

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1067/P1dn
RCT:wlj:jf

January 18, 2008

Amber Hodgson:

This is a preliminary draft of the amendment to the substitute amendment to SB 308. I did it as a preliminary draft so that it would not be jacketed. When you have approved the draft, please let me know and I will redraft it and have it jacketed.

I believe that the substitute amendment is clear that a purchaser has a choice of remedy, because of the phrase "as determined by the purchaser" on page 11, lines 24 and 25.

You asked that I change "may not" to "shall not" on page 4, line 18. There is no ambiguity about the meaning of "may not" in the Wisconsin statutes. The substitute amendment is drafted in the proper way to prohibit an action. It is in accordance with the Wisconsin Bill Drafting Manual. It is also consistent with normal English usage ("May I go to swimming?" "No, you may not."). All of the prohibitions currently in ch. 173 are written as "may not"; see, for example, s. 173.07 (5). It is important that we use consistent wording in the statutes. For one thing, this will avoid someone concluding that a provision in ch. 173 that says "may not" means something different from one that says "shall not." If after this bill becomes law there would be an argument about what this provision means, this note will be in the drafting file to resolve the issue.

Please let me know if you have any questions.

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