

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**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Raise consumer act limit to \$50,000.

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 03/11/99	chanaman 03/11/99		_____			State
/1			martykr 03/12/99	_____	lrb_docadmin 03/12/99		State
/2	rmarchan 03/23/99	chanaman 03/23/99	hhagen 03/25/99	_____	lrb_docadmin 03/25/99	lrb_docadmin 05/19/99	

FE Sent For:
05-20-99

<END>

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1/?	rmarchan	cmh 1 3/11	Kra 3 2	JA 3 2			

FE Sent For:

<END>

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creditor proves that the customer’s circumstances have adversely changed since the time the offer was made, making it no longer valid.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.



State of Wisconsin
1999 - 2000 LEGISLATURE

1
LRB-2363#
RJM:.....
Cory
RMNR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

NOTE

1 AN ACT *gen. act.*; relating to: transactions excluded from the Wisconsin consumer act,
2 authority of licensed lenders and consumer leases under the uniform
3 commercial code.

delete period

sub-sub

Analysis by the Legislative Reference Bureau

Wisconsin consumer act. Under current law, a transaction that is in an amount of \$25,000 or less and that is entered into for personal, family or household purposes is generally subject to the Wisconsin consumer act (consumer act). The consumer act provides obligations, remedies and penalties that current law generally does not require for other transactions. In addition to other exceptions, the consumer act does not apply to certain transactions relating to a first lien residential mortgage that originally had a principal amount in excess of \$25,000. Thus, if the original principal amount of a mortgage was greater than \$25,000, a refinancing of the mortgage would not be subject to the consumer act, even if the mortgage has a current balance of \$25,000 or less.

This bill expands current law by increasing the coverage of the consumer act to include a personal, family or household transaction that is in an amount of \$50,000 or less. In addition, this bill narrows the mortgage refinancing exception to the consumer act to exclude certain transactions relating to a first lien residential mortgage with an original principal amount in excess of \$50,000.

sub-sub

Uniform commercial code. Wisconsin's version of the uniform commercial code treats the parties to a commercial lease differently from the parties to a consumer lease that is in the amount of \$25,000 or less. For example, a lessee under a consumer lease may recover attorneys fees if a court holds that a portion of the lease resulted from

9 *dy*

the unconscionable conduct of the lessor. This bill expands the applicability of these uniform commercial code provisions to cover a consumer lease that is in the amount of \$50,000 or less.

SubSub - Licensed lenders This bill makes conforming changes to the licensed lender law in order to maintain existing consistency with the consumer act.

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 (9) of the statutes is renumbered 138.052 (9) (a) and
2 amended to read:

3 138.052 (9) (a) Chapters 421 to 428 do not apply to the refinancing,
4 modification, extension, renewal or assumption of a loan which had an original
5 principal balance in excess of \$25,000 if the unpaid principal balance of the loan has
6 been reduced to \$25,000 or less and the refinancing, modification, extension, renewal
7 or assumption takes place before the effective date of this paragraph ... [revisor
8 inserts date].

9 SECTION 2. 138.052 (9) (b) of the statutes is created to read:

10 138.052 (9) (b) Chapters 421 to 428 do not apply to the refinancing,
11 modification, extension, renewal or assumption of a loan ~~which~~ had an original
12 principal balance in excess of \$50,000 if the unpaid principal balance of the loan has
13 been reduced to \$50,000 or less and the refinancing, modification, extension, renewal
14 or assumption takes place on or after the effective date of this paragraph ... [revisor
15 inserts date].

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

17 138.09 (3) (e) 1. a. A business engaged in making loans for business or
18 agricultural purposes ~~on~~ loans before the effective date of this subdivision 1. a.

delete space

1 [revisor inserts date], exceeding \$25,000 in principal amount, or loans on or after the
2 effective date of this subdivision 1. a. [revisor inserts date], exceeding \$50,000 in
3 principal amount, except that all such loans having terms of 49 months or more are
4 subject to sub. (7) (gm) 2. or 4.

5 SECTION 4. 411.103 (1) (e) of the statutes is renumbered 411.103 (1) (e) (intro)
6 and amended to read:

7 411.103 (1) (e) (intro.) "Consumer lease" means a lease that a lessor regularly
8 engaged in the business of leasing or selling makes to a lessee who is an individual
9 and who takes under the lease primarily for a personal, family, or household purpose,
10 if the total payments to be made under the lease contract, excluding payments for
11 options to renew or buy, do not exceed \$25,000. the following:

12 SECTION 5. 411.103 (1) (e) 1. of the statutes is created to read:

13 411.103 (1) (e) 1. For a lease entered into before the effective date of this
14 subdivision [revisor inserts date], \$25,000.

15 SECTION 6. 411.103 (1) (e) 2. of the statutes is created to read:

16 411.103 (1) (e) 2. For a lease entered into on or after the effective date of this
17 subdivision [revisor inserts date], \$50,000.

18 SECTION 7. 421.202 (6) of the statutes is renumbered 421.202 (6) (a) and
19 amended to read:

20 421.202 (6) (a) Consumer credit transactions in which the amount financed
21 exceeds \$25,000, motor vehicle consumer leases in which the total lease obligation
22 exceeds \$25,000 or other consumer transactions in which the cash price exceeds
23 \$25,000, if the consumer credit transaction, motor vehicle consumer lease or other
24 consumer transaction was entered into before the effective date of this paragraph
25 [revisor inserts date];

1 **SECTION 8.** 421.202 (6) (b) of the statutes is created to read:

2 421.202 (6) (b) Consumer credit transactions in which the amount financed
3 exceeds \$50,000, motor vehicle consumer leases in which the total lease obligation
4 exceeds \$50,000 or other consumer transactions in which the cash price exceeds
5 \$50,000, if the consumer credit transaction, motor vehicle consumer lease or other
6 consumer transaction was entered into on or after the effective date of this paragraph
7 [revisor inserts date];

8 **SECTION 9.** 428.101 (3) of the statutes is amended to read:

9 428.101 (3) Loans made on or after November 1, 1981, and before the effective
10 date of this subsection [revisor inserts date], by a creditor to a customer and which
11 are secured by a first lien real estate mortgage or equivalent security interest if the
12 amount financed is \$25,000 or less.

13 **SECTION 10.** 428.101 (4) of the statutes is created to read:

14 428.101 (4) Loans made on or after the effective date of this subsection
15 [revisor inserts date], by a creditor to a customer and which are secured by a first lien
16 real estate mortgage or equivalent security interest if the amount financed is
17 \$50,000 or less.

18 **SECTION 11.** 429.104 (9) of the statutes is renumbered 429.104 (9) (a) (intro) and
19 amended to read:

20 429.104 (9) (a) (intro.) "Consumer lease" or "lease" means a lease entered into
21 in this state that transfers the right of possession and use by a natural person of a
22 motor vehicle primarily for a personal, family, household or agricultural purpose, for
23 a period of time exceeding 4 months, if the total lease obligation, excluding any option
24 to purchase or otherwise become owner of the motor vehicle at the expiration of the

1 consumer lease, does not exceed \$25,000. The term does not include a credit sale, as
2 defined under 12 CFR 226.2 (a) (16), the following:

3 **SECTION 12.** 429.104 (9) (a) 1. of the statutes is created to read:

4 429.104 (9) (a) 1. For a lease entered into before the effective date of this
5 subdivision [revisor inserts date], \$25,000.

6 **SECTION 13.** 429.104 (9) (a) 2. of the statutes is created to read:

7 429.104 (9) (a) 2. For a lease entered into on or after the effective date of this
8 subdivision [revisor inserts date], \$50,000.

9 **SECTION 14.** 429.104 (9) (b) of the statutes is created to read:

10 429.104 (9) (b) "Consumer lease" or "lease" does not include a credit sale, as
11 defined under 12 CFR 226.2 (a) (16).

12

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2363/1dn

RJM:.....

RMJ

1. Per your instructions, I have attached a draft raising the limit on transactions subject to the Wisconsin consumer act to \$50,000. Please note that the current \$25,000 limit is used in certain portions of chs. 138 (money and rates of interest) and 411 (uniform commercial code – leases). These statutes appear to shadow the provisions of the consumer act. I have treated these statutes in chs. 138 and 411 to reflect the change to the consumer act. Please review these treatments and contact me if they are inconsistent with your intent.

2. In order to avoid impairment of contracts issues, this draft only increases the cap for transactions entered into on or after the effective date of this draft. If this application is inconsistent with your intent, please call me.

3. You may want to consider a delayed effective date in order to allow the regulated parties an opportunity to prepare for the changes this draft effects. If you desire a delayed effective date, please let me know.

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

**DRAFTER'S NOTE
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LRB-2363/1dn
RJM:cmh:km

March 12, 1999

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State of Wisconsin
1999 - 2000 LEGISLATURE

2343/2
LRB-2000-18
RJM:cmf/ljs
cmf

1999 BILL

RMR

reger cat

1 AN ACT *to renumber and amend* 138.052 (9), 411.103 (1) (e), 421.202 (6) and
2 429.104 (9); *to amend* 138.09 (3) (e) 1. a. and 428.101 (3); and *to create* 138.052
3 (9) (b), 411.103 (1) (e) 1., 411.103 (1) (e) 2., 421.202 (6) (b), 428.101 (4), 429.104
4 (9) (a) 1., 429.104 (9) (a) 2. and 429.104 (9) (b) of the statutes; **relating to:**
5 transactions excluded from the Wisconsin Consumer Act, authority of licensed
6 lenders and consumer leases under the uniform commercial code.

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Wisconsin Consumer Act

Under current law, a transaction that is in an amount of \$25,000 or less and that is entered into for personal, family or household purposes is generally subject to the Wisconsin Consumer Act (consumer act). The consumer act provides obligations, remedies and penalties that current law generally does not require for other transactions. In addition to other exceptions, the consumer act does not apply to certain transactions relating to a first lien residential mortgage that originally had a principal amount in excess of \$25,000. Thus, if the original principal amount of a mortgage was greater than \$25,000, a refinancing of the mortgage would not be subject to the consumer act, even if the mortgage has a current balance of \$25,000 or less.

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BILL

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17

(END)

INSERT
5-17

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2363/2ins
RJM::

Insert 5-17

21

SECTION 1. Initial applicability.

(1) This act first applies to transactions entered into on the effective date of this subsection.

21

SECTION 2. Effective date.

(1) This act takes effect on the first day of the 6th month beginning after publication.

(END OF INSERT)

**SUBMITTAL
FORM**

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

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: 3/25/99

To: Senator Burke

Relating to LRB drafting number: LRB-2363

Topic

Raise consumer act limit to \$50,000.

Subject(s)

Fin. Inst. - WCA

1. **JACKET** the draft for introduction by 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