



2005 ASSEMBLY BILL 1164

April 3, 2006 - Introduced by Representatives SHERMAN, BOYLE, NELSON and MUSSER, cosponsored by Senator LASSA. Referred to Committee on Financial Institutions.

1 **AN ACT** *to amend* 422.202 (2m) (a), 422.203 (1) and 422.415 (2) (intro.); and *to*
2 **create** 421.109 of the statutes; **relating to:** penalties for late or delinquent
3 payments under the Wisconsin Consumer Act.

Analysis by the Legislative Reference Bureau

This bill prohibits, under certain circumstances, a merchant from imposing a late payment penalty on a customer in a transaction subject to the Wisconsin Consumer Act (WCA). Under current law, the WCA applies, with certain exceptions, to transactions for real or personal property, services, money, or credit that are entered into for personal, family, or household purposes. In addition, for the WCA to apply to a transaction, the cash price or amount financed must be \$25,000 or less. Except for certain credit transactions, the WCA does not impose restrictions on penalties for late or delinquent payments.

Under this bill, if a customer's payment to a merchant of an amount owed for a transaction subject to the WCA is received by the merchant no later than 28 days after the date that the merchant sends the customer a bill for the amount, the merchant may not impose any charge, fee, penalty, or interest for late or delinquent payment. In addition, the merchant may not report the customer's payment as a late or delinquent payment to any credit reporting agency.

The bill applies to any transaction that is subject to the WCA, including a credit transaction. Under current law, for certain types of credit transactions, a merchant is allowed to impose a delinquency charge only if a customer's payment is not made on or before the tenth day after its scheduled due date or, if the merchant and

ASSEMBLY BILL 1164

customer have agreed to defer the amount due, on or before the tenth day after the deferred due date. Under the bill, a merchant involved in such a credit transaction may impose a delinquency charge for a payment that is not made on or before the tenth day after its scheduled due date, but only if the merchant is otherwise allowed to impose a delinquency charge under the bill as described above. If the merchant and customer have agreed to defer the amount due, current law, rather than the bill, applies to the delinquency charge.

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

1 **SECTION 1.** 421.109 of the statutes is created to read:

2 **421.109 Late payments. (1)** In this section:

3 (a) “Credit report” means means any written, oral, or other communication of
4 any information by a credit reporting agency bearing on an individual’s
5 creditworthiness, credit standing, or credit capacity, which is used or is expected to
6 be used, or collected in whole or in part, for a purpose specified in 15 USC 1681b or
7 for the purpose of serving as a factor in establishing the individual’s eligibility for any
8 credit to be used primarily for personal, family, or household purposes.

9 (b) “Credit reporting agency” means any person who, for fees, dues, or other
10 compensation, or on a cooperative nonprofit basis, regularly engages in whole or in
11 part in the business of assembling or evaluating credit or other information on
12 individuals for the purpose of preparing credit reports that the credit reporting
13 agency furnishes to 3rd parties, but does not include any governmental agency whose
14 records are maintained primarily for traffic safety, law enforcement, or licensing
15 purposes.

16 (c) “Send” means to deposit in the mail, deposit for delivery by a service other
17 than the United States postal service, or transmit by an electronic mail service.

ASSEMBLY BILL 1164

1 **(2)** If a customer's payment to a merchant of an amount owed for a consumer
2 transaction is received by the merchant no later than 28 days after the date that the
3 merchant sends the customer a bill for the amount, the merchant may not do any of
4 the following:

5 (a) Impose any charge, fee, penalty, or interest for late or delinquent payment
6 of the amount.

7 (b) Report the customer's payment as a late or delinquent payment to any credit
8 reporting agency.

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

10 422.202 **(2m)** (a) A creditor may charge, collect and receive other fees and
11 charges, in addition to the finance charge authorized under s. 422.201, that are
12 agreed upon by the creditor and the customer. These other fees and charges may
13 include periodic membership fees, cash advance fees, charges for exceeding a
14 designated credit limit, ~~charges for late payments~~, charges for providing copies of
15 documents and, charges for the return of a dishonored check or other payment
16 instrument, ~~and, except as provided in s. 421.109, charges for late payments.~~

17 **SECTION 3.** 422.203 (1) of the statutes is amended to read:

18 422.203 **(1)** With respect to a consumer credit transaction other than one
19 pursuant to an open-end credit plan, the parties may, ~~subject to s. 421.109,~~ agree to
20 a delinquency charge on any installment not paid in full on or before its scheduled
21 due date, except that if a deferral is made under s. 422.204, the parties may agree
22 to a delinquency charge on any installment not paid in full on or before the 10th day
23 after its ~~scheduled or deferred due date in an amount not to.~~ A delinquency charge
24 under this subsection may not exceed \$10 or 5% of the unpaid amount of the
25 installment, whichever is less.

