

Rent-to-Own Co-Sponsorship Memorandum

DATE: November 14, 2017

FROM: Representative Warren Petryk & Senator Terry Moulton

RE: Co-Sponsorship of LRB 4307 relating to regulation of rental-purchase agreements and granting rule-making authority.

DEADLINE: Monday, November 20, 2017

Wisconsin is one of only three states in the country that does not have a dedicated state statute to define and regulate rent-to-own stores and their transactions. They are currently regulated under the Wisconsin Consumer Act which was written prior to the advent of the rent-to-own concept and does not adequately account for the unique nature of this business. Therefore, rent-to-own stores are virtually non-existent in our states.

Rent-to-own stores serve a distinct consumer population that may not otherwise have access to household items many of us would consider essential today such as a washer and dryer. The proposed changes reflected in LRB 4307 will incentivize the creation of more rent-to-own stores in Wisconsin and provide affordable, alternative choices for consumers.

LRB 4307 creates Chapter 420 of the state statutes with language similar to virtually every other state in the nation and distinguishes the rent-to-own transaction from consumer credit sales and other consumer lease transactions. The proposed legislation also requires full disclosure of all aspects of the transaction, some of which include: the actual cash price, amount of payments necessary for ownership and an itemized description of any other charges or fees to the consumer. These provisions will ensure transparency in the transaction and protect consumers.

A copy of the LRB draft is attached for your review. If you'd like to co-sponsor LRB 4307 please reply to this email or call Rep. Petryk's office a 266-0660 or Senator Moulton's office at 266-7511 by the end of the day on Monday, November 20, 2017.

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 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.