



(D-Nate)
State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-4186/P1

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FR I

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 AN ACT *to renumber and amend* 423.201 (2); *to amend* 220.02 (2) (b), 220.02
2 (3), 421.301 (9) and 421.301 (11); and *to create* 409.109 (4) (n), 421.202 (11),
3 423.201 (2) (b) and chapter 430 of the statutes; **relating to:** regulation of
4 rental-purchase agreements and granting rule-making authority.

Insert
Analysis

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:

5 SECTION 1. 220.02 (2) (b) of the statutes is amended to read:
6 220.02 (2) (b) The lending of money under s. 138.09 or those relating to finance
7 companies, motor vehicle dealers, adjustment service companies, community
8 currency exchanges, rental-purchase companies licensed under ch. 430, and
9 collection agencies under ch. 218.

1 **SECTION 2.** 220.02 (3) of the statutes, as affected by 2003 Wisconsin Act 33, is
2 amended to read:

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

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

13 **409.109 (4) (n)** The transfer of an interest under a rental-purchase agreement
14 under ch. 430.

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

16 **421.202 (11)** A rental-purchase agreement under ch. 430.

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

18 **421.301 (9)** “Consumer credit sale” means a sale of goods, services or an
19 interest in land to a customer on credit where the debt is payable in installments or
20 a finance charge is imposed and includes any agreement in the form of a bailment
21 of goods or lease of goods or real property if the bailee or lessee pays or agrees to pay
22 as compensation for use a sum substantially equivalent to or in excess of the
23 aggregate value of the goods or real property involved and it is agreed that the bailee
24 or lessee will become, or for no other or a nominal consideration has the option to
25 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 **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 **SECTION 7.** 423.201 (2) of the statutes is renumbered 423.201 (2) (intro.) and
8 amended to read:

9 423.201 (2) (intro.) “Consumer approval transaction” does not include ~~a~~ any
10 of the following:

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

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

14 423.201 (2) (b) A rental–purchase agreement under ch. 430.

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

16 **CHAPTER 430**

17 **RENTAL–PURCHASE AGREEMENTS**

18 **SUBCHAPTER I**

19 **SHORT TITLE; GENERAL PROVISIONS**

20 **430.101 Short title.** Chapter 430 shall be known and may be cited as the
21 Wisconsin Rental–Purchase Agreements Act.

22 **430.102 Applicable law.** (1) Unless superseded by ch. 430, the principles of
23 law and equity, including the law relative to capacity to contract, principal and agent,
24 estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other
25 validating or invalidating cause supplement ch. 430.

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

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

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

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

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

18 SUBCHAPTER III

19 DEFINITIONS

20 **430.301 Definitions.** In this chapter:

21 (1) "Division" means the division of banking in the department of financial
22 institutions.

(3) "General order" means an order of the division other than a
special order.

23 (2) "Lessee" means an individual who rents personal property under a
24 rental-purchase agreement.

(1) (3) "Administrator" means the administrator of the
division.

1 in the form prescribed by the division. In addition to any other information that may
2 be required by the division, an application for a license under this chapter shall
3 include all of the following:

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

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

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

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

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

14 (2) APPLICATION FEES. At the time of applying to the division for a license under
15 this chapter, the applicant shall pay any applicable fee specified by the ^Ydivision by
16 rule. _{ADMINISTRATOR}

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

20 **430.403 Issuance or denial of license.** (1) INVESTIGATION. Upon the filing
21 of an application under s. 430.402 (1) and the payment of any applicable fee, the
22 division shall perform an investigation. Except as provided in sub. (3), if the division
23 finds that the character, general fitness, and financial responsibility of the applicant;
24 the members of the applicant, if the applicant is a partnership, limited liability
25 company, or association; and the officers and directors of the applicant, if the

1 applicant is a corporation warrant the belief that the business will be operated in
2 compliance with this chapter, the division shall issue a license to the applicant.

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

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

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

12 (a).

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

18 (c) The applicant fails to comply, after appropriate notice, with a subpoena or
19 warrant issued by the department of workforce development or a county child
20 support agency under s. 59.53 (5) and related to paternity or child support
21 proceedings or is delinquent in making court-ordered payments of child or family
22 support, maintenance, birth expenses, medical expenses, or other expenses related
23 to the support of a child or former spouse, as provided in a memorandum of
24 understanding entered into under s. 49.857. An applicant whose application is
25 denied under this paragraph for delinquent payments is entitled to a notice and

1 hearing under s. 49.857, but is not entitled to any other notice or hearing under this
2 section.

3 **430.404 Licenses; other business. (1) LICENSED LOCATIONS.** A license issued
4 under this chapter shall specify the location at which the licensee is permitted to
5 conduct business. A separate license shall be required for each place of business
6 maintained by the licensee.

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

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

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

15 (5) OTHER BUSINESS PROHIBITED. No licensee may conduct business as a
16 rental-purchase company within any office, room, or place of business in which any
17 other business is solicited or engaged in, unless the licensee is authorized to do so,
18 in writing, by the division. For the purpose of this subsection, the division may not
19 unreasonably withhold any such authorization.

20 **430.405 Revocation, suspension, and restriction of license. (1)**
21 DISCRETIONARY SUSPENSION OR REVOCATION. The division may issue an order
22 suspending or revoking a license issued under this chapter if the division finds that
23 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. 430.408 (1), and, after notice, has
3 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 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 that the licensee is liable for delinquent taxes. A licensee whose license is
6 revoked under this subsection for delinquent taxes is entitled to a notice under s.
7 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (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) and
10 (3), the following procedure applies to every order of the division that suspends or
11 revokes a license under this chapter:

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. If the written
18 response does not contain a request for a contested case hearing under s. 227.42, 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 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) to (d), 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.

Insert 12-10

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 (10)~~ 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.

but any such order may not
conflict with this chapter

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.
 5 The 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~~^{administrator} alleging that a rental-purchase company has
 10 engaged in an act which is subject to action by the ~~secretary~~^{administrator} he or she shall
 11 immediately commence an investigation pursuant to sub. (2).

12 (4) RULES. The ~~division~~^{administrator} may promulgate rules for the administration of this
 13 chapter, ~~except that the secretary shall promulgate rules under s. 49.0504.~~

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

21 SUBCHAPTER V

22 DISCLOSURE, FORM OF WRITINGS,
 23 PROHIBITED PRACTICES, LIABILITY
 24 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.

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~~ ^R 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. ^{SERVICES} 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 ~~lessee~~
3 may repossess the property.”

rental-purchase
company

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.

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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 percent of the
9 ~~periodic~~ rental payment due under the rental-purchase agreement. The lessee shall
10 be 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 ~~lessee~~ ^{rental-purchase company} 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 percent of all rental
18 payments made by the lessee.

19 **430.506 Unconscionable conduct.** The ~~secretary~~ ^{administrator} 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~~ ^{administrator} shall consider, among other
23 things:

24 (1) That the practice unfairly takes advantage of the lack of knowledge, ability,
25 experience, or capacity of ~~customers~~ ^{lessees}

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

3

(3) The fact that the practice may enable ~~merchants~~^{rental-purchase companies} to take advantage of the inability of ~~customers~~^{lessees} 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.

7

(4) That the terms of the transaction require ~~customers~~^{lessees} to waive legal rights.

8

(5) That the terms of the transaction require ~~customers~~^{lessees} to unreasonably jeopardize money or property beyond the money or property immediately at issue in the transaction.

11

(6) That the natural effect of the practice is to cause or aid in causing ~~customers~~^{lessees} to misunderstand the true nature of the transaction or their rights and duties thereunder.

14

(7) That the writing purporting to evidence the obligation of the ~~customers~~^{lessees} in the transaction contains terms or provisions or authorizes practices prohibited by law.

17

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

19

430.507 Receipts and statements. (1) RECEIPTS. A rental-purchase company shall provide a written receipt to the lessee for any payment made by the 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, a rental-purchase company shall provide a written statement to the lessee showing the lessee's payment history on each rental-purchase agreement between the lessee and the rental-purchase company. A rental-purchase company is not required to

25

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), 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) and (3) 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

18 REFERRAL TRANSACTIONS

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

23 (a) That the transaction advertised is a rental-purchase agreement.

24 (b) The total number and total dollar amount of all ~~periodic~~ rental payments
25 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~~^{a lessee} 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

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

12 TERMINATION, REINSTATEMENT,

13 DEFAULT, AND RIGHT TO CURE

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (4) EFFECT OF OUTSTANDING LATE FEE ON TRANSFER OF OWNERSHIP. A
23 rental-purchase company may require payment of any outstanding late fees before
24 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 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~~⁶⁰ 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~~¹²⁰ 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 an additional 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 such efforts do not affect the lessee's right to reinstate 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 property of comparable quality and condition.

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

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

7 (b) The lessee materially breaches any other provision of the rental-purchase
8 agreement.

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

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

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

1 (a) The lessee was in default.

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

4 (c) The lessee cured the default.

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

9 SUBCHAPTER VIII

10 COLLECTION PRACTICES

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

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

17 (2) CRIMINAL PROSECUTION. Threaten criminal prosecution.

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

21 (4) COMMUNICATION WITH LESSEE'S EMPLOYER. Initiate or threaten to initiate
22 communication with the lessee's employer prior to obtaining final judgment against
23 the lessee, except for the purpose of enforcing an assignment of earnings authorized
24 under s. 430.802. This subsection does not prohibit a rental-purchase company from
25 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 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 ~~any~~^{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 (10) USE OF FALSE PROCESS. Use a communication which simulates legal or
2 judicial process or that gives the appearance of being authorized, issued, or approved
3 by a government, government agency, or attorney-at-law when it is not.

4 (11) USE OF THREAT TO SUE. Threaten to file a civil action against the lessee
5 unless the civil action is of a type that the rental-purchase company files in the
6 regular course of business or unless the rental-purchase company intends to file the
7 civil action against the lessee.

8 (12) VIOLATION OF RULES. Engage in conduct in violation of a rule ^{promulgated} adopted by
9 the ~~secretary~~ ^{administrator} after the conduct has been restrained or enjoined by a court in a civil
10 action by the ~~secretary~~ ^{administrator} against any rental-purchase company.

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11 **430.802 Assignment of earnings.** No rental-purchase company may take
12 or arrange for an assignment of earnings of an individual for payment or as security
13 for payment of an obligation arising out of a rental-purchase agreement unless the
14 assignment is revocable at will by the individual.

SUBCHAPTER IX

PENALTIES, CIVIL ACTIONS,
LIMITATIONS, AND VENUE

18 **430.901 Penalties.** (1) FAILURE TO PAY FEES AND PROVIDE REPORTS, INFORMATION,
19 AND NOTICES; GENERALLY. (a) A licensee that fails to do any of the following may be
20 required to forfeit not more than \$50:

- 21 1. File its annual report by the date specified in s. 430.407 (1).
- 22 2. Pay the annual license fee by the date specified in s. 430.404 (4).
- 23 3. Provide any required rider or endorsement to increase the amount of its bond
24 by the date specified in s. 430.404 (4).
- 25 4. Provide examination records by the date required by the division.

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 (1).

3 6. Provide notice to the division of other changes as required under s. 430.406
4 (2) by the date specified in s. 430.406 (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 ^{willfully and knowingly} 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~~ ^{\$2,000}, 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) to (8), 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), for reasonable
19 attorney fees as determined by the court, plus an amount equal to the ^{SUM} ~~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 percent of the total amount of payments ^{due in one}
24 ~~month~~ 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.

Necessary to acquire ownership of the rental property

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(2) TEMPORARY RELIEF; INJUNCTIONS. The ^{administrato}secretary 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.

5

(3) LIABILITY; CERTAIN VIOLATIONS. Except as provided in subs. (4) and (5), if a rental-purchase agreement 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.

10

(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 sub. (1) (b), 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.

22

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

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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). 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. Paragraphs (e) and (f) shall
11 apply 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. 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 or her from the class if he or she so requests by
23 a specified date.

24 2. The judgment, whether favorable or not, will include all members who do not
25 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 ^{administrator of ~~financial institutions~~} ~~secretary~~ and against the defendants for all costs of notice incurred by
14 the ^{be administrator} ~~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 intervenors.

1 4. Require that the pleadings be amended to eliminate therefrom 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~~ ^{rental-purchase company} 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~~ ^{administrator} whether or not a party to an action, shall bear the costs of
19 notice except that he ^{or she} 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), if the rental-purchase company violating this
24 chapter shows by a preponderance of the evidence that the violation was not
25 intentional, and that the violation resulted from a bona fide error notwithstanding

1 the maintenance of procedures reasonably adapted to avoid these errors. A bona fide
2 error under this subsection includes a clerical error, an error in making calculations,
3 an error due to computer malfunction or computer programming, and a printing
4 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 ^{lead in} 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 ^{set. plain} 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 ~~7~~ (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 **430.903 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 ^{administrator of} division of ^{the}
21 banking ~~and the secretary~~ ^{in the department} 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) (b), and (3) of the statutes, the ^{administrator of the} division of banking ~~and the secretary~~ of financial

1 ~~institutions are~~ ⁽¹⁵⁾ 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)

Insert
39-5

Insert 19-8:

(17) OPTIONAL SERVICES. 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.

[Handwritten scribble]

OK

Insert 20-19:

(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.

2 percent

X

Insert 30-11:

(12) VIOLATION OF RULES. Engage in false, misleading, deceptive, or unconscionable conduct in violation of a rule promulgated by the administrator after such or similar conduct has been restrained or enjoined by a court in a civil action by the administrator against any rental-purchase company.

Insert 39-5:

SECTION ~~11~~ Initial applicability.

(1) This act first applies to rental-purchase agreements, and conduct pursuant to those agreements, that are entered into on the effective date of this subsection.

X

Insert Analysis:

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

This bill exempts certain consumer leases from the consumer act and creates a new chapter of the statutes for the purpose of regulating these leases and the businesses that rent property to individuals under these leases. This chapter is to be known as the Wisconsin Rental-Purchase Agreements Act. The primary aspects of the bill are as follows:

Scope

The bill regulates the activities of a rental-purchase company, which is defined in the bill as any person engaged in the business of entering into rental-purchase agreements or acquiring or servicing rental-purchase agreements that are entered into in this state. With certain exceptions, an agreement qualifies as a rental-purchase agreement under the bill if, among other things, the rental property is to be used primarily for personal, family, or household purposes; the agreement has an initial term of four months or less and is automatically renewable with each payment after the initial term; the agreement does not require the lessee to renew the agreement beyond the initial term; and the agreement permits, but does not require, the lessee to acquire ownership of the personal property. Under the bill, a rental-purchase agreement is not subject to any laws relating to a security interest or lease under the Uniform Commercial Code.

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

Administration

The bill requires every rental-purchase company doing business in this state to obtain a license from the Division of Banking in the Department of Financial Institutions (division), pay an annual license fee, and make annual reports to the division. Under the bill, licenses are not assignable, and must be posted in a conspicuous place at the location of the rental-purchase company. The bill permits the division to examine the books and records of a rental-purchase company to determine compliance with the new chapter. In addition, the bill specifically authorizes the

the rental-purchase company permission to enter the lessee's premises or commit a breach of the peace in repossessing the rental property, a waiver of any defense or counterclaim or any provision of the new chapter, a provision requiring rental payments totaling more than the total dollar amount of all rental payments necessary to acquire ownership, a provision requiring the lessee to purchase insurance from the rental-purchase company to insure the rental property, or a provision requiring the lessee to pay attorney fees. Several of these prohibitions are similar to prohibitions contained in the consumer act.

Disclosure

All required provisions of a rental-purchase agreement must be clearly and conspicuously disclosed to the lessee in at least eight-point standard type on the face of the rental-purchase agreement. The lessee's payment obligations must be evidenced by a single, dated instrument that includes the signatures of the rental-purchase company and lessee. As under the consumer act, the bill requires the rental-purchase company to provide the lessee, or one lessee if there are multiple lessees under the same agreement, with a copy of the executed rental-purchase agreement. In addition, a rental-purchase company must provide the lessee with a receipt for any payment made by the lessee in cash, or upon request, for any other type of payment. With certain exceptions, upon the request of a lessee, a rental-purchase company must also provide the lessee or a person designated by the lessee with a copy of the lessee's payment history. The rental-purchase company may charge a fee if a lessee or designated person requests more than one copy in any 12-month period.

X
X
X

Related transactions

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

percent

X X

Marketing activities

With certain exceptions, the bill requires a rental-purchase company to display a card or tag on or next to any property offered for rent, indicating whether the property is new or used and indicating the cash price of the property, the amount of the rental payment and the term over which the rental payment must be made, and the total number and total dollar amount of all rental payments necessary to acquire ownership of the property. In addition, a rental-purchase company must ensure that an advertisement for a rental-purchase agreement that refers to the amount of a payment for a specific item of property also states that the advertisement is for a rental-purchase agreement and that the lessee does not acquire ownership of the property if the lessee fails to make all rental payments necessary to acquire ownership. The advertisement must also include the total number and total dollar amount of all rental payments necessary to acquire ownership of the property. The provisions relating to advertising, however, do not apply to an in-store display or an advertisement published in the yellow pages or similar business directory.

X
X

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

Right to reduced amount of rental payments and right to reinstatement

Under the bill, a lessee has the right to reinstate a terminated rental-purchase agreement, as long as the lessee returned the rental property within seven days after termination and not more than 60 days have passed since the return date or, if the lessee paid at least two-thirds of the total number of rental payments necessary to acquire ownership, not more than 120 days have passed since the return date. A rental-purchase company may require the payment of a \$5 reinstatement fee, all past-due rental charges, and any applicable late fees as a condition of reinstatement. Upon reinstatement, a rental-purchase company must provide a lessee with the same rental property, if available and in the same condition as when it was returned, or with comparable quality rental property.

Default and right to cure

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

Collections practices

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

- (1) Use or threaten to use force or violence.
- (2) Disclose or threaten to disclose false information relating to the creditworthiness of the lessee.

- (3) Disclose or threaten to disclose a debt that is disputed by the lessee without disclosing the fact that the debt is disputed.
- (4) Harass or threaten the lessee or a relative of the lessee.
- (5) Use obscene language in communicating with the lessee or a relative of the lessee.
- (6) Threaten to enforce a right with knowledge that the right does not exist.
- (7) Use a communication that falsely simulates legal, judicial, or governmental process.
- (8) Threaten to file an action against the lessee, unless the action is of a type that the rental-purchase company files in the regular course of business or unless the rental-purchase company intends to file the action.
- (9) With certain exceptions, disclose or threaten to disclose to a person other than the lessee or the lessee's spouse information affecting the lessee's reputation, with knowledge or reason to know that the person to whom the disclosure is made does not have a legitimate business need for the information.

In addition, a rental-purchase company may not threaten criminal prosecution. A rental-purchase company also may not communicate with a lessee's employer, except to verify employment status or earnings, to determine whether the employer has established a debt counseling procedure or to give effect to an assignment of earnings. Similar provisions regarding debt collection are also contained in the consumer act.

Unconscionable conduct

The bill requires the administrator of the division to promulgate rules declaring specific conduct in rental-purchase agreements and the collection of accounts and property arising therefrom to be unconscionable and prohibiting the use thereof. In promulgating the rules, the administrator must consider that the practice unfairly takes advantage of the lack of knowledge, ability, experience, or capacity of the lessees, that those engaging in the practice know of the inability of lessees to receive benefits properly anticipated from the goods or services involved; the fact that the practice may enable rental-purchase companies to take advantage of the inability of lessees 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; that the terms of the transaction require lessees to waive legal rights; that the terms of the transaction require lessees to unreasonably jeopardize money or property beyond the money or property immediately at issue in the transaction; that the natural effect of the practice is to cause or aid in causing lessees to misunderstand the true nature of the transaction or their rights and duties thereunder; that the writing purporting to evidence the obligation of the lessees in the transaction contains terms or provisions or authorizes practices prohibited by law; and definitions of unconscionability in statutes, rules, rulings, and decisions of legislative, administrative, or judicial bodies.

Obligation of good faith

Every agreement and duty regulated or established under the bill must be executed or performed in good faith, consistent with reasonable standards of fair dealing.

Penalties, remedies, defenses, and statute of limitations

percent

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

X
X
X
X
X

The bill provides that a rental-purchase company is not liable for any violation that the rental-purchase company shows, by a preponderance of the evidence, was unintentional and resulted from a bona fide error that the rental-purchase company has acted to correct and that took place notwithstanding the maintenance of procedures reasonably adopted to avoid the error. The bill specifies that a bona fide error includes a clerical error, an error in making calculations, and an error due to computer malfunction or computer programming or a printing error. The consumer act does not contain similar defenses.

An action brought by a lessee for a violation of the new chapter must be commenced within one year after the date of the violation, two years after the date on which the rental-purchase agreement was entered into, or one year after the date of the last payment, whichever is later.

X

insert 12-10:

(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 considered the equivalent of delivering the notice of hearing and complaint to the licensee.

✓
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✓

✓

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

LRB-4186/1dn

RAC: *[Signature]*

Date

Senator Brown:

This version of the bill incorporates the changes requested at the February 17, 2004, meeting with your staff and others. In reviewing the bill, please note the following:

1. See my language in s. 430.408 (4). Because the adoption, amendment, and repeal of rules occurs through the rule promulgation process under ch. 227, I continued to authorize the administrator to promulgate rules for the administration of ch. 430, rather than to adopt, amend, or repeal rules. Rule promulgation authority is the authority to adopt, amend, and repeal rules through that process.
2. See my language in s. 430.801 (12). Is the way in which I rewrote that subsection consistent with your intent? I could not tell if it was the specific conduct that was restrained or enjoined or similar conduct of another rental-purchase company in the past that was restrained or enjoined.
3. In s. 430.901 (3), in light of s. 430.901 (1) and (2), I continued to apply this provision to violations of s. 430.408 (2) or any provision of ss. 430.401 to 430.407, other than those provisions described in s. 430.901 (1) and (2), and not to the entire chapter. Is this your intent?

Rick A. Champagne
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4186/1dn
RAC:kjfrs

February 19, 2004

Senator Brown:

This version of the bill incorporates the changes requested at the February 17, 2004, meeting with your staff and others. In reviewing the bill, please note the following:

1. See my language in s. 430.408 (4). Because the adoption, amendment, and repeal of rules occurs through the rule promulgation process under ch. 227, I continued to authorize the administrator to promulgate rules for the administration of ch. 430, rather than to adopt, amend, or repeal rules. Rule promulgation authority is the authority to adopt, amend, and repeal rules through that process.
2. See my language in s. 430.801 (12). Is the way in which I rewrote that subsection consistent with your intent? I could not tell if it was the specific conduct that was restrained or enjoined or similar conduct of another rental-purchase company in the past that was restrained or enjoined.
3. In s. 430.901 (3), in light of s. 430.901 (1) and (2), I continued to apply this provision to violations of s. 430.408 (2) or any provision of ss. 430.401 to 430.407, other than those provisions described in s. 430.901 (1) and (2), and not to the entire chapter. Is this your intent?

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