

1983 Assembly Bill 1084

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1983 Wisconsin Act 389

AN ACT to amend 422.201 (10m) (a), (b) 1 and (h), 422.201 (10n), 422.202 (2m) (a), (b) and (c) (intro.), 422.413 (1) and (2) and 423.201; to repeal and recreate 425.109 and 425.205 (3); and to create subchapter V of chapter 425, 422.413 (2g) and (2r), 422.421, 425.208 (1) (cm), 799.11 (1) (h) and 801.50 (5m) of the statutes, relating to variable rates for consumer credit transactions and other miscellaneous changes in the laws governing consumer credit transactions and providing penalties.

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

SECTION 1g. 422.201 (10m) (a), (b) 1 and (h) of the statutes are amended to read:

422.201 (10m) (a) With respect to consumer credit transactions under an open-end credit plan entered into on or after November 1, 1981 and before ~~November 1, 1984~~ August 1, 1985, or after October 31, 1987, the parties may agree to the payment by the customer of a finance charge determined by application of a rate not in excess of 18% per year calculated according to the actuarial method, except as provided in pars. (b) and (h).

(b) 1. Notwithstanding par. (a), with respect to consumer credit transactions under an open-end credit plan entered into on or after November 1, 1981 and before ~~November 1, 1984~~ August 1, 1985, or after October 31, 1987, the parties may agree to the payment by the customer of a finance charge of which the customer is notified under subd. 3 if the yield on the most recently auctioned 2-year U.S. treasury notes on each of 5 successive Thursdays exceeds 15% per year, as determined by the administrator based on the report of the federal reserve bank of New York.

(h) A purchase, cash advance or other debit transaction entered into by a customer under an open-end credit plan in existence on November 1, 1981, is subject to the limit on finance charges under sub. (2) (a), except a purchase, cash advance or other debit transaction entered into on or after November 1, 1981 and before ~~November 1, 1984~~ August 1, 1985, or after October 31, 1987, is subject to the limits on finance charges provided in pars. (a) and (b) if the creditor mails or delivers to the customer a written notice of a finance charge to be applied which is greater than permitted under sub. (2) (a) at least 15 days prior to the beginning date of a billing cycle and the customer makes the purchase, obtains the cash advance or enters into the debit transaction on or after that date. This paragraph does not prohibit changes in open-end credit terms under s. 422.415.

SECTION 1m. 422.201 (10n) of the statutes is amended to read:

422.201 (10n) A consumer credit transaction under an open-end credit plan entered into after ~~October 31, 1984~~ July 31, 1985, and before November 1, 1987, is not subject to any maximum limit on finance charges.

SECTION 1p. 422.202 (2m) (a), (b) and (c) (intro.) of the statutes are amended to read:

422.202 (2m) (a) A charge not to exceed \$2 in any billing cycle in which the creditor receives less than a minimum payment due as agreed by the parties. Any charge imposed under this paragraph may not be included in any outstanding balance for purposes of calculating any finance charge or minimum payment. A charge may not be made under this paragraph after ~~October 31, 1984~~ July 31, 1985, and before November 1, 1987.

(b) A charge not to exceed 50 cents in any billing cycle in which there are at least 28 calendar days and where the balance as calculated in s. 422.201 (10m) is less than \$33.34. If the charge permitted in this subsection is imposed, no finance charge may be imposed under s. 422.201 (10m) nor may the charge permitted in par. (a) be imposed or collected. A charge may be imposed under this paragraph notwithstanding s. 422.415, except that no charge may be imposed under this paragraph after ~~October 31, 1984~~ July 31, 1985, and before November 1, 1987.

(c) (intro.) A charge not to exceed \$2 for each cash advance under an open-end credit plan other than by a seller credit card or an overdraft checking loan. A charge may not be made under this paragraph after ~~October 31, 1984~~ July 31, 1985, and before November 1, 1987. In this paragraph:

SECTION 1s. 422.413 (1) and (2) of the statutes are amended to read:

422.413 (1) Except as provided in ~~sub. subs. (2) and (2g)~~, 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 reasonable expenses incurred in the disposition of collateral and such other charges as are specifically authorized by chs. 421 to 427.

(2) In the case of a transaction for an agricultural purpose, a writing evidencing a consumer credit transaction may provide for the creditor's recovery of 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 2. 422.413 (2g) and (2r) of the statutes are created to read:

422.413 (2g) In any consumer credit transaction in which the collateral is a motor vehicle as defined in s. 340.01 (35), a trailer as defined in s. 340.01 (71), a snowmobile as defined in s. 340.01 (58a), a boat as defined in s. 30.50 (1), an aircraft as defined in s. 114.002 (3), or a mobile home as defined in s. 218.10 (2), a writing evidencing the transaction may provide for the creditor's recovery of all of the following expenses, if the expenses are reasonable and bona fide:

(a) Expenses of taking and holding the collateral if paid to persons not related to the creditor.

(b) Travel and transportation expenses of the creditor or the creditor's employes in taking possession of the collateral.

(c) If the collateral is not redeemed by the customer under s. 425.208, all of the following expenses of preparing the collateral for sale if paid to persons not related to the creditor:

1. Expenses for cleaning and restoring the appearance of the collateral, not to exceed \$100.

2. Expenses for repair of damage to the collateral if covered by insurance, not to exceed the lesser of any deductible amount or \$250.

3. Expenses for mechanical repairs to the collateral, not to exceed \$200.

(2r) Notwithstanding s. 409.504 (1), the proceeds of any disposition of collateral referred to in sub. (2g) shall be applied in the following order to:

- 1671 -

83 WisACT 389

(a) Any expenses described in sub. (2g) (a) subject to the restriction set forth in sub. (2g) (a).

(b) Any expenses described in sub. (2g) (b) subject to the restriction set forth in sub. (2g) (b).

(c) Any expenses described in sub. (2g) (c), subject to the restrictions set forth in sub. (2g) (c) (intro.), in the order, and subject to the limitations on amounts, set forth in sub. (2g) (c) 1 to 3.

(d) The satisfaction of indebtedness secured by the security interest under which the disposition of the collateral is made.

(e) Any expenses described in sub. (2g) (c) in excess of the limitations on amounts set forth in sub. (2g) (c) 1 to 3, in the order set forth in sub. (2g) (c) 1 to 3.

(f) The satisfaction of indebtedness secured by any subordinate security interest in the collateral, subject to the restrictions set forth in s. 409.504 (1) (c).

(g) Payment to the customer.

SECTION 3. 422.421 of the statutes is created to read:

422.421 Variable rate transaction. (1) DEFINITIONS. In this section:

(a) "Approved index" means any relevant index approved by the administrator that is beyond the control of the creditor and is verifiable by the customer.

(b) 1. "Consummation" with respect to a variable rate transaction other than one pursuant to an open-end credit plan means the time at which a customer becomes contractually obligated on the variable rate transaction.

2. "Consummation" with respect to a variable rate transaction pursuant to an open-end credit plan means the time at which a creditor accepts a customer's application and authorizes the customer's participation in the plan or the time at which an amendment to an existing open-end credit plan is accepted by or becomes binding on the customer under sub. (11) or s. 422.415.

(c) "Variable rate transaction" means any open-end credit plan and any consumer credit transaction other than one pursuant to an open-end credit plan, the terms of which permit the rate of finance charge to be adjusted from time to time during the term of the plan or transaction other than by an adjustment under s. 422.201 (10m) or 422.415, but does not include any consumer credit transaction the terms of which permit only the rates of finance charge that are initially numerically specified in any document evidencing the plan or transaction.

(2) VARIABLE RATE TRANSACTIONS PERMITTED. Creditors may engage in variable rate transactions subject to the conditions and limitations of this section.

(3) APPROVED INDEX ADJUSTMENTS. (a) Adjustments in the rate of finance charge of a variable rate transaction that are based upon changes in an approved index shall be made in accordance with provisions set forth in the documents evidencing the variable rate transaction including provisions specifying all of the following:

1. The method of determining approved index values.
2. The relationship between approved index values and the rates of finance charge.
3. The method of implementing the adjustments.
4. The frequency of adjustments.
5. Any limits on the magnitude of adjustments.
6. Any minimum increments of adjustments.
7. The method of implementing any rounding of the rates of finance charge.

(b) The provisions under par. (a) 5 may specify limited magnitudes of decreases in the rate of finance charge if the provisions specify limited magnitudes of increases that are at least as restrictive.

(c) If a creditor fails at any time to increase the rate of finance charge to the extent permitted by the provisions under par. (a), the creditor may not carry over and add any portion of the increase to any subsequent adjustment. Failure at any time to increase the rate of finance charge to the extent permitted by the provisions under par. (a) does not affect in any way the creditor's right to prospectively reestablish the relationship between approved index values and the rates of finance charge in accordance with the provisions under par. (a).

(4) OTHER ADJUSTMENTS. (a) Adjustments in the rate of finance charge of a variable rate transaction that are not based upon changes in an approved index shall be made in accordance with provisions set forth in the documents evidencing the variable rate transaction, including provisions specifying all of the following:

1. If based upon changes in an index other than an approved index, the method of determining index values.

2. If based upon changes in an index other than an approved index, the relationship between index values and the rates of finance charge.

3. The method of implementing the adjustments.

4. The frequency of adjustments.

5. Any limits on the magnitude of adjustments.

6. Any minimum increments of adjustments.

7. The method of implementing any rounding of the rates of finance charge.

(b) The provisions under par. (a) may not specify an increase in the rate of finance charge in excess of 2% plus any carry over permitted under par. (d) for each 12-month period commencing with the consummation of the variable rate transaction.

(c) The provisions under par. (a) may not specify a date for adjustment that is earlier than 3 months after the date of consummation of the variable rate transaction.

(d) If a creditor fails to increase the rate of finance charge during a 12-month period under par. (b) to the extent permitted by the provisions under par. (a), the increase may be carried over and added to any adjustment in the rate of finance charge otherwise permitted by the provisions under par. (a) but only during the succeeding 12-month period and subject to the limitations of par. (e).

(e) The maximum increase which may be carried over to a succeeding 12-month period under par. (d) is the difference between the rate of finance charge as of the commencement of the preceding 12-month period plus 2% and the highest rate of finance charge actually imposed during that 12-month period, or one percent, whichever is less.

(5) NOTICE. (a) 1. Except as provided in par. (b), a creditor shall mail or deliver to the customer written notice of every change implementing an adjustment in the rate of finance charge in a variable rate transaction. The notice shall be mailed or delivered to the customer at the customer's last-known address appearing on the records of the creditor. If the variable rate transaction involves more than one customer, notice given to any customer satisfies this requirement.

2. The notice under subd. 1 shall be mailed or delivered at least 15 days prior to the effective date of the adjustment if the adjustment is implemented in whole or in part by a change in the amount of a periodic payment, other than the final payment, previously disclosed to the customer.

3. The notice under subd. 1 shall be mailed or delivered not later than 30 days after the effective date of the adjustment if the adjustment is implemented by any change other than a change under subd. 2.

(b) 1. The requirements of par. (a) do not apply to a creditor if the adjustment is made in a variable rate transaction pursuant to an open-end credit plan that is based upon changes in an approved index.

2. The requirements of par. (a) do not apply to a creditor if the adjustment is made in a variable rate transaction, other than a transaction pursuant to an open-end credit plan, that is based upon changes in an approved index if the change does not cause a change in the amount of a periodic payment, other than the final payment, previously disclosed to the customer.

(c) If the final payment in a variable rate transaction, other than one pursuant to an open-end credit plan, exceeds the final payment disclosed to the customer prior to consummation by more than 50% but not less than \$100 as a result of adjustments in the rate of finance charge during the term of the variable rate transaction, the creditor shall give the customer written notice of the estimated amount of the final payment at least 90 days but not more than 180 days prior to the due date of the final payment. The notice shall be mailed or delivered to the customer at the customer's last-known address appearing on the records of the creditor. If the variable rate transaction involves more than one customer, notice given to any customer satisfies this requirement. Notwithstanding the terms of the variable rate transaction, the final payment shall not be due until the later of the originally scheduled due date or 90 days after mailing or delivering the notice and the customer shall not be in default during that period if the customer continues to make payments in the scheduled amounts and with the scheduled frequency in effect immediately prior to the final payment until the total amount due has been paid in full.

(6) MAXIMUM RATE. (a) 1. Except as provided in s. 422.201 (12), for any variable rate transaction, other than one pursuant to an open-end credit plan, entered into before November 1, 1984, or after October 31, 1987, the maximum rate of finance charge for any payment period may not exceed the limit set forth in s. 422.201 (2) (bm) as determined on the earlier of the first day of the payment period or the day notice is given under sub. (5) for the payment period.

2. The maximum rate of finance charge established under subd. 1 shall continue in effect for the entire term of the payment period regardless of any changes in the limit set forth in s. 422.201 (2) (bm) during the payment period.

(b) For any variable rate transaction pursuant to an open-end credit plan entered into before August 1, 1985, or after October 31, 1987, the maximum rate of finance charge for any payment period may not exceed the limit established under s. 422.201 (10m) (a), except that the limit does not apply to the periods specified in s. 422.201 (10m) (b) 2 if the yield on the most recently auctioned 2-year U.S. treasury notes on each of 5 successive Thursdays exceeds 15% per year, as determined by the administrator based on the report of the federal reserve bank of New York.

(7) ADJUSTMENTS AFTER MATURITY DATE. (a) Notwithstanding s. 422.203, adjustments in the rate of finance charge based upon changes in an approved index may continue to be made after the final scheduled maturity date if the adjustments are made in accordance with the requirements of sub. (3) governing adjustments made prior to the final scheduled maturity date.

(b) Notwithstanding s. 422.203, adjustments in the rate of finance charge not based upon an approved index may continue to be made after the final scheduled maturity date if the adjustments are made in accordance with the requirements of sub. (4) governing adjustments made prior to the final scheduled maturity date, and if the adjustments are not less favorable to the customer than contemporaneous adjustments made prior to the final scheduled maturity dates of similar variable rate transactions between other customers and the creditor.

(8) **CHANGES IN ORIGINAL SCHEDULE OF PAYMENTS.** The original schedule of payments for variable rate transactions that are subject to s. 422.402 shall comply with the requirements of s. 422.402. Any change made in the original schedule of payments to implement adjustments under sub. (3) or (4) is not a violation of s. 422.402.

(9) **CHANGES IN OPEN-END CREDIT PLANS.** Any change made in the terms of an open-end credit plan to implement adjustments under sub. (3) or (4) is not a violation of s. 422.415.

(10) **PREPAYMENT.** Upon prepayment in full of the unpaid balance of a variable rate transaction, an amount not less than the unearned portion of the finance charge, if any, calculated according to s. 422.209 (2) (b) shall be rebated to the customer.

(11) **AMENDMENTS TO OPEN-END CREDIT PLANS.** (a) Parties to an open-end credit plan entered into before or within 6 months after the effective date of this paragraph (1983), may agree to an amendment to the plan in accordance with the requirements of sub. (3) or (4) to permit the rate of finance charge for existing and future balances to be adjusted from time to time in accordance with the provisions of this section, only as provided under pars. (b) and (c) or under s. 422.415.

(b) An amendment under par. (a) may be made if the customer accepts the amendment as provided in par. (c) and if all of the following conditions are met:

1. The creditor gives written notice of the amendment to the customer by mail, addressed to the customer's last-known address appearing on the records of the creditor, not more than 60 days and not less than 30 days prior to the effective date of the amendment.

2. The notice under subd. 1 provides for acceptance or rejection by the customer as provided in either or both of the following:

a. If a self-addressed reply card is enclosed with the notice, the notice states that the customer accepts the amendment unless a reply card rejecting the amendment is mailed or delivered to the creditor by a date specified in the notice which is not less than 20 days after the date of mailing of the notice.

b. The notice states that the customer accepts the amendment if the customer enters into a consumer credit transaction under the plan at any time more than 15 days after the date of mailing of the notice.

(c) The customer shall have accepted the amendment if the customer fails to mail or deliver the reply card as provided in the notice under par. (b) 2. a, or if the customer enters into a transaction as provided in the notice under par. (b) 2. b.

(d) If a customer rejects an amendment as provided in the notice under par. (b) 2, the creditor shall permit the customer to pay existing balances under existing terms and the creditor may either close the account to future transactions or continue the account under existing terms.

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

SECTION 4. 423.201 of the statutes is amended to read:

423.201 Definition. "Consumer approval transaction" means a consumer transaction other than a sale or lease or listing for sale of real property, a sale of goods at auction, the sale or lease of goods for an agricultural purpose or a loan made to finance the sale of goods at auction for an agricultural purpose 1) which is initiated by face-to-face solicitation away from a regular place of business of the merchant or by mail or telephone solicitation directed to the particular customer and 2) which is consummated or in which the customer's offer to contract or other writing evidencing the transaction is received by the merchant away from a regular place of business of the merchant and involves the extension of credit or is a cash transaction in which the amount the customer pays ex-

ceeds \$25. “Consumer approval transaction” shall in no event include a catalog sale which is not accompanied by any other solicitation or a consumer loan conducted and consummated entirely by mail.

SECTION 5. 425.109 of the statutes is repealed and recreated to read:

425.109 Pleadings. (1) A complaint by a creditor to enforce any cause of action arising from a consumer credit transaction shall include all of the following:

- (a) An identification of the consumer credit transaction.
- (b) A description of the collateral or leased goods, if any, which the creditor seeks to recover or has recovered.
- (c) A specification of the facts constituting the alleged default by the customer.
- (d) The actual or estimated dollar amount that the creditor alleges he or she is entitled to recover and the figures necessary for computation of the amount, including any amount received from the sale of any collateral.
- (e) Except in an action to recover goods subject to a consumer lease, a statement that the customer has the right to redeem any collateral as provided in s. 425.208 (1) (intro.) and the actual or estimated dollar amount required for redemption, itemized in accordance with s. 425.208 (1) (a) to (d).
- (f) Except in an action to recover goods subject to a consumer lease, the estimated dollar amount of any deficiency claim which may be available to the creditor following the disposition of any collateral recovered subject to the limitations of s. 425.209 or which the creditor seeks to recover and which the creditor intends to assert subject to the limitations of s. 425.210 if the customer fails to redeem the collateral.
- (g) If the customer still has the right to cure a default under s. 425.105 pursuant to a notice given under s. 425.104, the total payment or other performance necessary to cure the alleged default and the exact date by which it must be made.
- (h) An accurate copy of the writings, if any, evidencing the transaction, except that with respect to claims arising under open-end credit plans, a statement that the creditor will submit accurate copies of the writings evidencing the customer’s obligation to the court and the customer upon receipt of the customer’s written request therefor on or before the return date or the date on which the customer’s answer is due.

(2) Upon the written request of the customer, the creditor shall submit accurate copies to the court and the customer of writings evidencing any transaction pursuant to an open-end credit plan upon which the creditor’s claim is made and judgment may not be entered for the creditor unless the creditor does so.

(3) A judgment may not be entered upon a complaint which fails to comply with this section.

SECTION 6. 425.205 (3) of the statutes is repealed and recreated to read:

425.205 (3) The complaint in such action shall conform with the requirements of s. 425.109.

SECTION 7. 425.208 (1) (cm) of the statutes is created to read:

425.208 (1) (cm) If a writing evidencing the consumer credit transaction so provides, expenses the creditor is entitled to recover under s. 422.413 (2) and (2g) (a) and (b); plus

SECTION 8. Subchapter V of chapter 425 of the statutes is created to read:

CHAPTER 425

SUBCHAPTER V

VENUE; CONSUMER CREDIT TRANSACTIONS

425.501 Venue. (1) The place of trial for an action arising from a consumer credit transaction is any of the following:

- (a) The county where the customer resides, or, if more than one customer is a party to the action, the county where any one of the customers resides.
- (b) The county where the customer is personally served.
- (c) The county where collateral securing the consumer credit transaction is located.
- (d) The county where the customer signed the document evidencing the customer's obligation under the terms of the consumer credit transaction.

(2) When, in any action under this chapter, it appears from the return of service of the summons or otherwise that the county in which the action is pending is not a proper place of trial of such action under this section, the court shall, on motion of a party or on its own motion, on the return day of the summons or prior to taking any other action on the case, determine the correctness of the venue. If venue is correct the case shall continue. If venue is not correct, the court shall dismiss the action unless the defendant appears and waives the improper venue. If the defendant does not appear and waive the improper venue, the court shall lack jurisdiction other than to dismiss the action.

SECTION 9. 799.11 (1) (h) of the statutes is created to read:

799.11 (1) (h) In an action arising from a consumer credit transaction, as defined in s. 421.301 (10), any county specified in s. 425.501.

SECTION 10. 801.50 (5m) of the statutes is created to read:

801.50 (5m) ACTIONS ARISING FROM CONSUMER CREDIT TRANSACTIONS. In an action arising from a consumer credit transaction, as defined in s. 421.301 (10), any county specified in s. 425.501.

SECTION 11. **Nonstatutory provisions; consumer credit transactions.** (1) REJECTION OF FEDERAL PREEMPTION. It is declared that this state rejects the applicability in this state of section 804 of P.L. 97-320 to any consumer credit transaction governed by chs. 421 to 427 consummated on or after the effective date of this subsection.

(2) VARIABLE RATE CONSUMER CREDIT TRANSACTIONS. Parties to a consumer credit transaction may agree to enter into a variable rate transaction, as defined in section 422.421 of the statutes, as created by this act, prior to the effective date of section 422.421 of the statutes, as created by this act, only if they agree that the transaction shall be governed by the provisions set forth in section 422.421 of the statutes, including the penalties provided in that section.

SECTION 12. **Effective date.** Section 422.421 of the statutes, as created by this act, takes effect on the first day of the 4th month commencing after publication.
