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Chapter DFI−Bkg 80

WISCONSIN CONSUMER ACT

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Note: Chapter Bkg 80 was renumbered Chapter DFI−Bkg 80 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498.

DFI−Bkg 80.01 Wisconsin consumer act rules; organization. In order to facilitate the organization of rules promulgated under the Wisconsin consumer act and to assist interested persons in relating the rules to the act, each rule shall refer to specific sections of the act. The rules shall be published so as to retain the numerical order of the sections of the act to which they refer. However, each statutory reference does not constitute the sole statutory authority for any particular rule.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.05 General definitions; consumer credit transactions. Acquisition of a leasehold interest in real property by a customer from a merchant is not a consumer lease within the meaning of s. 421.301 (11), Stats. For laws governing the leasing of real estate see ch. 704, Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.06 General definitions; customer. A person seeks or acquires real or personal property, services, money or credit for personal, family, household or agricultural purposes within the meaning of s. 421.301 (17), Stats., when such real or personal property, services, money or credit is to be used primarily, that is 50% or more, for one or more of these purposes.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.07 General definitions; finance charge. A delinquency or default charge is not a finance charge within the meaning of s. 421.301 (20), Stats., if imposed for actual unanticipated late payment, delinquency, default or other such occurrence. However, when a merchant's billings are not paid in full within a stipulated time period and under such circumstances the merchant does not, in fact, regard such accounts in default (For example, by customarily failing to institute collection activity or by continuing to extend credit) and imposes charges periodically for delaying payment of such accounts from time to time until paid, the charge so imposed comes within the definition of a finance charge and the credit so extended comes within the definition of open−end credit.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.08 General definitions; official fees. Official fees within the meaning of s. 421.301 (26) (a), Stats., shall include any fee charged by a register of deeds or the secretary of state for the filing or recording of any instrument of conveyance or other document for the purpose of perfecting a security interest for which the parties have contracted.

Note: See also s. DFI−Bkg 80.352.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.09 General definitions; required deposit balance. The definition of "required deposit balance" in s. 421.301 (38), Stats., together with the definition of "amount financed" requires that the required deposit balance be deducted from the amount financed for the purpose of calculating the finance charge and making disclosures. The purpose is to accurately disclose to the customer the amount of funds or credit of which he or she will have actual use, and thus the creditor is required to deduct from the funds advanced any compensating balance the creditor requires to be maintained with him or her. Consequently, the term does not apply to a deposit balance or deposit investment maintained by the customer with a financial

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institution other than the creditor, which is taken by the creditor as collateral for the advance made. The reference to "any investment" refers to deposit−type investments such as "share accounts" maintained with savings and loan associations, credit unions or mutual savings banks. The term "investment" in s. 421.301 (38), Stats., does not include investment securities of the type defined in ch. 408, Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; correction made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1991, No. 432.

DFI−Bkg 80.201 Finance charge for consumer credit transactions; per diem charge. Charges under s. 422.201, Stats., on consumer transactions other than those pursuant to an open−end plan where the finance charge is computed on the declining unpaid principal balance from time to time outstanding may be computed on actual unpaid balances at 1/360th of the annual rate for the actual number of days outstanding provided the use of this method shall be disclosed conspicuously together with all other disclosures required by subch. III of ch. 422, Stats., and provided the finance charge obtained by the application of this method does not exceed the maximum charge permissible under the act.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.22 Finance charge for consumer credit transactions; credit cards and coupon books. With respect to a consumer credit transaction involving the receipt or acceptance by a customer of any credit card, plate, merchandise certificate, letter of credit, coupon book or other like credit device, except gift certificates purchased by a customer for use by a person other than the customer, the unpaid balance in such transaction within the meaning of s. 422.201, Stats., shall include only the cash value of any money, property, labor or services, not including the credit device itself, acquired by the actual use or redemption of such credit device together with authorized additional charges. For example, where a customer receives a coupon book or several merchandise certificates in the amount of $200 and subsequently redeems one coupon or certificate in the amount of $25, the customer's unpaid balance upon which a finance charge may be assessed is limited to the $25 cash value of the goods or services which the customer has actually received. This rule shall not apply to merchandise certificates acquired by a customer pursuant to an open−end plan if:

(1) Acquisition of certificates is not a condition of the extension of credit to the customer,

(2) Unused certificates may be returned at any time for full credit to the customer's account,

(3) The acquisition cost is not billed to the customer for at least one month, and does not bear a finance charge for a minimum period of 2 months, after the certificate is acquired, and

(4) The customer is given notice, at least 15 days prior to the imposition of a finance charge, of the date by which any unused certificates must be returned to avoid imposition of finance charges on the price thereof.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.221 Finance charge for consumer credit transactions; actuarial method−compounding. The term "actuarial method" as used in s. 422.201, Stats., shall mean the method by which that portion of each payment not applicable to an escrow account is applied first to any finance charge or permitted additional charge accrued from the time of any prior payment or from the time credit is extended and the remainder, if any, is applied to the unpaid amount financed. With the exception of the calculation of delinquency charges, amounts remitted may be applied to interest and charges and then to principal on the most delinquent installment due and then to interest and charges on the next installment proceeding to more current instalments until the amount remitted is exhausted. For purposes of computing the finance charge under s. 422.201 (10m), Stats., a merchant may calculate the finance charge on an unpaid balance which includes unpaid finance charges.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; am. Register, July, 1983, No. 331, eff. 8−1−83; correction made under s. 13.93 (2m) (b) 7., Stats., Register April 2002 No. 556.

DFI−Bkg 80.23 Maximum charges; precision and rounding. When preparing charts and tables, programming electronic devices or performing numerical calculations in connection with ss. 422.201, 422.204, and 422.209, Stats., any number of decimal places may be used to express the multiplying factor, provided that such factor shall be carried out at least to the nearest ten−thousandth or if expressed as a percent to the nearest one−hundredth of a percent. Where the number of decimal places used exceeds the minimum, the final digit may be rounded. In any case, the same multiplier must be used consistently with regard to all calculations in the transaction, including computation of interest, deferrals or rebates. Where the multiplier complies with this rule, the final product may be rounded to the nearest cent provided that products of 5 mills and over shall be rounded upward.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.241 Finance charge for consumer credit transactions; minimum finance charge. Section 422.201 (9), Stats., provides for the election of a minimum finance charge by any merchant, including licensees under subch. I of ch. 218, Stats., who are limited to the election provided by this section notwithstanding the minimum time price differential provisions of s. 218.01 (6) (b) 7., Stats.

Note: Section 218.01 (6) (b) 7. was repealed by 1995 Wis. Act 329.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; am. Register, July, 1983, No. 331, eff. 8−1−83.

DFI−Bkg 80.26 Additional charges; cost of insurance. Disclosure of the cost of insurance as an additional charge under s. 422.202 (1) (b) and (c), Stats., must include written notice to the customer of the term of such insurance together with the dollar charge for such term. Where the term of the insurance is the same as the term of the transaction a disclosure of that fact shall be an adequate disclosure of the term of the insurance.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; am. Register, October, 1980, No. 298, eff. 11−1−80.

DFI−Bkg 80.261 Additional charges; equivalent security interest. The term"equivalent security interest" as used in s. 422.202 (2) (b), Stats., shall include a seller's interest under a land contract or a first lien deed of trust, and a second mortgage where there are no intervening liens and the mortgagee holds the first mortgage on the subject property. For cross reference application of this definition, see also ss. 422.303 (4), 422.306 (2), 422.408 (6), 422.409 (2) and 422.411 (2), Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.262 Additional charges; title examinations. Title examinations within the meaning of s. 422.202 (2) (a), Stats., shall include the fee for a written title opinion prepared by an attorney upon examination of the abstract of title to the real property which is the subject of the consumer credit transaction on which the charge is assessed.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; am. Register, October, 1980, No. 298, eff. 11−1−80.

DFI−Bkg 80.263 Additional charges, appraisals, copies. A creditor shall provide the customer, before any payment is due, with a copy of any appraisal for which the customer, in connection with a consumer credit transaction, is assessed an additional charge pursuant to s. 422.202 (2) (d), Stats.

History: Cr. Register, October, 1980, No. 298, eff. 11−1−80.

DFI−Bkg 80.264 Credit insurance; signature placement. A customer desiring consumer credit insurance shall separately sign his or her name pursuant to s. 422.202 (2s) (a) 1. b., Stats., on the same page as all other required insurance disclosures

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required under s. 422.202 (2s) (a) 1., Stats.; on a line specifically designed for the signature.

History: Cr. Register, February, 1993, No. 446, eff. 3−1−93.

DFI−Bkg 80.271 Delinquency charges; deferred installment. Where the parties have agreed to a delinquency charge in accordance with s. 422.203, Stats., and instalments have subsequently been deferred, the merchant may collect a delinquency charge on any deferred installment which is not paid in full on or before the 10th day after its deferred due date unless such installment is again deferred.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.28 Deferral charges; unilateral deferral at no cost. Notwithstanding s. 422.204, Stats., any number of the instalments may be deferred unilaterally by the creditor without the notice that would otherwise be required provided there is no charge for such deferral.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.281 Deferral charges; alternative computation. The methods for computing deferral charges described in s. 422.204 (1) (a) and (b), Stats., are alternatives and a creditor may elect to use either method to the extent that he or she can apply it to the particular transaction. However, if the transaction is not one to which s. 422.204 (1) (a), Stats., could apply, for example, because of irregular payments, then the creditor must compute the deferral pursuant to s. 422.204 (1) (b), Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; correction made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1991, No. 432;correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1993, No. 449.

DFI−Bkg 80.29 Deferral charges; "rule of 78". The portion of the precomputed finance charge attributable to the final installment of the original schedule of payments as used in s. 422.204 (1) (a), Stats., shall mean the pre−payment rebate calculated according to the Rule of 78 if the transaction is for a term of less than 37 months in which the amount financed is less than $5000 and entered into on or after August 1, 1987 or the actuarial method in all other cases, if the contract were prepaid in full on the payment date immediately preceding final originally scheduled maturity.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; am. Register, July, 1983, No. 331, eff. 8−1−83; am. Register, February, 1993, No. 446, eff. 3−1−93.

DFI−Bkg 80.30 Notice of non−performance. Written notice of non−performance by a customer pursuant to s. 422.207, Stats., shall be by personal delivery of such notice to the customer or by mailing such notice by regular, registered or certified mail to the customer's last known address. Where notice is by mail, notice shall be deemed given on the day of mailing. Unless otherwise demonstrated by either party a period of 10 days exclusive of the date on which notice is deemed given shall be presumptively a reasonable time within which to perform.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.301 Rebate on prepayment; irregular installment amounts or due dates. The unearned portion of the precomputed finance charge on consumer credit transactions described in s. 422.209 (3), Stats., having terms of less than 37 months in which the amount financed is less than $5000 and entered into on or after August 1, 1987 shall be computed in accordance with the provisions of s. 138.05 (2) (b), Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; am. Register, February, 1993, No. 446, eff. 3−1−93.

DFI−Bkg 80.311 General requirements and provisions; consummation. For the purpose of disclosing all information required by subch. III of ch. 422, Stats., a transaction shall be considered consummated at the time a contractual relationship is created between a merchant and a customer irrespective of the time of performance of either party.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.32 Disclosure customer copies. For purposes of s. 422.302 (3), Stats., documents which evidence the customer's obligation shall include documents which evidence an obligation to pay as well as those which evidence an obligation to perform including, but not limited to, a mortgage and a security agreement.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.321 Form requirements other than open−end—set off. As a condition to the exercise of a right of set off a merchant shall in accordance with s. 422.302, Stats., conspicuously disclose his or her right to apply any amounts owed by the merchant to the customer against any amounts owed by the customer to the merchant. No merchant shall exercise a right to set off prior to giving the customer notice of his or her right to cure any default, if applicable, and waiting the appropriate number of days in accordance with s. 425.105, Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; corrections made under s. 13.93 (2m) (b) 5. and 7., Stats., Register, December, 1991, No. 432.

DFI−Bkg 80.331 Form requirements other than open−end—microfilm copies. A creditor may retain copies of documents as required by s. 422.303 (5), Stats., by microfilm or other similar photographic process provided such creditor is able to reproduce individual permanent photo copies which retain substantially the same print size as the original document.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.34 Prohibition of blank writings. Blanks relating to price, charges or terms of payment which are inapplicable to a transaction must be filled in a manner which reveals their inapplicability. Pursuant to s. 422.304, Stats., a general clause or statement in a contract to the effect that spaces which are not filled in are inapplicable to the particular transactions does not satisfy the requirement of this section and may not be relied upon by the creditor.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.341 Notice to obligors. In addition to the language required by s. 422.305 (1), Stats., a merchant may include within the explanation of personal obligation a form number, the date of execution, instructions for completion, and a union printing label. Paragraph (a) of the explanation may provide that the obligation of the person signing it includes all extensions, renewals or deferrals of the particular transaction in which there is no advance of or increase in the amount of the principal or increase in the rate of finance charge.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; am. Register, October, 1980, No. 298, eff. 11−1−80.

DFI−Bkg 80.35 Notice to obligors; open−end accounts. In cases where a person assumes liability on an open−end account, paragraph (a) of the Explanation of Personal Obligation under s. 422.305, Stats., shall be modified to read as follows: "(a) You have agreed to pay amounts owing or to be owing in the future as a result of charges made by __(name of customer)__ on his or her charge account with __(name of creditor)__ in an amount not exceeding $ _____." Paragraph (b) of the Explanation must contain the following statement: "If you wish to terminate your guarantee with respect to future transactions, you must notify (name of creditor) in writing." An explanation of the form described in this rule will satisfy the requirements of s. 422.305, Stats., and no further notice or Explanation of Personal Obligation need be given the person with respect to subsequent individual purchases or loans on the account. However, in case of any subsequent change in the terms of the account which would increase or extend the contingent liability of the person, where the merchant was authorized to make unilateral changes from time to time under the original terms of the account, an explanation of such change must be given to the person in accordance with s. 422.415, Stats. Such notice shall conspicuously disclose that if the person

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wishes to terminate the guarantee with respect to future transactions, the person must notify the creditor in writing.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; am., Register, October, 1980, No. 298, eff. 11−1−80.

DFI−Bkg 80.351 Customer liability; open−end credit. In order to obligate a person for an obligation arising out of an open−end credit plan, the merchant must pursuant to s. 422.305, Stats., obtain the signature of that person on the writing evidencing the consumer credit transaction. Compliance with this rule requires that the customer to be held contractually liable sign one of the following:

(1) An open−end credit agreement setting forth all of the terms of the open−end credit plan including the credit disclosures required by s. 422.301, Stats.,

(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 agreement referred to in sub. (1), provided the creditor mails or delivers to each customer who signs the application 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 referred to in sub. (1), provided the creditor has mailed or delivered a copy of the open−end credit agreement to that customer before that customer makes any charges on the account.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; r. and recr., Register, October, 1980, No. 298, eff. 11−1−80.

DFI−Bkg 80.352 Receipts; accounting; evidence of payment; release of any security interest. The creditor may satisfy an obligation to release any security interest under s. 422.306 (4), Stats., by either 1) recording the necessary instrument and forwarding the same to the customer or designee by mail or by return on the instrument or 2) by delivering the necessary instrument fully completed and executed to the customer's designee, but in no instance to the customer, for recording. The recording or filing fee may be treated as an official fee within the meaning of s. 421.301 (26), Stats. Where the transaction is secured by a lien on a motor vehicle and the title is not in the possession of the creditor, the creditor may satisfy the requirements of this subsection by mailing a completed release of lien to the customer together with an envelope addressed to the department of motor vehicles, bureau of vehicle registration, postage prepaid, and a letter of instruction advising the customer to forward the release and title to the department to obtain release of the secured party's interest.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; corrections made under s. 13.93 (2m) (b) 5. and 7., Stats., Register, December, 1991, No. 432.

DFI−Bkg 80.353 Refund anticipation loan; before the customer enters into a refund anticipation loan. "Before the customer enters into a refund anticipation loan" as used in s. 422.310 (1) (intro.), Stats., means prior to the customer being asked to sign an application containing a loan agreement or a loan agreement where there is no application for a refund anticipation loan.

History: Cr. Register, September, 1994, No. 465, eff. 10−1−94.

DFI−Bkg 80.354 Refund anticipation loan; reasonable length of time to expect refund. The anticipated length of time called for in s. 422.310 (1) (f), Stats., in which the customer can reasonably expect to receive a tax refund shall be no more than 14 days.

History: Cr. Register, September, 1994, No. 465, eff. 10−1−94.

DFI−Bkg 80.355 Refund anticipation loan; estimated annual percentage rate. (1) For the purpose of s. 422.310 (1) (h), Stats., the requirement to disclose the estimated annual percentage rate shall be fulfilled by doing one of the following:

(a) Calculating the rate pursuant to 12 CFR 226.17 (c) (2) for the anticipated amount of the refund and the length of time within which it can reasonably be expected the tax refund will be received as a result of an electronically filed tax return as determined under s. DFI−Bkg 80.354.

(b) Distributing a chart titled "representative range of loan amounts" with headings for: total loan amount, amount financed, finance charge, estimated payment period, and annual percentage rate. The representative loan amounts shall be in $300 increments starting with $300 and ending with $3,000 and represent the anticipated refund amount.

(2) The disclosures shall be made in accordance with 12 CFR 226.18.

(3) For the purpose of calculating the annual percentage rate at the time the loan is actually made, the disclosure shall be based upon the actual amount of the loan and the length of time within which it can reasonably be expected the tax refund will be received as a result of the electronically filed tax return as determined under s. DFI−Bkg 80.354.

History: Cr. Register, September, 1994, No. 465, eff. 10−1−94.

DFI−Bkg 80.356 Refund anticipation loan; charges or fees for electronically filing an income tax return. For the purposes of s. 422.310 (1) (b) and (2), Stats., charges or fees assessed by a creditor, including a loan arranger, for checking tax return information, data entry of the tax return information, and costs of transmitting the tax return by computer modem are included in the charges and fees for electronically filing an income tax return.

History: Cr. Register, September, 1994, No. 465, eff. 10−1−94.

DFI−Bkg 80.36 Receipts; accounting; evidence of payment; customer inquiries. Should a customer or an authorized representative question in writing any bill or statement of a merchant, or of an assignee where notice of assignment pursuant to s. 422.409, Stats., has been given, such merchant or assignee shall in accordance with s. 422.306, Stats., respond specifically to the issue or dispute raised by the customer within 30 days of receipt of such inquiry, or, in the case of transactions evidenced by open−end credit plans not later than 2 complete billing cycles (in no event more than 90 days) from receipt of such inquiry. Inquiries made on an instrument of payment of [or] the returnable portion of the billing statement need not be acknowledged if the creditor conspicuously discloses this requirement on the statement or other disclosure to customers regarding the correction of billing errors. A reasonably disputed debt under s. 427.104 (1) (f), Stats., shall include an indebtedness questioned under this rule from the date of notice to the merchant to the date the merchant's response is made.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; am., Register, October, 1980, No. 298, eff. 11−1−80.

DFI−Bkg 80.361 Assignment of earnings prohibited; revocation. In any case where a merchant takes an assignment of earnings subject to s. 422.404, Stats., for payment or as security for payment of an obligation the assignment shall contain on its face a statement in substantially the following language: "THE CUSTOMER MAY TERMINATE THIS ASSIGNMENT AT ANY TIME WITHOUT PENALTY."

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.37 Notice of assignment; joint obligor customers. Where a consumer credit transaction involves joint obligor customers, one copy of a Notice of Assignment as described in s. 422.409, Stats., may be forwarded to all such customers who reside at the same last known address at the time the notice is given, if addressed to all such joint obligor customers. In all other cases a separate notice must be sent to each joint obligor

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customer. The same procedure shall be observed with respect to giving the following notices under the act: Notice of unilateral deferral, s. 422.204 (8), Stats.; Notice of non−performance, s. 422.207 (1), Stats.; Notice of right to cancel, s. 423.203, Stats.; Notice to cancel property insurance, s. 424.303 (1), Stats.; Notice of right to cure default, s. 425.104 (1), Stats.; the distribution of open−end credit agreements to potential customers pursuant to s. DFI−Bkg 80.351.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; am. Register, October, 1980, No. 298, eff. 11−1−80.

DFI−Bkg 80.371 Notice of assignment; address of customer. The notification of assignment under s. 422.409, Stats., shall be addressed to the last address furnished by any customer to the assignor if such address is different from the address contained in the contract. The same procedure shall be observed with respect to giving the following notices under the act: Notice of unilateral deferral, s. 422.204 (8), Stats.; Notice of nonperformance, s. 422.207 (1), Stats.; Notice of right to cancel, s. 423.203, Stats.; Notice to cancel property insurance, s. 424.303 (1), Stats.; Notice of right to cure default, s. 425.104 (1), Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.38 Restriction on liability in consumer lease. A reasonable charge for excess mileage in the case of a motor vehicle lease as established by reasonable standards of the industry as observed in the relevant market area with respect to the mileage and the rate per mile shall be considered a charge for damages to the leased property within the meaning of s. 422.412, Stats., provided that the mileage allowance and the charge per excess mile shall be conspicuously stated in the original lease agreement.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.391 Restrictions on security interest; proceeds. A security interest with respect to a consumer credit sale as described in s. 422.417 (1), Stats., may include repair or replacement parts in the property sold as well as proceeds of the property subject to s. 409.306, Stats., regarding proceeds.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.392 Waivers prohibited; dwelling. For the purposes of s. 422.419 (1) (a), Stats., the term "dwelling" shall include, any garage, shed, barn or other building on the premises whether attached or unattached.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.44 Consumer approval transaction; duty of customer. In any case where a customer gives notice of cancellation and the merchant fails to perform the merchant's obligation pursuant to s. 423.204, Stats., the duty of the customer under s. 423.205, Stats., to take reasonable care of the goods in the customer's possession shall cease 40 days after notice of cancellation is given.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; am., Register, October, 1980, No. 298, eff. 11−1−80.

DFI−Bkg 80.61 Cure of default; commencing legal action. The phrase"commence any action" as used in s. 425.105 (1), Stats., refers only to the commencement of legal proceedings in a court of law.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.62 Cure of default; date of notice and tender. For the purposes of s. 425.105 (2), Stats., notice of the customer's right to cure a default is deemed given on the date of mailing and the date of tender of performance shall be the date of mailing or personally delivering the amount of all unpaid instalments, deferral and delinquency charges which are due and unpaid.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.63 Exempt property; garnishee summons. In order to assist each employer in determining and applying the applicable wage exemption standard, in the case of any garnishment involving a consumer credit transaction governed by s. 425.106, Stats., the garnishee summons should bear the legend "Consumer Credit Transaction Garnishee Summons"placed opposite the identification of parties in the legend and the last paragraph of the form set forth in s. 812.04 (2), Stats., should be modified to conform with the requirements of s. 425.106 (1) (a), Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; am. Register, October, 1980, No. 298, eff. 11−1−80.

DFI−Bkg 80.64 Exempt property; medical services. For the purposes of s. 425.106, Stats., the term "medical services" shall include the cost of hospital accommodations.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.65 Exempt property; wages. Where an employee's pay period is one calendar week or less, the exempt wage under s. 425.106 (1) (a) 2., Stats., shall be equal to the exemption for an employee with the same number of exemptions paid on a calendar week basis as determined by the formula in this section regardless of the number of hours actually worked by the employee during such pay period. Where the employee's pay period is a multiple of whole calendar weeks (for example where the pay period is every 2 weeks, 3 weeks, or 4 weeks) the exempt wage is equal to the weekly rate determined by the formula in this subsection times the number of calendar weeks in such pay period. Where an employee's pay period is greater than one calendar week and is other than a multiple of whole calendar weeks (for example where the pay period is every 10 days, 15 days, or semi−monthly) the exempt wage is equal to the sum of the exemption for each calendar week plus an amount equal to one−seventh of the weekly rate for such employee for each additional day in such pay period.

Note: Section 425.106 (1) (a) was repealed and recreated by 1993 Wis. Act 80. There is no sub. (1) (a) 2.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.655 Exempt property; subsistence allowance. The term "unpaid earnings" in s. 425.106 (1) (a), Stats., means the customer's earnings remaining after all deductions required by law to be withheld. If the subsistence allowance described in s. 425.106 (1) (a) 1., Stats., is greater than the allowance described in s. 425.106 (1) (a) 2., Stats., less all deductions required by law to be withheld, the customer is entitled to the exemption described in s. 425.106 (1) (a) 1., Stats.

Note: Section 425.106 (1) (a) was repealed and recreated by 1993 Wis. Act 80. There is no sub. (1) (a) 1. and 2.

History: Cr. Register, October, 1980, No. 298, eff. 11−1−80.

DFI−Bkg 80.66 Body attachments. The term "warrant" as used in s. 425.113, Stats., refers to warrants issued pursuant to s. 816.05, Stats., and does not limit or effect the power of a court to issue an order or attachment pursuant to s. 816.03, Stats., where a person has failed to appear at a supplemental examination.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; am., Register, October, 1980, No. 298, eff. 11−1−80; am. Register, July, 1983, No. 331, eff. 8−1−83.

DFI−Bkg 80.67 Voluntary surrender of collateral. Pursuant to s. 425.204, Stats., a creditor may notify a customer of his or her right to voluntarily surrender the collateral. Such a notice will not be considered a request or demand pursuant to s. 425.204 (3), Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; corrections made under s. 13.93 (2m) (b) 5. and 7., Stats., Register, December, 1991, No. 432.

DFI−Bkg 80.68 Nonjudicial enforcement limited; surrender of collateral. Where a merchant requests or demands the return of collateral, after providing the customer with notice of default and opportunity to cure as required by s. 425.105, Stats., a release of the collateral by the customer is not a surrender

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under ss. 425.204 (3), and 425.206 (1) (a), Stats., if the merchant; 1) fails to provide a notice to the customer which clearly informs the customer of the right to a hearing on the issue of default before any repossession, unless the merchant perfects its right to take possession under s. 425.206 (1) (d), Stats.; 2) misrepresents any material fact or state of the law to the customer; or 3) violates any provision of ch. 427, Stats. The notice contained in s. 425.105 (1), Stats., is not required if the collateral has been abandoned by the customer.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; am. Register, October, 1980, No. 298, eff. 11−1−80; am. Register, July, 1983, No. 331, eff. 8−1−83; correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1993, No. 449; **CR 06−123: am. Register March 2007 No. 613, eff. 4−1−07.**

DFI−Bkg 80.69 Restrictions on deficiency judgments; amount owing. The phrase "amount owing at the time of default" as used in s. 425.209, Stats., shall mean the unpaid balance of the account excluding any unearned finance or additional charges but including any unpaid deferral or deficiency charges.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.70 Restrictions on deficiency judgments; repossession. For purposes of s. 425.209, Stats., the term "repossession" shall include action to recover collateral pursuant to s. 425.205, Stats., and possession of the collateral as a result of a surrender of the collateral as described in ss. 425.204 (3) and 425.206 (1) (a), Stats., where such surrender is not a voluntary surrender.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.71 Restrictions on deficiency judgments; renouncing rights in collateral. Prior to obtaining the statement of a customer renouncing rights in the collateral pursuant to s. 425.209 (2), Stats., the merchant shall notify the customer by written notice that by signing the statement the customer waives all rights to recover any surplus that may result from the sale of the collateral.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.80 Investigatory powers; merchant's records. Merchants shall maintain copies of records of all consumer transactions subject to the act and all advertisements, printings, displays, publications or distributions the terms of which relate to the extension of consumer credit in order to permit an investigation pursuant to s. 426.106, Stats., for a period not less than that during which a customer may bring an action with respect to such transaction or advertisement as limited by s. 425.307, Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.81 Powers of administrator; penalty. The term "penalty" as used in s. 426.104 (4) (a), Stats., is limited to those statutory penalties referred to in ss. 425.302 (1) (a), 425.303 (1), 425.304 (1), 425.305 (1) and 426.301, Stats., and does not preclude a customer from obtaining judgment for actual damages sustained.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73.

DFI−Bkg 80.82 Powers of administrator; submission for approval. Acts, practices or procedures provided to the administrator pursuant to s. 426.104 (4) (b), Stats., shall be submitted as follows:

(1) The submission shall be typed or mechanically reproduced.

(2) The submission shall include an original and 3 copies submitted by personal delivery, registered mail or certified mail return receipt requested;

(3) The submission of a form to replace a previously submitted form shall denote all changes from the previously submitted form to be approved by underlining or setting forth in a conspicuous manner those changes on the submitted forms;

(4) The submitted form shall be accompanied by a cover letter explaining the purpose for the form and any changes from a previously submitted form to be approved.

History: Cr. Register, June, 1973, No. 210, eff. 7−1−73; r. and recr. Register, July, 1994, No. 463, eff. 8−1−94.

DFI−Bkg 80.85 Discrimination; unconscionable conduct. (1) DECLARATION OF POLICY. It is the declared policy of the state of Wisconsin that no person shall be discriminated against in the granting or extension of any form of credit, or in the capacity or privilege of obtaining any form of credit, on a prohibited basis. Such discrimination is hereby declared by the secretary of the department of financial institutions to be unconscionable conduct under authority of s. 426.108, Stats. The purpose of this rule is to eliminate discrimination in the granting of consumer credit on a prohibited basis and to outline steps by which merchants can avoid such unlawful conduct. This regulation shall not apply to merchants chartered by any Wisconsin administrative agency which issues a regulation prohibiting discrimination in the granting of consumer credit on a prohibited basis.

(2) UNCONSCIONABLE CONDUCT. Discrimination in the extension of consumer credit by a merchant to a customer on a prohibited basis shall be an unconscionable credit practice prohibited pursuant to s. 426.108, Stats. Discrimination in the extension of consumer credit on a prohibited basis shall mean any denial of credit, increase in the charge for credit, restriction on the amount or use of credit, a different application procedure or the application of different credit criteria based on a prohibited basis and shall include, but not be limited to:

(a) The application of different credit criteria resulting in less favorable treatment in the granting of credit to women,

(b) A requirement that a customer who is contractually liable reapply for credit upon a change in name or marital status or a termination of credit to a customer who is contractually liable following a change in the customer's name or marital status without evidence of an unfavorable change in the customer's credit worthiness,

(c) A refusal to grant credit to a qualified customer in that person's birth−given first name and surname or a birth−given first name and a combined surname,

(d) A requirement that a spouse co−sign the credit application, debt instrument, or other document signed by the applicant spouse unless such signature is required by statute or such requirement is imposed without regard to sex or marital status on all similarly qualified customers who apply for a similar type and amount of credit except that with respect to secured credit the signature of a spouse on a document necessary to create a valid lien, convey clear title or waive inchoate or survivorship rights to property, may be required where the merchant's standards of credit worthiness require without regard to the applicant's sex or marital status security or collateral as a condition of the extension of credit in the amount requested,

(e) To evaluate any source of income including maintenance, alimony and child support on any basis other than its amount, its regularity and the period of receipt as of the date of the application together with any particular factors affecting the likelihood of continued payment, and

(f) Requesting information about birth control practices or child bearing intentions or capability of any customer or customer's spouse.

(3) WRITTEN CREDIT POLICY. The management of each financial organization as defined in s. 71.04 (8) (a), Stats., each person or organization licensed under s. 138.09, Stats., and each credit card issuer shall adopt a detailed statement of its policy of nondiscrimination in extending consumer credit including its commitment to avoid the specific prohibited practices set forth in this regulation. This statement of policy shall be available to any customer upon request at each office where extensions of credit are made, except that in the case of credit card issuers, the state-

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ment shall be furnished upon request of an applicant directed to any office from which such cards are issued. A copy of such policy statement shall be filed with the office of the secretary of the department of financial institutions upon request by that office. Such written policy shall be applied impartially to each person seeking credit.

(4) NOTICE OF ACTION AND RETENTION OF RECORDS. Each merchant shall within a reasonable time after receiving a credit application notify the customer of action taken on the application and shall upon request provide a customer whose application has been denied with the reasons for such denial, including the fact that information supplied by the customer cannot be verified if that is the case. A record of all reasons for denial or a record of the denial form number and each alternative therein applied to the customer along with the credit application and all other related documentation shall be retained by the merchant in reasonable order accessible by reference to the name of the customer, for a period of 15 months from the date of notice of action on each credit application.

(5) DEFINITIONS. In this section:

(a) "Disability" means a physical or mental impairment that substantially limits one or more of the major life activities, a record of having such an impairment or being regarded as having such an impairment.

(b) "Prohibited basis" means any of the following:

1. Age provided the applicant has the capacity to enter into a binding contract, race, creed, religion, color, disability, marital status, sex, national origin, ancestry, sexual orientation, or membership in the military forces of the United States or this state.

2. That all or part of the applicant's income derives from any public assistance program.

3. That the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law.

History: Cr. Register, January, 1976, No. 241, eff. 2−1−76; correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1993, No. 449; CR 05−065: am. (1) and (2) (intro.), cr. (5) Register November 2005 No. 599, eff. 12−1−05.

DFI−Bkg 80.86 Unsolicited credit cards; unconscionable conduct. It is an unconscionable credit practice, pursuant to s. 426.108, Stats., for any credit grantor to issue a credit card in the name of any person under terms which purport to create the contractual liability of that person in any manner inconsistent with s. DFI−Bkg 80.351 unless the person to be held liable personally requested the creditor to issue the card and open the account.

History: Cr. Register, October, 1980, No. 298, eff. 11−1−80.

DFI−Bkg 80.87 Sale of credit card numbers; unconscionable conduct. It is an unconscionable credit practice, pursuant to s. 426.108, Stats., for any person to sell the credit card account numbers of any other person to another for any purpose.

History: Cr. Register, February, 1993, No. 446, eff. 3−1−93.

DFI−Bkg 80.88 Auto brokering. Pursuant to s. 426.108, Stats., it is an unconscionable credit practice for any person, who is not a party or assignee of a party to the lease contract, installment sales agreement or other security agreement, to assist in, cause, arrange or otherwise engage in an actual or purported transfer or assignment of a motor vehicle, where such transaction is not permitted under the terms of the lease contract, installment sales agreement or other security agreement.

History: Cr. Register, February, 1993, No. 446, eff. 3−1−93.

DFI−Bkg 80.90 Registration fees. The registration fee required to be paid pursuant to s. 426.202 (1m), Stats., shall be 0.006% of the year−end balance, as defined in s. 426.202 (1m) (a) 3., Stats., except the fee shall not be less than $25 nor greater than $2,800.

History: Emerg. cr. eff. 12−3−01; CR 02−001: cr. Register April 2002 No. 556, eff. 5−1−02.