

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1217/P1dn
ARG:lmk:pg

February 6, 2007

ATTN: Beth Piliouras

Please review the attached draft carefully to ensure that it is consistent with your intent.

With regard to the treatment of s. 218.0116 (1) (h), the term “coerce” is also used in ss. 218.0116 (1) (hm) and (qm) 3. and 4. and 218.0145 (1) and (3) without definition. Having the definition of “coerce” in one paragraph but not the others is acceptable, but perhaps a little awkward. If you prefer, it might be possible to meet the objective here without defining “coerce” in s. 218.0116 (1) (h) or to provide definitions of “coerce” for these other provisions.

With regard to created s. 218.0116 (1) (z), the beginning of the second sentence “This paragraph does not prohibit” does not really fit with the introductory phrase in sub. (1) (intro.), but I have not changed it because similar language is used in other paragraphs of sub. (1). If you would prefer to revise this language along the lines of “This paragraph does not apply” or “This paragraph does not authorize the denial, suspension, or revocation of a sales finance company’s license for,” please let me know. Also, in this paragraph, I have used the term “retail installment contract” rather than “retail installment sales contract.” While I recognize the latter term is used in s. 218.0145, the former is the defined term under s. 218.0101 (32).

The proposed definitions for s. 218.0125 do not conform to our drafting conventions; we try to avoid putting into a definition language that is non-definitional and intended to have a substantive effect. I have attempted to incorporate the proposed changes into the text of s. 218.0125.

In s. 218.0125 (3) (am), I believe the combination of words “shall” and “only if” in the first two lines of the provision does not work and leaves the provision ambiguous. Is the word “may” on the first line consistent with your intent? Another option would be to phrase it “shall not ... unless” instead of “may ... only if” In s. 218.0125 (7) (a), I have eliminated “and paying” because it may create a slight ambiguity and is unnecessary, as the provision specifically provides that all approved claims must be paid within 30 days.

With regard to the proposed change to s. 218.0142 (1), do you want this separate contract, identified in created s. 218.0142 (1) (b), to be provided to the buyer in the same

manner required of the retail installment contract? See s. 218.0142 (4). If so I could amend s. 218.0142 (4) to also reference this separate contract identified in created s. 218.0142 (1) (b).

I could not understand the language proposed for what is created s. 218.0125 (2) (d) in this draft without referring to the explanatory comments. I have therefore rewritten this provision in an effort to make the intent clearer. Is this provision consistent with your intent?

I have made changes in s. 218.0134 as proposed. Do you also want changes made in s. 218.0116 (7) (a) 2. and (b) and (8) (a), (b) (intro.), and (c)?

With respect to created s. 218.0142 (1) (b), I have revised the proposed language. The gist of the proposed language is to create an exception to the "one document" rule for a retail installment sale. However, this exception (whether one or two documents can be created at the time of the retail installment sale) cannot depend on a later event, that is, whether the seller actually gives notice within seven days or not. Accordingly, I have drafted the language to allow for the second instrument if the instrument itself requires such notice to be provided. If you want the statutes to require that notice actually be provided, I don't believe that requirement should be placed in this paragraph.

Do you want to amend s. 218.0163 (1) (a) to include created s. 218.0116 (1) (y) and (z) to allow the recovery of damages in private actions for violation of these provisions?

Is the initial applicability provision related to s. 218.0134 consistent with your intent? I could have chosen an earlier trigger, that these statutory changes first apply with respect to disapprovals of proposed actions filed by the franchisor with DOT on the bill's effective date.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov