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Opposition Testimony - Assembly Bill 684
Assembly Committee on Consumer Protection
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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.