



## 1995 ASSEMBLY BILL 834

January 30, 1996 - Introduced by Representatives KAUFERT, TRAVIS, HOVEN, FREESE, WIRCH, FOTI, OTTE, RUTKOWSKI, GREEN, MEYER, BALDUS, SILBAUGH, VRAKAS, HASENOHRL and VANDER LOOP, cosponsored by Senators DARLING, WINEKE, ANDREA, BURKE, BRESKE, DRZEWIECKI, PETAK, C. POTTER, JAUCH and SCHULTZ. Referred to Committee on Financial Institutions.

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

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### ***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 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, exhibi-

tion, marketing, transportation, processing or manufacture of agricultural products by certain persons who cultivate, plant, propagate or nurture those agricultural products.

Under current law, a loan origination fee on a consumer loan is generally treated as part of the finance charge and, as a result, the unearned portion of the loan origination fee must be rebated to the customer upon prepayment of a precomputed consumer credit transaction. This bill creates an exception from this provision to allow a merchant to retain a loan origination fee if certain conditions are met. In order to retain the fee, the fee must not exceed 2% of the amount financed in the precomputed consumer credit transaction and the fee must be for a loan that is secured primarily by an interest in real property or in a mobile home. The bill restricts the ability of a merchant to retain a loan origination fee if a merchant makes a new loan to a customer which is used to prepay an old loan from the same merchant, the new loan is made within 6 months of the old loan and a new loan origination fee is charged on the new loan.

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

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

1           **SECTION 1.** 421.202 (9) of the statutes is created to read:

2           421.202 (9) 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 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

1 aspects of a transaction and in such event such person shall be deemed a customer  
2 for all purposes of chs. 421 to 427 with respect to such transaction.

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

4 422.201 (8) That portion of the finance charge consisting of an amount equal  
5 to a discount of 5% or less of the stated price which is offered to induce payment in  
6 full within a stated period of time in connection with ~~a sale for agricultural purposes~~  
7 ~~or~~ a sale of particular goods and services for which credit is not otherwise available  
8 from the merchant shall not be included in the finance charge for the purpose of de-  
9 termining the maximum rate of finance charge under sub. (2), (3) or (4) with respect  
10 to a customer who does not pay in full within such time.

11 **SECTION 5.** 422.201 (10) (e) of the statutes is amended to read:

12 422.201 (10) (e) If the availability of the discount is disclosed to all prospective  
13 buyers, that portion of the finance charge consisting of an amount equal to a discount  
14 of 5% or less of the stated price which is offered by a merchant ~~either in connection~~  
15 ~~with a sale for agricultural purposes, or~~ to induce immediate payment in full rather  
16 than by use of a credit card shall not be included in the finance charge for the purpose  
17 of determining the maximum rate of finance charge under this subsection with re-  
18 spect to a customer who either elects to use a credit card ~~or to have such agricultural~~  
19 ~~transaction posted to the customer's open-end account.~~

20 **SECTION 6.** 422.201 (10m) (g) of the statutes is amended to read:

21 422.201 (10m) (g) If its availability is disclosed to all prospective buyers, a dis-  
22 count of 5% or less of the stated price offered by a merchant ~~in connection with a sale~~  
23 ~~for agricultural purposes or~~ to induce immediate payment in full other than by use  
24 of a credit card may not be included in the finance charge for the purpose of determin-  
25 ing the maximum rate of finance charge under this subsection for a customer who

1 elects to use a credit card ~~or to have the agricultural transaction posted to the custom-~~  
2 ~~er's open-end account.~~

3 **SECTION 7.** 422.201 (12) of the statutes is repealed.

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

5 422.203 (4) (a) With respect to a consumer credit transaction ~~other than one~~  
6 ~~primarily for an agricultural purpose~~, interest after the final scheduled maturity  
7 date may not exceed the greater of either 12% per year or the annual rate of finance  
8 charge assessed on that transaction if the transaction is entered into on or after April  
9 6, 1980 and prior to November 1, 1981, and may not exceed the maximum rate per-  
10 mitted by s. 138.05 (1) (a), if the transaction is entered into prior to April 6, 1980, but  
11 if such interest is charged no delinquency charge may be taken on the final scheduled  
12 instalment.

13 **SECTION 9.** 422.203 (4) (b) of the statutes is repealed.

14 **SECTION 10.** 422.203 (4) (c) of the statutes is amended to read:

15 422.203 (4) (c) With respect to a consumer credit transaction ~~other than one~~  
16 ~~primarily for an agricultural purpose~~, interest after the final scheduled maturity  
17 date shall not exceed the greater of either 12% per year or the annual rate of finance  
18 charge assessed on that transaction if the transaction is entered into on or after No-  
19 vember 1, 1981, but if interest is charged no delinquency charge may be taken on the  
20 final scheduled instalment.

21 **SECTION 11.** 422.207 (1) of the statutes is amended to read:

22 422.207 (1) With respect to a consumer credit transaction the parties may, to  
23 the extent not prohibited by chs. 421 to 427, agree that the customer will perform cer-  
24 tain duties with respect to preserving or insuring collateral if such duties are reason-  
25 able in relation to the risk of loss of or damage to the collateral. If the customer fails

1 to so perform the creditor may, if authorized by the agreement, pay for the perfor-  
2 mance of such duties on behalf of the customer. The amount paid may be added to  
3 the unpaid balance of the customer's obligation, if, in the absence of performance, the  
4 merchant has made all expenditures on behalf of the customer in good faith and in  
5 a commercially reasonable manner and ~~except in the case of a transaction for an agri-~~  
6 ~~cultural purpose where the collateral is perishable and threatens to decline speedily~~  
7 ~~in value~~, the merchant has given the customer written notice of the nonperformance  
8 and reasonable opportunity after such notice to so perform.

9 **SECTION 12.** 422.209 (1) of the statutes is amended to read:

10 422.209 (1) ~~Upon Except as provided in sub. (1m), upon~~ prepayment in full of  
11 the unpaid balance of a precomputed consumer credit transaction, refinancing or  
12 consolidation, an amount not less than the unearned portion of the finance charge  
13 calculated according to this section shall be rebated to the customer. If the total of  
14 all rebates, refunds and credits to be paid to the customer under chs. 421 to 427 is  
15 less than \$1, no rebate need be made.

16 **SECTION 13.** 422.209 (1m) of the statutes is created to read:

17 422.209 (1m) (a) In the event of prepayment under sub. (1), a merchant may  
18 retain a loan origination fee that meets all of the following conditions:

19 1. The loan origination fee does not exceed 2% of the amount financed in the  
20 precomputed consumer credit transaction, refinancing or consolidation.

21 2. The loan origination fee is for a consumer loan that is secured primarily by  
22 an interest in real property or in a mobile home, as defined in s. 218.10 (2).

23 (b) Notwithstanding par. (a), a merchant may not retain any portion of a loan  
24 origination fee charged on a loan that is prepaid from the proceeds of a new loan made  
25 by the same creditor to the extent that a new loan origination fee is charged on the

1 portion of the amount financed used to prepay the prior loan, if the new loan is en-  
2 tered into within 6 months of the prior loan.

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

4 422.209 (2) (b) 1. The portion of the finance charge which is allocable to all un-  
5 expired payment periods as scheduled or deferred. A payment period is unexpired  
6 if prepayment is made within 15 days after the payment's due date. The unearned  
7 finance charge is the finance charge which, assuming all payments are made as  
8 scheduled or deferred, would be earned for each unexpired payment period by apply-  
9 ing to unpaid balances of principal, according to the actuarial method, the annual  
10 percentage rate disclosed to the customer under subch. III ~~or, in the case of a transac-~~  
11 ~~tion for an agricultural purpose, the annual percentage rate based on the finance~~  
12 ~~charge.~~ The creditor may decrease the annual interest rate to the next multiple of  
13 0.25%.

14 **SECTION 15.** 422.209 (2) (b) 2. of the statutes is amended to read:

15 422.209 (2) (b) 2. The finance charge less the amount determined by applying  
16 the annual percentage rate disclosed to the customer under subch. III ~~or, in the case~~  
17 ~~of a transaction for an agricultural purpose, the annual percentage rate based on the~~  
18 ~~finance charge,~~ according to the actuarial method, to the unpaid balances for the ac-  
19 tual time those balances were unpaid up to the date of prepayment.

20 **SECTION 16.** 422.402 (1) of the statutes is amended to read:

21 422.402 (1) Except as provided in sub. (1m), with respect to a consumer credit  
22 transaction other than a transaction which is a) pursuant to an open-end credit plan,  
23 or b) not precomputed and on which the annual percentage rate disclosed under  
24 subch. III is less than 16.5% for a consumer credit sale in which the seller retains a  
25 security interest in real estate which is the subject of the sale or any consumer loan,

1 either of which is entered into on or after April 6, 1980 and prior to November 1, 1981,  
2 or 12% for any other consumer credit transaction ~~or e) a transaction primarily for an~~  
3 ~~agricultural purpose~~, no merchant shall enter into an agreement which requires a  
4 schedule of payments under which any one payment is not equal or substantially  
5 equal to all other payments, or under which the intervals between any consecutive  
6 payments differ substantially except as permitted in sub. (2) or (3).

7 **SECTION 17.** 422.402 (1m) of the statutes is amended to read:

8 422.402 (1m) With respect to a consumer credit transaction other than a trans-  
9 action which is a) pursuant to an open-end credit plan, or b) not precomputed and  
10 on which the annual percentage rate disclosed under subch. III is not more than 18%  
11 for a consumer credit sale in which the seller retains a security interest in real estate  
12 which is the subject of the sale or any consumer loan, either of which is entered into  
13 on or after November 1, 1981 and before November 1, 1984, ~~or e) a transaction pri-~~  
14 ~~marily for an agricultural purpose~~, no merchant shall enter into an agreement which  
15 requires a schedule of payments under which any one payment is not equal or sub-  
16 stantially equal to all other payments, or under which the intervals between any con-  
17 secutive payments differ substantially except as permitted in sub. (2) or (3).

18 **SECTION 18.** 422.411 (1) of the statutes is amended to read:

19 422.411 (1) Except as provided in subs. (2) and (2m), with respect to a consumer  
20 credit transaction no term of a writing may provide for the payment by the customer  
21 of attorney fees. ~~Notwithstanding subs. (2) and (2m), a consumer credit transaction~~  
22 ~~may not provide for the payment by the customer of attorney fees if the transaction~~  
23 ~~is for an agricultural purpose.~~

24 **SECTION 19.** 422.412 of the statutes is amended to read:

1           **422.412 Restriction on liability in consumer lease.** In a consumer lease  
2 other than one for an agricultural purpose, the obligation of a customer upon expira-  
3 tion of the lease may not exceed the average payment allocable to a monthly period  
4 under the lease. This limitation does not apply to charges for damages to the leased  
5 property occasioned by other than normal use or for other default.

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

7           422.413 (1) Except as provided in ~~subs. (2) and sub. (2g)~~, no term of a writing  
8 evidencing a consumer credit transaction may provide for any charges as a result of  
9 default by the customer other than reasonable expenses incurred in the disposition  
10 of collateral and such other charges as are specifically authorized by chs. 421 to 427.

11           **SECTION 21.** 422.413 (2) of the statutes is repealed.

12           **SECTION 22.** 422.417 (1) (c) of the statutes is amended to read:

13           422.417 (1) (c) Real property to which the property sold is affixed, or which is  
14 maintained, repaired or improved as a result of the sale of the property or services,  
15 if the obligation secured is \$1,000 or more; and

16           **SECTION 23.** 422.417 (1) (d) of the statutes is amended to read:

17           422.417 (1) (d) Goods of the consumer which were the subject of a prior transac-  
18 tion with the seller which is consolidated (s. 422.206) with the consumer credit sale,  
19 or if the consumer credit sale is made pursuant to an open-end credit plan, goods pre-  
20 viously purchased by the consumer pursuant to the plan, subject however to s.  
21 422.418; and.

22           **SECTION 24.** 422.417 (1) (e) of the statutes is repealed.

23           **SECTION 25.** 422.417 (2) of the statutes is amended to read:

24           422.417 (2) With respect to a consumer lease, a lessor may not take a security  
25 interest in any property of the customer other than the leased goods to secure the les-

1 sor's obligations under the lease. This subsection does not prohibit a security inter-  
2 est in a cash security deposit for a consumer lease of motor vehicles ~~or agricultural~~  
3 ~~equipment~~.

4 **SECTION 26.** 422.418 (2) of the statutes is amended to read:

5 422.418 (2) For the purpose of determining the extent to which a consolidated  
6 obligation is secured after a consolidation of consumer sales ~~other than sales primar-~~  
7 ~~ily for an agricultural purpose~~, and after a consolidation of consumer loans in which  
8 one or more of the loans consolidated is secured by a purchase money security inter-  
9 est in property of the type described in s. 422.417 (3) (a), payments received by the  
10 creditor after a consolidation agreement are deemed to have been first applied to the  
11 payment of obligations arising from the transactions first made. To the extent that  
12 obligations are paid pursuant to this section, security interests in items of property  
13 terminate as the obligation originally incurred with respect to each item is paid.

14 **SECTION 27.** 422.421 (6) (a) 1. of the statutes is amended to read:

15 422.421 (6) (a) 1. ~~Except as provided in s. 422.201 (12), for~~ For any variable rate  
16 transaction, other than one pursuant to an open-end credit plan, entered into before  
17 November 1, 1984, the maximum rate of finance charge for any payment period may  
18 not exceed the limit set forth in s. 422.201 (2) (bm) as determined on the earlier of  
19 the first day of the payment period or the day notice is given under sub. (5) for the  
20 payment period.

21 **SECTION 28.** 422.501 (3) of the statutes is amended to read:

22 422.501 (3) "Extension of credit" means the right to defer payment of debt or  
23 to incur debt and defer its payment, that is offered or granted for debt that is incurred  
24 primarily for personal, family, or household ~~or agricultural~~ purposes.

25 **SECTION 29.** 423.201 of the statutes is amended to read:

1           **423.201 Definition.** “Consumer approval transaction” means a consumer  
2 transaction other than a sale or lease or listing for sale of real property, or a sale of  
3 goods at auction, ~~the sale or lease of goods for an agricultural purpose or a loan made~~  
4 ~~to finance the sale of goods at auction for an agricultural purpose~~ 1) which is initiated  
5 by face-to-face solicitation away from a regular place of business of the merchant  
6 or by mail or telephone solicitation directed to the particular customer and 2) which  
7 is consummated or in which the customer’s offer to contract or other writing evidenc-  
8 ing the transaction is received by the merchant away from a regular place of business  
9 of the merchant and involves the extension of credit or is a cash transaction in which  
10 the amount the customer pays exceeds \$25. “Consumer approval transaction” shall  
11 in no event include a catalog sale which is not accompanied by any other solicitation  
12 or a consumer loan conducted and consummated entirely by mail.

13           **SECTION 30.** 424.208 (1) (intro.) and (a) of the statutes are consolidated, renum-  
14 bered 424.208 (1) and amended to read:

15           **424.208 (1)** The initial amount of credit life insurance shall not exceed the total  
16 amount repayable under the contract of indebtedness however the indebtedness may  
17 be repayable, but: ~~(a) In in cases where an indebtedness is repayable in substantial-~~  
18 ~~ly equal instalments, the amount of insurance shall at no time exceed the scheduled~~  
19 ~~or actual amount of unpaid indebtedness, whichever is greater; and.~~

20           **SECTION 31.** 424.208 (1) (b) of the statutes is repealed.

21           **SECTION 32.** 424.301 (1) (b) 4. of the statutes is repealed.

22           **SECTION 33.** 425.103 (2) (a) of the statutes is amended to read:

23           **425.103 (2)** (a) With respect to a transaction other than one pursuant to an  
24 open-end plan, 1) if the interval between scheduled payments is 2 months or less,  
25 to have outstanding an amount exceeding one full payment which has remained

1 unpaid for more than 10 days after the scheduled or deferred due dates, or the failure  
2 to pay the first payment or the last payment, within 40 days of its scheduled or def-  
3 erred due date, 2) if the interval between scheduled payments is more than 2 months,  
4 to have all or any part of one scheduled payment unpaid for more than 60 days after  
5 its scheduled or deferred due date, or 3) if the transaction is scheduled to be repaid  
6 in a single payment, to have all or any part of the payment unpaid for more than 40  
7 days after its scheduled or deferred due date, ~~or 4) in the case of a transaction for an~~  
8 ~~agricultural purpose, the failure to pay the first or the only instalment when due or~~  
9 ~~to pay any other instalment within 40 days of its original or deferred due date.~~ For  
10 purposes of this paragraph the amount outstanding shall not include any delinquen-  
11 cy or deferral charges and shall be computed by applying each payment first to the  
12 instalment most delinquent and then to subsequent instalments in the order they  
13 come due;

14 **SECTION 34.** 425.114 of the statutes is repealed.

15 **SECTION 35.** 425.206 (1) (b) of the statutes is amended to read:

16 425.206 (1) (b) Judgment for the merchant has been entered in a proceeding  
17 for recovery of collateral or leased goods under s. 425.205, or for possession of the  
18 collateral or leased goods under s. 425.203 (2); or

19 **SECTION 36.** 425.206 (1) (c) of the statutes is amended to read:

20 425.206 (1) (c) The merchant has taken possession of collateral or leased goods  
21 pursuant to s. 425.207 (2); ~~or,~~

22 **SECTION 37.** 425.206 (1) (d) of the statutes is repealed.

23 **SECTION 38.** 425.207 (2) of the statutes is amended to read:

24 425.207 (2) A merchant who reasonably believes that a customer has aban-  
25 doned collateral or goods subject to a consumer lease may take possession of such

1 collateral or leased goods and preserve it. However, the customer may recover such  
2 collateral or leased goods upon request unless at the time of request the customer has  
3 surrendered the collateral or leased goods, or judgment for the merchant has been  
4 entered in a proceeding for recovery of collateral or leased goods under s. 425.205 or  
5 in a judgment described in s. 425.203 (2). A merchant taking possession of collateral  
6 or leased goods pursuant to this section shall promptly send notification to the cus-  
7 tomer's last-known address of such action and of the customer's right to recover such  
8 collateral or leased goods under this section. If the collateral or leased goods are re-  
9 covered by the customer pursuant to this section, it shall be returned to the customer  
10 at the location where the merchant took possession of such collateral or leased goods  
11 pursuant to this section or, at the option of the merchant, at such other location desig-  
12 nated by the customer; and any expense incurred by the merchant in taking posses-  
13 sion of, holding and returning the collateral or leased goods to the customer shall be  
14 borne by the merchant. If after taking possession of collateral or leased goods pur-  
15 suant to this subsection, the merchant perfects the right to possession through a sur-  
16 render by the customer or a judgment under s. 425.203 (2) or 425.205, the customer  
17 is liable for the expenses set forth in s. 409.504 (1). In determining such expenses,  
18 leased goods shall be considered collateral under s. 409.504 (1). However, a customer  
19 is not liable for expenses of holding the collateral or leased goods from the time the  
20 merchant takes possession until the merchant perfects the right to possession in the  
21 manner provided in this subsection. ~~This subsection shall not apply to collateral re-~~  
22 ~~covered in accordance with s. 425.114.~~

23 **SECTION 39.** 425.208 (1) (intro.) of the statutes is amended to read:

24 425.208 (1) (intro.) For a period of 15 days following exercise by the creditor of  
25 nonjudicial enforcement rights (s. 425.206) or issuance of process (s. 425.205) with

1 regard to the collateral, the customer shall, ~~except in a transaction for an agricultur-~~  
2 ~~al purpose if otherwise agreed in writing after default,~~ be entitled to redeem the  
3 goods by tendering:

4 **SECTION 40.** 425.208 (1) (cm) of the statutes is amended to read:

5 425.208 (1) (cm) If a writing evidencing the consumer credit transaction so pro-  
6 vides, expenses the creditor is entitled to recover under s. 422.413 ~~(2)~~ and (2g) (a) and  
7 (b); plus

8 (END)