DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3442/P3dn
RJM:jld:kjf

September 20, 2001

Senator Burke:

This draft is the same as the "/P2" version, except this draft incorporates LRB–3541/1, regarding rent–to–own agreements. This draft is in preliminary form and does not include every item from your instructions. I wanted to provide you with as complete a draft as possible pending more complete instructions, so that you can begin reviewing the draft as soon as possible. The remainder of this drafter's note is taken from the "/P2" version:

1. It was unclear from the instructions whether you wanted to incorporate the payday loan provisions of SB–84 or create provisions limiting payday loan interest at 26%. This draft incorporates SB–84. Among other things, SB–84 limits fees and interest in payday loans at 5% of the amount of the payday loan. Please let me know if I have misunderstood your intent.

2. The instructions indicated that the draft should require clearer disclosure of teaser interest rates. I had to fill in a lot of the details of this instruction and I may have done so in a manner that you do not intend. Although federal law generally preempts the state from regulating the content of applications for credit cards (see 15 USC 1610 (e)), there are other ways to accomplish the intent of this instruction. This draft requires a detailed disclosure to be made before the customer enters into a transaction under the open–end credit plan. This timing gets the notice to the customer before he or she uses the credit. The creditor in many cases could include the disclosure along with the initial disclosures required under the federal Truth In Lending Act (see 12 CFR 226.6).

Please review the disclosure requirement in proposed s. 422.308 (2g) and let me know if you desire any changes. Another option may be to require every advertisement for an open–end credit plan that includes a statement of an introductory rate to also state, adjacent to the introductory rate and in the same font and size, the rate that applies after the introductory rate expires. I have not yet researched whether this type of regulation would be permissible under federal law.

Please also review the disclosure requirement regarding minimum monthly payments in proposed s. 422.308 (2r) to ensure it is consistent with your intent.

3. The provision increasing the maximum liability under a class action for certain violations of the consumer act first applies to actions arising on the date on which the

provision becomes law. This treatment, in effect, grandfathers any creditors that may have made a business decision to permit ongoing violations of the consumer act and risk the current $100,000 liability. Another option would be to apply the increased maximum to actions *filed* on the date on which the provision becomes law. This option may be viewed by some as unfair because it may penalize creditors that would have conformed their behavior to the law had they known their liability was subject to the increased maximum.

The provision increasing the maximum penalty for certain violations of the consumer act similarly applies only to violations occurring on the date on which the provision becomes law. Please let me know if you desire any changes to these provisions.

4. You asked for a provision granting debit card holders the same limitations on liability that credit card holders currently receive. I did not draft this provision because current law already limits at $50 a customer's liability for unauthorized use of an ATM or debit card. Under Wis. Admin. Code Ch. DFI–Bkg 14.07 (2), the liability of a customer of a bank for the unauthorized use of an ATM or debit card may not exceed the lesser of $50 or the amount of any money, property, or services obtained by the unauthorized use prior to the time the bank becomes aware of circumstances that lead to the belief that unauthorized access to the customer's account may be obtained. There are similar rules that apply to customers of savings and loans, savings banks, and credit unions. However, it is questionable whether these limitations may be enforced against federally chartered financial institutions, regardless of whether the limitations are in the statutes or rules.

5. The instructions indicated that the draft should include privacy provisions dealing with the exchange of information between banks and insurance companies. The instructions for these provisions are not sufficiently detailed and, as a result, this draft does not include any privacy provisions. Please note that federal law restricts the state's ability to limit the transfer of information between affiliates and any privacy provisions you intend to create will need to take into account these federal laws. When you can make the time, please contact me so that we can meet and discuss your intent with regard to privacy.

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