Date of Hearing: April 4, 2017

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 1491 (Caballero) – As Amended March 27, 2017

As Proposed to be Amended

SUBJECT: SALES OF DOGS AND CATS: CONTRACTS

KEY ISSUE: SHOULD RENT-TO-OWN LEASING AGREEMENTS FOR PET DOGS AND CATS BE DEEMED VOID AS AGAINST PUBLIC POLICY IN CALIFORNIA--PARTICULARLY IN LIGHT OF CONCERNS ABOUT CONSUMER PROTECTION AND THE WELFARE OF PETS THAT ARE POTENTIALLY REPOSSESSED BY THE LENDER OR RELINQUISHED BY A CONSUMER WHO DEFAULTS ON HIGH LEASE PAYMENTS?

SYNOPSIS

In the last few years, consumer advocates and animal welfare advocates have raised concerns about a new kind of financing agreement increasingly being offered in some pet stores in California—a contract where the consumer (sometimes unwittingly) commits not to purchase, but to lease a desired dog or cat by making monthly payments that reflect financing rates far more than can be charged under state laws regulating loans and other lending instruments. According to the author, recent reports of consumer experiences with pet leasing contracts raise significant consumer protection concerns, including that some families don't seem to be made aware that they are entering into a lease agreement, and some are paying two or three times more than the store price of the pet under these lease agreements compared to what they could have paid if they simply had access to traditional credit options.

This bill is strongly supported by animal welfare advocates like the American Society for the Prevention of Cruelty to Animals (ASPCA) and the Humane Society of the United States for an entirely independent set of reasons. These groups believe that rent-to-own contracts or any other lease or installment contracts that do not immediately transfer ownership to the purchaser are inherently problematic when the property being leased is a pet dog or cat, and therefore should be curtailed and declared void as against public policy. These lease contracts generally require the consumer to return the property to the lessor upon expiration of the lease, or early termination of the contract by either party, unless the consumer elects to exercise an early option to purchase the property. When that property is a pet dog or cat, the notion of repossession by a financing company or debt collection agency becomes problematic from an animal welfare standpoint because of the likelihood that the repossessed pet will end up in an animal shelter rather than being re-homed by the lessor, and also as some argue, because of the emotional relationship that families have with their pets. Because of this fundamental belief that the purchase of pet dogs and cats should not be subject to financed lease arrangements or rent-to-own contracts, this bill would declare future contracts of this type, entered into on or after the effective date of this bill, January 1, 2018, void as against public policy. Proposed author's amendments clarify that the bill applies only to pet leasing agreements that provide for or offer the option of transfer of ownership of the dog or cat at the end of the lease term—and therefore does not impact other types of lease agreements, such as those used by dog enthusiasts to temporarily lease a breeding female for mating purposes. As proposed to be amended, the bill

has no known opposition, although at the time of this analysis, the Committee had yet to receive any correspondence from companies that employ pet leasing contracts in California.

SUMMARY: Declares as void against public policy rent-to-own and other types of leasing contracts for pet dogs or cats that do not immediately transfer of ownership of the animal to the purchaser. Specifically, **this bill**:

1) Establishes that a contract entered into on or after January 1, 2018, to transfer ownership of a dog or cat in which ownership is contingent upon the making of payments over a period of time subsequent to the transfer of possession of the dog or cat is void as against public policy.

2) Clarifies that 1) above does not apply to payments to repay an unsecured loan for the purchase of the dog or cat.

3) Establishes that a contract entered into on or after January 1, 2018, for the lease of a dog or cat that provides for or offers the option of transfer of ownership of the dog or cat at the end of the lease term is void as against public policy.

4) Provides that in addition to any other remedies provided by law, the consumer taking possession of a dog or cat transferred under the terms of a contract described in 1) or 3) above shall be deemed the owner of the dog or cat and shall be entitled to the return of all amounts he or she paid under the contract.

EXISTING LAW:

Pursuant to the Karnette Rental-Purchase Act (Civil Code Sec. 1812.620 *et seq*.):

1) Regulates personal property rental transactions in which the renter has the option to apply a portion of the rent toward purchase of the property. The Karnette Act governs the rental of property for use by a consumer for personal, household, or family purposes for an initial term of 4 months or less. (Civil Code Sec. 1812.622 *et seq*. All further references are to this code unless otherwise specified.)

2) Requires the rental purchase agreement to be in writing and to contain specified information, including a description of the property, the total number and the total amount of periodic payments necessary to acquire the property, and a notice to the consumer of his or her rights and obligations under the agreement. (Section 1812.623.)

3) Specifies the parameters of the consumer's liability for loss of, or damage to, the property and those of permissible security deposits, and regulates the advertisement of rental-purchase agreements, including the sending of solicitation or other promotional materials. (Sections 1812.636 to 1812.641.)

4) Establishes bright-line pricing caps for the cash price of the property and the total of payments under rental-purchase contracts. Specifically provides that the maximum cash price for the lessor's first rental of property subject to a rental-purchase agreement may not exceed 1.65 times the lessor's cost for computer systems and appliances; 1.7 times the lessor's cost for electronic sets, 1.9 times the lessor's cost for furniture; and 1.65 times the lessor's cost for all other items; further provides that the maximum total of payments may not

exceed 2.25 times the maximum cash price that could have been charged for the first rental of the property. (Section 1812.644, subd. (b) and (c).)

Pursuant to the California Retail Installment Sales Act, generally known as the Unruh Act (Civil Code Section 1801 *et seq*.):

5) Regulates retail installment contracts, defined as any contract for a retail installment sale between a buyer and seller which provides for (a) repayment in installments, whether or not such contract contains a title retention provision, and in which the buyer agrees to pay a finance charge or certain other conditions apply; or (b) payment in more than four installments. (Section 1802.6.)

6) Requires detailed disclosures, as specified, of contract terms in a retail installment contract, including an itemization of the amount financed, the cash price, sales taxes, administrative finance charges, and the amount of down payment, among other things. Further requires the entire content of the contract, including all terms, obligations, and disclosures, to appear in a single document. (Sections 1803.1 to 1803.3.)

7) Provides that if the buyer defaults in the performance of his obligations, the seller may repossess the goods, or sue for the contract balance. If the seller repossesses the goods, the buyer has ten days to redeem before the seller either sells the goods to cover the balance owing or retains the goods as full payment. (Section 1812.2.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: According to the author, consumer advocates and animal welfare advocates have raised concerns about a new kind of financing agreement being used by some pet stores in California—a contract where the consumer (often unwittingly) commits not to purchase, but to lease the desired dog or cat by making monthly payments that reflect near usurious financing rates. The author explains the need of the bill as follows:

> [One] company partners with pet retailers to offer consumers puppy leasing options, akin to a "rent-to-own" scheme. The structure is much like a car lease, in which the consumer pays fixed monthly payments and is then given the opportunity to purchase the puppy, kitten, or other pet at the end of the term by making a balloon payment. At the end of the lease term, the lessee may have paid twice or even three times the amount of the initial cost that the pet otherwise would have cost. Unlike other common forms of financing, the company has structured the financing so that there are no restrictions on the fees or interest that are charged. Given the emotional nature of purchasing a new pet, families often do not take the time to fully understand the financial implications of the transaction. Once the true cost is realized, these families must decide if they can keep their new furry friends, or if they have to cancel their contract. In the event of a default or cancellation, the future welfare of the pet is put into question given that the lending company has no interest in maintaining the pet.
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> AB 1491 would help by specifying that financing schemes that do not immediately transfer full ownership of a pet to a buyer may not be utilized to finance the purchase of a dog or cat. By precluding these types of transactions, we can protect consumers from unscrupulous lending practices involving the purchase of a pet

and reduce the potential that the puppy, kitten or other animal will be relinquished to a shelter due to financial circumstances.

Regulation of rent-to-own agreements, retail installment contracts, and usury laws, generally. Usury is defined by Black's Law Dictionary (5th Ed.) as an unconscionable and exorbitant rate or amount of interest, and a usurious loan is one whose interest rates are determined to be in excess of those permitted by a jurisdiction's usury laws. Under the California Constitution, the interest rate limit for sales contracts is 12%, while the interest rate on judgments is limited to 7%. (Cal. Const. Article XV, Sec. 1.) However, there are many exceptions to the usury laws, including for large banks and financial institutions, as well as for certain loans secured by real property. In addition, if a consumer expressly agrees to an interest rate higher than the statutory limit, then they effectively waive these protections. As a result, many consumer contracts (including virtually all credit card agreements) legally employ interest rates that exceed these limits.

Existing law, the California Retail Installment Sales Act, generally known as the Unruh Act (not to be confused with the Unruh Civil Rights Act, Section 51 of the Civil Code), regulates consumer retail installment contracts for the sale of personal goods and services on time and revolving charge accounts. (Civil Code Sec. 1801 *et seq*.) Generally speaking, the Unruh Act governs contracts that provide for the purchase to be paid in four or more installments, or which impose a finance charge, higher price, or other cost to the buyer in exchange for deferred payment. As originally enacted, the Unruh Act limited the interest rate that could be charged under such contracts, but those restrictions were removed in 1988 and no such restrictions exist today in California (although they do in other states).

Rent-to-own (RTO) contracts, also known as rental-purchase contracts, differ from retail installment contracts because there is a lessor-lessee relationship established until the lessee ultimately purchases the property, either by making all of the required monthly payments or by exercising an option to purchase the property before the scheduled end of the lease term, pursuant to the terms of the contract. Existing law, the Karnette Rental-Purchase Act governs consumer rental transactions of property for personal, household, or family purposes in which the renter has the option to apply a portion of the rent toward purchase of the property. (Civil Code Section 1812.620 *et seq*.) In 2006, the Legislature enacted AB 594 (Ch. 410, Stats. 2006) to amend the Karnette Act to establish bright-line pricing limits that cap the cash price of the property and the total amount of payments that can be required under RTO contracts. RTO contracts are leases also subject to regulation under the federal Consumer Leasing Act.

Recent reports of consumer experiences with pet leasing contracts raise significant consumer protection concerns. According to the author, the type of financing agreements for pet ownership identified by consumer advocates and highlighted in recent media reports are structured as leasing agreements rather than as lending agreements--in order to circumvent usury laws that cap what lenders can charge consumers—resulting in troubling examples of consumers charged exorbitant amounts beyond the cash price of the pet. The author cites a number of accounts appearing in recent media articles describing the experiences of consumers who, knowingly or unknowingly, entered into a leasing agreement for a pet dog or cat at extremely high rates of financing:

- One family thought they had bought a dog for $2,400 from a San Diego-area pet store, but without realizing it, had agreed to make 34 monthly lease payments of $165, after which they had the right to buy the dog for a balloon payment of about two months' rent.

> Under the lease agreement, they would have paid the equivalent of more than 70% in annualized interest—nearly twice what credit card lenders charge. In addition, the lender could take back the dog if a payment was missed, and the family would be on the hook for an early repayment charge if the dog ran away or died. (Patrick Clark, "I'm Renting a Dog?" Bloomberg (March 1, 2017). Available at: https://www.bloomberg.com/news/features/2017-03-01/i-m-renting-a-dog.)

- Another family from Oceanside, CA who entered into a leasing contract for a puppy that required 27 monthly payments totaling $2,687, after which they had the right to pay $93.52 to end the lease or twice that amount ($187.04) to purchase the pet, plus additional fees and taxes. The pet store's initial asking price for the puppy in this case was just $495. The family asserted that no store employees explained they were signing up for a lease rather than a purchase, and ultimately they returned to the store the day after taking the dog home and cancelled the contract. (Ashly McGlone, "Couple shocked at 'dog lease' deal." San Diego Union-Tribune (November 28, 2014.) Available at: http://www.sandiegouniontribune.com/news/watchdog/sdut-oceanside-puppy-dog-lease-2014nov28-htmlstory.html)

In both cases, the financing agreement offered at the pet store was through a company called Wags Lending, perhaps the most well-known of several companies that offer these types of financing agreements through pet stores in California. Started in 2013, Wags Lending was reportedly already used by 350 pet retail stores and breeders in 40 states by its first year of operation. (*Id.)* According to a Bloomberg writer, Wags Lending charges effective interest rates ranging from about 36% to 170% on an annualized basis, based on sample rates published on its website. (Clark, *supra*.) This fact is not immediately apparent because Wags doesn't show its pricing in terms of APR, since it asserts it is underwriting leases, not loans. (*Id.*) Importantly, because the contracts at issue in this bill are deliberately structured as lease agreements rather than loan agreements, they are not subject to usury laws or other laws regulating lenders, and this is true not only in California but likely in many other states where these contracts are being used.

According to the author (referring to Wags Lending):

> The primary lending company engaged in this type of financing states that the company focuses the financing in underserved communities with little or no access to credit. Additionally, (the CEO) has stated that the financing is targeted to the purchase of goods that are highly emotional in nature.
>
> The predatory nature of the financing scheme raises a number of consumer protection issues. If a buyer could simply purchase the pet on a traditional credit card, they could avoid a large proportion of the cost. Instead, for many low income or uninformed buyers, this becomes an unscrupulous financing scheme that could result in financial strains requiring the consumer to default

The author's statement refers to passages in the Bloomberg and San Diego Union-Tribune articles, cited above, including comments made by the CEO and founder of Wags Lending, to support the following contentions. First, the closed-end lease model was selected from a number of different credit models under consideration specifically because it is exempt from usury laws in all 50 states. (Clark, *supra*.) Second, the company's leasing agreements are intended to target consumers who don't have access to other forms of credit but still wish to acquire an expensive dog or cat by financing its purchase. (*Id.*) And third, that the company specifically targets pet

consumers (usually more expensive purebred animals) because of the emotional aspect of the purchase (*Id.*, quoting the CEO as saying "We like niches where we're dealing with emotional borrowers" to explain the types of purchases the parent company of Wags Lending chooses to finance.)

At the time of this analysis, the Committee had not received correspondence from Wags Lending or any other companies who offer pet leasing agreements. In the interest of balance, however, Committee staff notes that, in the same articles cited by the author, Wags Lending has defended its business practices from charges that they are predatory in nature. Specifically, Wags Lending has contended that: (1) it is transparent in its advertising and its contracts about the leasing structure of these agreements, and that any consumer who entered into such a contract without realizing he or she was leasing-to-own the pet rather than purchasing it outright bears responsibility for signing the contract without reading it first; (2) it offers consumers with credit limitations a way to finance the purchase of an expensive purebred dog or cat that simply can't be found at animal shelters; and (3) it complies with all applicable federal and state leasing laws, and even offers a money-back guarantee for the first 30 days.

Should existing law regulating rental-purchase agreements apply to the leasing of animals in the same way it currently applies to furniture, appliances, and other personal property? Although the contracts at issue in this bill are on their face structured as RTO lease agreements, some consumer lawyers have raised questions about whether these types of lease agreements for pets would hold up as leases under the federal Consumer Leasing Act if challenged in court. Although this theory has yet to be tested in court, supporters of this theory contend that dogs are uniquely different from other assets like furniture or vehicles because they cannot easily be taken back by the lessor, revalued and resold in the way a car is. (Clark, *supra*.) The Consumer Leasing Act contemplates that there is an "anticipated actual fair market value of the property upon lease expiration" that guides the decisions of the lessor and lessee (15 U.S.C. 41, Sec. 1667b), and unlike vehicles or other property that can be remarketed by the lessor after expiration or termination of a lease, it is not clear that this can be done for a pet dog or cat. As a practical matter, the author contends that consumers entering into RTO contracts at issue in this bill do not contemplate that they are only renting the pet for a period of months or years, to be returned at the expiration of the lease; and financers of these transactions have little experience repossessing or remarketing pets after the end of a lease because the event is so rare. (McGlone, *supra*.)

Pet leasing contracts may also threaten animal welfare. Whether these types of financing agreements are better regulated as loans rather than leases, supporters of the bill take the broader view that leases for dogs and cats should be deemed void against public policy because of the threat to animal welfare that they may create. Specifically, they contend that the repossession or potential repossession of pet dogs or cats pursuant to a lease contract creates unique animal welfare concerns that don't arise with respect to furniture, appliances or other inanimate forms of property, and therefore it should be against the public policy of California to allow rent-to-own contracts for dogs and cats.

The ASPCA writes in support:

> This type of "rent to own" scheme may be justifiable for some consumer goods, such as furniture or car tires, which can easily be repossessed. However, it is wholly ill-suited and unconscionable to utilize such a structure for the purchase of

> a dog or cat. Neither the financing scheme nor current California laws contemplate the responsibilities required to care for an animal in the event of repossession. s such, it is highly likely that the pet would be relinquished to an animal shelter in the event of the purchaser's default, resulting in a detriment to the purchaser, the financing company and, most importantly, the welfare of the animal.
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> In closing, the ASPCA believes that AB 1491 will protect consumers from unscrupulous lending practices involving the highly emotional purchase of a pet and reduce the potential that the puppy or kitten will be relinquished to an animal shelter due to financial circumstances.

Pet leasing agreements specifically contemplate several ways in which the pet could end up back in the possession of the lessor. First, the lessor may repossess the animal if the consumer defaults on the lease payments (increasingly likely given that the consumer presumably could not afford to buy the pet outright for the initial store price). Second, even if the consumer makes all the required monthly lease payments, he or she may decline to exercise the option to purchase the animal—effectively returning the pet to the lessor or financing company. Finally, the lessor may unilaterally repossess the pet if conditions of the lease are violated (e.g. it learns the animal is being mistreated or not being cared for properly).

According to proponents, the pet store that initially housed the dog or cat is no longer party to the transaction once the lease agreement is effective, and it is not unusual for the financing company to have assigned the contract to a third party company that primarily specializes in managing or collecting on debt obligations. Under these circumstances, what is to happen to the pet when the lease is terminated or expires? According to the articles cited by the author, Wags Lending says that return of pets after the full term of the contract is rare, and that it does take steps to find new homes for pets in cases where the lease was ended early, including trying to convince the pet store to take back the pet. However, as discussed above, it is hard to assess what remarket value or diminished "realized value" the asset has after repossession when the asset is a dog or cat that has been separated from the family it lived with for months or years previously.

Furthermore, a financing company or debt collection company is not in the business of re-homing pets or reselling them on the market, so it is conceivable and even likely that such pets will unfortunately end up being relinquished to animal shelters if they cannot be resold or found a new home by the company repossessing them. In support, the State Humane Association of California (SHAC) writes:

> (E)xisting law does not anticipate that a rent-to-own contract would be utilized for a transaction involving a pet. Therefore, it does not address the complexities of maintaining and caring for a pet, including the eventualities of sickness or death and the treatment and disposition of the pet in case of default. The stakes are simply too high to make rent-to-own contracts involving pets anything but bad public policy.

For these reasons, the bill is also supported by several other animal welfare organizations, including the ASPCA, the Humane Society of the United States (HSUS), and the San Diego Humane Society.

Proposed author's amendments to exclude breeding lease agreements used by dog enthusiasts. As currently in print, the bill provides that "any contract entered into on or after January 1, 2018 for the lease of a dog or cat" is void as against public policy. The Animal Council, a nonprofit based in Millbrae, CA, opposes the current version of the bill because they believe it is too broad and unnecessarily prohibits temporary leases of breeding females commonly used by dog enthusiasts to mate dogs and breed litters. They write:

> The American Kennel Club has historically provided for leases of breeding females as a means for registrants to use these (contracts) to access quality breeding stock from limited and valued canine gene pools. . . (These) have always been legal contracts in California and are routinely used by a broad range of private parties in personal transactions. These transactions are not part of the recent commercial pet financing industry and should not be prohibited in an effort to protect consumers from unscrupulous business practices within this emerging business model.

In order to clarify that this bill is intended only to affect leases of dogs and cats that contemplate transfer of ownership of the animal, and not the temporary lease of a breeding female for the purpose of breeding a litter, the author proposes the following amendment:

> On page 2, line 11, after "cat" insert: "that provides for or offers the option of transfer of ownership of the dog or cat at the end of the lease term"

In addition, the author proposes the following technical amendment to correct a minor drafting problem:

> On page 3, line 2, delete "return all amounts" and replace with "the return of all amounts he or she paid"

ARGUMENTS IN SUPPORT*:* The State Humane Association of California writes that the emotional bonds between pets and pet owners should also be taken into account in deciding whether RTO contracts should be against public policy. SHAC states:

> Setting aside the issue of whether RTO contracts are inherently unfair and predatory, a position held by many consumer advocates, they are categorically problematic in the context of pets. Although pets are generally treated as personal property under the law—no different than a television or dining room table—they serve an important social and emotional function in our lives. For example, in a 2015 Harris Poll, 95% of pet owners said they consider their pets to be members of the family. That we love our pets is undeniable. So to allow consumer transactions in which someone can spend years bonding with a cherished pet only to miss a payment and have the pet taken away is patently cruel and unconscionable. While there is no doubt that losing the family television would be disappointing, losing a beloved family pet would be unquestionably traumatic and heart-wrenching.

REGISTERED SUPPORT / OPPOSITION:

Support

American Society for the Prevention of Cruelty to Animals (ASPCA) (sponsor)
Humane Society of the United States (HSUS)
San Diego Humane Society
State Humane Association of California (SHAC)
Social Compassion in Legislation (SCIL)

Opposition (to previous version)

The Animal Council (now neutral)

Opposition

None on file

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