

1999 DRAFTING REQUEST**Assembly Substitute Amendment (ASA-AB849)**Received: **03/13/2000**Received By: **rmarchan**Wanted: **03/14/2000**

Identical to LRB:

For: **Suzanne Jeskewitz (608) 266-3796**By/Representing: **jim leonhart**

This file may be shown to any legislator: NO

Drafter: **rmarchan**

May Contact:

Alt. Drafters:

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

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Rental purchase companies

Instructions:

See Attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1	rmarchan 03/16/2000	gilfokm 03/17/2000	jfrantze 03/15/2000	_____	lrb-docadmin 03/15/2000	lrb-docadmin 03/15/2000	
/2	rmarchan 03/20/2000	chanaman 03/20/2000	martykr 03/17/2000	_____	lrb-docadmin 03/17/2000	lrb-docadmin 03/17/2000	
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/2			martykr 03/17/2000	_____	lrb-docadmin 03/17/2000	lrb-docadmin 03/17/2000	

FE Sent For: **03/15/2000.**

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Extra Copies:

Handwritten note in a circle:
Email copy
to Rebecca
in Rep. Jeskewitz
office

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Instructions:

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FE Sent For:							

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MEMORANDUM

TO: Rob Marchant
FROM: Jim Leonhart
DATE: March 10, 2000
RE: Amendment to AB 849

There will be only minor changes on Monday.

Thank you!

At the locations indicated, amend the Assembly Bill 849 as follows:

1. **Page 7, line 1:** Before that line insert:

218.06 Rent to own companies.

(1) Definitions. For purposes of this section:

(a) "Division" means the division of banking in the department of financial institutions.

(b) "General order" means an order that is not a special order.

(c) "Licensee" means a rental-purchase company **holding** a license issued by the division under this section.

(d) "Person" includes individuals, partnerships, associations, corporations and limited liability companies.

(e) "Rental-purchase company" shall have the meaning set forth in s. **435.201(4)**.

(f) "Rent-to-own agreement" shall have the meaning set forth in s. **435.201(5)**.

(g) "Special order" means an order against a person.

(2) License required. A person may not operate as a rental-purchase company without first having obtained a license from the division as required by this section.

(3) Applications; fees; bond. (a) 1. Application for licenses under the provisions of this section shall be made to the division in writing in a form to be prescribed by the division. An application for a license under this section shall include the following:

a. If the applicant is an individual, the applicant's social security number.

b. If the applicant is not an individual, the applicant's federal employer identification number.

2. The division may not disclose any information received under subd. 1. a. or b. to any person except as follows:

a. The division may disclose information under subd. 1. a. or b. to the division of revenue for the sole purpose of requesting certifications under **s. 73 .030 1**.

b. The division may disclose information under subd. **1. a.** to the division of workforce development in accordance with a memorandum of understanding under s. 49.857.

(b) At the time of making application, every applicant for a rental-purchase company license shall pay the fees specified in rules promulgated under sub. (10)(c).

(c) The division may require any applicant or licensee to file and maintain in force a bond, in a form to be prescribed by and acceptable to the division, and in such sum as determined by the division.

(4) Issuance or denial of licenses. (a) Upon the filing of such application and the payment of such fee, the division shall make an investigation, and **if the** division finds that the character and general fitness and the financial responsibility of the applicant, and the members thereof if the applicant is a partnership, limited liability company or association, and the officers and **directors** thereof if the applicant is a corporation, warrant the belief that the business will be operated in compliance with this section the division shall, except as provided in par. (c), issue a license to said applicant.

(b) Except as provided in par. (c), the division may deny the application for a license by written notice to the applicant, stating the grounds for such denial. A person whose application has been denied may request a hearing under s. 227.44 within 30 days after the date of denial. The division may appoint a hearing examiner under s. 227.46 to conduct the hearing.

(c) The division may not issue a license under this section if any of the following applies:

1. The applicant fails to provide the information required under sub. (3)(a) 1.
2. The division of revenue certifies under s. 73.0301 that the applicant is liable for delinquent taxes. An applicant for whom a license is not issued under this subdivision for delinquent taxes is entitled to a notice under s. **73.0301(2)(b)1.b.** and hearing under s. 73.0301(5)(a) but is not entitled to any other notice or hearing under this section.
3. The applicant fails to comply, after appropriate notice, with a subpoena or warrant issued by the division of workforce development or a county child support agency under s. **59.53(5)** and related to paternity or child support proceedings or is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An applicant whose application is denied under this subdivision for delinquent payments is entitled to a notice and hearing under s. 49.857 but is not entitled to any other notice or hearing under this section.

(5) Licenses; other business.

(a) A separate license shall be required for each place of business maintained by the licensee.

(b) A license issued under this section is not assignable and, except as provided in sub. **(7)**, shall permit operation under it only at or from the location specified in the license at which location all rent-to-own agreements shall be consummated.

(c) All rental-purchase company licenses shall be conspicuously posted in the office of the licensee.

(d) Every license shall remain in force and effect until suspended or revoked in accordance with this section or surrendered by the licensee, and every licensee shall, on or before each June 1, pay

to the division the annual license fee specified in rules promulgated under sub. (10)(c) and provide, where necessary, a rider or endorsement to increase the amount of the surety bond.

(e) No licensee shall conduct a rental-purchase business within any office, room or place of business in which any other business is solicited or engaged in except as may be authorized in writing by the division.

(6) Revocation; suspension. (a) The division may suspend or revoke any license issued under this section if the division finds that:

2. The licensee has violated any of the provisions of this section, any rules promulgated thereunder, or any lawful order of the division made thereunder;
3. The licensee has violated any of the provisions of ch. 435;
4. Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the division in refusing to issue such license;
5. The licensee made a material misstatement in an application for a license or in information furnished to the division;
6. The licensee has failed to pay the annual license fee or to maintain in effect the bond required under sub. (3)(c);
7. The licensee has failed to provide the information required under sub. (7)(c) within 20 days after receiving notice from the division; or
8. The licensee has not paid the penalties set forth in sub. (1 l)(a) or (1 l)(b) within 30 days after receiving notice by certified mail that penalties are due.

(b) The division shall restrict or suspend a license issued under this section if the division finds that the licensee is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county **child** support agency under s. **59.53(5)** and related to paternity or child support proceedings or who is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. A licensee whose license is restricted or suspended under this paragraph is entitled to a notice and hearing only as provided in a memorandum of understanding entered into under s. 49.857 and is not entitled to any other notice or hearing under this section.

(c) The division shall revoke a license issued under this section if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is revoked under this paragraph for delinquent taxes is entitled to a notice under s. **73.0301(2)(b)1.b.** and a hearing under s. 73.0301(5)(a) but is not entitled to any other notice or hearing under this section.

(d) Except as provided in pars. **(b)** and (c), the following procedure applies to every order of the department that suspends or revokes a rental-purchase company's registration:

- (i) The department shall provide a written notice to the rental-purchase company of the department's intent to issue an order suspending or revoking the **rental-purchase company's** registration. The notice shall **specify** the grounds for and the effective date of the proposed order.
- (ii) The rental-purchase company may file with the department a written response to the allegations contained in the notice within 20 days after receiving the notice. The rental-purchase company's written response may contain a request for a contested case hearing under s. 227.42. If the written response does not contain a request for a contested case hearing under s. 227.42, the right to a contested case hearing is waived.
- (iii) If a written response containing a request for a contested case hearing under s. 227.42 is received by the department within the time provided under par. (ii) and **if**, in the opinion of the department, the matter satisfies all of the conditions under s. 227.42(1)(a) to (d), the matter shall be scheduled for a contested case hearing to commence within 60 days after the date on which the department receives the written response.
- (iv) If the rental-purchase company fails to file a written response within the time provided under par. (ii), files a timely written response but fails to request a contested case hearing under s. 227.42 or files a timely written response requesting a contested case 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), the department may issue an order suspending or revoking the rental-purchase company's registration under sub. (1). If the rental-purchase company files a timely written response containing a proper request for a contested case hearing under s. 227.42, any order of the department suspending or revoking the rental-purchase company's registration shall be stayed pending completion of proceedings under ch. 227.

(7) Changes.

- (a) Whenever a rental-purchase company shall contemplate a change of its place of business to another location, it shall give at least 15 days prior written notice thereof to the division and pay the fees specified in rules promulgated under sub. (10)(c). Upon approval by the division of the new location, the division shall issue an amended license, **specifying** the date thereof and the new location.
- (b) Failure to provide the **15-day** written notice required in par. (a) shall subject the licensee to the penalty set forth in sub. (11)(a).
- (c) Except as provided in par. (a), a licensee must provide to the division, within 10 days after the change, notice of any material change to the information provided in the application or a previous notice of change filed by the licensee with the division. The licensee must, within 20 days after

being so notified by the division, provide any additional information, data and records about the change as the division requires. The division's cost, if any, of investigating and processing the change shall be paid by the licensee. The division shall determine the cost. All said costs shall be paid by the licensee within 30 days after demand by the division.

(d) Any change described in par. (c) shall be subject to the approval of the division. Such approval shall be subject to the same criteria as the criteria for approval of the original license.

(e) Failure to provide the notice of change required in par. (c) within 10 days after the change shall subject the licensee to the penalties set forth in sub. (1 l)(a).

(f) Failure to provide within 20 days any additional information about the change as the division requires may subject the licensee to the penalties set forth in sub. (1 l)(b), as well suspension or revocation of license.

(8) Annual report; records. (a) Each licensee shall annually, on or before the thirty-first day of March, file a report with the division giving such reasonable and relevant information as the division may require concerning the business and operations conducted by such licensee. Such report shall be made in the form prescribed by the division.

(b) Except as provided in par. (c), the licensee shall keep such books and records in the licensed location as in the opinion of the division will enable the division to determine whether the provisions of this section and ch. 435 are being observed. Every licensee shall preserve its records of rent-to-own agreements for at least 3 years after making the final entry in respect to any rent-to-own agreement.

(c) A licensee may keep the books and records specified in par. (b) at a single location inside or outside of this state if the books and records are kept at a location licensed under this section. The licensee shall organize the books and records by the place of business where the records originated and shall keep the books and records separate from other records for business conducted at that location. Actual costs incurred by the division to examine books and records maintained outside of this state shall be paid by the licensee.

(9) Powers of division. (a) The division may issue any general or special order in execution of or supplementary to this section.

(b) For the purpose of discovering violations of this section and ch. 435 the division may cause an investigation to be made of the business of the licensee transacted under the provisions of this section and ch. 435. The place of business, books of accounts, papers, records, safes and vaults of said licensee shall be open to inspection and examination by the division for the purpose of such investigation and the division shall have authority to examine under oath all persons whose testimony is required relative to said investigation. The cost of the investigation or examination shall be paid by the licensee. The division shall determine the cost of an investigation or

examination. The licensee shall pay the cost of any hearing including witness fees, unless it be found by the division or court that licensee has not violated any provision of this section or ch. 435. All said costs shall be paid by the licensee within 30 days after demand therefor by the division. The state may maintain an action for the recovery of such costs and expenses in any court of competent jurisdiction.

(c) The division may make such rules, including rules establishing fees, as it deems necessary for the administration of this section.

(d) The division shall have the same power to conduct hearings, take testimony and secure evidence as is provided in ss. 217.17 and 217.18.

(10) Penalties. (a) Whoever fails to **file** their annual report by the thirty-first day of March, pay the annual license fee or provide any necessary rider to increase the amount of the surety bond by the first day of June, provide examination records by the due date, notify the division in writing of a relocation of their licensed location 15 days before the effective date of the relocation, or provide the notice required by sub. (7)(c) within 10 days after the effective date of the change may be required to forfeit not more than \$50. Each day that this failure continues constitutes a separate offense.

(b) Whoever fails to provide the information requested by the division pursuant to sub. (7)(c) within 20 days after being notified by the division may be required to forfeit not more than \$100. Each day that this failure continues constitutes a separate offense.

(c) Any person who violates any provision of this section shall be guilty of a misdemeanor and, for each and every such offense shall, upon conviction thereof, be punished by a fine of not more than \$1,000 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

(11) Enforcement. The division shall have the duty, power, jurisdiction and authority to investigate, ascertain and determine whether this section or the lawful orders issued hereunder are being violated and for such purposes the division shall have all the powers conferred by this section. The division shall report all violations to the attorney general or the district attorney of the proper county for prosecution.

2. **Page 7, line 1:** before that line insert:

“Amend s. 220.02(2)(b) as follows:

The lending of money under s. 138.09 or those relating to finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges, rental-purchase companies and collection agencies under ch. 2 18.

And amend 220.02(3) as follows:

It is the intent of sub. (2) to give the division jurisdiction to enforce and carry out all laws relating to bank and banking in this state, including those relating to state banks, trust company banks, and also all laws relating to small loan companies or other loan companies or agencies, finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges, rental-purchase companies and collection agencies and those relating to sellers of checks under ch. 217, whether doing business as corporations, individuals otherwise, but to exclude laws relating to credit unions.”

3. **Page 7, line 10:** After “SCOPE” insert “AND GENERAL PROVISIONS”

4. **Page 7, line 20:** After that line insert:

“435.103 Territorial Application. For the purposes of ch. 435, a rent-to-own agreement is made in this state if

(a) A writing signed by the lessee and evidencing the obligation or an offer of the lessee is received by the rental-purchase company in this state; or

(b) The rental-purchase company induces the lessee who is a resident of this state to enter into the rent-to-own agreement by face-to-face solicitation or by mail or telephone solicitation directed to the particular lessee in this state.

435.104. Obligation of Good Faith. Every agreement or duty within ch. 435 imposes an obligation of good faith in its performance or enforcement. “Good faith” means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.”

5. **Page 8, line 9:** Delete the material beginning with “means” and ending with “agreement” on line 12 and substitute “means a person engaged in the business of entering into rent-to-own agreements in this state or acquiring or servicing rent-to-own agreements in this state”.

6. **Page 8, line 22:** After that line insert:

“435.202 Venue. (1) The venue for a claim arising out of a rent-to-own agreement is the county:

(a) Where the lessee resides or is personally served;

(b) Where the property which is the subject of the rent-to-own agreement is located; or

(c) Where the lessee sought or acquired the property which is the subject of the rent-to-own agreement or signed the document evidencing his or her obligation under the terms of the rent-to-own agreement.

(2) When it appears from the return of service of the summons or otherwise that the county in which the action is pending under sub. (1) is not a proper place of trial for such action, unless the defendant appears and waives the improper venue, the court shall transfer the action to any county which would be a proper place of trial.

(3) If there are several defendants, and if venue is based on residence, venue may be in the county of residence of any of them.”

7. **Page 8, line 23:** Delete the material beginning with line 23 and ending with page 12, line 12.

8. **Page 12, line 24:** After “disclosed,” delete “at or”.

9. **Page 13, line 9:** After that line insert:

“(4) SINGLE INSTRUMENT. In a rent-to-own agreement, the lessee’s payment obligations shall be evidenced by a single instrument, which shall include, in addition to the other disclosures required by this subchapter, the signature of the rental-purchase company, the signature of the lessee, and the date on which it was signed.”

10. **Page 14, line 6:** Delete “PAYMENT” and substitute “PERIODIC RENTAL PAYMENTS”

11. **Page 14, line 9:** Delete the material beginning with “OTHER” and ending with “disclosed” on line 14 and substitute:

“(6) OTHER CHARGES AND FEES TO ACQUIRE OWNERSHIP. The dollar amount, both itemized and in total, of all taxes, liability damage waiver fees, fees for optional services, processing fees, application fees and delivery charges that the lessee would incur if the lessee rented the rental property until ownership assuming the lessee does not add or decline the liability damage waiver or optional services after signing the rent-to-own agreement.

(6m) TOTAL PAYMENTS TO ACQUIRE OWNERSHIP. The total of all charges to be paid by the lessee to acquire ownership of the rental property, which shall consist of the sum of the total dollar amount of all periodic rental payments set forth in accordance with sub. (5) and the total dollar amount of all other charges and fees set forth in accordance with sub. (6), along

with a statement that this is the amount a lessee will pay to acquire ownership of the rental property if the tax rates do not change and the lessee does not change the selection of liability damage waiver or optional services.

(6p) OTHER CHARGES. An itemized description of other charges or fees that a lessee may incur, such as late payment, reinstatement, default or pick-up fees.

12. Page 14, line 17: Delete the material beginning with “to” and ending with “option” on line 19 and substitute:

“to acquire ownership of the rental property at any time after the first payment by paying all past due payments and fees and an amount not to exceed an amount equal to the cash price of the rental property multiplied by a fraction that has as its numerator the number of periodic rental payments remaining under the rent-to-own agreement and that has as its denominator the total number of periodic rental payments.”

13. Page 15, line 2: After “destroyed” insert:

“and shall be equal to the total of all past due payments and fees and an amount not to exceed an amount equal to the cash price of the rental property multiplied by a fraction that has as its numerator the number of periodic rental payments remaining under the rent-to-own agreement and that has as its denominator the total number of periodic rental payments.”

14. Page 15, line 3: Delete the material beginning with “**identifying**” and ending with “warranty” on line 9 and substitute:

“that during the term of the rent-to-own agreement, the rental-purchase company is required to service the rental property to maintain it in good working condition, as long as no other person has been permitted to service the rental property. In lieu of servicing the rental property, the rental purchase company may, at its option, replace the rental property. The **rental-**purchase company’s obligation to provide service shall be limited to defects in the property not caused by (i) harmful conditions outside the company’s or manufacturer’s control or (ii) improper use or neglect by the lessee”.

15. Page 16, line 21: After that line insert:

“(7) No term of a rent-to-own agreement may provide for the payment by the lessee of attorney fees.”

16. **Page 17, line 2:** After “agreement.” insert “The lessee shall be entitled to cancel such liability waiver at the end of any rental term.”
17. **Page 17, line 9:** After “RECEIPTS” delete “DUE UPON BEQUEST. Upon”
18. **Page 17, line 10:** Before “rental-purchase” delete “the request of a lessee, a” and substitute “A’
19. **Page 17, line 11:** After “lessee” insert “in cash, or upon the request of the lessee for any other type of payment .“.
20. **Page 17, line 24:** After that line insert:

“(4) A lessee shall be entitled to one such statement under (2) and (3) without charge once every 12 months. Additional statements shall be furnished if the lessee plays the rental-purchase company’s reasonable costs of preparing and **furnishing** the statement.”

21. **Page 18, lines 21:** Delete the material beginning with “property” and ending with “property” on line 22 and substitute “specific item”.
22. **Page 25, lines 11:** Delete the material beginning with “, unless” and ending with “lessee” on line 15 and substitute “. It shall not constitute threatening criminal prosecution for a rental-purchase company to inform the lessee of the **existence** of §943.20(1)(e) and the consequences thereof’.
23. **Page 25, line 25:** After that line insert:

“(4m) Disclose or threaten to disclose to a person other than the lessee or the lessee’s spouse information affecting the lessee’s reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information, but this paragraph does not prohibit the disclosure to another person of information permitted to be disclosed to that person by statute or an inquiry confined to determining the location of the lessee or the rental property.”

24. Page 29, line 14: After that **line** insert:

(2) EMERGENCY RULE-MAKING AUTHORITY. Using the procedure under section 227.24 of the statutes, the division of banking shall promulgate rules required under section 2 **18.06(3)(b)** of the statutes, as affected by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24(1)(c) and (2) of the statutes. Notwithstanding section **227.24**(1) (a) and (2)(b) of the statutes, the division need not provide evidence of the necessity of preservation of the public peace, health, **safety** or welfare in promulgating rules under this subsection.

25. Page 30, line 3: After “sections” insert “218.06,”

At the locations indicated, amend the Assembly Bill 849 as follows:

Page 7, line 1: Before that line insert:

218.06 Rent to own companies.

(1) Definitions. For purposes of this section:

- (a) "Division" means the division of banking in the department of financial institutions.
- (b) "General order" means an order that is not a special order.
- (c) "Licensee" means a rental-purchase company holding a license issued by the division under this section.
- (d) "Person" includes individuals, partnerships, associations, corporations and limited liability companies.
- (e) "Rental-purchase company" shall have the meaning set forth in s. 435.201(4).
- (f) "Rent-to-own agreement" shall have the meaning set forth in s. 435.201(5).
- (g) "Special order" means an order against a person.

(2) License required. ~~A person may not operate as a rental-purchase company without first having obtained a license from the division as required by this section.~~

(3) Applications; fees; bond. (a) 1. ~~Application for licenses under the provisions of this section shall be made to the division in writing in a form to be prescribed by the division. An application for a license under this section shall include the following:~~

- a. If the applicant is an individual, the applicant's social security number.
- b. If the applicant is not an individual, the applicant's federal employer identification number.

2. The division may not disclose any information received under subd. 1. a. or b. to any person except as follows:

- a. The division may disclose information under subd. 1. a. or b. to the division of revenue for the sole purpose of requesting certifications under s. 73.0301.
- b. The division may disclose information under subd. 1. a. to the division of workforce development in accordance with a memorandum of understanding under s. 49.857.

(b) At the time of making application, every applicant for a rental-purchase company license shall pay the fees specified in rules promulgated under sub. (10)(c).

(c) The division may require any applicant or licensee to file and maintain in force a bond in a form to be prescribed by and acceptable to the division, and in such sum as determined by the division.

Add to 435.201 no reader

valid

in this statute

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applying to the division

with the division

agreement

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(4) Issuance or denial of licenses. (a) Upon the ~~the filing of such application and the payment of such fee,~~ the division shall ~~make an investigation, and if the division finds that the character and general fitness and the financial responsibility of the applicant, and the members thereof if the applicant is a partnership, limited liability company or association, and the officers and directors thereof if the applicant is a corporation, warrant the belief that the business will be operated in compliance with this section~~ the division shall, except as provided in par. (c), issue a license to said applicant.

of the applicant

(b) Except as provided in par. (c), the ~~division may deny the application for a license by written notice to the applicant, stating the grounds for such denial. A person whose application has been denied may request a hearing under s. 227.44 within 30 days after the date of denial. The division may appoint a hearing examiner under s. 227.46 to conduct the hearing.~~

(c) The division may not issue a license under this ~~section~~ ^{sub} if any of the following applies:

1. The applicant fails to provide the information required under sub. (3)(a) 1.
2. **The division** of revenue certifies under s. 73.0301 that the applicant is liable for delinquent taxes. **An applicant** for whom a license is not issued under this subdivision for delinquent taxes is entitled to a notice under s. 73.0301(2)(b)1.b. and hearing under s. 73.0301(5)(a) but is not entitled to any other notice or hearing under this section.
3. The ~~applicant~~ fails to comply, after appropriate notice, with a subpoena or warrant issued by **the division** of workforce development or a county child support agency under s. 59.53(5) and related to paternity or child support proceedings or is delinquent in making court-ordered payments of child or family support, maintenance, bihh expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An applicant whose application is denied under this subdivision for delinquent payments is entitled to a notice and hearing under s. 49.857 but is not entitled to any other notice or hearing under this section.

(5) Licenses; other busshes.

at which a rental purchase company operates

(a) A separate license ~~shall be required~~ ^{sub} for each place of business ~~maintained by the licensee~~

(b) A license issued under this section is not assignable and, except as provided in sub. (7), shall ~~permit operation under it only at or from the location specified in the license~~ ^{at which location all} ~~rent-to-own agreements shall be consummated.~~

A license may not enter into a to do by at any location other than the place specified in the license

(c) All rental-purchase company licenses shall be conspicuously posted in the office of the licensee.

(d) Every license shall remain in force and effect until suspended or revoked in accordance with this section or surrendered by the licensee, and every licensee shall, on or before each June 1, pay

to the division the annual license fee specified in rules promulgated under sub. (10)(c) and provide, where necessary, a rider or endorsement to increase the amount of the surety bond.

any of the following apply
reg'd under sub (3)(c)
unless

(e) No licensee ^{may} shall ^{business as company} conduct a rental-purchase business within any office, room or place of business in which any other business is solicited or engaged in, ^{unless} except as may be authorized in writing by the division.

(6) **Revocation; suspension.** (a) The division may suspend or revoke any license issued under this section if the division finds that:

any of the following apply

2. The licensee has violated any of the provisions of this section, any rules promulgated thereunder, or any lawful order of the division made thereunder.

under this ch

3. The licensee has violated any of the provisions of ch. 435, this ch.

4. Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the division in refusing to issue such license;

the

5. The licensee made a material misstatement in an application for a license or in information furnished to the division;

6. The licensee has failed to pay the annual license fee or to maintain in effect the bond required under sub. (3)(c);

any

7. The licensee has failed to provide the information required under sub. (7)(c) within 20 days after receiving notice from the division, or

8. The licensee has not paid the penalties set forth in sub. (11)(a) or (11)(b) within 30 days after receiving notice by certified mail that penalties are due.

the

(b) The division shall restrict or suspend a license issued under this section if the division finds that the licensee is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53(5) and related to paternity or child support proceedings or who is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. A licensee whose license is restricted or suspended under this paragraph is entitled to a notice and hearing only as provided in a memorandum of understanding entered into under s. 49.857 and is not entitled to any other notice or hearing under this section.

(c) The division shall revoke a license issued under this section if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is revoked under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301(2)(b)1.b. and a hearing under s. 73.0301(5)(a) but is not entitled to any other notice or hearing under this section.

(d) Except as provided in pars. (b) and (c), the following procedure applies to every order of the department that suspends or revokes a rental-purchase company's registration:

Dunson

license

Nurse

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

(ii) The rental-purchase company may file with the department a written response to the allegations contained in the notice within 20 days after receiving the notice. The rental-purchase company's written response may contain a request for a contested case hearing under s. 227.42. **If the** written response does not contain a request for a contested case hearing under s. 227.42, the right to a contested case hearing is waived.

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

(iv) **If the rental-purchase company fails to file a written response within the time provided under par. (ii), files a timely written response but fails to request a contested case hearing under s. 227.42 or files a timely written response requesting a contested case 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), the department may issue an order suspending or revoking the rental-purchase company's registration under sub. (1). If the rental-purchase company files a timely written response containing a proper request for a contested case hearing under s. 227.42, any order of the department suspending or revoking the rental-purchase company's registration shall be stayed pending completion of proceedings under ch. 227.**

Nurse

this subsection of division

license

on which the license is issued

(7) Changes.

(a) Whenever a rental-purchase company shall contemplate a change of its place of business to another location, it shall give at least 15 days prior written notice thereof to the division and pay the fees specified in rules promulgated under sub. (10)(c). Upon approval by the division of the new location, the division shall issue an amended license, specifying the date thereof and the new location.

(b) Failure to provide the 15-day written notice required in par. (a) shall subject the licensee to the penalty set forth in sub. (1)(a).

(c) Except as provided in par. (a), a licensee shall provide to the division, within 10 days after the change notice of any material change to the information provided in the application or a previous notice of change filed by the licensee with the division. The licensee must, within 20 days after

Other than that provided in the rules unless the r-p.c.

may

of the change

shall notify

shall

The licensee shall pay

being so notified by the division, provide any additional information, data and records about the change as the division requires. The division's cost, if any, of investigating and processing the change shall be paid by the licensee. The division shall determine the cost. All said costs shall be paid by the licensee within 30 days after demand by the division.

(d) Any change descrii in par. (c) shall be subject to the approval of the division. Such approval shall be subject to the same criteria as the criteria for approval of the original license.

Supplies

(e) Failure to provide the notice of change required in par. (c) within 10 days after the change shall subject the licensee to the penalties set forth in sub. (11)(a).

(f) Failure to provide within 20 days any additional information about the change as the division requires may subject the licensee to the penalties set forth in sub. (11)(b), as well suspension or revocation of license.

a licensee shall

31

(8) Annual report; records. (a) Each licensee shall annually, on or before the thirty-first day of March, file a report with the division giving such reasonable and relevant information as the division may require concerning the business and operations conducted by such licensee. Such report shall be made in the form prescribed by the division.

The

The

(b) Except as provided in par. (c), the licensee shall keep such books and records in the licensed location as in the opinion of the division will enable the division to determine whether the provisions of this section and ch. 435 are being observed. Every licensee shall preserve its records of rent-to-own agreements for at least 3 years after making the final entry in respect to any rent-to-own agreement.

If they keep records out of state must be licensed by DFT

(c) A licensee may keep the books and records specified in par. (b) at a single location inside or outside of this state if the books and records are kept at a location licensed under this section. The licensee shall organize the books and records by the place of business where the records originated and shall keep the books and records separate from other records for business conducted at that location. Actual costs incurred by the division to examine books and records maintained outside of this state shall be paid by the licensee.

The licensee shall pay all

(9) Powers of division. (a) The division may issue any general or special order in execution of or supplementary to this section. regarding this subch.

(b) For the purpose of discovering violations of this section and ch. 435 the division may cause an investigation to be made of the business of the licensee transacted under the provisions of this section and ch. 435. The place of business, books of accounts, papers, records, safes and vaults of the licensee shall be open to inspection and examination by the division for the purpose of such investigation and the division shall have authority to examine under oath all persons whose testimony is required relative to said investigation. The cost of the investigation or examination shall be paid by the licensee. The division shall determine the cost of an investigation or

The for the

The licensee shall pay

The licensee shall pay all + expenses

examination. The licensee shall pay the cost of any hearing, including witness fees, unless it be found by the division or court that licensee has not violated any provision of this section or ch. 435. All said costs shall be paid by the licensee within 30 days after demand therefor by the division. The state may maintain an action for the recovery of such costs and expenses in any court of competent jurisdiction.

the demands payment

promulgate

(c) The division may make such rules, including rules establishing fees, as it deems necessary for the administration of this section.

(d) The division shall have the same power to conduct hearings, take testimony and secure evidence as is provided in ss. 217.17 and 217.18.

(a) or

(10) Penalties. (a) Whoever fails to file their annual report by the thirty-first day of March, pay the annual license fee or provide any necessary rider to increase the amount of the surety bond by the first day of June, provide examination records by the due date, notify the division in writing of a relocation of their licensed location 15 days before the effective date of the relocation, or provide the notice required by sub. (7)(c) within 10 days after the effective date of the change may be required to forfeit not more than \$50. Each day that this failure continues constitutes a separate offense.

fix fees to do down state

(b) Whoever fails to provide the information requested by the division pursuant to sub. (7)(c) within 20 days after being notified by the division may be required to forfeit not more than \$100. Each day that this failure continues constitutes a separate offense.

(c) Any person who violates any provision of this section shall be guilty of a misdemeanor and, for each and every such offense shall, upon conviction thereof be punished by a fine of not more than \$1,000 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

has

this section

(11) Enforcement. The division shall have the duty, power, jurisdiction and authority to investigate, ascertain and determine whether this section or the lawful orders issued hereunder are being violated and for such purposes the division shall have all the powers conferred by this section. The division shall report all violations to the attorney general or the district attorney of the proper county for prosecution.

2. Page 7, line 1: before that line insert:

“Amend s. 220.02(2)(b) as follows:

The lending of money under s. 138.09 or those relating to finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges, rental-urchase companies and collection agencies under ch. 2 18.

And amend 220.02(3) as follows:

It is the intent of sub. (2) to give the division jurisdiction to enforce and carry out all laws relating to bank and banking in this state, including those relating to state banks, trust company banks, and also all laws relating to small loan companies or other loan companies or agencies, finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges, rental-purchase companies and collection agencies and those relating to sellers of checks under ch. 217, whether doing business as corporations, individuals otherwise, but to exclude laws relating to credit unions."

3. **Page 7, line 10:** After "SCOPE" insert "AND GENERAL PROVISIONS"

4. **Page 7, line 20:** After that line insert:

218.607

435.103 Territorial Application. For the purposes of ch. 435, a rent-to-own agreement is made in this state if: *any of the following apply under a r-t-o ag*

(a) A writing signed by the lessee and evidencing the **obligation** or an offer of the lessee is received by the rental-purchase company in this state &

(b) The rental-purchase company induces the **lessee, who** is a resident of this state, to enter into the rent-to-own agreement by face-to-face solicitation or by mail or telephone solicitation **ected to the particular lessee in this state.**

~~435.107~~ ^{218.606} **Obligation of Good Faith.** Every agreement or duty ~~within~~ ^{under} ch. 435 imposes an obligation of good faith in its performance or enforcement. **"Good faith" means** honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing."

5. **Page 8, line 9:** Delete the material beginning with "means" and ending with "agreement" on line 12 and substitute "means a person engaged in the business of entering into rent-to-own agreements in this state or acquiring or servicing rent-to-own agreements in this state".

6. **Page 8, line 22:** After that line insert:

218.604

~~435.202~~ **Venue.** (1) The venue for a claim arising out of a rent-to-own agreement is the

country: *Following countries*

(a) Where the lessee resides or is personally ~~served~~

(b) Where the property which is the subject of the rent-to-own agreement is ~~located~~ or

(c) Where the lessee sought or acquired the property which is the subject of the **rent-to-own** agreement or signed the document evidencing his or her obligation under the terms of the **rent-to-own agreement**.

(2) When it appears from the return of service of ~~the~~ ^{an} summons or otherwise that the county in which ~~the~~ ^{an} action is pending under sub. (1) is not a proper place of trial for ~~such~~ ^{the} action, unless the defendant appears and waives the improper venue, the court shall transfer the action to any county which would be a proper place of trial.

(3) If there are several defendants, and if venue is based on residence, venue may be in the county of residence of any ~~of them~~ ^{of them}.

Page 8, line 23: Delete the material beginning with line 23 and ending with page 12, line 12.

Page 12, line 24: After "disclosed," delete "at or".

Page 13, line 9: After that line insert:

"(4) SINGLE INSTRUMENT. In a rent-to-oh agreement, the lessee's payment obligations shall be evidenced by a single instrument, which shall include ~~disclosures required by this subchapter, the signature of the rental-purchase company, the signature of the lessee, and the date on which it was signed~~ ^{the instrument was signed}"

10. Page 14, line 6: Delete "PAYMENT" and substitute "PERIODIC RENTAL PAYMENTS"

11. Page 14, line 9: Delete the material beginning with "OTHER" and ending with "disclosed" on line 14 and substitute:

"(6) OTHER CHARGES AND PEES TO ACQUIRE OWNERSHIP. The dollar amount, both itemized and in total, of all taxes, liability damage waiver fees, fees for optional services, processing fees, application fees and delivery charges that the lessee would incur if the lessee rented the rental property until ownership assuming the lessee does not add or **decline the liability** damage waiver or optional services after signing the rent-to-own agreement. ^{disclosed under}"

(6m) TOTAL PAYMENTS TO ACQUIRE OWNERSHIP. The total of **all charges to be paid by the lessee to acquire ownership of the rental property, which shall consist of the sum of** the total dollar amount of all periodic rental ~~payments set forth in accordance with sub. (5) and the total dollar amount of all other charges and fees set forth in accordance with sub. (6), along~~ ^{disclosed under}

with a statement that this is the amount a lessee will pay to acquire ownership of the rental property if the tax rates do not change and the lessee does not change the selection of liability damage waiver or optional services.

OK

(6p) OTHER CHARGES. An itemized description of other charges or fees that a lessee may incur, such as late payment, reinstatement, default or pick-up fees.

12 ✓

Page 14, line 17: Delete the material begin&g with “to” and **ending** with “option” on line 19 and substitute:

OK

“to acquire ownership of the rental **property** at any time after the first payment by paying **all** past due payments and fees and an amount not to exceed an amount equal to the cash price of the rental property multiplied by a fraction that has as its numerator the number of periodic rental payments remaining under the rent-to-own agreement and that has as its denominator the total number of periodic rental payments.”

13 ✓

Page 15, line 2: After “destroyed” insert:

OK

“and shall be equal to the total of all past due payments and fees and an amount not to exceed an amount equal to the cash price of the rental property multiplied by a fraction that has as its numerator the number of periodic rental payments remaining under the rent-to-own agreement **and that** has as its denominator the total number of periodic rental payments.”

14 ✓

Page 15, line 3: Delete the material beginning with “identifying” and ending with “warranty” on **line 9** and substitute:

has service

“that during the term of the rent-to-own agreement, the rental-purchase company is **required to service the rental property to maintain it** in good working condition, as long as no other person ~~has been permitted to service the rental~~ property. In lieu of servicing the rental property, the rental purchase company may, at its option, **replace the rental property**. The rental-purchase company’s obligation to provide service ~~shall be limited to~~ defects in the property not caused by (i) harmful conditions outside the company’s or manufacturer’s control or (ii) improper use or neglect by the lessee”.

is

15 ✓

Page 16, line 21: After that **line** insert:

A provision

“(7) ~~No term of a rent-to-own agreement may provide~~ for the payment by the lessee of attorney fees.”

16. **Page 17, line 2:** After "agreement." insert "The lessee shall be entitled to cancel such, ~~liability~~ waiver at the end of any rental term." the

17. **Page 17, line 9:** After "RECEIPTS" delete "DUE UPON BEQUEST. Upon"

18. **Page 17, line 10:** Before "rental-purchase" delete "the request of a lessee, a" and substitute "A"

19. **Page 17, line 11:** After "lessee" insert "in cash, or upon the request of the lessee for any other type of payment."

20. **Page 17, line 24:** After that line insert:

"(4) A lessee ^{is} shall be entitled to one such statement under (2) and (3) without charge once every 12 months. ~~Additional statements shall be furnished~~ if the lessee pays the rental-purchase company's reasonable costs of preparing and furnishing the statement."

An r-p-c shall provide ^{any} add'l stmts

21. **Page 18, lines 21:** Delete the material beginning with "property" and ending with "property" on line 22 and substitute "specific item".

as property

22. **Page 25, lines 11:** Delete the material beginning with ", unless" and ending with "lessee" on line 15 and substitute ". ~~It shall not constitute threatening criminal prosecution for a rental-purchase company to inform the lessee of the existence of §943.20(1)(e) and the consequences thereof.~~"

of violating that statute

An r-p-c does not violate this subsection by informing a

23. **Page 25, line 25:** After that line insert:

"(4m) Disclose or threaten to disclose to a person other than the lessee or the lessee's spouse information affecting the lessee's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information, but this paragraph does not prohibit the disclosure to another person of information permitted to be disclosed to that person by statute or an inquiry ~~confined to~~ for the purpose of determining the location of the lessee or the rental property."

except that

33mo Delete Sec 4 (1) (nonstats), Sec. 5 (3)

24. **Page 29. line 14:** After *that* line insert:

(2) EMERGENCY RULE-MAKING AUTHORITY. Using the procedure under section 227.24 of the statutes, the division of banking shall promulgate rules required under section 218.06(3)(b) of the statutes, as **affected** by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24(1)(c) and (2) of the statutes. Notwithstanding section 227.24(1)(a) and **(2)(b)** of the statutes, the division need not provide evidence of the necessity of preservation of the public peace, health, safety or welfare in promulgating rules under this subsection.

Rules are to establish permanent or initial rules.
Fix Xref

25. **Page 30. line 3:** After “sections” insert “218.06,”



**DEWITT
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Please respond to: Capitol Square Office

FAX TRANSMITTAL

TO: Rob Marchant **Fax No.** 244-8522
From: Douglas L. Flygt **Total Pages:** 1
(including this page)
Date: March 13, 2000 **Time Sent:** _____

Respond To: Douglas L. Flygt at 608-252-9355 (tel) / 608-252-9243 (fax)

MESSAGE

Please Add:

430.201(6) The termination date of a **rent-to-own** agreement shall be **the** earlier of (a) the **date specified** in the rent-to-own agreement as the date on which the rental term ends, **unless** such date has been extended pursuant to the terms of the rent-to-own agreement by the lessee **making** a prescribed payment and (b) the date on which the lessee voluntarily surrenders the property in accordance with s. **435.402(10)**.

This facsimile is intended only for the use of the addressee named herein and may contain legally privileged and confidential information. If you are not the intended recipient of this facsimile, you are hereby notified that any dissemination, distribution or copying of this facsimile is strictly prohibited. If you received this facsimile in error, or if you encountered any problems with transmission, please telephone us at **608/255-8891**. Our fax number is 6081252-9243.

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1999 - 2000 LEGISLATURE

LRB-4219/4

RJM:kmg:km

ASA-

PKMTR

1999 ASSEMBLY BILL 849

DL07Z

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

gen. act

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. *and providing a penalty* *providing an exemption from emergency rule procedures*

Analysis by the Legislative Reference Bureau

Under current law, a consumer credit transaction that is entered into for personal, family or household purposes is generally subject to the Wisconsin Consumer Act (consumer act). The consumer act grants consumers certain rights and remedies and contains notice and disclosure requirements and prohibitions relating to consumer credit transactions. Currently, a consumer lease that has a term of more than four months is among the consumer credit transactions that are subject to the consumer act. In addition, the consumer act applies to any other consumer lease, if the lessee pays or agrees to pay at least an amount that is substantially equal to the value of the leased property and if the lessee will become, or for not more than a nominal additional payment has the option to become, the owner of the leased property.

This bill exempts certain consumer leases from the consumer act and creates a new chapter for the purpose of regulating these leases and the businesses that rent property to individuals under these leases. The primary aspects of the bill are as follows:

Scope

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

ASSEMBLY BILL 849

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

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

Administration

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

Provisions of rent-to-own agreements

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

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

ASSEMBLY BILL 849

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

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

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

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

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

Disclosure

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

Related transactions

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

Marketing activities

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

ASSEMBLY BILL 849

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

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

Right to reduced amount of rental payments and right to reinstatement

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

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

ASSEMBLY BILL 849

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

Default and right to cure

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

Collections practices

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

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

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

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

Remedies, defenses and statute of limitations

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

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

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

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

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

MOVE TO 29-7

WISCONSIN

1 SECTION ~~#~~ 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. 485; or subch. XI of ch. 218

4 SECTION ~~#~~ 421.202 (7m) of the statutes is created to read:

5 421.202 (7m) A rent-to-own agreement under ~~ch. 485~~;

6 SECTION 3. ~~Chapter 485~~ of the statutes is created to read: Subchapter XI

7 ~~CHAPTER 485~~ (218) of chapter 218 [precedes 218.61]

8 RENT-TO-OWN AGREEMENTS

9 SUBCHAPTER XI

10 RENTAL-PURCHASE COMPANIES AND RENT-TO-OWN AGREEMENTS

11 ~~485.102~~ 218.61 Scope. (1) INAPPLICABILITY OF OTHER LAWS. A rent-to-own agreement

12 under this ~~chapter~~ ^{sub} is not governed by the laws relating to a security interest, as

13 defined in s. 401.201 (37), or a lease, as defined in s. 411.103 (1) (j), and is not

14 governed by chs. 421 to 427 and ^{sub} 429.

- 15 (2) EXCLUSIONS. This ^{sub} chapter does not apply to any of the following:
- 16 (a) A lease or bailment of personal property that is incidental to the lease of real
- 17 property
- 18 (b) A lease of a motor vehicle, as defined in s. 218.01 (1) (m).
- 19 (c) A credit sale, as defined in 15 USC 1602 (g) and in the regulations
- 20 promulgated under that section.

7-20

(3) "Licensee" means a rental-purchase company holding a license issued by the division under this subchapter.

SUBCHAPTER II

DEFINITIONS

48721 Definitions. In this chapter:

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

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

(3) "Rental property" means personal property rented under a rent-to-own agreement.

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

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

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

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

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

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

SUBCHAPTER III
ADMINISTRATION

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ASSEMBLY BILL 849

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

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

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

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

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

ASSEMBLY BILL 849**SECTION 3**

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

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

3
4 The department may examine the books and records of a rental-purchase company
5 for the purpose of determining compliance with this chapter.

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

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

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

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

ASSEMBLY BILL 849

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

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

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

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

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

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

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

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

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

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SUBCHAPTER IV
RENT-TO-OWN AGREEMENTS
AND DISCLOSURE REQUIREMENTS

16 ~~485.401~~ **General requirements of disclosure.** (1) ~~FORM~~ LOCATION, SIZE AND
17 TIME OF DISCLOSURE. The information required under s. ~~485.402~~ shall satisfy all of the
18 following requirements:

- 19 (a) The information shall be clearly and conspicuously disclosed.
- 20 (b) The information shall be disclosed in writing.
- 21 (c) The information shall be disclosed on the face of the rent-to-own agreement
22 above the line for the lessee's signature.
- 23 (d) The information shall be disclosed in not less than 8-point standard type.
- 24 (e) The information shall be disclosed ~~before~~ before the time that the lessee
25 becomes legally obligated under the rent-to-own agreement.

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218.634

ASSEMBLY BILL 849

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218.634

1 (2) ACCURACY OF DISCLOSURE. The information required under s. ~~485.402~~ must
2 be accurate as of the time that it is disclosed to the lessee. If any information
3 subsequently becomes inaccurate as a result of any act, occurrence or agreement by
4 the lessee, the resulting inaccuracy is not a violation of this ^{sub}chapter.

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

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10 ~~485.402~~ ^{218.634} ^{7B} **Required provisions of rent-to-own agreement.** A

11 rental-purchase company shall include all of the following information, to the extent
12 applicable, in every rent-to-own agreement:

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

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

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

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SECTION 3

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

the applicable
tax and

PERIODIC RENTAL PAYMENTS

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

TO ACQUIRE OWNERSHIP

INSERT 14-9

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

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

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

under sub. (9)

ASSEMBLY BILL 849

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

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

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

13 (13) RIGHT TO REINSTATE. A brief explanation of the lessee's right to reinstate
14 a rent-to-own agreement under s. 435.602 218.654

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

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

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ASSEMBLY BILL 849

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

218.636 (C)
~~435.403~~

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

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

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

the

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

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

against

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

the lessee to purchase

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

218.638 (C)
~~435.404~~

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

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ASSEMBLY BILL 849

The lessee shall be entitled to cancel the waiver at the end of any rental term.

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

3 ~~435.405~~ ^{218.647 (9)} **Early-purchase option.** An early-purchase option under a
4 rent-to-own agreement shall permit the lessee to purchase the rental property ~~for~~
5 ~~cash~~ ^{for an amount determined according to the early-purchase option formula under s. 218.634 (9)} at any time after the initial periodic rental payment. As a condition of exercising

6 the early-purchase option, the rental-purchase company may require the lessee to
7 be current on the payments under the lessee's rent-to-own agreement or to pay any
8 past-due rental charges and other outstanding fees that are owed.

9 ~~435.406~~ ^{218.642 (9)} **Receipts and statements. (1)** RECEIPTS DUE UPON REQUEST. Upon
10 the request of a lessee, a rental-purchase company shall provide a written receipt
11 to the lessee for any payment made by the lessee ^(a) in cash, or upon the request of the lessee for any other type of payment.

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

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

Subject to sub. (4)

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ASSEMBLY BILL 849

SECTION 3

218.644
485.501

SUBCHAPTER V
MARKETING

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3 ~~485.501~~ **Price cards displayed. (1) PRICE CARDS; GENERALLY.** Except as
4 provided ~~under~~ ^{sub. (2)} sub. (2), a rental-purchase company shall display a card or tag that
5 clearly and conspicuously states all of the following information on or next to any
6 property displayed or offered by the rental-purchase company for rent under a
7 rent-to-own agreement:

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

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

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

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

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

19 ~~435.802~~ **Advertising. (1) DISCLOSURE REQUIRED.** Except as provided under
20 sub. (2), if an advertisement for a ~~rent-to-own~~ agreement refers to or states the
21 amount of a payment for ~~any~~ ^{a specific item of} property and the right to acquire ownership of that
22 ~~property~~, the rental-purchase company shall ensure that the advertisement clearly
23 and conspicuously states all of the following:

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

ASSEMBLY BILL 849

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

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

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

9 ^{218.648} ~~435.503~~ **Referral transactions.** (1) PROHIBITED REFERRAL TRANSACTIONS. No
10 rental-purchase company may induce any individual to enter into a rent-to-own
11 agreement by giving or offering to give a rebate or discount to the individual in
12 consideration of the individual giving to the rental-purchase company the names
13 of prospective lessees, if the earning of the rebate or discount is contingent upon the
14 occurrence of any event that takes place after the time that the individual enters into
15 the rent-to-own agreement.

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

Handwritten notes: 10547, 19.12, with arrows pointing to lines 20 and 22.

SUBCHAPTER VI
RENTAL PAYMENTS
AND COLLECTIONS

23
24
25

ASSEMBLY BILL 849

218.1052

435.601 Late payment, grace period and late fees. (1) LATE FEE;

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

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

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

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

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

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

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

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

ASSEMBLY BILL 849

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

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

6 ~~435.602~~ ^{218.654 3(b)} **Reinstatement of terminated rent-to-own agreement. (1)**

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

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

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

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

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

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

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

8 ~~435.603~~ ^{218.650} **Reduced periodic rental payment due to reduced income. (1)**

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

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

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

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

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

ASSEMBLY BILL 849

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

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

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

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

21 ~~435.604~~ ^{218.6 58 30} **Default and right to cure. (1) DEFAULT; GENERALLY.** A lessee is in
22 default under a rent-to-own agreement if any of the following applies: occurs

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

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

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

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

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

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

21 (a) The lessee was in default.

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

24 (c) The lessee cured the default.

1 (5) REQUEST FOR VOLUNTARY SURRENDER OF PROPERTY. A rental-purchase
2 company may request the voluntary return or surrender of rental property prior to
3 the declaration of a default and the sending of written notice of default and right to
4 cure. A request under this subsection is subject to the requirements of s. ~~435.605~~ ^{218.666} ✓

5 ~~435.605~~ ^{218.666} **Rental-purchase company collection practices.** In attempting
6 to recover possession of rental property or to collect past-due periodic rental
7 payments or other charges owed under a rent-to-own agreement, a rental-purchase
8 company may not do any of the following:

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

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

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

19 (4) COMMUNICATION WITH LESSEE'S EMPLOYER. Initiate or threaten to initiate
20 communication with the lessee's employer prior to obtaining final judgment against
21 the lessee, except for the purpose of enforcing an assignment of earnings under s.

22 ~~435.605~~ ^{218.668} This subsection does not prohibit a rental-purchase company from
23 communicating with a lessee's employer solely to verify employment status or
24 earnings or to determine if the employer has an established debt counseling service
25 or procedure.

218.668
25-25
25

for a rental-purchase company

It is not a violation of this ~~subsection~~ subsection to inform a lessee of the existence of s. 943.20(1)(e) and the consequences of violating that statute.

ASSEMBLY BILL 849

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

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

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

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

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

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

20 **218.68 3(B)**
435.606 Assignment of earnings. No rental-purchase company may take
 21 or arrange for an assignment of earnings of an individual for payment or as security
 22 for payment of an obligation arising out of a rent-to-own agreement unless the
 23 assignment is revocable at will by the individual.

ASSEMBLY BILL 849

~~SUBCHAPTER VII
REMEDIES, DEFENSES
AND LIMITATIONS~~

Handwritten notes: "275829 27-3" in a circle, "218.684" with an arrow pointing to line 3, and a circled "3".

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~~435.701~~ **Civil actions and defenses. (1) LIABILITY; GENERALLY.** Except as provided under subs. (2) to (6), a rental-purchase company that violates any provision of this ^{sub}chapter is liable to a lessee damaged as a result of that violation for the costs of the action and, notwithstanding s. 814.01 ^{04 ← (1)}(1), for reasonable attorney fees as determined by the court, plus an amount equal to the greater of the following:

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

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

(2) **LIABILITY; CERTAIN VIOLATIONS.** Except as provided in subs. (4) and (5), if a rental-purchase company violates s. ~~435.703~~ ^{218.636}, the lessee may retain the rental property under the rent-to-own agreement without obligation to pay any amount and may recover any amounts paid to the rental-purchase company under the rent-to-own agreement transaction.

(3) **CLASS ACTION.** In the case of a class action, a rental-purchase company that violates this ^{sub}chapter is liable to the members of the class in an amount determined by the court, except that the total recovery for all lessees whose recovery is computed under sub. (1) (b) may not exceed \$100,000 plus the costs of the action and, notwithstanding s. 814.01 ^{04 ← (1)}(1), reasonable attorney fees as determined by the court. In determining the amount to award under this subsection, the court shall consider, among other relevant factors, the amount of actual damages sustained by the

ASSEMBLY BILL 849

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

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

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

19 (6) **LIABILITY FOR MULTIPLE VIOLATIONS.** Multiple violations of this ^{sub}chapter in
20 connection with the same rent-to-own agreement shall ^{only} entitle the lessee to a
21 single recovery under sub. (1), except that a violation of s. ~~435.605~~ ^{218.46} that occurs after
22 recovery has been granted with respect to that rent-to-own agreement may entitle
23 the lessee to an additional recovery under sub. (1).

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

ASSEMBLY BILL 849

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

218.686 } (1)
485.702 } (2)

3 **Limitation on actions.** An action brought by a lessee under this

4 ^{sub} chapter shall be commenced within one year after the date on which the alleged
5 violation occurred, 2 years after the date on which the rent-to-own agreement was
6 entered into or one year after the date on which the last payment was made under
7 the rent-to-own agreement, whichever is later.

INSERT
29-7

8 **SECTION 4. Nonstatutory provisions.**

LICENSING FEES FOR

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

INSERT
TEXT FROM
7-1 draft

INSERT
29-10

15 **SECTION 5. Initial applicability.**

218.61 to 218.616, 218.632 to 218.636,
218.64 to 218.68, 218.682(3) to 218.688,

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

creates
auto-ref
"a"

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

218.638
and
chapter
218 (title)

22 (3) **REGULATION OF RENTAL-PURCHASE COMPANIES.** The treatment of sections
23 218.617 to 218.63, 218.682(1) and (2), 220.02(2)(b) and ~~220.02(3)~~
24 as a rental-purchase company on the effective date of this subsection.

create auto-ref "d"

(1) and (2) and

WPO - auto-refs may
already be created

ASSEMBLY BILL 849

SECTION 6

1 SECTION 6. Effective dates. This act takes effect on the day after publication,
2 except as follows:

3 (1) RENT-TO-OWN AGREEMENTS. The treatment of sections 409.104 (12m) and
4 421.202 (7m) and chapter 218 of the statutes and SECTION 6 (1), (2), and (3) of this act
5 take effect on the first day of the 6th month beginning after publication.

6 (END)

and sections

chapter 218 (title)

subchapter XI of chapter 218
220.02 (2)(b), 220.02 (2)(c)

and

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Auto #

use auto-ref "a"
(created on page 29)

use auto-ref "b"

use auto-ref "c"

The treatment of sections 220.02 (2) (b) and (3),
409.104 (12m) and 421.202 (7m), subchapter
XI of chapter 218, and chapter 218 (title)

INSERT 7-5

SECTION 1. Chapter 218 (title) of the statutes is amended to read:

CHAPTER 218
FINANCE COMPANIES, AUTO DEALERS, ADJUSTMENT COMPANIES
AND, COLLECTION AGENCIES, RENTAL-PURCHASE COMPANIES
AND RENT-TO-OWN AGREEMENTS

INSERT 7-20 ✓

218.602 Territorial application. For the purposes of this subchapter, a rent-to-own agreement is entered into in this state if any of the following apply:

(1) A writing signed by the lessee and evidencing the obligation under the rent-to-own agreement or an offer of the lessee is received by the rental-purchase company in this state.

(2) The rental-purchase company induces the lessee who is a resident of this state to enter into the rent-to-own agreement by face-to-face solicitation or by mail or telephone solicitation directed to the particular lessee in this state.

218.606 Obligation of good faith. Every agreement or duty under this subchapter imposes an obligation of good faith in its performance or enforcement.

"Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

INSERT 8-4

(2) "General order" means an order that is not a special order.

INSERT 8-22

(8) "Special order" means an order against a specific person.

INSERT 12-18

(see part 4 of inserts)

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WPO - starts here and continues on page 5 of inserts
LRBs0404/1
RJM:.....

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218.00 License required. No person may operate as a rental-purchase company in this state without a valid license issued by the division under this subchapter. WPO go to page 5 of inserts !!

INSERT 13-9

(9) (4) SINGLE INSTRUMENT. In a rent-to-own agreement, the lessee's payment obligations shall be evidenced by a single instrument, which shall include the signature of the rental-purchase company, the signature of the lessee, and the date on which the instrument is signed.

INSERT 14-9

(9) The dollar amount, both itemized and in total, of all taxes, liability damage waiver fees, fees for optional services, processing fees, application fees and delivery charges that the lessee would incur if the lessee were to rent the rental property until ownership assuming that the lessee does not add or decline the liability damage waiver or optional services after signing the rent-to-own agreement.

(7) TOTAL PAYMENTS TO ACQUIRE OWNERSHIP. The total of all charges to be paid by the lessee to acquire ownership of the rental property, which shall consist of the sum of the total dollar amount of all periodic rental payments disclosed under sub. (5) and the total dollar amount of all other charges and fees disclosed under sub. (6), along with a statement that this is the amount a lessee will pay to acquire ownership of the rental property if the tax rates do not change and the lessee does not change the selection of liability damage waiver or optional services after signing the rent-to-own agreement.

(8) OTHER CHARGES. An itemized description of any other charges or fees that the rental-purchase company may charge the lessee.

INSERT 14-17

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105 14-17*

NS 98

to acquire ownership of the rental property at any time after the first payment by paying all past due payments and fees and an amount not to exceed an amount equal to the cash price of the rental property multiplied by a fraction that has as its numerator the number of periodic rental payments remaining under the rent-to-own agreement and that has as its denominator the total number of periodic rental payments

INSERT 16-2

~~and shall be equal to the total of all past due payments and fees and an amount not to exceed an amount equal to the cash price of the rental property multiplied by a fraction that has as its numerator the number of periodic rental payments remaining under the rent-to-own agreement and that has as its denominator the total number of periodic rental payments~~

INSERT 15-3

NS 98

that during the term of the rent-to-own agreement, the rental-purchase company is required to service the rental property to maintain it in good working condition, as long as no other person has serviced the rental property In lieu of servicing the rental property, the rental purchase company may, at its option, replace the rental property The rental-purchase company's obligation to provide service is limited to defects in the property not caused by improper use or neglect by the lessee or harmful conditions outside the company's or manufacturer's control

INSERT 16-21

of the rental-purchase company or manufacturer

requiring

91

(7) ATTORNEYS FEES. A provision for the payment by the lessee of attorney fees.

INSERT 17-24

to pay



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9

(4) FEE FOR STATEMENT. A lessee is entitled to receive one statement under subs. (2) and (3) without charge once every 12 months. A rental-purchase company shall provide an additional statement if the lessee pays the rental-purchase company's reasonable costs of preparing and furnishing the statement.

INSERT 19-22

13
65

218.618 Termination date. The termination date of a rent-to-own agreement is the earlier of the following:

(1) The date specified in the rent-to-own agreement as the date on which the rental term ends, unless this date has been extended pursuant to the terms of the rent-to-own agreement.

~~scribble~~

pursuant to

scribble

(2) The date on which the lessee voluntarily surrenders the rental property.

INSERT 25-25

9

(5) DISCLOSURE OF INFORMATION RELATING TO LESSEE'S REPUTATION. Disclose or threaten to disclose to a person other than the lessee or the lessee's spouse information affecting the lessee's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information, except that this subsection does not prohibit any of the following:

(a) The disclosure to another person of information permitted to be disclosed to that person by statute.

(b) An inquiry solely for the purpose of determining the location of the lessee or the rental property.

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INSERT 12-15 cont.

5- (continued from page 2 of inserts)

LRBs0404/1 RJM:.....

(A)

218.03 Application for license; fees; bond. (1) APPLICATION.

(a) An application for a license under this subchapter shall be made to the division, in writing, in the form prescribed by the division. An application for a license under this subchapter shall include all of the following:

- 1. If the applicant is an individual, the applicant's social security number.
- 2. If the applicant is not an individual, the applicant's federal employer identification number.

(b) The division may not disclose any information received under par. (a) 1. or 2. to any person except as follows:

1. The division may disclose information received under par. (a) 1. or 2. to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

2. The division may disclose information received under par. (a) 1. to the department of workforce development in accordance with a memorandum of understanding entered into under s. 49.857.

(2) APPLICATION FEES. At the time of applying to the division for a license under this subchapter, the applicant shall pay any applicable fee specified in the rules promulgated under s. 218.03(3). 43

(3) BOND. The division may require any applicant or licensee to file with the division and maintain in force a bond, in a form prescribed by and acceptable to the division and in an amount determined by the division.

218.03 - assurance or denial of license (1) INVESTIGATION. Upon the filing of an application under s. 218.03(1) and the payment of any applicable fee, the division shall investigate the character, general fitness and financial responsibility of the applicant and the members of the applicant if the applicant is a partnership.



limited liability company or association, and the officers and directors of the applicant, if the applicant is a corporation. Except as provided in sub. (3), if the results of the investigation warrant the belief that the business will be operated in compliance with this chapter, the division shall issue a license to said applicant.

(2) DENIAL; NOTICE; HEARING. Except as provided in sub. (3), the division may deny an application under s. 218.618(1) by providing written notice to the applicant & stating the grounds for the denial. Except as provided in sub. (3), a person whose application has been denied may request a hearing under s. 227.44 within 30 days after the date of denial. The division may appoint a hearing examiner under s. 227.46 to conduct the hearing.

(3) DENIAL,; CHILD OR FAMILY SUPPORT OR TAX DELINQUENCY. The division may not issue a license under this subchapter if any of the following applies:

(a) The applicant fails to provide the information required under s. 218.618(1) (a).

(b) The department of revenue certifies under s. 73.0301 that the applicant is liable for delinquent taxes. An applicant for whom a license is not issued under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

(c) The applicant fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of

a.

218.618



understanding entered into under s. 49.857. An applicant whose application is denied under this paragraph for delinquent payments is entitled to a notice and hearing under s. 49.857 but is not entitled to any other notice or hearing under this section.

^{022 3 (B)}
~~218.673~~ **License for other business. (1) LICENSED LOCATIONS.** A license issued under this subchapter shall specify the location at which the licensee is permitted to consummate rent-&-own agreements. A license issued under this subchapter permits operation only at or from the location specified in the license. A separate license shall be required for each place of business maintained by the licensee.

(2) ASSIGNMENT. A license issued under this subchapter is not assignable.

(3) POSTING. A licensee shall post its license in a conspicuous place at the location specified in the license.

(4) TERM OF LICENSE; FEE. Every license shall remain in force ~~and effect~~ until suspended or revoked in accordance with this subchapter or surrendered by the licensee. Every licensee shall, on or before June 1 of each year, pay to the division the annual license fee specified in rules promulgated under s. 218.673(3) and, if required by the division, provide a rider or endorsement to increase the amount of any bond required under s. 218.618(3).

(5) OTHER BUSINESS PROHIBITED. No licensee may conduct business as a rental-purchase company within any office, room or place of business in which any other business is solicited or engaged in, unless the licensee is authorized to do so, in writing, by the division.

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~~218.675~~ **Revocation, suspension and restriction of license. (1) DISCRETIONARY SUSPENSION OR REVOCATION.** The division may issue an order



suspending or revoking any license issued under this subchapter if the division finds that any of the following ~~apply~~ ^{applies} ✓

(a) The licensee has violated any of the provisions of this chapter, any rules promulgated under s. 218.623(3) or any lawful order of the division under s. 218.623(1).

(1).

(b) A fact or condition exists ^{that} which, if it had existed at the time of the original application for the license, would have warranted the division in refusing to issue the license.

(c) The licensee has made a material misstatement in an application for a license or in information furnished to the division.

(d) The licensee has failed to pay the annual license fee required under s. 218.622(4) or has failed to maintain in effect any bond required under s. 218.623(3).

(e) The licensee has failed to provide any additional information, data and records required by the division, within the time period prescribed under s. 218.624.

(2).

(f) The licensee has failed to pay any penalties due under s. 218.622(1) or (2) within 30 days after receiving notice, by certified mail, that the penalties are due.

(2) MANDATORY RESTRICTION OR SUSPENSION; CHILD ^{R 3 CS} FAMILY SUPPORT. The division shall restrict or suspend a license issued under this subchapter if the division finds that the licensee is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.5~ (5) and related to paternity or child support proceedings or who is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in



a memorandum of understanding entered into under s. 49.357. A licensee whose license is restricted or suspended under this subsection is entitled to a notice and hearing only as provided in a memorandum of understanding entered into under s. 49.857 and is not entitled to any other notice or hearing under this section.

(3) MANDATORY REVOCATION; DELINQUENT TAXES. The division shall revoke a license issued under this subchapter if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is revoked under this subsection for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

(4) REVOCATION AND SUSPENSION PROCEDURE. Except as provided in subs. (2) and (3), the following procedure applies to every order of the division that suspends or revokes a license issued under this subchapter:

(a) The division shall provide a written notice to the licensee of the division's intent to issue an order suspending or revoking the licensee's license. The notice shall specify the grounds for and the effective date of the proposed order.

(b) The licensee may file with the division a written response to the allegations contained in the notice within 20 days after receiving the notice. The licensee's written response may contain a request for a contested case hearing under s. 227.42. If the written response does not contain a request for a contested case hearing under s. 227.42, the right to a contested case hearing is waived.

(c) If a written response containing a request for a contested case hearing under s. 227.42 is received by the division within the time provided under par. (b) and if, in the opinion of the division, the matter satisfies all of the conditions under s. 227.42

Specified in



(1) (a) to (d), the matter shall be scheduled for a contested case hearing to commence within 60 days after the date on which the division receives the written response.

(d) If the licensee fails to file a written response within the time provided under par. (b), files a timely written response but fails to request a contested case hearing under s. 227.42 or files a timely written response requesting a contested case hearing but, in the opinion of the division, the matter fails to satisfy ^{per} all of the conditions

Please check spacing

Specified in

⁶²⁶ ~~under~~ s. 227.42 (1) (a) to (d), the division may issue an order suspending or revoking the license. If the licensee files a timely written response containing a proper request for a contested case hearing under s. 227.42, any order of the ~~department~~ ^{division} suspending or revoking the licensee's license shall be stayed pending completion of proceedings under ch. 227. (3)

218.620 Modification of license. (1) CHANGE IN PLACE OF BUSINESS. No

licensee may change ~~of its~~ place of business to another location without the prior approval of the division. A licensee shall ^{provide} ~~provide~~ the division ^{with} ~~at~~ least 15 days prior written notice of a proposed change under this subsection and shall pay any applicable fees specified in the rules promulgated under s. 218.620 ⁽⁴³⁾ (3). Upon approval by the division of the new location, the division shall issue an amended license, specifying the date on which the amended license is issued and the new location.

(2) **OTHER CHANGES.** Except as provided in sub. (1), a licensee shall notify the division of any material change to the information provided in the licensee's original application for a license under this subchapter or provided in a previous notice of change filed by the licensee with the division under this subsection. A licensee shall provide the notice required under this subsection within 10 days after the change. The licensee shall provide any additional information, data and records about the



change to the division within 20 days after the division requests the information, data or records. The division shall determine the cost of investigating and processing the change. The licensee shall pay the division's cost within 30 days after the division demands payment.

(3) DIVISION APPROVAL OF OTHER CHANGES. Any change that is subject to the notice requirement under sub. (2) is subject to the approval of the division. In reviewing the change, the division shall apply the same criteria as the criteria for approval of an original license application.

218.027 Annual report; records. (1) ANNUAL REPORT. ^{428 3 (3)} Annually, ^{or} or before

^{of each year} March 31, a licensee shall file a report with the division giving such reasonable and relevant information as the division may require concerning the business and operations conducted by the licensee. The licensee shall make the report in the form prescribed by the division.

(2) BOOKS AND RECORDS. A licensee shall keep such books and records in the licensed location as, in the opinion of the division, will enable the division to determine whether the provisions of this subchapter are being observed. Every licensee shall preserve its records of a rent-to-own agreement for at least 3 years after making the final entry with respect to the rent-to-own agreement.

218.028 Powers of division; administration. (1) ORDERS. ^{and dates} The division may issue any general or special order ⁽³⁾ (in execution of or supplementary to this subchapter). ^{order, as defined in s. 217.02(3), or} ⁽¹⁰⁾ as defined in s. 217.02(10)

(2) INVESTIGATIONS. For the purpose of discovering violations of this subchapter, the division may cause an investigation to be made of the business of ^(a) the licensee transacted under this subchapter. The place of business, books of accounts, papers, records, safes and vaults of the licensee shall be open to inspection and examination



Subsection

by the division for the purpose of the investigation and the division has authority to examine under oath all persons whose testimony is required for the investigation. The division shall determine the cost of an investigation under this paragraph. The licensee shall pay the cost of the investigation, together with the cost of any hearing, including witness fees, unless the division or a court finds that the licensee has not violated any provision of this subchapter. The licensee shall pay all costs owing under this paragraph within 30 days after the division demands payment. The state may maintain an action for the recovery of any costs owing under this paragraph.

(3) **RULES.** The division may promulgate rules for the administration of this subchapter.

(4) **TESTIMONIAL POWERS AND POWERS TO SECURE EVIDENCE.** The division has the same power to conduct hearings, take testimony and secure evidence as is provided in ss. 217.17 and 217.18.

(5) **ENFORCEMENT.** The division has the duty, power, jurisdiction and authority to investigate, ascertain and determine whether this subchapter or any lawful orders issued under sub. (1) are being violated. The division shall report all violations of this subchapter to the attorney general or the district attorney of the proper county for prosecution.

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218.03 Penalties. (1) FAILURE TO PAY FEES AND PROVIDER REPORTS, INFORMATION AND NOTICES; GENERALLY. A licensee that fails to file its annual report by the date specified in s. 218.07(1), fails to pay the annual license fee by the date specified in s. 218.07(4), fails to provide any required ^{der} or endorsement to increase the amount of its bond by the date specified in s. 218.07(4), fails to provide examination records by the date required by the division, fails to notify the division in writing of a relocation of the licensee's place of business by the date specified in s. 218.07(1)

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or fails to provide notice to the division of other changes, as required under s. 218.628 (2) by the date specified in s. 218.628 (2) may be required to forfeit not more than \$50. Each day that a failure described in this subsection continues constitutes a separate offense.

(2) FAILURE TO PROVIDE CERTAIN INFORMATION. A licensee that fails to provide any additional information, data or records requested by the division under s. 218.628 (2) by the date specified in s. 218.628 (2) may be required to forfeit not more than \$100. Each day that this failure continues constitutes a separate offense.

(3) MISDEMEANORS. Any person who violates ~~s. 218.628~~ any provision of s. 218.628 to ~~218.628~~ ~~or s. 218.628~~ may be fined not more than \$1,000, imprisoned for not more than 6 months, or both.

218.628 other than those provisions described in subs. (1) and (2)

INSERT 29-7

218.628 Venue. (1) GENERALLY. The venue for a claim arising out of a rent-to-own agreement is any of the following counties:

- (a) Where the lessee resides or is personally served.
- (b) Where the rental property is located.
- (c) Where the lessee sought or acquired the rental property or signed the document evidencing his or her obligation under the terms of the rent-to-own agreement.

(2) CHANGE IN VENUE. When it appears from the return of service of a summons or otherwise that the county in which an action is pending under sub. (1) is not a proper place of trial for the action, unless the defendant appears and waives the improper venue, the court shall transfer the action to any county that is a proper place of trial.



(3) MULTIPLE DEFENDANTS. If there are several defendants in an action arising out of a rent-to-own agreement, and if venue is based on residence, venue may be in the county of residence of any of the defendants.

SECTION ~~#~~ 220.02 (2) (b) of the statutes is amended to read:

220.02 (2) (b) The lending of money under s. 138.09 or those relating to finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges, rental-purchase companies and collection agencies under ch. 218.

SECTION ~~#~~ 220.02 (3) of the statutes is amended to read:

220.02 (3) It is the intent of sub. (2) to give the division jurisdiction to enforce and carry out all laws relating to banks or banking in this state, including those relating to state banks, trust company banks, and also all laws relating to small loan companies or other loan companies or agencies, finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges, rental-purchase companies and collection agencies and those relating to sellers of checks under ch. 217, whether doing business as corporations, individuals or otherwise, but to exclude laws relating to credit unions.

INSERT 29-10



Using the procedure under section 227.24 of the statutes, the division of banking may promulgate rules authorized under section 218.623(3) of the statutes, as created by this act, prescribing the fees under sections 218.618(2) and 218.622(4) of the statutes, as created by this act, for the period before the date on which permanent rules take effect, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b)



and (3) of the statutes, the division of banking is not required to provide evidence that promulgating a rule under this **subsection** as an emergency rule is necessary for the preservation of the public peace, health, safety or welfare and is not required to provide a finding of emergency for a rule promulgated under this ~~paragraph~~.

(END)

of insert

Subsection

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0404/1dn

RJM:.....

cmh

Representative Jeskewitz:

The instructions for this amendment were provided to me jointly by Chris Green at the department of financial institutions and Jim Leonhart at Dewitt, Ross & Stevens. In many instances, I have varied from the submitted language in order to more precisely accomplish my understanding of the intent or to make the amendment conform to current drafting style. You may want Mr. Green and Mr. Leonhart to review the amendment. In particular, please note the following:

1. The submitted language would have required a rental-purchase company to disclose "other charges or fees that a lessee may incur, such as late payment, reinstatement, default or pick-up fees." This language has two problems. First, the language does not limit the disclosure to fees that are related to a ~~rent-to-own~~ agreement. There are many "other charges or fees that a lessee may incur" that are unrelated to the rent-to-own agreement. Second, while the list of examples helps to clarify the types of fees and charges that must be disclosed, the list may be construed by a court to limit the fees that must be disclosed only to those listed. See *State ex rel. Harris v. Larson*, 64 Wis. 2d 521, 527 (1974). The amendment, ~~in~~ instead, requires an itemized description of any other charges or fees that the ~~rental-purchase~~ company may charge the lessee. See proposed s. 218.634 (8). ↩

2. Please review the penalty provisions in proposed s. 218.682 to ensure that they are consistent with your intent. In particular, proposed s. 218.682 (3) required numerous changes in order to conform with current drafting style. ✓

3. Proposed s. 218.63 (5) is an archaic provision and is probably unnecessary. Please review the provision. Do you really intend to require every violation to be reported to the department of justice or district attorney for prosecution? You may want to allow the division of banking to exercise some discretion and refrain from referring minimal violations for prosecution. (to)

4. Proposed s. 218.63 (1) authorizes the division of banking to issue any general or special order "in execution of or supplementary to this subchapter." This is an unusually broad delegation of authority. You may want to prohibit the division from issuing an order that contradicts the subchapter. Also, you may want to provide a standard for the division to exercise this authority. See, for example, s. 218.04 (7) (a) (division may issue order to protect public from oppressive or deceptive practices of licensees and to prevent evasions of the chapter).

Robert J. Marchant
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0404/1dn
RJM:cmh:jf

March 15, 2000

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TECHNICAL CORRECTIONS

✓ 11-6 to 17 investigation of EXAMINATION

✓ 11-11 (subchapter)

✓ 12-4

~~All information required to be required provisions of a...~~

under s. 218.639

The ~~the~~ info. required to be included in a r-t-o of shall.

✓ 14-2 (agrees) not requires

✓ 14-24 agreed, ~~to~~

✓ 15-19 all of the periodic rental payments

✓ 15-23 same

✓ 16-6 (authorized) under s. 218.68

✓ 3.3-1 delete title to sus.

~~These are not...~~

✓ 218.612

✓ 218.616

✓ 218.61

✓ 218.63

✓ 218.642

✓ ~~218.644~~ 218.644

✓ 218.684

✓ 218.686

Treat separately w/ DWP APR

218.644 → treat like Irish rule

218.646 → neither

218.648 →

218.68 →

~~218.684~~

Apply to new & old rent to own agreements rental payments