

1985 Senate Bill 593

Date of enactment: April 15, 1986
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1985 Wisconsin Act 256

AN ACT to repeal 424.201 (1); to renumber subchapter IV (title) of chapter 424, 424.201 (2) and (3), 424.401 and 424.402; to amend 422.417 (3) (intro.), 424.301 (1) (intro.) and (a), 425.106 (1) (b), 425.301 (4), 426.104 (4) (b), 426.110 (3) and 601.415 (9); to repeal and recreate 422.202 (1), 422.202 (3) and 424.301 (1) (b); and to create subchapter IV of chapter 424, subchapter V of chapter 424, 422.202 (2s), 424.301 (1m), 424.301 (4) and (5), 424.304 and 425.301 (5) of the statutes, relating to the sale of insurance products, the receipt of additional charges and exemptions from attachment and security interest in connection with consumer credit transactions and providing penalties.

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

SECTION 1. Legislative intent and declaration. (1) The legislature finds that the continuing availability of insurance products offered by creditors is desirable.

(2) The marketing and financing of insurance products offered by creditors has been regulated by the administrator of the Wisconsin consumer act.

(3) The legislature intends, by this act, to establish clear statutory marketing and financing guidelines for insurance products offered by creditors.

(4) The legislature declares that this act is not intended to evidence the intended meaning of any law affected by this act as it existed prior to the effective date of this subsection, nor of any rule, order, written opinion, interpretation or statement of the administrator of the Wisconsin consumer act issued prior to the effective date of this subsection which directly or indirectly concerns the laws affected by this act.

SECTION 2. 422.202 (1) of the statutes is repealed and recreated to read:

422.202 (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 against liability arising out of the ownership or use of property in which the creditor takes a security interest, 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).

SECTION 3. 422.202 (2s) of the statutes is created to read:

422.202 (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.

SECTION 4. 422.202 (3) of the statutes is repealed and recreated to read:

422.202 (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), 218.01 (8) or 425.305 and the penalty in s. 425.304, based on the assessment of the same additional charges.

SECTION 5. 422.417 (3) (intro.) of the statutes is amended to read:

422.417 (3) (intro.) 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:

SECTION 6. 424.201 (1) of the statutes is repealed.

SECTION 7. 424.201 (2) and (3) of the statutes are renumbered 424.201 (1) and (2).

SECTION 8. 424.301 (1) (intro.) and (a) of the statutes are amended to read:

424.301 (1) (intro.) A creditor may not contract for a separate charge or receive a separate charge for insurance against loss of or damage to property in which the creditor holds a security interest unless all of the following conditions are met:

(a) The insurance covers a substantial risk of loss or damage to property which is allowable collateral under s. 422.417 for the credit transaction;

SECTION 9. 424.301 (1) (b) of the statutes is repealed and recreated to read:

424.301 (1) (b) The amount of the insurance does not exceed any of the following:

1. The actual cash value or stated value of any motor vehicle or mobile home in which the creditor holds a security interest.

2. The cash value or replacement value of any property in which the creditor holds a purchase money security interest.

3. The stated amount of the customer's credit line if the purchase money security interest secures transactions pursuant to an open-end credit plan.

4. The amount of the creditor's commitment to lend to the customer in transactions for an agricultural purpose.

5. In any other transaction, the total payments or, if the transaction is for a term of 49 months or more, the amount financed.

SECTION 10. 424.301 (1m) of the statutes is created to read:

424.301 (1m) The limitations of subs. (1) and (2) and s. 422.202 (1) (b) do not apply to property insurance on some or all of the property in which the creditor holds a security interest if the creditor does not require any insurance on the property and if the creditor is not designated a loss payee in the policy. Subsection (3) does not apply to a credit transaction solely to finance the purchase of such property insurance.

SECTION 11. 424.301 (4) and (5) of the statutes are created to read:

424.301 (4) (a) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to the customer's property in which the creditor does not hold a security interest if any of the following apply:

1. The creditor sells the customer insurance described in sub. (1) covering some or all of the same property, except as provided in sub. (1m).

2. The amount of the insurance exceeds the amount by which the value of the property exceeds the amount of insurance against loss or damage to the property which the customer has in force at the time the consumer credit transaction is consummated.

(b) If the customer purchases property insurance in addition to that already in force, the value of the customer's property shall be verified by the customer's written statement or an appraisal or a bill of sale.

(5) A violation of this section is subject to s. 425.303.

SECTION 12. 424.304 of the statutes is created to read:

424.304 Cancellation by customer. (1) Following the sale of any insurance product under s. 422.202 (1) (b), the customer has the right to cancel the insurance until 30 days after the policy is mailed or otherwise delivered to the customer. The creditor shall provide the customer a notice in duplicate in the form set forth in subs. (2) and (3).

(2) The notice required by sub. (1) shall be in substantially the following form:

**CUSTOMER'S RIGHT
TO SUBSTITUTE PROPERTY
OR LIABILITY INSURANCE**

You may cancel the property or liability insurance which you purchased through (name and address of lender) to insure the collateral securing your loan dated (date). To cancel, you must mail or deliver a written notice, together with the original policy for the property or liability insurance, to us before midnight of the 30th day after the date our policy was mailed or otherwise delivered to you. In addition, you must include a copy of a policy or endorsement for substitute insurance from another insurance company, such as the company insuring your home, that provides the

same coverage and that names our company as loss payee. If you cancel and you do not provide evidence of substitute insurance to us with your notice or within 7 days after sending a cancellation notice to us, we may purchase other insurance to cover our risk and charge you for it.

If you wish, you may use this page as your written notice by writing "I hereby cancel this insurance" and adding your name, address and the date. This page, the original policy and a copy of the substitute policy or endorsement showing our company as loss payee must be sent or delivered to us before midnight on the 30th day after the date our policy was mailed or otherwise delivered to you. Keep the copy of this page for your records.

If you cancel this insurance, you may elect to receive either a check for the insurance premiums or a credit against your loan balance in the amount of the insurance premiums and the amount of applicable finance charge. Check which of the following you elect:

1. — I want you to send me a check in the amount of \$.... (amount of insurance premiums) for the insurance premiums.

2. — I want you to credit my loan balance in the amount of \$.... (amount of insurance premiums) which is the amount of the insurance premiums, plus the amount of applicable finance charge.

(3) A creditor may elect to provide only a credit to a customer who cancels insurance under this section. If a creditor so elects, the creditor shall delete the last paragraph of the notice under sub. (2) and shall substitute the following: "If you cancel this insurance, we will credit your loan balance in the amount of \$.... (amount of insurance premiums), which is the amount of the insurance premiums, plus the amount of applicable finance charge."

(4) Any customer who cancels and substitutes insurance within the 30-day period under sub. (1) is entitled to a credit or payment under s. 424.402. Any insurance policy covered by the notice shall be void as of the date of purchase, unless a loss has occurred, upon mailing or delivery of the notice of cancellation by the customer and all rights under the policy shall terminate. The creditor shall promptly provide the customer with a credit or payment, as applicable, even if the original policy does not accompany the notice of cancellation.

(5) A violation of this section is subject to s. 425.303.

SECTION 13. Subchapter IV (title) of chapter 424 of the statutes is renumbered subchapter VI (title) of chapter 424.

SECTION 14. 424.401 of the statutes is renumbered 424.601.

SECTION 15. Subchapter IV of chapter 424 of the statutes is created to read:

**CHAPTER 424
SUBCHAPTER IV
OTHER INSURANCE PRODUCTS**

424.401 Cancellation by customer. (1) Following the sale of any insurance product under s. 422.202 (2s) (a) 2, including insurance described in s. 424.301 (1m), or, if for a term of more than one year, any future service or motor club service contracts under s. 422.202 (2s) (a) 3, the customer has the right to cancel the products or contracts until 30 days after the insurance policy, future service contract or motor club service contract is mailed or otherwise delivered to the customer. The creditor shall provide the customer a notice in duplicate in the form set forth in subs. (2) and (3).

(2) The notice required by sub. (1) shall be in substantially the following form:

**CUSTOMER'S RIGHT
TO CANCEL OPTIONAL
(INSURANCE, FUTURE SERVICE
CONTRACT OR MOTOR CLUB
SERVICE CONTRACT)**

You may cancel the optional (insurance, future service contract or motor club service contract) which you purchased and financed through (name and address of lender) on (date). To cancel, you must mail or deliver a written notice to us before midnight of the 30th day after the date this (insurance policy or service contract) was mailed or otherwise delivered to you.

If you wish, you may use this page as your written notice by writing "I hereby cancel this (insurance or service contract)" and adding your name, address and the date. This page and the original (policy or contract) must be sent or delivered to us before midnight on the 30th day after the date the (insurance policy or service contract) was mailed or otherwise delivered to you. Keep the copy of this page for your records.

If you cancel this (insurance or service contract), you may elect to receive either a check for the (insurance premiums or service contract charges), or a credit against your loan balance in the amount of the (insurance premiums or service contract charges) plus the amount of applicable finance charge. Check which of the following you elect:

1. — I want you to send me a check in the amount of \$.... (amount of insurance premiums or service contract charges) for the (insurance premiums or service contract charges).

2. — I want you to credit my loan balance in the amount of \$.... (amount of insurance premiums or service contract charges), which is the amount of the (insurance premiums or service contract charges), plus the amount of applicable finance charge.

(3) A creditor may elect to provide only a credit to a customer who cancels insurance or a service contract under this section. If a creditor so elects, the creditor shall delete the last paragraph of the notice under sub. (2) and shall substitute the following: "If you cancel this (insurance or service contract), we will credit your loan balance in the amount of \$.... (amount of

insurance premiums or service contract charges), which is the amount of \$.... (insurance premiums or service contract charges), plus the amount of applicable finance charge."

(4) Any person who cancels insurance or a service contract within the 30-day period under sub. (1) is entitled to a credit or payment under s. 424.402. Any insurance policy or service contract covered by the notice is void as of the date of purchase upon mailing or delivery of the notice of cancellation by the customer and all rights under the policy or contract shall terminate. The creditor shall promptly provide the customer with a refund or credit, as applicable, even if the original policy or contract does not accompany the notice of cancellation.

(5) A violation of this section is subject to s. 425.303.

424.402 Insurance cancellation credit or payment.

(1) Any customer who cancels insurance or a service contract under s. 424.304 or 424.401 shall receive one of the following:

(a) A credit against the balance of the customer's obligation or account in the amount of the insurance premiums or service contract charges plus that portion of the finance charge attributable to the insurance premiums or service contract charges.

(b) A payment in the amount of the full amount of the insurance premiums or service contract charges, which amount shall continue to be part of the customer's obligation, if the creditor offers and the customer elects this option.

(2) With respect to the application of a credit under sub. (1) (a) to a customer's obligation for a consumer credit transaction other than one pursuant to an open-end credit plan, a merchant shall do one of the following:

(a) If the obligation is for a consumer credit transaction other than a precomputed consumer loan, apply the credit in one of the following ways:

1. First against the final instalment due on the customer's obligation and then to the preceding instalments in the reverse order in which they are due.

2. Against the balance of the customer's obligation and proportionately reduce the amount of each remaining instalment.

(b) If the obligation is for a precomputed consumer loan, apply the credit against the balance of the customer's obligation, compute and apply a refund of the finance charge, less the portion included in the credit, in the manner described in s. 422.209 (2) as of the date of the loan or the nearest scheduled instalment due date, and thereafter charge interest at a rate not to exceed the annual percentage rate of finance charge which was disclosed to the customer when the loan was made.

(3) If a credit under sub. (1) (a) is applied to a precomputed consumer loan, the finance charge resulting after application of the credit shall be the finance charge for the precomputed consumer loan,

but the cancellation shall not otherwise alter the customer's obligation for the precomputed consumer loan.

(4) A contract between an insurer and a creditor may not provide for a refund to the creditor upon cancellation by a customer under s. 424.304 or 424.401 in an amount less than the amount of the insurance premiums that the creditor must credit to the customer's account or pay to the customer under sub. (1).

(5) A violation of this section is subject to s. 425.303.

SECTION 16. 424.402 of the statutes is renumbered 424.602.

SECTION 17. Subchapter V of chapter 424 of the statutes is created to read:

CHAPTER 424
SUBCHAPTER V
INSURANCE PRACTICES

424.501 False, misleading or deceptive insurance solicitation. (1) A creditor may not solicit or offer for sale any insurance product in connection with a consumer credit transaction in any manner that is false, misleading or deceptive or that omits to state material information with respect to the insurance or the consumer credit transaction that is necessary to make the solicitation or offer not false, misleading or deceptive.

(2) It is not a violation of sub. (1) to use printed materials or forms that have been approved for use by the office of the commissioner of insurance.

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

424.502 Insurance commissions; limitations. A creditor or insurer may not pay to an employe of the creditor who participates in the processing of consumer credit transactions any commission or bonus that exceeds an amount equal to 25% of the employe's annual earnings for the sale of insurance in connection with those consumer credit transactions. Insurance does not include a warranty plan for which the commissioner of insurance has issued a limited certificate of authority pursuant to rule promulgated under s. 600.01 (1) (b) 5.

SECTION 18. 425.106 (1) (b) of the statutes is amended to read:

425.106 (1) (b) Clothing of the customer or his or her dependents, and the following: dining table and chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch and chairs, cooking utensils and kitchenware and household goods as defined in 12 CFR 227.13 (d), 12 CFR 535.1 (g) or 16 CFR 444.1 (i) consisting of furniture, appliances, one television, linens, china, crockery and personal effects including wedding rings, except works of art, electronic entertainment equipment, antiques and jewelry, to the extent a nonpossessory security interest in these household goods is prohibited under 12 CFR 227.13 (d), 12 CFR 535.2 (a) (4) or 16 CFR 444.2 (a) (4);

SECTION 19. 425.301 (4) of the statutes is amended to read:

425.301 (4) The liability of a merchant under chs. 421 to 427 is in lieu of and not in addition to any liability under the federal consumer credit protection act and s. 138.09 or 218.01. An action by a person alleging a violation under chs. 421 to 427 may not be maintained if a final judgment has been rendered for or against that person with respect to the same violation under the federal consumer credit protection act or s. 138.09 or 218.01. If a final judgment is entered against any merchant under chs. 421 to 427 and the federal consumer credit protection act or s. 138.09 or 218.01 for the same violation, the merchant has a cause of action for appropriate relief to the extent necessary to avoid double liability.

SECTION 20. 425.301 (5) of the statutes is created to read:

425.301 (5) If there are multiple obligors in the same consumer credit transaction or consumer lease, there may be no more than one recovery of civil penalties for each violation of chs. 421 to 427.

SECTION 21. 426.104 (4) (b) of the statutes is amended to read:

426.104 (4) (b) Any act, practice or procedure which has been submitted to the administrator in writing and either approved in writing by the administrator or not disapproved by the administrator within ~~30~~ 60 days after its submission to the administrator shall not be deemed to be a violation of chs. 421 to 427 or any other statute to which chs. 421 to 427 refer notwithstanding that ~~such~~ the approval of the administrator or nondisapproval by the administrator may be subsequently amended or rescinded ~~to~~ or be determined by judicial or other authority to be invalid for any reason.

SECTION 22. 426.110 (3) of the statutes is amended to read:

426.110 (3) Notwithstanding this chapter, no class action may be maintained for conduct proscribed in sub. (2) or for a violation of s. 423.301, 424.501, 425.107, 426.108 or 427.104 (1) (h) unless the conduct has been found to constitute a violation of chs. 421 to 427 at least 30 days prior to the occurrence of the conduct involved in the class action by an appellate court of this state or by a rule promulgated by the administrator as provided in ss. 426.104 (1) (e) and 426.108 specifying with particularity the act or practice in question.

SECTION 23. 601.415 (9) of the statutes is amended to read:

601.415 (9) CONSUMER CREDIT LAW. The commissioner shall cooperate with the commissioner of banking in the administration of ch. 424, shall determine the method for computation of refunds under s. 424.205, shall approve forms, schedules of premium rates and charges under s. 424.209 and shall issue rules or orders of compliance to insurers under s. 424.402 424.602.

SECTION 24. Nonstatutory provisions; insurance sales before effective date. A creditor may sell insurance products described in section 422.202 (2s) of the statutes prior to the effective date of this SECTION if the

creditor complies with that section and sections 424.401 and 424.402 of the statutes and subject to the penalties therein.

SECTION 25. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

| A | B | C |
|------------------|--------------------|---------------------|
| Statute Sections | References Deleted | References Inserted |
| 15.731 | 424.401, 424.402 | 424.601, 424.602 |

SECTION 26. Effective date. This act takes effect on the first day of the 4th month beginning after publication.
