

**SECTION 1.** Chapter 430 of the statutes is created to read:

**CONSUMER TRANSACTIONS—RENTAL-PURCHASE AGREEMENTS**

**SUBCHAPTER I**

**SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS**

**430.101. SHORT TITLE.**

Chapter 430 shall be known and may be cited as the Wisconsin Rental-Purchase Agreements Act.

**430.102. PURPOSES; RULES OF CONSTRUCTION.**

- (1) Chapter 430 shall be liberally construed and applied to promote its underlying purpose and policy.
- (2) The underlying purpose and policy of chapter 430 are:
  - a. To simplify, clarify and modernize the law governing rental-purchase agreements;
  - b. To protect lessees against unfair, deceptive, false, misleading and unconscionable practices by rental-purchase companies; and
  - c. To permit and encourage the development of fair and economically sound consumer practices in rental-purchase agreements.
- (3) A reference to a provision of ch. 430 includes reference to a related rule or order of the administrator adopted under ch. 430.

**430.103. APPLICABLE LAW.**

- (1) Unless superseded by the particular provisions of ch. 430, the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement ch. 430.
- (2) Chapter 430 shall not preempt the administration or enforcement of ch. 100.

**430.104 OBLIGATION OF GOOD FAITH.**

Every agreement or duty under this chapter imposes an obligation of good faith in its performance or enforcement. In this section, "good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

**SUBCHAPTER II**  
**SCOPE AND JURISDICTION**

**430.201 SCOPE.**

- (1) **INAPPLICABILITY OF OTHER LAWS.** A rental-purchase agreement under this chapter is not governed by the laws relating to a security interest, as defined in s. 401.201 (37), or a lease, as defined in s. 411.103 (1) (j), and is not governed by chs. 421 to 427 and 429.
- (2) **EXCLUSIONS.** This chapter does not apply to any of the following:
  - a. A lease or bailment of personal property that is incidental to the lease of real property.
  - b. A lease of a motor vehicle, as defined in s. 218.0101 (22).
  - c. A credit sale, as defined in 15 USC 1602 (g) and in the regulations promulgated under that section.

**430.202 TERRITORIAL APPLICATION.**

- (1) For the purposes of this chapter, a rental-purchase agreement is entered into in this state if any of the following applies:
  - a. A writing signed by a lessee and evidencing the obligation under the rental-purchase agreement or an offer of a lessee is received by a rental-purchase company in this state.
  - b. The rental-purchase company induces a lessee who is a resident of this state to enter into the rental-purchase agreement by face-to-face solicitation or by mail or telephone solicitation directed to the particular lessee in this state.
- (2) If a rental-purchase agreement, or modification thereof, is made in another state with a lessee who is a resident of this state when the transaction or modification is made, the following provisions apply as though the transaction occurred in this state:
  - a. A rental-purchase company, or an assignee of his rights, may collect through actions or other proceedings charges only to the extent permitted by this chapter.
  - b. A rental-purchase company may not enforce rights against the lessee to the extent that the provisions of the agreement violate subch. 430.503.
- (3) Except as provided in sub. (1) and (2), a rental-purchase agreement or modification thereof, made in another state with a customer who was not a resident of this state when the agreement or modification was made, is valid and enforceable under the

laws of the state applicable to the transaction.

- (4) For purposes of this chapter, the residence of a lessee is the address given by the lessee as his or her residence in any writing signed by the lessee in connection with a rental-purchase agreement. The given address is presumed to be unchanged until the rental-purchase company knows or has reason to know of a new or different address.

### **SUBCHAPTER III**

#### **DEFINITIONS**

#### **430.301 DEFINITIONS.**

In this chapter:

- (1) "Administrator" means the secretary of financial institutions.
- (2) "Division" means the division of banking in the department of financial institutions.
- (3) "Lessee" means an individual who rents personal property under a rental-purchase agreement.
- (3) "Licensee" means a rental-purchase company holding a license issued by the division under this chapter.
- (4) "Rental property" means personal property rented under a rental-purchase agreement.
- (5) "Rental-purchase company" means a person engaged in the business of entering into rental-purchase agreements in this state or acquiring or servicing rental-purchase agreements that are entered into in this state.
- (6) "Rental-purchase agreement" means an agreement between a rental-purchase company and a lessee for the use of personal property if all of the following conditions are met:
  - a. The personal property that is rented under the agreement 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 IV  
ADMINISTRATION**

**430.401 LICENSE REQUIRED.**

No person may operate as a rental-purchase company without a valid license issued by the division under this chapter.

**430.402 APPLICATION FOR LICENSE; FEES; BOND.**

**(1) APPLICATION.**

a. An application for a license under this chapter shall be made to the division, in writing, in the form prescribed by the division. An application for a license under this chapter 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 chapter, the applicant shall pay any applicable fee specified in the rules promulgated under s. 430.408 (3).

**(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.

**430.403 ISSUANCE OR DENIAL OF LICENSE.**

**(1) INVESTIGATION.** Upon the filing of an application under s. 430.402 (1) and the payment of any applicable fee, the division shall perform an investigation. Except as

provided in sub. (3), if the division finds that the character, general fitness, and financial responsibility of the applicant; 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, warrant the belief that the business will be operated in compliance with this chapter, the division shall issue a license to the applicant.

(2) **DENIAL; NOTICE; HEARING.** Except as provided in sub. (3), the division may deny an application made under s. 430.402 (1) by providing written notice to the applicant stating the grounds for the denial. Except as provided in sub. (3), a person whose application is 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 chapter if any of the following applies:

- a. The applicant fails to provide the information required under s. 430.402 (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 a 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 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.

#### **430.404 LICENSES; OTHER BUSINESS.**

- (1) **LICENSED LOCATIONS.** A license issued under this chapter shall specify the location at which the licensee is permitted to conduct business. A separate license shall be required for each place of business maintained by the licensee.
- (2) **ASSIGNMENT.** A license issued under this chapter 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 until suspended or revoked in accordance with this chapter 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. 430.408 (3) and, if required by the division, provide a rider or endorsement to increase the amount of any bond required under s. 430.402 (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, which authorization shall not be unreasonably withheld.

#### **430.405 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 chapter if the division finds that any of the following applies:
  - a. The licensee has violated any of the provisions of this chapter, any rules promulgated under s. 430.408 (3), or any lawful order of the division under s. 430.408 (1), and after notification thereof, has not corrected the violation.
  - b. A fact or condition exists that, 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. 430.404 (4) or has failed to maintain in effect any bond required under s. 430.402 (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. 430.406 (2).

f. The licensee has failed to pay any penalties due under s. 430.901 (1) or (2) within 30 days after receiving notice, by certified mail, that the penalties are due.

(2) **MANDATORY RESTRICTION OR SUSPENSION; CHILD OR FAMILY SUPPORT.** The division shall restrict or suspend a license issued under this chapter 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 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 chapter 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 chapter:

- 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 specified in 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 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 all of the conditions specified in 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 division suspending or revoking the licensee's license shall be stayed pending completion of proceedings under ch. 227.

#### **430.406 MODIFICATION OF LICENSE.**

- (1) **CHANGE IN PLACE OF BUSINESS.** No licensee may change its place of business to another location without the prior approval of the division, which approval shall not be unreasonably withheld. A licensee shall provide the division with at least 15 days' prior written notice of a proposed change under this section and shall pay any applicable fees specified in the rules promulgated under s. 430.408 (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 chapter 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.

#### **430.407 ANNUAL REPORT; RECORDS.**

- (1) **ANNUAL REPORT.** On or before March 31 of each year, 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 chapter are being observed. Every licensee shall preserve its records of a rental-purchase agreement for at least 2 years after making the final entry with respect to the rental-purchase agreement.

#### **430.408 POWERS AND DUTIES OF DIVISION; ADMINISTRATION.**

- (1) **ORDERS.** The division may issue any general order, as defined in s. 217.02 (3), or special order, as defined in s. 217.02 (10), in execution of or supplementary to this chapter, except that the division may not issue a general order or special order that conflicts with this chapter.
- (2) **INVESTIGATIONS AND EXAMINATIONS.** For the purpose of discovering violations of this chapter, the division may cause an investigation or examination to be made of the business of a licensee transacted under this chapter. The place of business, books of accounts, papers, records, safes, and vaults of the licensee shall be open to the division for the purpose of an investigation or examination, and the division has authority to examine under oath all persons whose testimony is required for an investigation or examination. The division shall determine the cost of an investigation or examination. The licensee shall pay the cost of an investigation or examination. The licensee shall pay the cost of any hearing held for the purpose of

this subsection, including witness fees, unless the division or a court finds that the licensee has not violated any provision of this chapter. The licensee shall pay all costs owing under this subsection within 30 days after the division demands payment. The state may maintain an action for the recovery of any costs owing under this subsection.

(3) **VERIFIED COMPLAINT; MANDATORY INVESTIGATION.** If 5 or more persons file a verified complaint with the Administrator alleging that a rental-purchase company has engaged in an act which is subject to action by the Administrator, he shall immediately commence an investigation pursuant to sub. (2).

(4) **RULES.** The division may promulgate rules for the administration of this chapter.

(5) **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.

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

#### **SUBCHAPTER V**

### **DISCLOSURE, FORM OF WRITINGS, PROHIBITED PRACTICES, LIABILITY WAIVERS AND ACCOUNT RECEIPTS**

#### **430.501 GENERAL REQUIREMENTS OF DISCLOSURE.**

(1) **FORM. LOCATION, SIZE, AND TIME OF DISCLOSURE.** The information required under s. 430.502 to be disclosed in a rental-purchase agreement shall satisfy all of the following requirements:

- a. The information shall be clearly and conspicuously disclosed.
- b. The information shall be disclosed in writing.
- c. The information shall be disclosed on the face of the rental-purchase agreement above the line for the lessee's signature.
- d. The information shall be disclosed in not less than 8-point standard type.
- e. The information shall be disclosed before the time that the lessee becomes legally obligated under the rental-purchase agreement.
- f. The disclosures required by s. 430.502 (2), (3), (4) and (5) shall be printed in

at least 10-point boldface type, shall be grouped together in a box, and shall include a space next to the box where the lessee may acknowledge that the lessee had read and understands the information disclosed therein, in the form and order prescribed by the division.

- (2) **ACCURACY OF DISCLOSURE.** The information required under s. 430.502 must be accurate as of the time that it is disclosed to the lessee. If any information subsequently becomes inaccurate as a result of any act, occurrence, or agreement by the lessee, the resulting inaccuracy is not a violation of this chapter.
- (3) **COPY OF RENTAL-PURCHASE AGREEMENT.** The rental-purchase company shall provide the lessee with a copy of the completed rental-purchase agreement signed by the lessee. If more than one lessee is legally obligated under the same rental-purchase agreement, delivery of a copy of the completed rental-purchase agreement to one of the lessees shall satisfy this subsection.
- (4) **SINGLE INSTRUMENT.** In a rental-purchase agreement, the lessee's rental 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.

#### **430.502 REQUIRED PROVISIONS OF RENTAL-PURCHASE AGREEMENTS.**

A rental-purchase company shall include all of the following information, to the extent applicable, in every rental-purchase agreement:

- (1) **DESCRIPTION.** A brief description of the rental property, sufficient to identify the rental property to the lessee and the rental-purchase company, including any identification number, and a statement indicating whether the rental property is new or used. A statement that incorrectly indicates that new rental property is used is not a violation of this chapter.
- (2) **CASH PRICE.** The price at which the rental-purchase company would sell the rental property to the lessee if the lessee were to pay for the rental property in full on the date on which the rental-purchase agreement is executed, along with a statement that, if the lessee is able to purchase the property for cash, or is able to obtain credit to finance the purchase, the lessee may be able to purchase similar property from a retailer at a lower cost.
- (3) **PERIODIC RENTAL PAYMENTS TO ACQUIRE OWNERSHIP.** The total

number, total dollar amount, and timing of all periodic rental payments necessary to acquire ownership of the rental property.

- (4) **COST OF RENTAL SERVICES.** The difference between the total dollar amount of payments necessary to acquire ownership of the rental property disclosed under sub. (3), and the cash price of the property disclosed under sub. (2), accompanied by a statement substantially similar to the following: "The cost of rental services is the amount you will pay in addition to the cash price if you acquire ownership of the rented goods by making all payments necessary to acquire ownership".
- (5) **RENTAL PAYMENT.** The periodic rental payment for the rental property.
- (6) **UP-FRONT PAYMENT.** Any payment required of the lessee at the time that the agreement is executed or at the time that the rental property is delivered, including the initial rental payment, any application or processing charge, any delivery fee, the applicable tax, and any charge for a liability damage waiver or for other optional services agreed to by the lessee.
- (7) **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 were to rent the rental property until the lessee acquires ownership, assuming that the lessee does not add or decline the liability damage waiver or optional services after signing the rental-purchase agreement.
- (8) **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. (3), and the total dollar amount of all other charges and fees disclosed under sub. (7), 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 if the lessee does not add or decline the liability damage waiver or optional services after signing the rental-purchase agreement.
- (9) **OTHER CHARGES.** An itemized description of any other charges or fees that the rental-purchase company may charge the lessee not otherwise disclosed in the rental-purchase agreement.
- (10) **SUMMARY OF EARLY-PURCHASE OPTION.** A statement summarizing the terms of the lessee's option to acquire ownership of the rental

property as set forth in Ch. 430.505 (2) herein.

- (11) **RESPONSIBILITY FOR THEFT OR DAMAGE.** A statement that, unless otherwise agreed, the lessee is responsible for the fair market value of the rental property, determined according to the early-purchase option formula under sub. (10), if the rental property is stolen, damaged, or destroyed while in the possession of or subject to the control of the lessee. The statement shall indicate that the fair market value will be determined as of the date on which the rental property is stolen, damaged, or destroyed.
- (12) **SERVICE AND WARRANTY.** A statement that during the term of the rental-purchase agreement, the rental-purchase company is required to service the rental property and 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 control of the rental-purchase company or manufacturer.
- (13) **TERMINATION AT OPTION OF LESSEE.** A statement that the lessee may terminate the agreement at any time without penalty by voluntarily surrendering or returning the rental property in good repair.
- (14) **RIGHT TO REINSTATE.** A brief explanation of the lessee's right to reinstate a rental-purchase agreement under s. 430.703.
- (15) **RENTAL, NOT PURCHASE.** A statement that the lessee will not own the rental property until the lessee has made all payments necessary to acquire ownership or has exercised the lessee's early-purchase option. The rental-purchase company shall also include a notice reading substantially as follows: "You are renting this property. You will not own the property until you make all payments necessary to acquire ownership or until you exercise your early-purchase option. If you do not make your payments as scheduled or exercise your early-purchase option, the lessor may repossess the property."
- (16) **INFORMATION ABOUT RENTAL-PURCHASE COMPANY AND LESSEE.** The names of the rental-purchase company and the lessee, the rental-purchase company's business address and telephone number, the lessee's address, and the date on which the rental-purchase agreement is executed.

**430.503. PROHIBITED PROVISIONS OF RENTAL-PURCHASE**

**AGREEMENTS.** A Rental-purchase company may not include any of the following provisions in a rental-purchase agreement:

- (1) **CONFESSION.** A confession of judgment.
- (2) **SECURITY.** A provision granting the rental-purchase company a security interest in any property except the rental property delivered by the rental-purchase company under the rental-purchase agreement.
- (3) **REPOSSESSION.** A provision authorizing the rental-purchase company or an agent of the rental-purchase company to enter the lessee's premises without the lessee's contemporaneous permission, or to commit a breach of the peace in the repossession of rental property provided by the rental-purchase company under the rental-purchase agreement.
- (4) **WAIVER.** A waiver of a defense or counterclaim, a waiver of any right to assert any claim that the lessee may have against the rental-purchase company or against an agent of the rental-purchase company, or a waiver of any provision of this chapter.
- (5) **OVERPAYMENT.** A provision requiring periodic rental payments totaling more than the total dollar amount of all periodic rental payments necessary to acquire ownership, as disclosed in the rental-purchase agreement.
- (6) **INSURANCE.** A provision requiring the lessee to purchase insurance from the rental-purchase company to insure the rental property.
- (7) **ATTORNEY FEES.** A provision requiring the lessee to pay attorney fees.

**430.504 LIABILITY WAIVERS.**

A rental-purchase company may offer a liability waiver to the lessee. The terms of the waiver shall be provided to the lessee in writing, incorporated into the rental-purchase agreement or on a separate document. The face of the writing shall clearly disclose that the lessee is not required to purchase the waiver. The fee for the waiver may not exceed 10% of the periodic rental payment due under the rental-purchase agreement. The lessee shall be entitled to cancel the waiver at the end of any rental term.

**430.505 LESSEE'S RIGHT TO ACQUIRE OWNERSHIP.**

- (1) **LIMITATION ON COST OF RENTAL SERVICES:** The total amount charged by the lessor for the cost of rental services in a rental-purchase transaction shall not exceed the cash price of the property.
- (2) **ACQUISITION OF OWNERSHIP:** At any time after tendering an initial rental

payment, a lessee may acquire ownership of the property that is the subject of the rental-purchase agreement by tendering an amount equal at a maximum to the amount by which the cash price of the rented property exceeds 50% of all rental payments made by the lessee.

#### **430.506 UNCONSCIONABLE CONDUCT.**

The Administrator shall promulgate rules declaring specific conduct in rental-purchase agreements and the collection of accounts and property arising there from to be unconscionable and prohibiting the use thereof. In promulgating such rules, the Administrator shall consider, among other things:

- (1) That the practice unfairly takes advantage of the lack of knowledge, ability, experience, or capacity of customers;
- (2) That those engaging in the practice know of the inability of customers to receive benefits properly anticipated from the goods or services involved;
- (3) The fact that the practice may enable merchants to take advantage of the inability of customers reasonably to protect their interests by reason of physical or mental infirmities, illiteracy or inability to understand the language of the agreement, ignorance or lack of education or similar factors;
- (4) That the terms of the transaction require customers to waive legal rights;
- (5) That the terms of the transaction require customers to unreasonably jeopardize money or property beyond the money or property immediately at issue in the transaction;
- (6) That the natural effect of the practice is to cause or aid in causing customers to misunderstand the true nature of the transaction or their rights and duties there under;
- (7) That the writing purporting to evidence the obligation of the customers in the transaction contains terms or provisions or authorizes practices prohibited by law; and
- (8) Definitions of unconscionability in statutes, rules, rulings and decisions of legislative, administrative or judicial bodies.

#### **430.507 RECEIPTS AND STATEMENTS.**

- (1) **RECEIPTS.** A rental-purchase company shall provide a written receipt to a lessee for any payment made by the lessee in cash, or upon the request of the lessee for any other type of payment.

- (2) **STATEMENT DUE TO LESSEE.** Subject to sub. (4), upon the request of a lessee, a rental-purchase company shall provide a written statement to the lessee showing the lessee's payment history under each rental-purchase agreement between the lessee and the rental-purchase company. A rental-purchase company is not required to provide a statement covering any rental-purchase agreement that terminated more than one year prior to the date of the lessee's request. A rental-purchase company may provide a single statement covering all rental-purchase agreements or separate statements for each rental-purchase agreement, at the rental-purchase company's option.
- (3) **STATEMENT DUE TO 3RD PARTY.** Subject to sub. (4), upon the written request of a lessee, made during the term of or no later than one year after the termination of a rental-purchase agreement, a rental-purchase company shall provide a written statement to any person designated by the lessee, showing the lessee's payment history under the rental-purchase agreement.
- (4) **FEE FOR STATEMENT.** A lessee or, if appropriate, a lessee's designee, 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.

## **SUBCHAPTER VI**

### **ADVERTISING, PRICE CARDS AND REFERRAL TRANSACTIONS**

#### **430.601 ADVERTISING.**

- (1) **DISCLOSURE REQUIRED.** Except as provided under sub. (2), if an advertisement for a rental-purchase agreement refers to or states the amount of a payment for a specific item of property, the rental-purchase company shall ensure that the advertisement clearly and conspicuously states all of the following:
- a. That the transaction advertised is a rental-purchase agreement.
  - b. The total number and total dollar amount of all periodic rental payments necessary to acquire ownership of the property.
  - c. That the lessee does not acquire ownership of the property if the lessee fails to make all periodic rental payments or other payments necessary to acquire ownership of the property.



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

#### **430.602 PRICE CARDS DISPLAYED.**

- (1) **PRICE CARDS GENERALLY.** Except as provided under sub. (2), a rental-purchase company shall display a card or tag that clearly and conspicuously states all of the following information on or next to any property displayed or offered by the rental-purchase company for rent under a rental-purchase agreement:
- a. The cash price that an individual would pay to purchase the property.
  - b. The amount and timing of the periodic rental payments.
  - c. The total number and total dollar amount of all periodic rental payments necessary to acquire ownership of the property under a rental-purchase agreement.
  - d. The cost of rental services under a rental-purchase agreement.
  - e. Whether the property is new or used.
- (2) **EXCEPTIONS.** If property is offered for rent under a rental-purchase agreement through a catalog, or if the size of the property is such that displaying a card or tag on or next to the property is impractical, a rental-purchase company may make the disclosures required under sub. (1) in a catalog or list that is readily available to prospective lessees.

#### **430.603 REFERRAL TRANSACTIONS.**

- (1) **PROHIBITED REFERRAL TRANSACTIONS.** No rental-purchase company may induce any individual to enter into a rental-purchase agreement by giving or offering to give a rebate or discount to the individual in consideration of the individual giving to the rental-purchase company the names of prospective lessees if the earning of the rebate or discount is contingent on the occurrence of any event that takes place after the time that the individual enters into the rental-purchase agreement.
- (2) **AUTHORIZED REFERRAL TRANSACTIONS.** After entering into a rental-purchase agreement, a rental-purchase company may give or offer to give a rebate or discount to the lessee under the rental-purchase agreement in consideration of the lessee giving to the rental-purchase company the names of prospective lessees. A rebate or discount under this subsection may be contingent on the occurrence of any

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

## **SUBCHAPTER VII**

### **TERMINATION, REINSTATEMENT, DEFAULT AND RIGHT TO CURE**

**430.701 TERMINATION OF RENTAL-PURCHASE AGREEMENT.** The termination date of a rental-purchase agreement is the earlier of the following:

- (1) The day specified in the rental-purchase agreement as the day on which the periodic rental term ends, unless a different day has been established pursuant to the terms of the rental-purchase agreement.
- (2) The date on which the lessee voluntarily surrenders the rental property.

**430.702 LATE FEE, GRACE PERIOD AND FEE LIMITATIONS.**

- (1) **LATE FEE, GENERALLY.** If a lessee fails to make a periodic rental payment when due under a rental-purchase agreement or if, at the end of any periodic rental term, the lessee fails to return the rental property or to renew the rental-purchase agreement for an additional term, the rental-purchase company may require the lessee to pay a late fee. Except as provided under sub. (4), this subsection does not apply if the lessee's failure to return the rental property or failure to renew the rental-purchase agreement at the end of the rental term is due to the lessee's exercise of an early-purchase option under the rental-purchase agreement or is due to the lessee making all periodic rental payments necessary to acquire ownership of the rental property.
- (2) **GRACE PERIODS.** The following grace periods shall apply to periodic rental payments made with respect to a rental-purchase agreement:
  - a. For an agreement that is renewed on a weekly basis, no late fee may be assessed for a periodic rental payment that is made within 2 days after the date on which the payment is due.
  - b. For an agreement that is renewed for a term that is longer than one week, no late fee may be assessed for a periodic rental payment that is made within 7 days after the date on which the payment is due.
- (3) **COLLECTION, APPLICATION AND LIMITATION OF LATE FEES.** Late fees are subject to all of the following limitations:

- a. A late fee may not exceed \$5 for each past-due periodic rental payment.
- b. A late fee may be collected only once on each periodic rental payment due, regardless of how long the payment remains past due.
- c. Payments received shall be applied first to the payment of any rent that is due and then to late fees and any other charges.
- d. A late fee may be collected at the time that the late fee accrues or at any time afterward.

**(4) EFFECT OF OUTSTANDING LATE FEE ON TRANSFER OF OWNERSHIP.**

A rental-purchase company may require payment of any outstanding late fees before transferring ownership of rental property to a lessee.

**430.703 REINSTATEMENT OF TERMINATED RENTAL-PURCHASE AGREEMENT.**

**(1) REINSTATEMENT GENERALLY.** A lessee may reinstate a terminated rental-purchase agreement without losing any rights or options previously acquired if all of the following conditions apply:

- a. The lessee returned or surrendered the rental property within 7 days after the termination of the rental-purchase agreement.
- b. Not more than 21 days have passed after the date on which the rental property was returned to the rental-purchase company or, if the lessee has paid two-thirds or more of the total number of periodic rental payments necessary to acquire ownership of the rental property, not more than 45 days have passed since the date on which the rental property was returned to the rental-purchase company.

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

**(3) EFFECT OF REPOSSESSION ON REINSTATEMENT.** Nothing in this section prohibits a rental-purchase company from attempting to repossess rental property upon termination of a rental-purchase agreement, but repossession efforts do not affect the lessee's right to reinstate the rental-purchase agreement as long as the rental property is repossessed, voluntarily returned or surrendered within 7 days after the termination of the rental-purchase agreement.

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

**430.704 DEFAULT AND RIGHT TO CURE.**

- (1) **DEFAULT GENERALLY.** A lessee is in default under a rental-purchase agreement if any of the following occurs:
- a. The lessee fails to return the rental property within 7 days after the date on which the last term for which a periodic rental payment was made expires, unless the lessee has exercised an early-purchase option or has made all periodic rental payments necessary to acquire ownership of the rental property.
  - b. The lessee materially breaches any other provision of the rental-purchase agreement.
- (2) **DEFAULT; NECESSARY FOR LESSEE LIABILITY.** No cause of action shall accrue against a lessee with respect to the lessee's obligations under a rental-purchase agreement except upon default and the expiration of any applicable period of time allowed for cure of the default.
- (3) **NOTICE OF DEFAULT; GENERAL REQUIREMENT.** Except as provided in sub. (4), as a condition precedent to bringing an action against a lessee arising out of the lessee's default, a rental-purchase company shall provide a written notice of the default and of the right to cure the default to the lessee. The notice shall specify the default and the action required to cure the default and shall inform the lessee that, if the default is not cured within 15 days after the notice is given, the rental-purchase company will have the right to bring an action against the lessee.
- (4) **NOTICE OF DEFAULT; EXCEPTION.** A rental-purchase company is not required to provide a notice of default and right to cure as a condition precedent to bringing an action against a lessee if the lessee breaches the agreement and, in so doing, may or does materially impair the condition, value or protection of the rental property, or otherwise if each of the following occurred twice during the 12 months before the date of the current default with respect to the same rental-purchase agreement:

- a. The lessee was in default.
  - b. The rental-purchase company gave the lessee written notice of the default and of the lessee's right to cure under sub. (3).
  - c. The lessee cured the default.
- (5) **REQUEST FOR VOLUNTARY SURRENDER OF PROPERTY.** A rental-purchase company may request the voluntary return or surrender of rental property prior to the declaration of a default and the sending of written notice of default and right to cure. A request under this subsection is subject to the requirements of s. 430.801.

### SUBCHAPTER VIII COLLECTION PRACTICES

**430.801 RENTAL-PURCHASE COMPANY COLLECTION PRACTICES.** In attempting to recover possession of rental property or to collect past-due periodic rental payments or other charges owed under a rental-purchase agreement, a rental-purchase company may not do any of the following:

- (1) **USE OF FORCE.** Use or threaten to use force or violence to cause physical harm to the lessee or the lessee's property or to a person related to the lessee.
- (2) **CRIMINAL PROSECUTION.** Threaten criminal prosecution.
- (3) **DISCLOSURE OF FALSE INFORMATION.** Disclose or threaten to disclose information adversely affecting the lessee's reputation for creditworthiness with knowledge or reason to know that the information is false.
- (4) **COMMUNICATION WITH LESSEE'S EMPLOYER.** Initiate or threaten to initiate communication with the lessee's employer prior to obtaining final judgment against the lessee, except for the purpose of enforcing an assignment of earnings authorized under s. 430.802. This subsection does not prohibit a rental-purchase company from communicating with a lessee's employer to verify employment status or earnings or to determine if the employer has an established debt counseling service or procedure.
- (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 creditworthiness, 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.

(6) **DISCLOSURE OF INFORMATION REGARDING A DISPUTED DEBT.**

Disclose or threaten to disclose information concerning the existence of a debt known to be reasonably disputed by the lessee without disclosing the fact that the lessee disputes the debt.

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

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

(9) **USE OF THREAT TO ENFORCE FALSE RIGHT.** Claim, attempt to claim, or threaten to enforce, a right with knowledge that the right does not exist.

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

(11) **USE OF THREAT TO SUE.** Threaten to file a civil action against the lessee unless the civil 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 civil action against the lessee.

(12) **VIOLATION OF RULES.** Engage in conduct in violation of a rule adopted by the Administrator after like conduct has been restrained or enjoined by a court in a civil action by the Administrator against any rental-purchase company pursuant to the provisions on injunction against false, misleading, deceptive or unconscionable agreements or conduct (ss. 430.503 and 430.505).

**430.802 ASSIGNMENT OF EARNINGS.** No rental-purchase company may take or arrange for an assignment of earnings of an individual for payment or as security for payment of an obligation arising out of a rental-purchase agreement unless the assignment is revocable at will by the individual.

## **SUBCHAPTER IX**

### **PENALTIES, CIVIL ACTIONS, LIMITATIONS AND VENUE**

#### **430.901 PENALTIES.**

- (1) **FAILURE TO PAY FEES AND PROVIDE REPORTS, INFORMATION, AND NOTICES; GENERALLY.** A Licensee that fails to file its annual report by the date specified in s. 430.407 (1), fails to pay the annual license fee by the date specified in s. 430.404 (4), fails to provide any required rider or endorsement to increase the amount of its bond by the date specified in s. 430.404 (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. 430.406 (1), or fails to provide notice to the division of other changes as required under s. 430.406 (2) by the date specified in s. 430.406 (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. 430.406 (2) by the date specified in s. 430.406 (2) may be required to forfeit not more than \$100. Each day that a failure described in this subsection continues constitutes a separate offense.
- (3) **MISDEMEANORS.** Any person who violates s. 430.408 (2) or any provision of ss. 430.401 to 430.407 other than those provisions described in subs. (1) and (2) may be fined not more than \$1,000, imprisoned for not more than 6 months, or both.

#### **430.902 CIVIL ACTIONS AND DEFENSES.**

- (1) **LIABILITY GENERALLY.** Except as provided under subs. (2) to (8), a rental-purchase company that violates any provision of this chapter is liable to a lessee that is damaged as a result of that violation for the costs of the action and, notwithstanding s. 814.04 (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; or
  - b. An amount equal to 25% of the total amount of payments necessary to acquire ownership of the property under the lessee's rental-purchase agreement, except that liability under this paragraph may not be less than \$100 or more than \$1,000.
- (2) **TEMPORARY RELIEF; INJUNCTIONS.** The Administrator may bring a civil action to restrain, by temporary or permanent injunction, a merchant from violating any provision of this chapter, or from engaging in false, misleading, deceptive, or unconscionable conduct, in rental-purchase transactions.
- (3) **LIABILITY, CERTAIN VIOLATIONS.** Except as provided in subs. (4) and (5), if a rental-purchase company violates s. 430.503, the lessee may retain the rental property under the rental-purchase agreement without obligation to pay any amount and may recover any amounts paid to the rental-purchase company under the rental-purchase agreement.
- (4) **CLASS ACTION.**
- a. In the case of a class action, a rental-purchase company that violates this chapter is liable to the members of the class in an amount equal to the actual damages incurred by the class. The total statutory damages for all lessees whose recovery is computed under sub. (1) (b) relating to statutory damages may not exceed \$100,000 plus the costs of the action and, notwithstanding s. 814.04 (1), reasonable attorneys' fees as determined by the court. In determining the amount to award under subsection (1)(b) herein, the court shall consider, among other relevant factors, the amount of actual damages sustained by the members of the class, the frequency and persistence of the violations by the rental-purchase company, the resources of the rental-purchase company, the number of persons damaged by the violation, the presence or absence of good faith on the part of the rental-purchase company, and the extent to which the violation was intentional.
  - b. Notwithstanding subsection a., no class action may be maintained for conduct proscribed in ch. 430 unless the conduct has been found to constitute a violation of ch. 430 at least 30 days prior to the occurrence of the conduct involved in the class action by an appellate court of this state or by a rule



promulgated by the division as provided in s. 430.408 (3), specifying with particularity the act or practice in question.

- c. At least 30 days prior to commencement of a class action for damages pursuant to the provisions of this section, any party must:
  - i. Notify the rental-purchase company against whom an alleged cause of action is asserted of the alleged claim or violation; and
  - ii. Demand that such rental-purchase company correct, or otherwise remedy, the basis for the alleged claim.
- d. The notice required in subsection c. shall be in writing, and shall be sent by certified or registered mail, return receipt requested, to such rental-purchase company at the place where the transaction occurred, such company's principal place of business within the state, or, if neither will effect actual notice, the department of financial institutions.
- e. Except as provided in subsection g., no action for damages may be maintained under this section if an appropriate remedy, which shall include actual damages and may include penalties, is given, or agreed to be given within a reasonable time, to such party within 30 days after receipt of such notice.
- f. Except as provided in subsection g., no action for damages may be maintained under this section upon a showing by a rental purchase company against whom the alleged claim or violation is asserted that all of the following exist:
  - i. All lessees similarly situated have been identified, or a reasonable effort to identify such other lessees has been made;
  - ii. All lessees so identified have been notified that, upon their request, such rental-purchase company shall make the appropriate remedy;
  - iii. The remedy requested by the lessees has been or in a reasonable time will be given; and
  - iv. Such rental-purchase company has ceased from engaging, or if immediate cessation is impossible under the circumstances, such rental-purchase company will, within a reasonable time, cease to engage in any acts on which the alleged claim is based.
- g. An action for injunctive relief may be commenced without compliance with

subsection c. Not less than 30 days after the commencement of an action for injunctive relief, and after compliance with subsection c., the lessee may amend his or her complaint without leave of court to include a request for damages. The appropriate provisions of subsections e. and f. shall be applicable if the complaint for injunctive relief is amended to request damages.

- h. As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and may be altered or amended before the decision on the merits. If the court determines that the action may not be maintained as a class action, it shall allow the action to proceed on behalf of the parties appearing in the action.
- i. In any class action maintained under this section, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall inform each class member that:
  - i. The court will exclude him from the class if he so requests by a specified date;
  - ii. The judgment, whether favorable or not, will include all members who do not request exclusion; and
  - iii. Any member who does not request exclusion may, if he desires, enter an appearance through his counsel.
- j. The judgment in an action maintained as a class action under this section, whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action, whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in sub. i. was directed, and who have not requested exclusion, and whom the court finds to be members of the class.
- k. When appropriate, a) an action may be brought or maintained as a class action with respect to particular issues, or b) a class may be divided into subclasses and each subclass treated as a class, and this section shall then be construed and applied accordingly.

- l. If judgment is for a class of plaintiffs, the court shall render judgment in favor of the Administrator and against the defendants for all costs of notice incurred by the Administrator in such action.
- m. In the conduct of actions to which this section applies, the court may make appropriate orders: a) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; b) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; c) imposing conditions on the representative parties or on interveners; d) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; e) dealing with similar procedural matters. The orders may be altered or amended as may be desirable from time to time.
- n. Once certified under this section, a class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.
- o. A merchant shall not be liable in a class action for statutory damages computed under sub. (1) (b) relating to statutory damages, unless it is shown by a preponderance of the evidence that the violation was a willful and knowing violation of this chapter. No recovery in an action under this subsection may exceed \$100,000.
- p. Reasonable attorneys' fees in a class action shall be determined by the value of the time reasonably expended by the attorney rather than by the amount of recovery on behalf of the class. A legal aid society or legal services program that represents a class shall be awarded a reasonable service fee in lieu of reasonable attorneys' fees, equal in amount to the amount of the attorneys' fees as measured by this subsection.
- q. The Administrator, whether or not a party to an action, shall bear the costs of

notice except that he may recover such costs from the defendant as provided in sub. 1.

- (5) **DEFENSE; BONA FIDE ERROR.** Notwithstanding any other section of this chapter, no customer shall be entitled, in an individual or class action, to recover any penalties provided under sub. 430.902 (1) b., if the rental-purchase company violating this chapter shows by a preponderance of the evidence that the violation was not intentional, and that the violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. A bona fide error under this subsection includes a clerical error, an error in making calculations, an error due to computer malfunction or to computer programming, or a printing error.
- (6) **DOUBLE LIABILITY LIMITED.** The liability of a rental-purchase company under this chapter is in lieu of, and not in addition to, any liability under the federal consumer credit protection act and s. 138.09 or 218.01. An action by a person alleging a violation under this chapter may not be maintained if a final judgment has been rendered for or against that person with respect to the same violation under the federal consumer credit protection act or s. 138.09 or 218.01. If a final judgment is entered against any rental-purchase company under this chapter and the federal consumer credit protection act or s. 138.09 or 218.01 for the same violation, the merchant has a cause of action for appropriate relief to the extent necessary to avoid double liability.
- (7) **LIABILITY FOR MULTIPLE VIOLATIONS.** Multiple violations of this chapter in connection with the same rental-purchase agreement shall entitle the lessee to only a single recovery under sub. (1), except that a violation of s. 430.801 that occurs after recovery has been granted with respect to that rental-purchase agreement may entitle the lessee to an additional recovery under sub. (1).
- (8) **NECESSARY PARTIES.** If more than one lessee is a party to the same rental-purchase agreement, all of the lessees that are parties to the rental-purchase agreement shall be joined as plaintiffs in any action under sub. (1), and the lessees are entitled to only a single recovery under sub. (1).

**430.903 LIMITATION ON ACTIONS.** An action brought by a lessee under this chapter shall be commenced within one year after the date on which the alleged violation occurred, 2 years after the date on which the rental-purchase agreement was entered into, or one year

after the date on which the last payment was made under the rental-purchase agreement, whichever is later.

**430.904 VENUE.**

- (1) **GENERALLY.** The venue for a claim arising out of a rental-purchase 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 rental-purchase 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 rental-purchase agreement, and if venue is based on residence, venue may be in the county of residence of any of the defendants.

**SECTION 2.** 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 3.** 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<sup>^</sup>, or otherwise, but to exclude laws relating to credit unions.

**SECTION 4.** 409.104 (12m) of the statutes is created to read:

409.104 (12m) To a transfer of an interest under a rental-purchase agreement under ch. 430;

or

**SECTION 5.** 421.202 (7m) of the statutes is created to read:

421.202 (7m) A rental-purchase agreement under ch. 430;

**SECTION 6. Nonstatutory provisions.**

**EMERGENCY RULES GOVERNING LICENSING FEES FOR RENTAL-PURCHASE COMPANIES.**

Using the procedure under section 227.24 of the statutes, the division of banking may promulgate rules authorized under section 430.408 (3) of the statutes, as created by this act, prescribing the fees under sections 430.402 (2), 430.404 (4), and 430.406 (1) 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 subsection.

**SECTION 7. Effective date.** This act takes effect on the 90th day after publication.

**(END)**



D-Note  
State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-4186/P1  
RAC: [Signature]

Monday 2/16

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

1 AN ACT ...; relating to: regulation of rental-purchase agreements and granting  
2 rule-making authority.

*Analysis by the Legislative Reference Bureau*

This is a preliminary version of the bill draft. An analysis will appear in a subsequent version of the bill draft.

For further information see the *state and local* 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:*

3 SECTION 1. 220.02 (2) (b) of the statutes is amended to read:

4 220.02 (2) (b) The lending of money under s. 138.09 or those relating to finance  
5 companies, motor vehicle dealers, adjustment service companies, community  
6 currency exchanges, rental-purchase companies licensed under ch. 430, and  
7 collection agencies under ch. 218.

, as affected by 2003 Wisconsin Act 33,

History: 1971 c. 239, 307; 1973 c. 3, 243; 1975 c. 65; 1977 c. 196 s. 131; 1977 c. 418; 1981 c. 390; 1985 a. 127; 1987 a. 399; 1989 a. 31; 1991 a. 221, 316; 1995 a. 27 ss. 52c, 5979 to 5984; 1995 a. 55, 216; 1997 a. 27; 2003 a. 33.

8 SECTION 2. 220.02 (3) of the statutes is amended to read:

1           220.02 (3) It is the intent of sub. (2) to give the division jurisdiction to enforce  
2 and carry out all laws relating to banks or banking in this state, including those  
3 relating to state banks, savings banks, savings and loan associations, and trust  
4 company banks, and also all laws relating to small loan companies or other loan  
5 companies or agencies, finance companies, motor vehicle dealers, adjustment service  
6 companies, community currency exchanges, rental-purchase companies licensed  
7 under ch. 430, and collection agencies and those relating to sellers of checks under  
8 ch. 217, whether doing business as corporations, individuals, or otherwise, but to  
9 exclude laws relating to credit unions.

History: 1971 c. 239, 307; 1973 c. 3, 243; 1975 c. 65; 1977 c. 196, 131; 1977 c. 418; 1981 c. 390; 1985 a. 127; 1987 a. 399; 1989 a. 31; 1991 a. 221, 316; 1995 a. 27 ss. 52c, 5979 to 5984; 1995 a. 55, 216; 1997 a. 27; 2003 a. 33.

10           **SECTION 3.** 409.109 (4) (n) of the statutes is created to read:

11           409.109 (4) (n) The transfer of an interest under a rental-purchase agreement  
12 under ch. 430.

13           **SECTION 4.** 421.202 (11) of the statutes is created to read:

14           421.202 (11) A rental-purchase agreement under ch. 430.

15           **SECTION 5.** 421.301 (9) of the statutes is amended to read:

16           421.301 (9) "Consumer credit sale" means a sale of goods, services or an  
17 interest in land to a customer on credit where the debt is payable in installments or  
18 a finance charge is imposed and includes any agreement in the form of a bailment  
19 of goods or lease of goods or real property if the bailee or lessee pays or agrees to pay  
20 as compensation for use a sum substantially equivalent to or in excess of the  
21 aggregate value of the goods or real property involved and it is agreed that the bailee  
22 or lessee will become, or for no other or a nominal consideration has the option to  
23 become, the owner of the goods or real property upon full compliance with the terms



1 of the agreement. “Consumer credit sale” does not include a rental-purchase  
 2 agreement under ch. 430. ✓

3 **History:** 1971 c. 239; 1973 c. 3; 1975 c. 407; 1979 c. 10, 89; 1983 a. 7; 1991 a. 148, 316; 1993 a. 111, 112; 1995 a. 329; 1997 a. 302; 1999 a. 162; 2001 a. 10. ✓

3 **SECTION 6.** 421.301 (11) of the statutes is amended to read:

4 421.301 (11) “Consumer lease” means a lease of goods which a merchant makes  
 5 to a customer for a term exceeding 4 months. “Consumer lease” does not include a  
 6 rental-purchase agreement under ch. 430. ✓

7 **Cross Reference:** Cross Reference: Cross Reference: See also s. DFI-Bkg 80.05, Wis. adm. code. **Cross Reference:** ✕

8 **History:** 1971 c. 239; 1973 c. 3; 1975 c. 407; 1979 c. 10, 89; 1983 a. 7; 1991 a. 148, 316; 1993 a. 111, 112; 1995 a. 329; 1997 a. 302; 1999 a. 162; 2001 a. 10.

8 **SECTION 7.** 423.201 (2) of the statutes is renumbered 423.201 (2) (intro.) and

9 amended to read:

10 423.201 (2) (intro.) “Consumer approval transaction” does not include ~~a~~ any of  
 11 the following:

12 (a) A catalog sale that is not accompanied by any other solicitation or a  
 13 consumer loan conducted and consummated entirely by mail.

14 **History:** 1971 c. 239; 1983 a. 389; 1997 a. 302; 1999 a. 32. ✓

14 **SECTION 8.** 423.201 (2) (b) of the statutes is created to read:

15 423.201 (2) (b) A rental-purchase agreement under ch. 430. ✓

16 **SECTION 9.** Chapter 430 of the statutes is created to read:

## 17 CHAPTER 430

### 18 RENTAL-PURCHASE AGREEMENTS

#### 19 SUBCHAPTER I

#### 20 SHORT TITLE; GENERAL PROVISIONS

21 **430.101 Short title.** Chapter 430 shall be known and may be cited as the  
 22 Wisconsin rental-purchase agreements act.

23 **430.102 Applicable law.** (1) Unless superseded by ch. 430, the principles of ✓  
 24 law and equity, including the law relative to capacity to contract, principal and agent,

1 estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other  
2 validating or invalidating cause supplement ch. 430.

3 **430.103 Obligation of good faith.** Every agreement or duty under this  
4 chapter imposes an obligation of good faith in its performance or enforcement. In this  
5 section, "good faith" means honesty in fact in the conduct or transaction concerned  
6 and the observance of reasonable commercial standards of fair dealing.

## 7 SUBCHAPTER II

### 8 SCOPE AND JURISDICTION

9 **430.201 Scope.** (1) **INAPPLICABILITY OF OTHER LAWS.** A rental-purchase  
10 agreement under this chapter is not governed by the laws relating to a security  
11 interest, as defined in s. 401.201 (37), or a lease, as defined in s. 411.103 (1) (j), and  
12 is not governed by chs. 421 to 427 and 429.

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

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

16 (b) A lease of a motor vehicle, as defined in s. 218.0101 (22).

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

19 **430.202 Territorial application.** (1) For the purposes of this chapter, a  
20 rental-purchase agreement is entered into in this state if any of the following  
21 applies:

22 (a) A writing signed by a lessee and evidencing the obligation under the rental-  
23 purchase agreement or an offer of a lessee is received by a rental-purchase company  
24 in this state.

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

4 (2) If a rental-purchase agreement is made or modified in another state with  
5 a lessee who is a resident of this state at the time that the agreement or modification  
6 is made, the following apply as though the agreement or modification occurred in this  
7 state:

8 (a) A rental-purchase company, or an assignee of its rights, may collect through  
9 actions or other proceedings charges only to the extent permitted under this chapter.

10 (b) A rental-purchase company may not enforce any right against a lessee if  
11 the enforcement of that right would violate s. 430.503.

12 (3) Except as provided in subs. (1) and (2), a rental-purchase agreement made  
13 or modified in another state with an individual who was not a resident of this state  
14 at the time that the agreement or modification was made, is valid and enforceable  
15 under the laws of the state applicable to the transaction.

16 (4) For purposes of this chapter, the residence of a lessee is the address given  
17 by the lessee as his or her residence in any writing signed by the lessee in connection  
18 with a rental-purchase agreement. The given address is presumed to be unchanged  
19 until the rental-purchase company knows or has reason to know of a new or different  
20 address.

### 21 SUBCHAPTER III

### 22 DEFINITIONS

23 **430.301 Definitions.** In this chapter:

24 (1) "Division" means the division of banking in the department of financial  
25 institutions.



1           **430.402 Application for license; fees; bond.** (1) APPLICATION. (a) An  
2 application for a license under this chapter shall be made to the division, in writing,  
3 in the form prescribed by the division. In addition to any other information that may  
4 be required by the division, an application for a license under this chapter shall  
5 include all of the following:

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

7           2. If the applicant is not an individual, the applicant's federal employer  
8 identification number.

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

11           1. The division may disclose the information to the department of revenue for  
12 the sole purpose of requesting certifications under s. 73.0301.

13           2. The division may disclose the information to the department of workforce  
14 development in accordance with a memorandum of understanding entered into  
15 under s. 49.857.

16           (2) APPLICATION FEES. At the time of applying to the division for a license under  
17 this chapter, the applicant shall pay any applicable fee specified by the division by  
18 rule.

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

22           **430.403 Issuance or denial of license.** (1) INVESTIGATION. Upon the filing  
23 of an application under s. 430.402 (1) and the payment of any applicable fee, the  
24 division shall perform an investigation. Except as provided in sub. (3), if the division  
25 finds that the character, general fitness, and financial responsibility of the applicant;

1 the members of the applicant, if the applicant is a partnership, limited liability  
2 company, or association; and the officers and directors of the applicant, if the  
3 applicant is a corporation warrant the belief that the business will be operated in  
4 compliance with this chapter, the division shall issue a license to the applicant.

5 (2) DENIAL; NOTICE; HEARING. Except as provided in sub. (3), the division may  
6 deny an application made under s. 430.402 (1) by providing written notice to the  
7 applicant stating the grounds for the denial. Except as provided in sub. (3), a person  
8 whose application is denied may request a hearing under s. 227.44 within 30 days  
9 after the date of denial. The division may appoint a hearing examiner under s. 227.46  
10 to conduct the hearing.

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

13 (a) The applicant fails to provide the information required under s. 430.402 (1)

14 (a).

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

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

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

5 **430.404 Licenses; other business.** (1) LICENSED LOCATIONS. A license issued  
6 under this chapter shall specify the location at which the licensee is permitted to  
7 conduct business. A separate license shall be required for each place of business  
8 maintained by the licensee.

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

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

12 (4) TERM OF LICENSE; FEE. Every license shall remain in force until suspended  
13 or revoked in accordance with this chapter or surrendered by the licensee. Every  
14 licensee shall, on or before June 1 of each year, pay to the division an annual license  
15 fee specified by the division by rule and, if required by the division, provide a rider  
16 or endorsement to increase the amount of any bond required under s. 430.402 (3).

17 (5) ~~Other business prohibited.~~ <sup>no (b) (c)</sup> No licensee may conduct business as a  
18 rental-purchase company within any office, room, or place of business in which any  
19 other business is solicited or engaged in, unless the licensee is authorized to do so,  
20 in writing, by the division. For the purpose of this subsection, the division may not  
21 unreasonably withhold any such authorization.

22 **430.405 Revocation, suspension, and restriction of license.** (1)  
23 DISCRETIONARY SUSPENSION OR REVOCATION. The division may issue an order  
24 suspending or revoking a license issued under this chapter if the division finds that  
25 any of the following applies:

1 (a) The licensee has violated this chapter, any rules promulgated under this  
2 chapter, or any lawful order of the division under s. 430.308 (1), and, after notice,  
3 has not corrected the violation.

4 (b) A fact or condition exists that, if it had existed at the time of the original  
5 application for the license, would have warranted the division's refusing to issue the  
6 license.

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

9 (d) The licensee has failed to pay the annual license fee required under s.  
10 430.404 (4) or has failed to maintain in effect any bond required under s. 430.402 (3).

11 (e) The licensee has failed to provide any additional information, data, or  
12 records required by the division, within the time period prescribed under s. 430.406  
13 (2).

14 (f) The licensee has failed to pay any penalties due under s. 430.901 (1) or (2)  
15 within 30 days after receiving notice, by certified mail, that the penalties are due.

16 (2) MANDATORY RESTRICTION OR SUSPENSION; CHILD OR FAMILY SUPPORT. The  
17 division shall restrict or suspend a license issued under this chapter if the division  
18 finds that the licensee is an individual who fails to comply, after appropriate notice,  
19 with a subpoena or warrant issued by the department of workforce development or  
20 a county child support agency under s. 59.53 (5) and related to paternity or child  
21 support proceedings or who is delinquent in making court-ordered payments of child  
22 or family support, maintenance, birth expenses, medical expenses, or other expenses  
23 related to the support of a child or former spouse, as provided in a memorandum of  
24 understanding entered into under s. 49.857. A licensee whose license is restricted  
25 or suspended under this subsection is entitled to a notice and hearing only as



1 provided in a memorandum of understanding entered into under s. 49.857<sup>✓</sup> and is not  
2 entitled to any other notice or hearing under this section.

3 (3) MANDATORY REVOCATION; DELINQUENT TAXES. The division shall revoke a  
4 license issued under this chapter if the department of revenue certifies under s.  
5 73.0301<sup>✓</sup> that the licensee is liable for delinquent taxes. A licensee whose license is  
6 revoked under this subsection<sup>✓</sup> for delinquent taxes is entitled to a notice under s.  
7 73.0301 (2)<sup>✓</sup> (b) 1. b. and a hearing under s. 73.0301 (5)<sup>✓</sup> (a) but is not entitled to any  
8 other notice or hearing under this section.

9 (4) REVOCATION AND SUSPENSION PROCEDURE. Except as provided in subs. (2)<sup>✓</sup> and  
10 (3)<sup>✓</sup>, the following procedure applies to every order of the division that suspends or  
11 revokes a license under this chapter<sup>✓</sup>:

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

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

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

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

10 **430.406 Modification of license.** (1) CHANGE IN PLACE OF BUSINESS. No  
11 licensee may change its place of business to another location without the prior  
12 approval of the division, which approval shall not be unreasonably withheld. A  
13 licensee shall provide the division with at least 15 days' prior written notice of a  
14 proposed change under this section and shall pay any applicable fees specified by the  
15 division by rule. Upon approval by the division of the new location, the division shall  
16 issue an amended license, specifying the date on which the amended license is issued  
17 and the new location.

18 (2) OTHER CHANGES. Except as provided in sub. (1), a licensee shall notify the  
19 division of any material change to the information provided in the licensee's original  
20 application for a license under this chapter or provided in a previous notice of change  
21 filed by the licensee with the division under this subsection. A licensee shall provide  
22 the notice required under this subsection within 10 days after the change. The  
23 licensee shall provide any additional information, data, and records about the  
24 change to the division within 20 days after the division requests the information,  
25 data, or records. The division shall determine the cost of investigating and

1 processing the change. The licensee shall pay the division's cost within 30 days after  
2 the division demands payment.

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

7 **430.407 Annual report; records.** (1) ANNUAL REPORT. On or before March  
8 31 of each year, a licensee shall file a report with the division giving such reasonable  
9 and relevant information as the division may require concerning the business and  
10 operations conducted by the licensee. The licensee shall make the report in the form  
11 prescribed by the division.

12 (2) BOOKS AND RECORDS. A licensee shall keep such books and records in the  
13 licensed location as, in the opinion of the division, will enable the division to enforce  
14 this chapter. Every licensee shall preserve its records of a rental-purchase  
15 agreement for at least 2 years after making any final entry with respect to the  
16 rental-purchase agreement.

17 **430.408 Powers and duties of division; administration.** (1) ORDERS. The  
18 division may issue any general order, as defined in s. 217.02 (3), or special order, as  
19 defined in s. 217.02 (10), in execution of or supplementary to this chapter.

20 (2) INVESTIGATIONS AND EXAMINATIONS. For the purpose of discovering violations  
21 of this chapter, the division may investigate or examine the business of a licensee  
22 transacted under this chapter. The place of business, books of accounts, papers,  
23 records, safes, and vaults of the licensee shall be open to the division for the purpose  
24 of an investigation or examination, and the division has authority to examine under  
25 oath all persons whose testimony is required for an investigation or examination.

1 The division shall determine the cost of an investigation or examination. The  
 2 licensee shall pay the cost of an investigation or examination. The licensee shall pay  
 3 the cost of any hearing held for the purpose of this subsection, including witness fees,  
 4 unless the division or a court finds that the licensee has not violated this chapter. The  
 5 licensee shall pay all costs owing under this subsection within 30 days after the  
 6 division demands payment. The state may maintain an action for the recovery of any  
 7 costs owing under this subsection.

8 (3) VERIFIED COMPLAINT; MANDATORY INVESTIGATION. If 5 or more persons file a  
 9 verified complaint with the secretary alleging that a rental-purchase company has  
 10 engaged in an act which is subject to action by the secretary, he or she shall  
 11 immediately commence an investigation pursuant to sub. (2).

12 (4) RULES. The division may promulgate rules for the administration of this  
 13 chapter, except that the secretary shall promulgate rules under s. 430.506.

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

17 (6) ENFORCEMENT. The division may investigate whether this chapter or any  
 18 lawful orders issued under sub. (1) are being violated. The division may report  
 19 violations of this chapter to the attorney general or the district attorney of the proper  
 20 county for prosecution.

21 SUBCHAPTER V

22 DISCLOSURE, FORM OF WRITINGS, PROHIBITED PRACTICES, LIABILITY  
 23 WAIVERS, AND ACCOUNT RECEIPTS

1           **430.501 General requirements of disclosure.** (1) FORM, LOCATION, SIZE, AND  
2 TIME OF DISCLOSURE. The information that is required to be disclosed under s. 430.502  
3 shall satisfy all of the following:

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

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

6           (c) The information shall be disclosed on the face of the rental-purchase  
7 agreement above the line for the lessee's signature.

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

9           (e) The information shall be disclosed before the time that the lessee becomes  
10 legally obligated under the rental-purchase agreement.

11           (f) The disclosures required by s. 430.502 (2), (3), (4), and (5) shall be printed  
12 in at least 10-point boldface type, and shall be grouped together in a box, in the form  
13 and order prescribed by the division.

14           (2) ACCURACY OF DISCLOSURE. The information required under s. 430.502 must  
15 be accurate as of the time that it is disclosed to the lessee. If any information  
16 subsequently becomes inaccurate as a result of any act, occurrence, or agreement by  
17 the lessee, the resulting inaccuracy is not a violation of this chapter.

18           (3) COPY OF RENTAL-PURCHASE AGREEMENT. The rental-purchase company shall  
19 provide the lessee with a copy of the completed rental-purchase agreement signed  
20 by the lessee. If more than one lessee is legally obligated under the same  
21 rental-purchase agreement, delivery of a copy of the completed rental-purchase  
22 agreement to one of the lessees shall satisfy this subsection.

23           (4) SINGLE INSTRUMENT. In a rental-purchase agreement, the lessee's rental  
24 payment obligations shall be evidenced by a single instrument, which shall include

1 the signature of the rental-purchase company, the signature of the lessee, and the  
2 date on which the instrument is signed.

*rental-purchase ← (B)*

3

**430.502 Required provisions of ~~rental-purchase~~ agreement.** A

4 rental-purchase company shall include all of the following information, to the extent  
5 applicable, in every rental-purchase agreement:

6 (1) DESCRIPTION. A brief description of the rental property, sufficient to identify  
7 the rental property to the lessee and the rental-purchase company, including any  
8 identification number, and a statement indicating whether the rental property is  
9 new or used.

10 (2) CASH PRICE. The price at which the rental-purchase company would sell the  
11 rental property to the lessee if the lessee were to pay for the rental property in full  
12 on the date on which the rental-purchase agreement is executed, along with a  
13 statement that, if the lessee intends to acquire ownership of the rental property and  
14 is able to pay for the property in full or is able to obtain credit to finance the purchase,  
15 the lessee may be able to purchase similar property from a retailer at a lower cost.

16

(3) PERIODIC RENTAL PAYMENTS TO ACQUIRE OWNERSHIP. The total number, total  
17 dollar amount, and timing of all periodic rental payments necessary to acquire  
18 ownership of the rental property.

19 (4) COST OF RENTAL. The difference between the total dollar amount of  
20 payments necessary to acquire ownership of the rental property disclosed under sub.  
21 (3), and the cash price of the property disclosed under sub. (2). The rental-purchase  
22 company shall also include a statement substantially similar to the following: "The  
23 cost of rental services is the amount you will pay in addition to the cash price if you  
24 acquire ownership of the rented goods by making all payments necessary to acquire  
25 ownership".

1           (5) RENTAL PAYMENT. The periodic rental payment for the rental property.

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

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

12           (8) TOTAL PAYMENTS TO ACQUIRE OWNERSHIP. The total of all charges to be paid  
13 by the lessee to acquire ownership of the rental property, which shall consist of the  
14 total dollar amount of all periodic rental payments disclosed under sub. (3), and the  
15 total dollar amount of all other charges and fees disclosed under sub. (7), along with  
16 a statement that this is the amount a lessee will pay to acquire ownership of the  
17 rental property if the tax rates do not change and if the lessee does not add or decline  
18 the liability damage waiver or optional services after signing the rental-purchase  
19 agreement.

20           (9) OTHER CHARGES. An itemized description of any other charges or fees that  
21 the rental-purchase company may charge the lessee that are not otherwise disclosed  
22 in the rental-purchase agreement.

23           (10) SUMMARY OF EARLY-PURCHASE OPTION. A statement summarizing the terms  
24 of the lessee's options to acquire ownership of the rental property as provided in s.  
25 430.505 (2).

1           (11) RESPONSIBILITY FOR THEFT OR DAMAGE. A statement that, unless otherwise  
2 agreed, the lessee is responsible for the fair market value of the rental property,  
3 determined according to the early-purchase option formula under sub. (10), if the  
4 rental property is stolen, damaged, or destroyed while in the possession of or subject  
5 to the control of the lessee. The statement shall indicate that the fair market value  
6 will be determined as of the date on which the rental property is stolen, damaged,  
7 or destroyed.

8           (12) SERVICE AND WARRANTY. A statement that during the term of the rental-  
9 purchase agreement, the rental-purchase company is required to service the rental  
10 property and maintain it in good working condition, as long as no other person has  
11 serviced the rental property. In lieu of servicing the rental property, the  
12 rental-purchase company may, at its option, replace the rental property. The  
13 rental-purchase company's obligation to provide service is limited to defects in the  
14 property not caused by improper use or neglect by the lessee or harmful conditions  
15 outside the control of the rental-purchase company or manufacturer.

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

19           (14) RIGHT TO REINSTATE. A brief explanation of the lessee's right to reinstate  
20 a rental-purchase agreement under s. 430.703.

21           (15) RENTAL, NOT PURCHASE. A statement that the lessee will not own the rental  
22 property until the lessee has made all payments necessary to acquire ownership or  
23 has exercised the lessee's early-purchase option. The rental-purchase company  
24 shall also include a notice reading substantially as follows: "You are renting this  
25 property. You will not own the property until you make all payments necessary to



1 acquire ownership or until you exercise your early-purchase option. If you do not  
2 make your payments as scheduled or exercise your early-purchase option, the lessor  
3 may repossess the property.”

4 (16) INFORMATION ABOUT RENTAL-PURCHASE COMPANY AND LESSEE. The names of  
5 the rental-purchase company and the lessee, the rental-purchase company’s  
6 business address and telephone number, the lessee’s address, and the date on which  
7 the rental-purchase agreement is executed.

8 **430.503 Prohibited provisions of rental-purchase agreements.** A  
9 rental-purchase agreement may not contain any of the following:

10 (1) CONFESSION. A confession of judgment.

11 (2) SECURITY. A provision granting the rental-purchase company a security  
12 interest in any property, except rental property delivered by the rental-purchase  
13 company under the rental-purchase agreement.

14 (3) REPOSSESSION. A provision authorizing a rental-purchase company, or an  
15 agent of the rental-purchase company, to enter the lessee’s premises without the  
16 lessee’s contemporaneous permission, or to commit a breach of the peace in the  
17 repossession of rental property provided by the rental-purchase company under the  
18 rental-purchase agreement.

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

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

1           (6) INSURANCE. A provision requiring the lessee to purchase insurance from the  
2 rental-purchase company to insure the rental property.

3           (7) ATTORNEY FEES. A provision requiring the lessee to pay any attorney fees.

4           **430.504 Liability waiver.** A rental-purchase company may offer a liability  
5 waiver to the lessee. The terms of the waiver must be provided to the lessee in  
6 writing, incorporated into the rental-purchase agreement or on a separate  
7 document. The face of the writing shall clearly disclose that the lessee is not required  
8 to purchase the waiver. The fee for the waiver may not exceed 10%<sup>one percent</sup> of the periodic  
9 rental payment due under the rental-purchase agreement. The lessee shall be  
10 entitled to cancel the waiver at the end of any rental term.

11           **430.505 Lessee's right to acquire ownership.** (1) LIMITS ON COST OF RENTAL  
12 SERVICES. The total amount charged by the lessor for the cost of rental services in a  
13 rental-purchase transaction shall not exceed the cash price of the property.

14           (2) ACQUISITION OF OWNERSHIP. At any time after tendering an initial rental  
15 payment, a lessee may acquire ownership of the property that is the subject of the  
16 rental-purchase agreement by tendering an amount equal at a maximum to the  
17 amount by which the cash price of the rented property exceeds 50%<sup>one percent</sup> of all rental  
18 payments made by the lessee.

19           **430.506 Unconscionable conduct.** The secretary shall promulgate rules  
20 declaring specific conduct in rental-purchase agreements and the collection of  
21 accounts and property arising therefrom to be unconscionable and prohibiting the  
22 use thereof. In promulgating such rules, the secretary shall consider, among other  
23 things:

24           (1) That the practice unfairly takes advantage of the lack of knowledge, ability,  
25 experience, or capacity <sup>of</sup> or customers.

1           (2) That those engaging in the practice know of the inability of customers to  
2 receive benefits properly anticipated from the goods or services involved.

3           (3) The fact that the practice may enable merchants to take advantage of the  
4 inability of customers reasonably to protect their interests by reason of physical or  
5 mental infirmities, illiteracy, or inability to understand the language of the  
6 agreement, ignorance or lack of education, or similar factors.

7           (4) That the terms of the transaction require customers to waive legal rights.

8           (5) That the terms of the transaction require customers to unreasonably  
9 jeopardize money or property beyond the money or property immediately at issue in  
10 the transaction.

11           (6) That the natural effect of the practice is to cause or aid in causing customers  
12 to misunderstand the true nature of the transaction or their rights and duties  
13 thereunder.

14           (7) That the writing purporting to evidence the obligation of the customers in  
15 the transaction contains terms or provisions or authorizes practices prohibited by  
16 law.

17           (8) Definitions of unconscionability in statutes, rules, rulings and decisions of  
18 legislative, administrative, or judicial bodies.

19           **430.507 Receipts and statements.** (1) RECEIPTS. A rental-purchase  
20 company shall provide a written receipt to the lessee for any payment made by the  
21 lessee in cash or, upon the request of the lessee, for any other type of payment.

22           (2) STATEMENT DUE TO LESSEE. Subject to sub. (4), upon the request of a lessee,  
23 a rental-purchase company shall provide a written statement to the lessee showing  
24 the lessee's payment history on each rental-purchase agreement between the lessee  
25 and the rental-purchase company. A rental-purchase company is not required to

1 provide a statement covering any rental-purchase agreement that was terminated  
2 more than one year prior to the date of the lessee's request. A rental-purchase  
3 company may provide a single statement covering all rental-purchase agreements  
4 or separate statements for each rental-purchase agreement, at the rental-purchase  
5 company's option.

6 (3) STATEMENT DUE TO OTHER PARTIES. Subject to sub. (4)<sup>✓</sup>, upon the written  
7 request of a lessee, made during the term of or no later than one year after the  
8 termination of a rental-purchase agreement, a rental-purchase company shall  
9 provide a written statement to any person designated by the lessee, showing the  
10 lessee's payment history under the rental-purchase agreement.

11 (4) FEE FOR STATEMENT. A lessee or, if appropriate, a lessee's designee, is entitled  
12 to receive one statement under subs. (2)<sup>✓</sup> and (3)<sup>✓</sup> without charge once every 12  
13 months. A rental-purchase company shall provide an additional statement if the  
14 lessee pays the rental-purchase company's reasonable costs of preparing and  
15 furnishing the statement.

## 16 SUBCHAPTER VI

### 17 ADVERTISING, PRICE CARDS, AND (REFERRAL TRANSACTIONS

18 **430.601 Advertising.** (1) DISCLOSURE REQUIRED. Except as provided under  
19 sub. (2)<sup>✓</sup>, if an advertisement for a rental-purchase agreement refers to or states the  
20 amount of a payment for a specific item of property, the advertisement shall also  
21 clearly and conspicuously state all of the following:

- 22 (a) That the transaction advertised is a rental-purchase agreement.
- 23 (b) The total number and total dollar amount of all periodic rental payments  
24 necessary to acquire ownership of the property.

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

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

7 **430.602 Price cards displayed.** (1) PRICE CARDS GENERALLY. Except as  
8 provided in sub. (2), a card or tag that clearly and conspicuously states all of the  
9 following shall be displayed on or next to any property displayed or offered by a  
10 rental-purchase company for rent under a rental purchase agreement:

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

12 (b) The amount and timing of the periodic rental payments.

13 (c) The total number and total amount of all periodic rental payments  
14 necessary to acquire ownership of the property under a rental-purchase agreement.

15 (d) The cost of rental services under a rental-purchase agreement.

16 (e) Whether the property is new or used.

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

22 **430.603 Referral transactions.** (1) PROHIBITED REFERRAL TRANSACTIONS. No  
23 rental-purchase company may induce any individual to enter into a rental-purchase  
24 agreement by giving or offering to give a rebate or discount to the individual in  
25 consideration of the individual's giving to the rental-purchase company the names

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1 of prospective lessees if the earning of the rebate or discount is contingent upon the  
2 occurrence of any event that takes place after the time that the individual enters into  
3 the rental-purchase agreement.

4 (2) AUTHORIZED REFERRAL TRANSACTIONS. After entering into a rental-purchase  
5 agreement, a rental-purchase company may give or offer to give a rebate or discount  
6 to a lessee under the rental-purchase agreement in consideration of the lessee's  
7 giving to the rental-purchase company the names of prospective lessees. A rebate  
8 or discount under this subsection may be contingent upon the occurrence of any event  
9 that takes place after the time that the names are given to the rental-purchase  
10 company.

11 SUBCHAPTER VII ~~XXXX~~

12 TERMINATION, REINSTATEMENT, DEFAULT, AND RIGHT TO CURE

13 **430.701 Termination of rental-purchase agreement.** The termination  
14 date of a rental-purchase agreement is the earlier of the following:

15 (1) The day specified in the rental-purchase agreement as the day on which  
16 the periodic rental term ends, unless a different day has been established under the  
17 rental-purchase agreement.

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

19 **430.702 Late payment, grace period, and late fees.** (1) LATE FEE GENERALLY.  
20 If a lessee fails to make any payment when due under a rental-purchase agreement  
21 or if, at the end of any rental term, the lessee fails to return the rental property or  
22 to renew the rental-purchase agreement for an additional term, the rental-purchase  
23 company may require the lessee to pay a late fee. Except as provided in sub. (4), this  
24 subsection does not apply if the lessee's failure to return rental property or failure  
25 to renew the rental-purchase agreement at the end of the rental term is due to the

1 lessee's exercise of an early-purchase option under the rental-purchase agreement  
2 or is due to the lessee's making all payments necessary to acquire ownership of the  
3 rental property.

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

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

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

12 (3) COLLECTION, APPLICATION, AND LIMITATION OF LATE FEES. Late fees are subject  
13 to all of the following:

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

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

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

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

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

24 **430.703 Reinstatement of terminated rental-purchase agreement. (1)**

25 REINSTATEMENT. GENERALLY. A lessee may reinstate a terminated ~~(rent-to-own)~~ <sup>rental-purchase</sup>

1 agreement without losing any rights or options previously acquired if all of the  
2 following apply:

3 (a) The lessee returned or surrendered the rental property within 7 days after  
4 the termination of the rental-purchase agreement.

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

10 (2) AUTHORIZED CONDITIONS ON REINSTATEMENT. As a condition of reinstatement  
11 under this section, the rental-purchase company may require the payment of all  
12 past-due rental charges, any applicable late fees, a reinstatement fee not to exceed  
13 \$5, and the periodic rental payment for an additional term.

14 (3) EFFECT OF REPOSSESSION ON REINSTATEMENT. Nothing in this section prohibits  
15 a rental-purchase company from attempting to repossess rental property upon  
16 termination of a rental-purchase agreement, but such efforts do not affect the  
17 lessee's right to reinstate as long as the rental property is voluntarily returned or  
18 surrendered within 7 days after the termination of the rental-purchase agreement.

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

24 **430.704 Default and right to cure.** (1) DEFAULT GENERALLY. A lessee is in  
25 default under a rental-purchase agreement if any of the following applies:



1 (a) The lessee fails to return rental property within 7 days after the date on  
2 which the last rental term for which a periodic rental payment was made expires,  
3 unless the lessee has exercised an early-purchase option or has made all periodic  
4 rental payments necessary to acquire ownership of the rental property.

5 (b) The lessee materially breaches any other provision of the ~~rent-to-own~~ <sup>rental-purchase</sup>  
6 agreement.

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

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

18 (4) NOTICE OF DEFAULT; EXCEPTION. A rental-purchase company is not required  
19 to provide a notice of default and right to cure as a condition precedent to bringing  
20 an action against a lessee if the lessee breaches the agreement and, in so doing, may  
21 or does materially impair the condition, value or protection of the rental property, or  
22 otherwise if each of the following occurred twice during the 12 months before the date  
23 of the current default with respect to the same rental-purchase agreement:

24 (a) The lessee was in default.

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

3 (c) The lessee cured the default.

4 (5) REQUEST FOR VOLUNTARY SURRENDER OF PROPERTY. A rental-purchase  
5 company may request the voluntary return or surrender of rental property prior to  
6 the declaration of a default and the sending of written notice of default and right to  
7 cure. A request under this subsection is subject to s. 430.801.

## 8 SUBCHAPTER VIII

### 9 COLLECTION PRACTICES

10 **430.801 Rental-purchase company collection practices.** In attempting  
11 to recover possession of rental property or to collect past-due periodic rental  
12 payments or other charges owed under a ~~rent-to-own~~ <sup>rental-purchase</sup> agreement, a rental-purchase  
13 company may not do any of the following:

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

16 (2) CRIMINAL PROSECUTION. Threaten criminal prosecution.

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

20 (4) COMMUNICATION WITH LESSEE'S EMPLOYER. Initiate or threaten to initiate  
21 communication with the lessee's employer prior to obtaining final judgment against  
22 the lessee, except for the purpose of enforcing an assignment of earnings authorized  
23 under s. 430.802. This subsection does not prohibit a rental-purchase company from  
24 communicating with a lessee's employer solely to verify employment status or

1 earnings or to determine if the employer has an established debt counseling service  
2 or procedure.

3 (5) DISCLOSURE OF INFORMATION RELATING TO LESSEE'S REPUTATION. Disclose or  
4 threaten to disclose to a person other than the lessee or the lessee's spouse  
5 information affecting the lessee's reputation, whether or not for creditworthiness,  
6 with knowledge or reason to know that the other person does not have a legitimate  
7 business need for the information, except that this subsection<sup>✓</sup> does not prohibit any  
8 of the following:

9 (a) The disclosure to another person of information that is otherwise permitted  
10 to be disclosed to that person by law.

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

13 (6) DISCLOSURE OF INFORMATION REGARDING A DISPUTED DEBT. Disclose or threaten  
14 to disclose information concerning the existence of a debt known to be reasonably  
15 disputed by the lessee without disclosing the fact that the lessee disputes the debt.

16 (7) HARASSMENT. Communicate with the lessee or a person related to the lessee  
17 with such frequency or at such unusual hours or in such a manner as can reasonably  
18 be expected to threaten or harass the lessee, or a person related to the lessee, or  
19 engage in any other conduct that can reasonably be expected to threaten or harass  
20 the lessee or a person related to the lessee.

21 (8) USE OF OBSCENE OR THREATENING LANGUAGE. Use obscene or threatening  
22 language in communicating with the lessee or a person related to the lessee.

23 (9) USE OF THREAT TO ENFORCE FALSE LEGAL RIGHT. Claim, attempt to claim, or  
24 threaten to enforce a legal right with knowledge that the legal right does not exist.



1           5. Notify the division in writing of a relocation of the licensee's place of business  
2 by the date specified in s. 430.406<sup>✓</sup> (1).

3           6. Provide notice to the division of other changes as required under s. 430.406<sup>✓</sup>  
4 (2) by the date specified in s. 430.406<sup>✓</sup> (2).

5           (b) Each day that a failure described in par. (a) continues constitutes a separate  
6 offense.

7           (2) FAILURE TO PROVIDE CERTAIN INFORMATION. A licensee that fails to provide any  
8 additional information, data, or records requested by the division under s. 430.406  
9 (2) by the date specified in s. 430.406 (2) may be required to forfeit not more than  
10 \$100. Each day that a failure described in this subsection continues constitutes a  
11 separate offense.

12           (3) MISDEMEANORS. Any person who violates s. 430.408 (2) or any provision of  
13 ss. 430.401 to 430.407, other than those provisions described in subs. (1) and (2), may  
14 be fined not more than \$1,000, imprisoned for not more than 6 months, or both.

15           **430.902 Civil actions and defenses.** (1) LIABILITY GENERALLY. Except as  
16 provided under subs. (2)<sup>✓</sup> to (8)<sup>✓</sup>, a rental-purchase company that violates any  
17 provision of this chapter is liable to a lessee that is damaged as a result of that  
18 violation for the costs of the action and, notwithstanding s. 814.04 (1)<sup>✓</sup>, for reasonable  
19 attorney fees as determined by the court, plus an amount equal to the greater of the  
20 following:

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

23           (b) An amount equal to 25<sup>percent</sup>% of the total amount of payments due in one month  
24 under the lessee's rental-purchase agreement, except that liability under this  
25 paragraph may not be less than \$100 nor more than \$1,000.

1           (2) TEMPORARY RELIEF; INJUNCTIONS. The secretary may bring a civil action to  
2       restrain, by temporary or permanent injunction, a merchant from violating any  
3       provision of this chapter, or from engaging in false, misleading, deceptive, or  
4       unconscionable conduct, in rental-purchase transactions.

5           (3) LIABILITY; CERTAIN VIOLATIONS. Except as provided in subs. (4) and (5), if a  
6       rental-purchase agreement violates s. 430.503, the lessee may retain the rental  
7       property under the rental-purchase agreement without obligation to pay any  
8       amount and may recover any amounts paid to the rental-purchase company under  
9       the rental-purchase agreement.

10          (4) CLASS ACTION. (a) In the case of a class action, a rental-purchase company  
11       that violates this chapter is liable to the members of the class in an amount equal to  
12       the actual damages incurred by the class. The total statutory damages for all lessees  
13       whose recovery is computed under sub. (1) (b) relating to statutory damages may not  
14       exceed \$100,000 plus the costs of the action and, notwithstanding s. 814.04 (1),  
15       reasonable attorneys' fees as determined by the court. In determining the amount  
16       to award under sub. (1) (b), the court shall consider, among other relevant factors,  
17       the amount of actual damages sustained by the members of the class, the frequency  
18       and persistence of the violations by the rental-purchase company, the resources of  
19       the rental-purchase company, the number of persons damaged by the violation, the  
20       presence or absence of good faith on the part of the rental-purchase company, and  
21       the extent to which the violation was intentional.

22          (b) Notwithstanding par. (a), no class action may be maintained for conduct  
23       proscribed in ch. 430 unless the conduct has been found to violate ch. 430 at least 30  
24       days prior to the occurrence of the conduct involved in the class action by an appellate

1 court of this state or by a rule promulgated by the division, specifying with  
2 particularity the act or practice in question.

3 (c) At least 30 days before commencing a class action for damages, a party must  
4 do all of the following:

5 1. Notify the rental-purchase company against whom an alleged cause of  
6 action is asserted of the alleged claim or violation.

7 2. Demand that the rental-purchase company correct, or otherwise remedy, the  
8 basis for the alleged claim.

9 (d) The notice required in par. (c) shall be in writing, and shall be sent by  
10 certified or registered mail, return receipt requested, to the rental-purchase  
11 company at the place where the transaction occurred, the company's principal place  
12 of business within the state, or, if neither will effect actual notice, the department  
13 of financial institutions.

14 (e) Except as provided in par. (g), no action for damages may be maintained  
15 under this section if an appropriate remedy, which shall include actual damages and  
16 may include penalties, is given, or agreed to be given within a reasonable time, to  
17 such party within 30 days after receipt of such notice.

18 (f) Except as provided in par. (g), no action for damages may be maintained  
19 under this section upon a showing by a rental-purchase company against whom the  
20 alleged claim or violation is asserted that all of the following exist:

21 1. All lessees similarly situated have been identified, or a reasonable effort to  
22 identify such other lessees has been made.

23 2. All lessees identified under subd. 1. have been notified that, upon their  
24 request, the rental-purchase company shall make the appropriate remedy.

1           3. The remedy requested by the lessees has been or in a reasonable time will  
2 be given.

3           4. The rental-purchase company has ceased from engaging, or if immediate  
4 cessation is impossible under the circumstances, the rental-purchase company will,  
5 within a reasonable time, cease to engage in any acts on which the alleged claim is  
6 based.

7           (g) An action for injunctive relief may be commenced without compliance with

8           par. (c). <sup>ΔΔ</sup> Not less than 30 days after the commencement of an action for injunctive  
9 relief, and after compliance with par. (c), the lessee may amend his or her complaint

10          without leave of court to include a request for damages. <sup>agraphs</sup> Par. (e) and (f) shall apply  
11 if the complaint for injunctive relief is amended to request damages.

12          (h) As soon as practicable after the commencement of an action brought as a  
13 class action, the court shall determine by order whether it is to be so maintained. <sup>ΔΔ</sup> An  
14 order may be conditional, and may be altered or amended before the decision on the  
15 merits. If the court determines that the action may not be maintained as a class  
16 action, it shall allow the action to proceed on behalf of the parties appearing in the  
17 action.

18          (i) In any class action, the court shall direct to the members of the class the best  
19 notice practicable under the circumstances, including individual notice to all  
20 members who can be identified through reasonable effort. The notice shall inform  
21 each class member that:

22           1. The court will exclude him <sup>or her</sup> from the class if he <sup>or she</sup> so requests by a specified date.

23           2. The judgment, whether favorable or not, will include all members who do not  
24 request exclusion.



1           3. Any member who does not request exclusion may enter an appearance  
2 through his or her counsel.

3           (j) The judgment in an action maintained as a class action under this section,  
4 whether or not favorable to the class, shall include and describe those whom the court  
5 finds to be members of the class. The judgment in an action maintained as a class  
6 action, whether or not favorable to the class, shall include and specify or describe  
7 those to whom the notice provided in par. (i) was directed, and who have not  
8 requested exclusion, and whom the court finds to be members of the class.

9           (k) When appropriate, an action may be brought or maintained as a class action  
10 with respect to particular issues, or a class may be divided into subclasses and each  
11 subclass treated as a class.

12           (L) If judgment is for a class of plaintiffs, the court shall render judgment in  
13 favor of the secretary and against the defendants for all costs of notice incurred by  
14 the secretary in such action.

15           (m) In the conduct of actions to which this section applies, the court may make,  
16 alter, or amend orders that do any of the following:

17           1. Determine the course of proceedings or prescribing measures to prevent  
18 undue repetition or complication in the presentation of evidence or argument.

19           2. Require, for the protection of the members of the class or otherwise for the  
20 fair conduct of the action, that notice be given in such manner as the court may direct  
21 to some or all of the members of any step in the action, or of the proposed extent of  
22 the judgment, or of the opportunity of members to signify whether they consider the  
23 representation fair and adequate, to intervene and present claims or defenses, or  
24 otherwise to come into the action.

25           3. Impose conditions on the representative parties or on interveners.

1 4. Require that the pleadings be amended to eliminate there from allegations  
2 as to representation of absent persons, and that the action proceed accordingly.

3 5. Deal with similar procedural matters.

4 (n) Once certified by the court under this section, a class action shall not be  
5 dismissed or compromised without the approval of the court, and notice of the  
6 proposed dismissal or compromise shall be given to all members of the class in such  
7 manner as the court directs.

8 (o) A merchant shall not be liable in a class action for statutory damages  
9 computed under sub. (1) (b) relating to statutory damages, unless it is shown by a  
10 preponderance of the evidence that the violation was a willful and knowing violation  
11 of this chapter. No recovery in an action under this subsection may exceed \$100,000.

12 (p) Reasonable attorneys' fees in a class action shall be determined by the value  
13 of the time reasonably expended by the attorney rather than by the amount of  
14 recovery on behalf of the class. A legal aid society or legal services program that  
15 represents a class shall be awarded a reasonable service fee in lieu of reasonable  
16 attorneys' fees, equal in amount to the amount of the attorneys' fees as measured by  
17 this subsection.

18 (q) The secretary, whether or not a party to an action, shall bear the costs of  
19 notice except that he may recover such costs from the defendant as provided in par.  
20 (L).

21 (5) DEFENSE; BONA FIDE ERROR. Notwithstanding any other section of this  
22 chapter, no customer shall be entitled, in an individual or class action, to recover any  
23 penalties provided under ~~sub. (1)(b)~~ <sup>ok-leave</sup> ~~sub. (1)(b)~~ <sup>plain</sup> (1)(b) if the rental-purchase company  
24 violating this chapter shows by a preponderance of the evidence that the violation  
25 was not intentional, and that the violation resulted from a bona fide error

1 notwithstanding the maintenance of procedures reasonably adapted to avoid these  
2 errors. A bona fide error under this subsection includes a clerical error, an error in  
3 making calculations, an error due to computer malfunction or computer  
4 programming, and a printing error.

5 (6) DOUBLE LIABILITY LIMITED. The liability of a rental-purchase company under  
6 this chapter is in lieu of any liability under the federal consumer credit protection  
7 act and s. 138.09 or 218.01. An action by a person alleging a violation under this  
8 chapter may not be maintained if a final judgment has been rendered for or against  
9 that person with respect to the same violation under the federal consumer credit  
10 protection act or s. 138.09 or 218.01. If a final judgment is entered against any  
11 rental-purchase company under this chapter and the federal consumer credit  
12 protection act or s. 138.09 or 218.01 for the same violation, the merchant has a cause  
13 of action for appropriate relief to the extent necessary to avoid double liability.

14 (7) LIABILITY FOR MULTIPLE VIOLATIONS. Multiple violations of this chapter in  
15 connection with the same rental-purchase agreement shall only entitle the lessee to  
16 a single recovery under sub. (1), except that a violation of s. 430.801 that occurs after  
17 recovery has been granted with respect to that rental-purchase agreement may  
18 entitle the lessee to an additional recovery under sub. (1).

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

23 <sup>g-3</sup> 430.902 **Limitation on actions.** An action brought by a lessee under this  
24 chapter shall be commenced within one year after the date on which the alleged  
25 violation occurred, 2 years after the date on which the rental-purchase agreement

1 was entered into, or one year after the date on which the last payment was made  
2 under the rental-purchase agreement, whichever is later.

3 **430.904 Venue.** (1) GENERALLY. The venue for a claim arising out of a  
4 rental-purchase agreement is any of the following counties:

5 (a) Where the lessee resides or is personally served.

6 (b) Where the rental property is located.

7 (c) Where the lessee sought or acquired the rental property or signed the  
8 document evidencing his or her obligation under the terms of the rental-purchase  
9 agreement.

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

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

18 **SECTION 10. Nonstatutory provisions.**

19 (1) SUBMISSION OF PROPOSED RULES GOVERNING REGISTRATION OF RENTAL-PURCHASE  
20 COMPANIES. Using the procedure under section 227.24 of the statutes, the division of  
21 banking and the secretary of financial institutions may promulgate rules under  
22 chapter 430 of the statutes, as created by this act, for the period before the date on  
23 which permanent rules take effect, but not to exceed the period authorized under  
24 section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a),  
25 (2), and (3) of the statutes, the division of banking and the secretary of financial

24  
25

(b)

1 institutions are not required to provide evidence that promulgating a rule under this  
2 subsection as an emergency rule is necessary for the preservation of the public peace,  
3 health, safety, or welfare and is not required to provide a finding of emergency for a  
4 rule promulgated under this subsection.

5 **SECTION 11. Effective date.**

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

7 (END)

D-Note

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4186/P1dr

RAC: C. J.

Date

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 <sup>S.</sup> 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) <sup>no 2</sup> 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 <sup>is</sup> 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<sup>✓</sup> and ch. 100<sup>✓</sup> 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. X

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<sup>✓</sup> and nowhere is there granted such blanket authority. X

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<sup>✓</sup>. 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<sup>✓</sup>?

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<sup>✓</sup> (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 statements<sup>✓</sup> payment includes or does not include the liability damage waiver and the other optional services. Please advise.

*lps: → apostrophe*

13. In s. 430.505<sup>✓</sup> (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%<sup>percent</sup> 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. *x*

14. In s. 430.506<sup>✓</sup>, 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)<sup>✓</sup>(a) seems to eviscerate the protection provided in s. 430.801 (5)<sup>✓</sup>(intro.). Is this your intent?

16. In s. 430.801<sup>✓</sup> (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)<sup>✓</sup> (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<sup>✓</sup> (4) (o), there is reference to a "merchant." Do you mean a rental-purchase company?

20. In s. 430.902<sup>✓</sup> (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<sup>✓</sup> 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. 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 *x*

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

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



any appropriation or an appropriation account in which the application fees and annual license fees are to be deposited. Please advise.

Rick A. Champagne  
Senior Legislative Attorney  
Phone: (608) 266-9930  
E-mail: rick.champagne@legis.state.wi.us

**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:

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Rick A. Champagne  
Senior Legislative Attorney  
Phone: (608) 266-9930  
E-mail: rick.champagne@legis.state.wi.us

## Champagne, Rick

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**From:** Chris Korst [ckorst@rcenter.com]  
**Sent:** Tuesday, February 17, 2004 10:20 AM  
**To:** rick.champagne@legis.state.wi.us  
**Cc:** James Leonhart  
**Subject:** Final (?) draft chan

Rick:

Thanks again for your evident effort and diligence on this draft. I really appreciate all your hard work. As promised, here is the language for some of the changes we discussed this morning:

- ✓ 430.301(1): "Administrator" means the administrator of the division of banking.
- ✓ 430.301(?): "General order" means any order that is not a special order.
- 430.301(?): "Special order" means an order against a person.
- ✓ 430.405(4): REVOCATION AND SUSPENSION PROCEDURE. Except as provided in subs. (2) and (3), no license shall be revoked or suspended except after a hearing under this chapter. A complaint stating the grounds for suspension or revocation together with a notice of hearing shall be delivered to the licensee at least 5 days in advance of the hearing. In the event the licensee cannot be found, complaint and notice of hearing may be left at the place of business stated in the license and this shall be deemed the equivalent of delivering the notice of hearing and complaint to the licensee.
- 430.408. POWERS AND DUTIES OF DIVISION; ADMINISTRATION. (1) Orders. The division may issue any general or special order in execution of or supplementary to this chapter, but not in conflict therewith.
- 430.408(4) Rules. (1) The Administrator may adopt, amend and repeal rules to carry out the purposes and policies of this chapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.
- ✓ 430.502(17): Optional Services. (1) Space for a specific, separately signed, affirmative written indication of the lessee's desire for any optional service for which a charge is assessed. The lessee's request must be obtained after a written disclosure of the cost of the optional service is made, and the cost and term of such service must be listed at or near the signature space.
- ✓ 430.505(2): Acquisition of Ownership. At any time after the initial rental period, a lessee may acquire ownership of the property that is the subject of the rental-purchase agreement by tendering an amount equal to the original cash price of the rented property, minus at least 50% of all rental payments made by the lessee. A rental-purchase company may also require the lessee to pay any accrued unpaid rental payments and fees.
- 430.801(12): Violation of Rules. Engage in conduct in violation of a rule adopted by the Administrator after like conduct has been restrained or enjoined by a court in a civil action by the Administrator against any rental-purchase company pursuant to the provisions on injunction against false, misleading, deceptive or unconscionable agreements or conduct (ss. 430.503 and 430.505).
- 430.901(3): Misdemeanors. Any person who willfully and knowingly engages in any conduct or practice in violation of this chapter may be fined not more than \$2,000, imprisoned for not more than 6 months, or both.

These are all of the changes I think I promised to send language for--of course, the other changes we discussed I believe you captured as we walked through the draft. If not, please let me know ASAP and I'll reconstruct those for you.

Thanks again, Rick. If you need to speak with me again, my cell number is 214.282.7693.

Chris Korst