

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4219/1dn
RJM:kmg:jf

February 14, 2000

Senator Chvala:

The attached bill is not identical to the rent-to-own provisions contained in Assembly Amendment 2 to Assembly Substitute Amendment 1 to AB-131 (budget amendment). I was able to devote more time to the bill than I was able to devote to drafting the budget amendment. As a result, the bill is more refined and consistent with current drafting style. I have tried to make all changes consistent with my understanding of the underlying intent. In particular, please note the following:

1. The budget amendment excluded a rent-to-own agreement from the Wisconsin Consumer Act (consumer act) and also specifically exempted a rent-to-own agreement from certain definitions under the consumer act. Because the exclusion makes these definitional exemptions unnecessary, the bill does not contain the definitional exemptions. In addition, it appears as though, under the budget amendment, the assignment-of-earnings provision of the consumer act actually was intended to apply to a creditor under a rent-to-own agreement. See proposed s. 435.602 (4) in the budget amendment. Rather than make the exclusion from the consumer act ambiguous, the bill creates an assignment of earnings provision that specifically applies to the rent-to-own chapter. See proposed s. 435.606.

2. The budget amendment specified several transactions that were specifically excluded from the rent-to-own chapter. See proposed s. 435.102 (2) in the budget amendment. However, the definition of "rent-to-own agreement" itself eliminates three of these excluded transactions from the rent-to-own chapter. As a result, the list of excluded transactions in proposed s. 435.102 (2) is shorter than the list contained in the budget amendment.

3. The registration requirement in the bill raises two issues. First, the bill does not permit the department of financial institutions (DFI) to deny a rental-purchase company's registration. The bill does not require DFI to review a registration and does not specify any standards for DFI to apply when a rental-purchase company submits a registration. Although the bill, in proposed s. 435.304 (1) (b), permits DFI to suspend or revoke a registration if the department becomes aware of a fact that "would have warranted the department's refusal to honor the registration", it is unclear what facts meet this requirement.

Second, the bill permits a rental-purchase company to operate for 30 days before registering. Although this procedure is similar to registration language contained in

the consumer act, the procedure may cause difficulties in enforcement. You may want to consider requiring a rental-purchase company to obtain a valid registration before conducting business in this state and allow a transitional period of 30 days after the bill's effective date for existing rental-purchase companies to register.

4. The bill makes the administrative review procedure in proposed s. 435.304 (2) (c) consistent with s. 227.42 (1), stats., by requiring all conditions under s. 227.42 (1) (a) to (d) to be satisfied in order for a contested case hearing to be held.

5. The budget amendment contained a liability exemption for any advertiser that runs a rent-to-own agreement advertisement that violates proposed s. 435.502 (1). The bill clarifies that the requirements of s. 435.502 (1) only apply to a rental-purchase company. Thus, the bill eliminates the liability exemption.

6. The budget amendment required a rent-to-own advertisement to state "that the lessee does not acquire ownership of the property if the total dollar amount of payments necessary to acquire ownership is not paid". The bill uses uniform terminology and, as a result, under the bill this disclosure refers to the lessee failing to make "all periodic rental payments or other payments necessary to acquire ownership". Please let me know if this disclosure is not sufficient.

7. Please review proposed s. 435.603, regarding reduced periodic rental payments due to reduced income. It was unclear whether you intend the eligibility requirement in proposed s. 435.603 (1) (a) 1. to refer to 50% of the total dollar amount or of the total number of periodic rental payments necessary to acquire ownership. The bill requires a lessee to have paid more than 50% of the total *number* of periodic rental payments.

Proposed s. 435.603 requires a reduction in *monthly* income. The submitted language did not specify a time-frame for measuring the required reduction.

Proposed s. 435.603 (3) clarifies that a rental-purchase company may restore the amount of periodic rental payments due if the lessee's income is *fully restored*.

The submitted language did not require any notification of a change in the amount or number of periodic rental payments under proposed s. 435.603. The bill requires a rental-purchase company to notify a lessee of these changes and requires written notification if the change is an increase in the amount or number of periodic rental payments. See proposed s. 435.603 (5). Let me know if this provision is not consistent with your intent.

8. The budget amendment prohibited the use of force or violence against a lessee's dependents when attempting to collect a debt. In order to remain consistent with other provisions, the bill refers, instead, to any person related to a lessee. See proposed s. 435.605 (1).

With certain exceptions, the budget amendment also prohibits a rental-purchase company from communicating with a lessee's employer "except as permitted by statute". This type of overbroad reference is not allowed under Joint Rule 52 (6). As a result, the bill eliminates this language. See proposed s. 435.605 (4).

The bill also clarifies the prohibition against threatening to sue a lessee. Please review proposed s. 435.605 (10), as compared with proposed s. 435.602 (10) in the budget amendment.

9. The bill does not specify a penalty that applies to a rental-purchase company that engages in business without a required registration. Without a specific penalty, this violation is subject to a forfeiture of up to \$200 under s. 939.61, stats.

10. The bill contains a five-month delayed effective date, in order to allow DFI time to promulgate the rules required under the bill. Under the bill, DFI must submit proposed rules no later than the first day of the third month beginning after publication. An eight-month or twelve-month delayed effective date, along with a six-month time period for the submission of proposed rules, may be more feasible.

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