



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873  
Email: [fiscal.bureau@legis.wisconsin.gov](mailto:fiscal.bureau@legis.wisconsin.gov) • Website: <http://legis.wisconsin.gov/lfb>

---

May 23, 2013

Joint Committee on Finance

Paper #275

### Regulation of Rental-Purchase Companies (DFI)

[LFB 2013-15 Budget Summary: Page 158, #7]

---

#### CURRENT LAW

A consumer credit transaction entered into for personal, family, or household purposes is generally subject to the Wisconsin Consumer Act (WCA), which includes Chapters 421 through 427 of the state statutes. 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 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. As a result, rental-purchase agreements are subject to regulation under the WCA.

#### GOVERNOR

Exclude rental-purchase companies and rental-purchase agreements from provisions of the WCA and the Uniform Commercial Code and, instead, create laws specifically governing rental-purchase companies and rental-purchase agreements. The Governor recommends: (a) requiring that rental-purchase companies file notice with, and pay an annual fee to, the Department of Financial Institutions (DFI) to be governed by such laws; (b) specifying what must be disclosed in a rental-purchase agreement and how those disclosures must appear on the form, as well as what items are prohibited from being included in such an agreement; (c) specifying price and cost limitations on rental property; (d) prohibiting any person from requiring a rental-purchase company to disclose an annual percentage rate on a rental-purchase agreement; (e) specifying how a rental-purchase agreement can be reinstated following termination of such agreement; (f) creating regulations for how and when receipts and statements

must be provided to a customer by a rental-purchase company; (g) specifying regulations on what can be included in an advertisement for rental property and what must be displayed on a price card or tag next to the rental property; (h) granting rulemaking authority to DFI to enforce laws governing rental-purchase companies; and (i) creating certain penalties for violating the newly-created laws. Additional detail regarding the Governor's recommendation can be found in Appendix I. The recommended provisions would first apply to rental-purchase agreements, and conduct pursuant to those agreements, that are entered into 90 days following publication of the budget bill.

The Governor's proposal would provide expenditure authority for supplies and services in DFI's general program operations appropriation of \$10,000 in 2013-14 to cover one-time startup costs. The administration estimates that fees paid by rental-purchase companies would increase total revenues by \$52,000, annually. These fees would be deposited into DFI's general program operations appropriation, and such funds would be used to pay for DFI's operating expenses, including staffing and administrative costs. At the end of each fiscal year, most unencumbered program revenue in the appropriation is lapsed to the general fund. As a result, general fund revenues would increase by an estimated \$42,000 in 2013-14 and \$52,000 in 2014-15.

## **DISCUSSION POINTS**

1. The Wisconsin Consumer Act does not include a definition or specific regulations for rental-purchase agreements. A series of appellate court decisions have generally come to interpret rental-purchase agreements as being consumer credit sales, which are subject to laws under the Wisconsin Consumer Act. One of the more recent legal settlements was entered into November, 2002, when the Wisconsin Department of Justice reached an \$8.4 million settlement with Rent-A-Center over the company's violations of the WCA. Rent-A-Center had disputed that rental-purchase agreements were governed as consumer credit sales under the WCA. Rent-A-Center agreed to change its business practices to offer sales, rather than rental transactions, but denied any wrongdoing. The settlement strengthened the state's position that rental-purchase agreements were consumer credit sales subject to the WCA and, as a result, the standards for disclosures required of rental-purchase have since been regulated under the WCA.

2. According to industry information, North Carolina, New Jersey, and Wisconsin are the only states that do not have specific state statutes defining rent-to-own transactions as a lease and providing regulations specific to rent-to-own companies. The industry reports that 15 rent-to-own stores currently operate in Wisconsin, generating annual revenues of over \$11 million per year. DFI estimates that, based on the business operations and ownership structures of certain companies registered in this state, approximately 52 store locations in this state would file a notice with DFI to be regulated as a rental-purchase company under the bill.

3. The rental-to-own industry generally argues that their industry operates more similarly to a lease agreement, rather than a credit sale subject to disclosures of an annual percentage rate and possible limits on finance charges. The industry argues that they provide a no obligation, debt free service to a segment of customers who may otherwise be unable to obtain needed items through other financing mechanisms.

4. According to DFI, rental-purchase companies generally rent and sell items such as appliances, furniture, and electronic goods to consumers. The consumer may agree to rent the item for a period of time, typically for a term of up to 18 months, at which time the consumer may automatically become the owner of the product. Some agreements include a single, final payment that is due at the end of an agreement, which permits the consumer to become the owner of the rented property. Consumers who enter into rental-purchase agreements generally do so because the consumer does not have enough cash to pay for the item outright. Rental-purchase transactions provide a low weekly or monthly payment without requiring a credit background check. The consumer can use the item immediately after executing the transaction with the option to cancel the transaction at any time.

5. DFI reports that merchandise purchased from a rental-purchase company usually costs more than if the consumer purchased the same merchandise from other types of stores. The Department has found that the cost of purchasing an item through a rental-purchase agreement can result in the consumer paying between 200% and 500% more than if the consumer had purchased the item from a department store or other retailer outright. In addition to the required weekly or monthly payments, rental-purchase companies may have additional charges, such as processing fees, delivery fees, set-up/installation fees, in-home collection fees, sales tax, home pick-up fees, damage waiver fees, and reinstatement fees.

6. Current laws governing the Uniform Commercial Code -- Secured Transactions are generally designed to specify filing requirements for creditors who enter into security transactions or consumer credit transactions. In addition, the UCC -- Secured Transactions provisions generally provide certain protections and rights for the creditor in consumer credit transactions. With regards to rental property subject to a rental-purchase agreement, current law provides certain rights and mechanisms so that a creditor may repossess property used as collateral if the creditor has a security interest in that property. The provisions under the Governor's recommendation exempt rental-purchase companies from these provisions.

7. Certain disclosure requirements are specified under Chapter 422 of the Consumer Act. The Governor's proposal would exempt rental-purchase companies from these disclosure requirements and, instead, rental-purchase companies would be subject to the disclosure requirements as described in Attachment I under "Required Provisions of Rental-Purchase Agreement." State law imposes certain federal disclosure requirements regarding consumer credit sales of rental-purchase agreements, such as disclosing the annual percentage rate of a credit sale, as specified under federal Truth-In-Lending provisions (Regulation Z), even though federal law does not specifically impose these requirements on rental-purchase companies. The Governor's proposal would no longer require rental purchase agreements to follow federal credit sale disclosure requirements, including the disclosure of an annual percentage rate. A description of current law disclosures applicable to rental-purchase agreements and a description of proposed disclosure requirements under the bill are provided in Attachment II. Where disclosure requirements under the bill were somewhat comparable to current law disclosure requirements, those requirements are shown side-by-side in Attachment II.

8. A number of the provisions that would be created under the bill are similar to

requirements imposed on rental-purchase agreements under current law. Other provisions of the bill are specific to treatment of rental-purchase companies entering into rental-purchase agreements with consumers, which do not appear in current law. The remainder of this paper describes items that this office has identified as a significant change from how rental-purchase agreements would be treated under the bill, as compared to current law.

### **Disclosure Requirements**

9. State law requires a creditor to disclose the annual percentage rate (APR) under a rental-purchase agreement. The APR is a measure of the cost of credit, expressed as a yearly rate, which relates the amount and timing of value received by the consumer to the amount and timing of payments made. 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 cash price for the merchandise is equivalent to a finance charge, which can be expressed as an interest rate. Under the bill, a rental-purchase company could not be required to disclose an APR under a rental-purchase agreement, or any percentage rate calculation, including a time-price differential.

The rent-to-own industry generally argues that the product is obtained through a lease of property, rather than a consumer credit sale. The position is generally argued that, because a consumer can cancel the transaction at any time, the amount disclosed as the APR is not applicable because the rental-purchase agreement may not end in a consumer credit sale, but rather a temporary rental terminated at the discretion of the consumer. However, consumer groups generally argue that the transaction more closely reflects intent to purchase an item after renting that item at a low monthly or weekly rate to secure ownership of that item, which could be considered a consumer credit sale that should require disclosure of the APR associated with obtaining ownership. The Committee could choose to require a rental-purchase agreement to disclose the APR, as is required under current law, and explicitly disclose to the consumer what the percentage interest rate would be if the customer chose to become the owner and made all optional and required payments, taxes, and fees necessary to acquire ownership of the rental property.

10. The provisions under the bill would require that a rental-purchase company must, on every rental-purchase agreement, disclose the total payments to acquire ownership. The total payments to acquire ownership must consist of the total dollar amount of all rental payments and the total dollar amount of all required fees and taxes. The bill does not require that the total payments to acquire ownership include any other charges for optional services, such as delivery fees, damage waivers, or other optional fees that a rental-purchase company may sell to the consumer in conjunction with the rental property. As a result, the amount that a rental-purchase company discloses on the rental-purchase agreement as the "total payments to acquire ownership" may, at the discretion of the company, exclude all optional services purchased by the consumer and understate the total amount of money the consumer would pay if the consumer were to make every payment associated with the rental-purchase agreement to acquire ownership of the rental property. The bill would require that charges for optional services must be disclosed; however, the rental-purchase company may disclose these costs separately on the agreement, or, the company may disclose these costs on a separate form that is not attached to the rental-purchase agreement.

It could be argued that excluding the cost of optional services understates the amount that a consumer may otherwise presume to be disclosed as a component of "total payments to acquire ownership." If the consumer had assumed that the "total payments to acquire ownership" included all required and optional taxes and fees when signing a rental-purchase agreement. The Committee could choose to require a rental-purchase company to include all optional fees for services purchased by the customer in the disclosure required under the bill for "total payments to acquire ownership." If the Committee chose to require this disclosure, the disclosure would be the same as the current law requirement under "disclosure of total sales price" for rental-purchase agreements, as described in Attachment II.

11. Under current law, if a creditor extends credit to a spouse in a consumer credit sale subject to the WCA, the extension of credit may result in an obligation of the nonapplicant spouse under state marital property laws. The creditor is generally required to notify the nonapplicant spouse by written notice of the extension of credit before any payment is due on a consumer credit sale. The bill does not extend a similar notice in writing if a spouse enters into a rental-purchase agreement that may result in an obligation of the nonapplicant spouse under state marital property laws. The Committee could choose to maintain current law by requiring that a rental-purchase company must notify a nonapplicant spouse, in writing, if the nonapplicant's spouse enters into a rental-purchase agreement.

### **Penalties and Remedies**

12. The bill would specify that if a rental-purchase company violates any of the proposed laws or rules governing rental-purchase companies, the company is liable to the lessee in an amount equal to the greater of: (a) the actual damages sustained by the lessee; or (b) if the action is not brought as a class action, 25% 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. According to DFI, if a rental-purchase company violates a provision of the WCA, that company is generally liable for damages sustained by the customer, including incidental and consequential damages sustained by the customer by reason of the violation, and a remedy or penalty payable to the lessee under current law, the amount of which depends on the violation. For example, for violations of the consumer act that do not specify a different penalty, a person is liable to the customer in an amount equal to \$25 and the actual damages sustained by the customer by reason of the violation. The bill would reduce the total amount of penalties or remedies that a rental-purchase company would be required to pay for violating the rights of a lessee. The Committee could choose to change individual penalties under the proposed laws governing rental-purchase companies to, instead, maintain the current law provision for general penalties under the WCA by specifying a fine of \$25 in addition to the amount of actual damages sustained by the customer by reason of the violation if a company were to violate a provision of the proposed laws governing rental-purchase companies.

13. Current law specifies that if a person willfully and knowingly engages in any conduct or practice in violation of the WCA, that person may be fined not more than \$2,000 and be found guilty of a misdemeanor. The provisions under the bill do not provide for either a penalty or a fine if a person willfully and knowingly violates provisions of the proposed laws governing rental-purchase companies. The Committee could choose to maintain current law and specify that

willfully and knowingly violating the rental-purchase company statutes would be a misdemeanor, and the penalty would be a fine of up to \$2,000.

14. Under the bill, recovery by all lessees in a class action or series of class actions arising out of the same violation would be the lesser of \$500,000 or 1% of the net worth of the rental-purchase company. The bill does not specify how the net worth of a rental-purchase company would be calculated; however, such a company would need to have a net worth of \$50 million in order for the company to be liable for the \$500,000 maximum liability under a class action. Under the WCA, the maximum amount recoverable in a class action lawsuit is no more than \$100,000, regardless of the company's net worth. The Committee could choose to retain the current \$100,000 limit or adopt the \$500,000 limit recommended by the Governor, but delete the other limit based on the company's net worth.

15. The bill would require a rental-purchase company to file a notice with the Department, within 30 days after commencing business in this state, for each place of business maintained by the rental-purchase company. The rental-purchase company would not be required under the bill to register with DFI to operate in this state, but the company would be required to pay an annual fee of \$1,000 and file a notice. While the Department may promulgate rules to administer and enforce the requirements under the proposed laws governing rental-purchase companies, it is unclear how DFI could stop such a company from operating in this state if that company were to commit multiple violations under the proposed laws governing rental-purchase companies. DFI may be able to seek an injunction from a court in order to stop a rental-purchase company that violates the proposed laws from entering into rental-purchase agreements under the bill. Under the bill, the only expressly permitted power that DFI would have is to order a rental-purchase company to cease operating if the company fails to pay the annual \$1,000 fee to be regulated as a rental-purchase company. The Committee could choose to require that a rental-purchase company file to register with the Department, rather than file a notice with DFI, to be governed by the proposed laws governing rental-purchase companies. The Committee could choose to give DFI express authority to promulgate rules governing when such a registration may be suspended or revoked and, if such a registration were suspended or revoked, that person would be regulated under the current law provisions of the WCA rather than the provisions recommended by the Governor.

### **Other Provisions**

16. Under the bill, a rental-purchase company that has filed a notice with DFI, and any rental-purchase agreement entered into by that company, would be exempt from state laws governing the WCA and the Uniform Commercial Code (UCC) -- Secured Transactions. Exemptions from the WCA and from the UCC -- Secured Transactions are generally provided for specific types of credit transactions. For instance, a landlord's lien is exempt from current laws governing the UCC -- Secured Transactions statutes; however, a landlord is not provided a general exemption from these provisions. Similarly, the sale of insurance by an insurer is exempt from the WCA under current law; however, an insurer is not provided a general exemption from the WCA. As drafted, if a rental-purchase company were engaged in other types of consumer credit transactions, the bill would exempt those transactions from current laws governing those types of transactions. The administration indicates that the intent of this provision was to provide an

exemption for rental-purchase agreements entered into by rental-purchase companies, not to exempt other consumer credit transactions that a rental-purchase company may enter into from the WCA and the UCC -- Secured Transactions laws. A technical amendment would be needed to clarify the Governor's intent.

17. Under the Consumer Act, for every document evidencing a consumer credit transaction, the writing must be completed as to all essential provisions prior to signing the document. Generally, no creditor may induce, encourage, or otherwise permit a customer to sign a writing containing blank spaces which are to be filled in after it is signed. The Governor's recommendation creates certain prohibitions specifying what cannot be included in a rental-purchase agreement, which is described in Attachment I under "Prohibited Provisions of Rental-Purchase Agreements;" however, the Governor did not recommend maintaining the current law prohibition on blank spaces in rental-purchase agreements. The Committee could, instead, choose to maintain the current law prohibition of blank spaces on rental-purchase agreements.

18. The WCA contains certain provisions concerning when a consumer credit transaction, including a rental-purchase agreement, is considered to be in default. Current law specifies that a customer is considered in default if the customer has an outstanding balance in excess of one full payment, which has remained unpaid for more than ten days after the scheduled or deferred due date. The merchant must give the customer written notice of the alleged default and, if applicable, of the customer's right to cure any such default. The customer is considered in default 15 days after the merchant gives notice of their right to cure the default. The Governor's recommendation does not include any provisions defining when a customer in a rental-purchase agreement is in default. Presumably, the terms of default and repossession would be specified and disclosed in each rental-purchase agreement under the "disclosure or rental, not purchase" provision described in Attachment II. The Committee could choose to require that a rental-purchase company must follow the current law provisions described above, with regards to when a customer is considered in default of a rental-purchase agreement.

## **ALTERNATIVES**

1. Approve the Governor's proposal with a technical amendment to specify that rental-purchase agreements entered into by rental-purchase companies are exempt from the WCA and the UCC-Secured Transactions statutes, and specify that other types of consumer credit transactions that a rental-purchase company might engage in would continue to be governed under the WCA and the UCC-Secured Transactions statutes.

2. Approve the Governor's proposal with a technical amendment to specify that rental-purchase agreements entered into by rental-purchase companies are exempt from the WCA and the UCC-Secured Transaction statutes, and specify that other types of consumer credit transactions that a rental-purchase company might engage in would continue to be governed under the WCA and the UCC-Secured Transactions statutes. However, specify that one or more of the following modifications apply to laws governing rental-purchase companies:

a. Specify that a rental-purchase company must disclose the annual percentage rate, as

required under current law, in every rental-purchase agreement.

b. Specify that a rental-purchase company must include all optional fees, up-front payments, and all costs that a consumer must pay associated with obtaining ownership of a rental property in the disclosure of total payments to acquire ownership, which must also consist of the total dollar amount of all rental payments disclosed and the total dollar amount of all required fees and taxes.

c. Specify that a rental-purchase company must notify a nonapplicant spouse, in writing, if the nonapplicant's spouse enters into a rental-purchase agreement, in the same manner as the current law requirement that a creditor must notify a nonapplicant spouse if the creditor extends credit to a spouse in a credit transaction governed under the WCA that may result in an obligation of the nonapplicant spouse under state marital property law.

d. Specify that the rental-purchase company must pay a penalty of \$25 to the lessee if the company were to violate a provision of the laws governing rental-purchase companies. Specify that the fine would be in addition to the amount the rental-purchase company must pay to the lessee for actual damages, including incidental and consequential damages sustained by the customer by reason of the violation, that are sustained by the lessee.

e. Specify that if a rental-purchase company willfully and knowingly engages in any conduct or practice that violates the proposed laws governing rental-purchase companies, that person must pay a fine up to \$2,000 and be found guilty of a misdemeanor.

f. Specify that if a rental-purchase company is subject to a class action, that company would be subject to an amount recoverable in a class action of no more than \$100,000, regardless of the company's net worth.

g. Specify that if a rental-purchase company is subject to a class action, that company would be subject to an amount recoverable in a class action of no more than \$500,000, regardless of the company's net worth.

h. Specify that a rental-purchase company must register with DFI to enter into rental-purchase agreements under laws governing rental-purchase companies. Specify that the applicant must pay an annual fee of \$1,000 to register with the Department. Specify that DFI may promulgate rules for what conditions must apply for the Department to suspend or revoke a rental-purchase company's registration to be governed under the newly-created laws.

i. Prohibit a rental-purchase company from inducing, encouraging, or otherwise permitting a customer to sign a rental-purchase agreement containing blank spaces which are to be filled in after it is signed, as required under current law.

j. Require that a rental-purchase company may not consider a customer in default of a rental-purchase agreement until after the customer has an outstanding balance in excess of the amount of one periodic payment, which has remained unpaid for more than ten days after the scheduled due date before the company sends a letter to the customer notifying the customer of the



alleged default. Specify that the customer is considered in default 15 days after the rental-purchase company gives notice of their right to cure the default, and specify that the company may then request the surrender of, or repossess, the rental property from the customer.

3. Delete provisions.

<b>ALT 3</b>	<b>Change to Bill</b>	
	Revenue	Funding
PR-REV	- \$104,000	\$0
GPR-Earned	- 94,000	0
PR	- \$10,000	

Prepared by: Sean Moran  
Attachments



## ATTACHMENT I

### **Governor's Recommended Regulations for Rental-Purchase Companies Under AB 40**

Exclude rental-purchase companies and rental-purchase agreements from laws governing the Wisconsin Consumer Act (WCA) and the Uniform Commercial Code and, instead, create the following laws governing rental-purchase companies and rental-purchase agreements.

#### **Definitions**

a. "Cash price" would mean 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.

b. "Department" would mean the Department of Financial Institutions.

c. "Rental Property" would mean property rented under a rental-purchase agreement, but would not include any motor vehicle, or any musical instrument that is intended to be used in whole or in part in an elementary school or high school.

d. "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: (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 or require, the lessee to acquire ownership of the rental property.

e. "Rental-purchase company" would mean 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.

#### **Notice to the Department**

A rental-purchase company would have to file notice with the Department, in the form and manner prescribed by DFI, within 30 days after commencing business in this state. A separate notice would be required for each place of business maintained by the rental-purchase company. If a rental-purchase company generates less than 75% of its total revenues in this state from transactions involving rental-purchase agreements, the company could elect not to file notice with DFI and, upon informing the Department of this election in a manner prescribed by DFI, would not be subject to laws governing rental-purchase agreements. Instead, those companies would be regulated as they would be under current law. For each location for which a rental-purchase company files a notice with DFI, the company would have to pay a \$1,000 annual fee to the Department. If a rental-purchase company fails to timely pay the annual fee, DFI would have to order the company to cease operation until the fee is paid. It should be noted

that the bill does not specify a due date for the annual fee; however, DFI would have rulemaking authority to specify when the annual fee would have to be paid.

### **General Requirements of Disclosure**

The provisions that would have to be disclosed in a rental-purchase agreement (specified in the following section on "Required Provisions of Rental-Purchase Agreements") would have to satisfy all of the following:

- a. The information would have to be clearly and conspicuously disclosed in writing.
- b. In general, the information would have to be disclosed in not less than eight point standard type in the rental-purchase agreement above the line for the lessee's signature. Multiple pages or backs of pages could be used as long as the face of the rental-purchase agreement was signed by the lessee and other pages are signed or initialed by the lessee. However, the required disclosures regarding price, rental payments to acquire ownership, cost of rental services, and total payments to acquire ownership would have to be printed in at least ten point boldface type on the face of the rental-purchase agreement, and these disclosures would have to be grouped together in a box, in the form and order prescribed by DFI.
- c. The information would have to be disclosed before the time that the lessee were to become legally obligated under the rental-purchase agreement.

The information that would be required to be disclosed in the rental-purchase agreement would have to be accurate as of the time that it is disclosed to the lessee. If any information subsequently were to become 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 the laws governing rental-purchase agreements.

The rental-purchase company would have to provide the lessee with a copy of the completed rental-purchase agreement signed by the lessee. If more than one lessee was legally obligated under the same rental-purchase agreement, delivery of a copy of the completed rental-purchase agreement to one of the lessees would satisfy this requirement.

### **Required Provisions of Rental-Purchase Agreement**

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 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 would not violate laws governing rental-purchase agreements.
- b. *Cash Price.* The cash price of the rental property.
- 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 and the cash price of the rental property. The rental-purchase company would also be required 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. *Periodic Payments.* The rental payment and any applicable taxes and fees for optional services to which the lessee agrees.

f. *Up-Front Payment.* The total amount of the initial payment to be made by the lessee at the time that the rental-purchase agreement was executed or the rental property was 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.

g. *Total Payments to Acquire Ownership.* The total of all charges to be paid by the lessee to acquire ownership of the rental property, which would consist of the total dollar amount of all rental payments necessary to acquire ownership, and the total dollar amount of all required fees and taxes.

h. *Other Charges.* An itemized description of any other charges or fees that the rental-purchase company could charge upon the occurrence of a contingency specified in the rental-purchase agreement, such as late fees.

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

j. *Responsibility for Theft or Damage.* A statement that, unless otherwise agreed, the lessee would be responsible for the fair market value of the rental property, determined according to the early-purchase option formula, if the rental property was 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 was stolen, damaged, or destroyed.

k. *Service and Warranty.* A statement that during the term of the rental-purchase agreement, the rental-purchase company would be required to service the rental property and maintain it in good working condition, as long as no other person had serviced the rental property. In lieu of servicing the rental property, the rental-purchase company could, at its option, replace the rental property with substitute property of comparable quality and condition. 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 company or manufacturer.

l. *Termination at Option of Lessee.* A statement that the lessee could terminate the agreement at any time without penalty by voluntarily surrendering or returning the rental property in good repair.

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

n. *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 may repossess the property."

o. *Information About Rental-Purchase Company and Lessee.* The names of the rental-purchase company and the lessee, the company's business address and telephone number, the lessee's address, and the date on which the rental-purchase agreement was executed.

p. *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 was assessed. The lessee's request would have to be obtained after a written disclosure of the cost of the optional service was made, and the disclosure of the cost and purpose of such service would have to be listed at or near the affirmation space. This requirement would be satisfied by a separate written agreement for an optional service.

### **Prohibited Provisions of Rental-Purchase Agreements**

A rental-purchase agreement could not contain any of the following:

- a. *Confession.* A confession of judgment.
- b. *Repossession.* A provision that authorizes a rental-purchase company, or an agent of the 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 company under the rental-purchase agreement.
- c. *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 company, or a waiver of any provision of the laws governing rental-purchase agreements relating to such agreements.
- d. *Overpayment.* A provision that requires rental payments totaling more than the total dollar amount of all rental payments necessary to acquire ownership.
- e. *Insurance.* A provision that requires the lessee to purchase insurance from the rental-purchase company to insure the rental property.
- f. *Attorney Fees.* A provision that requires the lessee to pay any attorney fees.

## **Price and Cost Limitations**

The cash price for rental property offered by a rental-purchase company could not exceed the greater of the following: (a) 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 (b) 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 total amount that could be charged by the rental-purchase company for all required charges or fees, excluding applicable taxes and any late fees or reinstatement fees, in a rental-purchase transaction could not exceed twice the maximum cash price of the property.

At any time after the initial rental period under a rental-purchase agreement, if a lessee affirmatively elects an early-purchase option, the lessee could acquire ownership of the rental property by tendering an amount not to exceed 55% 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, except that the lessee's early-purchase option amount could not be less than the amount of one rental payment. Before a lessee could acquire ownership of the rental property, a rental-purchase company could first require the lessee to pay any accrued unpaid rental payments and fees.

## **Prohibition on Requirement to Disclose Percentage Rate**

A rental-purchase company could not be required to disclose, in a rental-purchase agreement or otherwise, any percentage rate calculation, including a time-price differential, an annual percentage rate, or an effective annual percentage rate.

## **Reinstatement of a Rental-Purchase Agreement**

A lessee could reinstate a rental-purchase agreement that had ended without losing any rights or options previously acquired if: (a) the lessee voluntarily returned or surrendered the rental property within seven days after the expiration of the rental-purchase agreement; and (b) not more than 120 days have passed after the date on which the agreement ended. As a condition of this reinstatement, the rental-purchase company could require the payment of all past-due rental charges, any applicable fees, a reinstatement fee not to exceed \$5, and the rental payment for the next term. A rental-purchase company would not be prohibited from repossessing or attempting to repossess rental property when a rental-purchase agreement ends, but such efforts would not affect the lessee's right to reinstate as long as the rental property was voluntarily returned or surrendered within seven days after the agreement ends.

Upon reinstatement, the rental-purchase company would have to provide the lessee with the same rental property, if the property was available and in the same condition as when it was returned to the company, or with substitute property of comparable quality and condition. If the lessee was entitled to reinstatement, within 15 days of repossession or voluntary return or surrender of the rental property, the rental-purchase company would have to provide written notice to the lessee of the lessee's rights and obligations.

## **Receipts and Statements**

A rental-purchase company would have to provide a written receipt to the lessee for any payment made by the lessee in cash or, upon request of the lessee, for any other type of payment. Upon the request of the 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 rental purchase company. A rental-purchase company would not be 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 could provide a single statement covering all rental-purchase agreements or separate statements for each agreement, at the company's option. Upon written request of the lessee, made during the term of, or no later than one year after the rental-purchase agreement ended, 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 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 states the amount of a payment for a specific item of property, the advertisement would have to also 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; and (c) 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.

## **Price Card Display**

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 prices 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; and (e) whether the property is new or used. If property was offered for rent through a catalog, whether print or electronic, or if the size of the property was such that displaying a card or tag on or next to the property would be impractical, a rental-purchase company could make the required disclosures in a catalog, list, or disclosure sheet, provided the catalog, list, or disclosure sheet was readily available to prospective lessees and provided upon request.

## **Rulemaking**

DFI would be authorized to promulgate rules to administer and enforce the requirements of laws governing rental-purchase agreements.



## **Penalties**

A rental-purchase company that violates any law governing rental-purchase agreements, rule promulgated by the Department, or order issued pertaining to a lessee would be 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% 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; and (c) if the action is brought as a class action, the amount the court determines to be appropriate. The total recovery by all lessees in any class action or series of class actions arising out of the same violation could not be more than the lesser of \$500,000 or 1% of the net worth of the rental-purchase company. In determining the amount of any award in a class action, the court would have to 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.

A rental-purchase company would not be liable for any violation of laws governing rental-purchase agreements if the company shows, by a preponderance of evidence, that the violation was not intentional and resulted from a bona fide error, and the company maintains procedures reasonably adapted to avoid such an error. If a court awards any monetary amount to a lessee, the rental-purchase company would also be liable to the lessee for the costs of the action and for reasonable attorney fees as determined by the court.

## **Inapplicability of Consumer Act and the Uniform Commercial Code -- Secured Transactions**

A rental-purchase company that has filed notice with DFI to be regulated as a rental-purchase company would not be subject to the Wisconsin Consumer Act, or any related rule or order adopted under the WCA, or to any provision of the Uniform Commercial Code -- Secured Transactions. Any rental-purchase agreement entered into by such a rental-purchase company could not be construed or regulated as a security interest, credit sale, retail installment sale, conditional sale, or any other form of consumer credit, nor could it be considered to be the creation of a debt or extension of credit.

## **Initial Applicability**

These provisions would first apply to rental-purchase agreements, and conduct pursuant to those agreements, that are entered into 90 days following publication of the budget bill.



## ATTACHMENT II

### Comparison of Disclosure Requirements for Rental-Purchase Agreements Current Law Compared to AB 40

<u>Current Law Disclosure Requirements</u>	<u>AB 40 Disclosure Requirements</u>
<i>Disclosure of creditor.</i> The identity of the creditor making the disclosures.	<i>Disclosure of information about rental-purchase company and lessee.</i> 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.
<i>Disclosure of cash price.</i> The cash price would be disclosed in the itemization of the amount financed.	<i>Disclosure of cash price.</i> The cash price, meaning 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, of the rental property.
<i>Disclosure of amount financed.</i> The term "amount financed" must be used, and a brief description such as "the amount of credit provided to you on your behalf." The amount financed is calculated by: (a) determining the principal loan amount of the cash price (subtracting any down payment); (b) adding any other amounts that are financed by the creditor and are not part of the finance charge; and (c) subtracting any prepaid finance charge.	<i>No comparable requirement.</i>
<i>Disclosed itemization of amount financed.</i> A separate written itemization of the amount financed, including: (a) the amount of any proceeds distributed directly to the consumer; (b) the amount credited to the consumer's account with the creditor; (c) any amounts paid to other persons on the consumer's behalf (the creditor must identify those persons); and (d) the prepaid finance charge. The creditor is not required to include an itemization of the amount financed if the creditor provides a statement that the consumer has the right to receive a written itemization of the amount financed, together with a space for the consumer to indicate whether it is desired, and the consumer does not request it.	<i>No comparable requirement.</i>
<i>Disclosure of finance charge.</i> The finance charge and a brief description such as "the dollar amount the credit will cost you." The amount disclosed as the finance charge must be treated as accurate if: (a) in a transaction involving an amount financed of \$1,000 or less, it is not more than \$5 above or below the amount required to be disclosed; or (b) in a transaction involving an amount financed of more than \$1,000, it is not more than \$10 above or below the amount required to be disclosed.	<i>Disclosure cost of rental services.</i> The difference between the total dollar amount of payments necessary to acquire ownership of the rental property as calculated under "disclosure of rental payments to acquire ownership" and the "disclosure of cash price" of the property. The rental purchase company must 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."

<u>Current Law Disclosure Requirements</u>	<u>AB 40 Disclosure Requirements</u>
<p><i>Disclosure of annual percentage rate.</i> The annual percentage rate, and a brief description such as "the cost of your credit as a yearly rate." The annual percentage rate must be determined in accordance with either the actuarial method or the United States Rule method.</p>	<p><i>No comparable requirement.</i> A rental-purchase company cannot be required to disclose, in a rental-purchase agreement or otherwise, any percentage rate calculation, including a time-price differential, an annual percentage rate, or an effective percentage rate.</p>
<p><i>Disclosure of payment schedule.</i> The number, amounts, and timing of payments scheduled to repay the obligation. In a demand obligation with no alternate maturity dates, the creditor may comply by disclosing the due dates or payment periods of any scheduled interest payments for the first year. In a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply by disclosing the following information: (a) the dollar amounts of the largest and smallest payments in the series; and (b) a reference to the variations in the other payments in the series.</p>	<p><i>Disclosure of periodic payment.</i> The rental payment and any applicable taxes and any applicable taxes and fees for optional services to which the lessee agrees.</p> <p>Plus</p> <p><i>Disclosure of total payments to acquire ownership.</i> The total of all charges to be paid by the lessee to acquire ownership of the rental property, which must consist of the total dollar amount of all rental payments (as provided under "disclosure of rental payments to acquire ownership") and the total dollar amount of all required fees and taxes.</p>
<p><i>Disclosed total of payments.</i> The total of payments, and a descriptive explanation such as "the amount you will have paid when you have made all scheduled payments."</p>	<p><i>No comparable requirement.</i> But, the following disclosure is somewhat similar. Except it excludes all optional services.</p> <p><i>Disclosure of total payments to acquire ownership.</i> The total of all charges to be paid by the lessee to acquire ownership of the rental property, which must consist of the total dollar amount of all rental payments (as provided under "disclosure of rental payments to acquire ownership") and the total dollar amount of all required fees and taxes.</p>
<p><i>Disclosure of total sale price.</i> In a credit sale, the total sale price, and a descriptive explanation (including the amount of any down payment) such as "the total sale price of your purchase on credit, including your down payment of \$___." The total sale price is the sum of the cash price, the items described in the "amount financed" disclosure, and the amount disclosed as the "finance charge."</p>	<p><i>No comparable requirement.</i> But, the following disclosures are somewhat similar, except it excludes all optional services.</p> <p><i>Disclosure of total payments to acquire ownership.</i> The total of all charges to be paid by the lessee to acquire ownership of the rental property, which must consist of the total dollar amount of all rental payments (as provided under "disclosure of rental payments to acquire ownership") and the total dollar amount of all required fees and taxes.</p>
<p><i>Disclosure of prepayment.</i> When an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full. When an obligation includes certain types of finance charges, a statement must be disclosed indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full.</p>	<p><i>Disclosed summary of early-purchase option.</i> A statement summarizing the terms of the lessee's options to acquire ownership of the rental property.</p>
<p><i>Disclosure of late payment.</i> Any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge.</p>	<p><i>Disclosure of other charges.</i> 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.</p>

<u>Current Law Disclosure Requirements</u>	<u>AB 40 Disclosure Requirements</u>
<p><i>Disclosure of security interest.</i> The fact that the creditor has or will acquire a security interest in the property purchased as part of the transaction, or in other property identified by item or type.</p>	<p><i>Disclosure of rental, not purchase.</i> 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 may repossess the property."</p>
<p><i>Disclosure of insurance and debt cancellation.</i> The items required as voluntary credit insurance premiums, property insurance premiums, voluntary debt cancellation or debt suspension fees, and telephone purchases in order to exclude certain insurance premiums and debt cancellation fees from the finance charge.</p>	<p><i>Disclosure of optional services.</i> Space for a specific, separately signed or initialed, affirmative, written indication of the 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 if the optional services are disclosed in a separate written agreement.</p>
<p><i>Disclosure that customer will preserve or insure collateral.</i> Parties may agree that the customer will perform certain duties with respect to preserving or insuring collateral, if such duties are reasonable to in relation to the risk of loss or damage of the collateral.</p>	<p><i>Disclosed responsibility for theft or damage.</i> 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 rental property is stolen, damaged, or destroyed while in the possession of, or subject to the control of, the lessee. The statement must indicate that the fair market value will be determined as of the date on which the rental property is stolen, damaged, or destroyed.</p>
<p><i>No comparable requirement.</i></p>	<p><i>Disclosure of service and warranty.</i> 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.</p>
<p><i>Disclosure of right to redeem.</i> A statement that the customer has the right to redeem any collateral and the actual amount needed for the redemption.</p>	<p><i>Disclosure of right to reinstate.</i> A brief explanation of the lessee's right to reinstate a rental purchase agreement.</p>
<p><i>Disclosure of certain security interest charges.</i> The disclosures required, in order to exclude from the finance charge certain fees prescribed by law or certain premiums for insurance in lieu of perfecting a security interest, for: (a) taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or perfecting, releasing, or satisfying a security interest; and (b) the premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the taxes and fees described in "a."</p>	<p><i>No comparable requirement.</i></p>

<u>Current Law Disclosure Requirements</u>	<u>AB 40 Disclosure Requirements</u>
<p><i>Disclosure of contract reference.</i> A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. At the creditor's option, the statement may also include a reference to the contract for further information about security interests.</p>	<p><i>No comparable requirement.</i></p>
<p><i>Disclosure of required deposit.</i> If the creditor requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit.</p>	<p><i>No comparable requirement.</i></p>
<p><i>No comparable requirement.</i></p>	<p><i>Disclosure of termination at option of lessee.</i> 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.</p>
<p><i>No comparable requirement.</i></p>	<p><i>Disclosure of up-front payment.</i> 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 for which the lessee agrees.</p>
<p><i>Disclosed notice to customer.</i> Every writing evidencing the customer's obligation to pay under a consumer credit transaction, other than one pursuant to an open-end credit plan or a motor vehicle consumer lease, but contain immediately above or adjacent to the place for the signature of the customer, a clear, conspicuous, printed, or typewritten notice in substantially the following language: "NOTICE TO CUSTOMER. DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN. YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE."</p>	<p><i>No comparable requirement.</i></p>

<u>Current Law Disclosure Requirements</u>	<u>AB 40 Disclosure Requirements</u>
<p><i>Disclosure under marital property law.</i> If a creditor extends credit to a spouse in a credit transaction governed under the Wisconsin Consumer Act and the extension of credit may result in an obligation of the nonapplicant spouse, the creditor must give the nonapplicant spouse written notice of the extension of credit before any payment is due. The notice requirement may be satisfied by providing a copy of the instrument, document, agreement, or contract evidencing the obligation to pay or any required credit disclosure which is given to the applicant spouse, or by providing a separate writing briefly describing the nature of the credit extended. Notice is considered given on the date it is mailed to the address of the nonapplicant spouse provided to the creditor by the applicant spouse. If the applicant spouse informs the creditor that the spouses reside at the same address, the notice may be enclosed in an envelope addressed to the nonapplicant spouse or both spouses. Notice is considered given if the nonapplicant spouse has actual knowledge that the credit is extended or waives the notice in a signed writing.</p>	<p><i>No comparable requirement.</i></p>