2009 DRAFTING REQUEST

Bill

Received: **07/16/2009**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Pat Kreitlow (608) 266-7511**

By/Representing: **Kathryn Sweet**

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

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kreitlow@legis.wisconsin.gov**

Carbon copy (CC:) to: **christopher.sundberg@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Exemptions for certain future service contracts

Instructions:

Identical to LRB-0027

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	csundber 07/16/2009	kfollett 07/16/2009		_____ _____			State
/1			jfrantze 07/16/2009	_____ _____	cduerst 07/16/2009	cduerst 07/16/2009	

FE Sent For: "/1" @ intro. 7/23/09

<END>

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/?	csundber	/1 KJF 7/16	7/16	7/16			

FE Sent For:

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In: 7/16/09 Wanted: Mon. 7/20/09

State of Wisconsin
2009 – 2010 LEGISLATURE

3138/1
LRB-~~0027/1~~
CTS:bk:rs RunN
Stays

2009 ASSEMBLY BILL 289

June 2, 2009 – Introduced by Representatives FIELDS, M. WILLIAMS, TOWNSEND, JORGENSEN, PETROWSKI, BROOKS, A. OTT, NERISON, LOTHIAN, DANOU and GUNDERSON, cosponsored by Senators KREITLOW, PLALE and DARLING. Referred to Committee on Consumer Protection.

Regen

1 AN ACT ***to amend*** 136.10 (1) and 136.10 (2); and ***to create*** 136.02 (7) and 136.10
2 (3) of the statutes; **relating to:** creating separate regulatory requirements for
3 certain future service contracts.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Agriculture, Trade and Consumer Protection regulates future service contracts, defined as contracts whose primary purpose is to provide a customer with the right to purchase goods or services or to rent video recordings from a contractor. Generally, future service contracts must be in writing, may not provide the contractor more than 12 months in unearned fees, may not contain a renewal clause, and must grant customers rights against a successor to a contractor's interests and the right to cancel the contract within the first three months of the contract term or within three days after the customer's first purchase or rental worth more than $25, whichever occurs first. Also under current law, a contractor must maintain a $25,000 bond to cover customers who lose amounts prepaid to a contractor because the contractor has become insolvent or has ceased to conduct business.

This bill creates a new category of future service contracts. Under the bill, these contracts may have a term not to exceed three years, must grant the customer rights against a successor to the contractor's interests, must permit the customer to cancel the contract without penalty until midnight on the third day after entering into the contract, must contain a notice of the right to cancel on a separate page, and must permit the customer to cancel an order if the order is not delivered by the date it was

promised or to the address where the customer requested delivery. A contractor who enters into such a contract must maintain a $250,000 bond to cover customer losses.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 136.02 (7) of the statutes is created to read:

2 136.02 **(7)** Subsections (1) to (6) do not apply to a future service contract if all
3 of the following are true:

4 (a) The future service contract is in writing and provides for a term not longer
5 than 3 years, except that a future service contract under this subsection may be
6 extended if the customer affirmatively agrees to an extension in writing at the time
7 of the extension.

8 (b) The future service contract provides that assignees, purchasers, or other
9 transferees of the rights of the contractor are subject to all claims and defenses of the
10 customer against the contractor arising out of the future service contract.

11 (c) The future service contract permits the customer to cancel the future service
12 contract by mailing or hand delivering to the contractor written notice before
13 midnight of the 3rd day after the date on which the customer signed the future
14 service contract and the future service contract imposes no liability on the customer
15 for such a cancellation and entitles the customer to receive, not more than 20 days
16 after such a cancellation, a refund of the entire customer fee paid for the future
17 service contract.

18 (d) The future service contract contains an attached separate page that
19 contains all of the following:

1. A caption printed in boldface, uppercase type of not less than 10–point size entitled "CANCELLATION AND REFUNDS."

2. A provision under the caption stating: "RIGHT TO CANCEL. You are permitted to cancel this contract until midnight of the 3rd day after the date on which you signed the contract. If within this time period you decide you want to cancel this contract, you may do so by notifying .... (the seller) by any writing mailed or delivered to .... (the seller) at the address shown on the contract within the previously described time period. If you do so cancel, any payments made by you will be refunded within 20 days after notice of cancellation is delivered, and any evidence of any indebtedness executed by you will be canceled by .... (the seller) and arrangements will be made to relieve you of any further obligation to pay the same."

(e) The future service contract provides that a purchase order must specify a date and address of delivery for each item purchased and that the customer may cancel an order and demand refund of any payment the customer made for that order if the goods that the customer ordered are not delivered on or before the delivery date specified in the purchase order or not delivered to the address where the customer requested delivery of the goods, unless the future service contract specifies otherwise.

(f) The future service contract permits the seller to change the date or address of delivery specified in the purchase order only if the customer consents in writing to the change.

(g) The future service contract provides that a contract must return to a customer the full amount of a refund due to the customer under par. (e) without penalty not more than 20 days after the customer has demanded such a refund.

SECTION 2. 136.10 (1) of the statutes is amended to read:

136.10 **(1)** Every contractor shall maintain a bond issued by a surety company licensed to do business in this state. The principal sum of the bond shall at all times be $25,000, except that if a contractor enters into a contract described in s. 136.02 (7), the principal sum of the bond shall be $250,000.

SECTION 3. 136.10 (2) of the statutes is amended to read:

136.10 **(2)** The bond required by this section shall be in favor of the state for the benefit of any member who suffers loss of prepayments made pursuant to a contract ~~entered into after July 1, 1976,~~ due to insolvency of the contractor ~~or~~, the cessation of business by the plan, or the failure of a contractor to make a refund under a provision in a future service contract described in s. 136.02 (7) (e). A copy of the bond shall be filed with the department. Any person claiming against the bond may maintain an action at law against the contractor and the surety.

SECTION 4. 136.10 (3) of the statutes is created to read:

136.10 **(3)** In addition to other means for the enforcement of the surety's liability on the bond required by this section, the surety's liability may be enforced by motion after a final judgment has been obtained against a contractor. The notice of motion, the motion, and a copy of the judgment shall be served on the surety as provided under s. 801.14. The notice shall set forth the amount of the claim and a brief statement indicating that the claim is covered by the bond. Service shall also be made on the division of trade and consumer protection of the department of agriculture, trade and consumer protection. The court shall grant the motion unless the surety establishes that the claim is not covered by the bond or unless the court sustains an objection made by the department of agriculture, trade and consumer protection that the grant of the motion might impair the rights of actual or potential

1 claimants or is not in the public interest. The court may, in the interest of justice,
2 order a proportional or other equitable distribution of the bond proceeds.
3 **(END)**

Basford, Sarah

From: Saxler, Charles
Sent: Thursday, July 16, 2009 1:07 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-3138/1 Topic: Exemptions for certain future service contracts

Please Jacket LRB 09-3138/1 for the SENATE.