



1999 ASSEMBLY BILL 686

February 1, 2000 - Introduced by Representatives JESKEWITZ, HOVEN, PLALE and MEYER. Referred to Committee on Financial Institutions.

1 **AN ACT to repeal** 138.09 (7) (jm) 1. and 422.209 (1m) (a); **to renumber and**
2 **amend** 138.09 (7) (a) 1., 421.301 (35), 421.301 (36) and 422.209 (1m) (b); **to**
3 **amend** 138.052 (3) (c), 138.09 (3) (e) 1. a., 138.09 (7) (a) 2. (intro.), 138.09 (7)
4 (jm) 2., 138.09 (7) (jm) 3., 421.301 (5) (intro.), 421.301 (5) (c) 3., 421.301 (29),
5 422.201 (5) (b), 422.202 (2m) (a), 422.209 (1), 422.209 (2) (a) 3., 422.209 (2) (c)
6 2., 422.209 (2) (c) 3. and 424.303 (2); **to repeal and recreate** 138.09 (7) (gm);
7 and **to create** 138.09 (7) (a) 1. b., 138.09 (7) (a) 1m., 138.09 (7) (am), 138.09 (7)
8 (gr), 421.301 (35) (b), 421.301 (36) (b), 422.209 (2) (c) 4. and 422.209 (4m) of the
9 statutes; **relating to:** loan prepayment, loan administration fees, loan
10 origination fees and prepaid finance charges and interest.

Analysis by the Legislative Reference Bureau

Currently, the Wisconsin consumer act (WCA) contains numerous provisions regulating credit transactions that are entered into for personal, family or household purposes and in which the amount financed is \$25,000 or less. Furthermore, the statutes governing certain lenders licensed by the division of banking in the department of financial institutions (licensed lender law) contain numerous

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provisions regulating loans made by lenders other than banks, credit unions, savings and loan associations and savings banks. These other lenders are often referred to as “licensed lenders”. This bill makes several changes to the WCA and the licensed lender law. These changes include:

Rebate due upon prepayment of a precomputed loan

Under both the WCA and the licensed lender law, a creditor may precompute the finance charges or interest due on certain transactions or loans. Under the WCA, with certain exceptions, a precomputed transaction is a transaction in which the debt is expressed as a single sum comprised of the amount financed and the finance charges computed in advance. A similar definition applies to loans made under the licensed lender law. Under both the WCA and the licensed lender law, when a borrower prepays a precomputed transaction or loan, the creditor must calculate and rebate any unearned finance charges or interest. This bill expands the definition of a precomputed transaction or loan under the WCA and the licensed lender law to also include any transaction or loan in which the amount of prepaid charges is greater than one-half of the total scheduled finance charge applicable to the transaction or loan. By expanding this definition, this bill expands the circumstances under which a creditor must pay a rebate upon prepayment.

In some circumstances, both the WCA and the licensed lender law require a creditor to calculate the rebate of unearned finance charges or interest using what is commonly referred to as the rule of 78. This computation method results in a greater proportion of the total finance charges or interest being paid earlier in the loan term and, thus, results in a lower rebate of unearned finance charges or interest upon prepayment. With certain limited exceptions, this bill replaces the use of the rule of 78 with the actuarial method for any precomputed transaction or loan entered into on or after the date on which this bill becomes law, thus, generally increasing the amount of any rebate upon prepayment.

Additional charges

Currently, the WCA and the licensed lender law permit certain creditors to charge various expressly authorized additional charges. These expressly authorized additional charges are included in the total amount financed or the principal for the purpose of calculating interest owed under these transactions or loans; however, these expressly authorized additional charges are not considered finance charges or interest. Thus, these expressly authorized additional charges are not included in interest rate disclosures and, upon prepayment of a precomputed transaction or loan, are not included in the rebate of unearned finance charges or interest.

Under the WCA, a creditor who extends open-end credit (typically, pursuant to a credit card or line of credit) may assess the following expressly authorized additional charges: membership fees; cash advance fees; fees for exceeding a designated credit limit; late payment fees; fees for providing copies of documents; and fees for the return of a dishonored check. The licensed lender law permits a creditor to assess these same additional charges. The WCA and the licensed lender law also permit a creditor to assess certain insurance premiums, service contract fees and extended warranty fees as additional charges. In addition, upon prepayment of a precomputed transaction or loan under the WCA or the licensed lender law, a

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creditor may charge a loan administration fee equal to not more than 2% of the total amount financed, if the transaction or loan is secured primarily by an interest in land or by an interest in a mobile home.

This bill adds loan origination fees to the list of expressly authorized additional charges permitted in open-end credit transactions under the WCA and the licensed lender law. Furthermore, this bill raises the cap on loan administration fees to 5% of the total amount financed, includes loan administration fees as an expressly authorized additional charge permitted in open-end credit transactions and no longer limits loan administration fees to transactions or loans that are secured by an interest in land or an interest in a mobile home. Under this bill, loan administration fees may only be assessed in open-end credit transactions and certain residential mortgage loans. By including loan administration fees and loan origination fees as expressly authorized additional charges, this bill expands the permissible charges that may be included in the total amount financed or the principal for the purpose of calculating interest owed. However, under this bill, the total amount financed or the principal may only include that portion of the total of all expressly authorized additional charges assessed in a transaction or loan that is less than one-half of the total scheduled finance charge.

This bill also redefines a "prepaid finance charge" to be a "prepaid charge" and expands the definition to include that portion of any expressly authorized additional charge that is greater than one-half of the total scheduled finance charge applicable to a transaction or loan. This bill specifies that, upon prepayment of a transaction or loan, the creditor must rebate any expressly authorized additional charge that qualifies as a prepaid charge.

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.** 138.052 (3) (c) of the statutes is amended to read:

2 138.052 (3) (c) A loan administration fee charged by a lender, including fees
3 paid to 3rd parties for loan administration services, not exceeding ~~2%~~ 5% of the
4 principal amount of any ~~construction~~ the loan and ~~2%~~ of the principal amount of any
5 other loan.

6 **SECTION 2.** 138.09 (3) (e) 1. a. of the statutes is amended to read:

7 138.09 (3) (e) 1. a. A business engaged in making loans for business or
8 agricultural purposes or exceeding \$25,000 in principal amount, except that all such

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1 loans having terms of 49 months or more are subject to sub. (7) (gm) ~~2. or 4.~~ 1., 2. or
2 5.

3 **SECTION 3.** 138.09 (7) (a) 1. of the statutes is renumbered 138.09 (7) (a) 1.
4 (intro.) and amended to read:

5 138.09 (7) (a) 1. (intro.) "Precomputed loan" means a loan any of the following:
6 a. A loan in which the debt is expressed as a sum comprising the principal and
7 the amount of interest computed in advance.

8 **SECTION 4.** 138.09 (7) (a) 1. b. of the statutes is created to read:

9 138.09 (7) (a) 1. b. A loan in which the prepaid charge is greater than one-half
10 of the total scheduled finance charge applicable to the loan.

11 **SECTION 5.** 138.09 (7) (a) 1m. of the statutes is created to read:

12 138.09 (7) (a) 1m. "Prepaid charge" means the total of all of the following:

13 a. Any interest paid separately, in cash or otherwise, directly or indirectly to
14 the creditor or with the creditor's knowledge to another person, or withheld by the
15 creditor, from the proceeds of the credit extended.

16 b. That portion of any charge permitted under par. (i) 1. that is paid separately,
17 in cash or otherwise, directly or indirectly to the creditor or with the creditor's
18 knowledge to another person, or withheld by the creditor, from the proceeds of the
19 credit extended, and that is greater than one-half of the total scheduled finance
20 charge applicable to the loan.

21 **SECTION 6.** 138.09 (7) (a) 2. (intro.) of the statutes is amended to read:

22 138.09 (7) (a) 2. (intro.) "~~Principal~~ Except as provided under par. (am),
23 "principal" means the total of:

24 **SECTION 7.** 138.09 (7) (am) of the statutes is created to read:

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1 138.09 (7) (am) In this section, that portion of the total of all charges assessed
2 under par. (i) 1. for a transaction that is greater than one-half of the total scheduled
3 finance charge applicable to the loan may not be included in the principal.

4 **SECTION 8.** 138.09 (7) (gm) of the statutes is repealed and recreated to read:

5 138.09 (7) (gm) Except as provided under par. (gr), upon prepayment in full of
6 a loan by cash, renewal, refinancing or otherwise, the borrower shall receive a rebate
7 of the unearned interest together with that portion of any prepaid charge that is
8 described in par. (a) 1m. b. If the first payment period of the loan is more than one
9 month and the licensee charges additional interest under par. (c) 2., the additional
10 interest is earned on the first instalment date and shall not be considered in
11 computing the rebate of unearned interest under this subsection. Except as provided
12 under par. (gr), the amount of the rebate shall be determined as follows:

13 1. For a loan of \$25,000 or less with a term of at least 49 months that was
14 entered into on or after November 1, 1981, and before August 1, 1987, for personal,
15 family, household or agricultural purposes, the licensee shall compute the rebate
16 under s. 422.209 (2) (b).

17 2. For a loan with a term of more than 49 months that was entered into on or
18 after May 10, 1984, and before August 1, 1987, the licensee shall compute the rebate
19 under s. 422.209 (2) (b).

20 3. For a loan of less than \$5,000 that contains precomputed interest, is
21 repayable in substantially equal successive instalments at approximately equal
22 intervals, has a term of less than 37 months and was entered into on or after August
23 1, 1987, and before the effective date of this subdivision [revisor inserts date], the
24 licensee shall compute the rebate under s. 422.209 (2) (a).

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1 4. For a loan of less than \$5,000 with a term of less than 37 months that was
2 entered into on or after August 1, 1987, and before the effective date of this
3 subdivision [revisor inserts date], but that does not contain precomputed interest
4 or is not repayable in substantially equal successive instalments at approximately
5 equal intervals, the amount of the rebate shall be at least the difference between the
6 interest charged and the interest earned at the agreed rate, computed on the unpaid
7 principal balance.

8 5. For a loan entered into on or after August 1, 1987, that does not meet the
9 conditions of subd. 3. or 4., the licensee shall compute the rebate under s. 422.209 (2)
10 (b).

11 **SECTION 9.** 138.09 (7) (gr) of the statutes is created to read:

12 138.09 (7) (gr) 1. If the combined rebate of interest and other charges due under
13 par. (gm) is less than \$1, the licensee is not required to make a rebate.

14 2. Notwithstanding ss. 424.304 and 424.401, if any rebate due under par. (gm)
15 includes consumer credit insurance premiums, the rebate of consumer credit
16 insurance premiums shall be computed using a method no less favorable to the
17 borrower than the rule of 78 under s. 422.209 (2) (a).

18 **SECTION 10.** 138.09 (7) (jm) 1. of the statutes, as affected by 1999 Wisconsin Act
19 9, is repealed.

20 **SECTION 11.** 138.09 (7) (jm) 2. of the statutes is amended to read:

21 138.09 (7) (jm) 2. Notwithstanding subd. par. (i) 1., if a licensee charges a loan
22 administration fee on a consumer loan that is prepaid from the proceeds of a new loan
23 made by the same licensee within 6 months after the prior loan, then the licensee
24 shall reduce any loan administration fee on the new loan by the amount of the loan
25 administration fee on the prior loan.

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1 **SECTION 12.** 138.09 (7) (jm) 3. of the statutes is amended to read:

2 138.09 (7) (jm) 3. ~~A Except as provided under par. (am), a loan administration~~
3 ~~fee charged under this paragraph par. (i) 1. may be included in the amount financed~~
4 ~~in the consumer loan. The loan administration fee is earned by the licensee when~~
5 ~~charged and need not be refunded under par. (gm) 3. or, 4. A licensee who charges~~
6 ~~a loan administration fee under this paragraph may not also retain a loan~~
7 ~~administration fee under s. 422.209 (1m) in connection with the same consumer loan~~
8 ~~transaction or 5., except for that portion of the loan administration fee that is~~
9 ~~included in any prepaid charge that is required to be rebated under par. (gm).~~

10 **SECTION 13.** 421.301 (5) (intro.) of the statutes is amended to read:

11 421.301 (5) (intro.) “Amount financed” in a consumer credit transaction means
12 the total of the following items from which any prepaid finance charge or required
13 deposit balance has been excluded:

14 **SECTION 14.** 421.301 (5) (c) 3. of the statutes is amended to read:

15 421.301 (5) (c) 3. ~~Additional~~ That portion of the total of all additional charges
16 ~~permitted by~~ assessed under s. 422.202 for a transaction that is not greater than
17 one-half of the total scheduled finance charge applicable to the transaction.

18 **SECTION 15.** 421.301 (29) of the statutes is amended to read:

19 421.301 (29) “Other than open-end credit” means consumer credit other than
20 an open-end credit plan itself, or other than consumer credit transactions pursuant
21 to an open-end credit plan, and includes precomputed transactions described in sub.
22 (35) (a).

23 **SECTION 16.** 421.301 (35) of the statutes is renumbered 421.301 (35) (intro.) and
24 amended to read:

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1 421.301 (35) (intro.) “Precomputed” with respect to a consumer credit
2 transaction means a any of the following consumer credit ~~transaction~~ transactions,
3 other than a motor vehicle consumer lease;

4 (a) A transaction in which debt is expressed as a single sum comprised of the
5 amount financed and the finance charge computed in advance.

6 **SECTION 17.** 421.301 (35) (b) of the statutes is created to read:

7 421.301 (35) (b) A transaction in which the prepaid charge is greater than
8 one-half of the total scheduled finance charge applicable to the transaction.

9 **SECTION 18.** 421.301 (36) of the statutes is renumbered 421.301 (36) (intro.) and
10 amended to read:

11 421.301 (36) (intro.) “Prepaid ~~finance~~ charge” means any the total of all of the
12 following:

13 (a) Any finance charge paid separately, in cash or otherwise, directly or
14 indirectly to the creditor or with the creditor’s knowledge to another person, or
15 withheld by the creditor, from the proceeds of the credit extended.

16 **SECTION 19.** 421.301 (36) (b) of the statutes is created to read:

17 421.301 (36) (b) That portion of any charge permitted under s. 422.202 that is
18 paid separately, in cash or otherwise, directly or indirectly to the creditor or with the
19 creditor’s knowledge to another person, or withheld by the creditor, from the
20 proceeds of the credit extended and that is greater than one-half of the total
21 scheduled finance charge applicable to the transaction.

22 **SECTION 20.** 422.201 (5) (b) of the statutes is amended to read:

23 422.201 (5) (b) The dollar amount of finance charge shall include the prepaid
24 ~~finance~~ charge excluded from the amount financed; and

25 **SECTION 21.** 422.202 (2m) (a) of the statutes is amended to read:

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1 422.202 **(2m)** (a) A creditor may charge, collect and receive other fees and
2 charges, in addition to the finance charge authorized under s. 422.201, that are
3 agreed upon by the creditor and the customer. These other fees and charges may
4 include loan origination fees, periodic membership fees, cash advance fees, charges
5 for exceeding a designated credit limit, charges for late payments, charges for
6 providing copies of documents and charges for the return of a dishonored check or
7 other payment instrument. These other fees and charges may also include loan
8 administration fees, if the loan administration fees do not exceed 5% of the amount
9 financed.

10 **SECTION 22.** 422.209 (1) of the statutes is amended to read:

11 422.209 **(1)** Except as provided in sub. ~~(1m)~~ (4m), upon prepayment in full of
12 the unpaid balance of a precomputed consumer credit transaction, refinancing or
13 consolidation, an amount not less than the unearned portion of the finance charge
14 calculated according to this section, together with that portion of any prepaid charge
15 that is described in s. 421.301 (36) (b), shall be rebated to the customer. If the total
16 of all rebates, refunds and credits to be paid to the customer under chs. 421 to 427
17 is less than \$1, no rebate need be made.

18 **SECTION 23.** 422.209 (1m) (a) of the statutes, as affected by 1999 Wisconsin Act
19 9, is repealed.

20 **SECTION 24.** 422.209 (1m) (b) of the statutes is renumbered 422.209 (1g) and
21 amended to read:

22 422.209 **(1g)** Notwithstanding ~~par. (a)~~ s. 422.202 (2m), if a merchant retains
23 any portion of a loan administration fee charged on a loan that is prepaid from the
24 proceeds of a new loan made by the same merchant within 6 months after the prior
25 loan, then the merchant shall reduce any loan administration fee on the new loan by

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1 the amount of the loan administration fee on the prior loan that was retained by the
2 merchant.

3 **SECTION 25.** 422.209 (2) (a) 3. of the statutes is amended to read:

4 422.209 (2) (a) 3. Consumer credit transactions in which the amount financed
5 is less than \$5,000, which have initial terms of less than 37 months and which are
6 entered into on or after August 1, 1987, and before the effective date of this
7 subdivision [revisor inserts date].

8 **SECTION 26.** 422.209 (2) (c) 2. of the statutes is amended to read:

9 422.209 (2) (c) 2. Consumer credit transactions in which the amount financed
10 is \$5,000 or more and which are entered into on or after August 1, 1987, and before
11 the effective date of this subdivision [revisor inserts date].

12 **SECTION 27.** 422.209 (2) (c) 3. of the statutes is amended to read:

13 422.209 (2) (c) 3. Consumer credit transactions in which the amount financed
14 is less than \$5,000, which have initial terms of 37 months or more and which are
15 entered into on or after August 1, 1987, and before the effective date of this
16 subdivision [revisor inserts date].

17 **SECTION 28.** 422.209 (2) (c) 4. of the statutes is created to read:

18 422.209 (2) (c) 4. Consumer credit transactions entered into on or after the
19 effective date of this subdivision [revisor inserts date].

20 **SECTION 29.** 422.209 (4m) of the statutes is created to read:

21 422.209 (4m) Notwithstanding ss. 424.304 and 424.401, if any rebate due
22 under sub. (1) includes consumer credit insurance premiums, the rebate of consumer
23 credit insurance premiums shall be computed using a method no less favorable to the
24 customer than the rule of 78 under sub. (2) (a).

25 **SECTION 30.** 424.303 (2) of the statutes is amended to read:

