



1997 ASSEMBLY BILL 329

April 28, 1997 - Introduced by Representatives HOVEN, KAUFERT, MEYER, PLALE, VRAKAS, SKINDRUD, LA FAVE and WARD, cosponsored by Senators SHIBILSKI, WINEKE, ZIEN, FITZGERALD, C. POTTER, RUDE and WELCH. Referred to Committee on Financial Institutions.

1 **AN ACT to repeal** 422.201 (12), 422.203 (4) (b), 422.402 (1) (c), 422.402 (1m) (c),
2 422.413 (2), 422.417 (1) (e), 424.208 (1) (b), 424.301 (1) (b) 4., 425.114 and
3 425.206 (1) (d); **to consolidate, renumber and amend** 424.208 (1) (intro.) and
4 (a); **to amend** 421.203 (1), 421.301 (17), 422.201 (8), 422.203 (4) (a), 422.203 (4)
5 (c), 422.207 (1), 422.209 (2) (b) 1., 422.209 (2) (b) 2., 422.411 (1), 422.412,
6 422.413 (1), 422.417 (1) (c), 422.417 (1) (d), 422.417 (2), 422.418 (2), 422.421 (6)
7 (a), 422.501 (3), 423.201, 425.103 (2) (a), 425.206 (1) (b), 425.206 (1) (c), 425.207
8 (2), 425.208 (1) (intro.) and 425.208 (1) (cm); and **to create** 421.202 (10) of the
9 statutes; **relating to:** excluding agricultural transactions from the Wisconsin
10 consumer act.

Analysis by the Legislative Reference Bureau

Under current law, the Wisconsin consumer act (WCA) generally applies to all consumer transactions made in the state, unless a specific exclusion applies. Current law contains a number of exclusions, including an exclusion for consumer credit transactions in which the amount financed exceeds \$25,000 and other consumer transactions in which the cash price exceeds \$25,000. The bill amends the

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WCA to also exclude any transaction that is for an agricultural purpose. A transaction is for an agricultural purpose if its purpose is related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by certain persons who cultivate, plant, propagate or nurture those agricultural products.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 421.202 (10) of the statutes is created to read:

2 421.202 **(10)** Transactions that are primarily for an agricultural purpose.

3 **SECTION 2.** 421.203 (1) of the statutes is amended to read:

4 421.203 **(1)** Consumer credit transactions, not governed by ch. 428, which are
5 made, insured or guaranteed by the federal government or any agency thereof, ~~or by~~
6 ~~any federal instrumentality chartered under the federal farm credit act of 1971 (P.L.~~
7 ~~92-181; 85 stats. 583; 12 USC 2001 et seq.), or by~~ the department of veteran's affairs
8 shall be subject to only those provisions set forth in sub. (2).

9 **SECTION 3.** 421.301 (17) of the statutes is amended to read:

10 421.301 **(17)** "Customer" means a person other than an organization (s.
11 421.301 (28)) who seeks or acquires real or personal property, services, money or
12 credit for personal, family, or household ~~or agricultural~~ purposes. A person other
13 than a customer may agree to be governed by chs. 421 to 427 with respect to all
14 aspects of a transaction and in such event such person shall be deemed a customer
15 for all purposes of chs. 421 to 427 with respect to such transaction.

16 **SECTION 4.** 422.201 (8) of the statutes is amended to read:

17 422.201 **(8)** That portion of the finance charge consisting of an amount equal
18 to a discount of 5% or less of the stated price which is offered to induce payment in

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1 full within a stated period of time in connection with a sale for agricultural purposes
2 or a sale of particular goods and services for which credit is not otherwise available
3 from the merchant shall not be included in the finance charge for the purpose of
4 determining the maximum rate of finance charge under sub. (2) or (3) with respect
5 to a customer who does not pay in full within such time.

6 **SECTION 5.** 422.201 (12) of the statutes is repealed.

7 **SECTION 6.** 422.203 (4) (a) of the statutes is amended to read:

8 422.203 (4) (a) With respect to a consumer credit transaction ~~other than one~~
9 ~~primarily for an agricultural purpose~~, interest after the final scheduled maturity
10 date may not exceed the greater of either 12% per year or the annual rate of finance
11 charge assessed on that transaction if the transaction is entered into on or after April
12 6, 1980 and prior to November 1, 1981, and may not exceed the maximum rate
13 permitted by s. 138.05 (1) (a), if the transaction is entered into prior to April 6, 1980,
14 but if such interest is charged no delinquency charge may be taken on the final
15 scheduled instalment.

16 **SECTION 7.** 422.203 (4) (b) of the statutes is repealed.

17 **SECTION 8.** 422.203 (4) (c) of the statutes is amended to read:

18 422.203 (4) (c) With respect to a consumer credit transaction ~~other than one~~
19 ~~primarily for an agricultural purpose~~, interest after the final scheduled maturity
20 date shall not exceed the greater of either 12% per year or the annual rate of finance
21 charge assessed on that transaction if the transaction is entered into on or after
22 November 1, 1981, but if interest is charged no delinquency charge may be taken on
23 the final scheduled instalment.

24 **SECTION 9.** 422.207 (1) of the statutes is amended to read:

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1 422.207 (1) With respect to a consumer credit transaction the parties may, to
2 the extent not prohibited by chs. 421 to 427 and 429, agree that the customer will
3 perform certain duties with respect to preserving or insuring collateral or goods
4 subject to a motor vehicle consumer lease, if such duties are reasonable in relation
5 to the risk of loss of or damage to the collateral or goods. If the customer fails to so
6 perform the creditor may, if authorized by the agreement, pay for the performance
7 of such duties on behalf of the customer. The amount paid may be added to the
8 unpaid balance of the customer's obligation, if, in the absence of performance, the
9 merchant has made all expenditures on behalf of the customer in good faith and in
10 a commercially reasonable manner and ~~except in the case of a transaction for an~~
11 ~~agricultural purpose where the collateral is perishable and threatens to decline~~
12 ~~speedily in value~~, the merchant has given the customer written notice of the
13 nonperformance and reasonable opportunity after such notice to so perform.

14 **SECTION 10.** 422.209 (2) (b) 1. of the statutes is amended to read:

15 422.209 (2) (b) 1. The portion of the finance charge which is allocable to all
16 unexpired payment periods as scheduled or deferred. A payment period is unexpired
17 if prepayment is made within 15 days after the payment's due date. The unearned
18 finance charge is the finance charge which, assuming all payments are made as
19 scheduled or deferred, would be earned for each unexpired payment period by
20 applying to unpaid balances of principal, according to the actuarial method, the
21 annual percentage rate disclosed to the customer under subch. III ~~or, in the case of~~
22 ~~a transaction for an agricultural purpose, the annual percentage rate based on the~~
23 ~~finance charge~~. The creditor may decrease the annual interest rate to the next
24 multiple of 0.25%.

25 **SECTION 11.** 422.209 (2) (b) 2. of the statutes is amended to read:

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1 422.209 (2) (b) 2. The finance charge less the amount determined by applying
2 the annual percentage rate disclosed to the customer under subch. III ~~or, in the case~~
3 ~~of a transaction for an agricultural purpose, the annual percentage rate based on the~~
4 ~~finance charge~~, according to the actuarial method, to the unpaid balances for the
5 actual time those balances were unpaid up to the date of prepayment.

6 **SECTION 12.** 422.402 (1) (c) of the statutes is repealed

7 **SECTION 13.** 422.402 (1m) (c) of the statutes is repealed.

8 **SECTION 14.** 422.411 (1) of the statutes is amended to read:

9 422.411 (1) Except as provided in subs. (2) and (2m), with respect to a consumer
10 credit transaction no term of a writing may provide for the payment by the customer
11 of attorney fees. ~~Notwithstanding subs. (2) and (2m), a consumer credit transaction~~
12 ~~may not provide for the payment by the customer of attorney fees if the transaction~~
13 ~~is for an agricultural purpose.~~

14 **SECTION 15.** 422.412 of the statutes is amended to read:

15 **422.412 Restriction on liability in consumer lease.** In a consumer lease
16 ~~other than one for an agricultural purpose~~, the obligation of a customer upon
17 expiration of the lease may not exceed the average payment allocable to a monthly
18 period under the lease. This limitation does not apply to charges for damages to the
19 leased property occasioned by other than normal use or for other default.

20 **SECTION 16.** 422.413 (1) of the statutes is amended to read:

21 422.413 (1) Except as provided in subs. ~~(2)~~ and sub. (2g), no term of a writing
22 evidencing a consumer credit transaction may provide for any charges as a result of
23 default by the customer other than reasonable expenses incurred in the disposition
24 of collateral or goods subject to a motor vehicle consumer lease and such other
25 charges as are specifically authorized by chs. 421 to 427 and 429.

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1 **SECTION 17.** 422.413 (2) of the statutes is repealed.

2 **SECTION 18.** 422.417 (1) (c) of the statutes is amended to read:

3 422.417 (1) (c) Real property to which the property sold is affixed, or which is
4 maintained, repaired or improved as a result of the sale of the property or services,
5 if the obligation secured is \$1,000 or more; and

6 **SECTION 19.** 422.417 (1) (d) of the statutes is amended to read:

7 422.417 (1) (d) Goods of the consumer which were the subject of a prior
8 transaction with the seller which is consolidated (s. 422.206) with the consumer
9 credit sale, or if the consumer credit sale is made pursuant to an open-end credit
10 plan, goods previously purchased by the consumer pursuant to the plan, subject
11 however to s. 422.418; and.

12 **SECTION 20.** 422.417 (1) (e) of the statutes is repealed.

13 **SECTION 21.** 422.417 (2) of the statutes is amended to read:

14 422.417 (2) With respect to a consumer lease, except as otherwise provided in
15 s. 429.205 with respect to a motor vehicle consumer lease, a lessor may not take a
16 security interest in any property owned or leased by the customer other than the
17 leased goods to secure the lessor's obligations under the lease. This subsection does
18 not prohibit a security interest in a cash security deposit for a consumer lease of
19 motor vehicles ~~or agricultural equipment~~.

20 **SECTION 22.** 422.418 (2) of the statutes is amended to read:

21 422.418 (2) For the purpose of determining the extent to which a consolidated
22 obligation is secured after a consolidation of consumer sales ~~other than sales~~
23 ~~primarily for an agricultural purpose~~, and after a consolidation of consumer loans in
24 which one or more of the loans consolidated is secured by a purchase money security
25 interest in property of the type described in s. 422.417 (3) (a), payments received by

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1 the creditor after a consolidation agreement are deemed to have been first applied
2 to the payment of obligations arising from the transactions first made. To the extent
3 that obligations are paid pursuant to this section, security interests in items of
4 property terminate as the obligation originally incurred with respect to each item is
5 paid.

6 **SECTION 23.** 422.421 (6) (a) of the statutes is amended to read:

7 422.421 (6) (a) ~~Except as provided in s. 422.201 (12), for~~ For any variable rate
8 transaction, other than one pursuant to an open-end credit plan, entered into before
9 November 1, 1984, the maximum rate of finance charge for any payment period may
10 not exceed the limit set forth in s. 422.201 (2) (bm) as determined on the earlier of
11 the first day of the payment period or the day notice is given under sub. (5) for the
12 payment period.

13 **SECTION 24.** 422.501 (3) of the statutes is amended to read:

14 422.501 (3) "Extension of credit" means the right to defer payment of debt or
15 to incur debt and defer its payment, that is offered or granted for debt that is incurred
16 primarily for personal, family, or household ~~or agricultural~~ purposes.

17 **SECTION 25.** 423.201 of the statutes is amended to read:

18 **423.201 Definition.** "Consumer approval transaction" means a consumer
19 transaction other than a sale or lease or listing for sale of real property, or a sale of
20 goods at auction, ~~the sale or lease of goods for an agricultural purpose or a loan made~~
21 ~~to finance the sale of goods at auction for an agricultural purpose~~ 1) which is initiated
22 by face-to-face solicitation away from a regular place of business of the merchant
23 or by mail or telephone solicitation directed to the particular customer and 2) which
24 is consummated or in which the customer's offer to contract or other writing
25 evidencing the transaction is received by the merchant away from a regular place of

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1 business of the merchant and involves the extension of credit or is a cash transaction
2 in which the amount the customer pays exceeds \$25. "Consumer approval
3 transaction" shall in no event include a catalog sale which is not accompanied by any
4 other solicitation or a consumer loan conducted and consummated entirely by mail.

5 **SECTION 26.** 424.208 (1) (intro.) and (a) of the statutes are consolidated,
6 renumbered 424.208 (1) and amended to read:

7 424.208 (1) The initial amount of credit life insurance shall not exceed the total
8 amount repayable under the contract of indebtedness however the indebtedness may
9 be repayable, but:—(a)—~~In~~ in cases where an indebtedness is repayable in
10 substantially equal instalments, the amount of insurance shall at no time exceed the
11 scheduled or actual amount of unpaid indebtedness, whichever is greater; ~~and.~~

12 **SECTION 27.** 424.208 (1) (b) of the statutes is repealed.

13 **SECTION 28.** 424.301 (1) (b) 4. of the statutes is repealed.

14 **SECTION 29.** 425.103 (2) (a) of the statutes is amended to read:

15 425.103 (2) (a) With respect to a transaction other than one pursuant to an
16 open-end plan; if the interval between scheduled payments is 2 months or less, to
17 have outstanding an amount exceeding one full payment which has remained unpaid
18 for more than 10 days after the scheduled or deferred due dates, or the failure to pay
19 the first payment or the last payment, within 40 days of its scheduled or deferred due
20 date; if the interval between scheduled payments is more than 2 months, to have all
21 or any part of one scheduled payment unpaid for more than 60 days after its
22 scheduled or deferred due date; or, if the transaction is scheduled to be repaid in a
23 single payment, to have all or any part of the payment unpaid for more than 40 days
24 after its scheduled or deferred due date; ~~or in the case of a transaction for an~~
25 ~~agricultural purpose, the failure to pay the first or the only instalment when due or~~

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1 to pay any other instalment within 40 days of its original or deferred due date. For
2 purposes of this paragraph the amount outstanding shall not include any
3 delinquency or deferral charges and shall be computed by applying each payment
4 first to the instalment most delinquent and then to subsequent instalments in the
5 order they come due;

6 **SECTION 30.** 425.114 of the statutes is repealed.

7 **SECTION 31.** 425.206 (1) (b) of the statutes is amended to read:

8 425.206 (1) (b) Judgment for the merchant has been entered in a proceeding
9 for recovery of collateral or leased goods under s. 425.205, or for possession of the
10 collateral or leased goods under s. 425.203 (2); or

11 **SECTION 32.** 425.206 (1) (c) of the statutes is amended to read:

12 425.206 (1) (c) The merchant has taken possession of collateral or leased goods
13 pursuant to s. 425.207 (2); ~~or.~~

14 **SECTION 33.** 425.206 (1) (d) of the statutes is repealed.

15 **SECTION 34.** 425.207 (2) of the statutes is amended to read:

16 425.207 (2) A merchant who reasonably believes that a customer has
17 abandoned collateral or goods subject to a consumer lease may take possession of
18 such collateral or leased goods and preserve it. However, the customer may recover
19 such collateral or leased goods upon request unless at the time of request the
20 customer has surrendered the collateral or leased goods, or judgment for the
21 merchant has been entered in a proceeding for recovery of collateral or leased goods
22 under s. 425.205 or in a judgment described in s. 425.203 (2). A merchant taking
23 possession of collateral or leased goods pursuant to this section shall promptly send
24 notification to the customer's last-known address of such action and of the
25 customer's right to recover such collateral or leased goods under this section. If the

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1 collateral or leased goods are recovered by the customer pursuant to this section, it
2 shall be returned to the customer at the location where the merchant took possession
3 of such collateral or leased goods pursuant to this section or, at the option of the
4 merchant, at such other location designated by the customer; and any expense
5 incurred by the merchant in taking possession of, holding and returning the
6 collateral or leased goods to the customer shall be borne by the merchant. If after
7 taking possession of collateral or leased goods pursuant to this subsection, the
8 merchant perfects the right to possession through a surrender by the customer or a
9 judgment under s. 425.203 (2) or 425.205, the customer is liable for the expenses set
10 forth in s. 409.504 (1). In determining such expenses, leased goods shall be
11 considered collateral under s. 409.504 (1). However, a customer is not liable for
12 expenses of holding the collateral or leased goods from the time the merchant takes
13 possession until the merchant perfects the right to possession in the manner
14 provided in this subsection. ~~This subsection shall not apply to collateral recovered~~
15 ~~in accordance with s. 425.114.~~

16 **SECTION 35.** 425.208 (1) (intro.) of the statutes is amended to read:

17 425.208 (1) (intro.) For a period of 15 days following exercise by the creditor of
18 nonjudicial enforcement rights (s. 425.206) or issuance of process (s. 425.205) with
19 regard to the collateral, the customer shall, ~~except in a transaction for an~~
20 ~~agricultural purpose if otherwise agreed in writing after default,~~ be entitled to
21 redeem the goods by tendering:

22 **SECTION 36.** 425.208 (1) (cm) of the statutes is amended to read:

