CHAPTER 422

CONSUMER CREDIT TRANSACTIONS

SUBCHAPTER I
GENERAL PROVISIONS
422.101 Short title.
422.102 Scope.
SUBCHAPTER II
MAXIMUM CHARGES
422.201 Finance charge for consumer credit transactions.
422.202 Additional charges.
422.203 Delinquency charges.
422.204 Deferral charges.
422.205 Finance charge on refinancing.
422.206 Finance charge on consolidation.
422.207 Advances to perform agreements of customer.
422.208 Right to prepay.
422.209 Rebate on prepayment.
422.210 Agricultural credit transactions.
SUBCHAPTER III
DISCLOSURE AND FORM OF WRITINGS
422.301 Requirements of federal act.
422.302 General requirements and provisions.
422.303 Form requirements other than open−end or discount.
422.304 Prohibition of blank writings.
422.305 Notice to obligors.
422.306 Receipts; accounting; evidence of payment.
422.307 Estimates or approximations.
422.308 Open−end credit disclosures.
422.310 Refund anticipation loans.
SUBCHAPTER IV
LIMITATIONS ON AGREEMENTS AND PRACTICES
422.401 Scope.
422.402 Balloon payments prohibited.
422.403 Maximum periods of repayment.
422.404 Assignment of earnings.
422.405 Authorization to confess judgment prohibited.
422.406 Negotiable instruments.
422.407 Defenses assertable against an assignee.
422.408 Interlocking loans.
422.409 Notice of assignment.
422.410 Statements of compliance or performance.
422.411 Attorney fees.
422.412 Restriction on liability in consumer lease.
422.413 Limitation on default charges.
422.414 Use of multiple agreements.
422.415 Changes in open−end credit terms.
422.4155 Notice of termination of liability.
422.416 Referral transactions prohibited.
422.417 Restrictions on security interests.
422.418 Security interests: consolidations; open−end credit plans.
422.419 Waivers prohibited.
422.420 Cosigner charges.
422.421 Variable rate transaction.
422.422 Cash discounts.
SUBCHAPTER V
CREDIT SERVICES ORGANIZATIONS
422.501 Definitions.
422.502 Registration requirements.
422.503 Prohibited activities.
422.504 Information statement.
422.505 Contracts.
422.506 Waiver.

Cross−reference: See definitions in s. 421.301.

SUBCHAPTER I

GENERAL PROVISIONS

422.101 Short title. This chapter shall be known and may be cited as Wisconsin consumer act — consumer credit transactions.

History: 1971 c. 239.

422.102 Scope. This chapter applies to consumer credit transactions.

History: 1971 c. 239.

Creditor's responsibilities and duties under the Wisconsin consumer act. Holbrook, Bugge, 1973 WBB No. 1.

Real estate implications of the Wisconsin consumer act. Horton, 1973 WBB No. 1.

The effect of the Wisconsin consumer act on farm credit. Miller, 1973 WBB No. 2.

SUBCHAPTER II

MAXIMUM CHARGES

422.201 Finance charge for consumer credit transactions. (1) With respect to a consumer credit transaction other than one pursuant to an open−end credit plan, the parties may agree to the payment by the customer of a finance charge not in excess of that permitted by subs. (2) and (3).

(2) (a) The finance charge, calculated according to the actuarial method, may not exceed the equivalent of the total of the following for a consumer credit transaction entered into on or after April 6, 1980 and prior to November 1, 1981, other than by a federally chartered or state−chartered savings and loan association:

1. Eighteen percent per year on that part of the unpaid balance of the amount financed which is $1,000 or less; and

2. Fifteen percent per year on that part of the unpaid balance of the amount financed which is more than $1,000.

(b) The finance charge, calculated according to the actuarial method, may not exceed the equivalent of the total of the following for a consumer credit transaction entered into prior to April 6, 1980:

1. Eighteen percent per year on that part of the unpaid balance of the amount financed which is $500 or less; and

2. Twelve percent per year on that part of the unpaid balance of the amount financed which is more than $500.

(bm) 1. The finance charge, calculated according to the actuarial method, may not exceed the greater of the following for a consumer credit transaction entered into on or after November 1, 1981 and before November 1, 1984:

a. Eighteen percent per year.

b. A rate of 6 percent in excess of the interest rate applicable to 6−month U.S. treasury bills as determined under subd. 2.

2. For purposes of subd. 1. b., the interest rate applicable to 6−month U.S. treasury bills for any month is the average annual discount interest rate determined by the last auction of the bills in the preceding month, increased to the next multiple of 0.5 percent if the average annual discount interest rate includes a fractional amount.

3. Information regarding the amount of the maximum finance charge under subd. 1. for any month shall be available at the office of the administrator.

(bn) A consumer credit transaction entered into after October 31, 1984, is not subject to any maximum limit on finance charges.

(3) For licensees under s. 138.09 or 138.14 or under ss. 218.0101 to 218.0163, the finance charge, calculated according to those sections, may not exceed the maximums permitted in ss. 138.09, 138.14, and 218.0101 to 218.0163, respectively.

(5) For the purposes of this section:

(a) The finance charge may be calculated on the assumption that all scheduled payments will be made when due;

(b) The dollar amount of finance charge shall include the prepaid finance charge excluded from the amount financed; and

(c) The effect of prepayment is governed by the provisions on rebate upon prepayment under s. 422.209.

(6) For the purposes of this section, the term of a consumer credit transaction other than one pursuant to an open−end credit plan commences with the date the credit is granted or, if goods are delivered, services performed or proceeds of a loan paid 10 days or more after that date, with the date of commencement of delivery or performance. Differences in lengths of months are disregarded and a day may be counted as one−thirtieth of a month.

(7) Subject to classifications and differentiations the merchant may reasonably establish, the merchant may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate sub. (2) or (3) as the case may be if:

(a) When applied to the median amount within each range, it does not exceed the maximum permitted by sub. (2) or (3) as the case may be; and

(b) When applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to par. (a) by more than 8 percent of the rate calculated according to par. (a).

(8) That portion of the finance charge consisting of an amount equal to a discount of 5 percent 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 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) or (3) with respect to a customer who does not pay in full within such time.

(9) Notwithstanding sub. (2) or (3), a merchant may contract for and receive a minimum finance charge with respect to a transaction other than one pursuant to an open−end credit plan, of not more than $5 when the amount financed does not exceed $75, or $7.50 when the amount financed exceeds $75.

(10m) A finance charge determined by application of a periodic rate shall be determined by applying the periodic rate to one of the following:

(a) The average daily balance of the account.

(b) The unpaid balance of the account on the last day of the billing cycle after first deducting all payments, credits and refunds during the billing cycle.

(c) The median amount within a specified range within which the unpaid balance as calculated according to par. (a) or (b) is included. A charge may be made under this paragraph only if the creditor, subject to classifications and differentiations the creditor may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not exceed the charge resulting from applying that percentage to the lowest amount within the range by more than 8 percent of the charge on the median amount.

(10s) Regardless of the date that an open−end credit plan is entered into, the parties may agree to the payment by the customer of a finance charge at any periodic rate.

(11) Anything to the contrary in this chapter notwithstanding, with respect to consumer credit sales and consumer loans secured by real property and insured or guaranteed by the federal government, or any agency or instrumentality thereof, this chapter shall not prohibit or limit any charges which are required by statutes, rules or regulations of such government, agency or instrumentality.

(12m) This section does not apply to consumer credit sales of or consumer loans secured by a first lien on or equivalent security interest in mobile homes or manufactured homes, as defined in s. 101.91, if the sales or loans are made on or after November 1, 1981.

(13) A violation of this section is subject to s. 425.305.

History: 1971 c. 239; 1973 c. 2; 1979 c. 10, 168, 176; 1981 c. 45, 100; 1983 a. 389; 1985 a. 29; 1987 a. 27; 1989 a. 56; 1991 a. 316; 1995 a. 328, 329; 1997 a. 35, 302; 1999 a. 9, 31, 53; 2007 a. 11; 2009 a. 177, 405.

Cross−reference: See also ch. DFI−WCA 1, Wis. adm. code.

The scope of apparent agency may embrace the making of a usurious loan. Hollingsworth v. American Finance Corp. 86 Wis. 2d 172, 271 N.W.2d 872 (1978).

The sale of an interest−bearing note at a discount is not usurious unless it is found to be a cloak or cover for what is in reality a usurious loan. Val Zimmermann Corp. v. Leffingwell, 107 Wis. 2d 86, 318 N.W.2d 781 (1982).

Accord and satisfaction is not a defense to a claim of usury under the consumer act. Clark v. Aetna Finance Corp. 115 Wis. 2d 581, 340 N.W.2d 747 (Ct. App. 1983).

422.202 Additional charges. (1) In addition to the finance charge permitted by this subchapter, a merchant may bargain for and receive any of the following additional charges in connection with a consumer credit transaction:

(a) Official fees and taxes.

(b) Charges or premiums for insurance against loss of or damage to property in which the creditor takes a security interest or to property leased under a motor vehicle consumer lease or against liability arising out of the ownership or use of property in which the creditor takes a security interest or of property leased under a motor vehicle consumer lease, if all of the following conditions are met:

1. A clear, conspicuous and specific statement in writing is furnished by the creditor to the customer setting forth the cost and term of the insurance if obtained from or through the merchant and stating that the customer may choose the person through which the insurance is to be obtained.

2. The creditor mails or delivers to the customer a notice of the customer's right to cancel the insurance obtained from or through the merchant in accordance with s. 424.304.

(c) Charges in real property transactions as provided in sub. (2).

(d) With respect to a consumer credit transaction which is other than one pursuant to an open−end credit plan and which is entered into on or after May 17, 1988, a charge not to exceed $15 for each check presented for payment to a creditor which is returned unsatisfied because the drawer does not have an account with the drawee, does not have sufficient funds in his or her account or does not have sufficient credit with the drawee.

(e) With respect to a motor vehicle consumer lease, any reasonable fee or charge that is conspicuously disclosed in writing to the prospective lessee before execution of the motor vehicle consumer lease, is agreed upon by the lessor and lessee and is not prohibited by chs. 421 to 427 and 429.

(2) With respect to a consumer credit transaction which involves a manufactured home transaction as defined in s. 138.056 (1) (bg) or the extension of credit secured by an interest in real property, the parties may agree to the payment by the customer of the following charges in addition to the finance charge, if they will be paid to persons not related to the merchant, are reasonable in amount, bona fide and not for the purpose of circumvention or evasion of this subchapter:

(a) Fees or premiums for title examination, title insurance or similar purpose;

(b) Fees for preparation of a deed, settlement statement or other documents;

(c) Fees for notarizing deeds and other documents;

(d) Appraisal fees; and

(e) Survey costs.

(2m) With respect to an open−end credit plan, regardless of when the plan was entered into:

(a) A creditor may charge, collect and receive other fees and charges, in addition to the finance charge authorized under s. 422.201, that are agreed upon by the creditor and the customer. These other fees and charges may include periodic membership fees, cash advance fees, charges for exceeding a designated credit limit, charges for late payments, charges for providing copies of

documents and charges for the return of a dishonored check or other payment instrument.

(b) For purposes of 12 USC 85, 1463 (g), 1785 and 1831d, both the finance charge under s. 422.201 and charges permitted under par. (a) are interest and may be charged, collected and received as interest by a creditor.

(2s) (a) A creditor may contract for and collect from the borrower, or include in the amount financed, any of the following:

1. Charges or premiums for consumer credit insurance, as defined in s. 424.201, consisting of consumer credit life insurance, credit accident and sickness insurance and credit unemployment insurance against loss of income of debtors resulting from either labor disputes or involuntary unemployment if all of the following conditions are met:

a. The insurance coverage is not required by the creditor and that fact is clearly and conspicuously disclosed in writing to the customer.

b. Any customer desiring the insurance coverage gives a specific, separately signed, affirmative written indication of the desire after receiving written disclosure of the cost and term of the insurance.

2. Charges or premiums for insurance other than insurance described in subds. 1., 3. and 4., subs. (1) (b) and (2) (a) and s. 421.301 (20) (f) if all of the following conditions are met:

a. The insurance coverage is not required by the creditor and that fact is clearly and conspicuously disclosed in writing to the customer.

b. Any customer desiring the insurance coverage gives a specific, separately signed, affirmative written indication of the desire after receiving written disclosure of the cost and term of the insurance.

c. The creditor mails or delivers to the customer a notice of the customer's right to cancel the insurance in accordance with s. 424.401.

3. Charges or fees for future service contracts or motor club service contracts if all of the following conditions are met:

a. Membership is not required as a condition of the extension of credit.

b. The term of the membership does not exceed one year or the creditor mails or delivers to the customer a notice of the customer's right to cancel the contract or membership in accordance with s. 424.401.

4. Charges or fees for mechanical breakdown, extended warranty or maintenance service contracts or insurance if purchase of the contract or insurance is not required as a condition of the extension of credit.

5. Other charges not constituting finance charges as approved by written opinion of the administrator or not disapproved under s. 426.104 (4) (b).

(b) 1. Notwithstanding par. (a), in a consumer credit transaction other than one pursuant to an open−end credit plan, a creditor may sell and finance the products described in par. (a) 2., 3. and 4. without regard to the limitations contained in those subdivisions or in s. 424.301 (1) to (3) if the transaction is solely to purchase the products described in par. (a) 2., 3. and 4. and if the transaction is not evidenced by a credit contract that is signed by the customer on the same day as a contract evidencing any other consumer credit transaction with the creditor.

2. Notwithstanding par. (a), in a consumer credit transaction pursuant to an open−end credit plan, a creditor may sell and finance the products described in par. (a) 2., 3. and 4. without regard to the limitations contained in those subdivisions or in s. 424.301 if the transaction is solely to purchase the products described in par. (a) 2., 3. and 4. and if the transaction is not evidenced by a credit document that is signed by the customer on the same day as the document evidencing consummation of the open−end credit plan.

(3) (a) For purposes of chs. 421 to 427, any charge not authorized by this section shall be considered part of the finance charge. An additional charge authorized by this section but assessed in a manner inconsistent with this section is not part of the finance charge unless, except with respect to the charges under sub. (1), the creditor requires the charge as an incident to or a condition of the extension of credit.

(b) Except as otherwise provided in chs. 421 to 427, assessing an additional charge which is not authorized by this section and which is not included by the creditor as part of the finance charge, or which is authorized by this section but assessed in a manner inconsistent with this section, is a violation subject to s. 425.304.

(c) A merchant may not, in the same transaction, be subject to the penalty in s. 138.09 (9) (b), 218.0161 or 425.305 and the penalty in s. 425.304, based on the assessment of the same additional charges.

History: 1971 c. 239; 1973 c. 3; 1975 c. 362, 371, 372, 375, 407, 422; 1979 c. 89; 1981 c. 45, 314; 1983 a. 389; 1985 a. 29, 256; 1987 a. 399; 1993 a. 71, 150; 1995 a. 328, 329; 1997 a. 252; 1999 a. 31; 2007 a. 11.

Cross−reference: See also ss. DFI−WCA 1.263 and 1.264, Wis. adm. code.

Legislative Council Note, 1973: [As to sub. (1) (c)] Allows creditors to treat so−called "mortgage redemption insurance" as an additional charge. This is insurance written on long−term obligations, such as mortgages, which would not qualify as credit insurance, as that term is defined, because of its longer term. The effect of this amendment is to allow premiums for such insurance to be treated as additional charges, similar to insurance defined as "credit insurance", as long as the amount and term does not exceed the outstanding balance and term of the indebtedness.

[As to sub. (2) (b) (intro.)] Broadens the range of real estate transactions in which specified additional charges may be made. As the section reads prior to the above amendment, only the creditor holding a first mortgage or equivalent security interest may pass on these incidental charges, which include such items as title examination or title insurance fees, and fees for deed preparation, notarizing documents and appraisals to the extent that they are customarily borne by the customer in a cash transaction. The problem which arises from this approach is that these costs are incurred by other creditors in real estate transactions, but these creditors are unable to treat them in the same manner as the first mortgage; i.e., pass them on to the customer. The change made by this section is designed to insure equal treatment of purchase money creditors, regardless of the priority of their security interest, creditors refinancing a first mortgage and creditors financing substantial improvements of real property. [Bill 432−A]

422.203 Delinquency charges. (1) With respect to a consumer credit transaction other than one pursuant to an open−end credit plan, the parties may agree to a delinquency charge on any installment not paid in full on or before the 10th day after its scheduled or deferred due date in an amount not to exceed $10 or 5 percent of the unpaid amount of the installment, whichever is less.

(2) No delinquency charge may be collected on an installment which is paid in full on or before the 10th day after its scheduled or deferred due date even though an earlier maturing installment or a delinquency charge on an earlier installment may not have been paid in full. For purposes of this subsection payments are applied first to current installments and then to delinquent installments.

(3) A delinquency charge under sub. (1) may be collected only once on an installment however long it remains in default. A delinquency charge may not be collected for a late installment if, with respect to that installment, there has been a deferral.

(4) (a) With respect to a consumer credit transaction, interest after the final scheduled maturity date may not exceed the greater of either 12 percent per year or the annual rate of finance charge assessed on that transaction if the transaction is entered into on or after April 6, 1980 and prior to November 1, 1981, and may not exceed the maximum rate permitted by s. 138.05 (1) (a), if the transaction is entered into prior to April 6, 1980, but if such interest is charged no delinquency charge may be taken on the final scheduled installment.

(c) With respect to a consumer credit transaction, interest after the final scheduled maturity date shall not exceed the greater of either 12 percent per year or the annual rate of finance charge assessed on that transaction if the transaction is entered into on or after November 1, 1981, but if interest is charged no delinquency charge may be taken on the final scheduled installment.

(5) A violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1979 c. 10, 168; 1981 c. 45; 1991 a. 39; 1997 a. 302.

A fee that is required in order to allow the reinstatement of payments after a default is a delinquency charge. Burny v. Thorn, 944 F. Supp. 762 (1996).

422.204 Deferral charges. (1) With respect to a precomputed consumer credit transaction, the parties may at any time agree in writing to a deferral of all or part of one or more unpaid installments, and the creditor may make and collect a charge but:

(a) With respect to a precomputed transaction which is scheduled to be repaid in substantially equal successive installments at approximately equal intervals, if the deferral is made as of an installment due date and the payment dates for all wholly unpaid installments are deferred for one or more full installment periods and the maturity is extended for a corresponding period, the deferral charge shall not exceed the portion of the precomputed finance charge attributable to the final installment of the original schedule of payments multiplied by the total number of installments to be deferred and by the number of full installment periods in the deferment period; or

(b) If the deferral is not made pursuant to par. (a) the deferral charge shall not exceed the rate previously disclosed to the customer pursuant to the provisions on disclosure in subch. III, applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in the lengths of months, but proportionally for a part of a month, counting each day as one−thirtieth of a month.

(2) A deferral charge may be collected at the time it is assessed or at any time thereafter.

(3) The deferment period is that period of time in which no payment is required or made by reason of the deferral.

(4) Any payment received at the time of the deferment may be applied first to the deferral charge and the remainder, if any, to the unpaid balance of the transaction, but if such payment is sufficient to pay, in addition to the appropriate delinquency charge, any installment which is in default, it shall be first so applied, and such installment shall not then be deferred or subject to the deferral charge.

(5) No installment on which a delinquency charge has been collected shall be deferred or included in the computation of the deferral unless such delinquency charge is refunded to the customer or credited to the deferral charge.

(6) In addition to the deferral charge, the merchant may make appropriate additional charges as provided in s. 422.202. The amount of such charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral.

(7) (am) In addition to any requirements of form established by the administrator, a deferral agreement shall meet all of the following requirements:

1. The agreement shall be in writing and signed by the customer.

2. The agreement shall incorporate by reference the transaction to which the deferral applies.

3. The agreement shall state each installment or part thereof in the amount to be deferred, the date or dates originally payable and either the date or dates agreed to become payable for the payment of the amounts deferred or the periods of deferral.

4. The agreement shall clearly set forth the dollar amount of the charge for each installment to be deferred and the total dollar amount to be paid by the customer for the deferral.

(e) This subsection does not apply to deferral charges made under sub. (8).

(8) The parties may agree in writing at the time of a precomputed consumer transaction, refinancing or consolidation that if an installment is not paid within 30 days after its due date, the creditor at any time may unilaterally grant a deferral and make charges as provided in this section if a notice is sent to the customer at least 10 days prior to deferral advising the customer of the total dollar amount of the deferral charge and the periods of deferral, but such deferral shall not be allowed if the customer has a valid claim or defense against the creditor for the payment not made. Only one such unilateral deferral on a consumer credit transaction may be made during any 12−month period.

(9) No deferral charge may be made for a period after the date that the creditor elects to accelerate the maturity of the agreement.

(10) A violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1973 c. 3; 1991 a. 316; 1999 a. 85.

Cross−reference: See also s. DFI−WCA 1.281, Wis. adm. code.

Legislative Council Note, 1973: Clarifies the meaning of ss. 422.204 (5) and (6). The reference in sub. (5) to "partial payment" is phrased in a manner which infers that part of an installment cannot be deferred. However, this is not the case; see s. 422.204 (1) (intro.), which clearly allows the deferment of part of an installment. This change also has a minor substantive effect—the deferral charge on the deferment of part of an installment will always have to be calculated using the rate of finance charge previously disclosed to the buyer [s. 422.204 (1) (b)], rather than possibly refunding the partial payment and calculating the deferral charge using the "unit" method [s. 422.204 (1) (a)] if the transaction otherwise qualifies for such treatment.

The cross−reference language added in sub. (6) has the effect of specifying with greater exactitude those additional charges allowable in a deferral situation. [Bill 432−A]

422.205 Finance charge on refinancing. (1) With respect to a consumer credit transaction other than one pursuant to an open−end credit plan, the merchant may by agreement with the customer refinance the unpaid balance and may bargain for and receive a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted in s. 422.201.

(2) For the purpose of determining the finance charge permitted in refinancing, the amount financed resulting from the refinancing shall constitute the total of the following:

(a) The amount which the customer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment under s. 422.209 on the date of refinancing, except that for the purpose of computing this amount no minimum finance charge under s. 422.201 (9) shall be allowed; and

(b) Appropriate additional charges under s. 422.202, included for the period of refinancing.

(3) The maximum period for payments resulting from refinancing under this section shall not exceed the periods provided in s. 422.403 commencing with the date of refinancing, but the outstanding balances for the purposes of that section shall be based on the amount financed resulting from such refinancing.

(4) A violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1979 c. 10 s. 24.

422.206 Finance charge on consolidation. (1) If a customer owes an unpaid balance to a creditor with respect to a consumer credit transaction and becomes obligated on another consumer credit transaction or desires to enter into another consumer credit transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments.

(2) The unpaid balance with respect to the previous transaction shall be determined under s. 422.205 and the amount financed resulting therefrom shall be consolidated by adding to it the amount financed with respect to the subsequent transaction. The creditor may contract for and receive a finance charge based on the aggregate amount financed resulting from consolidation at a rate not exceeding that permitted by s. 422.201.

(3) The maximum period for payments resulting from consolidation under this section shall not exceed the periods provided for in s. 422.403 commencing with the date of consolidation but the outstanding balances for the purposes of that section shall be based on the amount of the consolidated outstanding balance.

(4) A violation of this section is subject to s. 425.304.

History: 1971 c. 239.

422.207 Advances to perform agreements of customer. (1) With respect to a consumer credit transaction the parties may, to the extent not prohibited by chs. 421 to 427 and 429, agree that the customer will perform certain duties with respect to preserving or insuring collateral or goods subject to a motor vehicle consumer lease, if such duties are reasonable in relation to the risk of loss of or damage to the collateral or goods. If the customer

fails 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, 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 the merchant has given the customer written notice of the nonperformance and reasonable opportunity after such notice to so perform.

(2) Within a reasonable time after advancing any sums pursuant to sub. (1), the merchant shall state to the customer in writing the amount of the sums advanced, any charges with respect to this amount and any revised payment schedule and, if the duties of the customer performed by the merchant pertain to insurance, a brief description of the insurance paid for including the type and amount of coverages.

(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, 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 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.

(4) A violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1979 c. 10, 89; 1995 a. 329; 1997 a. 302.

Cross−reference: See also s. DFI−WCA 1.30, Wis. adm. code.

422.208 Right to prepay. Subject to s. 422.209 and, with respect to a motor vehicle consumer lease, s. 429.207, the customer may prepay in full or in any part, at any time without penalty, the unpaid balance of any consumer credit transaction other than a transaction secured by a first lien mortgage or equivalent security interest on real estate with an original term of 10 years or more and on which the annual percentage rate disclosed pursuant to subch. III is 10 percent or less.

History: 1971 c. 239; 1995 a. 329.

422.209 Rebate on prepayment. (1) Except as provided in sub. (1m), upon prepayment in full of the unpaid balance of a precomputed consumer credit transaction, refinancing or consolidation, an amount not less than the unearned portion of the finance charge calculated according to this section shall be rebated to the customer. If the total of all rebates, refunds and credits to be paid to the customer under chs. 421 to 427 is less than $1, no rebate need be made.

(1m) (a) In the event of prepayment under sub. (1), a merchant may retain a loan administration fee that meets all of the following conditions:

1. The loan administration fee does not exceed 2 percent of the amount financed in the precomputed consumer credit transaction, refinancing or consolidation.

2. The loan administration fee is for a consumer loan that is secured primarily by an interest in real property or in a mobile home, as defined in s. 101.91 (10), or in a manufactured home, as defined in s. 101.91 (2).

(b) Notwithstanding par. (a), if a merchant retains any portion of a loan administration fee charged on a loan that is prepaid from the proceeds of a new loan made by the same merchant within 6 months after the prior loan, then the merchant shall reduce any loan administration fee on the new loan by the amount of the loan administration fee on the prior loan that was retained by the merchant.

(2) (a) The unearned portion of the precomputed finance charge on consumer credit transactions repayable in substantially equal successive installments at approximately equal intervals shall be equal to at least that portion of the finance charge which the sums of the installment balances of the obligation scheduled to be outstanding after the installment date nearest the date of prepayment bears to the sum of all installment balances originally scheduled to be outstanding under the obligation. For the purpose of determining the installment date nearest the date of prepayment when payments are monthly, any prepayment made on or before the 15th day following an installment due date shall be deemed to have been made as of the installment due date, and if prepayment occurs on or after the 16th day it shall be deemed to have been made on the succeeding installment due date. This method of calculating rebates may be referred to as the "rule of 78" or "sum of the digits" method. This paragraph applies to all of the following:

1. Consumer credit transactions entered into before November 1, 1981.

2. Consumer credit transactions having initial terms of less than 49 months entered into on or after November 1, 1981 and before August 1, 1987.

3. Consumer credit transactions in which the amount financed is less than $5,000, which have initial terms of less than 37 months and which are entered into on or after August 1, 1987.

(b) The unearned portion of the finance charge on consumer credit transactions described in par. (c) is, at the option of the creditor, either of the following:

1. The portion of the finance charge which is allocable to all unexpired payment periods as scheduled or deferred. A payment period is unexpired if prepayment is made within 15 days after the payment's due date. The unearned finance charge is the finance charge which, assuming all payments are made as scheduled or deferred, would be earned for each unexpired payment period by applying to unpaid balances of principal, according to the actuarial method, the annual percentage rate disclosed to the customer under subch. III. The creditor may decrease the annual interest rate to the next multiple of 0.25 percent.

2. The finance charge less the amount determined by applying the annual percentage rate disclosed to the customer under subch. III, according to the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

(c) Paragraph (b) applies to all of the following:

1. Consumer credit transactions which have terms of 49 months or more and which are entered into after November 1, 1981 and before August 1, 1987.

2. Consumer credit transactions in which the amount financed is $5,000 or more and which are entered into on or after August 1, 1987.

3. Consumer credit transactions in which the amount financed is less than $5,000, which have initial terms of 37 months or more and which are entered into on or after August 1, 1987.

(3) With respect to other precomputed consumer credit transactions, the administrator may prescribe by rule the refund formula consistent with sub. (2) (a) taking into account the irregularity of installment amounts and due dates.

(4) (a) Except as provided in par. (b), the unearned portion of a deferral charge is the deferral charge multiplied by the number of unexpired payment periods as of the date of prepayment and divided by the total number of installments deferred.

(b) If the unearned finance charge is calculated under sub. (2) (b), the deferral charge shall be refunded in full.

(5) This section does not preclude the collection or retention by the creditor of delinquency charges under s. 422.203 for delinquencies or payments due prior to prepayment.

(6) If the maturity of the obligation is accelerated for any reason and judgment is obtained, the customer is entitled to the same rebate as if payment in full had been made on the date judgment is entered against the customer.

(6m) For purpose of this section, the finance charge in a manufactured home transaction as defined in s. 138.056 (1) (bg) does not include fees, discounts, or other sums actually imposed by the government national mortgage association, the federal national mortgage association, the federal home loan mortgage corporation or other governmentally sponsored secondary mortgage mar-

ket purchaser of the loan or any private secondary mortgage market purchaser of the loan who is not a person related to the original lender.

(7) A violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1979 c. 89; 1981 c. 45 ss. 41 to 44, 51; 1987 a. 27; 1995 a. 272; 1997 a. 302; 1999 a. 9, 53; 2007 a. 11.

422.210 Agricultural credit transactions. (1) PERMISSIBLE FINANCE CHARGES AND FEES. With respect to a credit transaction that it is primarily for an agricultural purpose, a creditor may not charge, collect or receive any finance charge or fee unless the charge or fee is clearly disclosed in writing to the customer and that is agreed to by the creditor and the customer.

(2) PENALTY. A violation of this section is subject to s. 425.304.

History: 1997 a. 302.

SUBCHAPTER III

DISCLOSURE AND FORM OF WRITINGS

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 installments (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.

History: 1971 c. 239; 1979 c. 10.

The functions of disclosure regulation in consumer transactions. Whitford, 1973 WLR 400.

422.302 General requirements and provisions. (1) The information required by this subchapter to be disclosed by the creditor to the customer to whom credit is extended:

(a) Shall be made clearly and conspicuously;

(b) Shall be in writing;

(c) Except as provided in s. 422.303 and in rules adopted by the administrator, need not be contained in a single writing or made in the order set forth in chs. 421 to 427;

(d) May be supplemented by additional information or explanations supplied by the creditor, but none shall be stated, utilized or placed so as to mislead or confuse the customer or contradict, obscure or detract attention from the information required by this subchapter to be disclosed; and so long as the additional information or explanations do not have the effect of circumventing, evading or unduly complicating the information required to be disclosed by this subchapter; and

(e) Need be made only to the extent applicable and only as to those items for which the creditor makes a separate charge to the customer.

(2) The creditor shall disclose all information required by this subchapter before the transaction is consummated; such disclosures may be made on the face of the writing evidencing the transaction.

(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.

(4) Anything to the contrary in chs. 421 to 427 notwithstanding, the sale of insurance under ch. 424 shall not be considered a sale requiring separate disclosure other than as provided in s. 422.202 (1).

History: 1971 c. 239; 1979 c. 10, 89.

When a merchant first informed the customer of 24 percent interest to be charged on an open account in statements of the account provided after the account was opened, sub. (2) and s. 422.308 were violated and the merchant was only entitled to interest under s. 138.04. Severson Agri−Service, Inc. v. Lander, 172 Wis. 2d 269, 493 N.W.2d 230 (Ct. App. 1992).

422.303 Form requirements other than open−end or discount. (1) In a consumer credit sale other than one pursuant to an open−end credit plan or a 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.

(2) The terms of such instrument evidencing a consumer credit sale shall be set forth in not less than 8−point standard type, or such similar type as is prescribed in rules adopted by the administrator, to the extent that larger type is not specifically required by chs. 421 to 427.

(3) Except as provided in sub. (4), every writing evidencing the customer's obligation to pay under a consumer credit transaction other than one pursuant to an open−end credit plan or a motor vehicle consumer lease, shall contain immediately above or adjacent to the place for the signature of the customer, a clear, conspicuous, printed or typewritten notice in substantially the following language:

NOTICE TO CUSTOMER

(a) DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.

(b) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

(c) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

(d) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

(4) The notice described in sub. (3) (a) is not required when no terms appear on the reverse side of the writing. The notice described in sub. (3) (d) is not required with respect to a consumer credit transaction secured by a first lien mortgage or equivalent security interest on real property, the original term of which is 10 years or more.

(5) The creditor shall retain a copy of such writing evidencing a consumer credit transaction, other than one pursuant to an open−end credit plan, and of any proposal for a consumer credit transaction which the merchant has required or requested the customer to sign and which the customer has signed during contract negotiations, for a period of one year after the last payment scheduled under the transaction, or one year after the transaction has been repaid in full, whichever is sooner. The creditor shall supply the customer with copies of such documents upon any demand of the customer made within such period; one copy shall be furnished at no charge; and subsequent copies shall be furnished on the condition that the customer pay the creditor's reasonable costs of preparing and forwarding the copy. Copies supplied under this subsection are in addition to those copies required by s. 422.302.

(6) A violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1973 c. 3; 1975 c. 407; 1979 c. 10, 89; 1995 a. 329.

Legislative Council Note, 1973: Makes clear that this section refers to copies of documents given subsequently to documents furnished in the original transaction. Section 422.302 (3) requires that a copy of each document signed by the customer and evidencing his obligation be given to the customer before the first payment is due. This section is intended to refer to additional copies of such documents, furnished to the customer during the course of repaying the obligation. The added language inserted in sub. (5) further clarifies this intent. [Bill 432−A]

422.304 Prohibition of blank writings. (1) Every writing evidencing a consumer credit transaction shall be completed as to

all essential provisions prior to the signing thereof by the parties, and no creditor shall induce, encourage or otherwise permit the customer to sign a writing containing blank spaces which are to be filled in after it is signed except for a space provided for the identifying numbers of goods if not available at the time of the transaction. 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 unless their inapplicability is clearly and conspicuously indicated.

(2) A violation of this section is subject to s. 425.304.

History: 1971 c. 239.

Cross−reference: See also s. DFI−WCA 1.34, Wis. adm. code.

422.305 Notice to obligors. (1) No natural person is obligated to assume personal liability for payment of an obligation arising out of a consumer credit transaction unless 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
PERSONAL OBLIGATION

(a) 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) You will be liable and fully responsible for payment of the above amount even though you may not be entitled to any of the goods, services or loan furnished thereunder.

(c) 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)

(2) The 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 only the matter above set forth and the address of the merchant.

(3) 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 a cosigner.

(5) Taking or arranging for a person to sign an instrument in violation of this section is a violation subject to s. 425.304.

History: 1971 c. 239; 1973 c. 3; 1979 c. 10.

Cross−reference: See also s. DFI−WCA 1.351, Wis. adm. code.

422.306 Receipts; accounting; evidence of payment. (1) The creditor shall furnish the customer, without request, a written receipt for each payment made in cash, or any other time the method of payment does not itself provide evidence of payment.

(2) At any time after consummation of a consumer credit transaction other than one pursuant to an open−end credit plan, the creditor, upon written request by the customer, shall furnish to the customer a written statement of the amounts and specifying the dates of payments received and charges imposed, together with the unpaid balance at the time of the statement. With respect to transactions secured by a first lien mortgage, or equivalent security interest, on real property such statement need specify only the dates and amounts of payments received and charges imposed during the previous 12 months, and the unpaid balance remaining at the time of the statement. The customer shall be entitled to one such statement free of charge once every 12 months. Additional statements shall be furnished if the customer pays the creditor's reasonable costs of preparing and furnishing the statement.

(3) With respect to an open−end credit plan, the creditor shall at any time upon written request by the customer, furnish to the customer a written statement, which may consist of copies of the periodic statements furnished to the customer under the plan, specifying the dates and amounts of purchases or loan credit extended and payments received during the previous 12 months, and the unpaid balance remaining at the time of the statement. The customer shall be entitled to one such statement at a charge not in excess of $1 once every 12 months. Additional statements shall be furnished if the customer pays the creditor's reasonable costs of preparing and furnishing the statement.

(4) Except as provided in s. 708.15, within 45 days after payment by the customer of all sums for which the customer is obligated under a consumer credit transaction other than one pursuant to an open−end credit plan, the creditor shall give or forward to the customer instruments which acknowledge payment in full, and release of any security interest when there is no outstanding secured obligation, and furnish to the customer or the customer's designee evidence of the release or assignment to such designee of any recorded lien on real estate and termination of any filed financing statement which perfected such security interest.

History: 1971 c. 239; 1991 a. 316; 2013 a. 66.

Cross−reference: See also s. DFI−WCA 1.36, Wis. adm. code.

422.307 Estimates or approximations. If at the time disclosures must be made, an amount or other item of information required to be disclosed or needed to determine a required disclosure is unknown or not available to the creditor, and a reasonable effort has been made to ascertain it, the creditor may use an estimated amount or approximation of the information, if:

(1) The estimate or approximation is clearly identified as such, is reasonable and is based on the best information available to the creditor; and

(2) The estimate or approximation is not used for the purpose of circumventing or evading the disclosure requirements of this subchapter.

History: 1971 c. 239.

422.308 Open−end credit disclosures. (1) With regard to every open−end credit plan between a creditor, wherever located, and a customer who is a resident of this state and who is applying for the open−end credit plan from this state, every application for the open−end credit plan, including every application contained in an advertisement, shall be appropriately divided and captioned by its various sections and shall set forth all of the following:

(a) The annual percentage rate or, if the rate may vary, a statement that it may do so and of the circumstances under which the rates may increase, any limitations on the increase and the effects of the increase.

(b) The date or occasion upon which the finance charge begins to accrue on a transaction.

(c) Whether any annual fee is charged and the amount of the fee.

(d) Whether any other charges or fees may be charged, what they may be charged for and the amounts of the charges or fees.

(2) With regard to every open−end credit plan between a creditor, wherever located, and a customer who is a resident of this state and who is given the opportunity to enter into an open−end credit plan while present in any establishment located in this state but who is not required to complete an application under sub. (1), the customer shall be given a notice prior to entering into the

open−end credit plan. The notice shall be appropriately divided and captioned by its various sections and shall set forth all of the information in sub. (1) (a) to (d).

(3) The administrator shall publish an annual creditors' noncompliance report on November 1. The report shall set forth the names of creditors that the administrator knows, or reasonably believes, to have violated this section during the preceding 12 months, unless the administrator knows or reasonably believes that the violation or violations were the result of unintentional good faith error.

(4) A violation of this section is subject to s. 425.304 unless the violation was the result of an unintentional good faith error.

(5) If any part of this section is found unconstitutional with regard to a creditor solely or in any part because the creditor is located outside of this state, that part of this section shall not apply to any creditor located within this state.

History: 1985 a. 244.

When a merchant first informed the customer of 24 percent interest to be charged on an open account in statements of the account provided after the account was opened, s. 422.302 and subs. (1) and (2) were violated and the merchant was only entitled to interest under s. 138.04. Severson Agri−Service, Inc. v. Lander, 172 Wis. 2d 269, 493 N.W.2d 230 (Ct. App. 1992).

422.310 Refund anticipation loans. (1) In addition to any other requirements under this subchapter, a creditor shall disclose all of the following in writing to a customer on a form that is signed by the customer before the customer enters into a refund anticipation loan:

(a) Any refund anticipation loan fees.

(b) Any charge or fee for electronically filing an income tax return.

(c) The total dollar amount of all charges and fees under pars. (a) and (b).

(d) The anticipated length of time, within 2 business days, by which the customer will receive the refund anticipation loan proceeds.

(e) That the customer may electronically file an income tax return without obtaining a refund anticipation loan.

(f) The anticipated length of time within which the customer could reasonably expect to receive a tax refund if the income tax return is filed electronically and the customer does not request a refund anticipation loan.

(g) That the customer is responsible for repayment of the refund anticipation loan and refund anticipation loan fees even if the income tax refund is not paid or is paid in a lower amount than was anticipated.

(h) The estimated annual percentage rate, based on the size of the refund anticipation loan, the refund anticipation loan fees and the anticipated maturity date of the refund anticipation loan. The anticipated maturity date shall be the date disclosed under par. (f).

(2) A creditor may not impose a different fee or charge for electronically filing an income tax return on a customer who obtains a refund anticipation loan than the creditor imposes on a customer who does not obtain a refund anticipation loan.

(3) A violation of this section is subject to s. 425.304.

History: 1993 a. 111.

SUBCHAPTER IV

LIMITATIONS ON AGREEMENTS AND PRACTICES

422.401 Scope. This subchapter applies to consumer credit transactions.

History: 1971 c. 239.

422.402 Balloon payments prohibited. (1) Except as provided in sub. (1m), no merchant shall enter into an agreement which requires a schedule of payments under which any one payment is not equal or substantially equal to all other payments, or under which the intervals between any consecutive payments differ substantially except as permitted in sub. (2) or (3) with respect to a consumer credit transaction other than a transaction which is one of the following:

(a) Pursuant to an open−end credit plan.

(b) Not precomputed and on which the annual percentage rate disclosed under subch. III is less than 16.5 percent for a consumer credit sale in which the seller retains a security interest in real estate which is the subject of the sale or any consumer loan, either of which is entered into on or after April 6, 1980, and prior to November 1, 1981, or 12 percent for any other consumer credit transaction.

(1m) No merchant shall enter into an agreement which requires a schedule of payments under which any one payment is not equal or substantially equal to all other payments, or under which the intervals between any consecutive payments differ substantially except as permitted in sub. (2) or (3) with respect to a consumer credit transaction other than a transaction which is one of the following:

(a) Pursuant to an open−end credit plan.

(b) Not precomputed and on which the annual percentage rate disclosed under subch. III is not more than 18 percent for a consumer credit sale in which the seller retains a security interest in real estate which is the subject of the sale or any consumer loan, either of which is entered into on or after November 1, 1981, and before November 1, 1984.

(2) The parties may agree to payments that are not substantially equal to other payments or are paid at unequal intervals if:

(a) The customer's livelihood is dependent upon income that is seasonal or otherwise not regular, such payments are in accordance with the needs of the customer and a notice in substantially the following language is set forth immediately below the customer's signature in 12−point boldface type, or its equivalent as prescribed by the administrator:

WARNING

The amounts of payments or the dates on which they are payable under this agreement are not equal. Do not sign this paper unless you are certain that this payment schedule meets your needs.

(b) The unequal or irregular payment is part of an agreed down payment received by the creditor contemporaneously with or prior to the consummation of the transaction;

(c) The unequal or irregular payment is part of an agreed down payment that does not exceed 20 percent of the cash price, has a due date not later than the due date of the 2nd installment of the transaction and is excluded from the amount financed upon which the finance charge is computed, and if it is the mutual understanding of the customer and the creditor that such a partial payment will be separately financed the customer has the right to rescind the transaction without penalty if the customer cannot obtain such separate financing;

(d) The unequal or irregular payment is the final scheduled payment and is less than, or not more than 10 percent greater than, the average amount of the other scheduled payments, if such other payments are substantially equal; or

(e) The unequal or irregular payment is the first scheduled payment and results from the inclusion of interest charged for a first installment period of not more than 45 days or less than 15 days as permitted under s. 138.09 (7) (c) 2.

(3) In the event that sub. (2) (a) applies, the customer shall have the right at any time to refinance the unequal or irregular installment pursuant to s. 422.205 for refinancing, except that the rate shall not exceed the rate disclosed in the original transaction pursuant to subch. III of ch. 422.

(4) Taking or arranging for the customer to sign an instrument in violation of this section shall be subject to s. 425.304.

(5) This section does not apply to a manufactured home transaction as defined in s. 138.056 (1) (bg) made on or after November 1, 1981, and before November 1, 1984, if:

(a) The transaction complies with s. 138.056; or

(b) The unequal or irregular payment is the final scheduled payment of the transaction, and the merchant agrees to refinance the final scheduled payment at a rate of interest not in excess of the rate disclosed pursuant to subch. III of ch. 422 by more than one percent multiplied by the number of 6−month periods in the term of the immediately prior manufactured home transaction.

(6) This section does not apply to consumer credit transactions entered into on or after November 1, 1984.

History: 1971 c. 239; 1977 c. 444; 1979 c. 168; 1981 c. 45; 1983 a. 36; 1987 a. 27; 1991 a. 316; 1995 a. 225; 1997 a. 302; 2007 a. 11.

422.403 Maximum periods of repayment. (1) With respect to a consumer credit transaction other than one pursuant to an open−end credit plan or one pursuant to s. 138.09, no merchant shall initially schedule payments to be paid in full:

(a) Over a period of more than 25 months if the total of payments is $700 or less;

(b) Over a period of more than 37 months if the total of payments is more than $700, but does not exceed $1,400; or

(c) Over a period of more than 49 months if the total of payments is more than $1,400, but does not exceed $2,000, unless the transaction is for the acquisition of or substantial improvement to real property in which case such period shall not exceed 61 months.

(2) With respect to a consumer credit transaction other than one pursuant to an open−end credit plan or one pursuant to s. 138.09, which is for the purpose of an improvement to real property and in which the annual percentage rate disclosed under subch. III is 15 percent or less, no merchant may initially schedule payments to be paid in full:

(a) Over a period of more than 25 months if the total of payments is $300 or less;

(b) Over a period of more than 48 months if the total of payments is more than $300, but does not exceed $1,000; or

(c) Over a period of more than 60 months if the total of payments is more than $1,000, but does not exceed $2,000.

(3) The periods specified in subs. (1) and (2) shall commence with the date of first payment or when the finance charge begins to accrue, whichever is earlier.

(4) This section shall not apply to loans made, guaranteed or funded by federal or state agencies and loans made, guaranteed or funded by nonprofit educational institutions or foundations qualifying under section 501 (c) (3) of the internal revenue code, for purposes of post−high school education.

(4m) This section does not apply to loans made by an administrative agency within the executive branch established under ch. 15.

(5) Taking or arranging for the customer to sign an instrument in violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1973 c. 3, 4, 243; 1981 c. 20, 391.

422.404 Assignment of earnings. (1) No merchant shall take or arrange for an assignment of earnings of the customer for payment or as security for payment of an obligation arising out of a consumer transaction unless such assignment is revocable at will by the customer.

(2) A revocable assignment of earnings made as payment or as security for payment of an obligation arising out of a consumer credit transaction, which would otherwise expire under s. 241.09, shall be deemed to be renewed for a term not to exceed 6 months if:

(a) The original authorization contained a conspicuous notice of the customer's right to revoke;

(b) Prior to expiration, the merchant mails a notice to the customer which conspicuously states that the assignment of earnings is revocable, and that it shall continue to run for not more than 6 additional months, unless the merchant receives notice of revocation; and

(c) The customer does not revoke the assignment.

(3) A violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1973 c. 3.

422.405 Authorization to confess judgment prohibited. (1) No merchant shall take or accept from the customer a warrant or power of attorney or other authorization for the creditor, or other person acting on the creditor's behalf, to confess judgment.

(2) A violation of this section is subject to s. 425.305.

History: 1971 c. 239; 1991 a. 316.

422.406 Negotiable instruments. (1) In a consumer credit sale or lease transaction, no seller or lessor shall take a negotiable instrument (s. 403.104), other than a check, as evidence of the obligation of the customer.

(2) In a consumer loan transaction which constitutes an interlocking loan (s. 422.408), no creditor shall take a negotiable instrument (s. 403.104), other than a check, as evidence of the obligation of the customer.

(3) The holder to whom an instrument issued in violation of this section is negotiated, notwithstanding that the holder may otherwise be a holder in due course of such instrument, is subject to all claims and defenses of the customer against the payee, subject to sub. (4).

(4) Such holder's liability under this section is limited to:

(a) The amount owing to the holder on such instrument at the time the holder receives notice of a claim or defense of the customer against such payee; plus

(b) If the customer has obtained a judgment against such payee and execution with bond is issued within one year after judgment and is returned unsatisfied, the amount paid by the customer to the holder before the holder received notice of the claim or defense of the customer, if such claim is made against the holder within 2 years after such judgment is returned unsatisfied. Any judgment against the payee, other than a default judgment, shall be binding on the holder.

(5) Taking or arranging for the customer to sign an instrument in violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1973 c. 2; 1991 a. 316.

422.407 Defenses assertable against an assignee. (1) With respect to a consumer credit transaction other than a consumer loan which is not an interlocking consumer loan (s. 422.408), an assignee of the rights of a creditor is subject to all claims and defenses of the customer against the assignor arising out of the transaction notwithstanding an agreement to the contrary, subject to sub. (2).

(2) An agreement by the customer not to assert against an assignee a claim or defense arising from a consumer credit transaction is enforceable only by an assignee not related to the assignor who acquires the customer's contract in good faith and for value, who gives the customer notice of the assignment as provided in s. 422.409 and who, within 12 months after the mailing of the notice of assignment, has not received notice of the customer's claim or defense. In the event that such assignee further assigns the customer's obligation to another party not related to the original assignor, in good faith and for value, such party may enforce an agreement by the customer not to assert claims or defenses, only to the extent that that party's assignor could do so under this section, and any notice by the customer to the original or subsequent assignees is effective as to such party. Such good faith assignee's liability under this section is limited to:

(a) The amount owing to the assignee with respect to the consumer credit transaction at the time the assignee received notice of a claim or defense of the customer against the assignor; plus

(b) If the customer has obtained a judgment against the assignor and execution with bond is issued within one year after judgment and is returned unsatisfied, the amount paid by the customer to the assignee before the assignee received notice of the

claim or defense of the customer, if such claim is made against the assignee within 2 years after execution is returned unsatisfied. Any judgment against the assignor, other than a default judgment, shall be binding on the assignee.

(2m) (a) In the event that an assignee, who is related to the assignor or who takes the assignment not in good faith or not for value, further assigns the customer's obligation to a subsequent assignee not related to any prior assignor and who takes the assignment in good faith and for value, such subsequent assignee's liability is limited to that provided for in sub. (2) if the subsequent assignee's assignor at the time of the assignment to the subsequent assignee gives the notice required in s. 422.409 (2), subject to par. (b).

(b) The notice given under s. 422.409 (2) need not name the subsequent assignee. In such cases it shall state that payments may be made to the assignor, and shall otherwise comply with the requirements of s. 422.409 (2).

(3) Any assignee does not acquire a customer's contract in good faith within the meaning of subs. (2) and (2m) if the assignee has knowledge, including knowledge from his or her course of dealing with other customers of the assignor or from the assignor or the assignee's records, or written notice of violations of chs. 421 to 427, of conduct of the kind described in s. 426.108, or of substantial complaints by such other customers that such assignor fails or refuses to perform his or her contracts with such customers and fails to remedy their complaints.

(4) No term of an agreement may confer upon an assignee greater immunity from claims and defenses of the customer against the assignor than is permitted in this section. No term of an agreement purporting to waive defenses against an assignee is enforceable unless the agreement makes conspicuous reference to this section and to the customer's right to assert such claim or defense against an assignee within 12 months after being furnished a notice of assignment.

(5) Except where execution with bond is returned unsatisfied under sub. (2) (b) or where the assignor is in bankruptcy, receivership or other insolvency proceedings or cannot be found within the state, any claims or defenses of the customer under this section can only be asserted as a matter of counterclaim, defense to or set−off against a claim by the assignee.

(6) Taking or arranging for the customer to sign an instrument in violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1973 c. 3; 1979 c. 89; 1991 a. 316.

Legislative Council Note, 1973: Sections 39, 40 and 41 revise s. 422.407 so that it accomplishes its intended purpose, which is to enable a good faith assignee of a customer's contract, and his good faith assignees, to enforce an agreement by the customer not to raise claims and defenses against assignees of the contract, once 12 months have passed following the initial good faith assignment.

New s. 422.407 (2m), created by this act, accomplishes the same result in those cases where the first assignment is made to a related assignee, who further assigns the contract to an unrelated good faith assignee. This latter arrangement is not dealt with by present s. 422.407. New (2m) also recognizes existing business patterns in that it allows the related assignee to service an account, although the contract has been further assigned to an unrelated good faith assignee. In these cases the good faith assignee receives the protection of this section, provided the customer has been given the required notice of assignment. [Bill 432−A]

422.408 Interlocking loans. (1) The lender in an interlocking consumer loan is subject to the claims and defenses the consumer may have against the seller or lessor in the consumer transaction for which the proceeds of the loan are used, subject to sub. (3).

(2) For purposes of this section, a consumer transaction pursuant to a seller credit card shall be deemed to be a consumer loan transaction if the transaction is other than a purchase or lease of goods or services from the issuer of the seller credit card, from a person related to such issuer or from others licensed or franchised to do business solely under the business or trade name or designation of such issuer.

(3) For purposes of this section, a consumer loan transaction is an "interlocking consumer loan" if the creditor knows or has reason to know that all or a meaningful part of the proceeds of the loan are used to pay all or part of the customer's obligations to the seller or lessor under a consumer sale or lease, and if:

(a) The lender is a person related to the seller or lessor;

(b) The lender supplies to the seller or lessor, or the seller or lessor prepares, documents used to evidence the loan, other than sales slips or drafts used to evidence purchases pursuant to an open−end credit plan;

(c) The lender directly or indirectly pays to the seller or lessor any commission, finder's fee or other similar consideration based upon or measured by the consumer loan;

(d) The lender has recourse to the seller or lessor for nonpayment of the consumer loan transaction through a guaranty, maintenance of a reserve account or otherwise, but this paragraph shall not apply to transactions pursuant to a credit card issued by a lender not related to the seller or lessor;

(e) The lender has knowledge, including knowledge from the lender's course of dealing with other customers of the seller or lessor or from the lender's records, or written notice of substantial complaints by such other customers, that such seller or lessor fails or refuses to perform the seller's or lessor's contracts with them and that such merchant fails to remedy such complaints within a reasonable time; or

(f) The loan exceeds $100, is disbursed directly to the seller or lessor and is made pursuant to a credit card to finance a purchase from a seller's or lessor's place of business in this state, if the seller or lessor has a direct or indirect contractual relationship with the issuer permitting the seller or lessor to honor the credit card.

(4) To the extent that a lender under an interlocking consumer loan is subject to claims or defenses of the customer against a merchant under this section, the lender's liability is limited to claims or defenses arising from the consumer transaction financed by the proceeds of the loan, and may not exceed that portion of the unpaid balance of the loan at the time the lender has notice of the claim or defense, which the proceeds used to pay all or part of the customer's obligation on which the claim is based bears to the entire amount financed of the loan, unless the customer has obtained a judgment against the merchant and execution thereon has been returned unsatisfied, in which event the lender shall in addition be liable in a similar manner for the proportionate amount paid by the customer to the lender with respect to the interlocking consumer loan before the lender received notice of the claim or defense of the customer.

(5) With respect to a loan which constitutes an interlocking consumer loan solely by reason of sub. (3) (f), the lender shall be liable as provided in sub. (4) only if the lender receives notice of the customer's claim or defense within 12 months after the transaction is charged against the customer's account, and the unpaid balance of such a loan for purposes of sub. (4) shall be determined pursuant to the method set forth in s. 422.418.

(6) This section shall not apply to consumer loans extended for the purpose of acquiring residential real property which are secured by a first lien mortgage or equivalent security interest on such property and on which the annual percentage rate disclosed pursuant to subch. III is less than 12 percent.

History: 1971 c. 239; 1991 a. 316.

The lender liability limits under sub. (4) do not limit the liability of lenders subject to the Home Improvement Trade Practices Code promulgated under s. 100.20. Jackson v. DeWitt, 224 Wis. 2d 877, 592 N.W.2d 262 (Ct. App. 1999), 98−0493.

Consumer defenses in interlocking loans and credit card transactions; recent statutes, policies and a proposal. Littlefield, 1973 WLR 471.

422.409 Notice of assignment. (1) The customer is authorized to pay the assignor until the customer receives notification of assignment of the rights to payment pursuant to a consumer credit transaction and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the customer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless the assignee does so the customer may pay the assignor.

(2) The notification of assignment shall be in writing and addressed to the customer at the customer's address as stated in the contract, shall be accompanied by a copy of the contract or shall identify the contract, describe the goods or services, state the names of the assignor and the customer, the name and address of the assignee, the number, amount and due dates or periods of payments scheduled to repay the indebtedness and, except in the case of a transaction secured by a first lien mortgage or equivalent security interest for the purpose of the acquisition of a dwelling, the total of payments. A provision in the assigned contract that the customer waives or will not assert claims or defenses against the assignee under s. 422.407 (2) shall not be effective unless the notification of assignment also contains a clear and conspicuous statement that the customer has 12 months within which to notify the assignee in writing of any complaints, claims or defenses the customer may have against the assignor and that if the customer does not give such notice, the assignee or subsequent assignees will have the right to enforce the contract free of such claims or defenses subject to chs. 421 to 427.

History: 1971 c. 239; 1973 c. 2, 3; 1991 a. 316.

Cross−reference: See also ss. DFI−WCA 1.36 and 1.37, Wis. adm. code.

422.410 Statements of compliance or performance. Statements in the form of acknowledgments, certificates of performance or otherwise, signed by the customer, to the effect that there has been compliance with any of the requirements of chs. 421 to 427 or performance by the other party or parties to the transaction shall create no presumption that the facts recited in such statements are true.

History: 1971 c. 239; 1979 c. 89.

422.411 Attorney fees. (1) Except as provided in subs. (2) and (2m), with respect to a consumer credit transaction no term of a writing may provide for the payment by the customer of attorney fees.

(2) With respect to a consumer transaction in which credit is extended for the purpose of acquiring or refinancing the acquisition of residential real property, which is secured by a first lien or purchase money mortgage or equivalent security interest on such property, and on which the annual percentage rate disclosed pursuant to subch. III is 12 percent or less, the creditor may contract for the customer's payment of reasonable attorney fees actually incurred by the creditor, but the customer shall be liable for such fees only to the extent:

(a) Such fees are payable to a licensed attorney who is not an employee of the creditor; and

(b) Such fees do not exceed 5 percent of the amount of the judgment entered against the customer, or $100 in the event no judgment is so entered and the dispute is settled prior to judgment.

(2m) A lender licensed under s. 138.09 may contract for the customer's payment of reasonable attorney fees actually incurred by the licensed lender to foreclose a mortgage or equivalent security interest in residential real property, but the customer is liable for attorney fees only if all of the following conditions are satisfied:

(a) The fees are payable to a licensed attorney who is not an employee of the licensed lender.

(b) The fees do not exceed 5 percent of the amount of the judgment entered against the customer, or $100 in the event a judgment is not entered and the dispute is settled before judgment.

(3) Taking or arranging for the customer to sign an instrument in violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1973 c. 3; 1993 a. 368, 490; 1997 a. 302.

Legislative Council Note, 1973: Broadens the range of residential real estate transactions in which the limited amount of attorney fees allowed by the Wisconsin consumer act can be contracted for. The amendment's effect is to allow all first lien and purchase money creditors, and creditors refinancing a first lien or purchase money transaction, to contract for attorney fees. As the section now reads, only purchase money first mortgagees may contract for them. As amended, all such creditors will be treated in an equal manner. [Bill 432−A]

422.412 Restriction on liability in consumer lease. In a consumer lease, the obligation of a customer upon expiration of the lease may not exceed the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property occasioned by other than normal use or for other default.

History: 1971 c. 239; 1997 a. 302.

422.413 Limitation on default charges. (1) Except as provided in sub. (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 or goods subject to a motor vehicle consumer lease and such other charges as are specifically authorized by chs. 421 to 427 and 429.

(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 (2), an aircraft as defined in s. 114.002 (3), or a mobile home or manufactured home as defined in s. 101.91, 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 employees in taking possession of the collateral.

(c) 1. If the collateral is not redeemed by the customer under s. 425.208, the greater of expenses determined under subd. 2. or of all of the following expenses of preparing the collateral for sale if paid to persons not related to the creditor:

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

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

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

2. Expenses for any repair to the collateral which increase the selling price of the collateral, not to exceed the amount by which the selling price is increased because of the repairs, if paid to persons not related to the creditor. The selling price of the collateral before repairs shall be established by any reasonable method, at no cost to the customer.

(2r) Notwithstanding s. 409.615 (1), the proceeds of any disposition of collateral referred to in sub. (2g) shall be applied in the following order to:

(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) 1., subject to the restrictions set forth in sub. (2g) (c) 1. (intro.), in the order, and subject to the limitations on amounts, set forth in sub. (2g) (c) 1. a. to c., or in sub. (2g) (c) 2., subject to the limitation described in that subdivision.

(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) 1. in excess of the limitations on amounts set forth in sub. (2g) (c) 1. a. to c., in the order set forth in sub. (2g) (c) 1. a. to c.

(f) The satisfaction of indebtedness secured by any subordinate security interest in the collateral, subject to the restrictions set forth in s. 409.615 (1) (c) and (2).

(g) Payment to the customer.

(3) A violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1973 c. 2; 1979 c. 10; 1983 a. 389; 1985 a. 331; 1993 a. 368; 1995 a. 329; 1997 a. 302; 1999 a. 9, 53; 2001 a. 10; 2007 a. 11.

422.414 Use of multiple agreements. (1) No creditor shall divide or otherwise encourage the customer or customers to become obligated at the same time on more than one consumer loan, more than one consumer credit sale, or one or more interlocking consumer loans (s. 422.408) and consumer credit sale for the purpose of obtaining a higher rate of finance charge than would otherwise be permitted under chs. 421 to 427.

(2) Multiple agreements which arise out of substantially the same transaction shall be presumed to be in violation of this section.

(3) A violation of this section is subject to s. 425.305.

History: 1971 c. 239; 1979 c. 89.

422.415 Changes in open−end credit terms. (1) Except as provided in sub. (2), no creditor shall make any change in the terms of open−end credit plans that is adverse to the interests of the customer with respect to any outstanding balances or that imposes or alters a charge permitted under s. 422.202 (2m). For the purposes of this section, a change shall be presumed to be adverse if the result thereof is to increase the rate of the finance charge or the amount of the periodic payment due. Outstanding balances shall be determined on the assumption that all payments shall be credited first to any finance charges that may be due and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(2) A change that is adverse to the interests of the customer with respect to outstanding balances or that imposes or alters a charge permitted under s. 422.202 (2m) may be made if any of the following conditions is met:

(a) The change is required by legislation, regulations or administrative rules becoming effective after the date of the agreement with the customer and the creditor has mailed or delivered to the customer written notice disclosing such proposed change not less than 3 months prior to the effective date of such change or such lesser period of time as may be available before such change is required to be made.

(b) The change is made within 3 months of March 1, 1973 or within 3 months after the repeal or expiration of any federal legislation, administrative order, rule, guideline or regulation, the purpose of which was to limit or freeze finance charges or other charges, in effect on March 1, 1973, whichever is later.

(c) The creditor mails or otherwise delivers to the customer a written disclosure of the proposed change not less than 90 days prior to the effective date of such change.

(d) The customer agrees in writing to a change other than a change made to apply a finance charge permitted by the treatment of s. 422.201 (2) by chapter 168, laws of 1979, to a balance outstanding on April 6, 1980.

(3) No term of a writing executed by the customer shall constitute authorization for a creditor to unilaterally make changes in the terms of the credit plan, which are otherwise prohibited by this section.

(4) A violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1979 c. 168; 1981 c. 45 s. 51; 1993 a. 150; 1995 a. 328.

422.4155 Notice of termination of liability. (1) In an open−end credit plan in which more than one person may be obligated for extensions of credit, any person may terminate his or her liability for future extensions of credit under the plan by giving written notice to the creditor of the person's termination of liability. The person's liability for future extensions of credit under the plan shall continue as to loans extended to, or purchases made by, any other person under the plan for 15 business days after the creditor's receipt of the termination notice. The terminating person's liability may not exceed the greater of the requested and contracted for credit limit under the plan or the balance outstanding under the plan on the receipt of the termination notice plus $500.

(2) Notwithstanding sub. (1), a person remains liable for loans extended to, or purchases made by, the person after giving the termination notice.

History: 1981 c. 45.

422.416 Referral transactions prohibited. (1) With respect to a consumer transaction no merchant shall give or offer to give a rebate or discount or otherwise pay or offer to pay value to the customer as an inducement for a consumer transaction in consideration of the customer's giving to the creditor the names of prospective customers, or otherwise aiding the creditor in entering into a transaction with another customer or, without being limited by any of the foregoing, performing any other act or the occurrence of any other event, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the customer enters into the agreement.

(2) A violation of this section is subject to s. 425.305.

History: 1971 c. 239; 1991 a. 316.

422.417 Restrictions on security interests. (1) With respect to a consumer credit sale a seller may take a security interest only in:

(a) The property sold;

(b) Goods upon which the property sold is installed or to which it is annexed, or goods upon which the services sold are performed, if the obligation secured is $500 or more;

(c) Real property to which the property sold is affixed, or which is maintained, repaired or improved as a result of the sale of the property or services, if the obligation secured is $1,000 or more; and

(d) Goods of the consumer which were the subject of a prior transaction with the seller which is consolidated (s. 422.206) with the consumer credit sale, or if the consumer credit sale is made pursuant to an open−end credit plan, goods previously purchased by the consumer pursuant to the plan, subject however to s. 422.418.

(2) With respect to a consumer lease, except as otherwise provided in s. 429.205 with respect to a motor vehicle consumer lease, a lessor may not take a security interest in any property owned or leased by the customer other than the leased goods to secure the lessor's obligations under the lease. This subsection does not prohibit a security interest in a cash security deposit for a consumer lease of motor vehicles.

(3) With respect to a consumer loan, in addition to the limitations on security interests required by 12 CFR 227.13 (d), 12 CFR 535.2 (a) (4) or 16 CFR 444.2 (a) 4, if any, a lender may not take a security interest, other than a purchase money security interest, in:

(a) Clothing of the customer and the customer's dependents and the following, if they are not fixtures: dining table and chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch and chairs, cooking utensils and kitchenware; or

(b) Real property if the obligation secured is less than $1,000.

(4) A violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1973 c. 3; 1975 c. 406, 407, 421; 1981 c. 20, 391; 1985 a. 256; 1989 a. 359; 1991 a. 316; 1995 a. 329; 1997 a. 302.

422.418 Security interests: consolidations; open−end credit plans. (1) The parties may agree in a consolidation agreement under s. 422.206 that the creditor may secure the consolidated obligation by a security interest in property in which the creditor has an existing security interest as a result of the prior transaction which is one of those agreed to become consolidated.

(2) For the purpose of determining the extent to which a consolidated obligation is secured after a consolidation of consumer sales, and after a consolidation of consumer loans in which one or more of the loans consolidated is secured by a purchase money security interest in property of the type described in s. 422.417 (3) (a), payments received by the creditor after a consolidation agreement are deemed to have been first applied to the payment of obligations arising from the transactions first made. To the extent that

obligations are paid pursuant to this section, security interests in items of property terminate as the obligation originally incurred with respect to each item is paid.

(3) Payments received by the creditor upon an open−end credit plan are deemed, for the purpose of determining the amount of the unpaid balance secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account, and then to the payment of the respective amounts financed in the order in which the entries to the account were made.

(4) If obligations consolidated or financed pursuant to an open−end credit plan arise from 2 or more transactions made on the same day, payments received by the creditor are deemed, for the purpose of determining the amount of the obligation secured by the various security interests, to have been applied first to the payment of the smallest obligation.

History: 1971 c. 239; 1973 c. 3; 1997 a. 302.

422.419 Waivers prohibited. (1) No contract evidencing a consumer credit transaction may contain any provision by which:

(a) The merchant or other person acting on the merchant's behalf is given authority to enter the customer's dwelling or to commit any breach of the peace in the course of taking possession of collateral securing the transaction;

(b) The customer waives any right of action against the merchant, or other person acting on the merchant's behalf, for any breach of the peace or other illegal act committed in the course of taking possession of such collateral; or

(c) The customer executes a power of attorney or similar instrument appointing the merchant, or other person acting on the merchant's behalf, as the customer's agent in the taking of possession of such collateral.

(2) A violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1991 a. 316.

422.420 Cosigner charges. No term of a writing signed by a cosigner and made pursuant to a consumer credit transaction may:

(1) Provide for payment by the cosigner of any fees or charges which could not be imposed upon the customer as part of the transaction; or

(2) Operate to remove from the cosigner any rights or protections given the customer under chs. 421 to 427.

History: 1973 c. 3.

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. 422.415, 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 percent 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 percent 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 percent 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) For any variable rate transaction, other than one pursuant to an open−end credit plan, entered into before November 1, 1984, 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.

(c) The maximum rate of finance charge established under par. (a) 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.

(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 September 1, 1984, 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.

History: 1983 a. 389; 1985 a. 29; 1987 a. 27; 1995 a. 328; 1997 a. 302.

422.422 Cash discounts. No credit card issuer may, by contract or otherwise, prohibit a merchant from offering a discount to a customer to induce the customer to pay by cash, check, or similar means, rather than by use of a credit card or its underlying account, for the purchase of goods or services.

History: 2005 a. 84.

SUBCHAPTER V

CREDIT SERVICES ORGANIZATIONS

422.501 Definitions. In this subchapter:

(1) "Buyer" means a natural person or customer who is solicited to purchase or who purchases the services of a credit services organization.

(1m) "Consumer reporting agency" has the meaning given in 15 USC 1681a (f).

(2) (a) "Credit services organization" means a person or merchant who, with respect to the extension of credit by others, sells, provides or performs, or represents that the person will sell, provide or perform, any of the following services in return for the payment of money or for other valuable consideration:

1. Improving a buyer's credit record, credit history or credit rating.

2. Arranging for or obtaining an extension of credit for a buyer.

3. Providing advice or assistance to a buyer with regard to subd. 1. or 2.

(b) "Credit services organization" does not include any of the following:

1. A person organized, chartered or holding a license or authorization certificate to make loans or extensions of credit pursuant to the laws of this state or the United States and who is subject to regulation and supervision by an official or agency of this state or the United States.

2. A bank or savings and loan association whose deposits or accounts are insured by the federal deposit insurance corporation, or a credit union whose deposits or accounts are insured by the national credit union administration.

3. A nonprofit organization described under section 501 (c) (3) of the internal revenue code and exempt from taxation under section 501 (a) of the internal revenue code.

4. A person licensed as an adjustment service company under s. 218.02 if the person is acting within the course and scope of that license.

5. A person licensed as a real estate broker or salesperson under ch. 452 if the person is acting within the course and scope of that license.

6. A person licensed to practice law in this state if the person is rendering services within the course and scope of his or her practice as an attorney at law.

7. A broker−dealer or agent registered under s. 551.406 if the broker−dealer or agent is acting within the course and scope of that license.

8. A person licensed as a mortgage banker, mortgage loan originator, or mortgage broker under s. 224.72 or 224.725 if the person is acting within the course and scope of the license.

9. A consumer reporting agency, if the consumer reporting agency is acting within the scope of assembling or evaluating consumer credit information on consumers for the purpose of furnishing consumer reports, as defined in 15 USC 1681a (d), to 3rd parties.

(3) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, that is offered or granted for debt that is incurred primarily for personal, family or household purposes.

History: 1991 a. 244; 1995 a. 27; 1997 a. 145, 302; 2007 a. 196; 2009 a. 2.

422.502 Registration requirements. (1) A person may not act as a credit services organization unless the person has been issued a certificate of registration from the administrator and the person has complied with the bond or letter of credit requirements under sub. (3).

(2) A person desiring to act as a credit services organization shall apply to the administrator for a certificate of registration on a form prescribed by the administrator and shall pay the administrator a registration fee of $100.

(3) (a) A person desiring to act as a credit services organization shall obtain a surety bond that is issued by a surety company admitted to do business in this state or an irrevocable letter of credit from a federally insured bank or savings and loan association located in this state. The bond or letter of credit shall be in an amount equal to $25,000.

(b) The credit services organization shall file a copy of the bond or letter of credit with the administrator.

(c) The bond or letter of credit shall be in favor of this state for the benefit of any person who is damaged by a violation of this subchapter. The bond or letter of credit shall also be in favor of any person damaged by a violation of this subchapter.

(d) A person claiming against the bond or letter of credit for a violation of this subchapter may maintain an action at law against the credit services organization and against the surety or financial institution. The surety or financial institution may be liable only for actual damages and not for punitive damages. The aggregate liability of the surety or financial institution to all persons damaged by a credit services organization's violation of this subchapter may not exceed the amount of the bond or letter of credit.

(4) A certificate of registration as a credit services organization expires on December 1 of the even−numbered year after issuance. A credit services organization may renew a certificate of registration by submitting to the administrator a renewal application and a $100 renewal fee on or before the expiration date of the existing certificate of registration. A credit services organization shall refile a bond or letter of credit that satisfies sub. (3) as part of the renewal application.

History: 1991 a. 244; 1999 a. 85.

422.503 Prohibited activities. (1) A credit services organization, and its salespersons, agents and representatives who offer or sell the services of the credit services organization, may not do any of the following:

(a) Charge or receive any money or other valuable consideration solely for referral of the buyer to a merchant who will or may extend credit to the buyer, if the credit extended to the buyer is upon substantially the same terms as is credit that is available to the general public.

(b) Make, or counsel or advise any buyer to make, any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit, with respect to a buyer's credit worthiness, credit standing or credit capacity.

(c) Make or use any untrue or misleading representations in the offer or sale of the services of the credit services organization or engage, directly or indirectly, in any act, practice or course of business that operates or would operate as a fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization.

(2) A violation of this section is subject to s. 425.305.

History: 1991 a. 244.

422.504 Information statement. (1) Before the execution of a contract or agreement between the buyer and a credit services organization or before the credit services organization receives from the buyer any money or other valuable consideration, the credit services organization shall provide the buyer a written statement that includes all of the information required under sub. (2). The credit services organization shall maintain for a period of 2 years an exact copy of the statement that is signed by the buyer to acknowledge receipt of the statement.

(2) The information statement under sub. (1) shall include all of the following information:

(a) Notice of the buyer's right to review any file on the buyer maintained by a consumer reporting agency; the buyer's right to obtain a copy of that file; the approximate price the buyer may be charged by the consumer reporting agency for a copy of the file; and the buyer's right to obtain a copy of the buyer's file free of charge from the consumer reporting agency if the buyer requests the copy within 30 days after the buyer receives notice of a denial of credit.

(b) Notice of the buyer's right to dispute the completeness or accuracy of any item contained in any file on the buyer maintained by a consumer reporting agency.

(c) A description of the services to be performed by the credit services organization for or on behalf of the buyer and the total amount the buyer will be charged for the services.

(d) Notice of the buyer's right to proceed against the bond or letter of credit obtained by the credit services organization, a description of procedures that the buyer is to follow to proceed against the bond or letter of credit, and the name and address of the surety company that issued the bond or the name and address of the financial institution that issued the letter of credit.

(3) A violation of this section is subject to s. 425.305.

History: 1991 a. 244.

422.505 Contracts. (1) Every contract between a buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, shall be dated and shall be signed by the buyer. The contract shall include all of the following:

(a) A conspicuous statement, in not less than 10−point boldface type and in immediate proximity to the space reserved for the signature of the buyer, as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT OF THE 5TH DAY AFTER THE DATE OF THE TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(b) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person.

(c) A description of the services to be performed by the credit services organization for or on behalf of the buyer, including all guarantees or promises of full or partial refunds, and the estimated date by which such services are to be performed or the estimated length of time for performing such services.

(d) The credit services organization's principal business address and the name and address of its agent in this state, other than the department of financial institutions, who is authorized to receive service of process.

(e) A conspicuous statement, in not less than 8−point boldface type, as follows: "THIS CREDIT SERVICES ORGANIZATION IS REGISTERED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS at .... (insert address)."

(f) Any disclosures required under subch. III.

(2) (a) The contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract and easily detachable, and which shall contain the following statement in not less than 10−point type and written in the same language as used in the contract:

NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, within 5 days after the date on which the contract is signed.

If you cancel, any payment made by you under this contract will be returned within 15 days following receipt by .... (name of credit services organization) of your cancellation notice.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to .... (name of credit services organization) at .... (address of credit services organization), ... (place of business, if different from address) not later than midnight .... (date). I hereby cancel this transaction.

.... (Date)

.... (Buyer's signature)

(b) A copy of the fully completed contract and any other document the credit services organization requires the buyer to sign shall be given to the buyer at the time the contract or document is signed.

(3) A credit services organization's breach of a contract under this section or of any obligation arising from such a contract is a violation of this subchapter.

(4) A violation of this section is subject to s. 425.305.

History: 1991 a. 244; 1995 a. 27, 216.

422.506 Waiver. (1) A waiver by a buyer of any provision of this subchapter shall be void and unenforceable. An attempt by a credit services organization to have a buyer waive any right under this subchapter is a violation of this subchapter.

(2) A violation of this section is subject to s. 425.305.

History: 1991 a. 244.