

2001 DRAFTING REQUEST

Assembly Amendment (AA-AB571)

Received: **10/22/2001**

Received By: **nelsorp1**

Wanted: **Today**

Identical to LRB:

For: **Terry Musser (608) 266-7461**

By/Representing: **Pam Shannon**

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Addl. Drafters:

Subject: **Military Affairs - national guar**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Musser@legis.state.wi.us**

Carbon copy (CC:) to: **pam.shannon@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Brochures from the department of military affairs

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	nelsorp1 10/22/2001	gilfokm 10/22/2001	haugeca 10/22/2001	_____	lrb_docadmin 10/22/2001	lrb_docadmin 10/22/2001	

FE Sent For:

<END>

2001 DRAFTING REQUEST

Assembly Amendment (AA-AB571)

Received: 10/22/2001

Received By: nelsorp1

Wanted: Today

Identical to LRB:

For: Terry Musser (608) 266-7461

By/Representing: Pam Shannon

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Addl. Drafters:

Subject: Military Affairs - national guar

Extra Copies: RAC, PJH, RJM
e-mail: Terry McArdle
DMA
KMG

Submit via email: YES

Requester's email: Rep.Musser@legis.state.wi.us

Carbon copy (CC:) to: pam.shannon@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Brochures from the department of military affairs & other minor changes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	nelsorp1	11-10/22 KMG	CH 10-22	CH 11-10-22			

FE Sent For:

<END>

Kahler, Pam

From: Shannon, Pam
Sent: Monday, October 22, 2001 11:53 AM
To: Nelson, Robert P.; Champagne, Rick; Kahler, Pam
Subject: your thoughts on this letter

Hi folks--

Thanks so much for all your hard work on the military affairs drafting. Could you please take a quick look at this letter we got from Ross Kinzler (Wi Manufactured Housing Assoc.) on AB 571 (LRB-3971/2) and let me know ASAP if you think any of his points merit attention before Assembly floor action tomorrow. (I only need to hear from whomever of you drafted the various sections he's complaining about). I think his first point is addressed by the "materially affected" language sprinkled throughout. Agree? I don't know what to think about his second point. I don't think we have to respond to the thing about taxes, but if you have any thoughts/quips, let me know. I think he might be right about p. 9, line 18, changing to " to "by". Agree? But what about the rest of that paragraph about redeeming abandoned property?

Thanks for your help on this. Rep. Musser wants to know right away if we need to any amendments are warranted.

Pam Shannon
Senior Staff Attorney
Legislative Council Staff
Ph: (608) 266-2680 / Fax: (608) 266-3830
E-mail: Pam.Shannon@legis.state.wi.us

-----Original Message-----

From: McArdle, Terence [mailto:terence.mcardle@wi.ngb.army.mil]
Sent: Thursday, October 18, 2001 12:08 PM
To: 'pam.shannon@legis.state.wi.us'
Subject: FW: FYI

-----Original Message-----

From: Rep.Musser [mailto:Rep.Musser@legis.state.wi.us]
Sent: Thursday, October 18, 2001 11:00 AM
To: Shannon, Pam; McArdle, Terrence
Subject: FYI

Thought you might be interested:

-----Original Message-----

From: Ross Kinzler [mailto:ross@wmha.org]
Sent: Thursday, October 18, 2001 10:09 AM
To: rep.musser@legis.state.wi.us
Cc: rep.jensen@legis.state.wi.us; rep.nass@legis.state.wi.us
Subject: AB 571

The Wisconsin Manufactured Housing Association notes that the Legislature (Assembly) will take up AB 571 to extend the Soldiers' and Sailors' Relief Act to members of the state national guard. A person on active duty need only assert their status in order to garner the rights afforded. There is

no general provision that limits applicability of the provisions if the court finds that there is no need for them. If Brett Favre or Bill Gates was in the National Guard, why would they need protection from non-payment of a loan?

Second, there are severe penalties for a business proceeding in court against a member of the military. This should not apply if the business is unaware of the military status of the defendant. The language on page 8 lines 9-11, page 9, lines 10-12 and so forth do not seem to include any good faith exceptions. A business would not know if the limited exception which preceeds these penalty clauses applies until AFTER the court makes a determination. Since the penalty applies to "knowingly takes part" or "attempts to do so" is way to broad without a good faith exception.

Third, why is the private sector the only ones affected. Tax obligations are not stayed! While we're not opposed to giving the guys and gals in military service a break, we note with some interest how the federal and state government are so generous with other people's money.

There is also a drafting error on page 9, sub 13, last sentence. The language requires a payment "to" the service member when it should be "by" the service member to redeem the property. This entire section also seems

to conflict with the language referenceing section 704, stats. on page 10. There is no provision for the service member abandoning the property. It would appear the abandoned property must be left in its abandoned state forever.

We urge you to carefully consider the above and include amendments as appropriate before approving this bill which was only introduced two days ago.

Ross Kinzler
Executive Director
Wisconsin Manufactured Housing Association

77.60



ASSEMBLY AMENDMENT,
TO 2001 ASSEMBLY BILL 571

#. Page 1, line 2: after "service" insert
"and providing penalties".

1 At the locations indicated, amend the bill as follows:

2 1. Page 5, line 23: after "he or" insert "she".

3 ✓ #. Page 5, line 24: delete "months," and substitute "months".

4 2. Page 7, line 8: delete the material beginning with "Notwithstanding" and

5 ending with "no" on ~~page 7~~ line 10 and substitute "No" ^o

6 3. Page 11, line 11: delete "sub. (2)" and substitute "par. (b)".

7 4. Page 18, line 3: delete "of veterans".

8 5. Page 18, line 4: delete "affairs".

#. Page 11, line 4: on lines 4 and 22, delete "months," and substitute "months".
(END)

#. Page 7, line 11: on lines 11, 13 and 15, delete "6 percent" and substitute "6%".

#. Page 8, line 11: delete "months," and substitute "months".
#. Page 9, line 12: delete "months," and substitute "months".

Emery, Lynn

From: Emery, Lynn
Sent: Monday, October 22, 2001 4:47 PM
To: McArdle, Terrence
Subject: LRB a0786/1 (attached)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)
(E-Mail: lynn.emery@legis.state.wi.us) (FAX: 608-264-6948)

Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

10/22/2001

Nelson, Robert P.

From: McArdle, Terence [terence.mcardle@wi.ngb.army.mil]
Sent: Monday, October 22, 2001 6:00 PM
To: Olson, Larry; 'Pam.Shannon@legis.state.wi.us'; 'Robert.Nelson@legis.state.wi.us'
Subject: FW: Response to Ross Kinzler's email on AB 571

Larry, Pam and Bob, Here is the response I sent to Rep Musser on the questions asked by Mr. Kinzler of WI Manf'd Housing Assoc.. Bob and Pam, I hope that I'm on track with what we all agreed too, if not let me know quickly, Terry M

> -----Original Message-----

> From: McArdle, Terence
> Sent: Monday, October 22, 2001 5:57 PM
> To: 'Rep.TerryMusser@legis.state.wi.us'
> Cc: 'ross@wmha.org'
> Subject: Response to Ross Kinzler's email on AB 571
>

> Dear Rep. Musser :

> Ms Marlene Reineking, your senior staff person, asked me to review the email message you received on Oct 18th last from Mr. Ross Kinzler of WI Manufactured Housing Association with regard to AB 571, the state version of the SSCRA. Ms Reineking forwarded me a copy of that email at your request. I note that Mr. Kinzler is correct on a number of his comments and as a result your office is preparing an amendment to this legislation to reflect those proposed corrections. However, some of his comments are in fact answered by the actual operation of this legislation if implemented. Because I have been instructed to send Mr. Kinzler a copy of this response directly I will make an opening point which you have already heard. There are two general types of "protective" laws. The first can be compared to a sword, you've got to cut and curve your way into specific protections in the applicable law. The second is compared to a shield, all one has to do is "hold it up" and it affords him or her the designated protections, it also shifts the burden of challenging its application to the other party. AB 571 is a "shield" type of law. Therefore, some of what Mr. Kinzler has said is true; for example, the penalties do apply, but we believe they will never do so without a warning. Mr. Kinzler has

> listed five major concerns and I will address each of them in turn.
> First is his objection that there is no general provision that
> limits applicability of this provision, and he offers that if Brett
Farve
> were in the NG he would be protected. He is correct, if Brett Farve
were
> a NG member and if he were called up for state active duty for thirty
days
> or more, he would be protected by this legislation. However, his
> protection would be of the "shield" type and once he held it up the
burden
> would shift to the challenging party, the business person he dealt
with,
> to prove he was not materially affected by this activation. For you
see,
> every key provision, such as the "court stay" provisions in sections
(6)
> and (7) on page 6, require that if challenged by the other party the
court
> must make a finding of whether the "service member's ability to
represent
> his or her interest in the action is not materially affected by reason
of
> his or her active service." A similar "materially affected" test is
found
> on page 7 in section (10) on the maximum interest rate, and again at
page
> 11 in Section (15) on storage liens and the ability of the service
member
> to pay the lien.
> The net effect is that the businessman or creditor, the "other
> party" in a court action, can challenge whether the particular service
> member is or is not materially affected by his or her being activated
into
> the WI National Guard for state active duty service. I would venture
a
> guess that in at least 60% of the cases, a court in this state would
find
> that they are materially affected because their total income has
dropped
> substantially from their civilian income to their military income. I
am
> aware of one female Staff Sergeant in the Air National Guard, a single
> mother of two, who is about to take a reduction from \$50,000 per year
> civilian income to \$30,000 per year military income when she is
activated.
> However, I would also note that many businesses have also been
protected
> under the federal version of this bill. They took their challenge
into
> court where they have had a "Brett Farve" type of service member with
a
> lot of outside income, not dependent on the military, and won the
right to
> proceed or to collect their original interest on their loan. They

proved

> the service member in thier case was not "materially affected" by active
> duty.

> Second is Mr. Knizler objects to the severe penalties for a business

> proceeding in court without knowledge of the activation of a service
> member and stating that such penalties should not apply if the business

> is unaware of the military status. We generally agree, but do not see a

> need for additional language to that effect. This is because of this law

> being of the "shield" variety. A person who wants to get its protections

> has to "hold it up" like a "shield" to the creditor or business with whom

> they have been dealing. If they don't, they do not get the protections.

> The service member is therefore required to give notice, that is to send a

> letter to the creditor or business, to inform them that they are being
> called to state active duty for thirty days or more and asking them to
> implement the protections afforded by this legislation. Thus, there
> should be no lack of knowledge on the creditor or business person's part.

> However, if they do violate this legislations prohibitions the penalties

> are similar to those afforded under the federal act of a fine or
> imprisonment or both. We will hold our service members to their
> obligation to inform the businesses and creditors with whom they deal so

> that businesses are not inordinately disadvantaged by this legislation.

> However, we feel there should be some teeth in it for enforcement
> purposes.

> Third, Mr. Kinzler asks why this proposed act applies to commercial

> businesses and private individuals, but does not apply to the state
> government with respect to taxes? Good question. The standard answer is

> the old legal principal of "soverign immunity", that is, you cannot make

> the government do what it does not want to do to itself. Thus, state
> government is not required to grant such protections against itself, if it

> does not desire to do so. In reviewing this document some of us noted
> that it referred to a number of sections of the tax code, but not to all

> applicable ones, for the purpose of enumerating provisions of the state

> tax code not covered by this legislation, this seemed inappropriate.

> After these discussions, it was deemed a lot more appropriate to eliminate

> all references to excluding the tax code from the coverage of this

> interest provision. In other words, let the interest cap apply to
> all,
> including state government. Therefore, on your authority an amendment
> eliminating this exclusion of the tax code has been drafted and we are
> asking that you present it to the Assembly during floor action on this
> legislation.

> Fourth, Mr. Kinzler notes that he thinks there is a wrong
reference
> at page 9 section (13) line 18 requiring the payment "to" a service
member
> when it appears it should be "by" the service member. This particular
> section refers to the surrender of personal property to a creditor
upon an
> action to reclaim possession by a creditor, or on an action to rescind
or
> terminate the contract by the service member. This section is
identical
> to the federal statutory provision. Thus, the reference is to a court
> ordering the creditor to give the service member the surplus value of
the
> personal property over the indebtedness it secures as determined by a
> panel of three independent appraisers. No surplus, no payment. If a
> surplus exists, this order for payment "to" the service member is a
> condition of return of the property to the secured party. Therefore,
this
> reference to the word "to" is correct.

> Fifth, Mr. Kinzler states that the just mentioned provision
seems
> in conflict with section (15) on page 11 entitled storage liens
because
> there seems to be no automatic provision for handling the service
members
> abandoned property. We believe he is in part correct, but that there
is a
> provision to handle this is within the referenced section. However,
we
> note that the reference at page 11, line 11 to sub.(2) should correctly
be
> to sub. (b), and again at your request have asked that the amendment
> include this correction. Thereafter, in sub (b) using line 18, a
court
> would be authorized to allow a storage lienholder of personal property
of
> a service member to petition the court for an order to allow him or
her to
> dispose of a service member's personal property, if they had held it
in
> storage for the period of the service members active duty plus 3
months.
> I would hope that any court hearing this type of action would fully
agree
> that if a service member has not reclaimed his or her personal
property
> after this length of time that a lien holder could dispose of it. In
> reality, during federal active duty call-ups we have not found this to

be
> an extensive problem and have usually been able to work out something
> beneficial to both the business person and the service member. I
suspect
> the same will be true under this legislation if adopted.
> I hope this has answered Mr. Kinzler's concerns and that we've
made
> sufficient changes to this legislation to meet the needs of both our
> service members and the business people of this state. As noted
earlier,
> at your request, I am forwarding a copy of this response directly to
Mr.
> Kinzler so he is immediately aware of the corrective action you've
taken
> on this legislation.
>
> McArdle, WDMA

Respectfully yours, LTC Terry