

**1999 DRAFTING REQUEST**

**Bill**

Received: **03/1/99**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Brian Burke (608) 266-8535**

By/Representing: **Debbie**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Alt. Drafters:

Subject: **Fin. Inst. - WCA  
Trade Regulation**

Extra Copies: **MGG**

**Pre Topic:**

No specific pre topic given

**Topic:**

Changing terms of pre-approved open-end credit plan is deceptive advertising under s. 100.18 and false and misleading under s. 423.301.

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rmarchan 03/16/99	jgeller 03/16/99		_____			State
/1			hhagen 03/22/99	_____	lrb_docadmin 03/22/99		State
/2	rmarchan 03/26/99	jgeller 03/26/99	martykr 03/29/99	_____	lrb_docadmin 03/29/99		State
/3	rmarchan 04/1/99	jgeller 04/1/99	martykr 04/7/99	_____	lrb_docadmin 04/7/99	lrb_docadmin 05/19/99	

Vers.    Drafted    Reviewed    Typist    Proofed    Submitted    Jacketed    Required

FE Sent For:

05-20-99

<END>

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/2	rmarchan 03/26/99	jgeller 03/26/99	martykr 03/29/99	_____	lrb_docadmin 03/29/99		

FE Sent For:

*Handwritten notes:*  
 13 4/1 jg  
 km 4/1  
 HA  
 km 4/5

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**Topic:**

Create presumption that open-end credit offers are false or misleading under s. 423.301 and 100.18, if customer does not receive advertised terms.

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rmarchan 03/16/99	jgeller 03/16/99		_____			State
/1		<i>1/2 3/26 jlg</i> hhagen 03/22/99		_____	lrb_docadmin 03/22/99		
FE Sent For:		<i>Am 3/26</i>		<i>ch 3/29</i> <b>&lt;END&gt;</b>			

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/?	rmarchan	1 3/16 jlg	# 3/22	44/ LM 3/22			

FE Sent For:

<END>

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# Memorandum

**To:** Robert J. Marchant, LRB

**From:** Senator Burke

**Date:** 02/26/99

**Re:** 2 bill drafting requests

---

## "Pre-approved" Credit Card Offers.

Create the presumption that "pre-approved" credit card or other open-end credit offers are false or misleading under sec. 423.301 and sec. 100.18 if the customer does not receive credit with the advertised terms subject to review of changed circumstances.

Many consumers receive "pre-approved" credit card offers. The "pre-approval" solicitation can be misleading and deceitful. Often times the card is either not issued or not issued with terms as favorable as the advertised terms. Under this legislation, these credit card offers would be considered false or misleading unless the creditor proves that the customer's circumstances have adversely changed since the time the offer was made, making it no longer valid.

## Wisconsin Consumer Act Coverage.

Increase the \$25,000 cap on WCA coverage to \$50,000.

Raising the cap on WCA coverage serves to update the WCA to reflect current consumer credit economics. The \$25,000 cap was set 25 years ago. Inflation in wages and prices since the early 1970's has reduced the scope of the WCA.

*If you have any questions, please contact Debbie from my office at 6-8535.*

---

B

offer must  
contain terms  
"pre-approved"



3-10-99

tcj Debbie @ Burke's office 6-8535

- ① Wants to state X = violation but Y = defense rather than create presumption
- ② Need to specify violation is for advisory & then sitting for us
- ③ Also need to specify violation is for advisory pre-approved + then fully to come card



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-23620

RJM:.....

1  
Jig

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

EMNIR

DNOTE

gen. cast.

1

AN ACT ...; relating to: deceptive advertising of open-end credit plans. ✓

*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, which 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 up to \$200 and imprisoned for up to 6 months. 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.

that

six

This bill specifies that it is both deceptive advertising and a false, misleading or deceptive statement regarding consumer credit if a merchant directly communicates to a consumer terms of an open-end credit plan (typically, a credit card offer) that are more favorable to the consumer than the terms of the open-end credit plan the consumer eventually receives after responding to the communication. In addition, under this bill it is both deceptive advertising and a false, misleading or deceptive statement regarding consumer credit if a merchant informs a consumer that the consumer is approved for an open-end credit plan and then fails to extend credit to the consumer after the consumer requests the extension of credit. However,

under this bill it would not be a violation if the merchant's extending credit on different terms or refusing to extend credit resulted from an adverse change in the financial circumstances of the consumer. This bill retains the private cause of action, the authority of DATCP to prosecute violations and the general penalty provisions in current law.

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

---

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

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

2           100.18 (10v) DECEPTIVE ADVERTISING OF OPEN-END CREDIT PLANS. (a) *Definitions.*

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

7           3. "Open-end credit plan" has the meaning given in s. 421.301 (27).

8           4. "Organization" has the meaning given in s. 421.301 (28).

9           (b) *Deceptive rates, terms or conditions.* 1. It is deceptive advertising for a  
10           merchant to directly communicate to a customer or cause to be directly  
11           communicated to a customer rates, terms or conditions of an open-end credit plan  
12           that are more favorable to the customer than the rates, terms or conditions of the  
13           open-end credit plan under which the merchant makes an extension of credit to the  
14           customer pursuant to the customer's response to the communication.

15           2. Subdivision 1. does not apply to an extension of credit under an open-end  
16           credit plan, if the difference in rates, terms or conditions resulted from an adverse  
17           change in the financial circumstances of the customer.

1           ✓  
2           (c) *Deceptive approval*. 1. It is deceptive advertising for a merchant to refuse  
3           to extend credit to a customer under an open-end credit plan if the customer requests  
4           the extension of credit in response to a direct communication from the merchant or  
5           a direct communication caused by the merchant, indicating that the merchant has  
6           approved the extension of credit to the customer under an open-end credit plan.

7           2. Subdivision 1. ✓ does not apply to a refusal to extend credit under an open-end  
8           credit plan, if the refusal resulted from an adverse change in the financial  
9           circumstances of the customer.

10           **SECTION 2.** 423.301 of the statutes is renumbered 423.301 (1). ✓

11           **SECTION 3.** 423.301 (1) (title) of the statutes is created to read:

12           423.301 (1) (title) GENERAL PROHIBITION. ✓

13           **SECTION 4.** 423.301 (2) of the statutes is created to read:

14           423.301 (2) DECEPTIVE RATES, TERMS OR CONDITIONS OF OPEN-END CREDIT PLANS. ✓

15           (a) No merchant shall directly communicate to a customer or cause to be directly  
16           communicated to a customer rates, terms or conditions of an open-end credit plan  
17           that are more favorable to the customer than the rates, terms or conditions of the  
18           open-end credit plan under which the merchant makes an extension of credit to the  
19           customer pursuant to the customer's response to the communication.

20           (b) It is not a violation of par. (a) ✓ for a merchant to extend credit under an  
21           open-end credit plan with different rates, terms or conditions than those  
22           communicated to a customer, if the difference in rates, terms or conditions resulted  
23           from an adverse change in the financial circumstances of the customer.

24           **SECTION 5.** 423.301 (3) of the statutes is created to read:

25           423.301 (3) DECEPTIVE APPROVAL OF OPEN-END CREDIT PLANS. ✓ (a) No merchant  
          shall refuse to extend credit to a customer under an open-end credit plan if the

1 customer requests the extension of credit in response to a direct communication from  
2 the merchant or a direct communication caused by the merchant, indicating that the  
3 merchant has approved the extension of credit to the customer under an open-end  
4 credit plan.

5 (b) It is not a violation of par. (a)✓ for a merchant to refuse to extend credit under  
6 an open-end credit plan after communicating approval of the extension of credit to  
7 a customer, if the refusal to extend credit resulted from an adverse change in the  
8 financial circumstances of the customer.

9 SECTION 6. 423.302 of the statutes is amended to read:

10 **423.302 Remedies and penalty.** In addition to any other remedy provided  
11 by law, a customer who has been induced to consummate a consumer credit  
12 transaction as a result of an advertising or communication✓ in violation of s. 423.301  
13 shall be entitled to a recovery from the merchant in accordance with s. 425.305.

14

(END)

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

LRB-2362/1dn

RJM:.....

^  
Jg

1. Attached is a draft regarding deceptive advertising and false or misleading statements concerning open-end credit plans. Please review the substantive provisions of the draft to ensure that the draft is consistent with your intent. In particular, please note that this draft only applies if a merchant directly communicates or causes a direct communication with a consumer regarding a potential open-end credit plan. You may want to define what "direct communication" is. Does it include television, radio or print advertising? Telemarketing? Direct mail addressed to the consumer?

2. In addition, this draft generally prohibits a merchant from directly communicating rates, terms or conditions that are more favorable than those of the open-end credit plan under which the merchant eventually extends credit. You may want to require the difference in rates, terms or conditions to be material. Please let me know.

3. Rather than creating a presumption of liability, this draft prohibits certain practices by a merchant. The draft also provides an exception if the practices resulted from an adverse change in the consumer's financial condition. This method of drafting is necessary to integrate these provisions into the existing structure of s. 100.18, stats. In addition, I think this method of drafting more clearly expresses your intent. If I am incorrect, please let me know.

4. Under the current s. 100.26 (1), stats., a person who violates the provisions of this bill would be subject to a fine of up to \$200, imprisonment for up to 6 months or both. Other fine and forfeiture provisions exist in s. 100.26, stats., for violations of other marketing and trade practice statutes. If you desire another penalty to apply to this bill, please call me.

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-2362/1dn  
RJM;jlg:hmh

March 22, 1999

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

**Marchant, Robert**

---

**From:** Sybell, Debra  
**Sent:** Monday, March 22, 1999 3:46 PM  
**To:** Marchant, Robert  
**Subject:** Pre-approved credit card offers bill

Rob:

In response to your drafter's note for LRB-2362/1 #4, let's make violators of newly created 100.18(10v) be subject to a civil forfeiture of not less than \$100 nor more than \$200 for each violation.

Please call me if you have any questions or comments. (6-8535)

Thanks

Deb  
Senator Brian Burke's Office





State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-2362/2

RJM: ~~DOB~~

SOON

JL9 RMR

1999 BILL

DNOTE

re-gen. cat.

1 AN ACT to renumber 423.301; to amend 423.302; and to create 100.18 (10v),  
2 423.301 (1) (title), 423.301 (2) and 423.301 (3) of the statutes; relating to:  
3 deceptive ~~advertising~~ <sup>pre-approval</sup> of open-end credit plans <sup>and providing a penalty</sup> ✓

not less than \$50 not more than \$200.

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 up to \$200 and imprisoned for up to six months. 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.

INSERT ANALYSIS

~~This bill specifies that it is both deceptive advertising and a false, misleading or deceptive statement regarding consumer credit if a merchant directly communicates to a consumer terms of an open-end credit plan (typically, a credit card offer) that are more favorable to the consumer than the terms of the open-end credit plan the consumer eventually receives after responding to the communication.~~

**BILL**

In addition, under this bill it is both deceptive advertising and a false, misleading or deceptive statement regarding consumer credit if a merchant informs a consumer that the consumer is approved for an open-end credit plan and then fails to extend credit to the consumer after the consumer requests the extension of credit. However, under this bill it would not be a violation if the merchant's extending credit on different terms or refusing to extend credit resulted from an adverse change in the financial circumstances of the consumer. This bill retains the private cause of action, the authority of DATCP to prosecute violations and the general penalty provisions 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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1 SECTION 1. 100.18 (10v) of the statutes is created to read:

2 100.18 (10v) DECEPTIVE ADVERTISING OF OPEN-END CREDIT PLANS. (a) *Definitions.*

3 In this subsection:

*PRE-APPROVED CS*

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

*INSERT 2-6*

6 3. "Merchant" has the meaning given in s. 421.301 (25).

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

8 5. "Organization" has the meaning given in s. 421.301 (28).

9 (b) *Deceptive rates, terms or conditions.* 1. It is deceptive advertising for a

10 merchant to directly communicate to a customer or cause to be directly

11 communicated to a customer *that the merchant has pre-approved an extension of credit to the customer under*

12 *rates, terms or conditions of an open-end credit plan pursuant to the customer's response to the communication, to make*

13 *that are more favorable to the customer than the rates, terms or conditions of*

14 *open-end credit plan under which the merchant makes an extension of credit to the*

customer *pursuant to the customer's response to the communication,*

*under an open-end credit plan with rates, terms or conditions that are less financially favorable to the customer than those communicated.*

BILL

with different rates, terms or conditions than those communicated to the customer

INSERT 3-1

- 1
- 2
- 3
- 4

3. Subdivision 1. does not apply to an extension of credit under an open-end credit plan if the difference in rates, terms or conditions resulted from an adverse change in the financial circumstances of the customer

between the date on which the merchant communicates preapproval and the date on which the merchant makes the extension of credit

(c) Deceptive approval. 1. It is deceptive advertising for a merchant to refuse

to extend credit to a customer under an open-end credit plan if the customer requests the extension of credit in response to a direct communication from the merchant or a direct communication caused by the merchant, indicating that the merchant has approved the extension of credit to the customer under an open-end credit plan.

INSERT 3-9

- 8
- 9

3. Subdivision 1. does not apply to a refusal to extend credit under an open-end credit plan, if the refusal resulted from an adverse change in the financial circumstances of the customer

between the date on which the merchant communicates preapproval and the date on which the merchant refuses to extend credit

INS 3-11

- 11

SECTION 2. 423.301 of the statutes is renumbered 423.301 (1).

SECTION 3. 423.301 (1) (title) of the statutes is created to read:

423.301 (1) (title) GENERAL PROHIBITION.

SECTION 4. 423.301 (2) of the statutes is created to read:

PREAPPROVED

423.301 (2) DECEPTIVE RATES, TERMS OR CONDITIONS OF OPEN-END CREDIT PLANS.

(a) No merchant shall directly communicate to a customer or cause to be directly communicated to a customer <sup>(S)</sup> rates, terms or conditions of an open-end credit plan pursuant to the customer's response to the communication, to make <sup>(and then)</sup> that are more favorable to the customer than the rates, terms or conditions of the <sup>(COMM)</sup> open-end credit plan under which the merchant makes an extension of credit to the customer <sup>(Paragraph)</sup> pursuant to the customer's response to the communication <sup>that the merchant has preapproved an extension of credit to the customer under</sup> the customer than those communicated.

INSERT 3-22

- 22
- 23
- 24
- 25

(c) It is not a violation of <sup>(Paragraph)</sup> (a) for a merchant to extend credit under an open-end credit plan with different rates, terms or conditions than those communicated to a customer, if the difference in rates, terms or conditions resulted from an adverse change in the financial circumstances of the customer

between the date on which the merchant communicates preapproval and the date on which the merchant makes the extension of credit

BILL

1 SECTION 5. 423.301 (3) of the statutes is created to read:

2 423.301 (3) DECEPTIVE <sup>PREB</sup> APPROVAL OF OPEN-END CREDIT PLANS. (a) No merchant  
3 shall refuse to extend credit to a customer under an open-end credit plan if the  
4 customer requests the extension of credit in response to a direct communication from  
5 the merchant or a direct communication caused by the merchant, indicating that the  
6 merchant has <sup>PREB</sup> approved the extension of credit to the customer under an open-end  
7 credit plan.

INSERT  
4-8

8 (c) ~~This is not a violation of par. (a) if a merchant refuses to extend credit under~~  
9 ~~an open-end credit plan after communicating approval of the extension of credit to~~  
10 ~~a customer, if the refusal to extend credit resulted from an adverse change in the~~  
11 financial circumstances of the customer.

Paragraph

does not apply to a refusal

between the date on which the merchant communicates  
pre-approval and the date on which the merchant refuses  
to extend credit

12 SECTION 6. 423.302 of the statutes is amended to read:

13 423.302 Remedies and penalty. In addition to any other remedy provided  
14 by law, a customer who has been induced to consummate a consumer credit  
15 transaction as a result of an advertising or communication in violation of s. 423.301  
16 shall be entitled to a recovery from the merchant in accordance with s. 425.305.

17  
INSERT  
4-17

(END)

D-note  
↓

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2362/2ins  
RJM:

ANALYSIS

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 pre-approved an extension of credit to the consumer under an open-end credit plan and then extend credit to the consumer under terms that are less financially favorable to the consumer than those indicated. In addition, this bill prohibits a merchant from refusing to extend credit after indicating pre-approval 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 pre-approval 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 \$100 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.

2-6

¶ 2. "Directly" means in person, by mail addressed to the receiver, on a computer screen or by telephone.

3-1

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

3-9

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

INS  
3-11 →

SECTION 1. 100.26 (4s) of the statutes is created to read:

100.26 (4s) Any person who violates s. 100.18 (10v) may be required to forfeit not less than \$100 nor more than \$200 for each violation.

~~3-22~~ 3-22

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

4-8

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

4-17

SECTION 2. Initial applicability.



INS 4-17 CONT

(1) This act first applies an extension of credit or refusal to extend credit that takes place pursuant to a direct communication of pre~~approval~~<sup>approval</sup> made on the effective date of this subsection. ✓

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

LRB-2362/<sup>2dn</sup>~~001~~  
RJM:~~001~~

JG

1. Please review the definition of directly to ensure that it is consistent with your intent.

2. In order to <sup>clarify</sup> the effect of this draft upon an application for credit filed but not yet approved before the effective date of the draft, I have added an initial applicability section. Please contact me if this section is not consistent with your intent.

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-2362/2dn  
RJM:jl:km

March 26, 1999

1. Please review the definition of directly to ensure that it is consistent with your intent.
2. In order to clarify the effect of this draft upon an application for credit filed but not yet approved before the effective date of the draft, I have added an initial applicability section. Please contact me if this section is not consistent with your intent.

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



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-2362/7

RJM

3  
stays

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1999 BILL

RMT

Regen

re-gen cat.

1 AN ACT to renumber 423.301; to amend 423.302; and to create 100.18 (10v),  
2 100.26 (4s), 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.

**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

**BILL**

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 ~~\$100~~<sup>\$50</sup> 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.

*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<sup>or electronic mail</sup> addressed to the receiver, ~~or by~~  
7           ~~or~~ 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,

**BILL**

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

**BILL**

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

INSECT  
4-3  
3  
4

3 **SECTION 2.** 100.26 (4s) of the statutes is created to read:  
4 100.26 (4s) Any person who violates s. 100.18 (10v) may be required to forfeit  
5 not less than \$100 nor more than \$200 for each violation.

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

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

8 423.301 (1) (title) GENERAL PROHIBITION.

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

10 423.301 (2) DECEPTIVE PREAPPROVED RATES, TERMS OR CONDITIONS OF OPEN-END  
11 CREDIT PLANS. (a) No merchant shall directly communicate to a customer or cause  
12 to be directly communicated to a customer that the merchant has preapproved an  
13 extension of credit to the customer under an open-end credit plan and then,  
14 pursuant to the customer's response to the communication, to make an extension of  
15 credit to the customer under an open-end credit plan with rates, terms or conditions  
16 that are less financially favorable to the customer than those communicated.

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

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

**BILL**

1 merchant communicates preapproval and the date on which the merchant makes the  
2 extension of credit.

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

4 **423.301 (3) DECEPTIVE PREAPPROVAL OF OPEN-END CREDIT PLANS.** (a) No merchant  
5 shall refuse to extend credit to a customer under an open-end credit plan if the  
6 customer requests the extension of credit in response to a direct communication from  
7 the merchant or a direct communication caused by the merchant, indicating that the  
8 merchant has preapproved the extension of credit to the customer under an  
9 open-end credit plan.

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

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

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

20 **423.302 Remedies and penalty.** In addition to any other remedy provided  
21 by law, a customer who has been induced to consummate a consumer credit  
22 transaction as a result of an advertising or communication in violation of s. 423.301  
23 shall be entitled to a recovery from the merchant in accordance with s. 425.305.

24 **SECTION 8. Initial applicability.**



1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2362/3ins  
RJM:.....

4-3

SECTION 1. 100.26<sup>✓</sup> (4) of the statutes is amended to read:

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



**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

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The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

---

**Date:** 4/7/99

**To:** Senator Burke

**Relating to LRB drafting number:** LRB-2362

**Topic**

Changing terms of pre-approved open-end credit plan is deceptive advertising under s. 100.18 and false and misleading under s. 423.301.

**Subject(s)**

Fin. Inst. - WCA, Trade Regulation

1. **JACKET** the draft for introduction

*B. Burke*  
in the Senate  or the Assembly \_\_\_\_\_ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert J. Marchant, Legislative Attorney  
Telephone: (608) 261-4454