

## 1999 SENATE BILL 169

May 20, 1999 – Introduced by Senator BURKE, cosponsored by Representative MUSSER. Referred to Committee on Judiciary and Consumer Affairs.

1     **AN ACT** *to renumber* 423.301; *to amend* 100.26 (4) and 423.302; and *to create*  
2           100.18 (10v), 423.301 (1) (title), 423.301 (2) and 423.301 (3) of the statutes;  
3           **relating to:** deceptive preapproval of open-end credit plans and providing a  
4           penalty.

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### ***Analysis by the Legislative Reference Bureau***

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

This bill specifies that certain representations regarding an open-end credit plan (typically, a credit card) are both deceptive advertising and false, misleading or deceptive statements regarding consumer credit. Under this bill, a merchant may not indicate to a consumer that the merchant has preapproved an extension of credit

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

A violation of this bill would be subject to a forfeiture of not less than \$50 nor more than \$200. In addition, this bill retains the private cause of action and the authority of DATCP to prosecute violations in current law.

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

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

1           **SECTION 1.** 100.18 (10v) of the statutes is created to read:

2           **100.18 (10v)** DECEPTIVE ADVERTISING OF PREAPPROVED OPEN–END CREDIT PLANS.

3           (a) *Definitions.* In this subsection:

4           1. “Customer” means a person other than an organization who seeks or  
5 acquires credit for personal, family or household purposes.

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

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

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

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

11          (b) *Deceptive preapproved rates, terms or conditions.* 1. It is deceptive  
12 advertising for a merchant to directly communicate to a customer or cause to be  
13 directly communicated to a customer that the merchant has preapproved an  
14 extension of credit to the customer under an open–end credit plan and then,

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1 pursuant to the customer's response to the communication, to make an extension of  
2 credit to the customer under an open-end credit plan with rates, terms or conditions  
3 that are less financially favorable to the customer than those communicated.

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

8 3. Subdivision 1. does not apply to an extension of credit under an open-end  
9 credit plan with different rates, terms or conditions than those communicated to the  
10 customer, if the difference in rates, terms or conditions resulted from an adverse  
11 change in the financial circumstances of the customer between the date on which the  
12 merchant communicates preapproval and the date on which the merchant makes the  
13 extension of credit.

14 (c) *Deceptive preapproval.* 1. It is deceptive advertising for a merchant to refuse  
15 to extend credit to a customer under an open-end credit plan if the customer requests  
16 the extension of credit in response to a direct communication from the merchant or  
17 a direct communication caused by the merchant, indicating that the merchant has  
18 preapproved the extension of credit to the customer under an open-end credit plan.

19 2. Except as provided under subd. 3., it is not a defense to a violation of subd.  
20 1. that the merchant's pre-approval of an extension of credit to the customer is made  
21 subject to the merchant's review of the customer's financial information, credit  
22 worthiness, credit standing or credit capacity.

23 3. Subdivision 1. does not apply to a refusal to extend credit under an open-end  
24 credit plan, if the refusal resulted from an adverse change in the financial  
25 circumstances of the customer between the date on which the merchant

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1 communicates preapproval and the date on which the merchant refuses to extend  
2 credit.

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

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

7 **SECTION 3.** 423.301 of the statutes is renumbered 423.301 (1).

8 **SECTION 4.** 423.301 (1) (title) of the statutes is created to read:

9 423.301 (1) (title) GENERAL PROHIBITION.

10 **SECTION 5.** 423.301 (2) of the statutes is created to read:

11 423.301 (2) DECEPTIVE PREAPPROVED RATES, TERMS OR CONDITIONS OF OPEN-END  
12 CREDIT PLANS. (a) No merchant shall directly communicate to a customer or cause  
13 to be directly communicated to a customer that the merchant has preapproved an  
14 extension of credit to the customer under an open-end credit plan and then,  
15 pursuant to the customer's response to the communication, to make an extension of  
16 credit to the customer under an open-end credit plan with rates, terms or conditions  
17 that are less financially favorable to the customer than those communicated.

18 (b) Except as provided under par. (c), it is not a defense to a violation of par. (a)  
19 that the merchant's approval of an extension of credit to the customer is made subject  
20 to the merchant's review of the customer's financial information, credit worthiness,  
21 credit standing or credit capacity.

22 (c) Paragraph (a) does not apply to an extension of credit under an open-end  
23 credit plan with different rates, terms or conditions than those communicated to a  
24 customer, if the difference in rates, terms or conditions than those communicated to  
25 a customer, if the difference in rates, terms or conditions resulted from an adverse

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1 change in the financial circumstances of the customer between the date on which the  
2 merchant communicates preapproval and the date on which the merchant makes the  
3 extension of credit.

4 **SECTION 6.** 423.301 (3) of the statutes is created to read:

5 423.301 (3) DECEPTIVE PREAPPROVAL OF OPEN-END CREDIT PLANS. (a) No merchant  
6 shall refuse to extend credit to a customer under an open-end credit plan if the  
7 customer requests the extension of credit in response to a direct communication from  
8 the merchant or a direct communication caused by the merchant, indicating that the  
9 merchant has preapproved the extension of credit to the customer under an  
10 open-end credit plan.

11 (b) Except as provided under par. (c), it is not a defense to a violation of par. (a)  
12 that the merchant's approval of an extension of credit to the customer is made subject  
13 to the merchant's review of the customer's financial information, credit worthiness,  
14 credit standing or credit capacity.

15 (c) Paragraph (a) does not apply to a refusal to extend credit under an open-end  
16 credit plan, if the refusal resulted from an adverse change in the financial  
17 circumstances of the customer between the date on which the merchant  
18 communicates preapproval and the date on which the merchant refuses to extend  
19 credit.

20 **SECTION 7.** 423.302 of the statutes is amended to read:

21 **423.302 Remedies and penalty.** In addition to any other remedy provided  
22 by law, a customer who has been induced to consummate a consumer credit  
23 transaction as a result of an advertising or communication in violation of s. 423.301  
24 shall be entitled to a recovery from the merchant in accordance with s. 425.305.

25 **SECTION 8. Initial applicability.**

