2017 ASSEMBLY BILL 759

AN ACT to create 409.109 (4) (n), chapter 420 and 421.202 (11) of the statutes; relating to: regulation of rental-purchase agreements and granting 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 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 damages to a lessee, the rental-purchase company is also liable to the lessee for the costs of the action and reasonable attorney fees. The bill also allows DFI to promulgate rules to administer and enforce the requirements of the bill.

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.

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:

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

409.109 (4) (n) Rental-purchase agreements entered into by a rental-purchase company in compliance with ch. 420.

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

CHAPTER 420

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,” with respect to rental
property, means rental property displayed or offered at a physical location that
derives 50 percent or more of its revenues 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 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 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 chapter.

(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) or 55 percent 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)

Disclosure for property not displayed or offered primarily for rental-purchase. When property that is not displayed or offered primarily for rental-purchase is offered for rental-purchase, all of 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) The amount of the periodic renewal payment.

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

(2) ADDITIONAL DISCLOSURES FOR PROPERTY NOT DISPLAYED OR OFFERED PRIMARILY FOR RENTAL-PURCHASE. In addition to the disclosures required by s. 420.03, 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, all of the following additional disclosures shall be made on a separate page titled “Acknowledgment of Rental-Purchase Transaction” and signed by the lessee:

(a) The agreement is a rental-purchase agreement and the lessee does not own the property, 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 property to the lessor without additional charge or penalty at any time and will owe nothing further except unpaid rental charges and fees.

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

(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.

(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) 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.

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 such rental-purchase agreement 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 3. 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 ch. 420.

SECTION 4. Initial applicability.

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

SECTION 5. Effective date.

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