

2001 SENATE BILL 396

January 24, 2002 – Introduced by Senators BURKE, ERPENBACH, HANSEN, RISSER, ROSENZWEIG and WIRCH, cosponsored by Representatives RICHARDS, BERCEAU, HUBER, J. LEHMAN, MILLER, MUSSER, POCAN, RYBA, SCHNEIDER, TURNER and YOUNG. Referred to Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

1 **AN ACT** *to repeal* 100.18 (12) and 426.110 (3); *to renumber* 423.301 and 610.70
2 (5); *to renumber and amend* 138.052 (9), 411.103 (1) (e), 421.202 (6) and
3 429.104 (9); *to amend* 51.30 (4) (a), 100.18 (11) (b) 2., 100.26 (4), 138.09 (3) (e)
4 1. a., 146.82 (2) (b), 422.201 (3), 423.302, 425.302 (1) (a), 425.303 (1), 425.304
5 (1), 426.104 (4) (a) and (b), 426.110 (14), 428.101 (3), 788.01 and 788.015; *to*
6 *repeal and recreate* 138.09 (title); and *to create* 100.18 (10v), 138.052 (9) (b),
7 138.14, 224.15, 411.103 (1) (e) 1., 411.103 (1) (e) 2., 421.202 (6) (b), 422.308 (2g),
8 422.308 (2r), 422.422, 423.301 (1) (title), 423.301 (2), 423.301 (3), 428.101 (4),
9 429.104 (9) (a) 1., 429.104 (9) (a) 2., 429.104 (9) (b) and 610.70 (5) (bc) of the
10 statutes; **relating to:** the scope of the Wisconsin Consumer Act, the Wisconsin
11 Motor Vehicle Consumer Lease Act, and the law with regard to fraudulent
12 representations and deceptive advertising; liability and required disclosures
13 under the Wisconsin Consumer Act; liability under the Wisconsin Motor
14 Vehicle Consumer Lease Act; the authority of licensed lenders; the regulation

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1 of certain motor vehicle dealers, salespersons, and sales finance companies; the
2 regulation of consumer leases under the Uniform Commercial Code;
3 arbitration of controversies arising out of consumer credit transactions;
4 establishing a penalty for unauthorized disclosure of personal medical
5 information by an insurer; deceptive preapproval of open-end credit plans;
6 payday loan providers; liability for unauthorized, remote access to certain
7 depository accounts; and providing a penalty.

Analysis by the Legislative Reference Bureau***Transactions of \$50,000 or less***

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 (consumer act). In addition, certain motor vehicle leases that are entered into by a consumer for personal, family, household, or agricultural purposes are subject to the Wisconsin Motor Vehicle Consumer Lease Act (motor vehicle consumer lease act). The consumer act and the motor vehicle consumer lease act provide obligations, remedies, and penalties that current law generally does not require for other transactions. Currently, the consumer act and the motor vehicle consumer lease act apply only to transactions that are in an amount of \$25,000 or less.

This bill expands the coverage of the consumer act and the motor vehicle consumer lease act to include transactions that are in an amount of \$50,000 or less.

With certain exceptions, the auto dealer statutes currently regulate the activities of motor vehicle dealers, motor vehicle salespersons, and sales finance companies that, among other things, engage in business involving certain motor vehicle consumer leases that are in an amount of \$25,000 or less. For example, current law requires these businesses and individuals to obtain a license and imposes requirements relating to agreements entered into before the execution of a motor vehicle lease.

This bill expands the scope of the auto dealer statutes to regulate the activities of motor vehicle dealers, motor vehicle salespersons, and sales finance companies that engage in business involving certain motor vehicle consumer leases that are in an amount of \$50,000 or less.

Wisconsin's version of the Uniform Commercial Code treats the parties to a commercial lease differently from the parties to a lease that is entered into for personal, family, or household purposes and that is in an amount of \$25,000 or less (consumer lease). For example, a lessee under a consumer lease may recover attorney fees if a court holds that a portion of the lease resulted from the

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

Liability under the consumer act

Current law provides a safe harbor from any penalty under the consumer act or the motor vehicle consumer lease act for any person who acts in conformity with any rule or order of the department of financial institutions (DFI) or any written opinion, interpretation, or statement of DFI. Current law also provides a safe harbor for any person who submits a practice or procedure to DFI in writing that DFI either approves in writing or does not disapprove within 60 days. Currently, these safe harbors apply even if the applicable rule, order, opinion, interpretation, or statement, after the act in question, is amended, rescinded, or determined by judicial or other authority to be invalid.

This bill limits the application of these safe harbors. Under this bill, these safe harbors apply only in the context of an administrative proceeding conducted by DFI or the official or agency having supervisory authority over the person alleged to have committed the violation.

Current law provides different penalties for different violations of the consumer act. For many violations, the merchant who commits the violation is liable to the affected customer in an amount equal to the greater of twice the amount of the finance charge assessed in the transaction, up to a maximum of \$1,000, or the customer's actual damages. Under this bill, the merchant is liable for these violations in an amount equal to the greater of twice the amount of the finance charge assessed in the transaction, *up to a maximum of \$5,000*, or the customer's actual damages. For other violations, the merchant is currently liable for actual damages, plus \$25 or \$100, depending upon the violation. This bill increases these dollar amounts to \$500 and \$1,000.

Currently, with certain exceptions, the secretary of financial institutions or any customer affected by certain false, misleading, or unconscionable violations of the consumer act or the federal Consumer Credit Protection Act may file a class action lawsuit against the violating merchant for the actual damages resulting from the violations, reasonable attorney fees, and any other relief to which the members of the class are entitled under the consumer act generally. In addition, for certain willful and knowing violations, the merchant may also be liable for up to \$100,000 in penalties. This bill increases to \$500,000 the maximum amount of penalties available under this type of class action lawsuit.

Currently, a person may maintain a class action for certain violations of the consumer act only if, at least 30 days prior to the alleged violation, an appellate court or applicable rule of DFI has specified that the particular conduct constitutes a violation. This bill repeals this provision.

The changes to the penalties and class action provisions provided under this bill first apply to actions commenced on the day those changes take effect.

Disclosure requirements for open-end credit plans under the consumer act

Currently, a creditor under an open-end credit plan (typically, a credit card) that is within the scope of the consumer act must make certain disclosures with

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regard to the open-end credit plan. These disclosures include, among other things, information relating to the rate of the finance charge under the plan, any annual fee charged under the plan, and any other charges or fees assessed under the plan.

This bill requires certain creditors to make two additional disclosures. First, if the open-end credit plan includes a fixed introductory rate of finance charge that, after a specified period of time, increases or becomes a variable rate, the creditor must provide the customer with a separate notice to that effect before the customer enters into a transaction under the plan and with each subsequent billing statement, until the rate ceases to increase or becomes variable. The bill specifies the content and format of the notice and the manner in which it must be delivered to the customer.

Second, if the creditor furnishes the customer with a periodic statement that states a minimum monthly payment due under the open-end credit plan, the creditor must include, as part of or along with the periodic statement, a notice indicating the total amount of finance charges the customer would pay if he or she paid off the debt owing under the open-end credit plan as of the date of the statement by making only the minimum monthly payment every month. If the customer is unable to pay off the debt owing under the open-end credit plan by making the minimum monthly payment every month, the notice must indicate that fact.

Arbitration of consumer claims

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. 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 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.

Fraudulent representations and deceptive advertising

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

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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 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 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, because of an adverse change in the financial circumstances of the consumer.

A violation of these provisions 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.

Currently, the law that generally prohibits fraudulent representations and deceptive advertising does not apply to the insurance business or, in certain circumstances, licensed real estate brokers or salespersons. This bill repeals these exemptions. Thus, under this bill, persons engaged in the business of insurance or real estate are subject to the law that generally prohibits fraudulent representations and deceptive advertising.

Payday loans

Under current law, a lender other than a bank, savings bank, savings and loan association, or credit union generally must obtain a license from the division of banking in DFI in order to assess a finance charge greater than 18%. This type of lender is generally referred to as a "licensed lender." With certain limited exceptions, current law provides no maximum finance charge for a loan entered into by a licensed lender.

Currently, a lender who makes payday loans is typically required to be a licensed lender. In a standard payday loan transaction, the lender accepts a personal check from the borrower, pays the borrower the amount of the check less any applicable finance charge, and agrees to wait a short time, such as two weeks, before depositing the check. Current law does not specifically regulate payday loan transactions.

This bill creates requirements and prohibitions that apply specifically to payday loan transactions. Under this bill, a lender, other than a bank, saving bank, savings and loan association, or credit union, who makes payday loans in the regular course of business (payday loan provider), may not assess fees or interest in a payday loan transaction in an aggregate amount that exceeds 5% of the amount of the payday loan. In addition, a payday loan provider may not make a payday loan with a term of less than 30 days. The bill also requires a payday loan provider to give each borrower copies of educational brochures prepared by DFI regarding the operation

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and potential costs of payday loans, to make annual reports to the division of banking in DFI, and to annually pay any reasonable filing fee imposed by the division of banking in DFI.

Unauthorized use of ATM card

Currently, DFI rules limit at \$50 the liability of a customer of a bank, savings bank, savings and loan association, or credit union (financial institution) for unauthorized use of the customer's automatic teller machine (ATM) card or other means of access to the customer's account through an ATM. This limit may be a lesser amount under these rules if the financial institution is aware of circumstances which lead to the belief that unauthorized access may be obtained. The rules specify that a customer who furnishes another person with an ATM card or other means of access to the customer's account through an ATM is deemed to have authorized the use of that card or means of access, until the customer gives actual notice to the depository institution that further transactions are unauthorized. This bill incorporates these rules into the statutes.

Unauthorized disclosure of medical information by insurer

Current law provides requirements related to the disclosure of personal medical information for use in connection with insurance transactions. An insurer may disclose personal medical information concerning an individual only as provided by the individual's signed disclosure authorization, except for purposes and in situations specified in the statute, such as disclosure for the purpose of pursuing a subrogation claim or to a health care provider for the purpose of verifying insurance coverage. This bill provides that an insurer that discloses personal medical information concerning an individual in a manner that is inconsistent with the requirement under the statute is liable to the individual for actual damages, exemplary (punitive) damages of not more than \$25,000, costs, and reasonable actual attorney fees.

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.** 51.30 (4) (a) of the statutes is amended to read:
- 2 51.30 **(4)** (a) *Confidentiality of records.* Except as otherwise provided in this
- 3 chapter and ss. 118.125 (4), 610.70 (3) and (5) (ac), 905.03₁ and 905.04, all treatment
- 4 records shall remain confidential and are privileged to the subject individual. Such
- 5 records may be released only to the persons designated in this chapter or ss. 118.125
- 6 (4), 610.70 (3) and (5) (ac), 905.03₁ and 905.04, or to other designated persons with

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1 the informed written consent of the subject individual as provided in this section.

2 This restriction applies to elected officials and to members of boards appointed under
3 s. 51.42 (4) (a) or 51.437 (7) (a).

4 **SECTION 2.** 100.18 (10v) of the statutes is created to read:

5 100.18 (10v) (a) *Definitions.* In this subsection:

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

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

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

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

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

13 (b) *Deceptive preapproved rates, terms, or conditions.* 1. It is deceptive
14 advertising for a merchant to directly communicate to a customer, or cause to be
15 directly communicated to a customer, that the merchant has preapproved an
16 extension of credit to the customer under an open–end credit plan and then,
17 pursuant to the customer’s response to the communication, to make an extension of
18 credit to the customer under an open–end credit plan with rates, terms, or conditions
19 that are less financially favorable to the customer than those communicated.

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

24 3. Subdivision 1. does not apply to an extension of credit under an open–end
25 credit plan with different rates, terms, or conditions than those communicated to the

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1 customer, if the difference in rates, terms, or conditions resulted from an adverse
2 change in the financial circumstances of the customer between the date on which the
3 merchant communicates preapproval and the date on which the merchant makes the
4 extension of credit.

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

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

14 3. Subdivision 1. 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 3.** 100.18 (11) (b) 2. of the statutes is amended to read:

20 100.18 (11) (b) 2. Any person suffering pecuniary loss because of a violation of
21 this section by any other person may sue in any court of competent jurisdiction and
22 shall recover such pecuniary loss, together with costs, including reasonable attorney
23 fees, ~~except that no attorney fees may be recovered from a person licensed under ch.~~
24 ~~452 while that person is engaged in real estate practice, as defined in s. 452.01 (6).~~
25 Any person suffering pecuniary loss because of a violation by any other person of any

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1 injunction issued under this section may sue for damages therefor in any court of
2 competent jurisdiction and shall recover twice the amount of such pecuniary loss,
3 together with costs, including reasonable attorney fees, ~~except that no attorney fees~~
4 ~~may be recovered from a person licensed under ch. 452 while that person is engaged~~
5 ~~in real estate practice, as defined in s. 452.01 (6).~~

6 **SECTION 4.** 100.18 (12) of the statutes is repealed.

7 **SECTION 5.** 100.26 (4) of the statutes is amended to read:

8 100.26 **(4)** Any person who violates s. 100.18 (1) to (8) ~~or~~ (10), or (10v) or
9 100.182 is subject to a civil forfeiture of not less than \$50 nor more than \$200 for each
10 violation.

11 **SECTION 6.** 138.052 (9) of the statutes is renumbered 138.052 (9) (a) and
12 amended to read:

13 138.052 **(9)** (a) Chapters 421 to 428 do not apply to the refinancing,
14 modification, extension, renewal, or assumption of a loan which had an original
15 principal balance in excess of \$25,000 if the unpaid principal balance of the loan has
16 been reduced to \$25,000 or less and the refinancing, modification, extension,
17 renewal, or assumption takes place before the effective date of this paragraph
18 [revisor inserts date].

19 **SECTION 7.** 138.052 (9) (b) of the statutes is created to read:

20 138.052 **(9)** (b) Chapters 421 to 428 do not apply to the refinancing,
21 modification, extension, renewal, or assumption of a loan which had an original
22 principal balance in excess of \$50,000 if the unpaid principal balance of the loan has
23 been reduced to \$50,000 or less and the refinancing, modification, extension,
24 renewal, or assumption takes place on or after the effective date of this paragraph
25 [revisor inserts date].

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1 **SECTION 8.** 138.09 (title) of the statutes is repealed and recreated to read:

2 **138.09 (title) Licensed lenders.**

3 **SECTION 9.** 138.09 (3) (e) 1. a. of the statutes is amended to read:

4 138.09 **(3)** (e) 1. a. A business engaged in making loans for business or
5 agricultural purposes ~~or, loans before the effective date of this subdivision 1. a.~~
6 [revisor inserts date], exceeding \$25,000 in principal amount, or loans on or after the
7 effective date of this subdivision 1. a. [revisor inserts date], exceeding \$50,000 in
8 principal amount, except that all such loans having terms of 49 months or more are
9 subject to sub. (7) (gm) 2. or 4.

10 **SECTION 10.** 138.14 of the statutes is created to read:

11 **138.14 Payday loan providers. (1) DEFINITIONS.** In this section:

12 (a) “Check” has the meaning given in s. 403.104 (6).

13 (b) “Department” means the department of financial institutions.

14 (c) “Division” means the division of banking.

15 (d) “Payday loan” means any of the following:

16 1. A transaction between a person and the issuer of a check in which the person
17 agrees to accept a check from the issuer, hold the check for a period of time before
18 negotiating or presenting the check for payment, and pay to the issuer, upon
19 accepting the check, the amount of the check less any applicable fee.

20 2. A refinancing or consolidation of a transaction described in subd. 1.

21 (e) “Payday loan provider” means a person, other than a bank, savings bank,
22 savings and loan association, or credit union, who makes payday loans in the
23 ordinary course of business.

24 **(2) MAXIMUM FEES AND INTEREST FOR PAYDAY LOANS.** Notwithstanding ss. 138.09
25 and 422.201 (9), no payday loan provider may charge, contract for, or receive fees and

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1 interest for a payday loan in an aggregate amount that exceeds 5% of the amount of
2 the payday loan.

3 **(3) MINIMUM TERM FOR PAYDAY LOANS.** No payday loan provider may make a
4 payday loan with a term of less than 30 days.

5 **(4) DISCLOSURE REQUIREMENTS.** (a) Except as provided in par. (b), before
6 disbursing funds pursuant to a payday loan, a payday loan provider shall provide the
7 person obtaining the payday loan with a copy of each brochure provided by the
8 department under sub. (6).

9 (b) Paragraph (a) does not apply if the person obtaining the payday loan has
10 previously received a copy of each brochure from the payday loan provider.

11 **(5) REPORTING AND RECORDKEEPING.** (a) On or before March 15, every payday
12 loan provider shall make an annual report to the division and shall pay any
13 reasonable filing fee imposed by the division. The report shall cover business
14 relating to payday loans made by the payday loan provider during the preceding
15 calendar year and shall include any relevant information required by the division.
16 The report shall be made upon forms provided by the division and shall be signed and
17 verified by the oath or affirmation of the payday loan provider if an individual, one
18 of the partners if a partnership, a member or manager if a limited liability company,
19 or an officer of the corporation or association if a corporation or association. A payday
20 loan provider that is licensed under s. 138.09 may include the information required
21 to be reported under this paragraph in the payday loan provider's report under s.
22 138.09 (3) (f), if the information required under this paragraph is stated separately
23 in the report from information relating to the payday loan provider's other business.

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1 (b) Every payday loan provider shall keep the records relating to payday loans
2 made by the payday loan provider separate from the records of any other business
3 of the payday loan provider.

4 (6) EDUCATIONAL BROCHURES. The department shall provide brochures to
5 educate individuals regarding the operation and potential costs of payday loans and
6 regarding the laws of this state relating to consumer credit. Upon the request of a
7 payday loan provider, the department shall supply the payday loan provider with
8 copies of the brochures provided under this subsection. The department shall charge
9 a payday loan provider a reasonable fee for brochures supplied under this subsection.

10 (7) PENALTY. Any person who violates sub. (2), (3), (4), or (5) may be fined not
11 more than \$500 or imprisoned not more than 6 months or both.

12 **SECTION 11.** 146.82 (2) (b) of the statutes is amended to read:

13 146.82 (2) (b) Except as provided in s. 610.70 (3) and (5) (ac), unless authorized
14 by a court of record, the recipient of any information under par. (a) shall keep the
15 information confidential and may not disclose identifying information about the
16 patient whose patient health care records are released.

17 **SECTION 12.** 224.15 of the statutes is created to read:

18 **224.15 Liability for unauthorized, remote access to customer's**
19 **account. (1) DEFINITIONS.** (a) "Automatic teller machine" means a terminal or other
20 facility or installation, attended or unattended, that is not located at the principal
21 place of business or at a branch or remote facility of a depository institution and
22 through which customers and depository institutions may engage, by means of either
23 the direct transmission of electronic impulses to and from a depository institution or
24 the recording of electronic impulses or other indicia of a transaction for delayed
25 transmission to a depository institution, in transactions that are incidental to the

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1 conduct of the business of a depository institution and that are otherwise permitted
2 by law. “Automated teller machine” also includes all equipment, regardless of
3 location, that is interconnected with an automated teller machine and that is
4 necessary to transmit, route, and process electronic impulses in order to enable the
5 automated teller machine to perform any function for which it is designed.

6 (b) “Depository institution” means a bank, savings bank, savings and loan
7 association, or credit union.

8 **(2) LIMITATION OF LIABILITY.** (a) The liability of a customer of a depository
9 institution for the unauthorized use of a plastic card or other means of providing the
10 customer access to the customer’s account through an automated teller machine may
11 not exceed the lesser of the following:

12 1. Fifty dollars.

13 2. The amount of any money, property, or services obtained by the unauthorized
14 use of the plastic card or other means of access prior to the time the depository
15 institution is notified of, or otherwise becomes aware of, circumstances that lead to
16 the belief that unauthorized access to the customer’s account may be obtained.
17 Notice is sufficient when the customer takes such steps as may reasonably be
18 required in the ordinary course of business to provide the depository institution with
19 the pertinent information.

20 (b) A customer who furnishes another person with a plastic card or other means
21 of providing access to the customer’s account through an automated teller machine
22 shall be deemed to authorize all transactions that may be accomplished by that
23 means, until the customer gives actual notice to the depository institution that
24 further transactions are unauthorized.

SENATE BILL 396**SECTION 13**

1 **SECTION 13.** 411.103 (1) (e) of the statutes is renumbered 411.103 (1) (e) (intro)
2 and amended to read:

3 411.103 **(1)** (e) (intro.) “Consumer lease” means a lease that a lessor regularly
4 engaged in the business of leasing or selling makes to a lessee who is an individual
5 and who takes under the lease primarily for a personal, family, or household purpose,
6 if the total payments to be made under the lease contract, excluding payments for
7 options to renew or buy, do not exceed \$25,000. the following:

8 **SECTION 14.** 411.103 (1) (e) 1. of the statutes is created to read:

9 411.103 **(1)** (e) 1. For a lease entered into before the effective date of this
10 subdivision [revisor inserts date], \$25,000.

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

12 411.103 **(1)** (e) 2. For a lease entered into on or after the effective date of this
13 subdivision [revisor inserts date], \$50,000.

14 **SECTION 16.** 421.202 (6) of the statutes is renumbered 421.202 (6) (a) and
15 amended to read:

16 421.202 **(6)** (a) Consumer credit transactions in which the amount financed
17 exceeds \$25,000, motor vehicle consumer leases in which the total lease obligation
18 exceeds \$25,000, or other consumer transactions in which the cash price exceeds
19 \$25,000; if the consumer credit transaction, motor vehicle consumer lease, or other
20 consumer transaction was entered into before the effective date of this paragraph
21 [revisor inserts date].

22 **SECTION 17.** 421.202 (6) (b) of the statutes is created to read:

23 421.202 **(6)** (b) Consumer credit transactions in which the amount financed
24 exceeds \$50,000, motor vehicle consumer leases in which the total lease obligation
25 exceeds \$50,000, or other consumer transactions in which the cash price exceeds

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1 \$50,000, if the consumer credit transaction, motor vehicle consumer lease, or other
2 consumer transaction was entered into on or after the effective date of this paragraph
3 [revisor inserts date].

4 **SECTION 18.** 422.201 (3) of the statutes is amended to read:

5 422.201 (3) ~~For Notwithstanding sub. (2), for licensees under s. 138.09 and~~
6 ~~under ss. 218.0101 to 218.0163 and for payday loan providers under s. 138.14, the~~
7 ~~finance charge, calculated according to those sections,~~ may not exceed the applicable
8 ~~maximums permitted in and calculated under ss. 138.09, 138.14, and 218.0101 to~~
9 ~~218.0163, respectively.~~

10 **SECTION 19.** 422.308 (2g) of the statutes is created to read:

11 422.308 (2g) (a) This paragraph applies to every open–end credit plan under
12 which a customer obtains credit pursuant to an application described under sub. (1)
13 or pursuant to a transaction described under sub. (2). If the annual percentage rate
14 under the open–end credit plan is fixed for a specified period of time and then
15 automatically increases or becomes a variable rate, the creditor under the open–end
16 credit plan shall provide the customer the following notice, on a separate document
17 in not less than 12–point boldface type:

18 ATTENTION: IMPORTANT DISCLOSURE AS REQUIRED BY STATE OF
19 WISCONSIN. THE ANNUAL PERCENTAGE RATE FOR THE EXTENSION OF
20 CREDIT WE, (NAME OF CREDITOR), GRANTED YOU ON (DATE ON
21 WHICH CREDIT EXTENDED) AUTOMATICALLY (INCREASES) (BECOMES A
22 VARIABLE RATE) AFTER (DESCRIPTION OF CIRCUMSTANCES UNDER
23 WHICH THE INCREASE OR VARIABLE RATE OCCURS). THE (INCREASED)
24 (VARIABLE) RATE IS (STATEMENT OF INCREASED RATE OR
25 DESCRIPTION OF HOW VARIABLE RATE IS DETERMINED). THE

SENATE BILL 396**SECTION 19**

1 (INCREASED) (VARIABLE) RATE APPLIES (DESCRIPTION OF
2 APPLICABILITY OF INCREASED OR VARIABLE RATE).

3 (b) Except as otherwise provided in this paragraph, the creditor shall give the
4 customer the notice required under par. (a) before the first transaction is made under
5 the open–end credit plan and with each subsequent billing statement, until the
6 annual percentage rate ceases to automatically increase or becomes variable. If the
7 notice is mailed to the customer, it shall be mailed in an envelope marked in not less
8 than 12–point boldface type “ATTENTION: IMPORTANT DISCLOSURE
9 ENCLOSED, AS REQUIRED BY STATE OF WISCONSIN.” If the customer is to
10 receive a credit card under the open–end credit plan, the notice required to be given
11 before the first transaction is made under the plan shall be delivered to the customer
12 along with the credit card.

13 **SECTION 20.** 422.308 (2r) of the statutes is created to read:

14 422.308 (2r) (a) This paragraph applies to every open–end credit plan under
15 which a customer obtains credit pursuant to an application described under sub. (1)
16 or pursuant to a transaction described under sub. (2). If the creditor under the
17 open–end credit plan furnishes the customer with a periodic statement that states
18 a minimum monthly payment due under the open–end credit plan, the creditor shall
19 include, as part of or along with the periodic statement, a notice in not less than
20 12–point boldface type indicating the total amount of finance charges the customer
21 would pay if he or she entered into no transactions under the open–end credit plan
22 after the date of the periodic statement and paid off the debt owing under the
23 open–end credit plan by making only the minimum monthly payment every month.
24 If the customer is unable to pay off the debt owing under the open–end credit plan
25 by making the minimum monthly payment every month, the notice shall so indicate.

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1 **SECTION 21.** 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.
4 (2), no agreement between the parties to a consumer credit transaction may contain
5 a provision requiring the parties to submit to arbitration a controversy that arises
6 after the date on which the parties enter into the 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
10 parties to a consumer credit transaction from agreeing in writing to submit a
11 controversy to arbitration, if the parties enter into the agreement after the date on
12 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 22.** 423.301 of the statutes is renumbered 423.301 (1).

16 **SECTION 23.** 423.301 (1) (title) of the statutes is created to read:

17 **423.301 (1) (title) GENERAL PROHIBITION.**

18 **SECTION 24.** 423.301 (2) of the statutes is created to read:

19 **423.301 (2) DECEPTIVE PREAPPROVED RATES, TERMS, OR CONDITIONS OF OPEN-END**
20 **CREDIT PLANS.** (a) No merchant may directly communicate to a customer, or cause to
21 be directly communicated to a customer, that the merchant has preapproved an
22 extension of credit to the customer under an open-end credit plan and then,
23 pursuant to the customer's response to the communication, make an extension of
24 credit to the customer under an open-end credit plan with rates, terms, or conditions
25 that are less financially favorable to the customer than those communicated.

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

5 (c) Paragraph (a) does not apply to an extension of credit under an open-end
6 credit plan with different rates, terms, or conditions than those communicated to a
7 customer, if the difference in rates, terms, or conditions resulted from an adverse
8 change in the financial circumstances of the customer between the date on which the
9 merchant communicates preapproval and the date on which the merchant makes the
10 extension of credit.

11 **SECTION 25.** 423.301 (3) of the statutes is created to read:

12 **423.301 (3) DECEPTIVE PREAPPROVAL OF OPEN-END CREDIT PLANS.** (a) No merchant
13 may refuse to extend credit to a customer under an open-end credit plan if the
14 customer requests the extension of credit in response to a direct communication from
15 the merchant, or a direct communication caused by the merchant, indicating that the
16 merchant has preapproved the extension of credit to the customer under an
17 open-end credit plan.

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 a refusal to extend credit under an open-end
23 credit plan, if the refusal resulted from an adverse change in the financial
24 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 26.** 423.302 of the statutes is amended to read:

4 **423.302 Remedies and penalty.** In addition to any other remedy provided
5 by law, a customer who has been induced to consummate a consumer credit
6 transaction as a result of an advertising or communication in violation of s. 423.301
7 shall be entitled to a recovery from the merchant in accordance with s. 425.305.

8 **SECTION 27.** 425.302 (1) (a) of the statutes is amended to read:

9 425.302 (1) (a) ~~Twenty-five~~ Five hundred dollars; and

10 **SECTION 28.** 425.303 (1) of the statutes is amended to read:

11 425.303 (1) ~~One hundred~~ thousand dollars; and

12 **SECTION 29.** 425.304 (1) of the statutes is amended to read:

13 425.304 (1) Twice the amount of the finance charge in connection with the
14 transaction, except that the liability under this subsection shall not be less than \$100
15 nor greater than \$1,000 ~~\$5,000~~; or

16 **SECTION 30.** 426.104 (4) (a) and (b) of the statutes are amended to read:

17 426.104 (4) (a) No provision of chs. 421 to 427 and 429 or of any statute to which
18 chs. 421 to 427 and 429 refer which imposes any penalty shall apply in any
19 administrative proceeding conducted by the administrator or the official or agency
20 having supervisory authority over the person alleged to have committed the violation
21 to any act done or omitted to be done in conformity with any rule or order of the
22 administrator or any written opinion, interpretation or statement of the
23 administrator, notwithstanding that such rule, order, opinion, interpretation or
24 statement may, after such act or omission, be amended or rescinded or be determined
25 by judicial or other authority to be invalid for any reason.

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1 (b) Any act, practice or procedure which has been submitted to the
2 administrator in writing and either approved in writing by the administrator or not
3 disapproved by the administrator within 60 days after its submission to the
4 administrator shall not be deemed to be a violation of chs. 421 to 427 and 429 or any
5 other statute to which chs. 421 to 427 and 429 refer in any administrative proceeding
6 conducted by the administrator or the official or agency having supervisory authority
7 over the person alleged to have committed the violation, notwithstanding that the
8 approval of the administrator or nondisapproval by the administrator may be
9 subsequently amended or rescinded or be determined by judicial or other authority
10 to be invalid for any reason.

11 **SECTION 31.** 426.110 (3) of the statutes is repealed.

12 **SECTION 32.** 426.110 (14) of the statutes is amended to read:

13 426.110 (14) A merchant shall not be liable in a class action for specific
14 penalties under s. 425.302 (1) (a), 425.303 (1), 425.304 (1), 425.305 (1) or 429.301 (1)
15 for which it would be liable in individual actions by reason of violations of chs. 421
16 to 427 and 429 or of conduct prescribed in sub. (2) unless it is shown by a
17 preponderance of the evidence that the violation was a wilful and knowing violation
18 of chs. 421 to 427 and 429. ~~No~~ A recovery in an action under this subsection may not
19 exceed ~~\$100,000~~ the lesser of \$500,000 or 1% of the net worth of the merchant liable
20 in the action.

21 **SECTION 33.** 428.101 (3) of the statutes is amended to read:

22 428.101 (3) Loans made on or after November 1, 1981, and before the effective
23 date of this subsection [revisor inserts date], by a creditor to a customer and which
24 are secured by a first lien real estate mortgage or equivalent security interest if the
25 amount financed is \$25,000 or less.

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1 **SECTION 34.** 428.101 (4) of the statutes is created to read:

2 428.101 **(4)** Loans made on or after the effective date of this subsection
3 [revisor inserts date], by a creditor to a customer and which are secured by a first lien
4 real estate mortgage or equivalent security interest if the amount financed is
5 \$50,000 or less.

6 **SECTION 35.** 429.104 (9) of the statutes is renumbered 429.104 (9) (a) (intro) and
7 amended to read:

8 429.104 **(9)** (a) (intro.) “Consumer lease” or “lease” means a lease entered into
9 in this state that transfers the right of possession and use by a natural person of a
10 motor vehicle primarily for a personal, family, household, or agricultural purpose, for
11 a period of time exceeding 4 months, if the total lease obligation, excluding any option
12 to purchase or otherwise become owner of the motor vehicle at the expiration of the
13 consumer lease, does not exceed \$25,000. ~~The term does not include a credit sale, as~~
14 ~~defined under 12 CFR 226.2 (a) (16).~~ the following:

15 **SECTION 36.** 429.104 (9) (a) 1. of the statutes is created to read:

16 429.104 **(9)** (a) 1. For a lease entered into before the effective date of this
17 subdivision [revisor inserts date], \$25,000.

18 **SECTION 37.** 429.104 (9) (a) 2. of the statutes is created to read:

19 429.104 **(9)** (a) 2. For a lease entered into on or after the effective date of this
20 subdivision [revisor inserts date], \$50,000.

21 **SECTION 38.** 429.104 (9) (b) of the statutes is created to read:

22 429.104 **(9)** (b) “Consumer lease” or “lease” does not include a credit sale, as
23 defined under 12 CFR 226.2 (a) (16).

24 **SECTION 39.** 610.70 (5) of the statutes is renumbered 610.70 (5) (ac).

25 **SECTION 40.** 610.70 (5) (bc) of the statutes is created to read:

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1 610.70 (5) (bc) An insurer that discloses personal medical information
2 concerning an individual in a manner that is inconsistent with par. (ac) shall be liable
3 to the individual for actual damages, exemplary damages of not more than \$25,000,
4 costs, and reasonable actual attorney fees.

5 **SECTION 41.** 788.01 of the statutes is amended to read:

6 **788.01 Arbitration clauses in contracts enforceable.** ~~A~~ Except as
7 provided in s. 422.422, a provision in any written contract to settle by arbitration a
8 controversy thereafter arising out of the contract, or out of the refusal to perform the
9 whole or any part of the contract, or an agreement in writing between 2 or more
10 persons to submit to arbitration any controversy existing between them at the time
11 of the agreement to submit, shall be valid, irrevocable and enforceable except upon
12 such grounds as exist at law or in equity for the revocation of any contract. This
13 chapter shall not apply to contracts between employers and employees, or between
14 employers and associations of employees, except as provided in s. 111.10, nor to
15 agreements to arbitrate disputes under s. 101.143 (6s) or 230.44 (4) (bm).

16 **SECTION 42.** 788.015 of the statutes is amended to read:

17 **788.015 Agreement to arbitrate real estate transaction disputes.** ~~A~~
18 Except as provided in s. 422.422, a provision in any written agreement between a
19 purchaser or seller of real estate and a real estate broker, or between a purchaser and
20 seller of real estate, to submit to arbitration any controversy between them arising
21 out of the real estate transaction is valid, irrevocable and enforceable except upon
22 any grounds that exist at law or in equity for the revocation of any agreement. The
23 agreement may limit the types of controversies required to be arbitrated and specify
24 a term during which the parties agree to be bound by the agreement.

25 **SECTION 43. Initial applicability.**

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1 (1) **ARBITRATION.** The treatment of sections 422.422, 788.01, and 788.015 of the
2 statutes first applies to agreements entered into on the effective date of this
3 subsection.

4 (2) **TRANSACTIONS OF \$50,000 OR LESS.** The treatment of sections 138.09 (title) and
5 (3) (e) 1. a. and 428.101 (3) and (4) of the statutes, the renumbering and amendment
6 of sections 138.052 (9), 411.103 (1) (e), 421.202 (6), and 429.104 (9) of the statutes,
7 and the creation of sections 138.052 (9) (b), 411.103 (1) (e) 1. and 2., 421.202 (6) (b),
8 and 429.104 (9) (a) 1. and 2. and (b) of the statutes first apply to transactions entered
9 into on the effective date of this subsection.

10 (3) **DECEPTIVE PREAPPROVALS.** The treatment of sections 100.18 (10v), 100.26 (4),
11 and 423.302 of the statutes, the renumbering of section 423.301 of the statutes, and
12 the creation of sections 423.301 (1) (title), (2), and (3) of the statutes first apply an
13 extension of credit or refusal to extend credit that takes place pursuant to a direct
14 communication of preapproval made on the effective date of this subsection.

15 (4) **PAYDAY LOANS.** The treatment of sections 138.14 and 422.201 (3) of the
16 statutes first applies to payday loans made on the effective date of this subsection.

17 (5) **DAMAGES IN CLASS ACTIONS UNDER THE WISCONSIN CONSUMER ACT.** The
18 treatment of section 426.110 (14) of the statutes first applies to actions commenced
19 on the effective date of this subsection.

20 (6) **BAR TO CERTAIN CLASS ACTIONS UNDER THE WISCONSIN CONSUMER ACT.** The
21 treatment of section 426.110 (3) of the statutes first applies to actions commenced on
22 the effective date of this subsection.

23 (7) **PENALTIES UNDER THE WISCONSIN CONSUMER ACT.** The treatment of sections
24 425.302 (1) (a), 425.303 (1), and 425.304 (1) of the statutes first applies to actions
25 commenced on the effective date of this subsection.

