



2003 ASSEMBLY BILL 981

March 11, 2004 - Introduced by Representatives BERCEAU, BLACK, MOLEPSKE, TURNER and J. LEHMAN, cosponsored by Senators ROBSON and RISSER. Referred to Committee on Rules.

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

Analysis by the Legislative Reference Bureau

Deceptive preapproved rates, terms, or conditions

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

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

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

Billing statements

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

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

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

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

- 1 **SECTION 1.** 100.18 (10v) of the statutes is created to read:
- 2 100.18 (10v) (a) *Definitions.* In this subsection:
- 3 1. "Customer" means a person other than an organization who seeks or
- 4 acquires credit for personal, family, or household purposes.

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

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

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

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

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

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

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

23 (c) *Deceptive preapproval.* 1. It is deceptive advertising for a merchant to refuse
24 to extend credit to a customer under an open-end credit plan if the customer requests
25 the extension of credit in response to a direct communication from the merchant or

ASSEMBLY BILL 981**SECTION 1**

1 a direct communication caused by the merchant, indicating that the merchant has
2 preapproved the extension of credit to the customer under an open-end credit plan.

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

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

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

13 100.26 (4) Any person who violates s. 100.18 (1) to (8) ~~or~~ (10), or (10v) or
14 100.182 is subject to a civil forfeiture of not less than \$50 nor more than \$200 for each
15 violation.

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

17 422.308 (2m) (a) This subsection applies to every open-end credit plan under
18 which a customer obtains credit pursuant to an application described under sub. (1)
19 or pursuant to a transaction described under sub. (2) and for which the creditor under
20 the open-end credit plan furnishes the customer a periodic statement that states the
21 amount due under the open-end credit plan.

22 (b) If the periodic statement states a minimum payment due under the
23 open-end credit plan and if the creditor is permitted under the open-end credit plan
24 to increase the interest rate applicable to the outstanding balance as a result of the
25 customer's failure to make the minimum payment, the creditor shall include, as part

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1 the periodic statement, the following notice: “FAILURE TO MAKE A MINIMUM
2 PAYMENT BY THE DUE DATE MAY CAUSE AN INCREASE IN YOUR
3 INTEREST RATE.”

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

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

17 (e) Any notice required under par. (b) to (d) shall be displayed in 12-point bold
18 face type or 12 point type of a color different from the color of other type included in
19 the statement.

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

21 422.421 (5) (a) 1. Except as provided in par. (b), a creditor shall mail or deliver
22 to the customer written notice of every change implementing an adjustment in the
23 rate of finance charge in a variable rate transaction. The notice shall be mailed or
24 delivered to the customer at the customer’s last-known address appearing on the
25 records of the creditor. If the variable rate transaction involves more than one

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1 customer, notice given to any customer satisfies this requirement subdivision.

2 Notices given in compliance with s. 422.308 (2m) (d) satisfy this subdivision.

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

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

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

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

14 **SECTION 7. Initial applicability.**

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

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

21 **SECTION 8. Effective date.**

22 (1) This act takes effect on the first day of the 2nd month beginning after
23 publication.

24

(END)