

2001 DRAFTING REQUEST

Bill

Received: **05/24/2001**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing: **judy**

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

Drafter: **rmarchan**

May Contact:

Addl. Drafters:

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

Extra Copies:

Submit via email: **NO**

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Mandatory arbitration clauses in open-end credit plans

Instructions:

Prohibit mandatory arbitration clauses in open-end credit plans under the Wisconsin Consumer Act.

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 05/24/2001	jdye 05/25/2001		_____			
/1			pgreensl 05/25/2001	_____	lrb_docadmin 05/25/2001	lrb_docadmin 07/13/2001	

FE Sent For:

None needed

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/?	rmarchan	1 5/25 jld	5/25 p8	5/25 Pg 1/8A			

FE Sent For:


<END>


Miller, Steve

From: Frydenlund, Judy
Sent: Wednesday, May 16, 2001 3:10 PM
To: Miller, Steve
Subject: Proposed Legislation

Steve:

Marlin would like several more bill drafts:


2)for credit cards like American TV's which state "under the bank agreement, you agree that for any dispute that is subject to binding arbitration. Among other rights, you waive your right to go to court or to have a jury trial." However, in their Cedit Card Agreement it states: this section does not apply to cardholders residing in states where provisions for arbitration are prohibited or unenforceable. Marlin would like to make this a state where arbitration is prohibited.


Thank you.

Judy
6-0215



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2001 BILL

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open end

1 AN ACT to amend 788.01 and 788.015; and to create 422.422 of the statutes;
2 relating to: arbitration of controversies arising out of consumer credit
3 transactions to plans

Analysis by the Legislative Reference Bureau

Among other things, the Wisconsin Consumer Act regulates the extension of consumer credit under open-end credit plans (typically, credit card plans).

Under current law, a transaction in which a consumer is granted credit in an amount of \$25,000 or less and which is entered into for personal, family, or household purposes (consumer credit transaction) is generally subject to the Wisconsin Consumer Act. The Wisconsin Consumer Act provides obligations, remedies, and penalties that current law generally does not require for other transactions. Currently, the parties to any contract, including a contract that evidences a consumer credit transaction, generally may agree to settle by arbitration any controversy that arises out of the contract or out of the refusal to perform as required under the contract.

an open-end credit plan

This bill limits the ability of the parties to a consumer credit transaction to agree in advance to arbitrate a controversy that arises out of the transaction. Under the bill, no agreement between the parties to a consumer credit transaction may require the parties to arbitrate any controversy that arises out of the transaction or out of a failure to perform as required under the transaction, and that arises after the date of the transaction. However, under the bill, the parties to a consumer credit

plain

open-end credit plan

these items

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transaction may agree in writing to submit a controversy to arbitration, if the parties enter into the agreement after the date on which the controversy arises. *they*

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

1 SECTION 1. 422.422 of the statutes is created to read:

2 422.422 **Arbitration of controversies under consumer credit**

3 ~~transactions.~~ (1) **PROHIBITED ARBITRATION AGREEMENTS.** Except as provided in sub. *open-end credit plans* (3) *and no provision in an open-end credit plan entered into by a creditor and a customer*
4 (2), no agreement between *a creditor and a customer who are* the parties to a consumer credit transaction *an open-end credit plan* may contain
5 a provision *require* requiring the parties *creditor and the customer* to submit to arbitration a controversy that arises
6 after the date on which the parties *they* enter into the *open-end credit plan* consumer credit transaction and
7 that arises out of the consumer credit transaction or out of a failure to perform as
8 required under the consumer credit transaction.

9 (2) **PERMISSIBLE ARBITRATION AGREEMENTS.** Subsection (1) does not prohibit *the* parties to a consumer credit transaction *an open-end credit plan* from agreeing in writing to submit a
10 controversy to arbitration, if the parties *creditor and the customer* enter into the agreement after the date on
11 which the controversy arises.

13 (3) **REMEDY.** If an agreement violates sub. (1), that portion of the agreement
14 that requires arbitration is void and unenforceable.

15 SECTION 2. 788.01 of the statutes is amended to read:

16 788.01 **Arbitration clauses in contracts enforceable.** ~~A~~ Except as
17 provided in s. 422.422, a provision in any written contract to settle by arbitration a
18 controversy thereafter arising out of the contract, or out of the refusal to perform the
19 whole or any part of the contract, or an agreement in writing between 2 or more
20 persons to submit to arbitration any controversy existing between them at the time
21 of the agreement to submit, shall be valid, irrevocable and enforceable except upon

BILL

1 such grounds as exist at law or in equity for the revocation of any contract. This
2 chapter shall not apply to contracts between employers and employees, or between
3 employers and associations of employees, except as provided in s. 111.10, nor to
4 agreements to arbitrate disputes under s. 101.143 (6s) or 230.44 (4) (bm).

5 **SECTION 3.** 788.015 of the statutes is amended to read:

6 ~~**788.015 Agreement to arbitrate real estate transaction disputes.** A
7 Except as provided in s. 422.422, a provision in any written agreement between a
8 purchaser or seller of real estate and a real estate broker, or between a purchaser and
9 seller of real estate, to submit to arbitration any controversy between them arising
10 out of the real estate transaction is valid, irrevocable and enforceable except upon
11 any grounds that exist at law or in equity for the revocation of any agreement. The
12 agreement may limit the types of controversies required to be arbitrated and specify
13 a term during which the parties agree to be bound by the agreement.~~

14 **SECTION 4. Initial applicability.**

15 (1) This act first applies to agreements entered into on the effective date of this
16 subsection. ✓

17 (END)

D-note
↓

NOTE
date

^R
Rep. Schneider:

This bill contains an initial applicability provision, in order to avoid a potential claim that the bill unconstitutionally impairs existing contracts. Please let me know if you do not approve or if you have any questions.

[RTM]

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3352/1dn
RJM:jld:pg

May 25, 2001

Representative Schneider:

This bill contains an initial applicability provision, in order to avoid a potential claim that the bill unconstitutionally impairs existing contracts. Please let me know if you do not approve or if have any questions.

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



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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5TH FLOOR
MADISON, WI 53701-2037

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LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

May 25, 2001

MEMORANDUM

To: Representative Schneider

From: Robert J. Marchant, Legislative Attorney

Re: LRB-3352/1 Mandatory arbitration clauses in open-end credit plans

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 261-4454 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.