

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0404/1dn
RJM:cmh:jf

March 15, 2000

Representative Jeskewitz:

The instructions for this amendment were provided to me jointly by Chris Green at the department of financial institutions and Jim Leonhart at Dewitt, Ross & Stevens. In many instances, I have varied from the submitted language in order to more precisely accomplish my understanding of the intent or to make the amendment conform to current drafting style. You may want Mr. Green and Mr. Leonhart to review the amendment. In particular, please note the following:

1. The submitted language would have required a rental-purchase company to disclose "other charges or fees that a lessee may incur, such as late payment, reinstatement, default or pick-up fees." This language has two problems. First, the language does not limit the disclosure to fees that are related to a rent-to-own agreement. There are many "other charges or fees that a lessee may incur" that are unrelated to the rent-to-own agreement. Second, while the list of examples helps to clarify the types of fees and charges that must be disclosed, the list may be construed by a court to limit the fees that must be disclosed only to those listed. See *State ex rel. Harris v. Larson*, 64 Wis. 2d 521, 527 (1974). The amendment, instead, requires an itemized description of any other charges or fees that the rental-purchase company may charge the lessee. See proposed s. 218.634 (8).

2. Please review the penalty provisions in proposed s. 218.682 to ensure that they are consistent with your intent. In particular, proposed s. 218.682 (3) required numerous changes in order to conform with current drafting style.

3. Proposed s. 218.63 (5) is an archaic provision and is probably unnecessary. Please review the provision. Do you really intend to require every violation to be reported to the department of justice or district attorney for prosecution? You may want to allow the division of banking to exercise some discretion and refrain from referring minimal violations for prosecution.

4. Proposed s. 218.63 (1) authorizes the division of banking to issue any general or special order "in execution of or supplementary to this subchapter." This is an unusually broad delegation of authority. You may want to prohibit the division from issuing an order that contradicts the subchapter. Also, you may want to provide a standard for the division to exercise this authority. See, for example, s. 218.04 (7) (a) (division may issue order to protect public from oppressive or deceptive practices of licensees and to prevent evasions of the chapter).

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us