

# Jeremy Thiesfeldt

STATE REPRESENTATIVE • 52nd ASSEMBLY DISTRICT

## Testimony on Assembly Bill 684

Good morning chairwoman Duchow and fellow members of the committee.

AB 684 will make some adjustments to what has historically been a vendor-controlled copier lease acquisition process and enable the consumer more leverage in data collection and vendor negotiations. Under the current process the buyer must largely rely on information from the selling vendor's representative who has the best interest of the vendor in mind and is not responsible in any capacity to or for the consumer's financial decisions.

Often times an entity, like a church, school, or small business who have quite limited resources for legal consulting, will place too much trust in a copier sales representative for a copier or printer lease and fail to understand issues like internal financial mechanisms, residuals, annual percentage rate (APR), totality of cost formulas, parts availability, buy out terms and related return shipping requirements. Basic explanation and transparency for these vital issues are not explicitly required in the lease for this unregulated industry—and it is at the loss for the consumer. Often the lease contract specifically states it is non-cancellable and irrevocable upon signature, without containing clear instructions of the consequences, thus forcing the consumer to fully comply with full term and related financial requirements—typically a 5 year commitment!

This bill has 3 common sense safeguards added for consumers to decrease potentially deceptive lease tactics for copier and print equipment: showing the formula to reach the costs involved to understand the APR paid, requiring timely responses for payoff requests, and require the anticipated time replacement parts will be available.

Having safeguards in place on leases, contracts, and other legal arrangements is not uncommon in our statutes. Most everyone would agree that some safeguards are necessary no matter their philosophy on private contracts for services. We place numerous restrictions and responsibilities in housing and renting law, car leases, car purchasing contracts, buying clubs, storage facility leases, fitness centers, and collecting royalties. These safeguards were put into place undoubtable because often the less-savvy consumer did not receive adequate disclosure. I have a few people here today to tell you their story of their interaction with this industry. They will share with you detail about why each portion of the bill is needed and provide some practical examples.



**DAN FEYEN**

**STATE SENATOR**

18th Senate District  
(608) 266-5300  
Sen.Feyen@legis.wi.gov

PO Box 7882, Madison, WI 53707-7882  
<http://legis.wisconsin.gov/senate/18/feyen>

To: The Assembly Committee on Consumer Protection  
From: Sen. Dan Feyen  
Re: Assembly Bill 684

Ms. Chairman, members of the committee, thank you for holding this hearing today.

Rep. Thiesfeldt and I introduced this legislation on behalf of a constituent, Al Kietzmann, who is here to testify today.

Our office maintains a policy of giving all of our constituents a chance to make their case for legislative proposals they feel would better our state. Mr. Kietzmann believes Assembly Bill 684 and the changes it makes to the printer and copier leasing process would improve price transparency and offer consumers some statutorily-guaranteed information that other industries must similarly disclose.

I believe he can speak best to the bill and will therefore keep my comments brief.

Most importantly, thank you for your time today. I appreciate this bill receiving a hearing and the opportunity for concerns regarding the printer and copier leasing industry to be shared.



(<https://www.copierleasecenter.com/>)

## Current Copier Lease Rates

([http://copierleasecenter.com/wp-content/uploads/2013/11/copier\\_girl.jpg](http://copierleasecenter.com/wp-content/uploads/2013/11/copier_girl.jpg)) If you are looking to lease a copier, knowing what the lease rates are for businesses with better than average credit is good to know as a slight differential in the lease rate factor can add up quickly. For example, if your current leasing company is offering a lease rate factor of .023 for a 5 year FMV lease, it is good to know other leasing companies are offering lease rates at .0194 - Why? Because on a \$10,000 copier that works out to be \$29 a month for 5 years. Approx \$1800 difference. Fair Market Value means that you return the copier at the end of the term. \$1 Purchase Option means that you own the copier for \$1 at the end of the lease term. The uncommon one is the 10% Guarantee Lease - This means that the customer can buy the copier at the end of the contract, after all scheduled payments have been made, for 10% of the original purchase price. This type of Lease is intended for when your business thinks the copier will be worth more than 10% of the original value - you actually want to keep it - and you require lower payments right now. **That being said, here are the current copier lease rates: (Multiply Lease Factor by Equipment Costs to get monthly payment. If you have been given a monthly payment and are trying to figure out initial costs, this chart can help too. You'd divide the payment by the lease rate factor to get the Equipment Costs.**



### FMV

Term	12	24	36	39	48	60	63
\$1k to \$3k	.0833	.0444	.0302	.0288	.0253	.0215	.0212
\$3k to \$10k	.0820	.0424	.0275	.0259	.0223	.0187	.0184
\$10k to \$250k	.0813	.0419	.0272	.0256	.0221	.0185	.0182

### Knock-Out Promotion - FMV

Term	12	24	36	39	48	60	63
\$1k to \$3k	.0831	.0442	.0300	.0286	.0251	.0213	.0210
\$3k to \$10k	.0818	.0422	.0273	.0257	.0221	.0185	.0182
\$10k to \$100k	.0811	.0417	.0270	.0254	.0219	.0183	.0180

- \* For transactions over \$100k, please contact your Regional Sales Manager for special pricing
- \*\* Transactions must include a buyout or return quotation letter from a competitive Lessor
- \*\*\* Cannot be combined with Xerox Preferred buyouts or XFS Upgrades

### \$1-out

Term	12	24	36	39	48	60	63
\$1k to \$3k	.0931	.0502	.0355	.0336	.0289	.0243	.0236
\$3k to \$10k	.0907	.0479	.0325	.0304	.0256	.0212	.0205
\$10k to \$250k	.0891	.0469	.0318	.0297	.0249	.0208	.0200

#### Terms and Conditions for all factors:

- Rates are effective as of the date listed above and subject to change given prior notice
  - Rates do not include applicable personal property taxes
- (<https://www.copierleasecenter.com/>)

**Request Copier Pricing**

**Copier Type**                      **Max Paper Size**

**Color**                                      **Letter/Legal**

**Number of copies**

**Color**                                      **B&W**

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Products (<https://www.copierleasecenter.com/products/>)

\$1 Out or FMV Lease? (<https://www.copierleasecenter.com/1-out-or-fmv-lease/>)

**ACCGRAM RATE SCHEDULE #18910**

**You work hard to win your customers. The GreatAmerica Customers For Life® rates:**

- Include low end-of-term residuals for your customers
- Provide low upgrades\*\* for you
- Guarantee low upgrades and residuals, in writing
- Come standard with extraordinary GreatAmerica service

\*\* 90% of remaining payments (net of any security deposits)+ residual + miscellaneous amounts due

- Effective 4/02/09
- Subject to change without notice
- Rates good for 30 days from lease application approval date
- The security deposit is refundable at lease end
- For Copier, Printer, Fax, and Mailing Equipment only
- Call for rates on all other equipment
- 24 months tenure required
- Equipment pricing up to \$100,000 not to exceed 125% MSRP, over \$100,000 not to exceed MSRP
- Please call for Municipal Transactions over \$100,000 and all other Transactions over \$100,000

**CUSTOMERS FOR LIFE (CFL) LEASE**

		\$1,000- \$4,999	\$5,000- \$14,999	\$15,000- \$24,999	\$25,000- \$49,999	\$50,000- \$99,999
<b>ZERO DOWN</b>	12	.0946	.0913	.0901	.0889	.0879
	24	.0521	.0459	.0456	.0454	.0453
	36	.0369	.0316	.0314	.0313	.0312
	39	.0354	.0300	.0295	.0294	.0293
	48	.0316	.0256	.0255	.0254	.0253
	60	.0263	.0216	.0215	.0213	.0211
	63	.0254	.0209	.0207	.0205	.0204

<b>TWO DOWN</b>	12	.0903	.0878	.0870	.0862	.0855
	24	.0506	.0450	.0447	.0446	.0445
	36	.0358	.0312	.0310	.0309	.0308
	39	.0343	.0295	.0291	.0290	.0289
	48	.0307	.0253	.0252	.0251	.0250
	60	.0255	.0213	.0212	.0211	.0209
	63	.0248	.0206	.0204	.0203	.0202

**ONE DOLLAR LEASE**

		\$1,000- \$4,999	\$5,000- \$14,999	\$15,000- \$24,999	\$25,000- \$49,999	\$50,000- \$99,999
<b>ZERO DOWN</b>	12	.1040	.1014	.1003	.0991	.0989
	24	.0555	.0527	.0526	.0524	.0522
	36	.0387	.0358	.0356	.0355	.0353
	39	.0360	.0338	.0336	.0333	.0331
	48	.0324	.0287	.0283	.0282	.0280
	60	.0283	.0240	.0233	.0232	.0228
	63	.0274	.0228	.0225	.0224	.0223

<b>TWO DOWN</b>	12	.1012	.0982	.0974	.0967	.0966
	24	.0539	.0516	.0515	.0514	.0512
	36	.0374	.0352	.0350	.0349	.0347
	39	.0352	.0332	.0331	.0328	.0326
	48	.0315	.0282	.0279	.0278	.0276
	60	.0276	.0236	.0230	.0229	.0225
	63	.0263	.0225	.0222	.0220	.0219

GALCD004

**CFL RESIDUALS - YOUR ADVANTAGE**

	Buyout to Customer	Upgrade to Dealer
12-24 Mos	15.0%	15.0%
36-39 Mos	15.0%	13.5%
48-63 Mos	15.0%	10.0%

**Anna Savoy**  
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Customer Success is Our Bottom Line



EQUIPMENT LEASING AND FINANCE ASSOCIATION  
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Opposition Testimony - Assembly Bill 684  
Assembly Committee on Consumer Protection  
Tuesday, December 19, 2017

Scott Riehl  
Vice President, State Government Relations  
Equipment Leasing & Finance Association

The Equipment Leasing & Finance Association (ELFA) is the trade association representing financial services companies and manufacturers engaged in the U.S. commercial equipment finance sector. ELFA members do not deal in consumer transactions. ELFA members finance the acquisition of all types of capital equipment, including agriculture, commercial and corporate aircraft, rail cars and rolling stock, trucks and transportation equipment, vessels and containers, construction and off-road equipment, medical technology and equipment, IT equipment, office equipment and software and virtually every type of equipment used by a business. These businesses spent \$15.9 billion investing in capital goods to Wisconsin businesses in 2015. I appreciate this opportunity to present our statement of opposition to Assembly Bill 684.

ELFA opposition to AB 684 is three-fold. The legislation confuses business to business finance lease contracts with service agreements. Secondly, the legislation fails to recognize this legislature adopted definitions within the Streamline Sales Tax (SST) Agreement that specifically exclude service agreements from the definition of leasing. Finally, ELFA rejects the idea that a problem exists that would bring disrepute to the lease financing industry which is vital to the current and future growth of Wisconsin businesses.

Equipment finance lessors represented by ELFA are not retailers as the term is contemplated by proponents of Assembly Bill 684. Most noticeably, lessors do not have physical possession of equipment prior to a lease and must often rely on equipment descriptions and information contained in vendor invoices. Equipment finance lessors do not maintain a stock of inventory. Commercial leased equipment is shipped directly from supplier's (albeit manufacturer, vendor or distributor) inventory directly to lessees for their physical receipt and acceptance.

Some provisions of this legislation are misapplied to finance sources. As example, the bank or finance company would not be a party for a lessee to approach for failure of an equipment warranty or the mandated response time for replacement parts. To draw an analogy, if a problem arises with your leased car would you contact the bank or finance company that loaned you funds to acquire it or the auto dealership?

ELFA questions other mistaken assumptions. For instance, equipment lease financing is not a service yet AB 684 would make a lease finance contract "void and unenforceable" over questions about the service contract for replacement parts. The interstate Streamlined Sales Tax

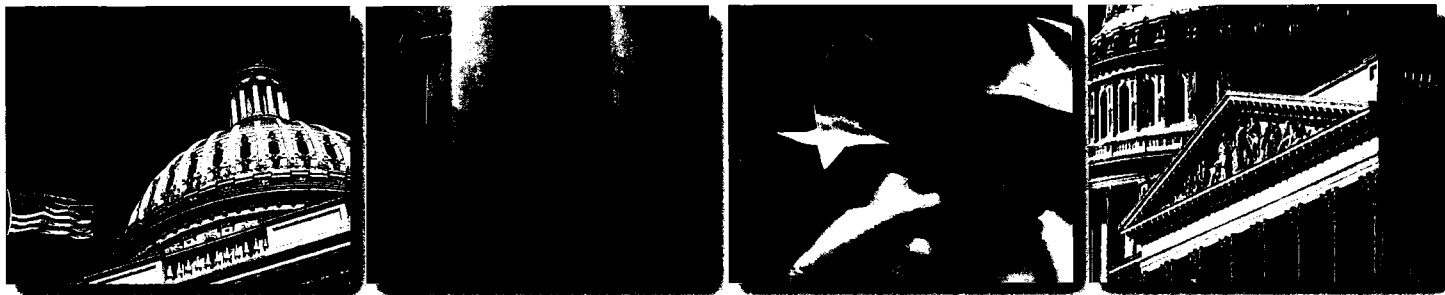
Agreement adopted by Wisconsin excludes servicing agreements for leased equipment from the definition of lease or rental of tangible personal property in addressing duties of an equipment operator beyond initial delivery and installation of equipment. It declares "a condition of this exclusion is that the operator is necessary for the equipment to perform as designed...an operator must do more than maintain, inspect, or set-up the tangible personal property". Physical receipt, set-up and acceptance by a lessee does not hoist upon the bank or finance company a responsibility to service a copier or printer. This exclusion adopted by Wisconsin echoes standard commercial contract procedure separating financing from servicing. Returning to the analogy above relating to leased vehicles, ELFA members providing financing of a copier or printer to a business are not retailers with employees that provide repair services.

Aside from the misconceptions wherein Assembly Bill 684 confuses financing of tangible personal property with servicing of the equipment, ELFA points out our financial company members' chief objective is to maintain a good relationship with their customers and reduce costs for both parties involved. They continuously work to provide a variety of programs to meet the needs and cash flows of their customers. Most importantly, our member companies work with their customers in good and in hard times.

The *ELFA Code of Fair Business Practices* states that while "different companies appropriately employ different business practices depending on a variety of factors ... ELFA Members believe that all business agreements, arrangements and transactions should be conducted with transparency with respect to the roles and responsibilities of all parties. Full disclosure in and clarity of transaction documentation is a key element of such transparency." Further, our *Code of Fair Business Practices* states "[m]embers shall conduct their activities in the spirit of full disclosure. All relevant information as to the terms and conditions of a transaction, relationship or service that may affect ... the customer's ongoing obligations under the contract, shall be disclosed clearly to the customer prior to closing".

Our industry takes these responsibilities seriously in the ELFA Bylaws that provide a Member may be censured, suspended or expelled from the Association for violating the Code of Fair Business Practices of the Association. Accordingly, disciplinary actions that the Association may take in the event of a violation of the Code include private censure; public censure; probationary membership with such conditions as may be determined by the Association; suspension of membership for a term and on such conditions as may be determined by the Association; expulsion from membership; and non-renewal of the membership of the Member.

We regret the confusion created by mingling of commercial copier and printer lease financing provided by banks and finance companies with servicing of the equipment. Thank you for this opportunity to present ELFA's opposition viewpoints.



## ELFA's Presence in Wisconsin

Each year American businesses, nonprofits and government agencies invest over \$1.584 trillion in capital goods and software (excluding real estate). Some 67%, or just over \$1 trillion, is financed through loans, leases and other financial instruments.

**In 2015, businesses in the State of Wisconsin spent \$15.9 billion investing in capital goods.**

ELFA members in Wisconsin include:

- AgStar Financial Services, ACA
- AILCO Equipment Finance Group, Inc.
- Alliance Laundry Systems
- Associated Bank Leasing
- BB Community Leasing Services, Inc.
- BMO Harris Equipment Finance Company
- Brocade Communications Systems, Inc
- Commerce Bank
- Dominion Leasing Software LLC
- Element Financial Corporation
- Farm Credit Leasing Services Corp.
- First Business Equipment Finance
- Forsythe/McArthur Associates, Inc.
- Trimarc Financial, Inc.
- Wintrust Commerical Finance
- GE Healthcare Financial Services (HFS)
- GFC Leasing-A Division of the Gordon Flesch Company,inc.
- J.P. Morgan Equipment Finance
- Jacobs Technology Inc.
- John Deere
- LCA Financial LLC
- Makino, Inc.
- Odessa Technologies, LLC
- Oshkosh Capital, Oshkosh Corporation
- Pitney Bowes Global Financial Services
- Sasser Family Holdings, Inc.
- Stoughton Trailers Acceptance Co. LLC
- Trans Lease, Inc.
- U.S. Bank Equipment Finance
- Wintrust Equipment Finance



TO: Representative Duchow, Chairwoman, Assembly Committee on Consumer Protection  
Members, Assembly Committee on Consumer Protection

FROM: Tom Flesch, CEO, Gordon Flesch Company, Inc.  
Mike Ullsperger, VP-Leasing, Gordon Flesch Company, Inc.

DATE: December 19, 2017

RE: Assembly Bill 684

Chairwoman Duchow, members of the Committee, thank you for allowing me to testify today related to the provisions of Assembly Bill 684 ("AB 684"). We also wish to thank Representative Thiesfeldt, the bill's Assembly author, who has graciously extended his time and his willingness to hear our concerns with AB 684 in its current form. We understand it is Rep. Thiesfeldt's intent to ensure that every end user of copier and printer equipment is entitled to clear, understandable, and fair leasing terms. We share that same goal.

#### About Gordon Flesch Company

Gordon Flesch Company, Inc. ("GFC") is a family-owned, Wisconsin-based company employing more than 300 individuals in Appleton, Madison and Milwaukee. GFC provides smart business technologies that manage data and costs, improve document workflow and process optimization, increase operational efficiency and manage copying and printing technology. The success of our business relies entirely on our reputation. For more than 60 years that reputation has allowed us to serve more than more than 20,000 customers nationwide, with 10,000 of those customers located in Wisconsin. Our clients are businesses, large and small, and include non-profit organizations, such as schools, churches, and other charitable organizations.

#### Utilization of Lease Agreements

GFC routinely utilizes lease agreements to offer copying and printing equipment and services to its customers. These lease agreements offer GFC's customers the ability to acquire equipment and services without the upfront expenditure of cash, lines of credit or other financial resources. Additionally, GFC's lease agreements serve the dual purpose of offering affordable financing terms while eliminating the risk of technology obsolescence for GFC's customers.

We are concerned that the provisions of AB 684—as written—would increase, not decrease, the complexity of our lease agreements and undermine a business process that has worked well for GFC's customers for more than 45 years. We are also concerned that the legislation's ambiguities may prevent our ability to implement the provisions of AB 684 free from the uncertainty that our lease agreements may be deemed void or unenforceable by a court.

#### Existing Regulatory Framework

Notwithstanding our implementation concerns with AB 684, our lease agreements are already governed by numerous consumer protection and regulatory schemes. For instance, the following statutes apply to printer and copier agreements:



- Renewals and extensions of business contracts. Our lease agreements are subject to strict disclosure requirements under Wis. Stat. § 134.49 (*See* Appendix A).
- The Uniform Commercial Code (“UCC”). The UCC, incorporated in Wisconsin under Wis. Stats. §§ 401.101, *et seq.*, governs commercial transactions, including the sales and lease of goods. Under Wis. Stat. § 401.401, the UCC also allows a lessee to repudiate a lease agreement with a lessor if the lessor fails to perform its obligations under the agreement.

GFC has expended significant time and financial resources to comply with these regulatory requirements. In addition, GFC’s ongoing compliance with these regulations has already required GFC to forgo hundreds-of-thousands of dollars in revenue.

*Ambiguities and Implementation Concerns with Assembly Bill 684*

After carefully reviewing the language of AB 684, we have numerous questions related to the meaning of certain terms and phrases contained in the legislation. In addition, the bill’s language has also raised numerous implementation concerns, some of which are described below (*See* Appendix B for a more exhaustive list of our concerns).

- GFC’s lease agreements currently explain the options available to the customer at the end of the lease. For instance, the customer may elect at the beginning of the agreement to own the equipment for \$1 at the end of the lease term. In a Fair Market Value (“FMV”) lease, the customer can choose from a variety of end of term options, including: (1) returning the equipment; (2) purchasing the equipment at a value agreed upon by the parties; or (3) extending the lease on a month-to-month basis under the same terms.
- GFC’s leases typically extend for a period of 48 to 60 months. If the intent of the legislation is to require GFC to determine the purchase value of equipment 4 to 5 years from the effective date of the agreement several concerns arise. For instance, to determine the value of a piece of equipment, GFC must evaluate the following concerns:
  - The general condition of the equipment.
  - The usage levels of the equipment.

Overall market conditions associated with each particular piece of equipment, including estimations of the overall economic climate and technological advances that have been made, also play a significant factor in determining the equipment’s value. Other considerations also affect the calculation of the purchase value of a piece of equipment, including payments made or not made and equipment modifications. Each of these factors are unknown to GFC at the effective date of the agreement. If GFC was required to provide these estimates at the outset of a lease agreement, it will be required to make conservative assumptions to calculate the costs which could increase, rather than decrease, the purchase amount of the equipment.

- The majority of GFC’s leases encompass multiple pieces of equipment and asset types that extend beyond copiers and printers and many involve multi-state locations. Providing the various costs for each specific piece of equipment will add to the length and complexity of the agreement. Furthermore, it is unclear whether this information will apply only to those portions of the agreement applicable to equipment located in Wisconsin or whether it must also be provided for equipment based outside Wisconsin. As a result, the disclosure of costs for some, but not all, of the assets under contract may create unnecessary confusion for our customers. Similarly, it is

unclear whether companies domiciled outside Wisconsin will be subject to this legislation adding an additional layer of complexity for Wisconsin customers.

- The term “lessee request” is vague. What constitutes a “lessee request” and to whom must the request must be made? Furthermore, what constitutes a valid “response” such that lease agreement does not become void or enforceable on the basis of an invalid response?
- GFC is not an equipment manufacturer, and thus has no oversight or control over the production of normal and customary parts. Product manufacturers such as Canon determine parts availability and product life-cycles. Lessors like GFC have no control over the availability of parts. Furthermore, it is unclear what constitutes “normal or customary” parts.
- It is unclear how this legislation would apply to companies based outside Wisconsin. If out-of-state lessors are not required to comply with this legislation, Wisconsin-based companies such as GFC will experience a significant competitive disadvantage.
- Making lease agreements that do not comply with the language of this legislation void and unenforceable is an extraordinary remedy. Because many of the terms are undefined or vague, the likelihood of increased litigation related to the enforceability of a lease agreement is high.

As mentioned, these comments represent just a few of the implementation concerns we have identified related to the provisions contained in AB 684. A more exhaustive list of our concerns is included as Appendix B to this memorandum.

### Conclusion

Thank you in advance for your consideration of our concerns. Should you have questions, or wish to discuss the contents of this memorandum in greater detail, please do not hesitate to contact Mike Ullsperger, Vice President of Leasing at (608) 441-6220 or [mullspberger@gflesch.com](mailto:mullspberger@gflesch.com).

### Summary of the Disclosure Requirements Under Wis. Stat. § 134.49

Wis. Stat. § 134.49 is applicable to “business contracts” which generally encompasses contracts entered into with customers for the lease of business equipment (if any of the equipment is used primarily in Wisconsin) or for providing business services.

A “customer” is defined as a person who conducts business in the state and who is the lessee under a business contract for the lease of business equipment or a purchaser of business services.

The provisions of the statute provide numerous end user protections including:

- **Disclosure Requirement.** If an automatic renewal provision is greater than one month, the customer must sign a disclosure document separate from the contract, which describes the automatic renewal, or the customer must initial the contract next to the same information if stated in the body of the contract.
  - **Content of Disclosure.** The disclosure must state the following: (1) that the contract will be automatically renewed unless declined; (2) procedure for describing how a customer can decline the renewal or extension; (3) the duration of the renewal; (4) whether there will be an increase in charges; and (4) the date of deadline to decline renewal. Failure to properly provide the disclosure will result in the automatic renewal being unenforceable.
- **Notice Requirement.** If the duration of the original contract is more than one year and the renewal period is more than one year, notice must be provided to the customer at least 15 days, but no more than 60 days, prior to the renewal deadline.
  - **Content of the Notice.** The notice must state the following: (1) that the contract will be renewed unless declined; (2) the deadline for the customer to decline renewal; and (3) a description of any increase in charges subject to the renewal, including a procedure describing how the customer can decline renewal.
- **Terms of contract cannot permit the lessor/seller to match any offer received by the customer for the extended term.** Any such provision is considered void and unenforceable.
- **Customer Remedies.** A customer is entitled to file a counterclaim under this statute. If the customer prevails, the customer is entitled to double damages, or the lesser of double the period payments or \$1,000, plus attorneys’ fees and costs.

### Supplementary Implementation Concerns Related to Assembly Bill 684

- The definition of “an electronic device that is capable of copying or printing paper documents” is overly broad. For instance, this definition could include: a scanner capable of copying paper documents; smartphones/tablets capable of photographing and/or copying paper documents; laptop and desktop computers that include cameras capable of photographing and/or copying paper documents; cameras capable of photographing and/or copying paper documents; large, highly sophisticated production equipment such as presses; and large sheet-fed and web-fed printing presses.
- The proposed legislation appears to apply to a hardware-as-a-service agreement that is designed to provide the customer with recent equipment over the course of a long term agreement.
- The proposed legislation would make it difficult, if not impossible, to draft enforceable agreements involving large, multinational companies with hundreds of machines and a variety of equipment, services, software, and consulting services, each with variations in term start dates, term length, and renewal provisions, etc. within one agreement.
- The proposed legislation appears to require the disclosures described under (1) to the non-copier/printer portion of the contract, such as maintenance and servicing. This provision would be difficult to implement because of the combined pricing involving equipment and service which can include, equipment service, IT service, cloud computing, and output management software.
- The terms “cost,” “upgrade,” “return” and “renew” are vague and ambiguous. Similarly, it is unclear at what point during the term of the agreement these disclosures apply. For instance, must a lessor include options to purchase at the end of every year of the agreement or upon termination of the agreement?
  - Does a “dollar buyout provision” satisfy the purchase option requirement or must it be a FMV provision?
  - Does the installation of new equipment, despite it being the same model constitute an upgrade? Furthermore, how can upgrade costs be determined at the effective date of the agreement unless the customer pre-informs the lessor as to its intent to upgrade equipment? Upgrade decisions are customer-driven and are often made based on technological advances not yet known at the time the agreement is made or business decisions that are only required years after the agreement is made. Additionally, some customers choose to rollover an existing agreement into an equipment upgrade. Again, this occurs at the customer’s initiative. As a result, it is impossible to determine the costs associated with an upgrade, especially since the equipment that

the customer chooses to upgrade to may not even exist at the time of the effective date of the agreement.

- The customer is already entitled to return the equipment at any point during the agreement. For this reason, the lessor cannot predict when a lessee may wish to return the equipment and therefore cannot determine the costs associated with the return because of dynamic market and product conditions.
- The lessee, not the lessor, decides which, if any, equipment subject to an agreement it wishes to “renew.” The lessor cannot establish a renewal price without knowing which equipment the lessee wishes to renew at the outset of the agreement.
- The proposed legislation appears to impact a lessor’s UCC filings. A declaration by a lessor that an agreement is void is likely to impact the validity of its UCC filings as a means to document their ownership in equipment subject to the agreement. This could result in the holders of General Business Security Agreements (“GBSA”) to claim priority in leased, but arguably unperfected, equipment owned by the leasing company.
- Numerous other provisions of AB 684 appear to conflict with the UCC. For instance, the definition of “lease” as it is described in AB 684 appears to conflict with the way in which that term is described in the UCC. In addition, various UCC provisions specify notice and response times for repudiation of a lease agreement are in conflict with AB 684.



December 19, 2017

Mr. Chairman and Members  
Assembly Committee on Consumer Protection  
State of Wisconsin

**Robert C. Goldberg**  
General Counsel

Re: Assembly Bill 684

Dear Mr. Chairman and Committee Members:

I have had the honor of serving as General Counsel to the Business Technology Association ("BTA") for more than thirty-five years. BTA, formerly the National Office Machine Dealers Association, was founded in 1926 and has served an ever developing and expanding industry since its formation. BTA is headquartered in Kansas City, Missouri and is proud to have as members more than fourteen dealerships located in the State of Wisconsin. These members employ hundreds of individuals and are significant contributors to the Wisconsin economy.

BTA has carefully considered Assembly Bill 684 and is greatly concerned regarding the effect it would have on businesses seeking to finance office equipment and systems necessary for the operation of their businesses. The proposed legislation seeks to require, at the time the lease is entered, disclosure of the cost to purchase the equipment, upgrade the equipment, return the equipment, and to renew the lease. The legislation reveals a lack of understanding of the equipment leasing transaction. Furthermore, it is vague and unclear. By including the word "printer" the legislation could reach receipt printers, postage meters, and credit card transaction printers that are leased a part of point of sales, mailing equipment, and other business systems.

A business end user always has the option to purchase the equipment outright at the time of initially acquiring the equipment. Rather many businesses elect to lease the equipment. Leased equipment has potential tax advantages for the business end user and allows for budgeting certainty. The proposed legislation would affect the application of both the Uniform Commercial Code as well as the Tax Code to business leases. More importantly however, is the inability of Lessors to forecast financial values of equipment at the conclusion of a thirty-six, forty-eight, or sixty-month lease.

The business equipment and systems industry sees technological advances each and every day. Equipment leased in 2017 may be significantly antiquated in three to five years. New technology would affect future value. Any attempt to estimate or predict the future would make leasing more expensive and less advantageous to business end users. It is for that reason that many leases include "fair market value" determination at the conclusion of the lease. Fair market value is an accurate assessment at a point in time and not based upon guesswork or uncertainty.

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The cost to upgrade equipment is dependent upon the cost of the equipment replacing that on the current lease. There is no right to upgrade equipment under a lease. Rather, this is an accommodation for a business end user seeking to take advantage of new technology. Cost of returning equipment at the conclusion of the lease is clearly spelled out in the lease document. The only variable would be which party is responsible for the freight and packaging cost of the return. The actual cost of the return is established by a freight company, not the Lessor. Regardless, that obligation is clearly spelled out in the lease agreement. Finally, the cost to renew the lease is a specific term in every lease agreement. Typically, the lease renews at the same monthly rate as existed during the initial lease period. As can be seen much of what Assembly Bill requires is not necessary due to industry standards and procedures, while others would severely impact the financial benefits of equipment leasing.

Assembly Bill 684 also seeks to require a five-day response to inquiries regarding a lease transaction. BTA is unaware of any failures to promptly respond to end user requests. It is believed that the advocate for this legislation is a consultant to business end users. It is very likely that a consultant would not receive responses to inquiries regarding a lease due to the fact that he or she is not a party to the lease. Due to both state and federal privacy requirements only the business end user is provided information regarding their business transaction.

Finally, the proposed legislation seeks a prediction on the time period for which parts will be available to maintain the equipment. Leasing companies are financing entities and not able to predict how long foreign manufacturers will continue to provide parts for their equipment. However, these manufacturers are among world leaders in their industry and make every effort to maintain their business reputation. Failure to support equipment with replacement parts would greatly diminish the reputation of the manufacturer. Again, BTA is unaware of instances where parts and supplies for sophisticated office equipment and systems are not available from the manufacturer or a third-party supplier.

In summary Assembly Bill 684 is unnecessary and in fact would have an adverse effect on Wisconsin businesses seeking the advantages of equipment leasing. It is sincerely hoped that the Committee recognizes these issues and refrains from voting the proposal out of Committee. I apologize for not being available to testify in person, however I am working outside the United States on the day of the hearing. I am available to respond to any questions that may arise.

Thank you.

Respectfully,



Robert C. Goldberg

General Counsel

Business Technology Association

  
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