

1979 Assembly Bill 58

Date published: **June 15, 1979**

CHAPTER 10, Laws of 1979

AN ACT to repeal 421.301 (20) (b) and 422.305 (3); to renumber 421.301 (20) (a) 1 to 8, 422.201 (8) to (11), 422.305 (4) to (6) and 422.413 (2); to consolidate and amend 421.301 (20) (intro.) and (a) (intro.); to amend 421.203 (1), 422.203 (4) (b), 422.207 (1) and (3), 422.301, 422.302 (3), 422.303 (1), 422.305 (title), (1), (2), (3) and (4), as renumbered, 422.413 (1), 425.103 (2) (a), 425.206 (1) (b) and (c), 425.207 (2) and 425.208 (1) (intro.); and to create 422.201 (8) and (10) (e), 422.413 (2), 425.114 and 425.206 (1) (d) of the statutes, relating to agricultural transactions under the Wisconsin consumer act and making other changes to that act.

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

SECTION 1. 421.203 (1) of the statutes is amended to read:

421.203 (1) Consumer credit transactions, not governed by ch. 428, which are made, insured or guaranteed by the federal government or any agency thereof, or by any federal instrumentality chartered under the federal farm credit act of 1971 (P.L. 92-181; 85 stats. 583; 12 U.S.C. 2001 et seq.), or the department of veteran's affairs shall be subject to only those provisions set forth in sub. (2).

SECTION 2. 421.301 (20) (intro.) and (a) (intro.) of the statutes are consolidated and amended to read:

421.301 (20) (intro.) "Finance charge" means the sum of all charges, payable directly or indirectly by the customer as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the creditor or any other person on

behalf of the customer to the creditor or to a 3rd party unless the creditor had no notice or knowledge of the charges paid or payable to the 3rd party. ~~(a)~~ The term includes the following types of charges to the extent they are not permitted additional charges under s. 422.202 or delinquency charges (s. 422.203) or deferral charges (s. 422.204):

SECTION 3. 421.301 (20) (a) 1 to 8 of the statutes are renumbered 421.301 (20) (a) to (h).

SECTION 4. 421.301 (20) (b) of the statutes is repealed.

SECTION 5. 422.201 (8) to (11) of the statutes are renumbered 422.201 (9) to (12).

SECTION 6. 422.201 (8) and (10) (e) of the statutes are created to read:

422.201 (8) That portion of the finance charge consisting of an amount equal to a discount of 5% or less of the stated price which is offered to induce payment in full within a stated period of time in connection with a sale for agricultural purposes or a sale of particular goods and services for which credit is not otherwise available from the merchant shall not be included in the finance charge for the purpose of determining the maximum rate of finance charge under sub. (2), (3) or (4) with respect to a customer who does not pay in full within such time.

(10) (e) If the availability of the discount is disclosed to all prospective buyers, that portion of the finance charge consisting of an amount equal to a discount of 5% or less of the stated price which is offered by a merchant either in connection with a sale for agricultural purposes, or to induce immediate payment in full rather than by use of a credit card shall not be included in the finance charge for the purpose of determining the maximum rate of finance charge under this subsection with respect to a customer who either elects to use a credit card or to have such agricultural transaction posted to the customer's open-end account.

SECTION 7. 422.203 (4) (b) of the statutes is amended to read:

422.203 (4) (b) With respect to a consumer credit transaction primarily for an agricultural purpose, interest after maturity of any scheduled instalment shall not exceed the maximum rate permitted by s. 138.05 (1) (a) greater of either 12% per annum or an amount determined by applying the annual rate of finance charge assessed on that transaction to that instalment until paid, but if such interest is charged, no delinquency charge may be taken on such instalment.

SECTION 8. 422.207 (1) and (3) of the statutes are amended to read:

422.207 (1) With respect to a consumer credit transaction the parties may, to the extent not prohibited by this act, agree that the customer will perform certain duties with respect to preserving or insuring collateral if such duties are reasonable in relation to the risk of loss of or damage to the collateral. In the event of the customer's failure to so perform the creditor may, if authorized by the agreement, pay for the performance of such duties on behalf of the customer. The amount paid may be added to the unpaid balance of the customer's obligation, if the merchant has given the customer written notice of his nonperformance, reasonable opportunity after such notice to so perform, and, in the absence of performance, the merchant has made all expenditures on behalf of the customer in good faith and in a commercially reasonable manner and except in the case of a transaction for an agricultural purpose where the collateral is perishable and threatens to decline speedily in value, the merchant has given the customer written notice of the nonperformance and reasonable opportunity after such notice to so perform.

(3) A finance charge may be made for sums advanced pursuant to sub. (1) at a rate not exceeding the rate stated to the customer pursuant to the provisions on disclosure in subch. III, except that with or if no disclosure is required then at the annual rate of finance charge assessed on that transaction. With respect to an open-end credit plan the

CHAPTER 10

32

amount of the advance may be added to the unpaid balance of the account and the merchant may make a finance charge not exceeding that permitted by s. 422.201.

SECTION 9. 422.301 of the statutes is amended to read:

422.301 Requirements of federal act. In addition to the disclosures required by the federal consumer credit protection act, if any, the creditor shall disclose to the customer to whom credit is extended the information required by this subchapter. With respect to every consumer credit sale payable in instalments (s. 421.301 (30)) upon which no separate finance charge is stated or imposed (s. 421.301 (20)) the creditor shall make disclosures in accordance with the federal consumer credit protection act, to the extent applicable, whether or not such act requires such disclosures to be made.

SECTION 10. 422.302 (3) of the statutes is amended to read:

422.302 (3) Before any payment is due, the creditor shall furnish the customer with an exact copy of each instrument, document, agreement and contract which is signed by the customer and which evidences the customer's obligation. If there is more than one customer, delivery of copies of the documents to one of them constitutes compliance with this subsection.

SECTION 11. 422.303 (1) of the statutes is amended to read:

422.303 (1) In a consumer credit sale other than one pursuant to an open-end credit plan or a discount sale as described in s. 421.301 (20) (b) credit sale in which the only finance charge is a prompt payment discount as described in s. 422.201 (8), the customer's obligation to pay the total of payments shall be evidenced by a single instrument, which shall include, in addition to the other disclosures required by this subchapter, the signature of the seller, the signature of the customer, the date on which it was signed and a description of any property the customer transfers to the seller as a trade-in.

SECTION 12. 422.305 (title), (1) and (2) of the statutes are amended to read:

422.305 (title) Notice to obligors. (1) No natural person, other than the customer and his spouse, shall be is obligated as a surety, co-signer, co-maker, indorser, guarantor or similar party to assume personal liability for payment of an obligation arising out of a consumer credit transaction unless such the person, in addition to signing the writing evidencing the consumer credit transaction, or a separate guaranty or similar instrument, also either receives a copy of each instrument, document, agreement and contract which is signed by the customer and which evidences the customer's obligation to pay, or signs and receives at the time of signing a separate instrument in substantially the following language:

EXPLANATION OF CO-SIGNER PERSONAL OBLIGATION

(a) The undersigned as a co-signer or guarantor has You have agreed to pay the total of payments under a consumer credit transaction between(name of customer) and(name of merchant) made on(date of transaction) for(description of purpose of credit, i.e. sale or loan) in the amount of \$.....

(b) As a co-signer the undersigned You will be liable and fully responsible for payment of the above amount even though he is you may not be entitled to any of the goods, services or loan furnished therewith.

(c) The undersigned You may be sued in court for the payment of the amount due under this consumer credit transaction even though the customer named above may be working or have funds to pay the amount due.

(d) This explanation is not the agreement under which you are obligated, and the guaranty or agreement you have executed must be consulted for the exact terms of your obligations.

(e) You are entitled now, or at any time, to one free copy of any document you sign evidencing this transaction.

(f) The undersigned acknowledges receipt of an exact copy of this notice.

.....
(Signature of co-signer)

(2) The instrument notice must be printed, typed or otherwise reproduced in a size and style equal to at least 10-point boldface type or such similar type as prescribed by the administrator, and shall contain no other only the matter than above set forth and shall bear the signature of the co-signer and no other person and the address of the merchant.

SECTION 13. 422.305 (3) of the statutes is repealed.

SECTION 14. 422.305 (4) to (6) of the statutes are renumbered 422.305 (3) to (5), and 422.305 (3) and (4), as renumbered, are amended to read:

422.305 (3) Such explanation This notice shall not be required to be given to a merchant who endorses or is otherwise liable for payment to an assignee or holder of the customer's obligation.

(4) The notice required by this section shall not act to increase or decrease the liability of the a cosigner.

SECTION 15. 422.413 (1) of the statutes is amended to read:

422.413 (1) Except for reasonable expenses incurred in disposition of collateral as provided in sub. (2), no term of a writing evidencing a consumer credit transaction may provide for any charges as a result of default by the customer other than those reasonable expenses incurred in the disposition of collateral and such other charges as are specifically authorized by this act chs. 421 to 427.

SECTION 16. 422.413 (2) of the statutes is renumbered 422.413 (3).

SECTION 17. 422.413 (2) of the statutes is created to read:

422.413 (2) In the case of a transaction for an agricultural purpose, a writing evidencing a consumer credit transaction may provide for expenses of taking and holding collateral and in the case of collateral other than automobiles, as defined in s. 340.01 (4), station wagons, as defined in s. 340.01 (61), and trucks other than farm trucks, as defined in s. 340.01 (18), for the expenses of preparing the collateral for sale.

SECTION 18. 425.103 (2) (a) of the statutes is amended to read:

425.103 (2) (a) With respect to a transaction other than one pursuant to an open-end plan, 1) if the interval between scheduled payments is 2 months or less, to have outstanding 2 or more scheduled payments which have an amount exceeding one full payment which has remained unpaid for more than 10 days after their original the scheduled or deferred due dates, or the failure to pay the first payment or the last payment, or in the ease of a transaction for an agricultural purpose, the failure to pay any instalment within 40 days of its original scheduled or deferred due date, 2) if the interval between scheduled payments is more than 2 months, to have outstanding all or any part of one scheduled payment which has remained unpaid for more than 60 days after its original scheduled or deferred due date, or 3) if the transaction is scheduled to be repaid in a single instalment payment, to have the instalment all or any part of the payment unpaid for more than 40 days after its scheduled or deferred due date, or 4) in the case of a transaction for an agricultural purpose, the failure to pay the first or the only instalment when due or to pay any other instalment within 40 days of its original or deferred due date. For purposes of this paragraph the amount outstanding shall not include any delinquency or deferral charges and shall be computed by applying each payment first to the instalment most delinquent and then to subsequent instalments in the order they come due;

SECTION 19. 425.114 of the statutes is created to read:

425.114 Repossession of farm products. Sections 425.103, 425.104 and 425.105 do not apply to the recovery of farm products as defined in s. 409.109 (3) which are collateral in a transaction for an agricultural purpose if the merchant reasonably believes the customer to be in default because of the customer's failure, without justification under any law, to observe any covenant of the transaction, breach of which materially impairs the condition, value or protection of or the merchant's right in such collateral. The rights and obligations of the merchant and the customer with respect to such collateral in case of such default are governed by ss. 409.501 to 409.507, except that the customer's right to redeem shall be governed by s. 425.208 and the restrictions on deficiency judgments contained in s. 425.209 shall apply to transactions described in that section.

SECTION 20. 425.206 (1) (b) and (c) of the statutes are amended to read:

425.206 (1) (b) Judgment for the merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205, or for possession of the collateral or leased goods under s. 425.203 (2); or

(c) The merchant has taken possession of collateral or leased goods pursuant to s. 425.207 (2); or

SECTION 21. 425.206 (1) (d) of the statutes is created to read:

425.206 (1) (d) The merchant has taken possession of collateral in accordance with s. 425.114.

SECTION 22. 425.207 (2) of the statutes is amended to read:

425.207 (2) A merchant who reasonably believes that a customer has abandoned collateral or goods subject to a consumer lease may take possession of such collateral or leased goods and preserve it. However, the customer may recover such collateral or leased goods upon request unless at the time of request a) the customer has surrendered the collateral or leased goods; or b) judgment for the merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205 or in a judgment described in s. 425.203 (2). A merchant taking possession of collateral or leased goods pursuant to this section shall promptly send notification to the customer's last-known address of such action and of the customer's right to recover such collateral or leased goods under this section. If the collateral or leased goods are recovered by the customer pursuant to this section, it shall be returned to the customer at the location where the merchant took possession of such collateral or leased goods pursuant to this section or, at the option of the merchant, at such other location designated by the customer; and any expense incurred by the merchant in taking possession of, holding and returning the collateral or leased goods to the customer shall be borne by the merchant. If after taking possession of collateral or leased goods pursuant to this subsection, the merchant perfects the right to possession through a surrender by the customer or a judgment under s. 425.203 (2) or 425.205, the customer is liable for the expenses set forth in s. 409.504 (1). In determining such expenses, leased goods shall be considered collateral under such subsection. However, a customer is not liable for expenses of holding the collateral or leased goods from the time the merchant takes possession until the merchant perfects the right to possession in the manner provided in this subsection. This subsection shall not apply to collateral recovered in accordance with s. 425.114.

SECTION 23. 425.208 (1) (intro.) of the statutes is amended to read:

425.208 (1) (intro.) For a period of 15 days following exercise by the creditor of nonjudicial enforcement rights (s. 425.206) or issuance of process (s. 425.205) with regard to the collateral, the customer shall, except in a transaction for an agricultural purpose if otherwise agreed in writing after default, be entitled to redeem the goods by tendering:

SECTION 24. Cross reference changes. In the sections of the statutes listed in Column A, the cross references shown in Column B are changed to the cross references shown in Column C:

A Statute Sections	B Old Cross References	C New Cross References
138.05 (6)	421.301 (20)(b)	422.201 (8) or (10)(e)
422.205 (2)(a)	422.201 (8)	422.201 (9)
426.201 (5)	421.301 (20)(b)	422.201 (8) or (10)(e)
