



2005 ASSEMBLY BILL 332

April 15, 2005 – Introduced by Representatives BERCEAU, ALBERS, HAHN, GRONEMUS, BOYLE, LEHMAN, HINES, POCAN, SEIDEL, FIELDS, TOLES, MOLEPSKE and TRAVIS, cosponsored by Senators HANSEN, MILLER, BRESKE and ERPENBACH. Referred to Committee on Financial Institutions.

1 **AN ACT to repeal** 422.421 (5) (b) 1.; **to renumber** 422.421 (5) (b) 2.; **to amend**
2 100.26 (4) and 422.421 (5) (a); and **to create** 100.18 (10v) and 422.308 (2m) of
3 the statutes; **relating to:** deceptive preapproved rates, terms, or conditions,
4 open-end credit plan billing statements, and providing a penalty.

Analysis by the Legislative Reference Bureau

Deceptive preapproved rates, terms, or conditions

Under current law, no person may distribute an untrue statement in an advertisement with the intent to induce the public to enter into any contract with the person. In addition to this general prohibition on deceptive advertising, no merchant may advertise any statement or representation with regard to the extension of consumer credit that is false, misleading, or deceptive. The Department of Agriculture, Trade and Consumer Protection may prosecute a person who distributes deceptive advertising. With certain exceptions, a person who distributes deceptive advertising may be fined not less than \$50 nor more than \$200. In addition, a person injured by deceptive advertising may sue and generally may recover any pecuniary loss together with reasonable attorney fees. Furthermore, a consumer who enters into a transaction resulting from a misleading statement with regard to the extension of credit may sue to void the transaction, recover amounts paid pursuant to the transaction, and recover reasonable attorney fees.

This bill specifies that certain representations regarding an open-end credit plan are deceptive advertising. Under this bill, it is deceptive advertising for a

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merchant to indicate to a consumer that the merchant has preapproved an extension of credit to the consumer under an open-end credit plan and then extend credit to the consumer under terms that are less financially favorable to the consumer than those indicated. In addition, it is deceptive advertising for a merchant to refuse to extend credit after indicating preapproval of an extension of credit under an open-end credit plan. It is not a defense to a violation of this bill for the merchant to indicate that its preapproval of an extension of credit is subject to the merchant's investigation of the consumer's financial information. However, under this bill it is not a violation for the merchant to extend credit on different terms, or refuse to extend credit, because of an adverse change in the financial circumstances of the consumer.

Billing statements

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). A creditor under an open-end credit plan that is within the scope of the consumer act must make certain disclosures with regard to the open-end credit plan. For example, if the rate of interest under the open-end credit plan is subject to adjustment, the creditor generally must provide notice of the adjustment before putting it into effect. This bill requires additional disclosures to be included in any periodic billing statement issued by a creditor pursuant to an open-end credit plan that is within the scope of the consumer act.

Under this bill, if the periodic billing statement states a minimum payment due and if the open-end credit plan permits the creditor to increase the consumer's interest rate for failure to make the minimum payment, the periodic billing statement must say, "Failure to make a minimum payment by the due date may cause an increase in your interest rate." If the open-end credit plan permits the creditor to take a security interest in property purchased through the use of credit extended under the open-end credit plan, the periodic statement must say, "When you use credit extended to you under this [credit card or plan] to purchase items, the creditor may obtain a security interest in those items." Finally, if the interest rate under the open-end credit plan is scheduled to increase on a specific date, the two periodic statements preceding the date of the increase must say, "The interest rate applicable to your outstanding balance is scheduled to increase to [new percentage interest rate] on [date of increase]."

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.** 100.18 (10v) of the statutes is created to read:
- 2 100.18 (**10v**) (a) *Definitions.* In this subsection:

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1 1. “Customer” means a person other than an organization who seeks or
2 acquires credit for personal, family, or household purposes.

3 2. “Directly” means in person, by mail or electronic mail addressed to the
4 receiver, or by telephone.

5 3. “Merchant” has the meaning given in s. 421.301 (25).

6 4. “Open-end credit plan” has the meaning given in s. 421.301 (27).

7 5. “Organization” has the meaning given in s. 421.301 (28).

8 (b) *Deceptive preapproved rates, terms, or conditions.* 1. It is deceptive
9 advertising for a merchant to communicate directly to a customer, or cause to
10 communicate directly to a customer, that the merchant has preapproved an
11 extension of credit to the customer under an open-end credit plan and then,
12 pursuant to the customer’s response to the communication, to make an extension of
13 credit to the customer under an open-end credit plan with rates, terms, or conditions
14 that are less financially favorable to the customer than those communicated.

15 2. Except as provided under subd. 3., it is not a defense to a violation of subd.
16 1. that the merchant’s preapproval of an extension of credit to the customer is made
17 subject to the merchant’s review of the customer’s financial information,
18 creditworthiness, credit standing, or credit capacity.

19 3. Subdivision 1. does not apply to an extension of credit under an open-end
20 credit plan with different rates, terms, or conditions than those communicated to the
21 customer, if the difference in rates, terms, or conditions resulted from an adverse
22 change in the financial circumstances of the customer between the date on which the
23 merchant communicates preapproval and the date on which the merchant makes the
24 extension of credit.

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1 (c) *Deceptive preapproval.* 1. It is deceptive advertising for a merchant to refuse
2 to extend credit to a customer under an open-end credit plan if the customer requests
3 the extension of credit in response to a direct communication from the merchant or
4 a direct communication caused by the merchant, indicating that the merchant has
5 preapproved the extension of credit to the customer under an open-end credit plan.

6 2. Except as provided under subd. 3., it is not a defense to a violation of subd.
7 1. that the merchant's preapproval of an extension of credit to the customer is made
8 subject to the merchant's review of the customer's financial information,
9 creditworthiness, credit standing, or credit capacity.

10 3. Subdivision 1. does not apply to a refusal to extend credit under an open-end
11 credit plan, if the refusal resulted from an adverse change in the financial
12 circumstances of the customer between the date on which the merchant
13 communicates preapproval and the date on which the merchant refuses to extend
14 credit.

15 **SECTION 2.** 100.26 (4) of the statutes is amended to read:

16 100.26 (4) Any person who violates s. 100.18 (1) to (8) ~~or~~, (10), or (10v) or
17 100.182 is subject to a civil forfeiture of not less than \$50 nor more than \$200 for each
18 violation.

19 **SECTION 3.** 422.308 (2m) of the statutes is created to read:

20 422.308 (2m) (a) This subsection applies to every open-end credit plan under
21 which a customer obtains credit pursuant to an application described under sub. (1)
22 or obtains credit as described under sub. (2) and for which the creditor under the
23 open-end credit plan furnishes the customer a periodic statement that states the
24 amount due under the open-end credit plan.

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1 (b) If the periodic statement states a minimum payment due under the
2 open-end credit plan and if the creditor is permitted under the open-end credit plan
3 to increase the interest rate applicable to the outstanding balance as a result of the
4 costumer's failure to make the minimum payment, the creditor shall include, as part
5 the periodic statement, the following notice: "FAILURE TO MAKE A MINIMUM
6 PAYMENT BY THE DUE DATE MAY CAUSE AN INCREASE IN YOUR
7 INTEREST RATE."

8 (c) If the creditor is permitted under the open-end credit plan to take a security
9 interest in property purchased through the use of credit extended under the
10 open-end credit plan, the creditor shall include, as part of the periodic statement, the
11 following notice: "WHEN YOU USE CREDIT EXTENDED TO YOU UNDER THIS
12 [CREDIT CARD OR PLAN] TO PURCHASE ITEMS, THE CREDITOR MAY
13 OBTAIN A SECURITY INTEREST IN THOSE ITEMS."

14 (d) If the interest rate applicable to the outstanding balance under the
15 open-end credit plan is scheduled to increase on a specific date, the creditor shall
16 include, as part of the two periodic statements preceding the date on which the
17 increase is to take effect, the following notice: "THE INTEREST RATE
18 APPLICABLE TO YOUR OUTSTANDING BALANCE IS SCHEDULED TO
19 INCREASE TO [FILL IN NEW PERCENTAGE INTEREST RATE] ON [FILL IN
20 DATE OF INCREASE]."

21 (e) Any notice required under pars. (b) to (d) shall be displayed in 12-point
22 boldface type or 12-point type of a color different from the color of other type included
23 in the statement.

24 **SECTION 4.** 422.421 (5) (a) of the statutes is amended to read:

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1 422.421 (5) (a) 1. Except as provided in par. (b), a creditor shall mail or deliver
2 to the customer written notice of every change implementing an adjustment in the
3 rate of finance charge in a variable rate transaction. The notice shall be mailed or
4 delivered to the customer at the customer's last-known address appearing on the
5 records of the creditor. If the variable rate transaction involves more than one
6 customer, notice given to any customer satisfies this requirement subdivision.
7 Notices given in compliance with s. 422.308 (2m) (d) satisfy this subdivision.

8 2. The A notice under subd. 1. shall be mailed or delivered at least 15 days prior
9 to the effective date of the adjustment if the adjustment is implemented in whole or
10 in part by a change in the amount of a periodic payment, other than the final
11 payment, previously disclosed to the customer. This subdivision does not apply to
12 notices given in compliance with s. 422.308 (2m) (d).

13 3. The notice under subd. 1. shall be mailed or delivered not later than 30 days
14 after the effective date of the adjustment if the adjustment is implemented by any
15 change other than a change under subd. 2. This subdivision does not apply to notices
16 given in compliance with s. 422.308 (2m) (d).

17 **SECTION 5.** 422.421 (5) (b) 1. of the statutes is repealed.

18 **SECTION 6.** 422.421 (5) (b) 2. of the statutes is renumbered 422.421 (5) (b).

19 **SECTION 7. Initial applicability.**

20 (1) DECEPTIVE PREAPPROVAL. The treatment of sections 100.18 (10v) and 100.26
21 (4) of the statutes first applies to an extension of credit or refusal to extend credit that
22 takes place pursuant to a direct communication of preapproval made on the effective
23 date of this subsection.

24 (2) DISCLOSURES. The treatment of section 422.308 (2m) of the statutes first
25 applies to periodic statements provided on the effective date of this subsection.

