



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0827/3

RJM:wlj&jlg:jf

Friday 7-23  
NOON

1999 BILL

RMUR  
DROTE

Reger

1 **AN ACT to repeal** 138.09 (7) (jm) 1. and 422.209 (lm) (a); **to renumber and**  
2 amend 138.09 (7) (a) 1., 421.301 (35), 421.301 (36) and 422.209 (lm) (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., 349.13 (3m), 421.301 (5) (c) 3., 421.301 (29), 422.202  
5 (2m) (a), 422.209 (1), 422.209 (2) (a) 3., 422.209 (2) (c) 2. and 422.209 (2) (c) 3.;  
6 **to repeal and recreate** 138.09 (7) (gm) and 425.206 (1) and (2); and **to create**  
7 138.09 (7) (a) 1. b., 138.09 (7) (a) lm., 138.09 (7) (am), 421.301 (35) (b), 421.301  
8 (36) (b) and 422.209 (2) (c) 4. of the statutes; **relating** to: repossession upon  
9 default in a consumer credit transaction, loan prepayment, loan administration  
10 fees, loan 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

**BILL**

provisions regulating loans made by lenders other than banks, credit unions, savings and loan associations and savings banks. 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 finance charges ~~or interest~~ is greater than one-half of the total scheduled finance charge ~~or interest~~ 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. This bill ~~eliminates~~ the use of the rule of 78 for any precomputed transaction or loan entered into on or after the date on which this bill becomes law, ~~and, thus, increases the likelihood of a borrower under the WCA and the licensed lender law receiving a larger 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. In addition, upon prepayment of a precomputed transaction or loan under the WCA or the licensed lender law, a 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.

replaces

generally

with the actuarial method

increasing the amount of any

BILL

*The total amount financed or the principal may only include that portion of the total of all*

This bill adds loan origination fees to the list of expressly authorized additional charges under the WCA and the licensed lender law. Furthermore, this bill removes the cap on loan administration fees, includes loan administration fees as an expressly authorized additional charge 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. In addition, 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, expressly authorized additional charges may only be included in the total amount financed or the principal if the total amount of these charges is not more than one-half of the total scheduled finance charge or interest applicable to the transaction or loan. *(that portion of)*

*assessed in a transaction or loan that*

This bill also expands the definition of "prepaid finance charge" to include any expressly authorized additional charge that is greater than one-half of the total scheduled finance charge ~~or interest~~ 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 finance charge.

**Repossession of collateral under the WCA**

The WCA currently limits the authority of a creditor to repossess collateral and leased goods upon a consumer's default without first obtaining a court judgment. Under current law, a creditor under the WCA may repossess this property without legal process if the consumer abandons or voluntarily surrenders the property. ~~Currently, no specific provision governs the repossession of collateral securing obligations under the licensed lender law.~~

This bill authorizes a creditor under the WCA to repossess collateral or leased goods without legal process upon default and after the consumer's right to cure expires, as long as the creditor does not enter the residence of the consumer and does not commit a breach of the peace. ~~This bill does not create any similar provisions in the licensed lender law.~~

*FE-5*

**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 service:
- 4           ~~amount of any construction loan and 2% of the principal amount of any other loan.~~
- 5           SECTION 2. 138.09 (3) (e) 1. a. of the statutes is amended to read:

## BILL

## SECTION 2

1 138.09 (3) (e) 1. a. A business engaged in making loans for business or  
2 agricultural purposes or exceeding \$25,000 in principal amount, except that all such  
3 loans having terms of 49 months or more are subject to sub. (7) (gm) ~~2. or 4. 1. 2. or~~  
4 ~~5.~~

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

7 138.09 (7) (a) 1. (intro.) "Precomputed loan" means a loan that satisfies any of  
8 the following:

9 a. Is a loan in which the debt is expressed as a sum comprising the principal  
10 and the amount of interest computed in advance.

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

12 138.09 (7) (a) 1. b. Is a loan in which the prepaid finance charge is greater than  
13 one-half of the total scheduled ~~interest~~ <sup>(finance charge)</sup> applicable to the loan.

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

15 138.09 (7) (a) 1m. "Prepaid finance charge" means the total of all of the  
16 following:

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

20 b. ~~Any~~ <sup>(that portion of any)</sup> charge permitted under par. (i) 1. that is paid separately, in cash or  
21 otherwise, directly or indirectly to the creditor or with the creditor's knowledge to  
22 another person, or withheld by the creditor, from the proceeds of the credit extended,  
23 <sup>(and that)</sup> ~~of the charge~~ is greater than one-half of the total scheduled ~~interest~~ <sup>(finance charge)</sup> applicable to the  
24 loan.

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

BILL

1 138.09 (7) (a) 2. (intro.) "Principal" Except as provided under par. (am),  
2 "nrincinal" means the total of:

3 SECTION 7. 138.09 (7) (am) of the statutes is created, to read:

*(that portion of the total assessed)*

4 138.09 (7) (am) In this section, charges ~~permitted~~ under par. (i) 1. ~~are only~~

5 ~~included in the principal if the total amount of all charges assessed under par. (i) 1.~~

6 for a transaction <sup>(that)</sup> is ~~not~~ greater than one-half of the total scheduled <sup>(interest)</sup>

7 applicable to the loan. <sup>(may not be included in the principal)</sup> <sup>(finance charge)</sup>

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

9 138.09 (7) (gm) Upon prepayment in full of a loan by cash, renewal, refinancing  
10 or otherwise, the borrower shall receive a rebate of the unearned interest together

11 with that portion of any ~~prepaid finance charge~~ <sup>(greater than one-half of the total scheduled finance charge applicable to the loan)</sup> that is ~~described in par. (a) 1.~~

12 unless the combined rebate of interest, prepaid finance charges and credit insurance  
13 premiums otherwise required is less than \$1. If the first payment period of the loan  
14 is more than one month and the licensee charges additional interest under par. (c)  
15 2., the additional interest is earned on the first instalment date and shall not be  
16 considered in computing the rebate of unearned interest under this subsection. The  
17 amount of the rebate of unearned interest shall be determined as follows:

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

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

*assessed under par. (i) 1.*

**BILL**

1           3. For a loan of less than \$5,000 that contains precomputed interest, is  
2 repayable in substantially equal successive instalments at approximately equal  
3 intervals, has a term of less than 37 months and was entered into on or after August  
4 1, 1987, and before the effective date of this subdivision . . . . [revisor inserts date], the  
5 licensee shall compute the rebate under s. 422.209 (2) (a).

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

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

16           **SECTION 9.** 138.09 (7) (jm) 1. of the statutes is repealed.

17           **SECTION 10.** 138.09 (7) (jm) 2. of the statutes is amended to read:

18           138.09 (7) (jm) 2. Notwithstanding ~~subd. par. (i)~~ l., if a licensee charges a loan  
19 administration fee on a consumer loan that is prepaid from the proceeds of a new loan  
20 made by the same licensee within 6 months after the prior loan, then the licensee  
21 shall reduce any loan administration fee on the new loan by the amount of the loan  
22 administration fee on the prior loan.

23           **SECTION 11.** 138.09 (7) (jm) 3. of the statutes is amended to read:

24           138.09 (7) (jm) 3. ~~A. If the total amount of all charges assessed under par. (i)~~

25           ~~for a consumer loan is not greater than one-half of the total scheduled finance~~

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Except as provided under par. (am), a

1 ~~charge applicable to the loan~~ a loan administration fee charged under this  
2 paragraph par. (i) 1. may be included in the amount financed in the consumer loan.  
3 ~~The~~ Except as provided under par. (am). the loan administration fee is earned by the  
4 licensee when charged and need not be refunded under par. (gm) 3. ~~or~~ 4. or 5. A  
5 licensee who charges a loan administration fee under ~~this paragraph par. (i) 1.~~ may  
6 not also retain a loan administration fee under s. ~~422.209 (1m) in connection with~~  
7 422.202 (2m) upon prepayment of the same consumer loan transaction.

SECTION 12. 349.13 (3m) of the statutes is amended to read:

9 349.13 (3m) No vehicle involved in trespass parking on a private parking lot  
10 or facility shall be removed without the permission of the vehicle owner, except upon  
11 the issuance of a repossession judgment, upon repossession under s. 425.206 or upon  
12 formal complaint and a citation for illegal parking issued by a traffic or police officer.

SECTION 13. 421.301 (5) (c) 3. of the statutes is amended to read:

13 That portion of the total of all additional charges assessed under  
14 421.301 (5) (c) 3. Additional charges permitted by s. 422.202, if the total  
15 amount of all charges assessed under s. 422.202 for a transaction that  
16 is not greater than one-half of the total scheduled finance charge applicable to the transaction.

SECTION 14. 421.301 (29) of the statutes is amended to read:

17 421.301 (29) "Other than open-end credit" means consumer credit other than  
18 an open-end credit plan itself, or other than consumer credit transactions pursuant  
19 to an open-end credit plan, and includes precomputed transactions described in sub.  
20 (35) (a).

SECTION 15. 421.301 (35) of the statutes is renumbered 421.301 (35) (intro.) and

21 amended to read:  
22  
23

**BILL**

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

4           (a) Is 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 16.** 421.301 (35) (b) of the statutes is created to read:

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

9           **SECTION 17.** 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 18.** 421.301 (36) ~~(b)~~ of the statutes is created to read:

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

22           **SECTION 19.** 422.202 (2m) (a) of the statutes is amended to read:

23           422.202 **(2m)** (a) A creditor may charge, collect and receive other fees and  
24 charges, in addition to the finance charge authorized under s. 422.201, that are  
25 agreed upon by the creditor and the customer. These other fees and charges may



**BILL**

1 include loan origination fees, loan administration fees, periodic membership fees,  
 2 cash advance fees, charges for exceeding a designated credit limit, charges for late  
 3 payments, charges for providing copies of documents and charges for the return of  
 4 a dishonored check or other payment instrument.

5 **SECTION 20.** 422.209 (1) of the statutes is amended to read:

6 422.209 (1) ~~Except as provided in sub. (1m), upon~~ Upon prepayment in full of  
 7 the unpaid balance of a **precomputed** consumer credit transaction, refinancing or  
 8 consolidation, an amount not less than the unearned portion of the finance charge  
 9 calculated according to this section, together with that portion of any prepaid finance  
 10 charge that is greater than one-half of the total scheduled finance charge applicable to the transaction  
 11 ~~charge that is described in s. 421.501 (26)(b),~~ shall be rebated to the customer. If the  
 12 total of all rebates, refunds and credits to be paid to the customer under chs. 421 to  
 13 427 is less than \$1, no rebate need be made.

13 **SECTION 21.** 422.209 (1m) (a) of the statutes is repealed.

14 **SECTION 22.** 422.209 (1m) (b) of the statutes is renumbered 422.209 (1g) and  
 15 amended to read:

16 422.209 (1g) Notwithstanding ~~par. (a) s. 422.202 (2m),~~ if a merchant retains  
 17 any portion of a loan administration fee charged on a loan that is prepaid from the  
 18 proceeds of a new loan made by the same merchant within 6 months after the prior  
 19 loan, then the merchant shall reduce any loan administration fee on the new loan by  
 20 the amount of the loan administration fee on the prior loan that was retained by the  
 21 merchant.

22 **SECTION 23.** 422.209 (2) (a) 3. of the statutes is amended to read:

23 422.209 (2) (a) 3. Consumer credit transactions in which the amount financed  
 24 is less than \$5,000, which have initial terms of less than 37 months and which are

assessed  
under s.  
422.202

## BILL

1 entered into on or after August 1, 1987, and before the effective date of this  
2 subdivision . . . . [revisor inserts date].

3 **SECTION 24.** 422.209 (2) (c) 2. of the statutes is amended to read:

4 422.209 (2) (c) 2. Consumer credit transactions in which the amount financed  
5 is \$5,000 or more and which are entered into on or after August 1, 1987, and before  
6 the effective date of this subdivision . . . . [revisor inserts date].

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

8 422.209 (2) (c) 3. Consumer credit transactions in which the amount financed  
9 is less than \$5,060, which have initial terms of 37 months or more and which are  
10 entered into on or after August 1, 1987, and before the effective date of this  
11 subdivision . . . . [revisor inserts date].

12 **SECTION 26.** 422.209 (2) (c) 4. of the statutes is created to read:

13 422.209 (2) (c) 4. Consumer credit transactions entered into on or after the  
14 effective date of this subdivision . . . . [revisor inserts date].

15 **SECTION 27.** 425.206 (1) and (2) of the statutes are repealed and recreated to  
16 read:

17 425.206 (1) **At** any time after default and the expiration of the period for cure  
18 of default a merchant may take possession of collateral or goods subject to a consumer  
19 lease without legal process only if the merchant satisfies all of the following:

20 (a) Takes possession without entering into a dwelling used by the customer as  
21 a residence.

22 (b) Takes possession without committing a breach of the peace.

23 (2) This section shall not limit the authority of a merchant to take possession  
24 of collateral or goods pursuant to a judgment in a proceeding under s. 425.205 or



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0827/2110 <sup>3dn</sup>  
RJM:wlj&jlg:jf

July 22, 1999

1. With the permission of your office, I completed the attached redraft upon the request of Walt Stewart. I received three faxes from Walt Stewart requesting various changes and additions to the original draft and I have attempted to incorporate the intent of those changes and additions into this draft. Please review the draft carefully and let me know if the draft is not consistent with your intent.

2. Walt Stewart requested an amendment to the definition of the term "precomputed." This amendment resulted in a need to amend the definition of the phrase "other than open-end credit" in order to preserve the current meaning. Please review this change and let me know if it is not consistent with your intent. See proposed s. 421.301 (29).

3. This bill makes changes to ch. 138 in order to maintain consistency between the consumer act and the licensed lender law. Please let me know if you do not intend to make these changes to ch. 138.

4. Walt Stewart requested that s. 422.202 (2m), stats., be amended to specify that a fee collected under that subsection is generally not subject to rebate upon prepayment. However, this change is unnecessary and I did not include it. Section 422.209, stats., requires a rebate of unearned finance charges upon prepayment. The definition of the term "finance charge" in s. 421.301 already excludes charges under s. 422.202.

Furthermore, it is my understanding that this draft actually should require the rebate of certain charges assessed under s. 422.202 (2m). See proposed s. 422.209 (1). Please let me know if I have misunderstood the instructions.

I have provided a "1/3" draft because I used the "1" draft as a working copy. Thus, other than this draft, you should only have received a "1/P1." Please let me know if you have any questions.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: Robert.Marchant@legis.state.wi.us

INSERT  
NOTE

7

and "1/2" as copies

## INSECT PNOSE

¶ 5. This draft expands the definition of "precomputed loan," based on the aggregate total of additional charges a lender assesses. Thus, if the total amount of additional charges for a loan exceeds 50% of the total scheduled interest charged, the loan is a precomputed loan. Because additional charges may be assessed sporadically over the term of a loan, it is possible that a loan, over time, may become a precomputed loan. This possibility may create difficulties in enforcing s. 138.09<sup>, stats.</sup> and the consumer act. You may want to contact the department of financial institutions regarding this issue.

¶ 6. Please note that I have clarified the definition of "prepaid finance charge" in s. 421.301 (36), stats., to charges paid from proceeds of credit extended or charges withheld from proceeds of credit extended. This clarification does not change current law. Please let me know if you do not approve.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0827/3dn  
RJM:wlj&jlg:mrc

July 23, 1999

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Furthermore, it is my understanding that this draft actually should require the rebate of certain charges assessed under s. 422.202 (2m). See proposed s. 422.209 (1). Please let me know if I have misunderstood the instructions.

5. This draft expands the definition of "precomputed loan," based on the aggregate total of additional charges a lender assesses. This, if the total amount of additional charges for a loan exceeds 50% of the total scheduled interest charged, the loan is a precomputed loan. Because additional charges may be assessed sporadically over the term of a loan, it is possible that a loan, over time, may become a precomputed loan. This possibility may create difficulties in enforcing s. 138.09, stats., and the consumer act. You may want to contact the department of financial institutions regarding this issue.

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7. I have provided a “/3” draft because I used the “/1” and “/2” drafts as working copies. Thus, other than this draft, you should only have received a “/P1.” Please let me know if you have any questions.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: [Robert.Marchant@legis.state.wi.us](mailto:Robert.Marchant@legis.state.wi.us)

**Stewart Law Office****Walter R. Stewart      Susan M. Fuller****Daniel P. Dunn**  
Of Counsel  
FAX (608) 256-7909330 East Wilson Street, Suite 100  
Madison, Wisconsin 53703  
(608) 256-7902  
(e-mail) [stew@itis.com](mailto:stew@itis.com)**FAX COVER SHEET**

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DATE: August 25, 1999

**TRANSMISSION TO:**FAX NUMBER: 264-8522  
ATTENTION: **ROB MARCHANT**  
SENDER: Walter R. Stewart  
RE: LRB 0868

There is/are 1 Page(s) following this cover sheet.

Please **dispatch** any **return** faxes to (608) **256-7909**. Please call, (608) **256-7902** if all pages are not **received**.



# Stewart Law Office

Walter R. Stewart      Susan M. Fuller

~~Daniel P. Linn~~  
Of Counsel  
FAX (608) 256-7909

239 East Wilson Street, Suite 100  
Madison, Wisconsin 53703  
(608) 256-7902  
(e-mail) [stew@itis.com](mailto:stew@itis.com)

## MEMORANDUM

DATE: August 25, 1999  
TO: ROB MARCHANT  
FROM: Walter R. Stewart  
RE: LRB-0868

Thank you for providing LRB-082713 in time for the summer meeting of the Wisconsin Financial Services Association.

The Association members raise a **question** regarding section 8 of the bill, which repeals and recreates section **138.09(7)(gm)**. Both the current and proposed **version** of **(gm)** mention the **refund** of the credit insurance premium. The request is that the rule of 78 continue to apply to the refund of the credit insurance premium. Can section 8 be revised to preserve the rule of 78 as applied to the insurance premiums? If not, what do you see as the problem?

WRS/



State of Wisconsin  
1999 - 2000 LEGISLATURE

4  
LRB-0827/0  
RJM:wlj&jlg:mrc

5000

1999 BILL

AMNR

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re-generate

1 **AN ACT to repeal** 138.09 (7) (jm) 1. and 422.209 (1m) (a); **to renumber and**  
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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., 349.13 (3m), 421.301 (5) (c) 3., 421.301 (29), 422.202  
5 (2m) (a), 422.209 (1), 422.209 (2) (a) 3., 422.209 (2) (c) 2. and 422.209 (2) (c) 3.;  
6 **to repeal and recreate** 138.09 (7) (gm) and 425.206 (1) and (2); and **to create**  
7 138.09 (7) (a) 1. b., 138.09 (7) (a) 1m., 138.09 (7) (am), 421.301 (35) (b), 421.301  
8 (36) (b) and 422.209 (2) (c) 4. of the statutes; **relating** to: repossession upon  
9 default in a consumer credit transaction, loan prepayment, loan administration  
10 fees, loan origination fees and prepaid <sup>STA</sup>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

**BILL**

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to as "licen... N

provisions regulating loans made by lenders other than banks, credit unions, savings and loan associations and savings banks. 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 ~~finance~~ 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. ~~the~~ 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.

With certain limited exceptions, this

**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. In addition, upon prepayment of a precomputed transaction or loan under the WCA or the licensed lender law, a 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.

(a creditor to assess)

The WCA and the licensed lender law also permit certain insurance premiums, service contract fees and extended warranty fees as additional charges.

**BILL**

permitted in open-end credit transactions

This bill adds loan origination fees to the list of expressly authorized additional charges under the WCA and the licensed lender law. Furthermore, this bill removes the cap on loan administration fees, includes loan administration fees as an expressly authorized additional charge 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. ~~On addition,~~ 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 ~~not more than~~ <sup>less</sup> one-half of the total scheduled finance charge. ~~to be a "prepaid charge" and expands the definition~~

permitted in open-end credit transactions

Under this bill, loan administration fees may only be assessed in open-end credit transactions and certain residential mortgage loans

This bill also ~~expands the definition of~~ "prepaid finance charge" <sup>to be a "prepaid charge" and expands the definition</sup> 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~~ charge.

redefines a

**Repossession of collateral under the WCA**

The WCA currently limits the authority of a creditor to repossess collateral and leased goods upon a consumer's default without first obtaining a court judgment. Under current law, a creditor under the WCA may repossess this property without legal process if the consumer abandons or voluntarily surrenders the property.

This bill authorizes a creditor under the WCA to repossess collateral or leased goods without legal process upon default and after the consumer's right to cure expires, as long as the creditor does not enter the residence of the consumer and does not commit a breach of the peace.

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 service - ~~g - 2% of the principal~~  
4 ~~amount of any construction loan and 2% of the principal amount of any other loan~~

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

6 138.09 (3) (e) 1. a. A business engaged in making loans for business or  
7 agricultural purposes or exceeding \$25,000 in principal amount, except that all such

**BILL**

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 that satisfies any of  
6 the following:

7 a. Is a loan in which the debt is expressed as a sum comprising the principal  
8 and the amount of interest computed in advance.

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

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

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

13 138.09 (7) (a) 1m. "Prepaid ~~finance~~ charge" means the total of all of the  
14 following:

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

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

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

24 138.09 (7) (a) 2. (intro.) "~~Principal~~ Except as provided under nar. (am).  
25 "nrincinal" means the total of:

## BILL

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

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

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

6           138.09 (7) (gm) ~~Upon prepayment in full of a loan by cash, renewal, refinancing~~  
7 or otherwise, the borrower shall receive a rebate of the unearned interest together  
8 with that portion of any <sup>prepaid</sup> charge <sup>that is</sup> assessed under par. (i) 1. that is greater than one-half  
9 of the total scheduled finance charge applicable to the loan, unless the combined  
10 rebate of interest, prepaid finance charges and credit insurance premiums otherwise  
11 required ~~is less than \$10~~ <sup>described in par. (a) 1m. b.v</sup>. If the first payment period of the loan is more than one  
12 month and the licensee charges additional interest under par. (c) 2., the additional  
13 interest is earned on the first instalment date and shall not be considered in  
14 computing the rebate of unearned interest under this subsection. <sup>Except as provided under par. (gr),</sup> The amount of the  
15 rebate of unearned interest shall be determined as follows:

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

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

23           3. For a loan of less than \$5,000 that contains precomputed interest, is  
24 repayable in substantially equal successive instalments at approximately equal  
25 intervals, has a term of less than 37 months and was entered into on or after August

**BILL**

1 1, 1987, and before the effective date of this subdivision . . . [revisor inserts date], the  
2 licensee shall compute the rebate under s. 422.209 (2) (a).

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

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

Liberty  
9-12  
12

13 SECTION 9. 138.09 (7) (jm) 1. of the statutes is repealed.

14 SECTION 10. 138.09 (7) (jm) 2. of the statutes is amended to read:

15 138.09 (7) (jm) 2. Notwithstanding ~~subd. par. (i)~~ l., if a licensee charges a loan  
16 administration fee on a consumer loan that is prepaid from the proceeds of a new loan  
17 made by the same licensee within 6 months after the prior loan, then the licensee  
18 shall reduce any loan administration fee on the new loan by the amount of the loan  
19 administration fee on the prior loan,

20 SECTION 11. 138.09 (7) (jm) 3. of the statutes is amended to read:

21 138.09 (7) (jm) 3. ~~A~~ Except as provided under par. (am), a loan administration  
22 fee charged under this paragraph par. (i) 1. may be included in the amount financed  
23 in the consumer loan. <sup>plan text 7</sup> ~~The~~ Except as provided under par. (gm), the  
24 loan administration fee is earned by the licensee when charged and need not be refunded  
25 under par. (gm) 3. or 4. ~~or 4. A licensee who charges a loan administration fee under~~

or 5., except for that portion of the loan administration fee <sup>that</sup> is included in ~~any~~ any  
prepaid charge that is required to be rebated under par. (gm) v

Move  
to 7-3

BILL

1 this paragraph ~~part (1m)~~ may not also retain a loan administration fee under s.  
 2 422.209 (1m) in connection with ~~422.202 (2m) upon prepayment of~~ the same  
 3 ~~consumer loan transaction.~~ [insert text from bottom of previous page] ✓

4 SECTION 12. 349.13 (3m) of the statutes is amended to read:

5 349.13 (3m) No vehicle involved in trespass parking on a private parking lot  
 6 or facility shall be removed without the permission of the vehicle owner, except upon  
 7 the issuance of a repossession judgment, upon repossession under s. 425.206 or upon  
 8 formal complaint and a citation for illegal parking issued by a traffic or police officer.

9 SECTION 13. 421.301 (5) (c) 3. of the statutes is amended to read:

10 421.301 (5) (c) 3. ~~Additional~~ That portion of the total of all additional charges  
 11 permitted by assessed under s. 422.202 for a transaction that is not greater than  
 12 one-half of the total scheduled finance charge applicable to the transaction.

13 SECTION 14. 421.301 (29) of the statutes is amended to read:

14 421.301 (29) "Other than open-end credit" means consumer credit other than  
 15 an open-end credit plan itself, or other than consumer credit transactions pursuant  
 16 to an open-end credit plan, and includes precomputed transactions described in sub.  
 17 (35) (a).

18 SECTION 15. 421.301 (35) of the statutes is renumbered 421.301 (35) (intro.) and  
 19 amended to read:

20 421.301 (35) (intro.) "Precomputed" with respect to a consumer credit  
 21 transaction means a consumer credit transaction, other than a motor vehicle  
 22 consumer lease, that satisfies any of the following:

23 (a) Is a transaction in which debt is expressed as a single sum comprised of the  
 24 amount financed and the finance charge computed in advance.

25 SECTION 16. 421.301 (35) (b) of the statutes is created to read:

Handwritten note in a circle: "Insert 7-8" with an arrow pointing to line 8.



**BILL**

1 421.301 (35) (b) Is a transaction in which the prepaid ~~finance~~ charge is greater  
2 than one-half of the total scheduled finance charge applicable to the transaction.

3 **SECTION 17.** 421.301 (36) of the statutes is renumbered 421.301 (36) (intro.) and  
4 amended to read:

5 421.301 (36) (intro.) "Prepaid-charge" means ~~any~~ the total of all of the  
6 following:

7 (a) Any finance charge paid separately, in cash or otherwise, directly or  
8 indirectly to the creditor or with the creditor's knowledge to another person, or  
9 withheld by the creditor, from the proceeds of the credit extended.

10 **SECTION 18.** 421.301 (36) (b) of the statutes is created to read:

11 421.301 (36) (b) That portion of any charge permitted under s. 422.202 that is  
12 paid separately, in cash or otherwise, directly or indirectly to the creditor or with the  
13 creditor's knowledge to another person, or withheld by the creditor, from the  
14 proceeds of the credit extended and that is greater than one-half of the total  
15 scheduled finance charge applicable to the transaction.

16 **SECTION 19.** 422.202 (2m) (a) of the statutes is amended to read:

17 422.202 (2m) (a) A creditor may charge, collect and receive other fees and  
18 charges, in addition to the finance charge authorized under s. 422.201, that are  
19 agreed upon by the creditor and the customer. These other fees and charges may  
20 include loan origination fees. loan administration fees. periodic membership fees,  
21 cash advance fees, charges for exceeding a designated credit limit, charges for late  
22 payments, charges for providing copies of documents and charges for the return of  
23 a dishonored check or other payment instrument.

24 **SECTION 20.** 422.209 (1) of the statutes is amended to read:

INSERT  
8-23  
23

**BILL**

*Plain text*

(4m) ✓

*plain text*

1           422.209 (1) ~~Except as provided in sub. (1m), upon~~ ~~loan~~ prepayment in full of  
2           the unpaid balance of a precomputed consumer credit transaction, refinancing or  
3           consolidation, an amount not less than the unearned portion of the finance charge  
4           calculated according to this section, together with that portion of any prepaid finance  
5           charge assessed under s. 422.202 that is greater than one-half of the total scheduled  
6           finance charge applicable to the transaction, <sup>(described in s. 421.301(36)(b) ✓)</sup> shall be rebated to the customer. If the  
7           total of all rebates, refunds and credits to be paid to the customer under chs. 421 to  
8           427 is less than \$1, no rebate need be made.

9           **SECTION 21.** 422.269 (1m) (a) of the statutes is repealed.

10          **SECTION 22.** 422.209 (1m) (b) of the statutes is renumbered 422.209 (1g) and  
11          amended to read:

12           422.209 (1g) Notwithstanding ~~par. (a) s. 422.202 (2m)~~, if a merchant retains  
13          any portion of a loan administration fee charged on a loan that is prepaid from the  
14          proceeds of a new loan made by the same merchant within 6 months after the prior  
15          loan, then the merchant shall reduce any loan administration fee on the new loan by  
16          the amount of the loan administration fee on the prior loan that was retained by the  
17          merchant.

18          **SECTION 23.** 422.209 (2) (a) 3. of the statutes is amended to read:

19           422.209 (2) (a) 3. Consumer credit transactions in which the amount financed  
20          is less than \$5,000, which have initial terms of less than 37 months and which are  
21          entered into on or after August 1, 1987, and before the effective date of this  
22          subdivision . . . . [revisor inserts date].

23          **SECTION 24.** 422.209 (2) (c) 2. of the statutes is amended to read:



Insert 0-12

Sec #. CR. 138.09 (7) (gr) ✓

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

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

**1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0827/4insA  
RJM:.....

**INSERT 7-8**

**SECTION 4.** 421.301 (5) (intro.)<sup>✓</sup> of the statutes is amended to read:

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

**1999-2000 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0827/4insB  
Raw.....

**INSERT 8-23**

**SECTION 4.** ~~4.~~ 422.201 (5) (b) of the statutes is amended to read:

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

Insert 10-11

SECT# CR; 422.209 (4m)<sup>↓</sup>

⑥  
422.209 (4m) Notwithstanding ss. 424.304<sup>↓</sup> and  
424.401,<sup>↓</sup> if any rebate due under sub. (1)<sup>↓</sup> includes  
consumer credit insurance premiums, the rebate of  
consumer credit insurance premiums shall be computed  
using a method no less favorable to the customer  
than the rule of 78 under sub. (2) (a).<sup>↓</sup>

**INSERT 10-12**

**SECTION 4.** 424.303 (2) of the statutes is amended to read:

424.303 (2) Following cancellation, the customer shall be entitled to a rebate or credit for any prepaid charges paid by the customer or on the customer's behalf which represent the premium for a period following cancellation.



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0827/4dn

RJM:.....

WJ

, 1999

1. Under this draft, as with the previous version, the definition of "precomputed loan" is based on the aggregate total of additional charges a lender assesses. Thus, if the total amount of additional charges for a loan exceeds 50% of the total scheduled interest charged, the loan is a precomputed loan. Because additional charges may be assessed sporadically over the term of a loan, it is possible that a loan, over time, may become a precomputed loan. This possibility may create difficulties in enforcing s. 138.09, stats., and the consumer act.

Because of this issue and because this draft makes other changes to this highly technical area of the law, you may want to have the department of financial institutions review this draft before introduction.

*changed* 2. With the permission of your office, I completed the attached redraft upon the request of Walt Stewart. I received a fax from Walt Stewart requesting that the draft be ~~amended~~ to allow a creditor to calculate any rebate of consumer credit insurance premiums by using the rule of 78 rather than the actuarial method. In completing this draft, I discovered a few other necessary changes which are noted below. Please review these changes and let me know if the draft is not consistent with your intent.

3. In order to avoid confusion, this draft uses the term "prepaid charge" rather than "prepaid finance charge." See, for example, proposed s. 138.09 (7) (a) 1. b. and 1m., stats. I incorporated this change into this draft because, as previously drafted, the term "prepaid finance charge" included certain charges that were normally excluded from the definition of "finance charge." Please let me know if you do not approve of this clarification.

4. In proposed ss. 138.09 (7) (gm) (intro.) and 422.209 (l), stats., this draft uses a cross-reference to the applicable portion of the definition of "prepaid charge" rather than referring to "that portion of any prepaid charge . . . that is greater than one-half of the total scheduled finance charge applicable to the transaction." Please review this change and let me know if it is not consistent with your intent.

5. This draft clarifies the meaning of proposed s. 138.09 (7) (jm) 3., stats., by specifying how s. 138.09 (7) (gm), stats., affects the earning of a loan administration fee. Again, let me know if you do not approve.

*Also, this draft removes the statement that a licensed lender ~~may~~ <sup>that</sup> charges a loan administration fee under s. 138.09 (7) (jm) 3., stats., may not also assess a loan administration fee under the consumer act. This language is no longer necessary because proposed s. 138.09 (7) (l), stats., only permits a licensed lender to assess those additional charges allowed under the consumer act.*

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: Robert.Marchant@legis.state.wi.us



State of Wisconsin  
1999 - 2000 LEGISLATURE

5  
LRB-0827/0  
RJM:wlj&jlg:kjf

Monday, 10-25

1999 BILL

RM NR  
DUOTE

re-gen. cat

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), 133.9 (3) 1. a., 138.09 (7) (a) 2. (intro.), 138.09 (7)  
4 (jm) 2., 138.09 (7) (jm) 3., 138.09 (3m), 421.301 (5) (intro.), 421.301 (5) (c) 3.,  
5 421.301 (29), 422.201 (5) 422.202 (2m) (a), 422.209 (1), 422.209 (2) (a) 3.,  
6 422.209 (2) (c) 2., 209 (2) (c) 3. and 424.303 (2); **to repeal and recreate**  
7 138.09 (7) (gm) and 425.206 (1) and (2); and **to create** 138.09 (7) (a) 1. b., 138.09  
8 (7) (a) 1m., 138.09 (7) (am), 138.09 (7) (gr), 421.301 (35) (b), 421.301 (36) (b),  
9 422.209 (2) (c) 4. and 422.209 (4m) of the statutes; **relating to:** ~~repossession~~  
10 ~~upon default in a consumer credit transaction,~~ loan prepayment, loan  
11 administration fees, loan origination fees and prepaid finance charges and  
12 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

**BILL**

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 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

**BILL**

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 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 removes the cap on loan administration fees, 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.

***Repossession of collateral under the WCA***

~~The WCA currently limits the authority of a creditor to repossess collateral and leased goods upon a consumer's default without first obtaining a court judgment. Under current law, a creditor under the WCA may repossess this property without legal process if the consumer abandons or voluntarily surrenders the property.~~

~~This bill authorizes a creditor under the WCA to repossess collateral or leased goods without legal process upon default and after the consumer's right to cure expires, as long as the creditor does not enter the residence of the consumer and does not commit a breach of the peace.~~

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:***

**SECTION 1.** 138.052 (3) (c) of the statutes is amended to read:

**BILL**

1           138.052 (3) (c) A loan administration fee charged by a lender, including fees  
2 paid to 3rd parties for loan administration service-g ~~2% of the principal~~  
3 ~~amount of any construction loan and 2% of the principal amount of any other loan.~~

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

5           138.09 '(3) (e) 1. a. A business engaged in making loans for business or  
6 agricultural purposes or exceeding \$25,000 in principal amount, except that all such  
7 loans having terms of 49 months or more are subject to sub. (7) (gm) ~~2. or 4. 1., 2. or~~  
8 5.

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

11           138.09 (7) (a) 1. (intro.) "Precomputed loan" means a loan that satisfies any of  
12 the following:

13           a. Is a loan in which the debt is expressed as a sum comprising the principal  
14 and the amount of interest computed in advance.

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

16           138.09 (7) (a) 1. b. Is a loan in which the prepaid charge is greater than one-half  
17 of the total scheduled finance charge applicable to the loan.

18           **SECTION 5.** 138.09 (7) (a) lm. of the statutes is created to read:

19           138.09 **(7)** (a) lm. "Prepaid charge" means the total of all of the following:

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

23           b. That portion of any charge permitted under par. (i) 1. that is paid separately,  
24 in cash or otherwise, directly or indirectly to the creditor or with the creditor's  
25 knowledge to another person, or withheld by the creditor, from the proceeds of the

**BILL**

1 credit extended, and that is greater than one-half of the total scheduled finance  
2 charge applicable to the loan.

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

4 **138.09** (7) (a) 2. (intro.) ~~“Principal”~~ Except as provided under par. (am),  
5 “principal” means the total of:

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

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

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

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

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

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

**BILL**

1           3. For a loan of less than \$5,000 that contains precomputed interest, is  
2 repayable in substantially equal successive instalments at approximately equal  
3 intervals, has a term of less than 37 months and was entered into on or after August  
4 1, 1987, and before the effective date of this subdivision . . . . [revisor inserts date], the  
5 licensee shall compute the rebate under s. 422.209 (2) (a).

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

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

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

17           138.09 (7) (gr) 1. If the combined rebate of interest and other charges due under  
18 par. (gm) is less than \$1, the licensee is not required to make a rebate.

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

23           **SECTION IO.** 138.09 (7) (jm) 1. of the statutes is repealed.

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

**BILL**

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

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

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

15           **SECTION 13.** 349.13 (3m) of the statutes is amended to read:

16           349.13 (3m) ~~No vehicle involved in trespass parking on a private parking lot~~  
17 ~~or facility shall be removed without the permission of the vehicle owner, except upon~~  
18 ~~the issuance of a repossession judgment, upon repossession under s. 425.206 or upon~~  
19 ~~formal complaint and a citation for illegal parking issued by a traffic or police officer.~~

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

21           421.301 (5) (intro.) "Amount financed" in a consumer credit transaction means  
22 the total of the following items from which any prepaid ~~finance~~ charge or required  
23 deposit balance has been excluded:

24           **SECTION 15.** 421.301 (5) (c) 3. of the statutes is amended to read:



**BILL**

1           421.301 (5) (c) 3. ~~Additional~~ That portion of the total of all additional charges  
2 permitted by assessed under s. 422.202 for a transaction that is not greater than  
3 one-half of the total scheduled finance charge applicable to the transaction.

4           **SECTION 16.** 421.301 (29) of the statutes is amended to read:

5           421.301 (29) "Other than open-end credit" means consumer credit other than  
6 an open-end credit plan itself, or other than consumer credit transactions pursuant  
7 to an open-end credit plan, and includes precomputed transactions described in sub.  
8 (35)(a).

9           **SECTION 17.** 421.301 (35) of the statutes is renumbered 421.301 (35) (intro.) and  
10 amended to read:

11           421.301 (35) (intro.) "Precomputed" with respect to a consumer credit  
12 transaction means a consumer credit transaction, other than a motor vehicle  
13 consumer lease, that satisfies any of the following:

14           (a) Is a transaction in which debt is expressed as a single sum comprised of the  
15 amount financed and the finance charge computed in advance.

16           **SECTION 18.** 421.301 (35) (b) of the statutes is created to read:

17           421.301 (35) (b) Is a transaction in which the prepaid charge is greater than  
18 one-half of the total scheduled finance charge applicable to the transaction.

19           **SECTION 19.** 421.301 (36) of the statutes is renumbered 421.301 (36) (intro.) and  
20 amended to read:

21           421.301 (36) (intro.) "Prepaid ~~finance~~ charge" means any the total of all of the  
22 following:

23           (a) Any finance charge paid separately, in cash or otherwise, directly or  
24 indirectly to the creditor or with the creditor's knowledge to another person, or  
25 withheld by the creditor, from the proceeds of the credit extended.

## BILL

1           **SECTION 20.** 421.301 (36) (b) of the statutes is created to read:

2           **421.301 (36)** (b) That portion of any charge permitted under s. 422.202 that is  
3 paid separately, in cash or otherwise, directly or indirectly to the creditor or with the  
4 creditor's knowledge to another person, or withheld by the creditor, from the  
5 proceeds of the credit extended and that is greater than one-half of the total  
6 scheduled finance charge applicable to the transaction.

7           **SECTION 21.** 422.201 (5) (b) of the statutes is amended to read:

8           422.201 (5) (b) The dollar amount of finance charge shall include the prepaid  
9 ~~finance~~ charge excluded from the amount financed; and

10          **SECTION 22.** 422.202 (2m) (a) of the statutes is amended to read:

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

18          **SECTION 23.** 422.209 (1) of the statutes is amended to read:

19          422.209 **(1)** Except as provided in sub. ~~(1m)~~ (4m), upon prepayment in full of  
20 the unpaid balance of a precomputed consumer credit transaction, refinancing or  
21 consolidation, an amount not less than the unearned portion of the finance charge  
22 calculated according to this section, together with that portion of any prenaid charge  
23 that is described in s. 421.301 (36) (b), shall be rebated to the customer. If the total  
24 of all rebates, refunds and credits to be paid to the customer under chs. 421 to 427  
25 is less than \$1, no rebate need be made.

**BILL**

1           **SECTION 24.** 422.209 (1m) (a) of the statutes is repealed.

2           **SECTION 25.** 422.209 (1m) (b) of the statutes is renumbered 422.209 (lg) and  
3 amended to read:

4           422.209 (lg) Notwithstanding pa&) s. 422.202 (2m), if a merchant retains  
5 any portion of a loan administration fee charged on a loan that is prepaid from the  
6 proceeds of a new loan made by the same merchant within 6 months after the prior  
7 loan, then the merchant shall reduce any loan administration fee on the new loan by  
8 the amount of the loan administration fee on the prior loan that was retained by the  
9 merchant.

10           **SECTION 26.** 422.209 (2) (a) 3. of the statutes is amended to read:

11           422.209 (2) (a) 3. Consumer credit transactions in which the amount financed  
12 is less than \$5,000, which have initial terms of less than 37 months and which are  
13 entered into on or after August 1, 1987, and before the effective date of this  
14 subdivision . . . . [revisor inserts date].

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

16           422.209 (2) (c) 2. Consumer credit transactions in which the amount financed  
17 is \$5,000 or more and which are entered into on or after August 1, 1987, and before  
18 the effective date of this subdivision . . . . [revisor inserts date].

19           **SECTION 28.** 422.209 (2) (c) 3. of the statutes is amended to read:

20           422.209 (2) (c) 3. Consumer credit transactions in which the amount financed  
21 is less than \$5,000, which have initial terms of 37 months or more and which are  
22 entered into on or after August 1, 1987, and before the effective date of this  
23 subdivision . . . . [revisor inserts date].

24           **SECTION 29.** 422.209 (2) (c) 4. of the statutes is created to read:

**BILL**

1           422.209 (2) (c) 4. Consumer credit transactions entered into on or after the  
2 effective date of this subdivision . . . . [revisor inserts date].

3           -SECTION 30. 422.209 (4m) of the statutes is created to read:

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

8           SECTION 31. 424.303 (2) of the statutes is amended to read:

9           424.303 (2) Following cancellation, the customer shall be entitled to a rebate  
10 or credit for any prepaid charges paid by the customer or on the customer's behalf  
11 which represent the premium for a period following cancellation.

12           ~~SECTION 32. 425.206 (1) and (2) of the statutes are repealed and recreated to  
13 read:~~

14           ~~425.206 (1) At any time after default and the expiration of the period for cure  
15 of default a merchant may take possession of collateral or goods subject to a consumer  
16 lease without legal process only if the merchant satisfies all of the following:~~

17           ~~(a) Takes possession without entering into a dwelling used by the customer as  
18 a residence.~~

19           ~~(b) Takes possession without committing a breach of the peace.~~

20           ~~(2) This section shall not limit the authority of a merchant to take possession  
21 of collateral or goods pursuant to a judgment in a proceeding under s. 425.205 or  
22 425.203 (2), pursuant to s. 425.207 (2), or pursuant to the voluntary surrender of  
23 collateral or goods by a customer.~~

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0827/40 Sdn  
RJM:wlj:kjf

October 14, 1999

(based upon the instructions of Tom Hansen)

1. This redraft eliminates the provisions regarding repossession of collateral. Please let me know if you do not approve. The remainder of this drafter's note is taken from the previous version of this draft (LRB-0827/40).

2. Under this draft, as with the previous version, the definition of "precomputed loan" is based on the aggregate total of additional charges a lender assesses. Thus, if the total amount of additional charges for a loan exceeds 50% of the total scheduled interest charged, the loan is a precomputed loan. Because additional charges may be assessed sporadically over the term of a loan, it is possible that a loan, over time, may become a precomputed loan. This possibility may create difficulties in enforcing s. 138.09, stats., and the Consumer Act.

Because of this issue and because this draft makes other changes to this highly technical area of the law, you may want to have the Department of Financial Institutions review this draft before introduction.

3. With the permission of your office, I completed the attached redraft upon the request of Walt Stewart. I received a fax from Walt Stewart requesting that the draft be changed to allow a creditor to calculate any rebate of consumer credit insurance premiums by using the rule of 78 rather than, the actuarial method. In completing this draft, I discovered a few other necessary changes which are noted below. Please review these changes and let me know if the draft is not consistent with your intent.

4. In order to avoid confusion, this draft uses the term "prepaid charge" rather than "prepaid finance charge." See, for example, proposed s. 138.09 (7) (a) 1. b. and lm., stats. I incorporated this change into this draft because, as previously drafted, the term "prepaid finance charge" included certain charges that were normally excluded from the definition of "finance charge." Please let me know if you do not approve of this clarification.

5. In proposed ss. 138.09 (7) (gm) (intro.) and 422.209 (1), stats., this draft uses a cross-reference to the applicable portion of the definition of "prepaid charge" rather than referring to "that portion of any prepaid charge. . . that is greater than one-half of the total scheduled finance charge applicable to the transaction." Please review this change and let me know if it is not consistent with your intent.

6. This draft clarifies the meaning of proposed s. 138.09 (7) (jm) 3., stats., by specifying how s. 138.09 (7) (gm), stats., affects the earning of a loan administration fee. Also, this draft removes the statement that a licensed lender that charges a loan administration fee under s. 138.09, stats., may not also assess a loan administration fee under the Consumer Act. This language is no longer necessary because proposed

s. 138.09 (7) (i) l., stats., only permits a licensed lender to assess those additional charges allowed under the Consumer Act. Again, let me know if you do not approve.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: [Robert.Marchant@legis.state.wi.us](mailto:Robert.Marchant@legis.state.wi.us)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0827/5dn  
RJM:wlj:hmh

October 18, 1999

1. This redraft, based upon the instructions of Tom Hansen, eliminates the provisions regarding repossession of collateral. Please let me know if you do not approve. The remainder of this drafter's note is taken from the previous version of this draft (LRB-082714).

2. Under this draft, as with the previous version, the definition of "precomputed loan" is based on the aggregate total of additional charges a lender assesses. Thus, if the total amount of additional charges for a loan exceeds 50% of the total scheduled interest charged, the loan is a precomputed loan. Because additional charges may be assessed sporadically over the term of a loan, it is possible that a loan, over time, may become a precomputed loan. This possibility may create difficulties in enforcing s. 138.09, stats., and the Consumer Act.

Because of this issue and because this draft makes other changes to this highly technical area of the law, you may want to have the Department of Financial Institutions review this draft before introduction.

3. With the permission of your office, I completed the attached redraft upon the request of Walt Stewart. I received a fax from Walt Stewart requesting that the draft be changed to allow a creditor to calculate any rebate of consumer credit insurance premiums by using the rule of 78 rather than the actuarial method. In completing this draft, I discovered a few other necessary changes which are noted below. Please review these changes and let me know if the draft is not consistent with your intent.

4. In order to avoid confusion, this draft uses the term "prepaid charge" rather than "prepaid finance charge." See, for example, proposed s. 138.09 (7) (a) 1. b. and lm., stats. I incorporated this change into this draft because, as previously drafted, the term "prepaid finance charge" included certain charges that were normally excluded from the definition of "finance charge." Please let me know if you do not approve of this clarification.

5. In proposed ss. 138.09 (7) (gm) (intro.) and 422.209 (1), stats., this draft uses a cross-reference to the applicable portion of the definition of "prepaid charge" rather than referring to "that portion of any prepaid charge. . . that is greater than one-half of the total scheduled finance charge applicable to the transaction." Please review this change and let me know if it is not consistent with your intent.

6. This draft clarifies the meaning of proposed s. 138.09 (7) (jm) 3., stats., by specifying how s. 138.09 (7) (gm), stats., affects the earning of a loan administration

fee. Also, this draft removes the statement that a licensed lender that charges a loan administration fee under s. 138.09, stats., may not also assess a loan administration fee under the Consumer Act. This language is no longer necessary because proposed s. 138.09 (7) (i) l., stats., only permits a licensed lender to assess those additional charges allowed under the Consumer Act. Again, let me know if you do not approve.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: [Robert.Marchant@legis.state.wi.us](mailto:Robert.Marchant@legis.state.wi.us)



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5/10 j X  
- 105  
105

105 105.25

0927/6

### Analysis

(Intro) "contains numerous provisions regulating..."

Just say "regulates"?

### Redate due...

Explain briefly rule & 78 and actual method?

Maybe you don't need to because you explain the

outcome, which is the important thing.

### Additional changes

1st sentence "additional changes" -- In addition

to what? Say "various expressly authorized  
finance changes

changes in addition to ... " ?

138.052 (3)(c) Res. mortgage loan

(2)(b) Prepayment - refund of unearned interest

(3) N-R including loan admin fee up to 2%

∴ if exceed 2% it is interest & must refund?

138.01 (3)(e) l.a. Business or ag or 7 \$25,000

subject to licensed lender law if 749 months?

\*

138.09 (2)(a)1. would this work a little better?

"Precomputed loan means <sup>to</sup> any of the following:

a. A loan in which

(a) i. b. A loan in which ...  
≈

\*

138.09 (2)(a) 2. Alternative: pull (2)(am) into

definition, l.a., (2)(a) 2. c.

c. That portion of the charges under par. (1)1.

that does not exceed one-half ... (?)

Then must change X-ref in 138.09 (2)(am) 3.

"Except for the amount specified in (2)(a) 2. c. ..."

} = My idea might not work



State of Wisconsin  
1999 - 2000 LEGISLATURE

6

LRB-0827%  
RJM:wlj&jlg:hmh

RM NR  
DNOTE

1999 BILL

re-gr

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. and 138.09 (7) (a) 2. (intro.), 138.09 (7)  
4 (jm) 2., 138.09 (7) (jm) 3. and 4., 421.301 (5) (intro.), 421.301 (5) (c) 3., 421.301 (29),  
5 422.201 (5) (b), 422.209 (2m) (a), 422.209 (l), 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. (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

**BILL**

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

**BILL**

to 5% of the total amount financed

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. <sup>(UNISES)</sup>

This bill adds loan origination fees to the list of expressly authorized additional charges permitted in open-end credit transaction under the WCA and the licensed lender law. Furthermore, this bill ~~removes~~ the cap on loan administration fees, 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% of the principal

4           amount of any construction loan and 2% of the principal amount of any other loan.

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

6           138.09 (3) (e) 1. a. A business engaged in making loans for business or

7           agricultural purposes or exceeding \$25,000 in principal amount, except that all such

plain text

plain text

5%

the

## BILL

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 that satisfies any of~~  
6 the following;

7 a. a loan in which the debt is expressed as a sum comprising the principal  
8 and the amount of interest computed in advance.

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

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

12 **SECTION 5.** 138.09 (7) (a) lm. of the statutes is created to read:

13 138.09 (7) (a) lm. "Prepaid charge" means the total of all of the following:

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

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

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

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

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

## BILL

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) lm. 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~~ <sup>51 to 60</sup> 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).



**BILL**

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 <sup>as affected by 1999 Wisconsin Act 9,</sup> s repealed.  
7

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

20           138.09 (7) (jm) 2. Notwithstanding ~~subd.~~ par. (i) l., if a licensee charges a loan  
21 administration fee on a consumer loan that is prepaid from the proceeds of a new loan  
22 made by the same licensee within 6 months after the prior loan, then the licensee  
23 shall reduce any loan administration fee on the new loan by the amount of the loan  
24 admipistration fee on the prior loan.

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

**BILL**

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

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

10           421.301 (5) (intro.) “Amount financed” in a consumer credit transaction means  
11 the total of the following items from which any prepaid finance charge or required  
12 deposit balance has been excluded:

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

14           421.301 (5) (c) 3. ~~Additional~~ That portion of the total of all additional charges  
15 permitted by assessed under s. 422.202 for a transaction that is not greater than  
16 one-half of the total scheduled finance charge applicable to the transaction.

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

18           421.301 (29) “Other than open-end credit” means consumer credit other than  
19 an open-end credit plan itself, or other than consumer credit transactions pursuant  
20 to an open-end credit plan, and includes precomputed transactions described in sub.  
21 (35) (a).

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

**BILL**

1           421.301 (35) (intro.) "Precomputed" with respect to a consumer credit  
 2 transaction means <sup>any of the following</sup> ~~a consumer credit transaction~~, <sup>transactions.</sup> other than a motor vehicle  
 3 consumer lease; ~~that satisfies any of the following:~~

4           (a) ~~is 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) is 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:

**BILL**

*also*  
*These other fees and charges may include loan administration fees, if the loan administration fees do not exceed 5% of the total amount financed.*

**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, ~~loan administration fees~~, periodic membership fees,  
**5** cash advance fees, charges for exceeding a designated credit limit, charges for late  
**6** payments, charges for providing copies of documents and charges for the return of  
**7** a dishonored check or other payment instrument. *Not*

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

**9**            422.209 (1) Except as provided in sub. ~~(1m)~~ (4m), upon prepayment in full of  
**10** the unpaid balance of a precomputed consumer credit transaction, refinancing or  
**11** consolidation, an amount not less than the unearned portion of the finance charge  
**12** calculated according to this section, together with that portion of any unrepaid charge  
**13** that is described in s. 421.301 (36) (b), shall be rebated to the customer. If the total  
**14** of all rebates, refunds and credits to be paid to the customer under chs. 421 to 427  
**15** is less than \$1, no rebate need be made.

*as affected by 1999 Wisconsin Act 9,*

**16**            SECTION 23. 422.209 (1m) (a) of the statutes <sup>is</sup> repealed.

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

**19**            422.209 (1g) Notwithstanding ~~par. (a)~~ s. 422.202 (2m), if a merchant retains  
**20** any portion of a loan administration fee charged on a loan that is prepaid from the  
**21** proceeds of a new loan made by the same merchant within 6 months after the prior  
**22** loan, then the merchant shall reduce any loan administration fee on the new loan by  
**23** the amount of the loan administration fee on the prior loan that was retained by the  
**24** merchant.

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

**BILL**

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

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

6           422.209 (2) (c) 2. Consumer credit transactions in which the amount financed  
7 is \$5,000 or more and which are entered into on or after August 1, 1987, and before  
8 the effective date of this subdivision . . . . [revisor inserts date].

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

10           422.209 (2) (c) 3. Consumer credit transactions in which the amount financed  
11 is less than \$5,000, which have initial terms of 37 months or more and which are  
12 entered into on or after August 1, 1987, and before the effective date of this  
13 subdivision . . . . [revisor inserts date].

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

15           422.209 (2) (c) 4. Consumer credit transactions entered into on or after the  
16 effective date of this subdivision . . . . [revisor inserts date].

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

18           422.209 (4m) Notwithstanding ss. 424.304 and 424.401, if any rebate due  
19 under sub. (1) includes consumer credit insurance premiums, the rebate of consumer  
20 credit insurance premiums shall be computed using a method no less favorable to the  
21 customer than the rule of 78 under sub. (2) (a).

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



DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0827/6dn  
RJM:/:....  
wlj

1. I have redrafted this bill per the instructions of Tom Hanson. If you have any questions about the bill's effects, please feel free to call me.

2. Mr. Hanson requested that the draft cap the points that a lender may charge under proposed s. 422.202 (2m) (a) at 5% of the amount financed. However, a portion of the charges assessed under proposed s. 422.202 (2m) (a) is included in calculating the total amount financed. See proposed s. 421.301 (5). It was unclear to me whether the points that a lender charges under proposed s. 422.202 (2m) (a) should be included in the amount financed for the purposes of calculating this 5% cap. Under this draft, the points are included in the amount financed for the purposes of calculating the 5% cap. Thus, this draft allows somewhat higher points to be charged than would be permitted if the points were excluded from the amount financed for the purposes of calculating the 5% cap. Please let me know if you do not approve.

3.

DWSE:ry  
DATE

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: Robert.Marchant@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0827/5dn  
RJM:wj:hmh

October 18, 1999

*INSERT DNOTE*

1. This redraft, based upon the instructions of Tom Hansen, eliminates the provisions regarding repossession of collateral. Please let me know if you do not approve. The remainder of this drafter's note is taken from the previous version of this draft (LRB-0827/4).

~~2.~~ Under this draft, as with the previous version, the definition of "precomputed loan" is based on the aggregate total of additional charges a lender assesses. Thus, if the total amount of additional charges for a loan exceeds 50% of the total scheduled interest charged, the loan is a precomputed loan. Because additional charges may be assessed sporadically over the term of a loan, it is possible that a loan, over time, may become a precomputed loan. This possibility may create difficulties in enforcing s. 138.09, stats., and the Consumer Act.

Because of this issue and because this draft makes other changes to this highly technical area of the law, you may want to have the Department of Financial Institutions review this draft before introduction.

~~3.~~ With the permission of your office, I completed the attached redraft upon the request of Walt Stewart. I received a fax from Walt Stewart requesting that the draft be changed to allow a creditor to calculate any rebate of consumer credit insurance premiums by using the rule of 78 rather than the actuarial method. In completing this draft, I discovered a few other necessary changes which are noted below. Please review these changes and let me know if the draft is not consistent with your intent.

~~4.~~ In order to avoid confusion, this draft uses the term "prepaid charge" rather than "prepaid finance charge." See, for example, proposed s. 138.09 (7) (a) 1. b. and lm., stats. I incorporated this change into this draft because, as previously drafted, the term "prepaid finance charge" included certain charges that were normally excluded from the definition of "finance charge." Please let me know if you do not approve of this clarification.

~~5.~~ In proposed ss. 138.09 (7) (gm) (intro.) and 422.209 (1), stats., this draft uses a cross-reference to the applicable portion of the definition of "prepaid charge" rather than referring to "that portion of any prepaid charge . . . that is greater than one-half of the total scheduled finance charge applicable to the transaction." Please review this change and let me know if it is not consistent with your intent.

~~6.~~ This draft clarifies the meaning of proposed s. 138.09 (7) (jm) 3., stats., by specifying how s. 138.09 (7) (gm), stats. affects the earning of a loan administration

*(END DUS)*



**DRAFTERS NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0827/6dn  
RJM:wlj:jf

January 4, 2000

1. I have redrafted this bill per the instructions of Tom Hanson. If you have any questions about the bill's effect, please feel free to call me.

2. Mr. Hanson requested that the draft cap the points that a lender may charge under proposed s. 422.202 (2m) (a) at 5% of the amount financed. However, a portion of the charges assessed under proposed s. 422.202 (2m) (a) is included in calculating the total amount financed. See proposed s. 421.301 (5). It was unclear to me whether the points that a lender charges under proposed s. 422.202 (2m) (a) should be included in the amount financed for the purpose of calculating this 5% cap. Under this draft, the points are included in the amount financed for the purpose of calculating the 5% cap. Thus, this draft allows somewhat higher points to be charged than would be permitted if the points were excluded from the amount financed for the purpose of calculating the 5% cap. Please let me know if you do not approve.

3. Under this draft, as with the previous version, the definition of "precomputed loan" is based on the aggregate total of additional charges a lender assesses. Thus, if the total amount of additional charges for a loan exceeds 50% of the total scheduled interest charged, the loan is a precomputed loan. Because additional charges may be assessed sporadically over the term of a loan, it is possible that a loan, over time, may become a precomputed loan. This possibility may create difficulties in enforcing s. 138.09, stats., and the Consumer Act.

Because of this issue and because this draft makes other changes to this highly technical area of the law, you may want to have the Department of Financial Institutions review this draft before introduction.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: Robert.Marchant@legis.state.wi.us