

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 363 Lease Contracts for the Sale of Dogs and Cats

SPONSOR(S): Killebrew

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Thompson	Anstead
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Consumers in the United States spent \$2.01 billion on live animal purchases in 2018. Over 100 million households nationwide own pets. Statistics at the state level regarding pet purchases are not readily available. However, if national data are distributed evenly across all 50 states, around \$38 million was spent on live animal purchases statewide in 2018.

For consumers, pet leasing is an alternative financial mechanism to purchasing a pet with cash or credit. According to the Federal Trade Commission, pet leasing is a relatively new industry that relies on a consumer lease. Some financial services companies have partnered with pet sellers to offer such leases. The lease terms vary. The federal Consumer Lease Act regulates consumer leases to ensure that meaningful and accurate disclosure of lease terms are provided to consumers before entering into a contract.

Recently, there have been reports of retail pet stores that are using pet leases to lock consumers, who do not qualify for credit, into contracts. In Florida, the Department of Agriculture and Consumer Services, Division of Consumer Services (DACCS) has received similar complaints. According to research, some of the complaints allege that retailers are overly persuasive, and that appropriate lease disclosures have not been made when the contract is signed. A sample of the complaints and other articles on this issue appears to show that certain consumers in Florida are:

- Entering into financial agreements they cannot afford;
- Not aware of all of the costs involved at the point of sale;
- Not reading the details ("fine print") in the agreements at the point of sale;
- Purchasing sick puppies; or
- Being led into financial agreements with predatory payment plans.

Florida law does not appear to specifically address consumer pet leases.

The bill prohibits future contracts that:

- Transfer ownership of a dog or cat contingent on the buyer making payments after taking possession of the animal;
- Provide for the lease of a dog or cat with the option to buy the animal at the end of the lease term; or
- Repay a loan for the purchase of a dog or cat, where a security interest is granted in the dog or cat purchased. Such provisions are void and unenforceable.

The bill deems consumers who take possession of a dog or cat under such contracts the owner, entitles the consumer to a full refund, and does not prohibit buying a dog or cat through an unsecured loan.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Pet Ownership

Sixty-seven percent of households in the United States (U.S.), or about 85 million families, own a pet. Of these households, approximately 65 million own dogs and 42 million own cats. The total number of dogs and cats owned in the U.S. is estimated to be approximately 183 million.¹

Consumers in the U.S. spent \$2.01 billion on live animal purchases in 2018. Acquisition of dogs varies by generation with more millennials turning to shelters and rescues, while baby boomers and Gen Xers look more to breeders. However, it has been found that millennials purchase pets at independent pet stores three times more often than Boomers or Gen Xers.²

Statistics at the state level regarding pet ownership and purchases are not readily available. However, if the national data are distributed evenly across all 50 states, the following annual statistics can be extrapolated and applied to each state:

- 1.6 million families own a pet, and of these families:
 - 1.2 million own dogs;
 - 800,000 own cats;
- 3.5 million dogs and cats are owned; and
- \$38 million is spent on live animal purchases.

Pet Lease Agreements

For consumers, pet leasing is an alternative financial mechanism to purchasing a pet with cash or credit. It is unknown what portion of the total amount spent each year on pets is from pet leasing and how many dogs and cats are purchased using a pet lease agreement.

According to the Federal Trade Commission, pet leasing is a relatively new industry that relies on a consumer lease. Consumer leases are commonly associated with cars, furniture, and heavy equipment. As a result, most people considering buying a pet are not expecting to be handed a lease and many pet sellers may not be prepared to explain a lease's terms.³

Some financial services companies have partnered with pet sellers to offer leases. The lease terms vary. In general, pet leases run for a set time, typically one to three years. During the lease period, customers are required to make monthly payments that can total more than the list price of the pet, sometimes much more.⁴

When the lease is over, the customer does not own the pet. To purchase the pet, the customer usually must pay an additional amount. If they can't buy the pet, they must surrender it, and if the customer misses a monthly payment, the leasing company can repossess it. If the animal gets lost, stolen, or dies, or if the customer can no longer keep the pet, the customer can still be required to make payments through the end of the lease period or pay an early termination fee. Failure to make required payments can show up on the customer's credit report and result in a collection action.⁵

¹ American Pet Products Association, *Press Releases: Americans Are Spending More on Pets Than Ever Before: \$72 Billion*, https://www.americanpetproducts.org/press_releasedetail.asp?id=191 (last visited Jan. 31, 2020).

² *Id.*

³ Federal Trade Commission, *A lease on a leash? Pet stores are leasing pets*, <https://www.ftc.gov/news-events/blogs/business-blog/2018/07/lease-leash-pet-stores-are-leasing-pets> (last visited Jan. 31, 2020).

⁴ *Id.*

⁵ *Id.*

Pet Lease Disclosures

The federal Consumer Lease Act (Act) regulates personal property leases that exceed four months in duration, do not exceed \$50,000, and are made to consumers for personal, family, or household purposes. The purpose of the Act is to ensure that meaningful and accurate disclosure of lease terms is provided to consumers before entering into a contract.⁶

Prior to signing a lease, the Act requires, among other things, that a consumer receive a written statement that clearly and conspicuously includes the following information:

- A brief description or identification of the leased property;
- The amount of any payment by the lessee required at the inception of the lease;
- The amount paid or payable by the lessee for official fees, registration, certificate of title, or license fees or taxes;
- The amount of other charges payable by the lessee not included in the periodic payments, a description of the charges and that the lessee is liable for the difference, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability;
- A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time;
- A statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;
- A brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;
- A description of any security interest held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;
- The number, amount, and due dates or periods of payments under the lease and the total amount of such periodic payments;
- Where the lease provides that the lessee shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration, and the differential between them; and
- A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments, or early termination.⁷

If pet leases are advertised, the Act requires, among other things, disclosure that the deal is a lease, the total amount due at lease signing, and the number, amount, and timing of payments.⁸ Specifically, if an advertisement for a consumer lease includes a statement of the amount of any payment or a statement that any or no initial payment is required, the advertisement must clearly and conspicuously state, as applicable:

- The transaction advertised is a lease;
- The total amount of any initial payments required on or before consummation of the lease or delivery of the property, whichever is later;
- That a security deposit is required;
- The number, amount, and timing of scheduled payments; and
- With respect to a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.⁹

A relatively small number of banks engage in consumer leasing. The trend seems to be for

⁶ 15 U.S.C. §§ 1667-1667f.

⁷ *Id.*

⁸ Federal Trade Commission, *supra* note 3.

⁹ 15 U.S.C. §§ 1667-1667f.

leasing to be carried out through specialized bank subsidiaries, vehicle finance companies, other finance companies, or directly by retailers.¹⁰

Recent Reports

Recently, there have been reports of retail pet stores that are allegedly using pet lease agreements to lock consumers into predatory contracts. The reports say that lessees are being charged two to four times the actual sticker-price for a puppy. In response, animal rights groups have spent the last two years filing lawsuits accusing leasing companies and pet stores of predatory practices.¹¹

In Florida, the Florida Department of Agriculture and Consumer Services, Division of Consumer Services (DACCS) has received related complaints. Some of the complaints allege that retailers are overly persuasive, and that appropriate lease disclosures are not being made when the contract is signed. A sample of the complaints¹² and news reports¹³ regarding the issue appear to show that consumers in Florida are:

- Entering into financial agreements that they cannot afford;
- Not aware of all of the costs involved at the point of sale;
- Not reading the details (“fine print”) in the agreements at the point of sale;
- Purchasing sick puppies; or
- Being led into a predatory payment plan.

Other States

Six states have enacted prohibitions on pet leasing and others have considered doing so.¹⁴ The states include California,¹⁵ Indiana,¹⁶ Nevada,¹⁷ New Jersey,¹⁸ New York,¹⁹ and Washington.²⁰

Current Law

Florida law does not appear to specifically address consumer pet leases.

Proposed Changes

Effective July 1, 2020, the bill prohibits future or new contracts that:

- Transfer ownership of a dog or cat contingent on the buyer making payments after taking possession of the animal;
- Provide for the lease of a dog or cat with the option to buy the animal at the end of the lease term; or

¹⁰ Federal Reserve, Regulation M Consumer Leasing Introduction, https://www.federalreserve.gov/boarddocs/caletters/2008/0805/08-05_attachment2.pdf (last visited Jan. 31, 2020).

¹¹ Sara DiNatale, *They thought they were buying a family dog. Turns out they were leasing it.*, Tampa Bay Times, (Dec. 27, 2018) <https://www.tampabay.com/business/they-thought-they-were-buying-a-family-dog-turns-out-they-were-leasing-it-20181224/> (last visited Jan. 31, 2020).

¹² Florida Department of Agriculture and Consumer Services, Division of Consumer Services, Mediation & Enforcement office.

¹³ Jeff Weinsier, Local 10 Investigates, Financing fido: Pet store loans raise eyebrows in Florida

Fine print of some agreements has buyer leasing their pets (Nov. 12, 2018), <https://www.local10.com/news/2018/11/13/financing-fido-pet-store-loans-raise-eyebrows-in-florida/> (last visited Jan. 31, 2020).

¹⁴ Connecticut considered a ban on pet leasing during the 2018 legislative session. However, the House did not take up the amended bill for consideration. Connecticut General Assembly, Research Report: State Laws Prohibiting Pet Leasing, <https://www.cga.ct.gov/2018/rpt/pdf/2018-R-0264.pdf> (last visited Jan. 31, 2020).

¹⁵ Cal. Civil Code § 1670.10 (2018).

¹⁶ Ind. Code § 24-4.5-2407.5 (2019).

¹⁷ Nev. Rev. Stat. § 597.997 (2017).

¹⁸ N.J. Stat. Ann. § 56:8-211 (2019).

¹⁹ N.Y. General Business Law § 753-e (2019).

²⁰ Wash. Rev. Code § 63.10.070 (2019).

- Repay a loan for the purchase of a dog or cat, where a security interest is granted in the dog or cat purchased.

The bill makes any such provisions void and unenforceable.

The bill deems consumers who take possession of a dog or cat under such a contract the owner and entitles the consumer to a refund of all moneys paid under the contract.

The bill does not prohibit buying a dog or cat through an unsecured loan.

B. SECTION DIRECTORY:

Section 1. Creates s. 725.09, F.S., prohibiting lease contracts for the sale of dogs and cats.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prohibits certain financial agreements that are typically offered by retail pet stores to potential customers as a mechanism for obtaining a dog or cat. As a result, the bill could create a negative fiscal impact on these businesses. To the extent these agreements may be predatory, the bill could have a positive fiscal impact on consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill purports to apply to lease contracts involving a dog or cat. However, the bill confuses the nature of a contract for the lease of property versus the nature of a contract for the sale of property. A lease involves the possession of the property, whereas a sale involves the transfer of ownership of the property.

For example:

- Line 14 contains a catchline for the proposed statute that begins with “lease contracts” and then immediately follows with “for the sale of dogs and cats.”
- Although the intent of the bill appears to relate to lease contracts, lines 23-24 speak of prohibiting certain types of loans “for the purchase of a dog or cat,” and lines 17-20 speak of the transfer of ownership of a dog or cat.

The bill also creates a new section of law in chapter 725, F.S., which generally relates to fraudulent contracts. However, chapter 828, F.S., specifically relates to sales of animals.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES