

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

LRB-3442/1dn  
RJM:jld:pg

November 9, 2001

Senator Burke:

Attached is an introducible version of the consumer law draft you requested. Please review the draft and let me know if you desire any changes. I believe this draft addresses all issues that were outstanding after I met with your staff on October 2, 2001. As you review the draft, please note the following:

1. Please review the treatment of proposed s. 422.308 (2g). I have adjusted the language regarding delivery of the notice so that the notice may be delivered electronically, consistent with the federal Electronic Signatures in Global and National Commerce Act (E-Sign). Generally, E-sign permits parties to use electronic notices in certain consumer transactions if various requirements are satisfied. See 15 USC 7001(c).
2. The changes in the initial applicability provisions relating to damages and penalties may violate the due process rights of persons who acted under current law with an expectation that the current damages and penalties may apply. See *Matthies v. Positive Safety Mfg. Co.*, 244 Wis. 2d 720 (2001). In analyzing retroactive legislation, the courts balance the public interest served by the retroactive application against the private interest that the retroactive application affects. The courts also consider the level of unfairness created by the retroactive legislation. You may want to avoid this issue altogether by restoring the treatment from the previous version of the draft, which applied the new damages and penalties to actions arising on the effective date of the draft.
3. Please review proposed s. 224.15 to ensure that it covers all types of ATM and debit card transactions that you intend to regulate. In particular, please review the definition of "automated teller machine" to ensure that it is defined broadly enough to fulfill your intent. As drafted, the provision is basically identical to the provisions in DFI's rules.

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