

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

LRB-4186/P1dn  
RAC:kjf:rs

February 16, 2004

Senator Brown:

The proposed draft that you sent over creating the Wisconsin Rental-Purchase Agreements Act is very well crafted and appears to be the product of careful and skillful legal work. At this juncture, I have prepared a preliminary version of the draft, so that you can look over the changes I have made in the proposed language and respond to the questions I have raised. In this regard, please note the following:

1. I did not include the material in the proposed draft that you submitted from s. 430.102 regarding purposes and rules of construction. It is LRB drafting policy not to include purpose statements unless the constitutionality of the provision is at issue or the provision is a model or uniform act and the intent is to try to persuade the courts to interpret the provision in a consistent manner across legal jurisdictions. The reason for our policy is that purpose statements are not always clear in their intent or application. For example, Section 430.102 (2) c. contained in your proposed draft provides that one of the purposes of the act is to “permit and encourage the development of fair and economically sound consumer practices in rental-purchase agreements.” Does this mean that a rental-purchase company cannot enter into a rental-purchase agreement unless it is fair and economically sound? If this is your intent, then we should draft a specific condition that no rental-purchase company may enter into such an agreement unless it is fair and economically sound. If this is not the intent, then the purpose statement confuses the issue because a court could read this as the intent.
2. I did not include the provision contained in Section 430.102 (3) of your proposed draft because I am unaware of case law in this area that provides that a violation of a rule interpreting a statutory requirement is not also a violation of that statute. If the rule is lawfully promulgated interpreting a statutory requirement, then that rule has the force of law. By including such a provision in this chapter, an issue is raised in all of the other chapters in the Wisconsin Statutes that do not have similar language as to whether a violation of a rule in those chapters also is a violation of the statutory requirement that gives rise to the rule. Please advise.
3. I did not include the provision contained in Section 430.103 (2) of your proposed draft because I am unsure of its intent and application. If there is a specific provision in ch. 430 that possibly preempts the administration and enforcement of ch. 100, please

identify the overlapping or conflicting provisions in ch. 430 and ch. 100 and I will clarify the relationship.

4. Rather than define “administrator” to mean the secretary of financial institutions, I have instead defined “secretary” to mean the secretary of financial institutions and have substituted the word “secretary” for “administrator” in the appropriate sections of the draft. I think it is clearer to refer to the “secretary” rather than to the “administrator” because there is then no confusion as to whether the duties are in actuality those of the administrator of the Division of Banking. I should also point out that you require the Division of Banking in the Department of Financial Institutions to promulgate rules and you require the secretary of financial institutions to promulgate rules. Is this your intent?

5. Note that in s. 430.402 (1) (intro.), I allowed for the Division of Banking to require any additional information from the applicants.

6. In s. 430.408 (1), I took out the phrase “except that the division may not issue a general order or special order that conflicts with this chapter.” I took out this phrase because it presumes that the Division of Banking has the authority to issue orders in violation of ch. 430 and nowhere is there granted such blanket authority.

7. In s. 430.408 (3), the secretary of financial institutions is authorized to commence an investigation “pursuant to sub. (2).” But sub. (2) governs an investigation by the Division of Banking. Wouldn’t it be more consistent to have the division doing this investigation? Please advise.

8. I changed s. 430.408 (4) to not allow the Division of Banking to promulgate rules governing s. 430.506. The reason is that you have specifically requested that the secretary of financial institutions promulgate rules to administer that section.

9. In s. 430.408 (6), you authorize the Division of Banking to report violations of ch. 430 to the attorney general. Is it your intent to give the attorney general enforcement authority over this chapter?

10. At this juncture, I did not include the statement in s. 430.502 (1) that reads: “A statement that incorrectly indicates that new rental property is used is not a violation of this chapter.” The reason is twofold. First, the immediate prior sentence requires the rental–purchase company to disclose whether the rental property is new or used. These two sentences seem therefore to be in conflict -- the one sentence requires accurate disclosure, but the other sentence says that inaccurate disclosure is allowed. Second, the provision literally states that the rental–purchase company may lie about whether the rental property is new or used. I was unsure if this was your intent. Please advise. Also, look at the requirement under s. 430.602 (1) (e). Is an inaccurate statement here not a violation of ch. 430?

11. Throughout the draft, there are references to “periodic rental payments.” How do “periodic rental payments” differ from “rental payments”? If there are no differences, then you should consider dropping the word “periodic” since it implies that there are other kinds of rental payments.

12. Please review the last part of the sentence in s. 430.502 (8), which reads: “if the lessee does not add or decline the liability damage waiver or optional services after signing the rental–purchase agreement.” As I was reading this, I wondered if the total statement’s payment includes or does not include the liability damage waiver and the other optional services. Please advise.

13. In s. 430.505 (2), you may wish to clarify the phrase “an amount equal at a maximum to the amount by which the cash price of the rented property exceeds 50 percent of all rental payments made by the lessee.” It isn’t entirely clear. Also, here you do not refer to “periodic rental payments” but only to “rental payments.” See my comments on Item No. 11.

14. In s. 430.506, relating to unconscionable conduct and which language seems to be borrowed from s. 425.107, you begin to use the terms customer and merchant for the first time in the draft. Throughout the other parts of the draft, the applicable terms are rental–purchase companies, licensees, and lessees. Now, in this section, we have new law affecting all merchants and customers. Is this your intent? Please advise.

15. Under current law, since most information that is possessed by the rental–purchase company is permitted to be disclosed to other persons insofar as disclosure is not prohibited, the exception in s. 430.801 (5) (a) seems to eviscerate the protection provided in s. 430.801 (5) (intro.). Is this your intent?

16. In s. 430.801 (12), do you also want to cover rules promulgated by the Division of Banking?

17. I reworked s. 430.901 (1) for clarification. Please review.

18. In s. 430.902 (4) (L), regarding class action lawsuits, why is the judgment to be rendered in favor of the secretary of financial institutions if the plaintiffs prevail? I seem to be missing something.

19. In s. 430.902 (4) (o), there is reference to a “merchant.” Do you mean a rental–purchase company?

20. In s. 430.902 (5), I retained your reference to a “bona fide” error even though good drafting conventions would dictate trying to replace Latin terms with ordinary language terms. In this case, there are simply too many references in the Wisconsin Statutes to “bona fide” to enforce this convention.

21. I have not yet included an Initial Applicability provision in the draft, but will do so in the next version of the draft. Because there are current rent–to–own contracts in place that are governed by the Wisconsin Consumer Act, you will have to have the ch. 430 provisions first apply to rental–purchase agreements entered into on the bill’s effective date in order to avoid the problem of an unconstitutional impairment of contract.

22. The word “lessor” is used in ss. 430.502 (15) and 430.505 (1), but is not defined. Is this your intent?

23. In several places, you refer to current law s. 218.01. Please note that this provision does not exist. Please advise.

24. Finally, what do you wish to do about funding the operations of the Division of Banking and the secretary of financial institutions? The proposed draft did not contain any appropriation or an appropriation account in which the application fees and annual license fees are to be deposited. Please advise.

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