CONCURRENCE IN SENATE AMENDMENTS
AB 1491 (Caballero)
As Amended August 22, 2017
Majority vote

ASSEMBLY: 63-10 (May 11, 2017) SENATE: 37-0 (August 31, 2017)

Original Committee Reference: **JUD.**

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 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 transferring 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 a contract described in 1) or 3) above shall be deemed the owner of the dog or cat and shall also be entitled to the return of all amounts the consumer paid under the contract.

The Senate amendments make a technical change and add several co-authors.

FISCAL EFFECT: None

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.
>
> This bill 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.

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. For example:

> 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)

According to the author, these pet leasing contracts raise many consumer protection issues because: 1) 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; 2) if a buyer could simply purchase the pet on a traditional credit card, they could avoid a large proportion of the cost; and 3) the company's CEO has stated that the financing is targeted to the purchase of goods that are highly emotional in nature. (Clark, *supra.)* For these reasons, the author believes that for many low income or uninformed buyers, pet leasing contracts amount to an predatory or unscrupulous financing scheme that often are calculated to lead the consumer to default on the contract.

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 rent-to-own (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 United States Code (U.S.C.) 41, Section 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.

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, 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 American Society for the Prevention of Cruelty to Animals (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. As 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. In closing, the ASPCA believes that this bill 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 that cared for it 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. Because the bill only applies to 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 bill is no longer opposed by the American Kennel Club and other dog enthusiasts who have traditionally utilized these breeding lease agreements without reported problems.

Analysis Prepared by: Anthony Lew / JUD. / (916) 319-2334 FN: 0001396