

2017 DRAFTING REQUEST

Bill

For: **Warren Petryk (608) 266-0660** Drafter: **agary**
 By: **Anna** Secondary Drafters:
 Date: **9/19/2017** May Contact:
 Same as LRB:

Submit via email: **YES**
 Requester's email: **Rep.Petryk@legis.wisconsin.gov**
 Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Rental purchase companies

Instructions:

See attached, provided to me by Anna and Logan, Rep. Petryk's aides, in their office on 9/19/17; explained by telephone later that day that ch. 440 provisions were clearly a mistake accidentally copied from 2013 budget bill - they were enacted in 2013 budget act

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 9/25/2017	anienaja 9/28/2017			
/P1	agary 11/15/2017	eweiss 11/15/2017	dwalker 9/28/2017		State
/1			lparisi 11/15/2017	dwalker 11/16/2017	State

FE Sent For:

*at
intro*

<END>

ASSEMBLY BILL _____ SECTION _____
RENTAL-PURCHASE COMPANIES

420.01 Definitions. In this chapter:

- (1) "Cash price" means the price at which a rental-purchase company would sell rental property to the lessee of the rental property if the lessee were to pay for the rental property in full on the date on which the rental-purchase agreement is executed.
- (2) "Department" means the department of financial institutions.
- (3) "Displayed or offered primarily for rental-purchase" refers to rental property displayed or offered at a physical location which derives fifty percent (50%) or more of its revenue from Rental-purchase agreements.
- (4) "Rental property" means property rented under a rental-purchase agreement but does not include any motor vehicle, as defined in s. 340.01 (35), or any musical instrument that is intended to be used in whole or in part in an elementary school or high school.
- (5) "Rental-purchase agreement" means an agreement between a rental-purchase company and a lessee for the use of rental property if all of the following apply:
 - (a) The rental property is to be used primarily for personal, family, or household purposes.
 - (b) The agreement has an initial term of 4 months or less and is renewable with each payment after the initial term.
 - (c) The agreement does not obligate or require the lessee to renew the agreement beyond the initial term.
 - (d) The agreement permits, but does not obligate, the lessee to acquire ownership of the rental property.
- (6) "Rental-purchase company" means a person or company engaged in the business of entering into rental-purchase agreements in this state or acquiring rental-purchase agreements that are entered into in this state.

420.02 General requirements of disclosure.

- (1) FORM, LOCATION, SIZE, AND TIME OF DISCLOSURE. The information that is required to be disclosed under s. 420.03 shall satisfy all of the following:

- (a) The information shall be clearly and conspicuously disclosed.
- (b) The information shall be disclosed in writing.
- (c) Except as provided in par. (f), the information shall be disclosed in the rental-purchase agreement above the line for the lessee's signature. Multiple pages or backs of pages may be used as long as the ~~face~~-final page of the rental-purchase agreement is signed by the lessee and other pages are signed or initialed by the lessee.
- (d) Except as provided in par. (f), the information shall be disclosed in not less than 8-point standard type.
- (e) The information shall be disclosed before the time that the lessee becomes legally obligated under the rental-purchase agreement.
- (f) The disclosures required by s. 420.03 (2), (3), (4), and (5) shall be printed in at least 10-point boldface type on the face of the rental-purchase agreement, and shall be grouped together in a box, in the form and order prescribed by the department.

(2) **ACCURACY OF DISCLOSURE.** The information required under s. 420.03 must be accurate as of the time that it is disclosed to the lessee. If any information subsequently becomes inaccurate as a result of any act, occurrence, or agreement by the lessee, the resulting inaccuracy is not a violation of any provision of this chapter relating to rental-purchase agreements.

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

420.03 Required provisions of rental-purchase agreement.

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

(1) **DESCRIPTION.** A brief description of the rental property, sufficient to identify the rental property to the lessee and the rental-purchase company, including any identification number, and a statement indicating whether the rental property is new or used. A statement that new rental property is used shall not be a violation of this subchapter.

(2) **CASH PRICE.** The cash price of the rental property.

(3) **RENTAL PAYMENTS TO ACQUIRE OWNERSHIP.** The total number, total dollar amount, and timing of all rental payments necessary to acquire ownership of the rental property, excluding any applicable taxes, application or processing charge, delivery fee, liability damage waiver fee, and fees for optional services.

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

(5) PERIODIC RENEWAL PAYMENT. The rental payment necessary to renew the rental-purchase agreement, not including any applicable taxes and fees for optional services to which the lessee agrees.

(6) INITIAL PAYMENT. The total amount of the initial payment to be made by the lessee at the time that the rental-purchase agreement is executed or the rental property is delivered, including the initial rental payment, any application or processing charge, any delivery fee, and fees for other optional services to which the lessee agrees.

(7) OTHER CHARGES. An itemized description of any other charges or fees that the rental-purchase company may charge upon the occurrence of a contingency specified in the rental-purchase agreement, such as late fees.

(8) SUMMARY OF EARLY-PURCHASE OPTION. A statement that the lessee has an early purchase option to purchase the property at any time during the period that the rental purchase agreement is in effect. The statement must specify the price or the formula or other method for determining the price at which the property may be purchased

(9) RESPONSIBILITY FOR THEFT OR DAMAGE. A statement that, unless otherwise agreed, in the event the rental property is stolen, damaged, or destroyed while in the possession of, or subject to the control of, the lessee, the lessee is responsible for an amount equal to the lesser of the amount required to exercise the early-purchase option as provided in sub. (8) above or 55% of the scheduled remaining periodic payments, but in no event in an amount greater than the cash price.

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

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

(12) RIGHT TO REINSTATE. A brief explanation of the lessee's right to reinstate a rental-purchase agreement under s. 420.06.

(13) RENTAL, NOT PURCHASE. A statement reading substantially as follows: "You are renting this property. You will not own the property until you make all payments necessary to acquire ownership or until you exercise your early-purchase option. If you do not make your payments as scheduled or exercise your early-purchase option, the rental-purchase company is entitled to immediate possession of the property."

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

(15) **OPTIONAL SERVICES.** Space for a specific, separately signed or initialed, 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 disclosure of the cost and purpose of such service must be listed at or near the affirmation space. This requirement is satisfied by a separate written agreement for an optional service that meets the requirements of this subsection.

420.04 Prohibited provisions of rental-purchase agreements.

A rental-purchase agreement may not contain any of the following:

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

420.05 Disclosures for certain rental-purchase Agreements.

(1) When property that is not displayed or offered primarily for rental-purchase is offered for rental-purchase, the following shall be separately disclosed prior to displaying or presenting a rental-purchase agreement to a lessee for execution:

- (a) The cash price of the property;
- (b) Amount of the periodic renewal payment; and
- (c) The total of dollar amount of all periodic rental payments necessary to acquire ownership if the lessee makes all scheduled payments.

(2) In addition to the disclosures required by s. 420.03 of this chapter, if the property that is the subject of a rental-purchase agreement was not displayed or offered primarily for rental-purchase prior to the rental-purchase transaction, the following additional disclosures shall be made on a separate page titled "Acknowledgment of Rental-Purchase Transaction" and which shall be signed by the lessee:

- (a) the agreement is a rental-purchase agreement and the lessee does not own the merchandise, but can obtain ownership by using ownership options provided in the agreement;
- (b) the agreement is not a credit transaction;
- (c) the lessee has the right to return the merchandise to the lessor without additional charge or penalty at any time and will owe nothing further except unpaid rent charges and fees;
- (d) if the lessee returns the property the agreement offers reinstatement rights which allow the lessee to get the property back if the lessee has complied with the agreement and the law; and
- (e) the lessee has reviewed and understands the agreement, including the purchase option rights and the total cost if all scheduled payments are made.

420.06 Reinstatement of a rental-purchase agreement.

(1) REINSTATEMENT GENERALLY. Subject to sub. (2), a lessee may reinstate a rental-purchase agreement that has ended without losing any rights or options previously acquired if all of the following apply:

- (a) The lessee voluntarily returned or surrendered the rental property within 7 days after the expiration of the rental-purchase agreement.
- (b) Not more than 120 days have passed after the date on which the rental-purchase agreement ended.

(2) AUTHORIZED CONDITIONS ON REINSTATEMENT. As a condition of reinstatement under sub. (1), the rental-purchase company may require the payment of all past-due rental charges, any applicable late fees, the rental payment for the next term, and a reinstatement fee not to exceed \$8 for agreements renewed on a monthly basis or \$5, for agreements renewed more frequently than monthly~~and the rental payment for the next term.~~

(3) EFFECT OF REPOSSESSION ON REINSTATEMENT. Subject to s. 420.04 (2), nothing in this section prohibits a rental-purchase company from repossessing or attempting to repossess rental property when a rental-purchase agreement is not renewed, but such efforts do not affect the lessee's right to reinstate as long as the rental property is voluntarily returned or surrendered within 7 days after the rental-purchase agreement expires.

(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.

420.07 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.

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

(3) **STATEMENT DUE TO OTHER PARTIES.** Subject to sub. (4), upon the written request of a lessee, made during the term of or no later than one year after the rental-purchase agreement ended, a rental-purchase company shall provide a written statement to any person the lessee designates, showing the lessee's payment history under the rental-purchase agreement.

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

420.08 Liability Damage Waiver.

(1) A rental-purchase company and a lessee may contract for a liability damage waiver. A rental-purchase company may charge a periodic fee for a liability damage waiver in an amount not to exceed 10% of the periodic rental payment.

(2) A rental-purchase company may not sell a liability damage waiver unless:

- (a) the contract containing the waiver is provided to the lessee in writing, incorporated into the rental-purchase agreement, or on a separate document;
- (b) the face of the writing clearly discloses that the lessee is not required to purchase the waiver;
- (c) the contract clearly discloses the dollar amount of the fee to be paid with each rental payment; and
- (d) the consumer expressly agrees to the waiver in writing.

(3) The liability damage waiver may exclude only loss or damage to the property that is the subject of the rental purchase agreement caused by moisture, scratches, mysterious disappearance, vandalism, abandonment of the property, or any other damage intentionally caused by the lessee or that results from the lessee's willful or wanton misconduct.

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

(5) A liability damage waiver is not insurance.

420.09 Advertising disclosure required.

If an advertisement for a rental-purchase agreement states the amount of a payment for a specific item of property, the advertisement shall also clearly and conspicuously state all of the following:

- (1) That the transaction advertised is a rental-purchase agreement.
- (2) The total number and total dollar amount of all rental payments necessary to acquire ownership of the property.
- (3) That the lessee does not acquire ownership of the property if the lessee fails to make all payments necessary to acquire ownership of the property.

420.10 Price cards displayed.

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

- (a) The cash price that a lessee would pay to purchase the property.
- (b) The amount and timing of the rental payments.
- (c) The total number and total amount of all rental payments necessary to acquire ownership of the property under a rental-purchase agreement.
- (d) Whether the property is new or used.

(2) EXCEPTIONS. If property is offered for rent under a rental-purchase agreement through a catalog, whether print or electronic, or if the size of the property is such that displaying a card or tag on or next to the property would be impractical, a rental-purchase company may make the disclosures required under sub. (1) in a catalog, list, or disclosure sheet if the catalog, list, or disclosure sheet is readily available to prospective lessees and provided upon request.

420.11 Rule making.

The department may promulgate rules to administer and enforce the requirements of this chapter.

420.12 Penalties.

(1) AWARD OF DAMAGES. Subject to sub. (3), a rental-purchase company that violates any provision of this chapter, rule promulgated under this chapter, or order issued under this chapter pertaining to a lessee is liable to the lessee in an amount equal to the greater of the following:

- (a) The actual damages sustained by the lessee as a result of the violation.
- (b) If the action is not brought as a class action, 25 percent of the total payments necessary for the lessee to acquire ownership of the rental property, but not less than \$100 nor more than \$1,000.
- (c) If the action is brought as a class action, the amount the court determines to be appropriate, subject to sub. (2).

(2) **DAMAGE LIMITATIONS IN CLASS ACTIONS.** The total recovery by all lessees in any class action or series of class actions arising out of the same violation may not be more than the lesser of \$500,000 or 1 percent of the net worth of the rental-purchase company. In determining the amount of any award in a class action, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency and persistence of the violation, the rental-purchase company's resources, and the extent to which the rental-purchase company's violation was intentional.

(3) **UNINTENTIONAL VIOLATIONS.** A rental-purchase company is not liable for any violation of this chapter if the rental-purchase company shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, and the rental-purchase company maintained procedures reasonably adapted to avoid such an error.

(4) **COSTS AND ATTORNEY FEES.** If a court awards any monetary amount under sub. (1) to a lessee, the rental-purchase company shall also be liable to the lessee for the costs of the action and, notwithstanding s. 814.04 (1), for reasonable attorney fees as determined by the court.

420.13 Inapplicability of Consumer Act and ch. 409.

A rental-purchase agreement that complies with this chapter is not subject to the Wisconsin Consumer Act, chs. 421 to 427, or any related rule or order adopted under chs. 421 to 427, or to any provision of ch. 409, and any rental-purchase agreement entered into by such a rental-purchase company shall not be construed or regulated as a security interest, credit sale, retail installment sale, conditional sale, or any other form of consumer credit, nor considered to be the creation of a debt or extension of credit.

SECTION 2178. 421.202 (11) of the statutes is created to read:

421.202 (11) Rental-purchase agreements entered into by a rental-purchase company in compliance with chapter 420.

~~SECTION 2179. 440.03 (7m) of the statutes is amended to read:~~

~~440.03 (7m) The department may promulgate rules that establish procedures for submitting an application for a credential or credential renewal by electronic transmission. Any rules promulgated under this subsection shall specify procedures for complying with any requirement that a fee be submitted with the application.~~

The rules may also waive any requirement in chs. 440 to 480 that an application submitted to the department, an examining board or an affiliated credentialing board be executed, verified, signed, sworn or made under oath, notwithstanding ss. 440.26 (2) (b), 440.42 (2) (intro.), 440.91 (2) (intro.), 443.06 (1) (a), 443.10 (2) (a), 445.04 (2), 445.08 (4), 445.095 (1) (a), 448.05 (7), 450.09 (1) (a), 452.10 (1) and 480.08 (2m).

SECTION 2180. 440.03 (13) (b) 29. of the statutes is repealed.

SECTION 2181. 440.03 (13) (b) 57m. of the statutes is repealed.

SECTION 2182. 440.03 (13) (b) 58. of the statutes is repealed.

SECTION 2183. 440.05 (intro.) of the statutes is amended to read:

440.05 Standard fees. (intro.) The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 444.03, 444.11, 446.02 (2) (c), 447.04 (2) (c) 2., 449.17 (1m) (d), and 449.18 (2) (d):

SECTION 2184. 440.08 (2) (a) 23m. of the statutes is repealed.

SECTION 2185. 440.08 (2) (a) 35m. of the statutes is repealed.

SECTION 2186. 440.08 (2) (a) 63p. of the statutes is repealed.

↑
Included
by mistake - from 2013
budget bill
(sub)

Similarities Between Current Law Governing Consumer Transactions and Proposed Bill Governing Rent-to-Own Agreements

What protections are available under both?	Proposed Statute	Proposed Language	Current Statute	Current Statutory Language/Current Case Law
<p>General Requirements for the Information Disclosed</p>	<p>420.02(1)</p>	<p>The information shall be:</p> <ul style="list-style-type: none"> • clearly and conspicuously disclosed • in writing • in not less than 8-point standard type • disclosed before the time that the lessee becomes legally obligated under the rental-purchase agreement 	<p>422.302 -303</p>	<p>The information shall be:</p> <ul style="list-style-type: none"> • clearly and conspicuously disclosed • in writing • the terms of such instrument evidencing a consumer credit sale shall be set forth in not less than 8-point standard type, or such similar type as is prescribed in rules adopted by the administrator • The creditor shall disclose all information required by this subchapter before the transaction is consummated
<p>Copy of Contract</p>	<p>420.02(3)</p>	<p>The rental-purchase company shall provide the lessee with a copy of the completed rental-purchase agreement signed by the lessee. If more than one lessee is legally obligated under the same rental-purchase agreement, delivery of a copy of the completed rental-purchase agreement to one of the lessees shall satisfy this subsection.</p>	<p>422.302</p>	<p>(3) Before any payment is due, the creditor shall furnish the customer with an exact copy of each instrument, document, agreement and contract which is signed by the customer and which evidences the customer's obligation. If there is more than one customer, delivery of copies of the documents to one of them constitutes compliance with this subsection.</p>
<p>Prohibition Against Confession of Judgment</p>	<p>420.04(1)</p>	<p>A rental-purchase agreement may not contain any of the following: (1) A confession of judgment</p>	<p>422.405</p>	<p>No merchant shall take or accept from the customer a warrant or power of attorney or other authorization for the creditor, or other person acting on the creditor's behalf, to confess judgment</p>
<p>Prohibition Against Breach of the Peace</p>	<p>420.04(2)</p>	<p>A rental-purchase agreement may not contain a provision authorizing a rental-purchase company, or an agent of the rental-purchase company, to enter the lessee's residence without</p>	<p>422.419(a)</p>	<p>No contract evidencing a consumer credit transaction may contain any provision by which the merchant or other person acting on the merchant's behalf is given authority to enter the customer's dwelling or to commit any breach of the peace in the course of taking possession of collateral securing the transaction</p>

		the lessee's permission, or to commit a breach of the peace in the repossession of rental property			
Prohibition Against Waiver of a Defense or Counterclaim	420.04(3)	A rental-purchase agreement may not contain any of the following: (3) A waiver of a defense or counterclaim, a waiver of any right to assert any claim that the lessee may have against the rental-purchase company or an agent of the rental-purchase company, or a waiver of any provision of this chapter relating to rental-purchase agreements.	422.419	No contract evidencing a consumer credit transaction may contain any provision by which (b) The customer waives any right of action against the merchant, or other person acting on the merchant's behalf, for any breach of the peace or other illegal act committed in the course of taking possession of such collateral	
Prohibition Against Mandatory Insurance	420.04(5)	A rental-purchase agreement may not contain any of the following: (5) A provision requiring the lessee to purchase insurance from the rental-purchase company to insure the rental property.	422.202 Additional charges.	A creditor may contract for and collect from the borrower, or include in the amount financed charges or premiums for consumer credit insurance, if the insurance coverage is not required by the creditor and that fact is clearly and conspicuously disclosed in writing to the customer.	
Customer may Reinstatement Agreement/Cure Default	420.06	A lessee may reinstate a rental-purchase agreement that has ended without losing any rights or options previously acquired. As a condition of reinstatement under sub. (1), the rental-purchase company may require the payment of all past-due rental charges, any applicable late fees, the rental payment for the next term.	425.208	The customer shall be entitled to redeem the goods by tendering the total of all unpaid amounts, including any unpaid delinquency or deferral charges	
Right to Receive Statement	420.07	<ul style="list-style-type: none"> 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. 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 	422.306	<ul style="list-style-type: none"> The creditor shall furnish the customer, without request, a written receipt for each payment made in cash, or any other time the method of payment does not itself provide evidence of payment. At any time after consummation of a consumer credit transaction other than one pursuant to an open-end credit plan, the creditor, upon written request by the customer, shall furnish to the customer a written statement of the amounts and specifying the dates of payments received and charges imposed, together with the unpaid balance at the time of the statement. 	

<p>Limitations to Fees for Liability Damage Waiver</p>	<p>420.08</p>	<p>rental-purchase company.</p> <ul style="list-style-type: none"> A rental-purchase company and a lessee may contract for a liability damage waiver. A rental-purchase company may charge a periodic fee for a liability damage waiver in an amount not to exceed 10% of the periodic rental payment. A rental-purchase company may not sell a liability damage waiver unless: (a) the contract containing the waiver is provided to the lessee in writing, incorporated into the rental-purchase agreement, or on a separate document; (b) the face of the writing clearly discloses that the lessee is not required to purchase the waiver; (c) the contract clearly discloses the dollar amount of the fee to be paid with each rental payment; and (d) the consumer expressly agrees to the waiver in writing. A liability damage waiver is not insurance. 	<p>429.204 Gov Walker's "GAP" Memo</p>	<ul style="list-style-type: none"> The consumer lease may contain a separate charge for the waiver under this subsection if the charge is conspicuously disclosed to the lessee, and the consumer lease also contains a conspicuous notice stating that, for such separate charge, the lessor agrees to waive such contractual right and that, in lieu of such separate charge, the lessee may purchase insurance from an insurer authorized to transact business in this state insuring the lessee for any or all of the gap amount. A waiver under this subsection without a separate charge may not be considered insurance on property. A lessor's waiver under sub. (2) may be conditioned upon payment of a separate charge, if any, for the waiver.
<p>Advertising Disclosure Requirements</p>	<p>420.09</p>	<p>If an advertisement for a rental-purchase agreement states the amount of a payment for a specific item of property, the advertisement shall also clearly and conspicuously state the total number and total dollar amount of all rental payments necessary to acquire ownership of the property.</p>	<p>12 CFR Part 1026 (Reg. Z)</p>	<p>If any of the following terms is set forth in an advertisement, the advertisement shall state the number of payments or period of repayment and the amount of any payment.</p>
<p>Penalties</p>	<p>420.12(1)</p>	<p>A rental-purchase company that violates any provision of this chapter, rule promulgated under this chapter, or order issued under this chapter pertaining to a lessee is liable to the lessee in an amount equal to the greater of the following: (a) The actual damages sustained by the lessee as a result of the violation. (b) If the action is not brought as a class action, 25 percent of the total payments necessary for the lessee to</p>	<p>425.302-305</p>	<p>Depending on the violation, a person is liable to the customer in an amount equal to: (a) Twenty-five dollars; and (b) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation. OR (1) One hundred dollars; and (2) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.</p>

			acquire ownership of the rental property, but not less than \$100 nor more than \$1,000. (c) If the action is brought as a class action, the amount the court determines to be appropriate, subject to sub. (2) (see below).			OR (1) Twice the amount of the finance charge in connection with the transaction, except that the liability under this subsection shall not be less than \$100 nor greater than \$1,000; or (2) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.
Damage Limitations in Class Actions	420.12(1)(2)	The total recovery by all lessees in any class action or series of class actions arising out of the same violation may not be more than the lesser of \$500,000 or 1 percent of the net worth of the rental-purchase company.	426.110	No recovery in an action under this subsection may exceed \$100,000.		
Unintentional Violations	420.12(3)	A rental-purchase company is not liable for any violation of this chapter if the rental-purchase company shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, and the rental-purchase company maintained procedures reasonably adapted to avoid such an error.	422.308	A violation of this section is subject to s. 425.304 unless the violation was the result of an unintentional good faith error.		
Costs and Attorney's Fees	420.12(1)(4)	If a court awards any monetary amount under sub. (1) to a lessee, the rental-purchase company shall also be liable to the lessee for the costs of the action and, notwithstanding s. 814.04 (1), for reasonable attorney fees as determined by the court.	425.308	1) If the customer prevails in an action arising from a consumer transaction, the customer shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on the customer's behalf in connection with the prosecution or defense of such action, together with a reasonable amount for attorney fees.		



due TODAY
State of Wisconsin
2013 - 2014 LEGISLATURE

Wanted
by Fri.
9/29



LRB-13267
ARG/jld/jm

-4307/P1

stay [unclear] CMW

in
9/25

DOA: Quinn, BB0421 - Rental purchase agreements

FOR 2013-2015 BUDGET - NOT READY FOR INTRODUCTION

including credit sales and

✓

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

Analysis by the Legislative Reference Bureau

COMMERCE AND ECONOMIC DEVELOPMENT

BUSINESS ORGANIZATIONS AND FINANCIAL INSTITUTIONS

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. ^{have}

MOVE

This bill creates requirements that specifically apply to rental-purchase agreements, imposes requirements on rental-purchase companies, and exempts rental-purchase companies and rental-purchase agreements from the ~~scope of the~~ Wisconsin Consumer Act and from provisions of the Uniform Commercial Code relating to security interests. The bill defines a "rental-purchase agreement" as an agreement

(consumer act)

⊕ This

between a rental-purchase company and a lessee for the use of rental property if all of the following apply: 1) the rental property is to be used primarily for personal, family, or household purposes; 2) the agreement has an initial term of four months or less and is renewable with each payment after the initial term; 3) the agreement does not obligate or require the lessee to renew the agreement beyond the initial term; and 4) the agreement permits, but does not obligate, the lessee to acquire ownership of the rental property. For purposes of a rental-purchase agreement, "rental property" does not include motor vehicles or musical instruments used in schools. A "rental-purchase company" is defined as a person engaged in the business of entering into rental-purchase agreements in this state or acquiring rental-purchase agreements that are entered into in this state.

The bill requires a rental-purchase company to file notice with DFI within 30 days after commencing business in this state, except that a rental-purchase company that generates less than 75 percent of its total revenues in this state from transactions involving rental-purchase agreements may elect not to file notice with DFI and not to be governed by the provisions of the bill. A separate notice is required for each place of business maintained by the rental-purchase company. In addition, the rental-purchase company must pay to DFI an annual fee of \$1,000 for each location for which a notice is filed.

Under the bill, the total amount charged by a rental-purchase company for all required charges or fees, excluding applicable taxes and any late fees or reinstatement fees, in a rental-purchase transaction may not exceed twice the maximum cash price of the rental property. The maximum cash price of rental property may not exceed the greater of the following: 1) an amount equal to twice the actual purchase price of the rental property, including any applicable freight charges, paid by the rental-purchase company; or 2) the price at which property of like type and quality is offered, in the ordinary course of business, for sale for cash in the market area of the rental-purchase store where the property is offered for rental purchase. The bill also limits the maximum amount that a lessee must pay to acquire ownership of the property if the lessee elects an early-purchase option after the initial rental period. This maximum amount to acquire ownership under an early-purchase option is the greater of the following: 1) an amount not to exceed 55 percent of the difference between the total of rental payments necessary to acquire ownership of the rental property and the total amount of rental payments paid for use of the rental property at that time, plus applicable taxes; or 2) the amount of one rental payment. Before a lessee acquires ownership of the rental property under an early-purchase option, the rental-purchase company may require the lessee to pay any accrued unpaid rental payments and fees.

Under the bill, a lessee may reinstate a rental-purchase agreement that has ended without losing any rights or options previously acquired if all of the following apply: 1) the lessee voluntarily returned or surrendered the rental property within seven days after the expiration of the rental-purchase agreement; and 2) not more than 120 days have passed after the date on which the rental-purchase agreement ended. As a condition of reinstatement, the rental-purchase company may require the payment of all past-due rental charges, any applicable late fees, a reinstatement

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e

, and a reinstatement fee not to exceed \$5 or \$8, depending on the circumstances ✓

fee not to exceed \$5, and the rental payment for the next term. Upon reinstatement, the rental-purchase company must provide the lessee with the same rental property or with substitute property of comparable quality and condition. A rental-purchase company must provide written notice to a lessee of the lessee's rights and obligations relating to reinstatement of the rental-purchase agreement within 15 days of repossession or voluntary return or surrender of the rental property, if the lessee is entitled to reinstatement.

The bill specifies that a rental-purchase company is not required to disclose, in a rental-purchase agreement or otherwise, any percentage rate calculation, including an annual percentage rate. However, every rental-purchase agreement must contain certain provisions, including the following, to the extent applicable:

1. A description of the rental property. ✓
2. The cash price of the rental property. ✓
3. The total amount of the rental payments necessary to acquire ownership of the property. ✓
4. The difference between the amount described under item 3., above, and the cash price of the rental property. ✓
5. The total amount of the initial payment due when the rental-purchase agreement is executed or the rental property is delivered. ✓
6. The rental payment and any applicable taxes and fees for optional services to which the lessee agrees. necessary to renew the rental-purchase agreement ✓
7. An itemized description of any other charges or fees the rental-purchase company may charge upon the occurrence of a contingency specified in the rental-purchase agreement, such as late fees. ✓
8. The total amount of all charges necessary to acquire ownership of the rental property. ✓
9. A statement of the lessee's early-purchase option. ✓
10. A statement of the lessee's responsibility in the event of theft of or damage to the rental property. ✓
11. A statement that, with certain exceptions, the rental-purchase company is required to service the rental property and 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. An explanation of the lessee's right to reinstate the rental-purchase agreement. ✓
14. A statement that the lessee will not own the rental property until the lessee exercises an early-purchase option or makes all rental payments necessary to acquire ownership. ✓

All required provisions of a rental-purchase agreement must be clearly and conspicuously disclosed to the lessee in the rental-purchase agreement in at least eight-point standard type, except for certain provisions that must be disclosed in at least ten-point boldface type. The bill also 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.

Under

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ANAL-A more up
cont'd

The bill also prohibits the inclusion of certain provisions in a rental-purchase agreement. The prohibited provisions include the following: 1) a confession of judgment; 2) a provision granting the rental-purchase company permission to enter the lessee's residence or commit a breach of the peace in repossessing the rental property; 3) a waiver of any defense or counterclaim or any provision of the bill's requirements; 4) a provision requiring rental payments totaling more than the total dollar amount of all rental payments necessary to acquire ownership; 5) a provision requiring the lessee to purchase insurance from the rental-purchase company to insure the rental property; and 6) a provision requiring the lessee to pay attorney fees.

and

(end ins ANAL-A)

Under the bill, 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 the lessee designates 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.

of transactions

The bill creates requirements for advertising rental-purchase agreements. 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 and timing of the rental payments, and the total number and total 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 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.

Under the bill, a rental-purchase company that violates any of the provisions of the bill, or any applicable rule or order of the Department, pertaining to a lessee is liable to the lessee in an amount equal to the greater of the following: 1) the actual damages sustained by the lessee as a result of the violation; 2) if the action is not brought as a class action, 25 percent of the total payments necessary for the lessee to acquire ownership of the rental property, but not less than \$100 nor more than \$1,000; or 3) if the action is brought as a class action, the amount the court determines to be appropriate. However, there are two limitations on such an award of damages. First, a rental-purchase company is not liable for any violation if the rental-purchase company shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, and the rental-purchase company maintained procedures reasonably adapted to avoid such an error. Second, in a class action or series of class actions, the total recovery by all lessees arising out of the same violation may not be more than the lesser of \$500,000 or 1 percent of the net worth of the rental-purchase company. If a court awards any monetary amount of

the Department of Financial Institutions

insert ANAL - D

damages to a lessee, the rental-purchase company is also liable to the lessee for the costs of the action and reasonable attorney fees. ~~NO~~ NO P.

The bill allows DFI to promulgate rules to administer and enforce the requirements of the bill. also

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

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

insert 5-4

1 SECTION 1. 409.109 (4) (n) of the statutes is created to read:

2 409.109 (4) (n) Any rental-purchase company that has filed notice as provided
3 under s. 420.02 (1) and any rental-purchase agreement entered into by such a
4 rental-purchase company. in compliance with ch. 420

5 SECTION 2. Chapter 420 of the statutes is created to read:

6 CHAPTER 420

7 RENTAL-PURCHASE COMPANIES

8 420.01 Definitions. In this chapter:

9 (1) "Cash price" means the price at which a rental-purchase company would
10 sell rental property to the lessee of the rental property if the lessee were to pay for
11 the rental property in full on the date on which the rental-purchase agreement is
12 executed.

insert 5-13

13 (2) "Department" means the department of financial institutions.

14 (3) "Rental property" means property rented under a rental-purchase
15 agreement but does not include any motor vehicle, as defined in s. 340.01 (35), or any
16 musical instrument that is intended to be used in whole or in part in an elementary
17 school or high school.

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5 → (B)
(4)

(1) (4) "Rental-purchase agreement" means an agreement between a rental-purchase company and a lessee for the use of rental property if all of the following apply: ✓

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

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

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

10 (d) The agreement permits, but does not obligate, the lessee to acquire ownership of the rental property. ✓

12 (6) (B) "Rental-purchase company" means a person engaged in the business of entering into rental-purchase agreements in this state or acquiring rental-purchase agreements that are entered into in this state.

15 **420.02 Notice to the department.** (1) NOTICE. (a) Except as provided in par. (b), a rental-purchase company shall file notice with the department, in the form and manner prescribed by the department, within 30 days after commencing business in this state. A separate notice is required for each place of business maintained by the rental-purchase company.

20 (b) A rental-purchase company that generates less than 75 percent of its total revenues in this state from transactions involving rental-purchase agreements may elect not to file notice with the department under par. (a) and, upon informing the department of this election in a manner prescribed by the department, shall not be governed by the provisions of this chapter.

1 ~~(2) FEE.~~ For each location for which a notice is filed under sub. (1), the
2 rental-purchase company shall pay to the department an annual fee of \$1,000. If a
3 rental-purchase company fails to timely pay the annual fee, the department shall
4 order the rental-purchase company to cease operating until the annual fee is paid.

5 ~~420.03~~² **General requirements of disclosure.** (1) FORM, LOCATION, SIZE, AND
6 TIME OF DISCLOSURE. The information that is required to be disclosed under s. 420.04³
7 shall satisfy all of the following:

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

9 (b) The information shall be disclosed in writing. ✓

10 (c) Except as provided in par. (f), ✓ the information shall be disclosed in the
11 rental-purchase agreement above the line for the lessee's signature. Multiple pages
12 or backs of pages may be used as long as the ^{final page ✓} face of the rental-purchase agreement
13 is signed by the lessee and other pages are signed or initialed by the lessee. ✓

14 (d) Except as provided in par. (f), ✓ the information shall be disclosed in not less
15 than 8-point standard type. ✓

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

18 (f) The disclosures required by s. 420.04³ (2), (3), (4), and (1)⁵ shall be printed in
19 at least 10-point boldface type on the face of the rental-purchase agreement, and
20 shall be grouped together in a box, in the form and order prescribed by the
21 department.

22 (2) ACCURACY OF DISCLOSURE. The information required under s. 420.04³ must
23 be accurate as of the time that it is disclosed to the lessee. If any information
24 subsequently becomes inaccurate as a result of any act, occurrence, or agreement by

1 the lessee, the resulting inaccuracy is not a violation of any provision of this chapter
2 relating to rental-purchase agreements.

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

8 ³ 420.01 **Required provisions of rental-purchase agreement.** A
9 rental-purchase company shall include all of the following information, to the extent
10 applicable, in every rental-purchase agreement: ✓

11 (1) DESCRIPTION. ✓ A brief description of the rental property, sufficient to identify
12 the rental property to the lessee and the rental-purchase company, including any
13 identification number, and a statement indicating whether the rental property is
14 new or used. A statement that new rental property is used shall not be a violation
15 of this subchapter. ✓

16 (2) CASH PRICE. The cash price of the rental property.

17 (3) RENTAL PAYMENTS TO ACQUIRE OWNERSHIP. The total number, total dollar
18 amount, and timing of all rental payments necessary to acquire ownership of the
19 rental property, excluding any applicable taxes, application or processing charge,
20 delivery fee, liability damage waiver fee, and fees for optional services. ✓

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

1 cash price if you acquire ownership of the rented goods by making all payments
2 necessary to acquire ownership.”

3 **(5) PERIODIC PAYMENT.** The rental payment and any applicable taxes and fees
4 for optional services to which the lessee agrees.

5 **(6) UP-FRONT PAYMENT.** The total amount of the initial payment to be made by
6 the lessee at the time that the rental-purchase agreement is executed or the rental
7 property is delivered, including the initial rental payment, any application or
8 processing charge, any delivery fee, and fees for other optional services to which the
9 lessee agrees. ✓

10 ~~**(7) TOTAL PAYMENTS TO ACQUIRE OWNERSHIP.** The total of all charges to be paid
11 by the lessee to acquire ownership of the rental property, which shall consist of the
12 total dollar amount of all rental payments disclosed under sub. (3), and the total
13 dollar amount of all required fees and taxes.~~

14 ~~**(8) OTHER CHARGES.** An itemized description of any other charges or fees that
15 the rental-purchase company may charge upon the occurrence of a contingency
16 specified in the rental-purchase agreement, such as late fees. ✓~~

17 **(9) SUMMARY OF EARLY-PURCHASE OPTION.** A statement summarizing the terms
18 of the lessee's options to acquire ownership of the rental property as provided in s.
19 420.06 (3).

20 ~~**(10) RESPONSIBILITY FOR THEFT OR DAMAGE.** A statement that, unless otherwise
21 agreed, the lessee is responsible for the fair market value of the rental property,
22 determined according to the early-purchase option formula under sub. (9), if the
23 rental property is stolen, damaged, or destroyed while in the possession of or subject
24 to the control of the lessee. The statement shall indicate that the fair market value~~

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

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

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

15 (B) 12 (13) RIGHT TO REINSTATE. A brief explanation of the lessee's right to reinstate
16 a rental-purchase agreement under s. 420.07.

17 (B) 13 (14) RENTAL, NOT PURCHASE. A statement reading substantially as follows: "You
18 are renting this property. You will not own the property until you make all payments
19 necessary to acquire ownership or until you exercise your early-purchase option. If
20 you do not make your payments as scheduled or exercise your early-purchase option,
21 the rental-purchase company may repossess the property." insert 10-21

22 (B) 14 (15) INFORMATION ABOUT RENTAL-PURCHASE COMPANY AND LESSEE. The names of
23 the rental-purchase company and the lessee, the rental-purchase company's
24 business address and telephone number, the lessee's address, and the date on which
25 the rental-purchase agreement is executed.

1 ¹⁵ (15) ~~(16)~~ OPTIONAL SERVICES. Space for a specific, separately signed or initialed,
2 affirmative, written indication of the lessee's desire for any optional service for which
3 a charge is assessed. The lessee's request must be obtained after a written disclosure
4 of the cost of the optional service is made, and the disclosure of the cost and purpose
5 of such service must be listed at or near the affirmation space. This requirement is
6 satisfied by a separate written agreement for an optional service that meets the
7 requirements of this subsection. ✓

8 ⁴ (B) ~~420.0%~~ **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) REPOSSESSION. A provision authorizing a rental-purchase company, or an
12 agent of the rental-purchase company, to enter the lessee's residence without the
13 lessee's permission, or to commit a breach of the peace in the repossession of rental
14 property provided by the rental-purchase company under the rental-purchase
15 agreement. ✓

16 (3) WAIVER. A waiver of a defense or counterclaim, a waiver of any right to
17 assert any claim that the lessee may have against the rental-purchase company or
18 an agent of the rental-purchase company, or a waiver of any provision of this chapter
19 relating to rental-purchase agreements. ✓

20 (4) OVERPAYMENT. A provision requiring rental payments totaling more than
21 the total dollar amount of all rental payments necessary to acquire ownership, as
22 disclosed in the rental-purchase agreement. ✓

23 (5) INSURANCE. A provision requiring the lessee to purchase insurance from the
24 rental-purchase company to insure the rental property. ✓

25 (6) ATTORNEY FEES. A provision requiring the lessee to pay any attorney fees.

Insert 12-1 ✓

1 **420.06 Price and cost limitations. (1) LIMITS ON CASH PRICES.** The cash price
2 for rental property offered by a rental-purchase company may not exceed the greater
3 of the following:

4 (a) An amount equal to twice the actual purchase price of the rental property,
5 including any applicable freight charges, paid by the rental-purchase company.

6 (b) The price at which property of like type and quality is offered, in the
7 ordinary course of business, for sale for cash in the market area of the
8 rental-purchase store where the property is offered for rental purchase.

9 **(2) LIMITS ON COST OF RENTAL SERVICES AND OTHER CHARGES.** The total amount
10 charged by the rental-purchase company for all required charges or fees, excluding
11 applicable taxes and any late fees or reinstatement fees, in a rental-purchase
12 transaction shall not exceed twice the maximum cash price of the property as
13 determined under sub. (1).

14 **(3) ACQUISITION OF OWNERSHIP.** At any time after the initial rental period under
15 a rental-purchase agreement, if a lessee affirmatively elects an early-purchase
16 option, the lessee may acquire ownership of the rental property by tendering an
17 amount not to exceed 55 percent of the difference between the total of rental
18 payments necessary to acquire ownership of the rental property and the total
19 amount of rental payments paid for use of the rental property at that time, plus
20 applicable taxes, except that the lessee's early-purchase option amount may not be
21 less than the amount of one rental payment. Before a lessee acquires ownership of
22 the rental property as provided under this subsection, a rental-purchase company
23 may first require the lessee to pay any accrued unpaid rental payments and fees.

24 **(4) ANNUAL PERCENTAGE RATE DISCLOSURE NOT REQUIRED.** A rental-purchase
25 company shall not be required to disclose, in a rental-purchase agreement or

1 otherwise, any percentage rate calculation, including a time-price differential, an
2 annual percentage rate, or an effective annual percentage rate.

3 **420.07** ^{6 ← B} **Reinstatement of a rental-purchase agreement. (1)**

4 REINSTATEMENT GENERALLY. Subject to sub. (2),[✓] a lessee may reinstate a
5 rental-purchase agreement that has ended without losing any rights or options
6 previously acquired if all of the following apply:[✓]

7 (a) The lessee voluntarily returned or surrendered the rental property within
8 7 days after the expiration of the rental-purchase agreement.[✓]

9 (b) Not more than 120[✓] days have passed after the date on which the
10 rental-purchase agreement ended.[✓]

11 (2) AUTHORIZED CONDITIONS ON REINSTATEMENT. As a condition of reinstatement
12 under sub. (1),[✓] the rental-purchase company may require the payment of all
13 past-due rental charges, any applicable late fees,[✓] a reinstatement fee not to exceed
14 \$5, and the rental payment for the next term. *insert 13-14 ✓*

15 (3) EFFECT OF REPOSSESSION ON REINSTATEMENT. Subject to s. 420.05[✓] (2), nothing
16 in this section prohibits a rental-purchase company from repossessing or attempting
17 to repossess rental property when a rental-purchase agreement ^{is not renewed} ends, but such
18 efforts do not affect the lessee's right to reinstate as long as the rental property is
19 voluntarily returned or surrendered within[✓] 7 days after the rental-purchase
20 agreement ends. *expires ✓*

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

1 (5) NOTICE OF REINSTATEMENT RIGHTS. If the lessee is entitled to reinstatement
2 under subs. (1) and (2), within 15 days of repossession or voluntary return or
3 surrender of the rental property, the rental-purchase company shall provide written
4 notice to the lessee of the lessee's rights and obligations under this section.

5 ~~420.0§~~ ^{7 ← (B)} Receipts and statements. (1) RECEIPTS. ✓ A rental-purchase company
6 shall provide a written receipt to the lessee for any payment made by the lessee in
7 cash or, upon the request of the lessee, for any other type of payment.

8 (2) STATEMENT DUE TO LESSEE. ✓ Subject to sub. (4), ✓ upon the request of a lessee,
9 a rental-purchase company shall provide a written statement to the lessee showing
10 the lessee's payment history on each rental-purchase agreement between the lessee
11 and the rental-purchase company. ✓ A rental-purchase company is not required to
12 provide a statement covering any rental-purchase agreement that ended more than
13 one year prior to the date of the lessee's request. A rental-purchase company may
14 provide a single statement covering all rental-purchase agreements or separate
15 statements for each rental-purchase agreement, at the rental-purchase company's
16 option. ✓

17 (3) STATEMENT DUE TO OTHER PARTIES. ✓ Subject to sub. (4), ✓ upon the written
18 request of a lessee, made during the term of or no later than one year after the
19 rental-purchase agreement ended, a rental-purchase company shall provide a
20 written statement to any person the lessee designates, showing the lessee's payment
21 history under the rental-purchase agreement. ✓

22 (4) FEE FOR STATEMENT. A lessee or, if appropriate, a lessee's designee, is entitled
23 to receive one statement under subs. (2) ✓ and (3) ✓ without charge once every 12 ✓
24 months. A rental-purchase company shall provide an additional statement if the

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15-2

1 lessee pays the rental-purchase company's reasonable costs of preparing and
2 furnishing the statement. ✓

3 **420.09 Advertising disclosure required.** If an advertisement for a
4 rental-purchase agreement states the amount of a payment for a specific item of
5 property, the advertisement shall also clearly and conspicuously state all of the
6 following: ✓

7 (1) That the transaction advertised is a rental-purchase agreement. ✓

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

10 (3) That the lessee does not acquire ownership of the property if the lessee fails
11 to make all payments necessary to acquire ownership of the property. ✓

12 **420.10 Price cards displayed.** (1) PRICE CARDS GENERALLY. ✓ Except as
13 provided in sub. (2), ✓ a card or tag that clearly and conspicuously states all of the
14 following shall be displayed on or next to any property displayed or offered by a
15 rental-purchase company for rent under a rental-purchase agreement: ✓

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

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

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

20 (d) ~~The cost of rental services under a rental-purchase agreement.~~ ✓

21 (e) ✓ Whether the property is new or used.

22 (2) EXCEPTIONS. If property is offered for rent under a rental-purchase
23 agreement through a catalog, whether print or electronic, or if the size of the property
24 is such that displaying a card or tag on or next to the property would be impractical,
25 a rental-purchase company may make the disclosures required under sub. (1) in a

NO
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1 catalog, list, or disclosure sheet if the catalog, list, or disclosure sheet is readily
2 available to prospective lessees and provided upon request. ✓

3 **420.11 Rule making.** ✓ The department may promulgate rules to administer
4 and enforce the requirements of this chapter. ✓

5 **420.12 Penalties.** (1) AWARD OF DAMAGES. ✓ Subject to sub. (3), ✓ a
6 rental-purchase company that violates any provision of this chapter, rule
7 promulgated under this chapter, or order issued under this chapter pertaining to a
8 lessee is liable to the lessee in an amount equal to the greater of the following: ✓

9 (a) The actual damages sustained by the lessee as a result of the violation.

10 (b) If the action is not brought as a class action, ✓ 25 percent of the total payments
11 necessary for the lessee to acquire ownership of the rental property, but not less than
12 \$100 nor more than \$1,000. ✓

13 (c) If the action is brought as a class action, the amount the court determines
14 to be appropriate, subject to sub. (2). ✓

15 (2) DAMAGE LIMITATIONS IN CLASS ACTIONS. ✓ The total recovery by all lessees in
16 any class action or series of class actions arising out of the same violation may not
17 be more than the lesser of ✓ \$500,000 or 1 percent ✓ of the net worth of the
18 rental-purchase company. In determining the amount of any award in a class action,
19 the court shall consider, among other relevant factors, the amount of actual damages
20 awarded, the frequency and persistence of the violation, the rental-purchase
21 company's resources, and the extent to which the rental-purchase company's
22 violation was intentional. ✓

23 (3) UNINTENTIONAL VIOLATIONS. ✓ A rental-purchase company is not liable for any
24 violation of this chapter if the rental-purchase company shows by a preponderance
25 of the evidence that the violation was not intentional and resulted from a bona fide

1 error, and the rental-purchase company maintained procedures reasonably adapted
2 to avoid such an error. ✓

3 (4) COSTS AND ATTORNEY FEES. ✓ If a court awards any monetary amount under
4 sub. (1) ✓ to a lessee, the rental-purchase company shall also be liable to the lessee for
5 the costs of the action and, notwithstanding s. 814.04 (1), ✓ for reasonable attorney fees
6 as determined by the court.

insert
17-8

7 **420.13 Inapplicability of Consumer Act and ch. 409.** ✓ A rental-purchase
8 company that has filed notice as provided under s. 420.02 (1) is not subject to the
9 Wisconsin Consumer Act, chs. 421 to 427, ✓ or any related rule or order adopted under
10 chs. 421 to 427, ✓ or to any provision of ch. 409, ✓ and any ^{such} rental-purchase agreement
11 entered into by such a rental-purchase company ^{shall} may not be construed or regulated
12 as a security interest, credit sale, retail installment sale, conditional sale, or any
13 other form of consumer credit, nor considered to be the creation of a debt or extension
14 of credit. ✓

15 SECTION 3. 421.202 (11) of the statutes is created to read:

16 421.202 (11) Any rental-purchase company that has filed notice as provided
17 under s. 420.02 (1) and any rental-purchase agreement ^s entered into by such a
18 rental-purchase company. *in compliance with ch. 420 ✓*

19 → SECTION ~~9314~~ [#] **Initial applicability; Financial Institutions.**

20 *Fix components* → (1) RENTAL-PURCHASE AGREEMENTS. The treatment of sections 409.109 (4) (m)
21 and 421.202 (11) and chapter 420 of the statutes ^{This act} first applies to rental-purchase
22 agreements, and conduct pursuant to those agreements, that are entered into on the
23 effective date of this subsection.

24 → SECTION ~~9414~~ [#] **Effective dates; Financial Institutions.**

change component ✓

change component ✓

SECTION 9414

1 *Fix component* (1) RENTAL-PURCHASE AGREEMENTS. The treatment of sections 409.109 (4) (n)
2 and 421.202 (11) and chapter 420 of the statutes and SECTION 9314 (1) of this act takes
3 effect on the 90th day after publication. ✓

4 (END)

1 **INSERT ANAL-B:**

(no ¶) The bill also includes certain disclosure requirements for property subject to a rental-purchase agreement if the property is not displayed or offered at a physical location that derives 50 percent or more of its revenues from rental-purchase agreements.

2 **INSERT ANAL-C:**

* ¶ The bill allows a rental-purchase company and lessee to contract for, and allows the rental-purchase company to charge a fee for, a liability damage waiver, but the fee may not exceed ten percent of the periodic rental payment. The bill imposes various requirements with respect to such a liability damage waiver and specifies that the waiver is not insurance.

3

4 **INSERT ANAL-D:**

Under the bill, rental-purchase agreements entered into in compliance with the provisions of the bill are not subject to the consumer act or to the security interest provisions of the Uniform Commercial Code.

5 **INSERT 5-4:**

****NOTE: The proposed draft language specifies in created s. 420.13 that a rental-purchase agreement is not subject to any provision of ch. 409. I have added the corresponding treatment in ch. 409 because that is where users of the statutes would expect to find this exception.

6

7 **INSERT 5-13:**

8 (3) "Displayed or offered primarily for rental-purchase," with respect to rental
9 property, means rental property displayed or offered at a physical location that
10 derives 50 percent or more of its revenues from rental-purchase agreements.

11

12



1

INSERT 10-21:

2

(no ff)

is entitled to immediate possession of

NO
ff

3

4

INSERT 17-8:

5

(no ff)

agreement that complies with this chapter

NO
ff

6

insert
9-3

1 (5) PERIODIC RENEWAL PAYMENT. The rental payment necessary to renew the
2 rental-purchase agreement, not including any applicable taxes and fees for optional
3 services to which the lessee agrees. ✓

4 (6) INITIAL PAYMENT. The total amount of the initial payment to be made by the
5 lessee at the time that the rental-purchase agreement is executed or the rental
6 property is delivered, including the initial rental payment, any application or
7 processing charge, any delivery fee, and fees for other optional services to which the
8 lessee agrees.

9 (7) OTHER CHARGES. An itemized description of any other charges or fees that
10 the rental-purchase company may charge upon the occurrence of a contingency
11 specified in the rental-purchase agreement, such as late fees.

insert
9-17

12 (8) SUMMARY OF EARLY-PURCHASE OPTION. ✓ A statement that the lessee has an
13 early purchase option to purchase the property at any time during the period that
14 the rental-purchase agreement is in effect. The statement must specify the price or
15 the formula or other method for determining the price at which the property may be
16 purchased. ✓

17 (9) RESPONSIBILITY FOR THEFT OR DAMAGE. ✓ A statement that, unless otherwise
18 agreed, in the event the rental property is stolen, damaged, or destroyed while in the
19 possession of, or subject to the control of, the lessee, the lessee is responsible for an
20 amount equal to the lesser of the amount required to exercise the early-purchase
21 option as provided in sub. (8) or 55 percent of the scheduled remaining periodic
22 payments, but in no event in an amount greater than the cash price. ✓

23 (10) SERVICE AND WARRANTY. A statement that, during the term of the rental-
24 purchase agreement, the rental-purchase company is required to service the rental
25 property and maintain it in good working condition, as long as no other person has

1 satisfied by a separate written agreement for an optional service that meets the
2 requirements of this subsection.

3 **420.04 Prohibited provisions of rental-purchase agreements.** A
4 rental-purchase agreement may not contain any of the following:

5 (1) CONFESSION. A confession of judgment.

6 (2) REPOSSESSION. A provision authorizing a rental-purchase company, or an
7 agent of the rental-purchase company, to enter the lessee's residence without the
8 lessee's permission, or to commit a breach of the peace in the repossession of rental
9 property provided by the rental-purchase company under the rental-purchase
10 agreement.

11 (3) WAIVER. A waiver of a defense or counterclaim, a waiver of any right to
12 assert any claim that the lessee may have against the rental-purchase company or
13 an agent of the rental-purchase company, or a waiver of any provision of this chapter
14 relating to rental-purchase agreements.

15 (4) OVERPAYMENT. A provision requiring rental payments totaling more than
16 the total dollar amount of all rental payments necessary to acquire ownership, as
17 disclosed in the rental-purchase agreement.

18 (5) INSURANCE. A provision requiring the lessee to purchase insurance from the
19 rental-purchase company to insure the rental property.

20 (6) ATTORNEY FEES. A provision requiring the lessee to pay any attorney fees.

21 **420.05 Disclosures for certain rental-purchase agreements.** (1)

22 *Disclosures for*
PROPERTY NOT DISPLAYED ~~IN STORE~~ OR ~~NOT~~ OFFERED PRIMARILY FOR RENTAL-PURCHASE.

23 When rental property is offered for rental-purchase but is not displayed ~~in store~~ or
24 is ~~property not~~ offered primarily for rental-purchase, all of the following shall be

insert
12-1

move → *that*
When rental property is offered for rental-purchase but is not displayed in store or is property not offered primarily for rental-purchase, all of the following shall be



displayed or offered primarily
- 8 -
for rental-purchase

1 separately disclosed prior to displaying or presenting a rental-purchase agreement
2 to a lessee for execution:

3 (a) The cash price of the property. ✓

4 (b) The amount of the periodic renewal payment. ✓

5 (c) The total dollar amount of all periodic rental payments necessary to acquire
6 ownership if the lessee makes all scheduled payments. ✓

7 (2) ^{Additional disclosures for} PROPERTY NOT DISPLAYED OR NOT OFFERED PRIMARILY FOR RENTAL-PURCHASE.

8 In addition to the disclosures required by s. 420.03, if the property that is the subject
9 of a rental-purchase agreement was not, prior to the rental-purchase transaction,
10 rental property displayed or offered at a physical location that derives 50 percent or
11 more of its revenue from rental-purchase agreements, all of the following additional

12 disclosures shall be made on a separate page titled "Acknowledgment of
13 Rental-Purchase Transaction" and signed by the lessee: ✓

14 (a) The agreement is a rental-purchase agreement and the lessee does not own
15 the property, but can obtain ownership by using ownership options provided in the
16 agreement. ✓

17 (b) The agreement is not a credit transaction. ✓

18 (c) The lessee has the right to return the property to the lessor without
19 additional charge or penalty at any time and will owe nothing further except unpaid
20 rental charges and fees. ✓

21 (d) If the lessee returns the property, the agreement offers reinstatement rights
22 that allow the lessee to get the property back if the lessee has complied with the
23 agreement and the law. ✓

24 (e) The lessee has reviewed and understands the agreement, including the
25 purchase option rights and the total cost if all scheduled payments are made. ✓

(end ins)

insert 12-1 cont'd

Insert
12-1
cont'd

****NOTE: I made some modifications to the proposed draft language in created s. 420.05 for purposes of clarity and consistency and to conform to LRB drafting conventions.

1 **420.06 Reinstatement of a rental-purchase agreement. (1)**

2 REINSTATEMENT GENERALLY. Subject to sub. (2), a lessee may reinstate a
3 rental-purchase agreement that has ended without losing any rights or options
4 previously acquired if all of the following apply:

5 (a) The lessee voluntarily returned or surrendered the rental property within
6 7 days after the expiration of the rental-purchase agreement.

7 (b) Not more than 120 days have passed after the date on which the
8 rental-purchase agreement ended.

9 **(2) AUTHORIZED CONDITIONS ON REINSTATEMENT.** As a condition of reinstatement
10 under sub. (1), the rental-purchase company may require the payment of all
11 past-due rental charges, any applicable late fees, and a reinstatement fee not to
12 exceed \$8 for agreements renewed on a monthly basis or \$5 for agreements renewed
13 more frequently than monthly.

Insert
13-14

14 **(3) EFFECT OF REPOSSESSION ON REINSTATEMENT.** Subject to s. 420.04 (2), nothing
15 in this section prohibits a rental-purchase company from repossessing or attempting
16 to repossess rental property when a rental-purchase agreement is not renewed, but
17 such efforts do not affect the lessee's right to reinstate as long as the rental property
18 is voluntarily returned or surrendered within 7 days after the rental-purchase
19 agreement expires.

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

~~1 months. A rental-purchase company shall provide an additional statement if the
 2 lessee pays the rental-purchase company's reasonable costs of preparing and
 3 furnishing the statement.~~

insert
15-2

420.08 Liability damage waiver. (1) WAIVER PERMISSIBLE.

A rental-purchase company and a lessee may contract for a liability damage waiver. A rental-purchase company may charge a periodic fee for a liability damage waiver in an amount not to exceed 10 percent of the periodic rental payment.

(2) REQUIREMENTS FOR WAIVER. A rental-purchase company may not sell a liability damage waiver unless all of the following apply:

(a) The contract containing the waiver is provided to the lessee in writing, either by incorporating it into the rental-purchase agreement or by providing it as a separate document.

(b) The face of the writing under par. (a) clearly discloses that the lessee is not required to purchase the waiver.

(c) The contract clearly discloses the dollar amount of the fee to be paid with each rental payment.

(d) The lessee expressly agrees to the waiver in writing.

(3) SCOPE OF WAIVER. The liability damage waiver may exclude only loss or damage to the property that is the subject of the rental-purchase agreement caused by moisture, scratches, mysterious disappearance, vandalism, abandonment of the property, or any other damage intentionally caused by the lessee or that results from the lessee's willful or wanton misconduct.

(4) WAIVER CANCELLATION. The lessee is entitled to cancel the waiver at the end of any rental term.

(5) WAIVER IS NOT INSURANCE. A liability damage waiver is not insurance.



insert
15-2
cont'd

***NOTE: I made some modifications to the proposed draft language in created s. 420.08 for purposes of clarity and consistency and to conform to LRB drafting conventions. To my understanding, the waiver may be within the rental-purchase agreement or a separate agreement. If it is within the rental-purchase agreement, is it true that the ~~waiver~~ would appear on the "face" of the writing, ~~as stated in sub. (2) (b)?~~ *disclosure under* ~~made~~

1 **420.09 Advertising disclosure required.** If an advertisement for a
2 rental-purchase agreement states the amount of a payment for a specific item of
3 property, the advertisement shall also clearly and conspicuously state all of the
4 following:

- 5 (1) That the transaction advertised is a rental-purchase agreement.
- 6 (2) The total number and total dollar amount of all rental payments necessary
- 7 to acquire ownership of the property.
- 8 (3) That the lessee does not acquire ownership of the property if the lessee fails
- 9 to make all payments necessary to acquire ownership of the property.

10 **420.10 Price cards displayed.** (1) PRICE CARDS GENERALLY. Except as
11 provided in sub. (2), a card or tag that clearly and conspicuously states all of the
12 following shall be displayed on or next to any property displayed or offered by a
13 rental-purchase company for rent under a rental-purchase agreement:

- 14 (a) The cash price that a lessee would pay to purchase the property.
- 15 (b) The amount and timing of the rental payments.
- 16 (c) The total number and total amount of all rental payments necessary to
- 17 acquire ownership of the property under a rental-purchase agreement.
- 18 (d) Whether the property is new or used.

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



Today

in 11/15

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

11/15 H/c w/ Anna - wants / - no changes

No changes except removing Notes

SA/
XFP
PWFV

- 1 AN ACT *to create* 409.109 (4) (n), chapter 420 and 421.202 (11) of the statutes;
- 2 **relating to:** regulation of rental-purchase agreements and granting
- 3 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill creates requirements that specifically apply to rental-purchase agreements, imposes requirements on rental-purchase companies, and exempts rental-purchase companies and rental-purchase agreements from the Wisconsin Consumer Act (consumer act).

Under current law, a consumer credit transaction that is entered into for personal, family, or household purposes is generally subject to the consumer act. The consumer act grants consumers certain rights and remedies and contains notice and disclosure requirements and prohibitions relating to consumer credit transactions, including credit sales and consumer leases that have a term of more than four months. 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 defines a “rental-purchase agreement” as an agreement between a rental-purchase company and a lessee for the use of rental property if all of the following apply: 1) the rental property is to be used primarily for personal, family, or household purposes; 2) the agreement has an initial term of four months or less and is renewable with each payment after the initial term; 3) the agreement does not obligate or require the lessee to renew the agreement beyond the initial term; and

4) the agreement permits, but does not obligate, the lessee to acquire ownership of the rental property. For purposes of a rental-purchase agreement, "rental property" does not include motor vehicles or musical instruments used in schools. A "rental-purchase company" is defined as a person engaged in the business of entering into rental-purchase agreements in this state or acquiring rental-purchase agreements that are entered into in this state.

Under the bill, every rental-purchase agreement must contain certain provisions, including the following, to the extent applicable:

1. A description of the rental property.
2. The cash price of the rental property.
3. The total amount of the rental payments necessary to acquire ownership of the property.
4. The difference between the amount described under item 3., above, and the cash price of the rental property.
5. The total amount of the initial payment due when the rental-purchase agreement is executed or the rental property is delivered.
6. The rental payment necessary to renew the rental-purchase agreement.
7. An itemized description of any other charges or fees the rental-purchase company may charge upon the occurrence of a contingency specified in the rental-purchase agreement, such as late fees.
8. A statement of, and information related to, the lessee's early-purchase option.
9. A statement of the lessee's responsibility in the event of theft of or damage to the rental property.
10. A statement that, with certain exceptions, the rental-purchase company is required to service the rental property and maintain it in good working condition.
11. A statement that the lessee may terminate the rental-purchase agreement at any time, without penalty, by surrendering the rental property in good repair.
12. An explanation of the lessee's right to reinstate the rental-purchase agreement.
13. A statement that the lessee will not own the rental property until the lessee exercises an early-purchase option or makes all payments necessary to acquire ownership.

All required provisions of a rental-purchase agreement must be clearly and conspicuously disclosed to the lessee in the rental-purchase agreement in at least eight-point standard type, except for certain provisions that must be disclosed in at least ten-point boldface type. The bill also 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. The bill also includes certain disclosure requirements for property subject to a rental-purchase agreement if the property is not displayed or offered at a physical location that derives 50 percent or more of its revenues from rental-purchase agreements.

The bill also prohibits the inclusion of certain provisions in a rental-purchase agreement. The prohibited provisions include the following: 1) a confession of judgment; 2) a provision granting the rental-purchase company permission to enter

the lessee's residence or commit a breach of the peace in repossessing the rental property; 3) a waiver of any defense or counterclaim or any provision of the bill's requirements; 4) a provision requiring rental payments totaling more than the total dollar amount of all rental payments necessary to acquire ownership; and 5) a provision requiring the lessee to purchase insurance from the rental-purchase company to insure the rental property.

The bill allows a rental-purchase company and lessee to contract for, and allows the rental-purchase company to charge a fee for, a liability damage waiver, but the fee may not exceed 10 percent of the periodic rental payment. The bill imposes various requirements with respect to such a liability damage waiver and specifies that the waiver is not insurance.

Under the bill, a lessee may reinstate a rental-purchase agreement that has ended without losing any rights or options previously acquired if all of the following apply: 1) the lessee voluntarily returned or surrendered the rental property within seven days after the expiration of the rental-purchase agreement; and 2) not more than 120 days have passed after the date on which the rental-purchase agreement ended. As a condition of reinstatement, the rental-purchase company may require the payment of all past-due rental charges, any applicable late fees, the rental payment for the next term, and a reinstatement fee not to exceed \$5 or \$8, depending on the circumstances. Upon reinstatement, the rental-purchase company must provide the lessee with the same rental property or with substitute property of comparable quality and condition.

Under the bill, 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 the lessee designates 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.

The bill creates requirements for advertising rental-purchase transactions. 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 and timing of the rental payments, and the total number and total 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 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.

Under the bill, a rental-purchase company that violates any of the provisions of the bill, or any applicable rule or order of the Department of Financial Institutions, pertaining to a lessee is liable to the lessee in an amount equal to the greater of the

1 the rental property in full on the date on which the rental-purchase agreement is
2 executed.

3 (2) "Department" means the department of financial institutions.

4 (3) "Displayed or offered primarily for rental-purchase," with respect to rental
5 property, means rental property displayed or offered at a physical location that
6 derives 50 percent or more of its revenues from rental-purchase agreements.

7 (4) "Rental property" means property rented under a rental-purchase
8 agreement but does not include any motor vehicle, as defined in s. 340.01 (35), or any
9 musical instrument that is intended to be used in whole or in part in an elementary
10 school or high school.

11 (5) "Rental-purchase agreement" means an agreement between a
12 rental-purchase company and a lessee for the use of rental property if all of the
13 following apply:

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

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

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

20 (d) The agreement permits, but does not obligate, the lessee to acquire
21 ownership of the rental property.

22 (6) "Rental-purchase company" means a person engaged in the business of
23 entering into rental-purchase agreements in this state or acquiring rental-purchase
24 agreements that are entered into in this state.

1 **420.02 General requirements of disclosure. (1) FORM, LOCATION, SIZE, AND**
2 TIME OF DISCLOSURE. The information that is required to be disclosed under s. 420.03
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) Except as provided in par. (f), the information shall be disclosed in the
7 rental-purchase agreement above the line for the lessee's signature. Multiple pages
8 or backs of pages may be used as long as the final page of the rental-purchase
9 agreement is signed by the lessee and other pages are signed or initialed by the
10 lessee.

11 (d) Except as provided in par. (f), the information shall be disclosed in not less
12 than 8-point standard type.

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

15 (f) The disclosures required by s. 420.03 (2), (3), (4), and (5) shall be printed in
16 at least 10-point boldface type on the face of the rental-purchase agreement, and
17 shall be grouped together in a box, in the form and order prescribed by the
18 department.

19 **(2) ACCURACY OF DISCLOSURE.** The information required under s. 420.03 must
20 be accurate as of the time that it is disclosed to the lessee. If any information
21 subsequently becomes inaccurate as a result of any act, occurrence, or agreement by
22 the lessee, the resulting inaccuracy is not a violation of any provision of this chapter
23 relating to rental-purchase agreements.

24 **(3) COPY OF RENTAL-PURCHASE AGREEMENT.** The rental-purchase company shall
25 provide the lessee with a copy of the completed rental-purchase agreement signed

1 by the lessee. If more than one lessee is legally obligated under the same
2 rental-purchase agreement, delivery of a copy of the completed rental-purchase
3 agreement to one of the lessees shall satisfy this subsection.

4 **420.03 Required provisions of rental-purchase agreement.** A
5 rental-purchase company shall include all of the following information, to the extent
6 applicable, in every rental-purchase agreement:

7 (1) DESCRIPTION. A brief description of the rental property, sufficient to identify
8 the rental property to the lessee and the rental-purchase company, including any
9 identification number, and a statement indicating whether the rental property is
10 new or used. A statement that new rental property is used shall not be a violation
11 of this chapter.

12 (2) CASH PRICE. The cash price of the rental property.

13 (3) RENTAL PAYMENTS TO ACQUIRE OWNERSHIP. The total number, total dollar
14 amount, and timing of all rental payments necessary to acquire ownership of the
15 rental property, excluding any applicable taxes, application or processing charge,
16 delivery fee, liability damage waiver fee, and fees for optional services.

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."

SECTION 2

1 **(5) PERIODIC RENEWAL PAYMENT.** The rental payment necessary to renew the
2 rental-purchase agreement, not including any applicable taxes and fees for optional
3 services to which the lessee agrees.

4 **(6) INITIAL PAYMENT.** The total amount of the initial payment to be made by the
5 lessee at the time that the rental-purchase agreement is executed or the rental
6 property is delivered, including the initial rental payment, any application or
7 processing charge, any delivery fee, and fees for other optional services to which the
8 lessee agrees.

9 **(7) OTHER CHARGES.** An itemized description of any other charges or fees that
10 the rental-purchase company may charge upon the occurrence of a contingency
11 specified in the rental-purchase agreement, such as late fees.

12 **(8) SUMMARY OF EARLY-PURCHASE OPTION.** A statement that the lessee has an
13 early purchase option to purchase the property at any time during the period that
14 the rental-purchase agreement is in effect. The statement must specify the price or
15 the formula or other method for determining the price at which the property may be
16 purchased.

17 **(9) RESPONSIBILITY FOR THEFT OR DAMAGE.** A statement that, unless otherwise
18 agreed, in the event the rental property is stolen, damaged, or destroyed while in the
19 possession of, or subject to the control of, the lessee, the lessee is responsible for an
20 amount equal to the lesser of the amount required to exercise the early-purchase
21 option as provided in sub. (8) or 55 percent of the scheduled remaining periodic
22 payments, but in no event in an amount greater than the cash price.

23 **(10) SERVICE AND WARRANTY.** A statement that, during the term of the rental-
24 purchase agreement, the rental-purchase company is required to service the rental
25 property and maintain it in good working condition, as long as no other person has

1 serviced the rental property. In lieu of servicing the rental property, the
2 rental-purchase company may, at its option, replace the rental property with
3 substitute property of comparable quality and condition. The rental-purchase
4 company's obligation to provide service is limited to defects in the property not
5 caused by improper use or neglect by the lessee or harmful conditions outside the
6 control of the rental-purchase company or manufacturer.

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

10 **(12) RIGHT TO REINSTATE.** A brief explanation of the lessee's right to reinstate
11 a rental-purchase agreement under s. 420.06.

12 **(13) RENTAL, NOT PURCHASE.** A statement reading substantially as follows: "You
13 are renting this property. You will not own the property until you make all payments
14 necessary to acquire ownership or until you exercise your early-purchase option. If
15 you do not make your payments as scheduled or exercise your early-purchase option,
16 the rental-purchase company is entitled to immediate possession of the property."

17 **(14) INFORMATION ABOUT RENTAL-PURCHASE COMPANY AND LESSEE.** The names of
18 the rental-purchase company and the lessee, the rental-purchase company's
19 business address and telephone number, the lessee's address, and the date on which
20 the rental-purchase agreement is executed.

21 **(15) OPTIONAL SERVICES.** Space for a specific, separately signed or initialed,
22 affirmative, written indication of the lessee's desire for any optional service for which
23 a charge is assessed. The lessee's request must be obtained after a written disclosure
24 of the cost of the optional service is made, and the disclosure of the cost and purpose
25 of such service must be listed at or near the affirmation space. This requirement is

1 satisfied by a separate written agreement for an optional service that meets the
2 requirements of this subsection.

3 **420.04 Prohibited provisions of rental-purchase agreements.** A
4 rental-purchase agreement may not contain any of the following:

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

6 (2) **REPOSSESSION.** A provision authorizing a rental-purchase company, or an
7 agent of the rental-purchase company, to enter the lessee's residence without the
8 lessee's permission, or to commit a breach of the peace in the repossession of rental
9 property provided by the rental-purchase company under the rental-purchase
10 agreement.

11 (3) **WAIVER.** A waiver of a defense or counterclaim, a waiver of any right to
12 assert any claim that the lessee may have against the rental-purchase company or
13 an agent of the rental-purchase company, or a waiver of any provision of this chapter
14 relating to rental-purchase agreements.

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

18 (5) **INSURANCE.** A provision requiring the lessee to purchase insurance from the
19 rental-purchase company to insure the rental property.

20 **420.05 Disclosures for certain rental-purchase agreements. (1)**
21 **DISCLOSURE FOR PROPERTY NOT DISPLAYED OR OFFERED PRIMARILY FOR RENTAL-PURCHASE.**
22 When property that is not displayed or offered primarily for rental-purchase is
23 offered for rental-purchase, all of the following shall be separately disclosed prior to
24 displaying or presenting a rental-purchase agreement to a lessee for execution:

25 (a) The cash price of the property.

1 (b) The amount of the periodic renewal payment.

2 (c) The total dollar amount of all periodic rental payments necessary to acquire
3 ownership if the lessee makes all scheduled payments.

4 **(2) ADDITIONAL DISCLOSURES FOR PROPERTY NOT DISPLAYED OR OFFERED PRIMARILY**
5 **FOR RENTAL-PURCHASE.** In addition to the disclosures required by s. 420.03, if the
6 property that is the subject of a rental-purchase agreement was not displayed or
7 offered primarily for rental-purchase prior to the rental-purchase transaction, all
8 of the following additional disclosures shall be made on a separate page titled
9 “Acknowledgment of Rental-Purchase Transaction” and signed by the lessee:

10 (a) The agreement is a rental-purchase agreement and the lessee does not own
11 the property, but can obtain ownership by using ownership options provided in the
12 agreement.

13 (b) The agreement is not a credit transaction.

14 (c) The lessee has the right to return the property to the lessor without
15 additional charge or penalty at any time and will owe nothing further except unpaid
16 rental charges and fees.

17 (d) If the lessee returns the property, the agreement offers reinstatement rights
18 that allow the lessee to get the property back if the lessee has complied with the
19 agreement and the law.

20 (e) The lessee has reviewed and understands the agreement, including the
21 purchase option rights and the total cost if all scheduled payments are made.

22 **420.06 Reinstatement of a rental-purchase agreement. (1)**

23 REINSTATEMENT GENERALLY. Subject to sub. (2), a lessee may reinstate a
24 rental-purchase agreement that has ended without losing any rights or options
25 previously acquired if all of the following apply:

1 (a) The lessee voluntarily returned or surrendered the rental property within
2 7 days after the expiration of the rental-purchase agreement.

3 (b) Not more than 120 days have passed after the date on which the
4 rental-purchase agreement ended.

5 **(2) AUTHORIZED CONDITIONS ON REINSTATEMENT.** As a condition of reinstatement
6 under sub. (1), the rental-purchase company may require the payment of all
7 past-due rental charges, any applicable late fees, the rental payment for the next
8 term and a reinstatement fee not to exceed \$8 for agreements renewed on a monthly
9 basis or \$5 for agreements renewed more frequently than monthly.

10 **(3) EFFECT OF REPOSSESSION ON REINSTATEMENT.** Subject to s. 420.04 (2), nothing
11 in this section prohibits a rental-purchase company from repossessing or attempting
12 to repossess rental property when a rental-purchase agreement is not renewed, but
13 such efforts do not affect the lessee's right to reinstate as long as the rental property
14 is voluntarily returned or surrendered within 7 days after the rental-purchase
15 agreement expires.

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

21 **420.07 Receipts and statements. (1) RECEIPTS.** A rental-purchase company
22 shall provide a written receipt to the lessee for any payment made by the lessee in
23 cash or, upon the request of the lessee, for any other type of payment.

24 **(2) STATEMENT DUE TO LESSEE.** Subject to sub. (4), upon the request of a lessee,
25 a rental-purchase company shall provide a written statement to the lessee showing

1 the lessee's payment history on each rental-purchase agreement between the lessee
2 and the rental-purchase company. A rental-purchase company is not required to
3 provide a statement covering any rental-purchase agreement that ended more than
4 one year prior to the date of the lessee's request. A rental-purchase company may
5 provide a single statement covering all rental-purchase agreements or separate
6 statements for each rental-purchase agreement, at the rental-purchase company's
7 option.

8 **(3) STATEMENT DUE TO OTHER PARTIES.** Subject to sub. (4), upon the written
9 request of a lessee, made during the term of or no later than one year after the
10 rental-purchase agreement ended, a rental-purchase company shall provide a
11 written statement to any person the lessee designates, showing the lessee's payment
12 history under the rental-purchase agreement.

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

18 **420.08 Liability damage waiver. (1) WAIVER PERMISSIBLE.** A
19 rental-purchase company and a lessee may contract for a liability damage waiver.
20 A rental-purchase company may charge a periodic fee for a liability damage waiver
21 in an amount not to exceed 10 percent of the periodic rental payment.

22 **(2) REQUIREMENTS FOR WAIVER.** A rental-purchase company may not sell a
23 liability damage waiver unless all of the following apply:

1 (a) The contract containing the waiver is provided to the lessee in writing,
2 either by incorporating it into the rental-purchase agreement or by providing it as
3 a separate document.

4 (b) The face of the writing under par. (a) clearly discloses that the lessee is not
5 required to purchase the waiver.

6 (c) The contract clearly discloses the dollar amount of the fee to be paid with
7 each rental payment.

8 (d) The lessee expressly agrees to the waiver in writing.

9 (3) SCOPE OF WAIVER. The liability damage waiver may exclude only loss or
10 damage to the property that is the subject of the rental-purchase agreement caused
11 by moisture, scratches, mysterious disappearance, vandalism, abandonment of the
12 property, or any other damage intentionally caused by the lessee or that results from
13 the lessee's willful or wanton misconduct.

14 (4) WAIVER CANCELLATION. The lessee is entitled to cancel the waiver at the end
15 of any rental term.

16 (5) WAIVER IS NOT INSURANCE. A liability damage waiver is not insurance.

****NOTE: I made some modifications to the proposed draft language in created s.
420.08 for purposes of clarity and consistency and to conform to LRB drafting
conventions. To my understanding, the waiver may be within the rental-purchase
agreement or a separate agreement. If it is within the rental-purchase agreement, is it
true that the disclosure under sub. (2) (b) would appear on the "face" of the writing?

17 **420.09 Advertising disclosure required.** If an advertisement for a
18 rental-purchase agreement states the amount of a payment for a specific item of
19 property, the advertisement shall also clearly and conspicuously state all of the
20 following:

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

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

3 **(3)** That the lessee does not acquire ownership of the property if the lessee fails
4 to make all payments necessary to acquire ownership of the property.

5 **420.10 Price cards displayed. (1) PRICE CARDS GENERALLY.** Except as
6 provided in sub. (2), a card or tag that clearly and conspicuously states all of the
7 following shall be displayed on or next to any property displayed or offered by a
8 rental-purchase company for rent under a rental-purchase agreement:

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

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

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

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

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

20 **420.11 Rule making.** The department may promulgate rules to administer
21 and enforce the requirements of this chapter.

22 **420.12 Penalties. (1) AWARD OF DAMAGES.** Subject to sub. (3), a
23 rental-purchase company that violates any provision of this chapter, rule
24 promulgated under this chapter, or order issued under this chapter pertaining to a
25 lessee is liable to the lessee in an amount equal to the greater of the following:

SECTION 2

1 (a) The actual damages sustained by the lessee as a result of the violation.

2 (b) If the action is not brought as a class action, 25 percent of the total payments
3 necessary for the lessee to acquire ownership of the rental property, but not less than
4 \$100 nor more than \$1,000.

5 (c) If the action is brought as a class action, the amount the court determines
6 to be appropriate, subject to sub. (2).

7 **(2) DAMAGE LIMITATIONS IN CLASS ACTIONS.** The total recovery by all lessees in
8 any class action or series of class actions arising out of the same violation may not
9 be more than the lesser of \$500,000 or 1 percent of the net worth of the
10 rental-purchase company. In determining the amount of any award in a class action,
11 the court shall consider, among other relevant factors, the amount of actual damages
12 awarded, the frequency and persistence of the violation, the rental-purchase
13 company's resources, and the extent to which the rental-purchase company's
14 violation was intentional.

15 **(3) UNINTENTIONAL VIOLATIONS.** A rental-purchase company is not liable for any
16 violation of this chapter if the rental-purchase company shows by a preponderance
17 of the evidence that the violation was not intentional and resulted from a bona fide
18 error, and the rental-purchase company maintained procedures reasonably adapted
19 to avoid such an error.

20 **(4) COSTS AND ATTORNEY FEES.** If a court awards any monetary amount under
21 sub. (1) to a lessee, the rental-purchase company shall also be liable to the lessee for
22 the costs of the action and, notwithstanding s. 814.04 (1), for reasonable attorney fees
23 as determined by the court.

24 **420.13 Inapplicability of Consumer Act and ch. 409.** A rental-purchase
25 agreement that complies with this chapter is not subject to the Wisconsin Consumer

1 Act, chs. 421 to 427, or any related rule or order adopted under chs. 421 to 427, or to
2 any provision of ch. 409, and any such rental-purchase agreement shall not be
3 construed or regulated as a security interest, credit sale, retail installment sale,
4 conditional sale, or any other form of consumer credit, nor considered to be the
5 creation of a debt or extension of credit.

6 **SECTION 3.** 421.202 (11) of the statutes is created to read:

7 421.202 (11) Rental-purchase agreements entered into by a rental-purchase
8 company in compliance with ch. 420.

9 **SECTION 4. Initial applicability.**

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

12 **SECTION 5. Effective date.**

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

14 (END)

Walker, Dan

From: Rep.Petryk
Sent: Thursday, November 16, 2017 9:25 AM
To: LRB.Legal
Subject: Draft Review: LRB -4307/1

Please Jacket LRB -4307/1 for the ASSEMBLY.