



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2924/1
ARG:kjf:rs

2011 ASSEMBLY BILL 582

February 17, 2012 - Introduced by Representatives PETRYK, BERNIER, LITJENS, STONE and SUDER, cosponsored by Senator MOULTON. Referred to Committee on Financial Institutions.

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

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

This bill creates requirements that specifically apply to rental-purchase agreements, imposes requirements on rental-purchase companies, and exempts rental-purchase companies and rental-purchase agreements from the scope of the consumer act and from provisions of the Uniform Commercial Code relating to security interests. The 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,

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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. A “rental-purchase company” is defined as a person engaged in the business of entering into rental-purchase agreements in this state or acquiring rental-purchase agreements that are entered into in this state.

The bill requires a rental-purchase company to file notice with the Department of Financial Institutions (DFI) within 30 days after commencing business in this state. A separate notice is required for each place of business maintained by the rental-purchase company. In addition, the rental-purchase company must pay to DFI an annual fee of \$1,000 for each location for which a notice is filed.

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

The bill specifies that a rental-purchase company must not disclose, in a rental-purchase agreement or otherwise, any percentage rate calculation, including an annual percentage rate.

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

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1 (1) “Cash price” means the price at which a rental-purchase company would
2 sell rental property to the lessee of the rental property if the lessee were to pay for
3 the rental property in full on the date on which the rental-purchase agreement is
4 executed.

5 (2) “Department” means the department of financial institutions.

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

8 (4) “Rental-purchase agreement” means an agreement between a
9 rental-purchase company and a lessee for the use of rental property if all of the
10 following apply:

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

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

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

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

19 (5) “Rental-purchase company” means a person engaged in the business of
20 entering into rental-purchase agreements in this state or acquiring rental-purchase
21 agreements that are entered into in this state.

22 **420.02 Notice to the department.** (1) NOTICE REQUIRED. A rental-purchase
23 company shall file notice with the department, in the form and manner prescribed
24 by the department, within 30 days after commencing business in this state. A

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1 separate notice is required for each place of business maintained by the
2 rental-purchase company.

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

7 **420.03 Price and cost limitations. (1) LIMITS ON CASH PRICES.** The cash price
8 for rental property offered by a rental-purchase company may not exceed the greater
9 of the following:

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

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

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

20 (3) ACQUISITION OF OWNERSHIP. At any time after the initial rental period under
21 a rental-purchase agreement, if a lessee affirmatively elects an early-purchase
22 option, the lessee may acquire ownership of the rental property by tendering an
23 amount not to exceed 55 percent of the difference between the total of rental
24 payments necessary to acquire ownership of the rental property and the total
25 amount of rental payments paid for use of the rental property at that time, plus

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1 applicable taxes, except that the lessee's early-purchase option amount may not be
2 less than the amount of one rental payment. Before a lessee acquires ownership of
3 the rental property as provided under this subsection, a rental-purchase company
4 may first require the lessee to pay any accrued unpaid rental payments and fees.

5 (4) ANNUAL PERCENTAGE RATE DISCLOSURE NOT REQUIRED. A rental-purchase
6 company shall not disclose, in a rental-purchase agreement or otherwise, any
7 percentage rate calculation, including a time-price differential, an annual
8 percentage rate, or an effective annual percentage rate.

9 **420.04 Reinstatement of a rental-purchase agreement. (1)**

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

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

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

17 (2) AUTHORIZED CONDITIONS ON REINSTATEMENT. As a condition of reinstatement
18 under sub. (1), the rental-purchase company may require the payment of all
19 past-due rental charges, any applicable late fees, a reinstatement fee not to exceed
20 \$5, and the rental payment for the next term.

21 (3) EFFECT OF REPOSSESSION ON REINSTATEMENT. Nothing in this section prohibits
22 a rental-purchase company from repossessing or attempting to repossess rental
23 property when a rental-purchase agreement ends, but such efforts do not affect the
24 lessee's right to reinstate as long as the rental property is voluntarily returned or
25 surrendered within 7 days after the rental-purchase agreement ends.

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

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

10 **420.05 Rule making; enforcement. (1) RULE MAKING.** The department may
11 promulgate rules relating to rental-purchase company disclosure requirements in
12 connection with rental-purchase agreements as well as rules relating to any
13 requirement by the department for rental-purchase companies to maintain records
14 and make reports to the department.

15 **(2) ENFORCEMENT.** The department shall administer and enforce this chapter,
16 and any rule promulgated under, or order issued under, this chapter.

17 **420.06 Penalties. (1) AWARD OF DAMAGES.** Subject to sub. (3), a
18 rental-purchase company that violates any provision of this chapter, rule
19 promulgated under this chapter, or order issued under this chapter pertaining to a
20 lessee is liable to the lessee in an amount equal to the greater of the following:

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

22 (b) If the action is not brought as a class action, 25 percent of the total payments
23 necessary for the lessee to acquire ownership of the rental property, but not less than
24 \$100 nor more than \$1,000.

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

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

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

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

20 **420.07 Inapplicability of Consumer Act and ch. 409.** A rental-purchase
21 company that has filed notice as provided under s. 420.02 (1) is not subject to the
22 Wisconsin consumer act, chs. 421 to 427, or any related rule or order adopted under
23 chs. 421 to 427, or to any provision of ch. 409, and any rental-purchase agreement
24 entered into by such a rental-purchase company may not be construed or regulated
25 as a security interest, credit sale, retail installment sale, conditional sale, or any

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1 other form of consumer credit, nor considered to be the creation of a debt or extension
2 of credit.

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

4 421.202 (11) Any rental-purchase company that has filed notice as provided
5 under s. 420.02 (1) and any rental-purchase agreement entered into by a such a
6 rental-purchase company.

7 **SECTION 4. Initial applicability.**

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

10 **SECTION 5. Effective date.**

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

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(END)