



State of Wisconsin
2003 - 2004 LEGISLATURE

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2003 BILL

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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.

Analysis by the Legislative Reference Bureau

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

This bill exempts certain consumer leases from the consumer act and creates a new chapter 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:

BILL***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 division to issue orders and conduct investigations and examinations. Under the bill, the division may suspend or revoke a rental-purchase company's registration if, among other things, the rental-purchase company violates the new chapter, the rental-purchase company fails to pay the license fee, or the division becomes aware of a fact that would be grounds for refusing to grant the rental-purchase company a license. If certain conditions are satisfied, a rental-purchase company may appeal an order of the division that suspends or revokes the rental-purchase company's license.

Provisions of rental-purchase agreements

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

- (1) A description of the rental property.
- (2) The cost of purchasing the rental property on the date on which the rental-purchase agreement is executed.
- (3) A statement indicating that it may cost less to purchase the rental property from a retailer other than the rental-purchase company.
- (4) The amount of the rental payments.
- (5) The amount of any payment due when the rental-purchase agreement is executed or the rental property is delivered.

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(6) The total dollar amount, total number, and timing of all rental payments necessary to acquire ownership of the rental property.

(7) The total dollar amount and an itemization of all taxes, liability damage waiver fees, fees for optional services, processing and application fees, and delivery charges that the lessee would incur if the lessee were to rent the property until the lessee acquires ownership.

(8) An itemization and description of any other charges or fees the rental-purchase company may charge the lessee.

(9) A summary of the lessee's early-purchase option.

(10) A description of the lessee's responsibility in the event of theft of or damage to the rental property.

(11) A statement indicating that, with certain exceptions, the rental-purchase company is required to service the rental property to maintain it in good working condition.

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

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

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

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

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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.

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 percent 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.

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.

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

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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

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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

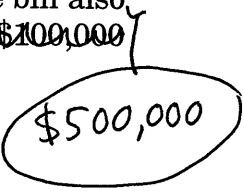
Every agreement and duty regulated or established under the bill must be executed or performed in good faith, consistent with reasonable standards of fair dealing.

Penalties, remedies, defenses, and statute of limitations

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 percent 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.



\$2,000



\$500,000

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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.

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:

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

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

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

8 220.02 (3) It is the intent of sub. (2) to give the division jurisdiction to enforce
9 and carry out all laws relating to banks or banking in this state, including those
10 relating to state banks, savings banks, savings and loan associations, and trust
11 company banks, and also all laws relating to small loan companies or other loan
12 companies or agencies, finance companies, motor vehicle dealers, adjustment service
13 companies, community currency exchanges, rental–purchase companies licensed
14 under ch. 430, and collection agencies and those relating to sellers of checks under

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1 ch. 217, whether doing business as corporations, individuals, or otherwise, but to
2 exclude laws relating to credit unions.

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

4 409.109 (4) (n) The transfer of an interest under a rental–purchase agreement
5 under ch. 430.

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

7 421.202 (11) A rental–purchase agreement under ch. 430.

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

9 421.301 (9) “Consumer credit sale” means a sale of goods, services or an
10 interest in land to a customer on credit where the debt is payable in installments or
11 a finance charge is imposed and includes any agreement in the form of a bailment
12 of goods or lease of goods or real property if the bailee or lessee pays or agrees to pay
13 as compensation for use a sum substantially equivalent to or in excess of the
14 aggregate value of the goods or real property involved and it is agreed that the bailee
15 or lessee will become, or for no other or a nominal consideration has the option to
16 become, the owner of the goods or real property upon full compliance with the terms
17 of the agreement. “Consumer credit sale” does not include a rental–purchase
18 agreement under ch. 430.

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

20 421.301 (11) “Consumer lease” means a lease of goods which a merchant makes
21 to a customer for a term exceeding 4 months. “Consumer lease” does not include a
22 rental–purchase agreement under ch. 430.

23 **SECTION 7.** 423.201 (2) of the statutes is renumbered 423.201 (2) (intro.) and
24 amended to read:

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1 interest, as defined in s. 401.201 (37), or a lease, as defined in s. 411.103 (1) (j), and
2 is not governed by chs. 421 to 427 and 429.

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

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

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

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

9 **430.202 Territorial application.** (1) For the purposes of this chapter, a
10 rental-purchase agreement is entered into in this state if any of the following
11 applies:

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

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

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

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

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

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

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

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

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

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

14 **430.403 Issuance or denial of license.** (1) INVESTIGATION. Upon the filing
15 of an application under s. 430.402 (1) and the payment of any applicable fee, the
16 division shall perform an investigation. Except as provided in sub. (3), if the division
17 finds that the character, general fitness, and financial responsibility of the applicant;
18 the members of the applicant, if the applicant is a partnership, limited liability
19 company, or association; and the officers and directors of the applicant, if the
20 applicant is a corporation warrant the belief that the business will be operated in
21 compliance with this chapter, the division shall issue a license to the applicant.

22 (2) DENIAL; NOTICE; HEARING. Except as provided in sub. (3), the division may
23 deny an application made under s. 430.402 (1) by providing written notice to the
24 applicant stating the grounds for the denial. Except as provided in sub. (3), a person
25 whose application is denied may request a hearing under s. 227.44 within 30 days

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1 after the date of denial. The division may appoint a hearing examiner under s. 227.46
2 to conduct the hearing.

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

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

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

12 (c) The applicant fails to comply, after appropriate notice, with a subpoena or
13 warrant issued by the department of workforce development or a county child
14 support agency under s. 59.53 (5) and related to paternity or child support
15 proceedings or is delinquent in making court-ordered payments of child or family
16 support, maintenance, birth expenses, medical expenses, or other expenses related
17 to the support of a child or former spouse, as provided in a memorandum of
18 understanding entered into under s. 49.857. An applicant whose application is
19 denied under this paragraph for delinquent payments is entitled to a notice and
20 hearing under s. 49.857, but is not entitled to any other notice or hearing under this
21 section.

22 **430.404 Licenses; other business.** (1) LICENSED LOCATIONS. A license issued
23 under this chapter shall specify the location at which the licensee is permitted to
24 conduct business. A separate license shall be required for each place of business
25 maintained by the licensee.

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

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

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

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

14 **430.405 Revocation, suspension, and restriction of license. (1)**
15 DISCRETIONARY SUSPENSION OR REVOCATION. The division may issue an order
16 suspending or revoking a license issued under this chapter if the division finds that
17 any of the following applies:

18 (a) The licensee has violated this chapter, any rules promulgated under this
19 chapter, or any lawful order of the division under s. 430.408 (1).

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

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

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1 (d) The licensee has failed to pay the annual license fee required under s.
2 430.404 (4) or has failed to maintain in effect any bond required under s. 430.402 (3).

3 (e) The licensee has failed to provide any additional information, data, or
4 records required by the division, within the time period prescribed under s. 430.406
5 (2).

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

8 **(2) MANDATORY RESTRICTION OR SUSPENSION; CHILD OR FAMILY SUPPORT.** The
9 division shall restrict or suspend a license issued under this chapter if the division
10 finds that the licensee is an individual who fails to comply, after appropriate notice,
11 with a subpoena or warrant issued by the department of workforce development or
12 a county child support agency under s. 59.53 (5) and related to paternity or child
13 support proceedings or who is delinquent in making court-ordered payments of child
14 or family support, maintenance, birth expenses, medical expenses, or other expenses
15 related to the support of a child or former spouse, as provided in a memorandum of
16 understanding entered into under s. 49.857. A licensee whose license is restricted
17 or suspended under this subsection is entitled to a notice and hearing only as
18 provided in a memorandum of understanding entered into under s. 49.857 and is not
19 entitled to any other notice or hearing under this section.

20 **(3) MANDATORY REVOCATION; DELINQUENT TAXES.** The division shall revoke a
21 license issued under this chapter if the department of revenue certifies under s.
22 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is
23 revoked under this subsection for delinquent taxes is entitled to a notice under s.
24 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to any
25 other notice or hearing under this section.

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1 (4) REVOCATION AND SUSPENSION PROCEDURE. Except as provided in subs. (2) and
2 (3), no license shall be revoked or suspended except after a hearing under this
3 chapter. A complaint stating the grounds for suspension or revocation together with
4 a notice of hearing shall be delivered to the licensee at least 5 days in advance of the
5 hearing. In the event the licensee cannot be found, complaint and notice of hearing
6 may be left at the place of business stated in the license and this shall be considered
7 the equivalent of delivering the notice of hearing and complaint to the licensee.

8 **430.406 Modification of license. (1) CHANGE IN PLACE OF BUSINESS.** No
9 licensee may change its place of business to another location without the prior
10 approval of the division, which approval shall not be unreasonably withheld. A
11 licensee shall provide the division with at least 15 days' prior written notice of a
12 proposed change under this section and shall pay any applicable fees specified by the
13 division by rule. Upon approval by the division of the new location, the division shall
14 issue an amended license, specifying the date on which the amended license is issued
15 and the new location.

16 (2) OTHER CHANGES. Except as provided in sub. (1), a licensee shall notify the
17 division of any material change to the information provided in the licensee's original
18 application for a license under this chapter or provided in a previous notice of change
19 filed by the licensee with the division under this subsection. A licensee shall provide
20 the notice required under this subsection within 10 days after the change. The
21 licensee shall provide any additional information, data, and records about the
22 change to the division within 20 days after the division requests the information,
23 data, or records. The division shall determine the cost of investigating and
24 processing the change. The licensee shall pay the division's cost within 30 days after
25 the division demands payment.

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

5 **430.407 Annual report; records. (1) ANNUAL REPORT.** On or before March
6 31 of each year, a licensee shall file a report with the division giving such reasonable
7 and relevant information as the division may require concerning the business and
8 operations conducted by the licensee. The licensee shall make the report in the form
9 prescribed by the division.

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

15 **430.408 Powers and duties of division; administration. (1) ORDERS.** The
16 division may issue any general order or special order in execution of or
17 supplementary to this chapter but any such order may not conflict with this chapter.

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

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

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

10 (4) RULES. The administrator may promulgate rules for the administration of
11 this chapter.

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

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

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

23 **430.501 General requirements of disclosure. (1) FORM, LOCATION, SIZE, AND**
24 **TIME OF DISCLOSURE.** The information that is required to be disclosed under s. 430.502
25 shall satisfy all of the following:

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

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

3 (c) The information shall be disclosed on the face of the rental–purchase
4 agreement above the line for the lessee’s signature.

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

6 (e) The information shall be disclosed before the time that the lessee becomes
7 legally obligated under the rental–purchase agreement.

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

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

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

20 **(4) SINGLE INSTRUMENT.** In a rental–purchase agreement, the lessee’s rental
21 payment obligations shall be evidenced by a single instrument, which shall include
22 the signature of the rental–purchase company, the signature of the lessee, and the
23 date on which the instrument is signed.

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1 **430.502 Required provisions of rental–purchase agreement.** A
2 rental–purchase company shall include all of the following information, to the extent
3 applicable, in every rental–purchase agreement:

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

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

14 (3) **RENTAL PAYMENTS TO ACQUIRE OWNERSHIP.** The total number, total dollar
15 amount, and timing of all rental payments necessary to acquire ownership of the
16 rental property.

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

24 (5) **RENTAL PAYMENT.** The rental payment for the rental property.

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

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

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

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

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

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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

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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
3 rental-purchase company 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 (17) OPTIONAL SERVICES. Space for a specific, separately signed, affirmative
9 written indication of the lessee’s desire for any optional service for which a charge
10 is assessed. The lessee’s request must be obtained after a written disclosure of the
11 cost of the optional service is made, and the cost and term of such service must be
12 listed at or near the signature space.

13 **430.503 Prohibited provisions of rental-purchase agreements.** A
14 rental-purchase agreement may not contain any of the following:

15 (1) CONFESSION. A confession of judgment.

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

19 (3) REPOSSESSION. A provision authorizing a rental-purchase company, or an
20 agent of the rental-purchase company, to enter the lessee’s premises without the
21 lessee’s contemporaneous permission, or to commit a breach of the peace in the
22 repossession of rental property provided by the rental-purchase company under the
23 rental-purchase agreement.

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

4 (5) **OVERPAYMENT.** A provision requiring rental payments totaling more than
5 the total dollar amount of all rental payments necessary to acquire ownership, as
6 disclosed in the rental–purchase agreement.

7 (6) **INSURANCE.** A provision requiring the lessee to purchase insurance from the
8 rental–purchase company to insure the rental property.

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

10 **430.504 Liability waiver.** A rental–purchase company may offer a liability
11 waiver to the lessee. The terms of the waiver must be provided to the lessee in
12 writing, incorporated into the rental–purchase agreement or on a separate
13 document. The face of the writing shall clearly disclose that the lessee is not required
14 to purchase the waiver. The fee for the waiver may not exceed 10 percent of the rental
15 payment due under the rental–purchase agreement. The lessee shall be entitled to
16 cancel the waiver at the end of any rental term.

17 **430.505 Lessee’s right to acquire ownership.** (1) **LIMITS ON COST OF RENTAL**
18 **SERVICES.** The total amount charged by the rental–purchase company for the cost of
19 rental services in a rental–purchase transaction shall not exceed the cash price of the
20 property.

21 (2) **ACQUISITION OF OWNERSHIP.** At any time after the initial rental period, a
22 lessee may acquire ownership of the property that is the subject of the
23 rental–purchase agreement by tendering an amount equal to the original cash price
24 of the rented property, minus at least 50 percent of all rental payments made by the

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1 lessee. A rental–purchase company may also require the lessee to pay any accrued
2 unpaid rental payments and fees.

3 **430.506 Unconscionable conduct.** The administrator shall promulgate
4 rules declaring specific conduct in rental–purchase agreements and the collection of
5 accounts and property arising therefrom to be unconscionable and prohibiting the
6 use thereof. In promulgating such rules, the administrator shall consider, among
7 other things:

8 (1) That the practice unfairly takes advantage of the lack of knowledge, ability,
9 experience, or capacity of lessees.

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

12 (3) The fact that the practice may enable rental–purchase companies to take
13 advantage of the inability of lessees reasonably to protect their interests by reason
14 of physical or mental infirmities, illiteracy, or inability to understand the language
15 of the agreement, ignorance or lack of education, or similar factors.

16 (4) That the terms of the transaction require lessees to waive legal rights.

17 (5) That the terms of the transaction require lessees to unreasonably
18 jeopardize money or property beyond the money or property immediately at issue in
19 the transaction.

20 (6) That the natural effect of the practice is to cause or aid in causing lessees
21 to misunderstand the true nature of the transaction or their rights and duties
22 thereunder.

23 (7) That the writing purporting to evidence the obligation of the lessees in the
24 transaction contains terms or provisions or authorizes practices prohibited by law.

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1 ADVERTISING, PRICE CARDS, AND
2 REFERRAL TRANSACTIONS

3 **430.601 Advertising. (1) DISCLOSURE REQUIRED.** Except as provided under
4 sub. (2), if an advertisement for a rental–purchase agreement refers to or states the
5 amount of a payment for a specific item of property, the advertisement shall also
6 clearly and conspicuously state all of the following:

7 (a) That the transaction advertised is a rental–purchase agreement.

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

10 (c) That the lessee does not acquire ownership of the property if the lessee fails
11 to make all rental payments or other payments necessary to acquire ownership of the
12 property.

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

16 **430.602 Price cards displayed. (1) PRICE CARDS GENERALLY.** Except as
17 provided in sub. (2), a card or tag that clearly and conspicuously states all of the
18 following shall be displayed on or next to any property displayed or offered by a
19 rental–purchase company for rent under a rental–purchase agreement:

20 (a) The cash price that a lessee would pay to purchase the property.

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

22 (c) The total number and total amount of all rental payments necessary to
23 acquire ownership of the property under a rental–purchase agreement.

24 (d) The cost of rental services under a rental–purchase agreement.

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

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1 (1) The day specified in the rental–purchase agreement as the day on which
2 the rental term ends, unless a different day has been established under the
3 rental–purchase agreement.

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

5 **430.702 Late payment, grace period, and late fees. (1) LATE FEE**
6 **GENERALLY.** If a lessee fails to make any payment when due under a rental–purchase
7 agreement or if, at the end of any rental term, the lessee fails to return the rental
8 property or to renew the rental–purchase agreement for an additional term, the
9 rental–purchase company may require the lessee to pay a late fee. Except as
10 provided in sub. (4), this subsection does not apply if the lessee’s failure to return
11 rental property or failure to renew the rental–purchase agreement at the end of the
12 rental term is due to the lessee’s exercise of an early–purchase option under the
13 rental–purchase agreement or is due to the lessee’s making all payments necessary
14 to acquire ownership of the rental property.

15 (2) **GRACE PERIODS.** The following grace periods shall apply to rental payments
16 made with respect to a rental–purchase agreement:

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

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

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

25 (a) A late fee may not exceed \$5 for each past–due rental payment.

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

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

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

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

10 **430.703 Reinstatement of terminated rental-purchase agreement. (1)**
11 **REINSTATEMENT GENERALLY.** A lessee may reinstate a terminated rental-purchase
12 agreement without losing any rights or options previously acquired if all of the
13 following apply:

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

16 (b) Not more than 60 days have passed after the date on which the rental
17 property was returned to the rental-purchase company or, if the lessee has paid
18 two-thirds or more of the total number of rental payments necessary to acquire
19 ownership of the rental property, not more than 120 days have passed since the date
20 on which the rental property was returned to the rental-purchase company.

21 **(2) AUTHORIZED CONDITIONS ON REINSTATEMENT.** As a condition of reinstatement
22 under this section, the rental-purchase company may require the payment of all
23 past-due rental charges, any applicable late fees, a reinstatement fee not to exceed
24 \$5, and the rental payment for an additional term.

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

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

12 **430.704 Default and right to cure. (1) DEFAULT GENERALLY.** A lessee is in
13 default under a rental–purchase agreement if any of the following applies:

14 (a) The lessee fails to return rental property within 7 days after the date on
15 which the last rental term for which a rental payment was made expires, unless the
16 lessee has exercised an early–purchase option or has made all rental payments
17 necessary to acquire ownership of the rental property.

18 (b) The lessee materially breaches any other provision of the rental–purchase
19 agreement.

20 **(2) DEFAULT; NECESSARY FOR LESSEE LIABILITY.** No cause of action shall accrue
21 against a lessee with respect to the lessee’s obligations under a rental–purchase
22 agreement except upon default and the expiration of any applicable period of time
23 allowed for cure of the default.

24 **(3) NOTICE OF DEFAULT; GENERAL REQUIREMENT.** Except as provided in sub. (4),
25 as a condition precedent to bringing an action against a lessee arising out of the

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1 lessee's default, a rental-purchase company shall provide a written notice of the
2 default and of the right to cure the default to the lessee. The notice shall specify the
3 default and the action required to cure the default and shall inform the lessee that
4 if the default is not cured within 15 days after the notice is given the rental-purchase
5 company may bring an action against the lessee.

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

12 (a) The lessee was in default.

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

15 (c) The lessee cured the default.

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

SUBCHAPTER VIII**COLLECTION PRACTICES**

22 **430.801 Rental-purchase company collection practices.** In attempting
23 to recover possession of rental property or to collect past-due rental payments or
24 other charges owed under a rental-purchase agreement, a rental-purchase
25 company may not do any of the following:

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

3 (2) **CRIMINAL PROSECUTION.** Threaten criminal prosecution.

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

7 (4) **COMMUNICATION WITH LESSEE'S EMPLOYER.** Initiate or threaten to initiate
8 communication with the lessee's employer prior to obtaining final judgment against
9 the lessee, except for the purpose of enforcing an assignment of earnings authorized
10 under s. 430.802. This subsection does not prohibit a rental-purchase company from
11 communicating with a lessee's employer solely to verify employment status or
12 earnings or to determine if the employer has an established debt counseling service
13 or procedure.

14 (5) **DISCLOSURE OF INFORMATION RELATING TO LESSEE'S REPUTATION.** Disclose or
15 threaten to disclose to a person other than the lessee or the lessee's spouse
16 information affecting the lessee's reputation, whether or not for creditworthiness,
17 with knowledge or reason to know that the other person does not have a legitimate
18 business need for the information, except that this subsection does not prohibit an
19 inquiry solely for the purpose of determining the location of the lessee or the rental
20 property.

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

24 (7) **HARASSMENT.** Communicate with the lessee or a person related to the lessee
25 with such frequency or at such unusual hours or in such a manner as can reasonably

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1 be expected to threaten or harass the lessee, or a person related to the lessee, or
2 engage in any other conduct that can reasonably be expected to threaten or harass
3 the lessee or a person related to the lessee.

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

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

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

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

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

19 **430.802 Assignment of earnings.** No rental-purchase company may take
20 or arrange for an assignment of earnings of an individual for payment or as security
21 for payment of an obligation arising out of a rental-purchase agreement unless the
22 assignment is revocable at will by the individual.

SUBCHAPTER IX**PENALTIES, CIVIL ACTIONS,****LIMITATIONS, AND VENUE**

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

4 1. File its annual report by the date specified in s. 430.407 (1).

5 2. Pay the annual license fee by the date specified in s. 430.404 (4).

6 3. Provide any required rider or endorsement to increase the amount of its bond
7 by the date specified in s. 430.404 (4).

8 4. Provide examination records by the date required by the division.

9 5. Notify the division in writing of a relocation of the licensee's place of business
10 by the date specified in s. 430.406 (1).

11 6. Provide notice to the division of other changes as required under s. 430.406
12 (2) by the date specified in s. 430.406 (2).

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

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

20 **(3) MISDEMEANORS.** Any person who willfully and knowingly violates s. 430.408
21 (2) or any provision of ss. 430.401 to 430.407, other than those provisions described
22 in subs. (1) and (2), may be fined not more than \$2,000, imprisoned for not more than
23 6 months, or both.

24 **430.902 Civil actions and defenses. (1) LIABILITY GENERALLY.** Except as
25 provided under subs. (2) to (8), a rental-purchase company that violates any

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1 provision of this chapter is liable to a lessee that is damaged as a result of that
2 violation for the costs of the action and, notwithstanding s. 814.04 (1), for reasonable
3 attorney fees as determined by the court, plus an amount equal to the sum of the
4 following:

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

7 (b) An amount equal to 25 percent of the total amount of payments necessary
8 to acquire ownership of the rental property under the lessee's rental-purchase
9 agreement, except that liability under this paragraph may not be less than \$100 nor
10 more than \$1,000.

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

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

20 (4) CLASS ACTION. (a) In the case of a class action, a rental-purchase company
21 that violates this chapter is liable to the members of the class in an amount equal to
22 the actual damages incurred by the class. The total statutory damages for all lessees
23 whose recovery is computed under sub. (1) (b) relating to statutory damages may not
24 exceed ~~\$100,000~~ ^{\$500,000} plus the costs of the action and, notwithstanding s. 814.04 (1),
25 reasonable attorneys' fees as determined by the court. In determining the amount

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1 to award under sub. (1) (b), the court shall consider, among other relevant factors,
2 the amount of actual damages sustained by the members of the class, the frequency
3 and persistence of the violations by the rental–purchase company, the resources of
4 the rental–purchase company, the number of persons damaged by the violation, the
5 presence or absence of good faith on the part of the rental–purchase company, and
6 the extent to which the violation was intentional.

7 (b) Notwithstanding par. (a), no class action may be maintained for conduct
8 proscribed in ch. 430 unless the conduct has been found to violate ch. 430 at least 30
9 days prior to the occurrence of the conduct involved in the class action by an appellate
10 court of this state or by a rule promulgated by the division, specifying with
11 particularity the act or practice in question.

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

- 14 1. Notify the rental–purchase company against whom an alleged cause of
15 action is asserted of the alleged claim or violation.
- 16 2. Demand that the rental–purchase company correct, or otherwise remedy, the
17 basis for the alleged claim.

18 (d) The notice required in par. (c) shall be in writing, and shall be sent by
19 certified or registered mail, return receipt requested, to the rental–purchase
20 company at the place where the transaction occurred, the company’s principal place
21 of business within the state, or, if neither will effect actual notice, the department
22 of financial institutions.

23 (e) Except as provided in par. (g), no action for damages may be maintained
24 under this section if an appropriate remedy, which shall include actual damages and

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1 may include penalties, is given, or agreed to be given within a reasonable time, to
2 such party within 30 days after receipt of such notice.

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

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

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

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

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

16 (g) An action for injunctive relief may be commenced without compliance with
17 par. (c). Not less than 30 days after the commencement of an action for injunctive
18 relief, and after compliance with par. (c), the lessee may amend his or her complaint
19 without leave of court to include a request for damages. Paragraphs (e) and (f) shall
20 apply if the complaint for injunctive relief is amended to request damages.

21 (h) As soon as practicable after the commencement of an action brought as a
22 class action, the court shall determine by order whether it is to be so maintained. An
23 order may be conditional, and may be altered or amended before the decision on the
24 merits. If the court determines that the action may not be maintained as a class

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1 action, it shall allow the action to proceed on behalf of the parties appearing in the
2 action.

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

7 1. The court will exclude him or her from the class if he or she so requests by
8 a specified date.

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

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

13 (j) The judgment in an action maintained as a class action under this section,
14 whether or not favorable to the class, shall include and describe those whom the court
15 finds to be members of the class. The judgment in an action maintained as a class
16 action, whether or not favorable to the class, shall include and specify or describe
17 those to whom the notice provided in par. (i) was directed, and who have not
18 requested exclusion, and whom the court finds to be members of the class.

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

22 (L) If judgment is for a class of plaintiffs, the court shall render judgment in
23 favor of the administrator and against the defendants for all costs of notice incurred
24 by the administrator in such action.

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

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

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

11 3. Impose conditions on the representative parties or on intervenors.

12 4. Require that the pleadings be amended to eliminate therefrom allegations
13 as to representation of absent persons, and that the action proceed accordingly.

14 5. Deal with similar procedural matters.

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

19 (o) A rental-purchase company shall not be liable in a class action for statutory
20 damages computed under sub. (1) (b) relating to statutory damages, unless it is
21 shown by a preponderance of the evidence that the violation was a willful and
22 knowing violation of this chapter. No recovery in an action under this subsection may
23 exceed \$100,000.

24 (p) Reasonable attorneys' fees in a class action shall be determined by the value
25 of the time reasonably expended by the attorney rather than by the amount of

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1 recovery on behalf of the class. A legal aid society or legal services program that
2 represents a class shall be awarded a reasonable service fee in lieu of reasonable
3 attorneys' fees, equal in amount to the amount of the attorneys' fees as measured by
4 this subsection.

5 (q) The administrator, whether or not a party to an action, shall bear the costs
6 of notice except that he or she may recover such costs from the defendant as provided
7 in par. (L).

8 (5) **DEFENSE; BONA FIDE ERROR.** Notwithstanding any other section of this
9 chapter, no customer shall be entitled, in an individual or class action, to recover any
10 penalties provided under sub. (1) (b), if the rental–purchase company violating this
11 chapter shows by a preponderance of the evidence that the violation was not
12 intentional, and that the violation resulted from a bona fide error notwithstanding
13 the maintenance of procedures reasonably adapted to avoid these errors. A bona fide
14 error under this subsection includes a clerical error, an error in making calculations,
15 an error due to computer malfunction or computer programming, and a printing
16 error.

17 (6) **DOUBLE LIABILITY LIMITED.** The liability of a rental–purchase company under
18 this chapter is in lieu of any liability under the federal Consumer Credit Protection
19 Act and s. 138.09. An action by a person alleging a violation under this chapter may
20 not be maintained if a final judgment has been rendered for or against that person
21 with respect to the same violation under the federal Consumer Credit Protection Act
22 or s. 138.09. If a final judgment is entered against any rental–purchase company
23 under this chapter and the federal Consumer Credit Protection Act or s. 138.09 for
24 the same violation, the merchant has a cause of action for appropriate relief to the
25 extent necessary to avoid double liability.

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1 (7) **NECESSARY PARTIES.** If more than one lessee is a party to the same
2 rental–purchase agreement, all of the lessees that are parties to the rental–purchase
3 agreement shall be joined as plaintiffs in any action under sub. (1), and the lessees
4 are entitled to only a single recovery under sub. (1).

5 **430.903 Limitation on actions.** An action brought by a lessee under this
6 chapter shall be commenced within one year after the date on which the alleged
7 violation occurred, 2 years after the date on which the rental–purchase agreement
8 was entered into, or one year after the date on which the last payment was made
9 under the rental–purchase agreement, whichever is later.

10 **430.904 Venue. (1) GENERALLY.** The venue for a claim arising out of a
11 rental–purchase agreement is any of the following counties:

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

13 (b) Where the rental property is located.

14 (c) Where the lessee sought or acquired the rental property or signed the
15 document evidencing his or her obligation under the terms of the rental–purchase
16 agreement.

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

22 **(3) MULTIPLE DEFENDANTS.** If there are several defendants in an action arising
23 out of a rental–purchase agreement, and if venue is based on residence, venue may
24 be in the county of residence of any of the defendants.

25 **SECTION 10. Nonstatutory provisions.**

Barman, Mike

From: Barman, Mike
Sent: Friday, February 20, 2004 8:50 AM
To: Sen.Brown
Subject: LRB 03-4186/2 (attached)



03-4186/2

Mike Barman

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