuant to sub. (1) (b) may not exceed \$100,000 plus the costs of the action and  
5 reasonable attorney fees as determined by the court. In determining the amount to  
6 award under this subsection, the court shall consider, among other relevant factors,  
7 the amount of actual damages sustained by members of the class, the frequency and  
8 persistence of violations by the rental-purchase company, the resources of the  
9 rental-purchase company, the number of persons damaged by the violation, the  
10 presence or absence of good faith on the part of the rental-purchase company, and  
11 the extent to which the violation was intentional.

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

~~17~~ (5) **DEFENSE; UNINTENTIONAL ERROR.** A rental-purchase company is not liable  
18 for a violation of this chapter if the rental-purchase company shows by a  
19 preponderance of the evidence that the violation was not intentional, that the  
20 violation resulted from a bona fide error notwithstanding the maintenance of  
21 procedures reasonably ~~adapted~~ <sup>adopted</sup> to avoid these errors and that the rental-purchase  
22 company has acted to correct the error. A bona fide error under this subsection  
23 includes a clerical error, an error in making calculations, an error due to computer  
24 malfunction or computer programming, or a printing error.

1 <sup>(7)</sup> ~~(8)~~ **NECESSARY PARTIES.** If more than one lessee is a party to the same  
 2 rent-to-own agreement, all of the lessees that are parties to the rent-to-own  
 3 agreement shall be joined as plaintiffs in any action under sub. (1) and the lessees  
 4 are entitled to only a single recovery under sub. (1).

5 <sup>(6)</sup> ~~(7)~~ **LIABILITY FOR MULTIPLE VIOLATIONS.** Multiple violations of this chapter in  
 6 connection with the same rent-to-own agreement shall only entitle the lessee to a  
 7 single recovery under sub. (1), except that a violation of s. 435.60~~2~~<sup>5</sup> that occurs after  
 8 recovery has been granted with respect to that rent-to-own agreement may entitle  
 9 the lessee to an additional recovery under sub. (1).

10 **435.702 Limitation on actions.** An action brought by a lessee under this  
 11 chapter shall be commenced within one year after the date on which the alleged  
 12 violation occurred, 2 years after the date on which the rent-to-own agreement was  
 13 entered into, or one year after the date on which the last payment was made under  
 14 the rent-to-own agreement, whichever is later.

15 ~~4 Page 1511, line 23, after that line insert:~~

SEC #. Nonstat.

16 ~~#~~ ~~(2)~~ **SUBMISSION OF PROPOSED RULES GOVERNING REGISTRATION OF**  
 17 **RENTAL-PURCHASE COMPANIES.** No later than the first day of the 3rd month beginning  
 18 after publication, the department of financial institutions shall submit in proposed  
 19 form the rules governing registration of rental-purchase companies under section  
 20 435.301<sup>(2)</sup> of the statutes, as created by this act, to the legislative council staff under  
 21 section 227.15 (1) of the statutes. !&

22-22  
 SEC #. Inapp.

22 ~~52 Page 1589, line 14, after that line insert:~~

23 ~~#~~ ~~(2a)~~ **RENT-TO-OWN AGREEMENTS.** The treatment of sections 409.104 (12m),  
 24 421.202 (7m), 421.301 (9), (10) and ~~(11)~~ 423.204, 435.102 to 435.201, ~~435.301 and~~



435.403 and 435.405 to

1 435.401 to 435.701 of the statutes first applies to rent-to-own agreements entered  
2 into on the effective date of this subsection.

3 ~~(12)~~ REGISTRATION OF RENTAL-PURCHASE COMPANIES. The treatment of sections  
4 435.301, 435.302 and 435.304 of the statutes first applies to any person engaging in  
5 business as a rental-purchase company on the effective date of this subsection.

6 ~~Page 1608, line 19: after that line insert:~~ Sec #. Eff dates.

7 ~~(22)~~ RENT-TO-OWN AGREEMENTS. The treatment of sections 409.104 (12m), and  
8 421.202 (7m), 421.301 (9), (10) and (11) and 423.201 and chapter 435 of the statutes  
9 and SECTION ~~(21)~~ and ~~(22)~~ of this act take effect on the first day of the 6th  
10 month beginning after publication. (1) and (2)

11 (END) auto ref. 22-22 auto ref. 22-23 auto ref. 23-3

This act takes effect on the day after publication, except as follows:

~~(15)~~ LIABILITY WAIVERS. The treatment of section 435.404 of the statutes first applies to liability waivers entered into on the effective date of this subsection.

## INSERT ANALYSIS

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 4 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 as any person who regularly provides the use of personal property through 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 4 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 <sup>new</sup> chapter created in the bill. 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) A description of the rental property.
- 2 (b) The cost of purchasing the rental property on the date on which the rent-to-own agreement is executed.
- 3 (c) A statement indicating that it may cost less to purchase the rental property from a retailer other than the rental-purchase company.
- 4 (d) The amount of the periodic rental payment.
- 5 (e) The amount of any payment due at the time that the rent-to-own agreement is executed or that the rental property is delivered.
- 6 (f) The total dollar amount, total number and due dates of all rental payments necessary to acquire ownership of the rental property.
- 7 (g) 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 (h) A summary of the lessee's early purchase option.
- 9 (i) A description of the lessee's responsibility in the event of theft of or damage to the rental property.
- 10 (j) A description of the service and maintenance responsibilities <sup>and</sup> a statement regarding any warranty that covers the rental property.
- 11 (k) A statement that the lessee may terminate the rental-purchase agreement at any time, without penalty, by surrendering the rental property in good repair and paying any past-due rental payments, fees and charges.
- 12 (l) A description of the lessee's right to reinstate the rental-purchase agreement.
- 13 (m) 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 <sup>in</sup> 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 <sup>or</sup> 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 8-point standard type on the face of

eight

property

✓

✓

the rent-to-own agreement. As under the consumer act, under the bill the rental-purchase company must 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 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 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. However, the bill 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.

50%

**Right to reduced amount of rental payments and right to reinstatement**

Under the bill, if a lessee who has paid more than ~~one-half~~ of the total number 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 ~~for~~ until the lessee's monthly income is no longer reduced, and 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. However, a rental-purchase company may not 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.

Five

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 ~~5 days after~~ termination and not more than 21 days have passed since the return date or, if the lessee paid at least two-thirds of the total number of rental payments necessary to acquire ownership, not more than 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 7 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. However, 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, under the bill the

seven

✓

rental-purchase company is not required to provide 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:

- (a) Use or threaten to use force or violence.
- (b) Disclose or threaten to disclose false information relating to the creditworthiness of the lessee.
- (c) Disclose or threaten to disclose a debt that is disputed by the lessee without disclosing the fact that the debt is disputed.
- (d) Harass or threaten the lessee or a relative of the lessee.
- (e) Use obscene language in communicating with the lessee or a relative of the lessee.
- (f) Threaten to enforce a right with knowledge that the right does not exist.
- (g) Use a communication that falsely simulates legal, judicial or governmental process.
- (h) 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, 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. However, if 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 <sup>5</sup> 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 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, ~~2~~ years after the date the rent-to-own agreement was entered into or one year after the date of the last payment, whichever is later. This provision is generally the same as that under the consumer act.

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

two

on which

INSERT ~~14-14~~ 9-16 ✓

along with a

~~(14)~~ COMPARISON OF RENTAL AND PURCHASE. A statement that, if the lessee intends to acquire ownership of the rental property, the lessee may be able to purchase similar property from a retailer at a lower cost, if the lessee is able to pay for the property in full or is able to obtain credit to finance the purchase.

INSERT 16-7 ✓

407

3rd

**435.b communication of payment history to ~~third~~ parties.** Upon the written request of a lessee, made <sup>during the term of or</sup> no later than one year after the <sup>termination</sup> expiration of a rent-to-own agreement, <sup>a</sup> the rental-purchase company shall provide a written statement to any person designated by the lessee, showing the lessee's payment history under the rent-to-own agreement.

17-15  
INSERT ~~13-20~~ ✓

reduced income

Reduced periodic

403

**435.000 Reduction of rental payments due to hardship.** (1) REDUCTION

PERIODIC REQUIRED

IN AMOUNT OF <sup>periodic</sup> RENTAL PAYMENTS; EVIDENCE OF ~~HARDSHIP~~ (a) *Reduction in amount of rental payments.* If a lessee's monthly income is reduced by 25% or more due to pregnancy, disability, ~~an~~ involuntary job loss or ~~an~~ involuntary reduction in the amount of hours worked or wages earned, the rental-purchase company shall reduce the amount of each <sup>periodic</sup> rental payment due under the rent-to-own agreement by the same percentage that the lessee's monthly income is reduced or by 50%, whichever is less, for the period of time during which the lessee's income is reduced. This subsection only applies if all of the following are satisfied:

1. The total number of <sup>periodic</sup> rental payments made by the lessee under the rent-to-own agreement equals more than 50% of the total number of <sup>periodic</sup> rental payments necessary to acquire ownership of the rental property,



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

(b) Evidence of continued ~~ownership~~ <sup>reduction in income</sup>. At reasonable intervals after reducing the amount of a <sup>periodic</sup> rental payment under par. (a), a rental-purchase company may require the lessee to provide evidence of the lessee's monthly income and evidence that the cause of the reduction in the lessee's monthly income has not abated.

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

(3) INCREASE IN AMOUNT OF <sup>PERIODIC</sup> RENTAL PAYMENTS. Except as provided in sub. (4), if a rental-purchase company reduces the amount of a <sup>periodic</sup> rental payment under sub. (1) (a) and if, subsequently, the lessee's monthly income is fully restored, the rental-purchase company may increase the amount of each <sup>periodic</sup> rental payment due after the date that the lessee's monthly income is fully restored.

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

(5) REQUIRED NOTICES. A rental-purchase company shall provide a lessee with all of the following:

*I* *not* *Italic, not CS*  
NOTICE OF

(a) ~~REDUCTION IN AMOUNT OF RENTAL PAYMENTS~~ Notice of any reduction in the amount of a ~~rental~~ *periodic* payment under sub. (1) (a) before the date ~~that~~ *start* the first reduced ~~rental~~ payment is due.

(b) ~~INCREASE IN NUMBER OF RENTAL PAYMENTS~~ *OF PAYMENTS* Written notice of any increase in the total number of ~~rental~~ *periodic* payments under sub. (2) no later than 15 days after the ~~rental-purchase~~ company determines to increase the total number of ~~rental~~ payments.

(c) ~~INCREASE IN AMOUNT OF RENTAL PAYMENTS~~ *OF PAYMENTS.* Written notice of any increase in the amount of a ~~rental~~ *periodic* payment under sub. (3) before the date ~~that~~ *start* the first increased ~~rental~~ payment is due.

*Lead*  
*of 17-15*

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4219/linsC  
RJM:.....

INSERT 20-10 ✓

606  
~~435.605~~ Assignment of earnings. (1) IRREVOCABLE ASSIGNMENT OF EARNINGS

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

(B) (22) REVOCABLE ASSIGNMENT OF EARNINGS; TERM. Notwithstanding s. 241.09, a revocable assignment of earnings that is entered into for payment or as security for payment of an obligation arising out of a rent-to-own agreement shall be considered to be renewed for a term not to exceed 6 months if all of the following apply:

(a) The original assignment of earnings contains a conspicuous notice of the right of the individual whose earnings are assigned to revoke the assignment.

(b) The rental-purchase company, before expiration of the assignment of earnings, provides a notice to the individual whose earnings are assigned, conspicuously stating that the assignment of earnings is revocable and that the assignment will continue in effect for not more than 6 additional months, unless the rental-purchase company receives notice of revocation.

(c) The individual whose earnings are assigned does not revoke the assignment.

Lead

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

LRB-4219/1dn

RJM:.....

*kmj*

Senator Chvala:

The attached bill is not identical to the rent-to-own provisions contained in Assembly Amendment 2 to Assembly Substitute Amendment 1 to AB-131 (budget amendment). I was able to devote more time to the bill than I was able to devote to drafting the budget amendment. As a result, the bill is more refined and consistent with current drafting style. I have tried to make all changes consistent with my understanding of the underlying intent. In particular, please note the following:

1. The budget amendment excluded a rent-to-own agreement from the Wisconsin Consumer Act (consumer act) and also specifically exempted a rent-to-own agreement from certain definitions under the consumer act. Because the exclusion makes these definitional exemptions unnecessary, the bill does not contain the definitional exemptions. In addition, it appears as though, under the budget amendment, the assignment of earnings provision of the consumer act actually was intended to apply to a creditor under a rent-to-own agreement. See proposed s. 435.602 (4) in the budget amendment. Rather than make the exclusion from the consumer act ambiguous, the bill creates an assignment of earnings provision that specifically applies to the rent-to-own chapter. See proposed s. 435.606.

2. The budget amendment specified several transactions that were specifically excluded from the rent-to-own chapter. See proposed s. 435.102 (2) in the budget amendment. However, the definition of "rent-to-own agreement" itself eliminates three of these excluded transactions from the rent-to-own chapter. As a result, the list of excluded transactions in proposed s. 435.102 (2) is shorter than the list contained in the budget amendment.

3. The registration requirement in the bill raises two issues. First, the bill does not permit the department of financial institutions (DFI) to deny a rental-purchase company's registration. The bill does not require DFI to review a registration and does not specify any standards for DFI to apply when a rental-purchase company submits a registration. Although the bill, in proposed s. 435.304 (1) (b), permits DFI to suspend or revoke a registration if the department becomes aware of a fact that "would have warranted the department's refusal to honor the registration," it is unclear what facts meet this requirement.

Second, the bill permits a rental-purchase company to operate for 30 days before registering. Although this procedure is similar to registration language contained in

the consumer act, the procedure may cause difficulties in enforcement. You may want to consider requiring a rental-purchase company to obtain a valid registration before conducting business in this state and allow a transitional period of 30 days after the bill's effective date for existing rental-purchase companies to register.

4. The bill makes the administrative review procedure in proposed s. 435.304 (2) (c) consistent with s. 227.42 (1), stats., by requiring all conditions under s. 227.42 (1) (a) to (d) to be satisfied in order for a contested hearing to be held.

5. The budget amendment contained a liability exemption for any advertiser that runs a rent-to-own agreement advertisement that violates proposed s. 435.502 (1). The bill clarifies that the requirements of s. 435.502 (1) only apply to a rental-purchase company. Thus, the bill eliminates the liability exemption.

6. The budget amendment required a rent-to-own advertisement to state "that the lessee does not acquire ownership of the property if the total dollar amount of payments necessary to acquire ownership is not paid." The bill uses uniform terminology and, as a result, under the bill this disclosure refers to the lessee failing to make "all periodic rental payments or other payments necessary to acquire ownership." Please let me know if this disclosure is not sufficient.

7. Please review proposed s. 435.603, regarding reduced periodic rental payments due to reduced income. It was unclear whether you intend the eligibility requirement in proposed s. 435.603 (1) (a) 1. to refer to 50% of the total dollar amount or of the total number of periodic rental payments necessary to acquire ownership. The bill requires a lessee to have paid more than 50% of the total number of periodic rental payments.

Proposed s. 435.603 requires a reduction in monthly income. The submitted language did not specify a time-frame for measuring the required reduction.

Proposed s. 435.603 (3) clarifies that a rental-purchase company may restore the amount of periodic rental payments due if the lessee's income is fully restored.

The submitted language did not require any notification of a change in the amount or number of periodic rental payments under proposed s. 435.603. The bill requires a rental-purchase company to notify a lessee of these changes and requires written notification if the change is an increase in the amount or number of periodic rental payments. See proposed s. 435.603 (5). Let me know if this provision is not consistent with your intent.

8. The budget amendment prohibited the use of force or violence against a lessee's dependents when attempting to collect a debt. In order to remain consistent with other provisions, the bill refers, instead, to any person related to a lessee. See proposed s. 435.605 (1).

With certain exceptions, the budget amendment also prohibits a rental-purchase company from communicating with a lessee's employer "except as permitted by statute." This type of overbroad reference is not allowed under Joint rule 52 (6). As a result, the bill eliminates this language. See proposed s. 435.605 (4).

The bill also clarifies the prohibition against threatening to sue a lessee. Please review proposed s. 435.605 (10), as compared with proposed s. 435.602 (10) in the budget amendment.

case

cf

✓

✓

9. The bill does not specify a penalty that applies to a rental-purchase company that engages in business without a required registration. Without a specific penalty, this violation is subject to a forfeiture of up to \$200 under s. 939.61, stats.

10. The bill contains a <sup>five</sup>~~six~~-month delayed effective date, in order to allow DFI time to promulgate the rules required under the bill. Under the bill, DFI must submit proposed rules no later than the first day of the third month beginning after publication. An eight-month or twelve-month delayed effective date, along with a six-month time period for the submission of proposed rules, may be more feasible.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: Robert.Marchant@legis.state.wi.us



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-421911

RJM:kmg:hh&jf

WEDNESDAY 2-16

12MVE  
DUOTE

**1999 BILL**

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 as any person who regularly provides the use of personal property through

in the bill

**BILL**

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 ~~at the time that~~ <sup>when</sup> the rent-to-own agreement is executed or ~~that~~ the rental property is delivered.
- (6) The total dollar amount, total number and due dates 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.



**BILL**

statement identifying the party that is responsible for

of the rental property

(10) A ~~description of the~~ service and maintenance ~~responsibilities~~ 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 and paying any past-due rental payments, fees and charges.

(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, under the bill, the rental-purchase company must 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

## BILL

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. ~~However,~~ ~~the bill 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 number 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, and 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. ~~However, a rental-purchase company may not, 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 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

**BILL**

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. However, 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, **under the bill** the rental-purchase company is not required to provide the written notice of default and right to cure as a condition of filing an action.

Under the bill

the bill permits a

to file an action without providing

**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 (a) Use or threaten to use force or violence.
- 2 (b) Disclose or threaten to disclose false information relating to the creditworthiness of the lessee.
- 3 (c) Disclose or threaten to disclose a debt that is disputed by the lessee without disclosing the fact that the debt is disputed.
- 4 (d) Harass or threaten the lessee or a relative of the lessee.
- 5 (e) Use obscene language in communicating with the lessee or a relative of the lessee.
- 6 (f) Threaten to enforce a right with knowledge that the right does not exist.
- 7 (g) Use a communication that falsely simulates legal, judicial or governmental process.
- 8 (h) 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, 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

**BILL**

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**

[if however,]

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. However, if 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 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 provision is generally the same as that under the consumer act.

statute of limitations

the statute of limitations

**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.** 409.104 (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 governed by  
chs. 421 to 427 and ch. 429

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

15           (a) A lease or bailment of personal property ~~which~~ <sup>that</sup> is incidental to the lease of  
16 real property.

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

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

20    SUBCHAPTER II

21    DEFINITIONS

**BILL**

1           **435.201 Definitions.** In this chapter:

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

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

5           **(3)** “Rental property” means personal property rented ‘under a rent-to-own  
6 agreement.

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

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

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

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

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

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

21   SUBCHAPTER III

22   ADMINISTRATION

23           **435.301 Registration. (1) REQUIREMENT APPLICATION.** Every person engaging  
24 in business as a rental-purchase company in this state shall file a registration  
25 statement with the department within 30 days after the date on which the person

**BILL**

~~or unrevoked~~

1 commences business in this state and no later than February 28 of each year  
2 thereafter. Except during the first 30 days after the date on which the person  
3 commences business in this state, no person may engage in business as a  
4 rental-purchase company in this state without a valid unsuspended registration  
5 filed under this subsection. A registration statement under this section shall include  
6 all of the following information:

- 7 (a) The name of the rental-purchase company.
- 8 (b) The name under which the rental-purchase company transacts business.
- 9 (c) The address of the rental-purchase company's principal office.
- 10 (d) The addresses of all locations in this state at which the rental-purchase  
11 company offers rent-to-own agreements to potential lessees.
- 12 (e) The address of the rental-purchase company's designated agent upon whom  
13 service of process may be made in this state.

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

16 **435.302 Registration fees. (1) WHEN DUE.** A rental-purchase company  
17 required to register under s. 435.301 shall pay a registration fee to the department  
18 when the rental-purchase company files the registration statement required under  
19 s. 435.301.

20 **(2) AMOUNT.** The amount of the registration fee ~~shall be~~ \$25 for each location  
21 in this state ~~at which the rental-purchase company offers rent-to-own agreements~~  
22 to potential lessees. ~~However, the registration fee shall not be less than \$50 nor more~~  
23 ~~than \$750.~~

annual is \$50, plus

in excess of 2,

per year

subject to a maximum fee of

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

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

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

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

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

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

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



**BILL**approve

1 (b) The department becomes aware that any fact or condition exists which, if  
2 it had existed at the time that the rental-purchase company first filed its  
3 registration statement, would have warranted the department's refusal to ~~approve~~ the  
4 registration.

5 (c) The rental-purchase company has failed to pay the registration fee under  
6 s. 435.302.

7 (2) **PROCEDURE.** The following procedure applies to every order of the  
8 department that suspends or revokes a rental-purchase company's registration:

9 (a) The department shall provide a written notice to the rental-purchase  
10 company of the department's intent to issue an order suspending or revoking the  
11 rental-purchase company's registration. The notice shall specify the grounds for and  
12 the effective date of the proposed order.

13 (b) The rental-purchase company <sup>may</sup> shall file with the department a written  
14 response to the allegations contained in the notice within 20 days after receiving the  
15 notice. The rental-purchase company's written response may contain a request for  
16 a contested case hearing under s. 227.42. If the written response does not contain  
17 a request for a contested case hearing under s. 227.42, the right to a contested case  
18 hearing is waived.

19 (c) If a written response containing a request for a contested case hearing under  
20 s. 227.42 is received by the department within the time provided under par. (b) and  
21 if, in the opinion of the department, the matter satisfies all of the conditions under  
22 s. 227.42 (1) (a) to (d), the matter shall be scheduled for a contested case hearing to  
23 commence within 60 days after the date on which the department receives the  
24 written response.

## BILL

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

## SUBCHAPTER IV

## RENT-TO-OWN AGREEMENTS

## AND DISCLOSURE REQUIREMENTS

14 **435.401 General requirements of disclosure. (1) FORM, LOCATION, SIZE AND**  
15 **TIME OF DISCLOSURE.** The information required under s. 435.402 shall satisfy all of  
16 the following: *requirements*

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

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

19 (c) The information shall be disclosed on the face of the rent-to-own agreement  
20 above the line for the lessee's signature.

21 (d) The information shall be disclosed in not less than B-point standard type.

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

24 **(2) ACCURACY OF DISCLOSURE.** The information required under s. 435.402 must  
25 be accurate as of the time that it is disclosed to the lessee. If any information

**BILL**

1 subsequently becomes inaccurate as a result of any act, occurrence or agreement by  
2 the lessee, the resulting inaccuracy is not a violation of this chapter.

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

8 **435.402 Required provisions of rent-to-own agreement.** A  
9 rental-purchase company shall include all of the following information, to the extent  
10 applicable, in every rent-to-own agreement:

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

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

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

23 **(4) UP-FRONT PAYMENT.** Any payment required of the lessee at the time that the  
24 agreement is executed or at the time that the rental property is delivered, including  
25 the initial rental payment, any application or processing charge, any delivery fee,

## BILL

1 any charge for a liability damage waiver or for other optional services agreed to by  
2 the lessee, and the applicable tax.

3 (5) **PAYMENT TO ACQUIRE OWNERSHIP.** The total number, total dollar amount and  
4 due date of all periodic rental payments necessary to acquire ownership of the rental  
5 property.

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

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

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

23 (9) **SERVICE AND WARRANTY.** A statement identifying the party responsible for  
24 maintaining or servicing the rental property during the term of the rent-to-own  
25 agreement, together with a description of that responsibility, and a statement that

**BILL**

1 if any part of a manufacturer's express warranty covers the rental property when the  
2 lessee acquires ownership of the rental property the manufacturer's express  
3 warranty will be transferred to the lessee, if the transfer is allowed by the terms of  
4 the manufacturer's express warranty.

5 **(10) TERMINATION AT OPTION OF LESSEE.** A statement that the lessee may  
6 terminate the agreement at any time without penalty by voluntarily surrendering  
7 or returning the rental property in good repair along with any past-due rental  
8 payments, fees and charges.

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

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

20 **(13) INFORMATION ABOUT RENTAL PURCHASE COMPANY AND LESSEE.** The names of  
21 the rental-purchase company and the lessee, the rental-purchase company's  
22 business address and telephone number, the lessee's address and the date on which  
23 the rent-to-own agreement is executed.

## BILL

provisions

1           435.403   **Prohibited provisions of rent-to-own agreement.**   A  
2 rental-purchase company may not include any of the following in a rent-to-own  
3 agreement:

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

5           (2) **SECURITY.** A provision granting the rental-purchase company a security  
6 interest in any property except <sup>the</sup> rental property delivered by the rental-purchase  
7 company <sup>under</sup> pursuant to the rent-to-own agreement.

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

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

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

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

20          **435.404 Liability waiver.** A rental-purchase company may offer a liability  
21 waiver to the lessee. The terms of the waiver <sup>shall</sup> ~~must~~ be provided to the lessee in writing  
22 and the face of the writing <sup>shall</sup> ~~must~~ clearly disclose that the lessee is not required to  
23 purchase the waiver. The fee for the waiver may not exceed 10% of the periodic rental  
24 payment due under the rent-to-own agreement.

**BILL**

1           **435.405 Early-purchase option.** An early-purchase option under a  
 2 rent-to-own agreement shall permit the lessee to purchase the rental property for  
 3 cash at any time after the initial periodic rental payment. As a condition of exercising  
 4 the early-purchase option, ~~the rental-purchase company~~ may require the lessee to  
 5 be current on the ~~lessee's rent-to-own agreement~~ <sup>payments under the</sup> or to pay any past-due rental  
 6 charges and other outstanding fees that are owed.

7           **435.406 Receipts and statements. (1) RECEIPTS DUE UPON REQUEST.** Upon  
 8 the request of a lessee, a rental-purchase company shall provide a written receipt  
 9 to the lessee for any payment made by the lessee.

10           (2) **STATEMENT DUE <sup>TO LESSEE</sup> ~~UPON REQUEST~~.** Upon the request of a lessee, a  
 11 rental-purchase company shall provide a written statement to the lessee showing  
 12 the lessee's payment history under each rent-to-own agreement between the lessee  
 13 and the rental-purchase company. A rental-purchase company is not required to  
 14 provide a statement covering any rent-to-own agreement that terminated more  
 15 than one year prior to the date of the lessee's request. A rental-purchase company  
 16 may provide a single statement covering all rent-to-own agreements or separate  
 17 statements for each rent-to-own agreement, at the rental-purchase company's  
 18 option. **(3) STATEMENT DUE TO 3RD PARTY.**

19           ~~435.407 Communication of payment history to 3rd parties.~~ Upon the  
 20 written request of a lessee, made during the term of or no later than one year after  
 21 the termination of a rent-to-own agreement, a rental-purchase company shall  
 22 provide a written statement to any person designated by the lessee, showing the  
 23 lessee's payment history under the rent-to-own agreement.

24   SUBCHAPTER V

25   MARKETING

**BILL**

information

Except as provided  
under

**SECTION 3**  
Subject to Sub. (2), a

1           **435.501 Price cards displayed. (1) PRICE CARDS; GENERALLY. A**

2 rental-purchase company shall display a card or tag that clearly and conspicuously  
3 states all of the following on or next to any property displayed or offered by the  
4 rental-purchase company for rent under a rent-to-own agreement:

5 (a) The price that an individual would pay to purchase the property on the date  
6 <sup>in which</sup> ~~that~~ the individual reads the card or tag.

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

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

11 (d) Whether the property is new or used.

12 (2) **EXCEPTIONS.** If property is offered for rent under a rent-to-own agreement  
13 through a catalog or if the size of the property is such that displaying a card or tag  
14 on or next to the property is impractical, a rental-purchase company may make the  
15 disclosures required by <sup>under sub. (1)</sup> ~~this section~~ in a catalog or list that is readily available to  
16 prospective lessees.

17           **435.502 Advertising. (1) DISCLOSURE REQUIRED.** Except as provided under  
18 sub. (2), if an advertisement for a rent-to-own agreement refers to or states the  
19 amount of a payment for any property and the right to acquire ownership of that  
20 property, the rental-purchase company shall ensure that the advertisement clearly  
21 and conspicuously states all of the following:

22 (a) That the transaction advertised is a rent-to-own agreement,

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



**BILL**

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

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

7 **435.503 Referral transactions. (1) PROHIBITED REFERRAL TRANSACTIONS. No**  
8 rental-purchase company may induce any individual to enter into a rent-to-own  
9 agreement by giving or offering to give a rebate or discount to the individual in  
10 consideration of the individual's giving to the rental-purchase company the names  
11 of prospective lessees, if the earning of the rebate or discount is contingent upon the  
12 occurrence of any event that takes place after the time that the individual enters into  
13 the rent-to-own agreement.

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

## SUBCHAPTER VI

## RENTAL PAYMENTS

## AND COLLECTIONS

23 **435.601 Late payment, grace period and late fees. (1) LATE FEE;**  
24 **GENERALLY** If a lessee fails to make a periodic rental payment when due under a  
25 rent-to-own agreement or if, at the end of any rental term, the lessee fails to return

**BILL**

Except

1 the rental property or to renew the rent-to-own agreement for an additional term,  
 2 the rental-purchase company may require the lessee to pay a late fee. ~~However,~~  
 3 ~~except~~ as provided under sub. (4), this subsection does not apply if the lessee's failure  
 4 to return <sup>the</sup> rental property or failure to renew the rent-to-own agreement at the end  
 5 of the rental term is due to the lessee's exercise of an early-purchase option under  
 6 the rent-to-own agreement or <sup>is</sup> due to the lessee making all periodic rental payments  
 7 necessary to acquire ownership of the rental property.

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

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

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

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

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

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

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

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

**BILL**

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

4 **435.602 Reinstatement of terminated rent-to-own agreement. (1)**

5 **REINSTATEMENT, GENERALLY.** A lessee may reinstate a terminated rent-to-own  
6 agreement without losing any rights or options previously acquired if all of the  
7 following <sup>conditions</sup> apply:

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

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

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

19 (3) **EFFECT OF REPOSSESSION ON REINSTATEMENT.** Nothing in this section prohibits  
20 a rental-purchase company from attempting to repossess rental property upon  
21 termination of a rent-to-own agreement, but repossession efforts do not affect the  
22 lessee's right to reinstate the rent-to-own agreement as long as the rental property  
23 is voluntarily returned or surrendered within 5 days after the termination of the  
24 rent-to-own agreement.

**BILL****SECTION 3**

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 rental property of comparable quality  
5 and condition.

6           **435.603 Reduced periodic rental payment due to reduced income. (1)**

7           **REDUCTION IN AMOUNT OF PERIODIC RENTAL PAYMENTS; REQUIRED EVIDENCE. (a)**

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

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

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

21           **(b) Evidence of continued reduction in income.** At reasonable intervals after  
22 reducing the amount of a periodic rental payment under par. (a), a rental-purchase  
23 company may require the lessee to provide evidence of the lessee's monthly income  
24 and evidence that the cause of the reduction in the lessee's monthly income has not  
25 abated.

## BILL

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

6           **(3) INCREASE IN AMOUNT OF PERIODIC RENTALPAYMENTS.** Except as provided in  
7 sub. (4), if a rental-purchase company reduces the amount of a periodic rental  
8 payment under sub. (1) (a) and if, subsequently, the lessee's monthly income is fully  
9 restored, the rental-purchase company may increase the amount of each periodic  
10 rental payment due after the date <sup>on which</sup> ~~that~~ the lessee's monthly income is fully restored.

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

18           **(5) REQUIRED NOTICES.** A rental-purchase company shall provide a lessee with  
19 all of the following:

20           (a) Notice **of reduction.** <sup>Written</sup> Notice of any reduction in the amount of a periodic  
21 rental payment under sub. (1) (a) before the date <sup>on which</sup> ~~that~~ the first reduced payment is  
22 due.

23           (b) **Notice of increase in number of payments.** Written notice of any increase in  
24 the total number of periodic rental payments under sub. (2) no later than 15 days

**BILL**

1 after the rental-purchase company determines to increase the total number of  
2 payments.

3 (c) **Notice of increase in amount of payments.** Written notice of any increase in  
4 the amount of a periodic rental payment under sub. (3) before the date <sup>on which</sup> ~~that~~ the first  
5 increased payment is due.

6 **435.604 Default and right to cure. (1) DEFAULT; ~~GENERALLY.~~** A lessee is in  
7 default under a rent-to-own agreement if any of the following applies: <sup>on which</sup>

8 (a) The lessee fails to return <sup>the</sup> rental property within 7 days after the date ~~t~~ &  
9 the last term for which a periodic rental payment was made expires, unless the lessee  
10 has exercised an early-purchase option or has made all periodic rental payments  
11 necessary to acquire ownership of the rental property.

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

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

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

## BILL

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

6           (a) The lessee was in default.

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

9           (c) The lessee cured the default.

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

14           **435.605 Rental-purchase company collection practices.** In attempting  
15 to recover possession of rental property or to collect past-due periodic rental  
16 payments or other charges owed under a rent-to-own agreement, a rental-purchase  
17 company may not do any of the following:

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

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

**BILL**

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

4           (4) **COMMUNICATION WITH LESSEE'S EMPLOYER.** Initiate or threaten to initiate  
5 communication with the lessee's employer prior to obtaining final judgment against  
6 the lessee, except as permitted under s. 435.606. This subsection does not prohibit  
7 a rental-purchase company from communicating with a lessee's employer solely to  
8 verify employment status or earnings or to determine if the employer has an  
9 established debt counseling service or procedure.

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

13          (6) **HARASSMENT.** Communicate with the lessee or a person related to the lessee  
14 with such frequency or at such unusual hours or in such a manner as can reasonably  
15 be expected to threaten or harass the lessee or engage in any other conduct ~~which~~ <sup>that</sup> can  
16 reasonably be expected to threaten or harass the lessee or a person related to the  
17 lessee.

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

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

22          (9) **USE OF FALSE PROCESS.** Use a communication ~~which~~ <sup>that</sup> simulates legal or  
23 judicial process or ~~which~~ <sup>that</sup> gives the appearance of being authorized, issued or  
24 approved by a government, government agency or attorney-at-law when it is not.



**BILL**

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

5           **435.606 Assignment of earnings. (1) IRREVOCABLE ASSIGNMENT OF EARNINGS**  
6 **PROHIBITED.** No rental-purchase company may take or arrange for an assignment of  
7 earnings of an individual for payment or as security for payment of an obligation  
8 arising out of a rent-to-own agreement unless the assignment is revocable at will  
9 by the individual.

10           **(2) REVOCABLE ASSIGNMENT OF EARNINGS; TERM.** Notwithstanding s. 241.09, a  
11 revocable assignment of earnings that is entered into for payment or as security for  
12 payment of an obligation arising out of a rent-to-own agreement shall be considered  
13 to be renewed for a term not to exceed 6 months if all of the following apply:

14           (a) The original assignment of earnings contains a conspicuous notice of the  
15 right of the individual whose earnings are assigned to revoke the assignment.

16           (b) The rental-purchase company, before expiration of the assignment of  
17 earnings, provides a notice to the individual whose earnings are assigned,  
18 conspicuously stating that the assignment of earnings is revocable and that the  
19 assignment will continue in effect for not more than 6 additional months, unless the  
20 rental-purchase company receives notice of revocation.

21           (c) The individual whose earnings are assigned does not revoke the  
22 assignment.

## SUBCHAPTER VII

## REMEDIES, DEFENSES

## AND LIMITATIONS

**BILL****SECTION 3**

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

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

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

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

16           (3) **CLASS ACTION.** In the case of a class action, a rental-purchase company that  
17 violates this chapter is liable to the members of the class in an amount determined  
18 by the court, except that the total recovery for all lessees whose recovery is computed  
19 <sup>under</sup> pursuant to sub. (1) (b) may not exceed \$100,000 plus the costs of the action and  
20 reasonable attorney fees as determined by the court. In determining the amount to  
21 award under this subsection, the court shall consider, among other relevant factors,  
22 the amount of actual damages sustained by <sup>the</sup> members of the class, the frequency and  
23 persistence of <sup>the</sup> violations by the rental-purchase company, the resources of the  
24 rental-purchase company, the number of persons damaged by the violation, the

## BILL

① presence or absence of good faith on the part of the rental-purchase company and  
2 the extent to which the violation was intentional.

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

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

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

21 (7) NECESSARY PARTIES. If more than one lessee is a party to the same  
22 rent-to-own agreement, all of the lessees that are parties to the rent-to-own  
23 agreement shall be joined as plaintiffs in any action under sub. (1) and the lessees  
24 are entitled to only a single recovery under sub. (1).

**BILL**

1           **435.702 Limitation on actions.** An action brought by a lessee under this  
2 chapter shall be commenced within one year after the date on which the alleged  
3 violation occurred, 2 years after the date on which the rent-to-own agreement was  
4 entered into <sup>or</sup> one year after the date on which the last payment was made under  
5 the rent-to-own agreement, whichever is later.

6           **SECTION 4. Nonstatutory provisions.**

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

13           **SECTION 5. Initial applicability.**

14           (1) **RENT-TO-OWN AGREEMENTS.** The treatment of sections 409.104 (12m),  
15 421.202 (7m), 435.102 to 435.201, 435.401 to 435.403 and 435.405 to 435.701 of the  
16 statutes first applies to rent-to-own agreements entered into on the effective date  
17 of this subsection.

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

20           (3) **REGISTRATION OF RENTAL-PURCHASE COMPANIES.** The treatment of sections  
21 435.301 to 435.304 of the statutes first applies to any person engaging in business  
22 as a rental-purchase company on the effective date of this subsection.

23           **SECTION 6. Effective dates.** This act takes effect on the day after publication,  
24 except as follows:

**BILL**

1           (1) ~~RENT-TO-OWN AGREEMENTS~~. The treatment of sections 409.104 (12m) and  
2           421.202 (7m) and chapter 435 of the statutes and **SECTION 5** (1), (2) and (3) of this act  
3           take effect on the first day of the 6th month beginning after publication.

4

**(END)**