

2019 DRAFTING REQUEST

Assembly Amendment (AA-AB655)

For: Robert Brooks (608) 267-2369

Drafter: mduchek

By: Christopher

Secondary Drafters:

Date: 1/23/2020

May Contact:

Same as LRB:

Submit via email: YES

Requester's email: Rep.Rob.Brooks@legis.wisconsin.gov

Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Various changes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 1/24/2020				
/P1	mduchek 1/27/2020	kmochal 1/27/2020	lparisi 1/24/2020		
/1			dwalker 1/27/2020	dwalker 1/27/2020	

FE Sent For:

<END>



AB 655 Amendment

draft the amendment

Modify and add to the current draft:

Deletions are indicated as strikethroughs and additions as underlined.

- **Page 6, Section 21, end of line 20. Include additional clarification as noted below.**

A home inspector ~~is not required to~~ shall use the term "defect" in describing a defect in the written report required under this subsection if the home inspector believes the condition meets the definition in s. 440.97(2m).

- **Pages 6-7, Section 22, lines 23-25 and lines 1-2, respectively. Modify to reflect the following changes deletions and additions including new statements to be included on the summary page:**

440.975(3)(cr) ^{1.} Includes a summary page listing ~~and labeling~~ but is not limited to, labeling conditions observed under Wis. Stat. s. 440.975(3)(cm) as defects including significant health and safety issues and other items as defined in Wis. Stat. s: 440.97(2m), safety concerns, components needing repairs, components needing further evaluation, and items to monitor, and maintenance items; and included references to the page, heading or item number in the detailed account for further information.

The summary page shall include the following statements.

NOTE: The summary page is provided for convenience and is not a substitute for reading the entire report and should not be relied upon as the complete list for the client's reference.

For the purposes of the report, "Defect" ^{is} as defined in s. 440.97(2m) ^{Wis. Stat. end} means a condition of any component of an improvement that would significantly impair the health or safety of future occupants of a property or that, if not repaired, removed, or replaced, would significantly shorten or adversely affect the expected normal life of the component of the improvement. However, a condition in the report may not be listed as a Defect but may have a significant adverse effect on the value of the Property as per the offer to purchase. *as reflected in the offer*

NOTE: A home inspector may not report on the market value or marketability of a property or whether a property should or should not be purchased.

- **Page 8, Section 27 add a section (3) that provides:**
Requiring a home inspector to describe a defect by using the term "defect" in a written report that is consistent with s. 440.97(2m) is not intended to modify liability under 440.977.
- **Page 9, section 29, lines 1-2, the effective date:**
Replace September 1, 2020 with January 1, 2021.

Duchek, Michael

From: Schaefer, Christopher
Sent: Friday, January 24, 2020 10:36 AM
To: Duchek, Michael
Subject: FW: Amendment to AB 655

Mike:

Here is a response I received to your questions.

Mr. Christopher Schaefer, M.A.
Legislative Assistant,
Office of Representative Rob Brooks
60th Assembly District
(608) 267-2369
Christopher.Schaefer@legis.wisconsin.gov

From: Cori Lamont <CoriL@wra.org>
Sent: Friday, January 24, 2020 10:33 AM
To: Schaefer, Christopher <Christopher.Schaefer@legis.wisconsin.gov>; Tom Larson <tlarson@wra.org>
Subject: RE: Amendment to AB 655

2. For the last sentence of the first note, we thought it might read better to say "However, a condition in the report that is not listed as a defect may nonetheless have a significant adverse effect on the value of the property reflected in [the/your?] offer to purchase." What do you think?

Response: since this is a statement made to the consumer, how about? However, even though a condition in the report is not listed as a defect, the inspection contingency of the offer to purchase may include a condition that would have a significant adverse effect on the value of the property.

I spoke with one of the real estate drafters here and just wanted to double check on this one – she explained that the standard form’s inspection contingency would only allow a buyer to rescind an offer for a “defect,” and not for something that is not a defect. So I just wanted to confirm here since you reference the inspection contingency.

Cori’s comments:

The goal was to help the consumer understand that the definition in the offer to purchase differs from the definition in s 440 by the fact that the offer definition includes “significant adverse effect on the value of the property.” Therefore, in the offer the buyer would be able to include in a notice of defects for a significant adverse effect on the value of the property. Therefore, the inspection report may not include that item. We are trying to avoid referencing specifically lines in case the form changes or if the definition in the offer changes or they are not using the state-approved form.

Would this language help resolve the confusion?

Note, even though a condition in the report is not listed as a defect, the inspection contingency of the offer to purchase may include in the definition of defect a condition that would have a significant adverse effect on the value of the property.

3. Regarding your change on page 8, it sounds like you want this as a statement of legislative intent. Is that correct? If so, we usually word these as "The legislature intends that..." OK? Also, the language references s. 440.977 but that section does not establish liability, it just limits it. So I would instead suggest something more generic without a cross-reference, like "...is not intended to modify liability of a home inspector in an action relating to a home inspection conducted by the home inspector."

Response: the suggested changes work for us.

This is not necessarily related to any of your other stuff, but let me know if you'd also or instead like to add language in Section 28 to make clearer that the home inspection report changes first apply to reports prepared on 1/1/21, if that would help further effectuate your intent. (i.e., "[The changes to the contents of the report] first applies to home inspection reports submitted to a client on [1/1/21]).

Cori's comments:

Thank you, that's a great point that makes good sense.

Cori M. Lamont
Senior Director of Legal and Public Affairs
Wisconsin REALTORS® Association
4801 Forest Run Road
Madison, WI 53704
tel: 608.241.2047 | cell: 262.309.2724 | www.wra.org

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From: Schaefer, Christopher <Christopher.Schaefer@legis.wisconsin.gov>
Sent: Friday, January 24, 2020 10:06 AM
To: Cori Lamont <CoriL@wra.org>; Tom Larson <tlarson@wra.org>
Subject: FW: Amendment to AB 655

Here is a follow up email from Mike Duchek at LRB regarding the home inspector amendment. His comments are in red.

Mr. Christopher Schaefer, M.A.
Legislative Assistant,
Office of Representative Rob Brooks
60th Assembly District
(608) 267-2369
Christopher.Schaefer@legis.wisconsin.gov

From: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Sent: Friday, January 24, 2020 10:04 AM
To: Schaefer, Christopher <Christopher.Schaefer@legis.wisconsin.gov>
Subject: RE: Amendment to AB 655

See the two things in red below, and otherwise I will get this out ASAP.

-Mike

From: Schaefer, Christopher <Christopher.Schaefer@legis.wisconsin.gov>
Sent: Friday, January 24, 2020 8:33 AM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Subject: RE: Amendment to AB 655

Mike,

Here are the response to your amendment questions:

1. In the changes to s. 440.975 (3) (cr) – it appears you have “listing, but is not limited to, labeling...” I assume the idea here is that you want to make clear that the summary page may include additional information? But I am hung up on the phrasing “listing... labeling.” Is there a word missing? What about this language as a way of breaking it out?

Response: the objective is to make sure the summary page is not too rigid. I think saying a summary page that includes all of the following works. This allows the report to require certain information but not prohibit additional.

440.975 (3) (cr) 1. Includes a summary page that includes [at least?] all of the following:

- a. A list of conditions observed under par. (cm), including significant health and safety issues and other items, that are observed under par. (cm) to be defects [, as defined in s. 440.97 (2m)]. The conditions shall be [specifically?] labeled on the summary page as “defects.”
(Note: It is unnecessary to have a cross-reference to the definition of defects since it’s defined for purposes of the subchapter, so unless you feel you need that, I would take that out. Also, you left out the words “in the following order” from the bill. Was that deletion intentional?)

Response: the cross-reference was intention to ensure the inspectors knew what was meant by defect.

Since the definition of defects includes significantly impair the health and safety, it would appear the language can be streamlined to provide:

A list of conditions labeled as defects observed under par. (cm) to be defects, as defined in s. 440.97 (2m).

- b. A listing of components needing repairs, components needing further evaluation, items to monitor, and maintenance items. *(Note: You had an extra “and” before “items” that was not in the original bill, so I’m not sure if you meant to add that or not.)*

Response: thank you

2. The summary page shall include references to the page, heading, or item number in the detailed account for further information.
3. The summary page shall include all of the following statements: [...]

2. For the last sentence of the first note, we thought it might read better to say "However, a condition in the report that is not listed as a defect may nonetheless have a significant adverse effect on the value of the property reflected in [the/your?] offer to purchase." What do you think?

Response: since this is a statement made to the consumer, how about? However, even though a condition in the report is not listed as a defect, the inspection contingency of the offer to purchase may include a condition that would have a significant adverse effect on the value of the property.

I spoke with one of the real estate drafters here and just wanted to double check on this one – she explained that the standard form’s inspection contingency would only allow a buyer to rescind an offer for a “defect,” and not for something that is not a defect. So I just wanted to confirm here since you reference the inspection contingency.

3. Regarding your change on page 8, it sounds like you want this as a statement of legislative intent. Is that correct? If so, we usually word these as “The legislature intends that...” OK? Also, the language references s. 440.977 but that section does not establish liability, it just limits it. So I would instead suggest something more generic without a cross-reference, like “...is not intended to modify liability of a home inspector in an action relating to a home inspection conducted by the home inspector.”

Response: the suggested changes work for us.

This is not necessarily related to any of your other stuff, but let me know if you'd also or instead like to add language in Section 28 to make clearer that the home inspection report changes first apply to reports prepared on 1/1/21, if that would help further effectuate your intent. (i.e., “[The changes to the contents of the report] first applies to home inspection reports submitted to a client on [1/1/21]).

If you have any additional questions, feel free to reach out.

Christopher

Mr. Christopher Schaefer, M.A.
Legislative Assistant,
Office of Representative Rob Brooks
60th Assembly District
(608) 267-2369
Christopher.Schaefer@legis.wisconsin.gov

From: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Sent: Thursday, January 23, 2020 4:32 PM
To: Schaefer, Christopher <Christopher.Schaefer@legis.wisconsin.gov>
Subject: RE: Amendment to AB 655

Let me know if you can answer these questions. Happy to chat as well with your or WRA.

1. In the changes to s. 440.975 (3) (cr) – it appears you have “listing, but is not limited to, labeling...” I assume the idea here is that you want to make clear that the summary page may include additional information? But I am hung up on the phrasing “listing... labeling.” Is there a word missing? What about this language as a way of breaking it out?

440.975 (3) (cr) 1. Includes a summary page that includes [at least?] all of the following:

- a. A list of conditions observed under par. (cm), including significant health and safety issues and other items, that are observed under par. (cm) to be defects [, as defined in s. 440.97 (2m)]. The conditions shall be [specifically?] labeled on the summary page as “defects.”
(Note: It is unnecessary to have a cross-reference to the definition of defects since it’s defined for purposes of the subchapter, so unless you feel you need that, I would take that out. Also, you left out the words “in the following order” from the bill. Was that deletion intentional?)
- b. A listing of components needing repairs, components needing further evaluation, items to monitor, and maintenance items. *(Note: You had an extra “and” before “items” that was not in the original bill, so I’m not sure if you meant to add that or not.)*
2. The summary page shall include references to the page, heading, or item number in the detailed account for further information.
3. The summary page shall include all of the following statements: [...]
2. For the last sentence of the first note, we thought it might read better to say “However, a condition in the report that is not listed as a defect may nonetheless have a significant adverse effect on the value of the property reflected in [the/your?] offer to purchase.” What do you think?
3. Regarding your change on page 8, it sounds like you want this as a statement of legislative intent. Is that correct? If so, we usually word these as “The legislature intends that...” OK? Also, the language references s. 440.977 but that section does not establish liability, it just limits it. So I would instead suggest something more generic without a cross-reference, like “...is not intended to modify liability of a home inspector in an action relating to a home inspection conducted by the home inspector.”

-Mike

From: Schaefer, Christopher <Christopher.Schaefer@legis.wisconsin.gov>
Sent: Wednesday, January 22, 2020 3:41 PM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Subject: Amendment to AB 655

Mike:

Could we get the attached drafted as an amendment to Assembly Bill 655? Would it be possible to get a draft before next Thursday’s public hearing?

Thank you, Mike.

Christopher

Mr. Christopher Schaefer, M.A.
Legislative Assistant,
Office of Representative Rob Brooks
60th Assembly District
(608) 267-2369
Christopher.Schaefer@legis.wisconsin.gov



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBa0973/P1

MED:... *amm*

*In 1-24-20
TODAY if poss*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 655

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

2 **1.** Page 6, line 19: delete “describing a defect” and substitute “describing a
3 defect condition”.

4 **2.** Page 6, line 20: after “subsection” insert “if the home inspector believes the
5 condition satisfies the definition of defect under s. 440.97 (2m)”.

6 **3.** Page 6, line 23: delete the material beginning with that line and ending with
7 page 7, line 2, and substitute:

8 “440.975 (3) (cr) 1. Includes a summary page that includes at least all of the
9 following:

10 a. A list of conditions, labeled as defects, that are observed under par. (cm) to
11 be defects, as defined in s. 440.97 (2m).

1 b. A listing of components needing repairs, components needing further
2 evaluation, items to monitor, and maintenance items.

3 2. The summary page shall include references to the page, heading, or item
4 number in the detailed account for further information.

5 3. The summary page shall include all of the following statements:

6 NOTE: This summary page is provided for convenience and is not a substitute
7 for reading the entire report and should not be relied upon as the complete list for
8 the client's reference.

9 For the purposes of the report, "defect," as defined in section 440.97 (2m), Wis.
10 stats., means a condition of any component of an improvement that would
11 significantly impair the health or safety of future occupants of a property or that, if
12 not repaired, removed, or replaced, would significantly shorten or adversely affect
13 the expected normal life of the component of the improvement. However, even
14 though a condition in the report is not listed as a defect, the inspection contingency
15 of the offer to purchase may include a condition that would have a significant adverse
16 effect on the value of the property.

17 NOTE: A home inspector may not report on the market value or marketability
18 of a property or whether a property should or should not be purchased."

19 **4.** Page 8, line 3: after that line insert:

20 (1g) In requiring a home inspector, under s. 440.975 (3) (cm), to describe a
21 defect, as defined in s. 440.97 (2m), by using the term "defect" in a home inspection
22 consistent with the definition under s. 440.97 (2m), the legislature does not intend
23 to modify the liability of a home inspector in any action relating to a home inspection
24 conducted by the home inspector."

Duchek, Michael

From: Schaefer, Christopher
Sent: Monday, January 27, 2020 10:00 AM
To: Duchek, Michael
Subject: RE: Amendment

Hello, Mike:

Could we get the amendment drafted as a slash one?

Thank you, Mike.

Christopher

Mr. Christopher Schaefer, M.A.
Legislative Assistant,
Office of Representative Rob Brooks
60th Assembly District
(608) 267-2369
Christopher.Schaefer@legis.wisconsin.gov

From: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Sent: Monday, January 27, 2020 8:55 AM
To: Schaefer, Christopher <Christopher.Schaefer@legis.wisconsin.gov>
Subject: RE: Amendment

All right. Do you want this as a /P2 or /1? (If /1 then it will get automatically jacketed and we'll have to get the jacket back or do a new # if any more changes are made.)

-Mike

From: Schaefer, Christopher <Christopher.Schaefer@legis.wisconsin.gov>
Sent: Friday, January 24, 2020 5:43 PM
To: Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
Subject: Fwd: Amendment

Christopher J. Schaefer, M.A.
Policy Director, Office of Representative Rob Brooks

Begin forwarded message:

From: Cori Lamont <CoriL@wra.org>
Date: January 24, 2020 at 4:23:19 PM CST
To: "Schaefer, Christopher" <Christopher.Schaefer@legis.wisconsin.gov>, Joel Kleefisch

<jkleefisch.jk@gmail.com>

Cc: Tom Larson <tlarson@wra.org>

Subject: RE: Amendment

Hi Christopher,

I apologize with having to make a change on something we requested, but upon further review of the amendment language, I think page 2, end of line 13 – line 16 may be better stated in the following manner:

The contract of sale may define defect to also include a condition that would have a significant adverse effect on the value of the property, but such a condition may not be labeled a defect in this report unless it meets the definition in s. 440.97(2m).

Otherwise, the amendment looks good.

Thank you and have a great weekend,

Cori

Cori M. Lamont

Senior Director of Legal and Public Affairs

Wisconsin REALTORS® Association

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From: Schaefer, Christopher <Christopher.Schaefer@legis.wisconsin.gov>

Sent: Friday, January 24, 2020 12:07 PM

To: Cori Lamont <CoriL@wra.org>; Joel Kleefisch <jkleefisch.jk@gmail.com>

Subject: Amendment

Attached is our amendment to the home inspector bill, for your review.

Mr. Christopher Schaefer, M.A.

Legislative Assistant,

Office of Representative Rob Brooks

60th Assembly District

(608) 267-2369

Christopher.Schaefer@legis.wisconsin.gov



State of Wisconsin
2019 - 2020 LEGISLATURE

ln 1-27-20
TODAY

LRBa0973/PT
MED:amn ¹ kem

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 655

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4 **2.** Page 6, line 20: after “subsection” insert “if the home inspector believes the
5 condition satisfies the definition of defect under s. 440.97 (2m)”.

6 **3.** Page 6, line 23: delete the material beginning with that line and ending with
7 page 7, line 2, and substitute:

8 “440.975 (3) (cr) 1. Includes a summary page that includes at least all of the
9 following:

10 a. A list of conditions, labeled as defects, that are observed under par. (cm) to
11 be defects, as defined in s. 440.97 (2m).

1 b. A listing of components needing repairs, components needing further
2 evaluation, items to monitor, and maintenance items.

3 2. The summary page shall include references to the page, heading, or item
4 number in the detailed account for further information.

5 3. The summary page shall include all of the following statements:

6 NOTE: This summary page is provided for convenience and is not a substitute
7 for reading the entire report and should not be relied upon as the complete list for
8 the client's reference.

9 For the purposes of the report, "defect," as defined in section 440.97 (2m), Wis.
10 Stats., means a condition of any component of an improvement that would
11 significantly impair the health or safety of future occupants of a property or that, if
12 not repaired, removed, or replaced, would significantly shorten or adversely affect
13 the expected normal life of the component of the improvement.

14 However, even though a condition in the report is not listed as a defect, the inspection contingency
15 of the offer to purchase may include a condition that would have a significant adverse
16 effect on the value of the property.

17 NOTE: A home inspector may not report on the market value or marketability
18 of a property or whether a property should or should not be purchased."

19 4. Page 8, line 3: after that line insert:

20 "(1g) In requiring a home inspector, under s. 440.975 (3) (cm), to describe a
21 defect, as defined in s. 440.97 (2m), by using the term "defect" in a home inspection
22 consistent with the definition under s. 440.97 (2m), the legislature does not intend
23 to modify the liability of a home inspector in any action relating to a home inspection
24 conducted by the home inspector."

The contract of sale may define "defect" to also include a condition that would have a significant adverse effect on the value of the property but such a condition may not be listed as a defect in the report unless it meets the definition in section 440.97(2m) Wis Stats.

