

2005 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB180)

Received: 09/09/2005

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **David Zien (608) 266-7511**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Zien@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Cash discounts for consumer credit card purchases

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/1	mkunkel 09/14/2005	wjackson 09/16/2005	pgreensl 09/16/2005	_____	lnorthro 09/16/2005	lnorthro 09/16/2005	

FE Sent For:

<END>

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/?	mkunkel	1 wly 9/16	9/14 p8	9/14 scb			

FE Sent For:

<END>

Kunkel, Mark

From: Searing, Eric
Sent: Thursday, September 08, 2005 2:06 PM
To: Sklansky, Ron; Kunkel, Mark; Egide, Paul; Blodgett, Tony

Attachments: Federal law Truth in Lending.pdf; DFI Credit Card Surcharges.pdf; DFI opinion Cash discounts for gas.htm; SB-180.pdf



Federal law Truth in Lending.p...



DFI Credit Card Surcharges.pdf...



DFI opinion Cash discounts for...



SB-180.pdf (11 KB)

Gentleman,

I would like to facilitate a meeting with all of you regarding SB 180 in our office at 15S tomorrow if possible at 10 AM, can you all please let me know if this works?

Thanks,

Eric Searing
Senator Dave Zien's Office

226
12 CFR s. ~~262~~.12 (f) "Discounts; tie-in arrangements. **No card issuer may, by contract or otherwise:**

(1) **Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or**

(2) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed." (Emphasis added.)

"Card issuer" means "a person that issues a credit card or that person's agent with respect to the card." 12 CFR s. 226.2 (7). "Credit card" means "any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit. Charge card means a credit card on an account for which no periodic rate is used to compute a finance charge." 12 CFR s. 226.2 (15). "Credit" means "the right to defer payment of debt or to incur debt and defer its payment." 12 CFR s. 226.2 (14).

Exemptions from Truth in Lending Regulation Z (12 CFR 226.3):

"(a) Business, commercial, agricultural, or organizational credit. (1) An extension of credit primarily for a business, commercial or agricultural purpose.

(2) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.

(b) Credit over \$ 25,000 not secured by real property or a dwelling. An extension of credit not secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer, in which the amount financed exceeds \$ 25,000 or in which there is an express written commitment to extend credit in excess of \$ 25,000.

(c) Public utility credit. An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. The financing of durable goods or home improvements by a public utility is not exempt.

(d) Securities or commodities accounts. Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(e) Home fuel budget plans. An installment agreement for the purchase of home fuels in which no finance charge is imposed.

(f) Student loan programs. Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.)”

46 FR 20848

FEDERAL RESERVE SYSTEM

AGENCY: Board of Governors of the Federal Reserve System.

12 CFR Part 226

Truth in Lending; Revised Regulation Z

[Reg. Z; Docket No. R-0288]

46 FR 20848

April 7, 1981

"SUMMARY: The Board is adopting a complete revision of its Regulation Z (Truth in Lending). The revision implements the Truth in Lending Simplification and Reform Act (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221) and substantially alters the requirements and the structure of the current regulation. Within the last year, the Board has twice published proposed revisions of the regulation (45 FR 29702, May 5, 1980, and 45 FR 80648, December 5, 1980) and received more than 1000 comments on those proposals."

"(f) *Discounts; tie-in arrangements.* Paragraph (f)(1) provides that card issuers may not prohibit merchants from offering discounts for payment in cash instead of by credit card. This paragraph is unchanged from the December proposal. It differs from the current regulation in that it is phrased in terms of offering a discount to "a consumer," rather than to "all customers," in order to make clear that prohibiting discounts for particular customers would be as impermissible as prohibiting discounts for all customers of a merchant."

Credit Card Surcharges

Paul Egide, Wisconsin Department of Financial Institutions
December 2001

When a merchant accepts a payment made by a credit card the merchant must pay between 1.5% to 6% of the purchase amount for the processing of the credit card payment. This payment goes to the merchant's bank and to the card processors such as Visa, MasterCard and American Express. Some merchants like to pass on this cost to the consumer by assessing a fee, commonly referred to as a surcharge, whenever a credit card is used. Many consumers ask if merchants can legally assess such surcharges.

In Wisconsin, a merchant can legally assess a surcharge if the customer is made aware of the surcharge, either orally or in writing, before the customer becomes obligated to the merchant. It is possible, however, that the contract between the merchant and Visa/MasterCard prohibits the merchant from assessing such a charge. The contract, however, cannot prevent the merchant from offering a discount to consumers who pay by means other than a credit card.

The argument in favor of surcharges is that the expense of processing credit cards is passed on to those customers that cause the expense to be incurred. If surcharges were not allowed, the merchant might pass on the cost of processing credit cards to all consumers by increasing all purchase prices. In this case, consumers paying cash or by check would be penalized because they would be paying for part of the cost of processing credit cards.

A more detailed discussion follows:

Federal Law - Allows the assessment of a credit card surcharge if the retailer discloses the amount of the surcharge, or an explanation of how the surcharge will be determined, prior to its imposition. This must be disclosed before the consumer becomes obligated for the property or services that may be paid for by use of the credit card, pursuant to §226.9(d) Regulation Z of the Truth in Lending Act (TILA). For example, a restaurant must disclose the surcharge before the consumer eats a meal or by a hotel before the consumer stays overnight. The disclosure of the surcharge can be made either orally or in writing. While the federal law allows a surcharge it does not prohibit a card issuer from preventing a merchant, by contract or otherwise, from assessing a surcharge. However, a card issuer may not prohibit any merchant from offering a discount to a consumer to induce the consumer to pay by means other than a credit card, pursuant to §167(a), TILA. Previously §167(a)(2), TILA prohibited surcharges, however, this law expired in 1984.

Wisconsin Law - Allows the assessment of a credit card surcharge, however, the same disclosure requirements of the federal law exist under Wisconsin law. §422.301, Wis. Stats.

Laws of Other States - Since 1984, when the federal law ban on credit card surcharges expired, the following ten states enacted laws prohibiting surcharges: California, Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, New York, Oklahoma and Texas.

Contract with Credit Card Processors - Before a merchant can accept credit cards the merchant must enter into a contract with a processor, such as Visa, MasterCard or American Express. In these contracts Visa and MasterCard usually prohibit surcharges, and American Express discourages them. American Express, however, does prohibit "discrimination" against its card, therefore, if a merchant accepts Visa and MasterCard, and cannot impose a surcharge under those companies' rules, the merchant may not discriminate against American Express by imposing a surcharge. If a surcharge is improperly being assessed the consumer's only remedy is to contact the card processor. Repeated abuses may lead to the cancellation of the contract and the end of the ability of the merchant to accept credit cards. While a surcharge may be prohibited by contract, the contract may not prohibit any merchant from offering a discount to a consumer to induce the consumer to pay by means other than a credit card, pursuant to §167(a), TILA.

From: Marcott, Susan
Sent: Tuesday, August 16, 2005 9:14 AM
To: Hogan, John
Subject: FW: Cash discounts for gas

Importance: High

Attachments: Credit Card Surcharges.pdf

From: Egide, Paul
Sent: Monday, August 15, 2005 4:43 PM
To: Sen.Zien
Cc: Carlson, Kathryn
Subject: RE: Cash discounts for gas

I believe retailers can legally offer discounts for cash/checks. It is possible that the contract between the retailer and card processor (e.g. Visa) prohibits the retailer from assessing a surcharge if the consumer uses a credit card, however, the contract cannot prevent a retailer from offering a discount to a consumer that uses cash. Please see attachment.

<<Credit Card Surcharges.pdf>>

Paul Egide, Director
Office of Consumer Affairs
Wisconsin Department of Financial Institutions
PO Box 8041, Madison WI 53708
608-267-3518
paul.egide@dfi.state.wi.us

-----Original Message-----

From: Sen.Zien [<mailto:Sen.Zien@legis.state.wi.us>]
Sent: Monday, August 15, 2005 12:44 PM
To: Egide, Paul
Subject: Cash discounts for gas

Paul,

We're drafting legislation (SB 180) to allow Wisconsin gas retailers to offer cash discounts to consumers.

Fed law that says that a discount can be offered to a consumer who will pay for gas with cash, check, (means other than a credit card) but Wisconsin gas retailers are prohibited from doing so.

Why can't Wisconsin gas retailers offer cash discounts to consumers?

I've attached a document, Federal law truth in lending.

Thanks,
Dave Zien
State Senator

23rd District

<< File: Federal law Truth in Lending.pdf >>



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0204/1

MDK:.....

Wlj

By 9/21

SENATE SUBSTITUTE AMENDMENT ,
TO 2005 SENATE BILL 180

Today please

Gen

1 AN ACT ...; relating to: cash discounts for purchases.

Analysis by the Legislative Reference Bureau

Under current federal law, with certain exceptions, a credit card issuer may not, by contract or otherwise, prohibit a person who honors a credit card from offering a customer a discount to induce the customer to pay by cash, check, or similar means, rather than by use of a credit card or its underlying account, for the purchase of property or services. The exceptions pertain to transactions involving the following: 1) business, commercial, agricultural, or organization credit, rather than consumer credit; 2) credit extended to entities, rather than natural persons; 3) amounts in excess of \$25,000; 3) public utility credit; 4) security or commodity accounts; 5) home fuel budget plans; or 6) student loans.

This bill creates the same requirement under state law in the Wisconsin Consumer Act (WCA). Because the requirement is created in the WCA, the requirement applies only to consumer transactions involving \$25,000 or less. The WCA has additional exceptions that are comparable to the exceptions under federal law pertaining to agricultural or organization credit and transactions involving securities. The bill's requirement is enforced by the Department of Financial Institutions, which has authority under current law to enforce the WCA.

