

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

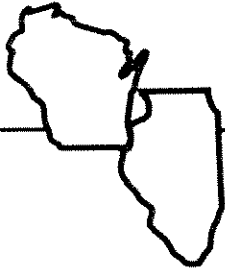
Senate Committee on
Agriculture and
Environmental
Resources
(SC-AER)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
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- Clearinghouse Rules ... CRule
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- Committee Hearings ... CH
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- Committee Reports ... CR
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- Executive Sessions ... ES
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- Hearing Records ... HR
- 97hr_ab0329_pt05
- Miscellaneous ... Misc
-
- Record of Comm. Proceedings ... RCP
-

MIDWEST



EQUIPMENT DEALERS ASSOCIATION

13 Odana Court • Madison, Wisconsin 53719 • 608-276-6700 • Fax 608-276-6719
Mailing Address: P.O. Box 44364 • Madison, Wisconsin 53744-4364

March 18, 1998

Committee on Agriculture and Environmental Resources
Wisconsin Senate

Re: *Support for Assembly Bill 329*

The Midwest Equipment Dealers Association ("MEDA") is the trade association representing farm equipment dealerships throughout Wisconsin as well as Illinois. MEDA supports AB 329 removing agricultural transactions from the Wisconsin Consumer Act.

MEDA's members sell and service farm equipment and are in contact daily with the Consumer Act. Over the years, MEDA has provided instruction on compliance with the Consumer Act and has fielded hundreds of questions from members on the Act. No law has created greater compliance problems for our members nor has any other law generated special paperwork to the extent of the Consumer Act.

Simply put, the Consumer Act does not fit our industry or its needs. This is why, to the best of our knowledge, only one other state treats agricultural transactions as consumer transactions. The numerous problems we have encountered include:

1. Forms and Computer Software. Wisconsin has barely over 200 farm equipment dealerships. Because dealer numbers have been declining, it is not economical to prepare forms and computer software just for Wisconsin dealers. Financing forms are prepared in the industry for national markets thus leaving Wisconsin dealers without readily available forms and software regarding Consumer Act Compliance. Even our association cannot prepare or market a single set of forms or software to all of our members since we represent dealers in two states.

2. Diversity of Customers. Under the present law, only one segment of a dealer's customers are considered "consumers" thus leaving dealers with varying requirements. Only individuals purchasing equipment or service for agricultural purposes are covered by the Act. This excludes corporate farms as well as lumber companies, construction companies and others who purchase equipment or service for non-agricultural purposes. Dealers have to maintain separate types of accounts and separate paperwork only for individual farmers.

*Serving Farm, Industrial, Dairy, Farmstead Mechanization,
and Outdoor Power Equipment Dealers throughout Illinois and Wisconsin*



AFFILIATE OF NORTH AMERICAN EQUIPMENT DEALERS ASSOCIATION



3. Open Accounts. In order for a dealer to allow a farmer to pay later for a repair, whether the farmer wants to pay in installments or the dealer wants a reasonable finance charge, the Consumer Act requires the dealer to produce the same paperwork as a bank offering to open a mastercard account. Attached to this statement is summary of form requirements from the former Office of the Commissioner of Banking showing the extreme detail. Such requirements may be workable for banks granting a mastercard, but they do not work for a farm equipment dealership called upon to make quick repairs when a farmer's combine has gone down during harvest. If a dealership is not equipped with all of the proper forms, the result is that credit cannot be extended.

Equipment dealers do not want to remove agricultural transactions from the Consumer Act so they can charge more interest or exact harsh terms. They simply are not equipped like banks to meet all of the paperwork requirements. If a farmer does not have cash to pay for a repair they would like to agree to take installment payments with a reasonable finance charge like they do with their non-consumer customers.

Finally, dealers would like to avoid collection problems on their customer accounts. Typically, the Consumer Act is used by certain debtors to avoid debts when dealers attempt collection. Recently we saw a dealer file a small claims action to collect on an unpaid repair account using simple small claims forms. The farmer in question hired an attorney who moved to dismiss the action, not because the account was not due, but because the dealer had failed to meet technical pleading requirements in sec. 425.109 of the Consumer Act. To a great extent, the Consumer Act is used in agricultural transactions as technical defenses to legitimate debts.

Farms are businesses and need credit from dealers to operate just like other businesses need credit from suppliers and service providers. The needs of farms are different from those of a consumer wanting to finance a television or stereo system. Enacting AB 329 will remove roadblocks which have been established to providing farmers with their credit needs. The Consumer Act has not worked for agricultural transactions and has impeded business more than it has helped. AB 329 is good legislation.

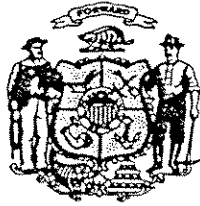
Thank you for this opportunity to address this legislation.

MIDWEST EQUIPMENT DEALERS
ASSOCIATION, INC.

By: Gary W. Manke
Gary W. Manke
Executive Vice President

By: Gary L. Antoniewicz
Gary L. Antoniewicz
Legal Counsel

Tommy G. Thompson
Governor
Roby E. Sherry
Commissioner



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State of Wisconsin Office of Commissioner of Banking

131 West Wilson Street • Madison, Wisconsin 53707

Sample Forms for Open End Credit Plans Under the Wisconsin Consumer Act

The Wisconsin Consumer Act covers extensions of credit for personal, family, household or agricultural purposes in which the amount financed is \$25,000 or less. In an open end credit plan (1) the creditor permits the customer to make purchases from time to time as the plan provides, (2) the customer may pay the balance in full or in installments and (3) a finance charge may be computed from time to time on the outstanding unpaid balance. The forms used in such plans must contain specific disclosures to comply with the Wisconsin Consumer Act which incorporates the Federal Truth-In-Lending Act requirements and the Wisconsin Marital Property Act, if the applicant is married.

A finance charge on an account cannot be assessed unless there is a written agreement between the creditor and the customer permitting such a charge and provided the agreement and all billing statements sent to the customer by the creditor include all of the disclosures required. To be liable for payment of an open end credit plan, the customer must sign any one of the following:

1. The open end credit agreement setting forth all of the terms of the credit plan,
2. A credit application which expressly states that each person signing the application will be obligated according to the terms of the open end credit plan and provided the customer receives a copy of the open end credit agreement before that customer makes any charges on the account, or
3. A transaction receipt which expressly states that each person signing the receipt will be obligated according to the terms of the open end credit agreement and provided the customer receives a copy of the open end credit agreement before making any charges on the account.

The sample forms which are enclosed are designed for use in connection with a consumer credit plan which assesses a finance charge at the maximum rate permitted under the Wisconsin Consumer Act. A lesser rate may be assessed. The Wisconsin Consumer Act does not cover extensions of credit for business purposes. While the enclosed forms may be used for transactions for business purposes, by doing so the account would then be subject to the provisions of the Wisconsin Consumer Act.

Application - Exhibit 1

Under §422.308 of the Wisconsin Statutes, each credit application for an open end credit plan is required to include the following information:

1. The annual percentage rate. Also, if applicable, the possibility and effect of an increase in the rate;
2. When the finance charge begins to accrue on a transaction;
3. Whether an annual fee is charged and, if so, the amount;
4. Any other charges or fees which may be assessed on the account.

The information required by §422.308 is in addition to the Federal Truth-In-Lending disclosures required in open end credit and must be separately disclosed. The information may be incorporated in the application form or given on a separate sheet of paper attached to the application. If a creditor does not use an application form, the information must be given the customer on a separate sheet of paper before opening the account.

If a married person whose spouse is not a party to the account applies for an account, the creditor should have the applicant separately sign a statement that the account will be used in the interest of the marriage or family. Also, the applicant should provide the name of the spouse who is not applying for credit and the spouse's address. This information will be necessary to notify the non-applicant spouse of the account if credit is granted.

Charge Account Agreement and Disclosures - Exhibit 2

Before the first transaction is entered into, the creditor must disclose to the customer in a single written statement the following:

1. The conditions under which a finance charge may be imposed and any time period within which the balance may be paid to avoid a finance charge;
2. The method of determining the balance on which a finance charge may be imposed;
3. The method of determining the amount of the finance charge;
4. The periodic rate as well as the corresponding annual percentage rate of the finance charge (The terms "finance charge" and "annual percentage rate" when required to be disclosed must be more conspicuous);
5. The minimum payment required (The amount in the sample form is just one example);
6. The amount of any other charges in addition to a finance charge that may be imposed;

7. Any security interest which will be taken;
8. The customer's rights to dispute billing errors (The long form notice is on the back of the sample form).

A copy of the agreement must be given to the customer or customers.

Tattletale Notice

If the applicant for the open end credit plan is married and only one spouse has applied for credit, §766.56(3)(b), Stats., requires a written notice to the non-applicant spouse of the extension of credit. The notice must be sent before any payment is due and addressed to the non-applicant spouse or addressed to both spouses if the applicant says that they reside at the same address. The notice requirement may be satisfied by sending any one of the following:

1. A copy of the document evidencing the obligation;
2. A copy of the credit disclosures given to the applicant;
3. A brief statement of the nature of the credit extended.

Billing Statement - Exhibit 3

The creditor is required to provide the customer with a billing statement containing specific disclosures in any billing cycle at the end of which the customer has a debit or credit balance in excess of \$1.00 or where a finance charge is imposed. The billing statement must contain:

1. The outstanding balance at the beginning of the billing cycle;
2. Identification of the transactions posted to the account;
3. The amount and date of each payment, refund, rebate or adjustment posted to the account;
4. The amount of the finance charge using the term "Finance Charge";
5. The periodic rate or rates of finance charge and the corresponding annual percentage rate of the finance charge using the term "Annual Percentage Rate";
6. The balance on which the finance charge was computed and a statement as to how that balance was determined;
7. The closing date of the billing cycle and the outstanding balance in the account on that date;
8. Any time period the customer may have to pay the balance to avoid an additional finance charge.

On the back of the form is the short form billing error rights statement. A merchant may either provide the customer with the long form statement at least once each calendar year or as an alternative provide the short form on or with each billing statement.

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Notification - Exhibit 4

If a finance charge is imposed in excess of 12% per annum, the creditor must notify this office of that fact and, depending on the volume, pay a fee.

The credit disclosures for open end credit are contained in §226.6 and §226.7 of Regulation Z which was issued by the Federal Reserve Board to implement the Federal Truth-In-Lending Act. § 422.301, Wis. Stats., incorporates these requirements. The Wisconsin Marital Property Act is found in Chapter 766, Wis. Stats.

We hope that this information and these forms will aid you in understanding the application of the Wisconsin Consumer Act to open end credit. If we can be of further assistance to you, please do not hesitate to contact us.

Exhibit 1

Examples of the type of information which must be given with the application or separately if no application form is used.

RETAIL OPEN ACCOUNTS

ANNUAL PERCENTAGE RATE: <u>18%</u>
FINANCE CHARGE: Finance Charge begins to accrue on a transaction which is not paid in full within 25 days after the first billing of the charge.
ANNUAL FEE: None
OTHER CHARGES: 50¢ minimum finance charge on balances less than \$33.34.

HOME EQUITY LOAN UNDER THE WISCONSIN CONSUMER ACT

ANNUAL PERCENTAGE RATE: 4% over the bank prime loan rate as reported in the money rates section of the Wall Street Journal on the first Tuesday of the previous month. The rate charged may vary and will increase or decrease as the prime rate changes. However, the rate charged will not exceed 18% or as allowed by statute. A change in the rate will result in an increase or decrease in the minimum payment due on the account.
FINANCE CHARGE: The finance charge is assessed as of the date credit is extended.
ANNUAL FEE: The annual fee is \$15.00.
OTHER CHARGES: 1. \$2.00 for failure to pay minimum payment. 2. 50¢ minimum finance charge on balances less than \$33.34. 3. Appraisal Fee: \$100.00. 4. Title Insurance: \$150.00. 5. Recording Fee: \$8.00.

Complete this section if married and spouse has not signed the application:

Name and Address of Spouse: _____

I agree that this account will be used in the interest of the marriage or family.

Signature of Applicant

Exhibit 3

Send Inquiries To: (Merchant's Name and Address)

Account No. Billing Date

NOTICE: See reverse side for important information.

Previous Balance \$	-Payments \$	-Credits \$	=Adjusted Balance \$
+ FINANCE CHARGE \$	+ New Purchases \$		= New Balance \$

Purchases/Payments/Credits

Date	Quantity	Description	Amount

Minimum Amount Due:

To avoid additional FINANCE CHARGE pay New Balance by _____

Pay This Amount of New Balance

To the Adjusted Balance we apply a Periodic Rate of 1½% (ANNUAL PERCENTAGE RATE 18%) to compute the FINANCE CHARGE. The Adjusted Balance is the Previous Balance less all payments and credits made since the last billing date.

BILLING RIGHTS SUMMARY

In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us (on a separate sheet) at (address) (the address shown on your bill) as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information

- * Your name and account number.
- * The dollar amount of the suspected error.
- * Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

Wisconsin Rural Development Center, Inc.



216 W. Main St.
Mount Horeb, WI 53572
608/437-5971

TESTIMONY BEFORE THE SENATE AG COMMITTEE ON A.B. 329

Presented by the Wisconsin Rural Development Center

18 March 1998

I would like to thank the committee for the opportunity to testify before you on AB 329. I am here today representing the Wisconsin Rural Development Center (WRDC). We are a 250 member-based farm advocacy organization. Before I begin, I want to express my appreciation to those members of the Assembly who provided amendments to A.B. 329. As it was first proposed, the bill would have gutted any and all farmer protections under the Wisconsin Consumer Act (WCA).

For over 20 years, the WCA has served to protect family farmers by requiring all creditors to disclose rates and terms to borrowers and follow strict guidelines regarding debt collection and repossession practices. Wisconsin is one of the few remaining states to preserve borrower protections under the Act and I think we should all be proud of that fact.

However, even with the compromises reached in the Assembly, we believe this bill will have a negative impact on already financially troubled family farmers. For many of these farmers, The WCA is the last line of defense against unfair loan a debt collection practices. No other law, federal or state currently holds creditors accountable to an obligation of "good faith" in dealing with their farm customers.

Having farmed full-time during the last farm crisis of the mid 1980s, I know from first hand experience how critical access to affordable and reasonably-structured credit can be to our the survival of our state's family farmers. Today, farmers are facing another crisis. Low commodity, cull cow and milk prices have combined to significantly reduce cash income for farmers. Wisconsin is currently losing a record 5 farms per day. As more and more farmers struggle to cover operating costs, pay family living expenses and make scheduled loan repayments, AB 329 couldn't come at a worse time.

Critics of the WCA have stated the law is outdated and needs to be revised. To a certain extent we would agree. However, the bill before you goes far beyond minor revision -- it would

totally strip farm borrowers of the few remaining rights they have under the law. AB 329 would remove caps on default charges; any restrictions on security interests taken in secured property; allow creditors to redefine when a loan is in default; and, perhaps most damaging to farm customers, gut procedures for the reasonable and orderly repossession of secured farm property. This bill is clearly one sided. On the one hand, AB 329 maintains and reinforces creditors rights and lessens creditor obligations. On the other hand, it denies farm customers any and all rights under the law.

Over the years, the Wisconsin Rural Development Center has worked directly with hundreds of farmers to restructure debt, prevent foreclosures and advise on bankruptcy options. Over the last 10 years, a large share of the cases we have worked on have directly involved the WCA. It is clear from our own experience that the WCA is the only and last line of defense many farmers have against unfair credit and debt collection practices. Although the majority of creditors act in good faith regarding their farm customers, abuses nevertheless exist. Here are several common problems faced by farm borrowers which I hope will illustrate the importance of keeping agricultural protections in the act:

- ◆ Failure by creditors to fulfill verbal agreements to provide credit or to write loans per verbally negotiated credit terms.
- ◆ The lack of loan disclosure with regard to closing costs, rates and/or loan transaction fees
- ◆ The impositions of stringent or excessive credit practices involving closing costs, credit terms and collection practices.
- ◆ Unsatisfactory performance by creditors in processing credit requests, informing borrowers of all possible credit options and excessive loan closings and administrative costs.
- ◆ The refusal by creditors to remove liens or delinquent accounts from credit reports once loans have been satisfied.
- ◆ Forgeries on loan papers.

To cite several specific examples which would no longer be protected under the WCA if A.B. 329 were to pass:

- ◆ Farmers reported to our office that they were charged fees in excess of \$2,000 for contracting costs for Farm Service Agency guarantees — even though bank loan officers implied that no fees would be charged. Since this bank was the farmer's primary creditor, they were hesitant to refuse to pay for fear of retaliation by the bank.
- ◆ Unsecured creditors (feed mills, farm suppliers, veterinarians) regularly charge interest on delinquent accounts even though no signed agreement exists to pay additional charges. Many farmer patrons stated they felt obligated to pay these costs even though they are not legally obligated -- fearing an implied or overt threat by the supplier that they will no longer provide services or credit to the customer.
- ◆ Several farmers reported to us that they were charged for a creditor's inventory check of secured property, even though these costs were not disclosed (most banks cover these costs). Again, farmers were afraid to raise the issue for fear of retaliation.
- ◆ We have received several calls from farm borrowers that creditors had refused to remove liens on secured property or judgements on credit reports once a debt had been satisfied. There only recourse was to seek legal action.
- ◆ Farmers have stated that creditors have repossessed cattle and machinery without due process — in one case the farmer left for the day and came back to find all his cattle gone.

We believe the revisions now being proposed under AB 329 would lead to an increase in these types of "predatory" lending practices by creditors. Subprime lenders are currently making billions of dollars financing auto and housing loans to low-income borrowers -- often with devastating consequences to customers. In some cases, home owners are being charged exorbitant interest rates and fees on loan defaults. Many of our state's farmers are considered low-income. Because of lower net worth, limited income and repayment ability, these borrowers often find it difficult to obtain favorable and affordable credit terms. Low-income farm borrowers are often subject to more stringent collateral and underwriting criteria, are charged higher than average interest rates and have shortened repayment terms on loan agreements. Critics of the WCA have stated the law prevents offering more flexible underwriting and terms on loans. Perhaps it does, but the sword cuts both ways. Without the protections afforded under the WCA, what will prevent more of these lenders from moving into the lucrative farm market and preying on desperate farm families?

AB 329 has one purpose: to make debt collection easier for banks, implement dealers and agricultural suppliers. The WCA has been, and is now, working for our state farmers. We are unaware of any ground swell by farmers to remove agricultural protections from the Act. Before you give final consideration to sending this bill to the floor for a vote, I think it is important to ask who A.B. 329 really benefits. Clearly, it is not the Wisconsin farmer.



Wisconsin National Farmers Organization

March 18, 1998

Chairperson Alice Clausing &
Members of the Senate Agriculture & Environmental Resources Comm.

Comments concerning AB 329

Attached are the comments and feeling of the three thousand farmer members of the Wisconsin National Farmers Organization. I regret that I was unable to stay to personally testify before this committee. I hope that my written testimony can be entered into the record.

Sincerely,

Ron R. Statz

Director of Membership Services

The Wisconsin Consumer Act was passed in March, 1972 as the most sweeping consumer protection legislation in this state's history. It was passed based upon the support of a coalition of consumer and farm groups including National Farmers Organization and Wisconsin Farmers Union. It was passed to eliminate and prevent harsh and abusive credit practices and to make the consumer and small farmers more aware and knowledgeable of the nature of their credit transactions. Creditors did not oppose the legislation but worked with the consumer groups to produce agreeable legislation that provided a workable consumer credit package in Wisconsin. The Wisconsin Consumer Act has provided protection to consumers and farmers for 25 years without major legislative changes.

The Act defines a consumer as a customer who "seeks or acquires real or personal property, services, money or credit for personal, family, household or agricultural purposes." While the Act does not generally cover business transactions, agricultural transactions are included. The enacting legislators felt that small farmers needed the same protections as did other consumers. The Act does not extend to transactions in which the credit exceeds \$25,000, an amount which has not changed since 1972. Inflation over 25 years has eroded the number of transactions covered by the Act. Had the Act been adjusted for inflation, the Act today would apply to transactions not exceeding approximately \$75,000.

The proposed legislation seeks to eliminate all Consumer Act protection from agricultural transactions. National Farmers Organization opposes this legislation.

Before taking a position on this legislation, the questions NFO asked were: What protection to farmers or impositions on creditors are being given up? Secondly, are these items of benefit to farmers?

The implications of the Consumer Act are broad-spread. The Consumer Act restricts the maximum rates of interest on consumer transactions and also requires disclosures or agreements before such rates of interest are imposed. It also defines otherwise denoted charges as interest even though the creditor may not have defined them as such. Delinquency charges are limited to 5% and may not be collected until a payment is at least 10 days late and can only be collected once, instead of multiple times, if a payment remains unpaid for several months.

Charges on deferrals of payments are limited. Finance charges on refinancing and consolidation of loans are restricted. Prepayment penalties, previously common, are eliminated in most cases. Unearned interest must be rebated if an account is prepaid.

The Consumer Act also requires disclosure and that agreements take certain forms of writing. In order to be enforceable the Consumer Credit Transaction must be in writing and be clear and conspicuous. Copies of the documents supporting the transaction must be provided to the consumer. With respect to credit sales transactions other than an open-ended credit plan, the finance terms must be signed by the consumer and dated. The writing must not be in small print and must contain disclaimers concerning unfilled blanks, reading the contract, rights to prepay, rights to a refund of unearned finance charges, and rights to a copy of the contract. Copies must be provided to the customer upon request without charge. Personal obligations must be explained. Unfilled-in blanks are prohibited. Guarantors must be given copies of the agreements as must the primary customer. Customers are entitled to receipts for payments and, upon request, must be given a statement showing payments previously made. With open-ended credit plans the customer can request and must be furnished copies or accountings of previous purchases, finance charges or other transactions. Also, certain fees other than interest must be disclosed to the customer.

The Consumer Act also contains limitations on certain agreements and practices. "Balloon" payments are generally prohibited because they lure customers into making initially affordable payments only to be hit with an unmanageable "balloon" payment at the end of the loan term, thus resulting in defaults. To the extent "balloon" payments are allowed, certain disclosures are required. There are limitations on loan terms, in number of years, depending on the size of the loan. Assignments of earnings must be revocable at the option of the consumer. If a merchant sells a consumer a defective product and then assigns the note to a bank or finance company for collection, the consumer can assert the same defenses against the bank or finance company that he could against the original seller of the defective product. The consumer must be notified if his loan is assigned.

Upon default, attorneys' fees are generally limited to 5% of the amount due at judgment or \$100 prior to judgment. Excessive attorneys' fees are eliminated. Default charges are limited to the reasonable expenses associated with the disposition of the goods. Rebates and discounts between merchants and financiers for customer referrals are prohibited. Waivers of consumer rights under the Consumer Act may not be contained in the loan documents. A loan cannot be divided into multiple transactions in order to obtain higher finance charges. Door-to-door transactions in which the merchant is outside of its normal place of business must contain a 3 day rescission/cancellation provision. This is because transactions in the home or on the farm are perceived to be particularly onerous, invasive and coercive.

Collection remedies are also regulated. Coercion or threats in collection activities are prohibited. Communication with third parties are limited. A "default" is defined as 2 regularly scheduled payments being unpaid for greater than 10 days. A default cannot be declared upon being one payment late for only one day, as it could in the past. Notice of defaults and a 15-day opportunity to cure must be provided. Unless a customer voluntarily surrenders the collateral, the creditor must get a court order in order to secure the possession of collateral. If a payment is missed and the farmer drives his pickup truck, the loan collateral, into town to go shopping and leaves it unattended, the creditor cannot drive it away in the meantime. A farmer's cattle, collateral on a defaulted loan, cannot be picked up by the creditor from a pasture. These practices regularly occurred before the Consumer Act. To recover the collateral, the lender must sue the customer and provide him with an opportunity to present to a court any defenses he may have.

Upon the commencement of an action by a creditor to recover possession of collateral the debtor must be provided an opportunity to redeem the property by making certain payments. Deficiency judgments for the amounts remaining after the collateral is disposed of are limited.

In addition to prohibitions on creditors, there are teeth in the enforcement remedies. Customers are given remedies to enforce their rights by being awarded court-ordered damages of a maximum of \$1,000 per violation, or actual damages, plus actual attorneys' fees.

The prohibitions provided by the Wisconsin Consumer Act were in reaction to harsh, abusive, unfair and overreaching activities which went unabated for years by consumer creditors. The restrictions were enacted as a reaction to and as a prohibition of conduct of creditors. It is alluring, but naive, to believe consumers, including small farmers, no longer need these protections since the abuses have now been eliminated by legislation. However, you can be assured, that once the legislative prohibitions are removed the abusive practices will return.

Creditors cannot claim that these restrictions are prohibitive from a cost stand-point given record profits by banks and loan companies. The rush of mergers is evidence that the consumer loan business remains a money-maker for lenders.

Advocates of the proposed changes have not presented any compelling basis for removal of these protections. Instead of being eliminated, the protections of the Act should be increased by (i) raising the maximum amount of consumer transactions to greater than \$25,000 to adjust for inflation since 1972 (I approximate that to be \$75,000), and (ii) applying these restrictions to all credit transactions affecting small businesses and not just consumer and agricultural transactions.

There is no justifiable reason to remove from the books protections which farmers and consumers fought long and hard to secure and which have worked well for 25 years. NFO opposes this proposal.

Wisconsin Rural Development Center, Inc.



216 W. Main St.
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However, even with the compromises reached in the Assembly, we believe this bill will have a negative impact on already financially troubled family farmers. For many of these farmers, The WCA is the last line of defense against unfair loan a debt collection practices. No other law, federal or state currently holds creditors accountable to an obligation of "good faith" in dealing with their farm customers.

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- ◆ Farmers reported to our office that they were charged fees in excess of \$2,000 for contracting costs for Farm Service Agency guarantees — even though bank loan officers implied that no fees would be charged. Since this bank was the farmer's primary creditor, they were hesitant to refuse to pay for fear of retaliation by the bank.
- ◆ Unsecured creditors (feed mills, farm suppliers, veterinarians) regularly charge interest on delinquent accounts even though no signed agreement exists to pay additional charges. Many farmer patrons stated they felt obligated to pay these costs even though they are not legally obligated -- fearing an implied or overt threat by the supplier that they will no longer provide services or credit to the customer.
- ◆ Several farmers reported to us that they were charged for a creditor's inventory check of secured property, even though these costs were not disclosed (most banks cover these costs). Again, farmers were afraid to raise the issue for fear of retaliation.
- ◆ We have received several calls from farm borrowers that creditors had refused to remove liens on secured property or judgements on credit reports once a debt had been satisfied. There only recourse was to seek legal action.
- ◆ Farmers have stated that creditors have repossessed cattle and machinery without due process — in one case the farmer left for the day and came back to find all his cattle gone.

We believe the revisions now being proposed under AB 329 would lead to an increase in these types of "predatory" lending practices by creditors. Subprime lenders are currently making billions of dollars financing auto and housing loans to low-income borrowers -- often with devastating consequences to customers. In some cases, home owners are being charged exorbitant interest rates and fees on loan defaults. Many of our state's farmers are considered low-income. Because of lower net worth, limited income and repayment ability, these borrowers often find it difficult to obtain favorable and affordable credit terms. Low-income farm borrowers are often subject to more stringent collateral and underwriting criteria, are charged higher than average interest rates and have shortened repayment terms on loan agreements. Critics of the WCA have stated the law prevents offering more flexible underwriting and terms on loans. Perhaps it does, but the sword cuts both ways. Without the protections afforded under the WCA, what will prevent more of these lenders from moving into the lucrative farm market and preying on desperate farm families?

AB 329 has one purpose: to make debt collection easier for banks, implement dealers and agricultural suppliers. The WCA has been, and is now, working for our state farmers. We are unaware of any ground swell by farmers to remove agricultural protections from the Act. Before you give final consideration to sending this bill to the floor for a vote, I think it is important to ask who A.B. 329 really benefits. Clearly, it is not the Wisconsin farmer.

if there are problems
offering certain credit
products, couldn't we
amend the law to address
those problems instead
of completely taking ag-
transactions out?

— Credit Act for farmers ←



WISCONSIN FEDERATION OF COOPERATIVES • 30 West Mifflin Street, Suite 401 • Madison, WI 53703 • Phone (608) 258-4400

Memorandum

DATE: **March 18, 1998**

TO: **Members, State Senate Committee on
Agriculture and Environmental Resources**

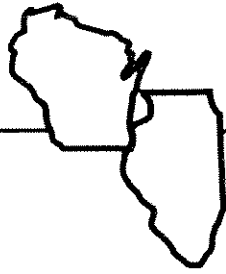
FROM: **John Manske, Government Relations
Director**

RE: **Support for Assembly Bill 329**

On behalf of WFC members active in the agricultural credit arena, I **urge you to support Assembly Bill 329**. In the Assembly, WFC worked to advance Assembly Amendment 2 to AB 329. AA 2, which was adopted, will continue to provide the partial exclusion from Wisconsin Consumer Act provisions that Farm Credit Services (FCS) currently enjoys. The amendment was necessary because some transactions that FCS is involved with fall outside of the traditional definition of agricultural purpose lending, such as home lending in communities below 2,500 population. Also, borrowers with loans made by Farm Credit entities are protected by a federally mandated set of borrower rights.

With the above issue addressed, WFC believes that agri-business transactions of \$25,000 or less should be governed by the general business laws that govern those in excess of \$25,000. Almost all states and the federal government have decided to not treat agri-business credit as consumer credit. At a time of national and global competition in the agricultural goods marketplace, it seems unwise to continue the WCA's application to agricultural credit transactions, if additional cost and restrictions accompany important agricultural purchases such as machinery. Thank you for your consideration of this recommendation.

MIDWEST



EQUIPMENT DEALERS ASSOCIATION

13 Odana Court • Madison, Wisconsin 53719 • 608-276-6700 • Fax 608-276-6719
Mailing Address: P.O. Box 44364 • Madison, Wisconsin 53744-4364

March 18, 1998

Committee on Agriculture and Environmental Resources
Wisconsin Senate

Re: *Support for Assembly Bill 329*

The Midwest Equipment Dealers Association ("MEDA") is the trade association representing farm equipment dealerships throughout Wisconsin as well as Illinois. MEDA supports AB 329 removing agricultural transactions from the Wisconsin Consumer Act.

MEDA's members sell and service farm equipment and are in contact daily with the Consumer Act. Over the years, MEDA has provided instruction on compliance with the Consumer Act and has fielded hundreds of questions from members on the Act. No law has created greater compliance problems for our members nor has any other law generated special paperwork to the extent of the Consumer Act.

Simply put, the Consumer Act does not fit our industry or its needs. This is why, to the best of our knowledge, only one other state treats agricultural transactions as consumer transactions. The numerous problems we have encountered include:

1. Forms and Computer Software. Wisconsin has barely over 200 farm equipment dealerships. Because dealer numbers have been declining, it is not economical to prepare forms and computer software just for Wisconsin dealers. Financing forms are prepared in the industry for national markets thus leaving Wisconsin dealers without readily available forms and software regarding Consumer Act Compliance. Even our association cannot prepare or market a single set of forms or software to all of our members since we represent dealers in two states.
2. Diversity of Customers. Under the present law, only one segment of a dealer's customers are considered "consumers" thus leaving dealers with varying requirements. Only individuals purchasing equipment or service for agricultural purposes are covered by the Act. This excludes corporate farms as well as lumber companies, construction companies and others who purchase equipment or service for non-agricultural purposes. Dealers have to maintain separate types of accounts and separate paperwork only for individual farmers.

*Serving Farm, Industrial, Dairy, Farmstead Mechanization,
and Outdoor Power Equipment Dealers throughout Illinois and Wisconsin*



AFFILIATE OF NORTH AMERICAN EQUIPMENT DEALERS ASSOCIATION



3. Open Accounts. In order for a dealer to allow a farmer to pay later for a repair, whether the farmer wants to pay in installments or the dealer wants a reasonable finance charge, the Consumer Act requires the dealer to produce the same paperwork as a bank offering to open a mastercard account. Attached to this statement is summary of form requirements from the former Office of the Commissioner of Banking showing the extreme detail. Such requirements may be workable for banks granting a mastercard, but they do not work for a farm equipment dealership called upon to make quick repairs when a farmer's combine has gone down during harvest. If a dealership is not equipped with all of the proper forms, the result is that credit cannot be extended.

Equipment dealers do not want to remove agricultural transactions from the Consumer Act so they can charge more interest or exact harsh terms. They simply are not equipped like banks to meet all of the paperwork requirements. If a farmer does not have cash to pay for a repair they would like to agree to take installment payments with a reasonable finance charge like they do with their non-consumer customers.

Finally, dealers would like to avoid collection problems on their customer accounts. Typically, the Consumer Act is used by certain debtors to avoid debts when dealers attempt collection. Recently we saw a dealer file a small claims action to collect on an unpaid repair account using simple small claims forms. The farmer in question hired an attorney who moved to dismiss the action, not because the account was not due, but because the dealer had failed to meet technical pleading requirements in sec. 425.109 of the Consumer Act. To a great extent, the Consumer Act is used in agricultural transactions as technical defenses to legitimate debts.

Farms are businesses and need credit from dealers to operate just like other businesses need credit from suppliers and service providers. The needs of farms are different from those of a consumer wanting to finance a television or stereo system. Enacting AB 329 will remove roadblocks which have been established to providing farmers with their credit needs. The Consumer Act has not worked for agricultural transactions and has impeded business more than it has helped. AB 329 is good legislation.

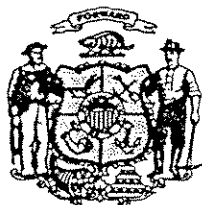
Thank you for this opportunity to address this legislation.

MIDWEST EQUIPMENT DEALERS
ASSOCIATION, INC.

By: Gary W. Manke
Gary W. Manke
Executive Vice President

By: Gary L. Antoniewicz
Gary L. Antoniewicz
Legal Counsel

Tommy G. Thompson
Governor
Roby E. Sherry
Commissioner



Mailing Address
P.O. Box 7876
Madison, Wisconsin 53707-7876
(608) 266-1621
(608) 267-6889 (Fax)

State of Wisconsin Office of Commissioner of Banking

131 West Wilson Street • Madison, Wisconsin 53707

Sample Forms for Open End Credit Plans Under the Wisconsin Consumer Act

The Wisconsin Consumer Act covers extensions of credit for personal, family, household or agricultural purposes in which the amount financed is \$25,000 or less. In an open end credit plan (1) the creditor permits the customer to make purchases from time to time as the plan provides, (2) the customer may pay the balance in full or in installments and (3) a finance charge may be computed from time to time on the outstanding unpaid balance. The forms used in such plans must contain specific disclosures to comply with the Wisconsin Consumer Act which incorporates the Federal Truth-In-Lending Act requirements and the Wisconsin Marital Property Act, if the applicant is married.

A finance charge on an account cannot be assessed unless there is a written agreement between the creditor and the customer permitting such a charge and provided the agreement and all billing statements sent to the customer by the creditor include all of the disclosures required. To be liable for payment of an open end credit plan, the customer must sign any one of the following:

1. The open end credit agreement setting forth all of the terms of the credit plan,
2. A credit application which expressly states that each person signing the application will be obligated according to the terms of the open end credit plan and provided the customer receives a copy of the open end credit agreement before that customer makes any charges on the account, or
3. A transaction receipt which expressly states that each person signing the receipt will be obligated according to the terms of the open end credit agreement and provided the customer receives a copy of the open end credit agreement before making any charges on the account.

The sample forms which are enclosed are designed for use in connection with a consumer credit plan which assesses a finance charge at the maximum rate permitted under the Wisconsin Consumer Act. A lesser rate may be assessed. The Wisconsin Consumer Act does not cover extensions of credit for business purposes. While the enclosed forms may be used for transactions for business purposes, by doing so the account would then be subject to the provisions of the Wisconsin Consumer Act.

Application - Exhibit 1

Under §422.308 of the Wisconsin Statutes, each credit application for an open end credit plan is required to include the following information:

1. The annual percentage rate. Also, if applicable, the possibility and effect of an increase in the rate;
2. When the finance charge begins to accrue on a transaction;
3. Whether an annual fee is charged and, if so, the amount;
4. Any other charges or fees which may be assessed on the account.

The information required by §422.308 is in addition to the Federal Truth-In-Lending disclosures required in open end credit and must be separately disclosed. The information may be incorporated in the application form or given on a separate sheet of paper attached to the application. If a creditor does not use an application form, the information must be given the customer on a separate sheet of paper before opening the account.

If a married person whose spouse is not a party to the account applies for an account, the creditor should have the applicant separately sign a statement that the account will be used in the interest of the marriage or family. Also, the applicant should provide the name of the spouse who is not applying for credit and the spouse's address. This information will be necessary to notify the non-applicant spouse of the account if credit is granted.

Charge Account Agreement and Disclosures - Exhibit 2

Before the first transaction is entered into, the creditor must disclose to the customer in a single written statement the following:

1. The conditions under which a finance charge may be imposed and any time period within which the balance may be paid to avoid a finance charge;
2. The method of determining the balance on which a finance charge may be imposed;
3. The method of determining the amount of the finance charge;
4. The periodic rate as well as the corresponding annual percentage rate of the finance charge (The terms "finance charge" and "annual percentage rate" when required to be disclosed must be more conspicuous);
5. The minimum payment required (The amount in the sample form is just one example);
6. The amount of any other charges in addition to a finance charge that may be imposed;

7. Any security interest which will be taken;
8. The customer's rights to dispute billing errors (The long form notice is on the back of the sample form).

A copy of the agreement must be given to the customer or customers.

Tattletale Notice

If the applicant for the open end credit plan is married and only one spouse has applied for credit, §766.56(3)(b), Stats., requires a written notice to the non-applicant spouse of the extension of credit. The notice must be sent before any payment is due and addressed to the non-applicant spouse or addressed to both spouses if the applicant says that they reside at the same address. The notice requirement may be satisfied by sending any one of the following:

1. A copy of the document evidencing the obligation;
2. A copy of the credit disclosures given to the applicant;
3. A brief statement of the nature of the credit extended.

Billing Statement - Exhibit 3

The creditor is required to provide the customer with a billing statement containing specific disclosures in any billing cycle at the end of which the customer has a debit or credit balance in excess of \$1.00 or where a finance charge is imposed. The billing statement must contain:

1. The outstanding balance at the beginning of the billing cycle;
2. Identification of the transactions posted to the account;
3. The amount and date of each payment, refund, rebate or adjustment posted to the account;
4. The amount of the finance charge using the term "Finance Charge";
5. The periodic rate or rates of finance charge and the corresponding annual percentage rate of the finance charge using the term "Annual Percentage Rate";
6. The balance on which the finance charge was computed and a statement as to how that balance was determined;
7. The closing date of the billing cycle and the outstanding balance in the account on that date;
8. Any time period the customer may have to pay the balance to avoid an additional finance charge.

On the back of the form is the short form billing error rights statement. A merchant may either provide the customer with the long form statement at least once each calendar year or as an alternative provide the short form on or with each billing statement.

Page 4

Notification - Exhibit 4

If a finance charge is imposed in excess of 12% per annum, the creditor must notify this office of that fact and, depending on the volume, pay a fee.

The credit disclosures for open end credit are contained in §226.6 and §226.7 of Regulation Z which was issued by the Federal Reserve Board to implement the Federal Truth-In-Lending Act. § 422.301, Wis. Stats., incorporates these requirement. The Wisconsin Marital Property Act is found in Chapter 766, Wis. Stats.

We hope that this information and these forms will aid you in understanding the application of the Wisconsin Consumer Act to open end credit. If we can be of further assistance to you, please do not hesitate to contact us.

Exhibit 1

Examples of the type of information which must be given with the application or separately if no application form is used.

RETAIL OPEN ACCOUNTS

ANNUAL PERCENTAGE RATE: <u>18%</u>
FINANCE CHARGE: Finance Charge begins to accrue on a transaction which is not paid in full within 25 days after the first billing of the charge.
ANNUAL FEE: None
OTHER CHARGES: 50¢ minimum finance charge on balances less than \$33.34.

HOME EQUITY LOAN UNDER THE WISCONSIN CONSUMER ACT

ANNUAL PERCENTAGE RATE: 4% over the bank prime loan rate as reported in the money rates section of the Wall Street Journal on the first Tuesday of the previous month. The rate charged may vary and will increase or decrease as the prime rate changes. However, the rate charged will not exceed 18% or as allowed by statute. A change in the rate will result in an increase or decrease in the minimum payment due on the account.
FINANCE CHARGE: The finance charge is assessed as of the date credit is extended.
ANNUAL FEE: The annual fee is \$15.00.
OTHER CHARGES: <ol style="list-style-type: none">1. \$2.00 for failure to pay minimum payment.2. 50¢ minimum finance charge on balances less than \$33.34.3. Appraisal Fee: \$100.00.4. Title Insurance: \$150.00.5. Recording Fee: \$8.00.

Complete this section if married and spouse has not signed the application:

Name and Address of Spouse: _____

I agree that this account will be used in the interest of the marriage or family.

Signature of Applicant

Exhibit 3

Send Inquiries To: (Merchant's Name and Address)

Account No.

Billing Date

NOTICE: See reverse side for important information.

Previous Balance \$	-Payments \$	-Credits \$	=Adjusted Balance \$
+ FINANCE CHARGE \$	+ New Purchases \$		= New Balance \$

Purchases/Payments/Credits

Date	Quantity	Description	Amount

Minimum Amount Due:

To avoid additional FINANCE CHARGE pay New Balance by _____

Pay This Amount of New Balance

To the Adjusted Balance we apply a Periodic Rate of $1\frac{1}{2}\%$ (ANNUAL PERCENTAGE RATE 18%) to compute the FINANCE CHARGE. The Adjusted Balance is the Previous Balance less all payments and credits made since the last billing date.

BILLING RIGHTS SUMMARY

In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us (on a separate sheet) at (address) (the address shown on your bill) as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information

- * Your name and account number.
- * The dollar amount of the suspected error.
- * Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.



ROBERT W. WIRCH
STATE SENATOR TWENTY-SECOND DISTRICT

TALKING POINTS ON SS SB 3 (AKA AB329)

HISTORY:

- This is a bad bill.
- Passed Assembly on a 75-22 vote, had a hearing in your Senate Agriculture & Environmental Resources committee, and died for lack of support.
- This provision also failed in Budget Adjustment Bill in Joint Finance on a 7-9 vote.
- **Editorial comment:** Now that Don Stitt (Lobbies for John Deere Credit) has gone into Governor Thompson's office with a bushel full of money, the Governor has included it in his special session call.
- Farm Groups **do not** support this bill. WI Farmers Union (WI Farmers Union) and Ron Statz (National Farmers Organization) oppose the bill and see no reason why farmers should give up these protections. WI Rural Development Center (Bill Wenzel) testified strongly against this bill when it had a hearing. See his comments attached!
- Speaking against the bill:
 1. Bill Wenzel, WI Rural Development Center
 2. Stephen Meili, Center for Public Representation
- Registering against the bill
 - *Ron Statz, NFO
 - *Joanne Ricca, AFL-CIO
- Supporters of this bill include:
- Speaking in favor:
 - I. Edward Heiser, Deere Credit Corp.
 - II. Gary Antoniewicz, Midwest Equipment Dealers Assoc.
 - III. Pat Mack, John Deere Credit
 - IV. John Manske, WI Federation of Cooperatives
 - V. Dawn Beck, Case Credit Corporation
 - VI. Laurence Schwartz, Gehl Company
 - VII. John Brown, John Deere Credit
- Registering in favor:
 1. Senator Bob Welch
 2. Michael Vaughn, WI Bankers Assoc.

COMMENTS:

- The Wisconsin Consumer Act (WCA) was created in 1972 to prevent abusive credit practices and to make consumers more aware and knowledgeable about their credit transactions.
- At the time the law was created, there was a farm crisis, and it was determined that farmers deserved and needed the same protection consumers got under this law.
- Farm organizations pushed to get this provision in place. They see no reason why farmers should give up this protection now. They want to retain this protection.

State Capitol, P.O. Box 7882, Madison, Wisconsin 53707-7882 • 608-267-8979

Toll-Free Office Hotline: 1-888-769-4724

Email: Sen.Wirch@legis.state.wi.us • Fax: (608) 267-0984

Home: 3007 Springbrook Road, Kenosha, Wisconsin 53142 • (414) 694-7379

- If this bill passes, such protections provided by the WCA as: regulation of debt collection, repossession, and default practices would no longer apply to such transactions.
- We are losing five dairy farmers a day. There is a farm crisis now, just like in 1972 when this law was enacted. This bill pulls a blanket of consumer protection out from under farmers when they most need help from creditors.
- This bill is being passed in a whirlwind of activity when most farmers may not even know about it because they are working in their fields.
- This is another example of special interests calling the shots and Republicans catering to their whims.