



Legislative Fiscal Bureau

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October 19, 2005

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 268 and Assembly Bill 587: Regulation of Rental-Purchase Agreements
Under the Wisconsin Consumer Act

Senate Bill 268 and Assembly Bill 587 are identical bills that would modify the regulation of rental-purchase agreements under the Wisconsin Consumer Act (WCA).

SB 268 was introduced on July 27, 2005, and referred to the Senate Committee on Housing and Financial Institutions. On October 3, 2005, that committee adopted SA 1 and SA 2, each by a vote of 7 to 0, and recommended the bill for passage as amended by a vote of 6 to 1. The bill was then referred to the Joint Committee on Finance.

AB 587 was introduced on August 2, 2005, and referred to the Assembly Committee on State Affairs. On October 3, 2005, that committee adopted AA 1 and AA 3, each by a vote of 9 to 0, and recommended the bill for passage as amended by a vote of 6 to 3. The bill was then referred to the Joint Committee on Finance.

As amended, the bills are still identical, with one exception relating to repossessions of rental property, which is described in the sections below on Senate Amendment 2 to SB 268 and Assembly Amendment 3 to AB 587.

CURRENT LAW

Under current law, a consumer credit transaction entered into for personal, family, or household purposes is generally subject to the Wisconsin Consumer Act, which includes Chapters 421 to 427 of the state statutes. The WCA 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 WCA. 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.

SUMMARY OF BILLS

SB 268 and AB 587, as amended, would specify that certain of the WCA provisions under current law do not apply in the case of rental-purchase companies and rental-purchase agreements, and would, instead, create new provisions specific to such companies and agreements. The bills would specify that it is the responsibility of the Division of Banking (DOB) in the Department of Financial Institutions (DFI) to enforce laws relating to the supervision and control of rental-purchase companies licensed and registered in this state. In addition, the bills would specify that Chapter 409, relating to the Uniform Commercial Code for secured transactions, does not apply in the case of a transfer of an interest under a rental-purchase agreement.

According to DFI, most of the provisions of the bills are similar to current law. The most significant changes under the bills relate to disclosure of annual percentage rates in rental-purchase agreements, the definition of when a customer is in default of a rental-purchase agreement, and repossessions of property in case of default. These modifications are described below.

Disclosure of Annual Percentage Rate. Rental-purchase agreements can be viewed as the purchase of merchandise through installment payments if the customer makes all of the required payments to acquire ownership of the property. In such cases, the amount paid by the customer over and above the normal purchase price for the merchandise is equivalent to a finance charge, which can be expressed as an interest rate. Under current law in Chapter 422, rental-purchase companies are required to disclose the effective annual percentage rate associated with rental-purchase agreements. Under the bills, disclosure of the annual percentage rate would no longer be required for rental-purchase agreements.

Definition of Default. Under current law in Chapter 425, "default," with respect to a consumer credit transaction, means without justification under any law:

- a. If the interval between scheduled payments is two months or less, to have outstanding an amount exceeding one full payment which has remained unpaid for more than 10 days after the scheduled or deferred due dates, or the failure to pay the first payment or the last payment, within 40 days of its scheduled or deferred due date.
- b. If the interval between scheduled payments is more than two months, to have all or any part of one scheduled payment unpaid for more than 60 days after its scheduled or deferred due date.

c. If the transaction is scheduled to be repaid in a single payment, to have all or any part of the payment unpaid for more than 40 days after its scheduled or deferred due date.

Under the bills, a lessee would be in default under a rental-purchase agreement if the lessee failed to return rental property within seven days after the date on which the last rental term for which a rental payment was made expires, unless the lessee has exercised an early-purchase option or has made all rental payments necessary to acquire ownership of the property.

Repossession of Rental Property. Currently, under Chapter 425, no merchant may take possession of goods subject to a consumer lease by means other than legal process in accordance with Chapter 425 except when judgment for the merchant has been entered in a proceeding for recovery of the goods. Under the bills, in cases of default, a rental-purchase company could take action to repossess rental property without obtaining a court judgment.

Additional provisions under the bills are described below according to the chapter of the statutes that would be modified by these provisions.

Oversight of Rental-Purchase Companies by the Division of Banking (Chapter 218)

The bills would create Subchapter XI of Chapter 218 relating to the regulation of rental-purchase companies and rental-purchase agreements by the Division of Banking.

Definitions

"Rental-purchase agreement" would mean 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 four months or less and is automatically 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.

"Rental-purchase company" would mean a person engaged in the business of entering into rental-purchase agreements in this state or acquiring or servicing rental-purchase agreements that are entered into in this state.

License Requirements

Under the bills, no person could operate as a rental-purchase company without a valid license issued by DOB.

An application for a rental-purchase company license would have to be made to DOB in writing, in the form prescribed by the Division. In addition to any other information that may be required by the Division, a license application would have to include the applicant's social security number (if the applicant is an individual) or federal employer identification number (if the applicant is a business entity other than an individual).

DOB could not disclose an applicant's social security number or federal employer identification number to any person except: (a) the Department of Revenue (DOR) for the sole purpose of administering provisions requiring the denial of licenses to persons who owe delinquent taxes; and (b) the Department of Workforce Development (DWD) for the purpose of administering provisions requiring the denial of licenses to persons who are delinquent in the payment of child support or who fail to comply with a warrant or subpoena related to child support.

At the time of applying for a rental-purchase company license, the applicant would have to pay any applicable fee specified by DOB by rule.

DOB could require an applicant or licensee to file with the Division and maintain in force a bond, in a form prescribed by and acceptable to the Division, and in an amount determined by the Division.

Upon the filing of a license application and the payment of any applicable fee, DOB would be required to perform an investigation. If the Division finds that the character, general fitness, and financial responsibility of the applicant, its members (if the applicant is a partnership, limited liability company, or association), and its officers and directors (if the applicant is a corporation) warrant the belief that the business will be operated in compliance with any provision of Chapters 421 to 427 relating to rental-purchase agreements, the Division would have to issue a license to the applicant.

DOB could deny a license application by providing written notice to the applicant stating the grounds for the denial. A person whose application is denied could request a contested case hearing within 30 days after the date of denial. DOB could appoint a hearing examiner to conduct the hearing.

DOB could not issue a license if any of the following applies:

- a. The applicant fails to provide the information required by DOB in the application.
- b. DOR certifies that the applicant is liable for delinquent taxes. An applicant for whom a license is not issued under this provision would be entitled to notice and a hearing regarding the

tax delinquency, but would not be entitled to any other notice or hearing under the rental-purchase company licensure provisions. DOB would have to revoke any license issued to a person who is certified by DOR after the license was issued.

c. The applicant fails to comply, after appropriate notice, with a subpoena or warrant issued by DWD or a county child support agency and related to paternity or child support proceedings or is delinquent in making court-ordered support payments. An applicant whose application is denied under this provision would be entitled to notice and hearing under the child support enforcement provisions, but would not be entitled to any other notice or hearing under the rental-purchase company licensure provisions. DOB would have to restrict or suspend any license issued to a person who fails to comply with the child support requirements after the license was issued.

A rental-purchase company license would have to specify the location at which the licensee is permitted to conduct business. A separate license would be required for each place of business maintained by the licensee. A rental-purchase company license would not be assignable, and the licensee would have to post its license in a conspicuous place at the location specified in the license.

Rental-purchase company licenses would remain in force until suspended or revoked in accordance with these provisions or surrendered by the licensee. By June 1 of each year, each licensee would have to pay an annual license fee specified by DOB by rule and, if required by the Division, provide a rider or endorsement to increase the amount of any required bond.

No licensee could conduct business as a rental-purchase company within any office, room, or place of business in which any other business is solicited or engaged in, unless the licensee is authorized to do so, in writing, by DOB. The Division could not unreasonably withhold any such authorization.

DOB could issue an order suspending or revoking a rental-purchase company license if the Division finds that any of the following applies:

a. The licensee has violated any provision of Chapters 421 to 427 relating to rental-purchase agreements, any rules promulgated under any such provision, or any lawful order of the Division.

b. A fact or condition exists that, if it had existed at the time of the original application for the license, would have warranted the Division's refusing to issue the license.

c. The licensee has made a material misstatement in an application for a license or in any information furnished to DOB.

d. The licensee has failed to pay the annual license fee or has failed to maintain in effect any required bond.

e. The licensee has failed to timely provide any additional information, data, or records required by DOB.

f. The licensee has failed to pay any penalties due as a result of violating the statutes relating to rental-purchase agreements within 30 days after receiving notice, by certified mail, that the penalties are due.

No rental-purchase company license could be revoked or suspended except after a hearing. A complaint stating the grounds for suspension or revocation together with a notice of hearing would have to be delivered to the licensee at least five days in advance of the hearing. In the event the licensee cannot be found, the complaint and notice of hearing could be left at the place of business stated in the license and this would be considered the equivalent of delivering the notice to the licensee.

No rental-purchase company licensee could change its place of business to another location without the prior approval of DOB, and the Division could not unreasonably withhold such approval. A licensee would have to provide the Division with at least 15 days' prior written notice of a proposed change of location and pay any applicable fees specified by DOB by rule. Upon approval of the new location, DOB would have to issue an amended license, specifying the date on which the amended license is issued and the new location.

Except as provided above for a change of business location, a licensee would have to notify DOB of any material change to the information provided in the licensee's original license application or provided in a previous notice of change filed by the licensee. Licensees would have to provide the notice within 10 days after the change. Licensees would also have to provide any additional information, data, and records about the change to DOB within 20 days after the Division requests the information. DOB would have to determine the cost of investigating and processing the change, and the licensee would have to pay the Division's cost within 30 days after the Division demands payment.

Any change that is subject to the notice requirement in the previous paragraph would be subject to the approval of DOB. In reviewing the change, DOB would have to apply the same criteria as for approval of an original license application.

On or before March 31 of each year, each licensed rental-purchase company would have to file a report with DOB giving such reasonable and relevant information as the Division may require concerning the business and operations conducted by the licensee. The report would have to be in the form prescribed by DOB.

Licensed rental-purchase companies would have to keep such books and records in the licensed location as, in the opinion of DOB, will enable the Division to enforce the provisions of Chapters 421 to 427 relating to rental-purchase agreements. Licensees would be required to

preserve their records of rental-purchase agreements for at least two years after making any final entry with respect to the agreement.

Powers and Duties of DOB

DOB would be authorized to issue any general order or special order in execution of, or supplementary to, the provisions of Chapter 421 to 427 relating to rental-purchase agreements, but any such order could not conflict with any statutory provision.

For the purpose of discovering violations of any provision of Chapters 421 to 427 relating to rental-purchase agreements, DOB would be authorized to investigate or examine the business of a licensed rental-purchase company transacted under such provisions. The place of business, books of accounts, papers, records, safes, and vaults of the licensee would be open to DOB for the purpose of an investigation or examination, and the Division would have authority to examine under oath all persons whose testimony is required for an investigation or examination. The Division would have to determine the cost of an investigation or examination, and the licensee would have to pay such cost. In addition, licensees would have to pay the cost of any hearing held for the purpose of this provision, including witness fees, unless DOB or a court finds that the licensee has not committed a violation. Licensees would have to pay all costs owing under this provision within 30 days after DOB demands payment. The state could maintain an action for the recovery of any costs owing under this provision.

If five or more persons file a verified complaint with DOB alleging that a rental-purchase company has engaged in an act that is subject to action by the Division, DOB would have to immediately commence an investigation pursuant to the provisions outlined in the preceding paragraph.

DOB would be authorized to promulgate rules for the administration of any provision under the new statutes relating to rental-purchase companies and rental-purchase agreements.

DOB would have the same power to conduct hearings, take testimony, and secure evidence as is provided in the current statutes regulating sellers of checks.

The bills would authorize DOB to investigate any statute relating to rental-purchase agreements or any lawful orders issued by the Division to determine if the provision or order is being violated, and to report any violations to the Attorney General or the district attorney of the proper county for prosecution.

General Provisions and Definitions of Consumer Transactions (Chapter 421)

The bills would specify that definitions of the following terms that generally apply under the WCA would not apply with respect to rental-purchase agreements (or to transactions or goods related to rental-purchase agreements), or to rental property: (a) cash price; (b) consumer credit sale;

(c) consumer credit transaction; (d) consumer lease; (e) consumer loan; (f) finance charge; (g) goods; (h) security interest; and (i) personal property.

The bills would also create new definitions for rental property, a rental-purchase company, and a rental-purchase agreement that would generally be applicable for the purposes of Chapters 421 to 427. The terms "rental-purchase company" and "rental-purchase agreement" would be defined as indicated above. "Rental property" would mean property rented under a rental-purchase agreement but would not include a motor vehicle.

Consumer Credit Transactions (Chapter 422)

The bills would specify that most provisions of the existing five subchapters under Chapter 422 (relating to maximum charges, disclosure, and limitations on agreements and practices) would no longer apply to rental-purchase agreements. Instead, a new Subchapter VI would govern rental-purchase agreements. The following sections describe the proposed provisions. As noted, the current requirement that rental-purchase companies disclose the annual percentage rate with rental-purchase agreements would no longer apply.

Disclosure Requirements

Under the bills, a rental-purchase company would have to include all of the following information, to the extent applicable, in every rental-purchase agreement:

a. *Description.* A brief description of the rental property, sufficient to identify the property to the lessee and the rental-purchase company, including any identification number, and a statement indicating whether the property is new or used.

b. *Cash Price.* The price at which the rental-purchase company would sell the rental property to the lessee if the lessee were to pay for the property in full on the date on which the rental-purchase agreement is executed, along with a statement that if the lessee intends to acquire ownership of the property and is able to pay for the property in full or is able to obtain credit to finance the purchase, the lessee may be able to purchase similar property from a retailer at a lower cost.

c. *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.

d. *Cost of Rental Services.* The difference between the total dollar amount of payments necessary to acquire ownership of the rental property disclosed under "c" and the cash price of the property disclosed under "b". The rental-purchase company would also have to 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."

e. *Rental Payment.* The periodic rental payment for the rental property, including any applicable taxes, liability damage waiver fees, and fees for optional services.

f. *Up-Front Payment.* Any payment required of the lessee at the time that the agreement is executed or the rental property is delivered, including the initial rental payment, any application or processing charge, any delivery fee, and any charge for a liability damage waiver or for other optional services to which the lessee agrees.

g. *Other Charges and Fees to Acquire Ownership.* The dollar amount, both itemized and in total, of all taxes, liability damage waiver fees, fees for optional services, processing fees, application fees, and delivery charges that the lessee would incur if the lessee were to rent the rental property until the lessee acquires ownership, assuming that the lessee does not add or decline the liability damage waiver or optional services after signing the rental-purchase agreement.

h. *Total Payments to Acquire Ownership.* The total of all charges required to be paid by the lessee to acquire ownership of the rental property, which consists of the total dollar amount of all rental payments disclosed under "c" and the total dollar amount of all other charges and fees disclosed under "g", along with a statement that this is the amount a lessee will pay to acquire ownership of the property if the tax rates do not change and if the lessee does not add or decline the liability damage waiver or optional services after signing the rental-purchase agreement.

i. *Other Charges.* An itemized description of any other charges or fees that the rental-purchase company may charge the lessee that are not otherwise disclosed in the rental-purchase agreement.

j. *Summary of Early-Purchase Option.* A statement summarizing the terms of the lessee's options to acquire ownership of the rental property.

k. *Responsibility for Theft or Damage.* A statement that, unless otherwise agreed, the lessee is responsible for the fair market value of the rental property, determined according to the early-purchase option formula, if the property is stolen, damaged, or destroyed while in the possession of, or subject to the control of, the lessee. The statement would have to indicate that the fair market value will be determined as of the date on which the rental property is stolen, damaged, or destroyed.

L. *Service and Warranty.* A statement that during the term of the rental-purchase agreement, the rental-purchase company is required to service the property and maintain it in good working condition, as long as no other person has serviced the property. In lieu of servicing the rental property, the rental-purchase company could, at its option, replace the property. The rental-purchase company's obligation to provide service would be 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.

m. *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.

n. *Right to Reinstate.* A brief explanation of the lessee's right to reinstate a rental-purchase agreement.

o. *Rental, Not Purchase.* A statement that the lessee will not own the rental property until the lessee has made all payments necessary to acquire ownership or has exercised the early-purchase option. The rental-purchase company would also have to include a notice 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 may repossess the property."

p. *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.

q. *Optional Services.* Space for a specific, separately signed, affirmative, written indication of the lessee's desire for any optional service for which a charge is assessed. The lessee's request could be obtained only after a written disclosure of the cost of the optional service is made, and the cost and term of such service would have to be listed at or near the signature space.

The required information would have to be clearly and conspicuously disclosed in writing on the face of the rental-purchase agreement above the line for the lessee's signature. The information would have to be disclosed before the time that the lessee becomes legally obligated under the rental-purchase agreement.

In general, the information would have to be disclosed in not less than 8-point standard type. However, information regarding the property's cash price, the cost of rental services, other charges and fees to acquire ownership of rental property, and total payments to acquire ownership would have to be printed in at least 10-point boldface type, and grouped together in a box, in the form and order prescribed by the Secretary of DFI. [This is 8-point standard. **This is 10-point boldface type.**]

The required disclosures would have to be accurate as of the time that the information 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 would not be a violation of any provision of Chapters 421 to 427 relating to rental-purchase agreements.

Rental-purchase companies would be required to 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 agreement, delivery of a copy of the completed agreement to one of the lessees would satisfy this requirement.

In a rental-purchase agreement, the lessee's rental payment obligations would have to be evidenced by a single instrument, which includes the signatures of the rental-purchase company and the lessee, and the date on which the instrument is signed.

Prohibited Provisions of Rental-Purchase Agreements

Under the bills, a rental-purchase agreement could not contain any of the following:

a. A confession of judgment. [A confession of judgment is a contractual provision specifying that if some future event occurs, such as a default, the party harmed by the event may get a judgment in his or her favor without a hearing.]

b. A provision granting the rental-purchase company a security interest in any property, except rental property delivered by the company under the rental-purchase agreement.

c. A provision authorizing a rental-purchase company, or its agent, to enter the lessee's premises without the lessee's contemporaneous permission, or to commit a breach of the peace in the repossession of property provided by the company under the rental-purchase agreement.

d. 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 its agent, or a waiver of any provision of Chapters 421 to 427 relating to rental-purchase agreements.

e. 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.

f. A provision requiring the lessee to purchase insurance from the rental-purchase company to insure the rental property.

g. A provision requiring the lessee to pay any attorney fees.

A violation of these provisions would entitle the lessee to retain the goods or services received pursuant to the transaction without obligation to pay any amount. In addition, the lessee would be entitled to recover any sums paid to the rental-purchase company pursuant to the transaction.

Liability Waiver

A rental-purchase company would be allowed to offer a liability waiver to the lessee. The terms of the waiver would have to be provided to the lessee in writing, incorporated into the rental-purchase agreement or on a separate document. The face of the writing would have to clearly disclose that the lessee is not required to purchase the waiver. The fee for the waiver could not exceed 10% of the rental payment due under the rental-purchase agreement. The lessee would have to be entitled to cancel the waiver at the end of any rental term.

Price and Cost Limitations

The cash price for rental property could not exceed an amount equal to twice the actual purchase price of the rental property, including any applicable freight charges, paid by the rental-purchase company to a manufacturer or wholesaler.

The total amount charged by the rental-purchase company for the cost of rental services and all required charges or fees, excluding applicable taxes, in a rental-purchase transaction could not exceed the cash price of the property.

A court would be prohibited from finding that a rental-purchase transaction that complies with these restrictions is unconscionable on the grounds that there is a gross disparity between the price of goods or services and their value as measured by the price at which similar goods or services are readily obtainable by other customers, or by other tests of true value.

Acquisition of Ownership

Under the bills, at any time after the initial rental period, a lessee could acquire ownership of the property that is the subject of the rental-purchase agreement by tendering an amount not to exceed the cash price of the rental property multiplied by a fraction that has as its numerator the number of periodic rental payments remaining under the agreement and that has as its denominator the total number of periodic rental payments. A rental-purchase company could also require the lessee to pay any accrued unpaid rental payments and fees.

Receipts and Statements

The bills would require rental-purchase companies to 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.

Upon the request of a lessee, a rental-purchase company would have to provide a written statement to the lessee showing the lessee's payment history on each rental-purchase agreement between the lessee and the company. A rental-purchase company would not be required to provide a statement covering any rental-purchase agreement that was terminated more than one year prior to the date of the lessee's request. A rental-purchase company could provide a single statement

covering all rental-purchase agreements or separate statements for each rental-purchase agreement, at the company's option.

Also upon the written request of a lessee, made during the term of or no later than one year after the termination of a rental-purchase agreement, a rental-purchase company would have to provide a written statement to any person the lessee designates, showing the lessee's payment history under the agreement.

A lessee or, if appropriate, a lessee's designee, would be entitled to receive one statement under the above provisions without charge once every 12 months. A rental-purchase company would have to provide an additional statement if the lessee pays the company's reasonable costs of preparing and furnishing the statement.

Advertising Disclosure Required

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

- a. That the transaction advertised is a rental-purchase agreement.
- b. The total number and total dollar amount of all rental payments necessary to acquire ownership of the property.
- c. That the lessee does not acquire ownership of the property if the lessee fails to make all rental payments or other payments necessary to acquire ownership of the property.

Price Cards

Except as provided below, a card or tag that clearly and conspicuously states all of the following would have to 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. The cost of rental services under a rental-purchase agreement.
- e. Whether the property is new or used.

If property is offered for rent through a catalog, or if the size of the property is such that displaying a card or tag on or next to it would be impractical, a rental-purchase company could make the required disclosures in a catalog or list, if the catalog or list is readily available to prospective lessees.

Referral Transactions

After entering into a rental-purchase agreement, a rental-purchase company would be allowed to give or offer to give a rebate or discount to a lessee in consideration of the lessee giving to the company the names of prospective lessees. Such a rebate or discount could be made contingent upon the occurrence of any event that takes place after the time that the names are given to the rental-purchase company. Referral transactions are prohibited under current law.

Termination of Rental-Purchase Agreements, Late Payment, Grace Period, and Late Fees

The bills would specify that the termination date of a rental-purchase agreement is the day specified in the agreement as the day on which the rental term ends or the date on which the lessee voluntarily surrenders the rental property, whichever is earlier.

If a lessee fails to make any payment when due under a rental-purchase agreement or if, at the end of any rental term, the lessee fails to return the rental property or to renew the agreement for an additional term, the rental-purchase company could require the lessee to pay a late fee. The late fee could not be imposed if the lessee's failure to return the property or failure to renew the agreement is due to the lessee's exercise of an early-purchase option or is due to the lessee making all payments necessary to acquire ownership of the property.

The following grace periods would apply to rental payments made with respect to a rental-purchase agreement:

- a. For an agreement that is renewed on a weekly basis, no late fee could be assessed for a payment that is made within two days after the date on which the scheduled payment is due.
- b. For an agreement that is renewed for a term that is longer than one week, no late fee could be assessed for a payment that is made within seven days after the date on which the scheduled payment is due.

Late fees would be subject to all of the following:

- a. A late fee could not exceed \$5 for each past-due rental payment.
- b. A late fee could be collected only once on each rental payment due, regardless of how long the payment remains past due.

c. Payments received would have to be applied first to the payment of any rent that is due and then to late fees and any other charges.

d. A late fee could be collected at the time it accrues or at any time afterward.

A rental-purchase company could require payment of any outstanding late fees before transferring ownership of property to a lessee.

Reinstatement of Terminated Rental-Purchase Agreements

Under the bills, a lessee would be permitted to reinstate a terminated rental-purchase agreement without losing any rights or options previously acquired if all of the following apply:

a. The lessee returned or surrendered the rental property within seven days after the termination of the agreement.

b. Not more than 60 days have passed after the date on which the property was returned to the rental-purchase company or, if the lessee has paid two-thirds or more of the total number of rental payments necessary to acquire ownership of the property, not more than 120 days have passed since the date on which the property was returned.

As a condition of reinstatement, the rental-purchase company could 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.

These provisions would not prohibit a rental-purchase company from attempting to repossess rental property upon termination of a rental-purchase agreement, but such efforts would not affect the lessee's right to reinstate as long as the property is repossessed, voluntarily returned, or surrendered within seven days after the termination of the agreement.

Upon reinstatement, the rental-purchase company would have to 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 company, or with substitute property of comparable quality and condition.

Default and Right to Cure

A lessee would be in default under a rental-purchase agreement if either of the following applies:

a. The lessee fails to return rental property within seven days after the date on which the last rental term for which a rental payment was made expires, unless the lessee has exercised an early-purchase option or has made all rental payments necessary to acquire ownership of the property.

b. The lessee breaches any other provision of the agreement and such breach materially impairs the condition, value, or protection of the property.

Under the bills, no cause of action could accrue against a lessee with respect to the lessee's obligations under a rental-purchase agreement except upon default and the expiration of any applicable period of time allowed for cure of the default.

Except as provided below, as a condition precedent to bringing an action against a lessee arising out of a default, a rental-purchase company would have to provide a written notice of the default and of the right to cure the default to the lessee. The notice would have to specify the default and inform the lessee that the lessee may cure the default by tendering an amount equal to all unpaid and due rental payments, fees, and taxes, and the next periodic rental payment, within 15 days after the notice is given. The act of curing a default would restore the lessee's rights under the agreement as though no default had occurred.

A rental-purchase company would not be required to provide a notice of default and right to cure as a condition precedent to bringing an action against a lessee if the lessee breaches the agreement and if each of the following occurred twice during the 12 months before the date of the current default with respect to the same rental-purchase agreement: (a) the lessee was in default; (b) the company gave the lessee the required written notice of the default and of the lessee's right to cure the default; and (c) the lessee cured the default.

Surrender and Repossession of Rental Property

A rental-purchase company could request the voluntary return or surrender of rental property prior to the declaration of a default and the sending of written notice of default and right to cure. Such a request would be subject to the following provisions and to current-law restrictions regarding the collection of debts in consumer credit transactions. These current provisions prohibit the use or threatened use of force or violence, threats of criminal prosecution, communication with the debtor's employer, the use of obscene language, and other actions in collecting consumer debts.

Under the bills, no rental-purchase company could take or attempt to take possession of rental property under a rental-purchase agreement by any means other than the legal process specified above (under "Default and Right to Cure") or by return or voluntary surrender of the rental property by the lessee until at least 48 hours have lapsed after the company has made a reasonable effort to contact the lessee and request the return or voluntary surrender of the property. However, if the rental-purchase company has attempted to engage in a telephone conversation with the lessee and the telephone number at the lessee's address has been disconnected, the 48-hour requirement would not apply. "Reasonable effort" would mean any of the following:

- a. Provided written notice, by certified mail, to the last-known address of the lessee.
- b. Engaged in a telephone conversation with the lessee.

c. Attempted at least once on each of two consecutive days occurring after the most recent rental payment due date to engage in a telephone conversation with the lessee. Each attempt would have to be made to the last-known telephone number at the lessee's address. If the rental-purchase company attempts to engage in such a telephone conversation and discovers that the telephone number is disconnected, the company would only have to make the initial attempt to engage in a telephone conversation with the lessee.

Rental-purchase companies would have to maintain all necessary records to verify compliance with these provisions.

Consumer Approval Transactions and Other Consumer Rights (Chapter 423)

The bills would modify the definition of "consumer approval transaction" under Chapter 423 to exclude rental-purchase agreements. With this change and the other revised definitions under the bills, rental-purchase agreements would be excluded from provisions granting consumers the right to cancel a transaction within three business days.

However, the bills would specify that the provisions of Chapter 423 concerning false, misleading, or deceptive advertising would continue to apply to rental-purchase agreements. The current remedies and penalties related to false advertising would also continue to apply.

In addition, under current law in Chapter 423, a merchant generally may not record a customer's address, telephone number or any other identification information as a condition for accepting a credit card as payment for a consumer credit transaction. The bills would specify that this restriction would continue to apply to rental-purchase agreements.

Consumer Transactions--Remedies and Penalties (Chapter 425)

Similarly, the bills would generally specify that current provisions under Chapter 425 would no longer apply to rental-purchase agreements. However, as described below, most of the current provisions relating to remedies and penalties for consumer transactions that are found by a court to be unconscionable would continue to apply to rental-purchase agreements

Under current law, if a court finds that any aspect of a consumer transaction, any conduct directed against the customer by a party to the transaction, or any result of the transaction is unconscionable, the court must either refuse to enforce the transaction against the customer, or limit the application of any unconscionable aspect or conduct to avoid any unconscionable result. In addition, the customer is entitled to recover from the creditor or the person responsible for the unconscionable conduct an amount equal to \$100 plus actual damages.

The statutes list a number of factors that the court may consider as pertinent to the issue of unconscionability, one of which is that there exists a gross disparity between the price of goods or services and their value as measured by the price at which similar goods or services are readily obtainable by other customers, or by other tests of true value.

The bills would specify that these provisions would continue to apply to rental-purchase agreements, except that a court would not be permitted to find that a rental-purchase agreement that complies with the price and cost limitations outlined above is unconscionable because of a gross disparity between the price of goods or services and their true value.

The bills would also create new penalties for violations by rental-purchase companies. Under these provisions, a rental-purchase company that violates any provision of Chapters 421 to 427 relating to rental-purchase agreements would be liable to a lessee that is damaged as a result of that violation for the costs of the action and for reasonable attorney fees as determined by the court, plus an amount equal to the sum of the following:

- a. The actual damages, including any incidental and consequential damages, the lessee sustains as a result of the violation.
- b. An amount equal to 25% of the total amount of periodic rental payments necessary to acquire ownership of the rental property under the agreement, but not less than \$100 nor more than \$1,000.

These provisions would apply to all violations regarding rental-purchase agreements for which no other remedy is specifically provided.

Consumer Transactions--Administration (Chapter 426)

Under the bills, most of the provisions of Chapter 426 would continue to apply to persons who make or solicit rental-purchase agreements.

However, the current provisions regarding class actions for violations of the Consumer Act would be modified so that the total liability of a rental-purchase company for certain willful and knowing violations would be \$500,000 (plus costs and attorney fees) rather than the current-law amount of \$100,000 (plus costs and attorney fees).

The bills would also delete, for rental-purchase companies, the requirement that annual registration requirements and fees be based on a company's year-end balance of consumer credit transactions. This change reflects the fact that rental-purchase agreements would no longer be considered consumer credit transactions under the bills.

Consumer Transactions--Debt Collection (Chapter 427)

The bills would specify that the provisions of Chapter 427, which concern consumer transactions and debt collection, would continue to apply to transactions in connection with rental-purchase agreements.

Initial Applicability and Effective Date

The bills would take effect on the 90th day after publication, and would first apply to rental-purchase agreements, and conduct pursuant to those agreements, entered into on that date.

Senate Amendment 1 to SB 268 and Assembly Amendment 1 to AB 587

Social Security Numbers. Under the bills, an application for a rental-purchase company license by an individual would have to include the individual's social security number. Under SA 1 and AA 1, if an applicant who is an individual does not have a social security number, the applicant would have to submit a statement made or subscribed under oath or affirmation to DOB that he or she does not have a social security number. The form of the statement would have to be prescribed by DWD. Any license issued in reliance upon such a statement that is false would be invalid.

Investigations of Verified Complaints. Under the bills, if five or more persons file a verified complaint with DOB alleging that a rental-purchase company has engaged in an act that is subject to action by the Division, DOB would have to immediately commence an investigation of the company. SA 1 and AA 1 would delete this requirement.

Technical Changes. SA 1 and AA 1 would also make a number of technical modifications to clarify that the statutes governing rental-purchase companies include the new provisions created under the bills.

Senate Amendment 2 to SB 268

Referral Transactions. The bills would authorize certain referral transactions by rental-purchase companies. Specifically, after entering into a rental-purchase agreement, a rental-purchase company would be allowed to give or offer to give a rebate or discount to a lessee in consideration of the lessee giving to the company the names of prospective lessees. Such a rebate or discount could be made contingent upon the occurrence of any event that takes place after the time that the names are given to the rental-purchase company. SA 2 to SB 268 would delete these provisions. With this modification, referral transactions would continue to be prohibited.

Three-Day Right of Cancellation. The bills specify that a "consumer approval transaction" under Chapter 423 (relating to consumer approval transactions and other consumer rights) would not include a rental-purchase agreement. SA 2 would delete this provision so that rental-purchase agreements would continue to be governed under Chapter 423. This change would restore the customer's three-day right of cancellation for rental-purchase agreements. The other provisions of Chapter 423 (relating to false advertising and customer identification) would continue to apply to rental-purchase agreements under the bills and under SA 2.

Repossession of Rental Property. SA 2 would also specify that in taking or attempting to repossess rental property, it would be illegal for a rental-purchase company to commit a breach of the peace or enter a dwelling used by the lessee as a residence except at voluntary request of the

lessee. This restriction would be similar, but not identical, to language used in the sections of the bills regarding prohibited provisions of rental-purchase agreements.

Assembly Amendment 2 to AB 587 is identical to SA 2. However, AA 2 was not adopted by the Assembly Committee on State Affairs. Instead, that committee adopted Assembly Amendment 3, described below.

Assembly Amendment 3 to AB 587

AA 3 is identical to SA 2 except that in repossessing rental property a rental-purchase company would be prohibited from entering a dwelling used by the lessee as a residence except with the contemporaneous permission of the lessee (rather than at the voluntary request of the lessee, as under SA 2). The AA 3 language ("contemporaneous permission") is identical to the language used in the statutory sections of the bills regarding prohibited provisions of rental-purchase agreements.

FISCAL EFFECT

The Department of Financial Institutions has estimated that it would need 2.0 additional FTE positions and \$135,300 of additional program revenue expenditure authority to complete its obligations under the bills. The \$135,300 includes \$128,800 for salaries and fringe benefits, \$4,000 for travel, and \$2,500 for other supplies and services. The Department also estimates that it would receive additional annual program revenue of \$207,200 from license fees, registration fees, and reimbursements for the cost of examinations.

The bills would not provide any additional positions or expenditure authority to DFI. However, the Department could request supplemental authority under sections 16.515 and 16.517 of the statutes.

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