

2017 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB759)

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 Date: 2/12/2018 May Contact:
 Same as LRB: s0275

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Pre Topic:

No specific pre topic given

Topic:

Rental purchase companies

Instructions:

Companion to senate sub, 17s0275

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 2/12/2018	aernstr 2/12/2018			
/P1	agary 2/13/2018	wjackson 2/13/2018	mbarman 2/12/2018		
/1			jmurphy 2/13/2018	jmurphy 2/13/2018	

FE Sent For: <END>



State of Wisconsin
2017 - 2018 LEGISLATURE

Today

50319/P1

LRBs0275/P1
ARG:ahe&emw

in
2/12

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Assembly

SENATE SUBSTITUTE AMENDMENT,

TO SENATE BILL 637 759

companion - no changes

- 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 substitute amendment 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 substitute amendment 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 of the type typically used 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. 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, but does not include a person only in the business of renting musical instruments used in schools.

Under the substitute amendment, 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.
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 substitute amendment 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 substitute amendment 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 substitute amendment 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 substitute amendment'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 substitute amendment also prohibits a rental-purchase company from charging a lessee a late fee and from charging a lessee an insufficient funds fee or credit card charge-back fee greater than \$15.

The substitute amendment 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 substitute amendment imposes various requirements with respect to such a liability damage waiver and specifies that the waiver is not insurance.

Under the substitute amendment, 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 365 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, 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 substitute amendment, 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 substitute amendment creates requirements for advertising rental-purchase transactions. With certain exceptions, the substitute amendment requires a rental-purchase company to display a card or tag on or next to any rental-purchase 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 substitute amendment, a rental-purchase company that violates any of the provisions of the substitute amendment, 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 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 three 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, a rental-purchase company is not liable for any violation if the rental-purchase company notifies the consumer of its noncompliance and corrects the noncompliance within 45 days. Third, 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 damages to a lessee, the rental-purchase company is also liable to the lessee for the costs of the action and reasonable attorney fees. Under the substitute amendment, the specified penalties do not preempt the administration or enforcement of other laws related to a rental-purchase transaction except, as described below, the consumer act and certain provisions of the Uniform Commercial Code.

Under the substitute amendment, within 30 days after commencing business in this state, a rental-purchase company must file with DFI a notice that includes each location where the rental-purchase company conducts rental-purchase operations in this state. The rental-purchase company must thereafter annually file with DFI a list of locations where the rental-purchase company conducts rental-purchase operations in this state and must pay an annual fee based on the number of locations but not to exceed a maximum of \$2,500.

With some limitations, the substitute amendment allows DFI to promulgate rules necessary to administer and enforce the requirements of the substitute amendment. Although DFI may by rule develop a model rental-purchase agreement, DFI may not require its use, although use of the form creates a conclusive presumption of compliance with certain provisions of the substitute amendment. DFI's rules may not establish requirements for rental-purchase agreements beyond

those established in the substitute amendment and may not include provisions that are more restrictive than those in the substitute amendment.

Under the substitute amendment, rental-purchase companies that have provided notice to DFI, and rental-purchase agreements entered into by these rental-purchase companies, are not subject to the consumer act or to the security interest provisions of UCC Article 9.

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

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

2 409.109 (4) (n) Rental-purchase agreements entered into by a rental-purchase
3 company that has provided notice to the department of financial institutions under
4 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.

13 (2) "Charge-back fee" means a charge or fee for a payment that is denied or
14 dishonored by a credit card provider.

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

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

1 (5) “Insufficient funds fee” means a charge or fee for the return of a check,
2 electronic funds transfer, or other payment instrument that is denied or dishonored.

3 (6) “Rental property” means property rented under a rental-purchase
4 agreement but does not include any motor vehicle, as defined in s. 340.01 (35).

5 (7) “Rental-purchase agreement” means an agreement between a
6 rental-purchase company and a lessee for the use of rental property if all of the
7 following apply:

8 (a) The rental property is of the type typically used for personal, family, or
9 household purposes.

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

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

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

16 (8) “Rental-purchase company” means a person engaged in the business of
17 entering into rental-purchase agreements in this state or acquiring rental-purchase
18 agreements that are entered into in this state, but does not include a person only in
19 the business of renting musical instruments that are intended to be used in whole
20 or in part in an elementary school or high school.

21 **420.02 General requirements of disclosure. (1) FORM, LOCATION, SIZE, AND**
22 **TIME OF DISCLOSURE.** The information that is required to be disclosed under s. 420.03
23 shall satisfy all of the following:

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

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

1 (c) Except as provided in par. (f), the information shall be disclosed in the
2 rental-purchase agreement above the line for the lessee's signature. Multiple pages
3 or backs of pages may be used as long as the final page of the rental-purchase
4 agreement is signed by the lessee and other pages are signed or initialed by the
5 lessee.

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

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

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

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

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

1 **420.03 Required provisions of rental-purchase agreement.** A
2 rental-purchase company shall include all of the following information, to the extent
3 applicable, in every rental-purchase agreement:

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

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

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

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

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

24 **(6) INITIAL PAYMENT.** The total amount of the initial payment to be made by the
25 lessee at the time that the rental-purchase agreement is executed or the rental

1 property is delivered, including the initial rental payment, any application or
2 processing charge, any delivery fee, and fees for other optional services to which the
3 lessee agrees.

4 (7) OTHER CHARGES. An itemized description of any other charges or fees that
5 the rental-purchase company may charge upon the occurrence of a contingency
6 specified in the rental-purchase agreement, such as a reinstatement fee or, subject
7 to s. 420.07, a charge-back fee or insufficient funds fee.

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

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

19 (10) SERVICE AND WARRANTY. A statement that, during the term of the rental-
20 purchase agreement, the rental-purchase company is required to service the rental
21 property and maintain it in good working condition, as long as no other person has
22 serviced the rental property. In lieu of servicing the rental property, the
23 rental-purchase company may, at its option, replace the rental property with
24 substitute property of comparable quality and condition. The rental-purchase
25 company's obligation to provide service is limited to defects in the property not

1 caused by improper use or neglect by the lessee or harmful conditions outside the
2 control of the rental-purchase company or manufacturer.

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

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

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

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

17 (15) OPTIONAL SERVICES. Space for a specific, separately signed or initialed,
18 affirmative, written indication of the lessee's desire for any optional service for which
19 a charge is assessed. The lessee's request must be obtained after a written disclosure
20 of the cost of the optional service is made, and the disclosure of the cost and purpose
21 of such service must be listed at or near the affirmation space. This requirement is
22 satisfied by a separate written agreement for an optional service that meets the
23 requirements of this subsection.

24 **420.04 Prohibited provisions of rental-purchase agreements.** A
25 rental-purchase agreement may not contain any of the following:

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

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

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

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

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

16 **420.05 Disclosures for certain rental-purchase agreements. (1)**

17 DISCLOSURE FOR PROPERTY NOT DISPLAYED OR OFFERED PRIMARILY FOR RENTAL-PURCHASE.
18 When property that is not displayed or offered primarily for rental-purchase is
19 offered for rental-purchase, all of the following shall be separately disclosed prior to
20 displaying or presenting a rental-purchase agreement to a lessee for execution:

21 (a) The cash price of the property.

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

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

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

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

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

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

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

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

19 **420.06 Reinstatement of a rental-purchase agreement. (1)**

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

23 (a) The lessee voluntarily returned or surrendered the rental property within
24 7 days after the expiration of the rental-purchase agreement.

1 (b) Not more than 365 days have passed after the date on which the
2 rental-purchase agreement ended.

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

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

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

19 **420.07 Certain fees prohibited.** A rental-purchase company may not
20 charge a lessee any late fee in connection with any past-due rental charges or
21 reinstatement of a rental-purchase agreement and may not charge a lessee any
22 charge-back fee or insufficient funds fee that exceeds \$15 for each attempted
23 payment that is denied or dishonored.

1 **420.08 Receipts and statements.** (1) RECEIPTS. A rental-purchase company
2 shall provide a written receipt to the lessee for any payment made by the lessee in
3 cash or, upon the request of the lessee, for any other type of payment.

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

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

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

23 **420.09 Liability damage waiver.** (1) WAIVER PERMISSIBLE. A
24 rental-purchase company and a lessee may contract for a liability damage waiver.

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

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

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

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

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

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

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

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

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

21 **420.10 Advertising disclosure required.** If an advertisement for a
22 rental-purchase agreement states the amount of a payment for a specific item of
23 property, the advertisement shall also clearly and conspicuously state all of the
24 following:

25 (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 **420.11 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 primarily
8 for rental-purchase by a rental-purchase company for rent under a rental-purchase
9 agreement:

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

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

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

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

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

21 **420.12 Notice to the department. (1) INITIAL NOTICE.** A rental-purchase
22 company shall file notice with the department, in the form and manner prescribed
23 by the department, within 30 days after commencing business in this state. The
24 notice shall set forth the location of each place of business in this state where the
25 rental-purchase company conducts any operations regulated under this chapter.

1 **(2) ANNUAL NOTICE.** After filing the initial notice in sub. (1), a rental-purchase
2 company shall file annually, on or before January 31 of each year, in the form and
3 manner prescribed by the department, a list setting forth the location of each place
4 of business in this state where the rental-purchase company conducts any
5 operations regulated under this chapter.

6 **(3) ANNUAL FEE.** (a) A rental-purchase company shall remit an annual fee with
7 the report required by sub. (2). The amount of the annual fee shall be calculated
8 according to the sum of the following, but may not exceed \$2,500:

- 9 1. One hundred dollars for each of the first 10 locations in the state.
- 10 2. Fifty dollars for each additional location in this state.

11 (b) If a rental-purchase company fails to timely pay the annual fee on or before
12 January 31, the department shall provide written notice to the rental-purchase
13 company. If the rental-purchase company fails to pay within 30 days after issuance
14 of this notice, the department may order the rental-purchase company to cease
15 operating until the annual fee is paid.

16 **420.13 Rule making.** (1) **GENERALLY.** Subject to subs. (2) and (3), the
17 department may promulgate rules under ch. 227 necessary to administer and
18 enforce the requirements of this chapter.

19 **(2) MODEL AGREEMENT.** A rule promulgated by the department may include a
20 model rental-purchase agreement that meets the requirements of this chapter. The
21 department may not require a rental-purchase company to use this form, but if a
22 rental-purchase company does use this form, the form is conclusively presumed to
23 have been executed in compliance with ss. 420.02, 420.03, and 420.04.

24 **(3) PROHIBITED RULES.** No rule promulgated by the department may do any of
25 the following:

1 (a) Require disclosures not explicitly required or permitted by this chapter.

2 (b) Establish a requirement for, or limitation on, the pricing offered to a
3 consumer by a rental-purchase company.

4 (c) Establish any other requirement for, or limitation on, a rental-purchase
5 agreement not explicitly required or permitted by this chapter or that is more
6 restrictive than this chapter.

7 **420.14 Penalties. (1) AWARD OF DAMAGES.** Subject to subs. (3) and (6), a
8 rental-purchase company that violates any provision of this chapter, rule
9 promulgated under this chapter, or order issued under this chapter pertaining to a
10 lessee is liable to the lessee in an amount equal to the greater of the following:

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

12 (b) If the action is not brought as a class action, 25 percent of the total payments
13 necessary for the lessee to acquire ownership of the rental property, but not less than
14 \$100 nor more than \$1,000.

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

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

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

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

10 **(5) PENALTIES UNDER OTHER LAWS.** Except as provided in s. 420.15, the penalties
11 in this section do not preempt the administration or enforcement of other laws
12 related to a transaction governed by this chapter and, subject to subs. (3) and (6), a
13 rental-purchase company found by a court to be liable for a violation of any provision
14 of this chapter, rule promulgated under this chapter, or order issued under this
15 chapter may be subject to penalties under s. 100.18 (1).

16 **(6) CURE OF NONCOMPLIANCE.** A rental-purchase company is not liable for any
17 violation of any provision of this chapter, rule promulgated under this chapter, or
18 order issued under this chapter if the rental-purchase company notifies the
19 consumer of its noncompliance with this chapter, rule promulgated under this
20 chapter, or order issued under this chapter and corrects the noncompliance within
21 45 days of the earliest of any of the following:

- 22 (a) The receipt of a written notice of the noncompliance from the consumer.
23 (b) The discovery of the noncompliance by the rental-purchase company.

24 **420.15 Inapplicability of Consumer Act and ch. 409.** A rental-purchase
25 company that has provided notice to the department under this chapter is not subject

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

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

8 421.202 (11) Rental-purchase agreements entered into by a rental-purchase
9 company that has provided notice to the department of financial institutions under
10 ch. 420.

11 **SECTION 4. Initial applicability.**

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

14 **SECTION 5. Effective date.**

15 (1) This act takes effect on the first day of the 7th month beginning after
16 publication.

17 (END)

Konopacki, Larry

From: Konopacki, Larry
Sent: Monday, February 12, 2018 8:20 PM
To: Sen.Moulton; Watson, Anna; Gary, Aaron
Cc: Norsetter, Julia
Subject: RE: Draft review: LRB s0275/P1

Hi Aaron, Nathan, and Anna,

Julia and I have only three comments about the substitute amendment:

1. Based on what we heard at the public hearing and a re-read of the bill and sub, it appears that one piece is missing from the required disclosures under s. 420.03. Under sub (6), disclosure must be made of the total **initial** payment amount, including applicable taxes, fees for optional services, application or processing charges, and delivery fees. Under subs. (3) and (5), none of these charges must be disclosed, and sub (7) (Other charges) only applies to contingent charges. Therefore, it looks like the bill fails to require disclosure of other costs such as applicable taxes, fees for optional services, application or processing charges, and delivery fees that may be applied to payments **other than the initial payment**. Based on what we heard at the hearing, this appears to have been an oversight. It would be fairly simple to include a requirement that these charges be disclosed under the "Other charges" provision under sub (7).
2. In the new penalties provision under s. 420.14 (5), my understanding of the direction we got from Sen. Moulton would require adding s. 100.20 (fair trade practices) to s. 100.18, and eliminating the applicability of subs. (3) and (6) to these remedies.
3. Section 420.15 should only apply to rental purchase companies **with respect to rental purchase agreements entered into by those companies** (If they also choose to enter into consumer credit transactions, then the consumer act, etc., would still apply).

Thanks, and let us know if you would like anything else from us.

Larry and Julia

2/13 Mtg w/ Larry and Julia
• discussed s. 420.14 (5) →

Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

• penalties are exclusive for ch. 420 violations; but other principles of law should apply too → see attached changes

From: Sen.Moulton
Sent: Monday, February 12, 2018 1:01 PM
To: Watson, Anna <Anna.Watson@legis.wisconsin.gov>
Cc: Norsetter, Julia <Julia.Norsetter@legis.wisconsin.gov>; Konopacki, Larry <Larry.Konopacki@legis.wisconsin.gov>
Subject: FW: Draft review: LRB s0275/P1

For your review - just in case you had not seen this already.



State of Wisconsin
2017 - 2018 LEGISLATURE

Now

LRBs0319/DW1
ARG:ahe&emw

m 2/13

+WLj

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT ,
TO ASSEMBLY BILL 759**

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 substitute amendment 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 substitute amendment 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 of the type typically used 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. 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, but does not include a person only in the business of renting musical instruments used in schools.

Under the substitute amendment, 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.
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 substitute amendment 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 substitute amendment 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 substitute amendment 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 substitute amendment'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 substitute amendment also prohibits a rental-purchase company from charging a lessee a late fee and from charging a lessee an insufficient funds fee or credit card charge-back fee greater than \$15.

The substitute amendment 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 substitute amendment imposes various requirements with respect to such a liability damage waiver and specifies that the waiver is not insurance.

Under the substitute amendment, 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 365 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, 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 substitute amendment, 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 substitute amendment creates requirements for advertising rental-purchase transactions. With certain exceptions, the substitute amendment requires a rental-purchase company to display a card or tag on or next to any rental-purchase 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 substitute amendment, a rental-purchase company that violates any of the provisions of the substitute amendment, 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 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 three 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, a rental-purchase company is not liable for any violation if the rental-purchase company notifies the consumer of its noncompliance and corrects the noncompliance within 45 days. Third, 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 damages to a lessee, the rental-purchase company is also liable to the lessee for the costs of the action and reasonable attorney fees. Under the substitute amendment, the specified penalties do not preempt the administration or enforcement of other laws related to a rental-purchase transaction except, as described below, the consumer act and certain provisions of the Uniform Commercial Code.

Under the substitute amendment, within 30 days after commencing business in this state, a rental-purchase company must file with DFI a notice that includes each location where the rental-purchase company conducts rental-purchase operations in this state. The rental-purchase company must thereafter annually file with DFI a list of locations where the rental-purchase company conducts rental-purchase operations in this state and must pay an annual fee based on the number of locations but not to exceed a maximum of \$2,500.

With some limitations, the substitute amendment allows DFI to promulgate rules necessary to administer and enforce the requirements of the substitute amendment. Although DFI may by rule develop a model rental-purchase agreement, DFI may not require its use, although use of the form creates a conclusive presumption of compliance with certain provisions of the substitute amendment. DFI's rules may not establish requirements for rental-purchase agreements beyond

those established in the substitute amendment and may not include provisions that are more restrictive than those in the substitute amendment.

Under the substitute amendment, rental-purchase companies that have provided notice to DFL and rental-purchase agreements entered into by these rental-purchase companies, are not subject to the consumer act or to the security interest provisions of UCC Article 9.

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

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

2 409.109 (4) (n) Rental-purchase agreements entered into by a rental-purchase
3 company that has provided notice to the department of financial institutions under
4 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.

13 (2) “Charge-back fee” means a charge or fee for a payment that is denied or
14 dishonored by a credit card provider.

15 (3) “Department” means the department of financial institutions.

16 (4) “Displayed or offered primarily for rental-purchase,” with respect to rental
17 property, means rental property displayed or offered at a physical location that
18 derives 50 percent or more of its revenues from rental-purchase agreements.

1 (5) “Insufficient funds fee” means a charge or fee for the return of a check,
2 electronic funds transfer, or other payment instrument that is denied or dishonored.

3 (6) “Rental property” means property rented under a rental-purchase
4 agreement but does not include any motor vehicle, as defined in s. 340.01 (35).

5 (7) “Rental-purchase agreement” means an agreement between a
6 rental-purchase company and a lessee for the use of rental property if all of the
7 following apply:

8 (a) The rental property is of the type typically used for personal, family, or
9 household purposes.

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

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

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

16 (8) “Rental-purchase company” means a person engaged in the business of
17 entering into rental-purchase agreements in this state or acquiring rental-purchase
18 agreements that are entered into in this state, but does not include a person only in
19 the business of renting musical instruments that are intended to be used in whole
20 or in part in an elementary school or high school.

21 **420.02 General requirements of disclosure. (1) FORM, LOCATION, SIZE, AND**
22 **TIME OF DISCLOSURE.** The information that is required to be disclosed under s. 420.03
23 shall satisfy all of the following:

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

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

1 (c) Except as provided in par. (f), the information shall be disclosed in the
2 rental-purchase agreement above the line for the lessee's signature. Multiple pages
3 or backs of pages may be used as long as the final page of the rental-purchase
4 agreement is signed by the lessee and other pages are signed or initialed by the
5 lessee.

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

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

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

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

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

1 **420.03 Required provisions of rental-purchase agreement.** A
2 rental-purchase company shall include all of the following information, to the extent
3 applicable, in every rental-purchase agreement:

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

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

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

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

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

24 **(6) INITIAL PAYMENT.** The total amount of the initial payment to be made by the
25 lessee at the time that the rental-purchase agreement is executed or the rental

1 property is delivered, including the initial rental payment, any application or
2 processing charge, any delivery fee, and fees for other optional services to which the
3 lessee agrees.

4 (7) OTHER CHARGES. An itemized description of any other charges or fees that
5 the rental-purchase company may charge upon the occurrence of a contingency
6 specified in the rental-purchase agreement, such as a reinstatement fee or, subject
7 to s. 420.07, a charge-back fee or insufficient funds fee. *insert 9-7*

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

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

19 (10) SERVICE AND WARRANTY. A statement that, during the term of the rental-
20 purchase agreement, the rental-purchase company is required to service the rental
21 property and maintain it in good working condition, as long as no other person has
22 serviced the rental property. In lieu of servicing the rental property, the
23 rental-purchase company may, at its option, replace the rental property with
24 substitute property of comparable quality and condition. The rental-purchase
25 company's obligation to provide service is limited to defects in the property not

1 caused by improper use or neglect by the lessee or harmful conditions outside the
2 control of the rental-purchase company or manufacturer.

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

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

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

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

17 (15) OPTIONAL SERVICES. Space for a specific, separately signed or initialed,
18 affirmative, written indication of the lessee's desire for any optional service for which
19 a charge is assessed. The lessee's request must be obtained after a written disclosure
20 of the cost of the optional service is made, and the disclosure of the cost and purpose
21 of such service must be listed at or near the affirmation space. This requirement is
22 satisfied by a separate written agreement for an optional service that meets the
23 requirements of this subsection.

24 **420.04 Prohibited provisions of rental-purchase agreements.** A
25 rental-purchase agreement may not contain any of the following:

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

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

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

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

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

16 **420.05 Disclosures for certain rental-purchase agreements. (1)**
17 **DISCLOSURE FOR PROPERTY NOT DISPLAYED OR OFFERED PRIMARILY FOR RENTAL-PURCHASE.**
18 When property that is not displayed or offered primarily for rental-purchase is
19 offered for rental-purchase, all of the following shall be separately disclosed prior to
20 displaying or presenting a rental-purchase agreement to a lessee for execution:

21 (a) The cash price of the property.

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

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

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

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

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

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

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

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

19 **420.06 Reinstatement of a rental-purchase agreement. (1)**

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

23 (a) The lessee voluntarily returned or surrendered the rental property within
24 7 days after the expiration of the rental-purchase agreement.

1 (b) Not more than 365 days have passed after the date on which the
2 rental-purchase agreement ended.

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

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

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

19 **420.07 Certain fees prohibited.** A rental-purchase company may not
20 charge a lessee any late fee in connection with any past-due rental charges or
21 reinstatement of a rental-purchase agreement and may not charge a lessee any
22 charge-back fee or insufficient funds fee that exceeds \$15 for each attempted
23 payment that is denied or dishonored.

1 **420.08 Receipts and statements. (1) RECEIPTS.** A rental-purchase company
2 shall provide a written receipt to the lessee for any payment made by the lessee in
3 cash or, upon the request of the lessee, for any other type of payment.

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

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

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

23 **420.09 Liability damage waiver. (1) WAIVER PERMISSIBLE.** A
24 rental-purchase company and a lessee may contract for a liability damage waiver.

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

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

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

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

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

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

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

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

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

21 **420.10 Advertising disclosure required.** If an advertisement for a
22 rental-purchase agreement states the amount of a payment for a specific item of
23 property, the advertisement shall also clearly and conspicuously state all of the
24 following:

25 **(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 **420.11 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 primarily
8 for rental-purchase by a rental-purchase company for rent under a rental-purchase
9 agreement:

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

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

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

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

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

21 **420.12 Notice to the department. (1) INITIAL NOTICE.** A rental-purchase
22 company shall file notice with the department, in the form and manner prescribed
23 by the department, within 30 days after commencing business in this state. The
24 notice shall set forth the location of each place of business in this state where the
25 rental-purchase company conducts any operations regulated under this chapter.

1 **(2) ANNUAL NOTICE.** After filing the initial notice in sub. (1), a rental-purchase
2 company shall file annually, on or before January 31 of each year, in the form and
3 manner prescribed by the department, a list setting forth the location of each place
4 of business in this state where the rental-purchase company conducts any
5 operations regulated under this chapter.

6 **(3) ANNUAL FEE.** (a) A rental-purchase company shall remit an annual fee with
7 the report required by sub. (2). The amount of the annual fee shall be calculated
8 according to the sum of the following, but may not exceed \$2,500:

- 9 1. One hundred dollars for each of the first 10 locations in the state.
- 10 2. Fifty dollars for each additional location in this state.

11 (b) If a rental-purchase company fails to timely pay the annual fee on or before
12 January 31, the department shall provide written notice to the rental-purchase
13 company. If the rental-purchase company fails to pay within 30 days after issuance
14 of this notice, the department may order the rental-purchase company to cease
15 operating until the annual fee is paid.

16 **420.13 Rule making.** (1) **GENERALLY.** Subject to subs. (2) and (3), the
17 department may promulgate rules under ch. 227 necessary to administer and
18 enforce the requirements of this chapter.

19 **(2) MODEL AGREEMENT.** A rule promulgated by the department may include a
20 model rental-purchase agreement that meets the requirements of this chapter. The
21 department may not require a rental-purchase company to use this form, but if a
22 rental-purchase company does use this form, the form is conclusively presumed to
23 have been executed in compliance with ss. 420.02, 420.03, and 420.04.

24 **(3) PROHIBITED RULES.** No rule promulgated by the department may do any of
25 the following:

1 (a) Require disclosures not explicitly required or permitted by this chapter.

2 (b) Establish a requirement for, or limitation on, the pricing offered to a
3 consumer by a rental-purchase company.

4 (c) Establish any other requirement for, or limitation on, a rental-purchase
5 agreement not explicitly required or permitted by this chapter or that is more
6 restrictive than this chapter.

7 **420.14 Penalties. (1) AWARD OF DAMAGES.** Subject to subs. (3) and (6), a
8 rental-purchase company that violates any provision of this chapter, rule
9 promulgated under this chapter, or order issued under this chapter pertaining to a
10 lessee is liable to the lessee in an amount equal to the greater of the following:

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

12 (b) If the action is not brought as a class action, 25 percent of the total payments
13 necessary for the lessee to acquire ownership of the rental property, but not less than
14 \$100 nor more than \$1,000.

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

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

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

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

10 **(5) PENALTIES UNDER OTHER LAWS.** Except as provided in s. 420.15, the penalties
11 in this section do not preempt the administration or enforcement of other laws
12 related to a transaction governed by this chapter and, subject to subs. (3) and (6), a
13 rental-purchase company found by a court to be liable for a violation of any provision
14 of this chapter, rule promulgated under this chapter, or order issued under this
15 chapter may be subject to penalties under s. 100.18 (1).

16 **(6) CURE OF NONCOMPLIANCE.** A rental-purchase company is not liable for any
17 violation of any provision of this chapter, rule promulgated under this chapter, or
18 order issued under this chapter if the rental-purchase company notifies the
19 consumer of its noncompliance with this chapter, rule promulgated under this
20 chapter, or order issued under this chapter and corrects the noncompliance within
21 45 days of the earliest of any of the following:

- 22 (a) The receipt of a written notice of the noncompliance from the consumer.
23 (b) The discovery of the noncompliance by the rental-purchase company.

24 **420.15 Inapplicability of Consumer Act and ch. 409.** A rental-purchase
25 company that has provided notice to the department under this chapter is not subject

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

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

8 421.202 (11) Rental-purchase agreements entered into by a rental-purchase
9 company that has provided notice to the department of financial institutions under
10 ch. 420.

11 **SECTION 4. Initial applicability.**

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

14 **SECTION 5. Effective date.**

15 (1) This act takes effect on the first day of the 7th month beginning after
16 publication.

17 (END)

**2017-2018 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

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(ho P) , as well as certain other charges and fees

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(ho P) , as well as any applicable taxes, fees for optional services, application or processing charges, and delivery fees that are not included in the initial payment under sub. (6)

INSERT 19-11:

(5) EXCLUSIVE PENALTIES FOR VIOLATIONS OF THIS CHAPTER; APPLICABILITY OF OTHER

LAWS. (a) The penalties under this section and ss. 100.18 and 100.20 provide the exclusive remedies for a violation of any provision of this chapter, rule promulgated under this chapter, or order issued under this chapter. The application of the penalties under this section and ss. 100.18 and 100.20 are all subject to subs. (3) and (6).

(b) Except as provided in par. (a) and s. 420.15, laws other than this chapter that relate to a transaction governed by this chapter are not preempted by this chapter.

INSERT 19-25:

(ho P) , with respect to rental-purchase agreements entered into by the rental-purchase company,