



2005 ASSEMBLY BILL 333

April 15, 2005 - Introduced by Representatives BERCEAU, BLACK, LEHMAN, HINES, POCAN and TRAVIS, cosponsored by Senator RISSER. Referred to Committee on Financial Institutions.

1 **AN ACT to repeal** 425.302; **to renumber and amend** 138.052 (9), 411.103 (1) (e),
2 421.202 (6), 425.303 and 429.104 (9); **to amend** 138.09 (3) (e) 1. a., 422.421 (12),
3 425.301 (3), 425.304 (intro.), 425.304 (1), 426.110 (14) and 428.101 (3); and **to**
4 **create** 138.052 (9) (b), 411.103 (1) (e) 1., 411.103 (1) (e) 2., 421.202 (6) (b),
5 425.303 (2m), 428.101 (4), 429.104 (9) (a) 1., 429.104 (9) (a) 2. and 429.104 (9)
6 (b) of the statutes; **relating to:** transactions excluded from and remedies under
7 the Wisconsin Consumer Act and authority of licensed lenders and consumer
8 leases under the Uniform Commercial Code.

Analysis by the Legislative Reference Bureau

Scope of Wisconsin Consumer Act

Under current law, a transaction that is in an amount of \$25,000 or less and that is entered into for personal, family, or household purposes is generally subject to the Wisconsin Consumer Act (consumer act). The consumer act provides obligations, remedies, and penalties that current law generally does not require for other transactions. In addition to other exceptions, except for certain high-cost loans, the consumer act does not apply to certain transactions relating to a first lien residential mortgage that originally had a principal amount in excess of \$25,000.

This bill expands the application of the consumer act to include a personal, family, or household transaction that is in an amount of \$75,000 or less. In addition,

ASSEMBLY BILL 333

this bill narrows the mortgage refinancing exception to the consumer act to exclude certain transactions relating to a first lien residential mortgage with an original principal amount in excess of \$75,000.

The bill also makes changes to the licensed lender law to conform to the foregoing changes to the consumer act. (The licensed lender law requires licensure of certain lenders who are not banks, savings banks, savings and loan associations, or credit unions.)

Uniform Commercial Code

Wisconsin's version of the Uniform Commercial Code treats the parties to a commercial lease differently from the parties to a consumer lease that is in the amount of \$25,000 or less. For example, a lessee under a consumer lease may recover attorney fees if a court holds that a portion of the lease resulted from the unconscionable conduct of the lessor. Under this bill, the different treatment applies to a consumer lease that is in the amount of \$75,000 or less.

Remedies under the Wisconsin Consumer Act

Under current law, the consumer act generally provides three different remedies to customers affected by violations of the act. The first remedy is \$25 plus actual damages. The bill deletes this remedy. The second remedy under current law is \$100 plus actual damages. The bill changes this remedy to \$500 plus actual damages and applies this remedy to all violations that are subject to the first remedy under current law. The third remedy under current law is twice the amount of the finance charge in the applicable transaction, subject to a minimum of \$100 and a maximum of \$1,000, or actual damages. The bill changes the foregoing minimum to \$500 and the foregoing maximum to \$5,000.

Current law also imposes a \$100,000 limit on recoveries in class actions against merchants who violate the consumer act. This bill changes the limit to \$500,000 or 1 percent of a merchant's net worth, whichever is greater.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 138.052 (9) of the statutes, as affected by 2003 Wisconsin Act 257,
2 is renumbered 138.052 (9) (a) and amended to read:

3 138.052 (9) (a) Chapters 421 to 427 and subch. I of ch. 428 do not apply to the
4 refinancing, modification, extension, renewal or assumption of a loan which had an
5 original principal balance in excess of \$25,000 if the unpaid principal balance of the
6 loan has been reduced to \$25,000 or less and the refinancing, modification,

ASSEMBLY BILL 333

1 extension, renewal, or assumption takes place before the effective date of this
2 paragraph [revisor inserts date].

3 **SECTION 2.** 138.052 (9) (b) of the statutes is created to read:

4 138.052 (9) (b) Chapters 421 to 427 and subch. I of ch. 428 do not apply to the
5 refinancing, modification, extension, renewal, or assumption of a loan which had an
6 original principal balance in excess of \$75,000 if the unpaid principal balance of the
7 loan has been reduced to \$75,000 or less and the refinancing, modification,
8 extension, renewal, or assumption takes place on or after the effective date of this
9 paragraph [revisor inserts date].

10 **SECTION 3.** 138.09 (3) (e) 1. a. of the statutes is amended to read:

11 138.09 (3) (e) 1. a. A business engaged in making loans for business or
12 agricultural purposes ~~or, loans before the effective date of this subd. 1. a. [revisor~~
13 ~~inserts date], exceeding \$25,000 in principal amount, or loans on or after the effective~~
14 ~~date of this subd. 1. a. [revisor inserts date], exceeding \$75,000 in principal~~
15 ~~amount, except that all such loans having terms of 49 months or more are subject to~~
16 sub. (7) (gm) 2. or 4.

17 **SECTION 4.** 411.103 (1) (e) of the statutes is renumbered 411.103 (1) (e) (intro.)
18 and amended to read:

19 411.103 (1) (e) (intro.) "Consumer lease" means a lease that a lessor regularly
20 engaged in the business of leasing or selling makes to a lessee who is an individual
21 and who takes under the lease primarily for a personal, family, or household purpose,
22 if the total payments to be made under the lease contract, excluding payments for
23 options to renew or buy, do not exceed \$25,000. the following:

24 **SECTION 5.** 411.103 (1) (e) 1. of the statutes is created to read:

ASSEMBLY BILL 333

1 411.103 (1) (e) 1. For a lease entered into before the effective date of this
2 subdivision [revisor inserts date], \$25,000.

3 **SECTION 6.** 411.103 (1) (e) 2. of the statutes is created to read:

4 411.103 (1) (e) 2. For a lease entered into on or after the effective date of this
5 subdivision [revisor inserts date], \$75,000.

6 **SECTION 7.** 421.202 (6) of the statutes is renumbered 421.202 (6) (a) and
7 amended to read:

8 421.202 (6) (a) Consumer credit transactions in which the amount financed
9 exceeds \$25,000, motor vehicle consumer leases in which the total lease obligation
10 exceeds \$25,000 or other consumer transactions in which the cash price exceeds
11 \$25,000, if the consumer credit transaction, motor vehicle consumer lease, or other
12 consumer transaction was entered into before the effective date of this paragraph
13 [revisor inserts date];

14 **SECTION 8.** 421.202 (6) (b) of the statutes is created to read:

15 421.202 (6) (b) Consumer credit transactions in which the amount financed
16 exceeds \$75,000, motor vehicle consumer leases in which the total lease obligation
17 exceeds \$75,000, or other consumer transactions in which the cash price exceeds
18 \$75,000, if the consumer credit transaction, motor vehicle consumer lease, or other
19 consumer transaction was entered into on or after the effective date of this paragraph
20 [revisor inserts date];

21 **SECTION 9.** 422.421 (12) of the statutes is amended to read:

22 422.421 (12) PENALTY. A violation of this section is subject to s. 425.304, except
23 that failure to give the notice required under sub. (5) (c) does not subject a creditor
24 to the penalty provided in s. ~~425.302~~ or 425.304.

25 **SECTION 10.** 425.301 (3) of the statutes is amended to read:

ASSEMBLY BILL 333

1 425.301 **(3)** Notwithstanding any other section of chs. 421 to 427, a customer
2 shall not be entitled to recover specific penalties provided in s. ~~425.302 (1) (a)~~,
3 425.303 (1) (a), 425.304 (1) or 425.305 (1) if the person violating chs. 421 to 427 shows
4 by a preponderance of the evidence that the violation was not intentional and
5 resulted from a bona fide error notwithstanding the maintenance of procedures
6 reasonably adapted to avoid any such error.

7 **SECTION 11.** 425.302 of the statutes is repealed.

8 **SECTION 12.** 425.303 of the statutes is renumbered 425.303 (1), and 425.303 (1)
9 (intro.) and (a), as renumbered, are amended to read:

10 425.303 **(1)** (intro.) A person who commits a violation to which this section
11 applies is liable to the customer in an amount equal to all of the following:

12 (a) ~~One~~ Five hundred dollars; ~~and.~~

13 **SECTION 13.** 425.303 (2m) of the statutes is created to read:

14 425.303 **(2m)** This section applies to all violations for which no other remedy
15 is specifically provided.

16 **SECTION 14.** 425.304 (intro.) of the statutes is amended to read:

17 **425.304 Remedy and penalty for certain violations.** (intro.) A person who
18 commits a violation to which this section applies is liable to the customer in an
19 amount equal to the greater of the following:

20 **SECTION 15.** 425.304 (1) of the statutes is amended to read:

21 425.304 **(1)** Twice the amount of the finance charge in connection with the
22 transaction, except that the liability under this subsection shall not be less than \$100
23 nor greater than ~~\$1,000;~~ \$5,000.

24 **SECTION 16.** 426.110 (14) of the statutes is amended to read:

ASSEMBLY BILL 333**SECTION 16**

1 426.110 (14) A merchant shall not be liable in a class action for specific
2 penalties under s. 425.302(1)(a), 425.303 (1) (a), 425.304 (1), 425.305 (1) or 429.301
3 (1) for which it would be liable in individual actions by reason of violations of chs. 421
4 to 427 and 429 or of conduct prescribed in sub. (2) unless it is shown by a
5 preponderance of the evidence that the violation was a willful and knowing violation
6 of chs. 421 to 427 and 429. No recovery in an action under this subsection may exceed
7 \$100,000 \$500,000 or 1 percent of the merchant's net worth, whichever is greater.

8 **SECTION 17.** 428.101 (3) of the statutes, as affected by 2003 Wisconsin Act 257,
9 is amended to read:

10 428.101 (3) Loans made on or after November 1, 1981, and before the effective
11 date of this subsection [revisor inserts date], by a creditor to a customer and which
12 are secured by a first lien real estate mortgage or equivalent security interest if the
13 amount financed is \$25,000 or less and if the loan is not subject to subch. II.

14 **SECTION 18.** 428.101 (4) of the statutes is created to read:

15 428.101 (4) Loans made on or after the effective date of this subsection
16 [revisor inserts date], by a creditor to a customer and which are secured by a first lien
17 real estate mortgage or equivalent security interest if the amount financed is
18 \$75,000 or less and if the loan is not subject to subch. II.

19 **SECTION 19.** 429.104 (9) of the statutes is renumbered 429.104 (9) (a) (intro.)
20 and amended to read:

21 429.104 (9) (a) (intro.) "Consumer lease" or "lease" means a lease entered into
22 in this state that transfers the right of possession and use by a natural person of a
23 motor vehicle primarily for a personal, family, household or agricultural purpose, for
24 a period of time exceeding 4 months, if the total lease obligation, excluding any option
25 to purchase or otherwise become owner of the motor vehicle at the expiration of the

ASSEMBLY BILL 333

1 consumer lease, does not exceed \$25,000. ~~The term does not include a credit sale, as~~
2 ~~defined under 12 CFR 226.2 (a) (16).~~ the following:

3 **SECTION 20.** 429.104 (9) (a) 1. of the statutes is created to read:

4 429.104 (9) (a) 1. For a lease entered into before the effective date of this
5 subdivision [revisor inserts date], \$25,000.

6 **SECTION 21.** 429.104 (9) (a) 2. of the statutes is created to read:

7 429.104 (9) (a) 2. For a lease entered into on or after the effective date of this
8 subdivision [revisor inserts date], \$75,000.

9 **SECTION 22.** 429.104 (9) (b) of the statutes is created to read:

10 429.104 (9) (b) "Consumer lease" or "lease" does not include a credit sale, as
11 defined under 12 CFR 226.2 (a) (16).

12 **SECTION 23. Initial applicability.**

13 (1) The treatment of sections 138.09 (3) (e) 1. a. and 428.101 (3) and (4) of the
14 statutes, the renumbering and amendment of sections 138.052 (9), 411.103 (1) (e),
15 421.202 (6), and 429.104 (9) of the statutes, and the creation of sections 138.052 (9)
16 (b), 411.103 (1) (e) 1. and 2., 421.202 (6) (b), and 429.104 (9) (a) 1. and 2. and (b) of
17 the statutes first apply to transactions entered into on the effective date of this
18 subsection.

19 (2) The treatment of sections 422.421 (12), 425.301 (3), 425.302, 425.304 (intro.)
20 and (1), and 426.110 (14) of the statutes, the renumbering and amendment of section
21 425.303 of the statutes, and the creation of section 425.303 (2m) of the statutes first
22 apply to violations committed on the effective date of this subsection.

23 **SECTION 24. Effective date.**

