

2001 DRAFTING REQUEST

Bill

Received: **06/19/2001**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Brian Burke (608) 266-8535**

By/Representing: **ethan carrier**

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

Drafter: **rmarchan**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - banking inst.
Fin. Inst. - WCA
Fin. Inst. - miscellaneous
Trade Regulation - other**

Extra Copies: **MGG
RNK**

Submit via email: **YES**

Requester's email: **Sen.Burke@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Scope of consumer act, class actions under consumer act, limits on payday loan interest, credit and debit cards, false advertising, arbitration of consumer law claims, financial privacy

Instructions:

See attached proposal for comprehensive consumer protection legislation.

Drafting History:

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/?	rmarchan 07/02/2001	jdyer 07/02/2001					State

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/P1	rmarchan 07/06/2001	jdyer 07/09/2001	haugeca 07/05/2001	_____			State
/P2	rmarchan 09/17/2001	wjackson 09/20/2001	haugeca 07/09/2001	_____	lrb_docadmin 07/09/2001		State
/P3	rmarchan 10/24/2001 kahlepj 10/24/2001	jdyer 10/25/2001 jdyer 11/07/2001	kfollet 09/20/2001	_____ _____ _____	lrb_docadmin 09/20/2001		State
/1			pgreensl 11/09/2001	_____	lrb_docadmin 11/09/2001	lrb_docadmin 01/22/2002	

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/P2		<i>/P3 9/20 jld</i>	haugca 07/09/2001	_____	lrb_docadmin 07/09/2001		

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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ESB
9/20

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1?	rmarchan	1/01 7/2 jld	CH 7-9	CH 7-9 CH 5			

FE Sent For:

<END>

Memorandum

To: Robert J. Marchant, Legislative Attorney
From: Ethan Carrier, Staff -Sen. Brian Burke
Date: 06/18/01
Re: Consumer Protection Legislation

Here is all the information I have on Sen. Burke's desired consumer protection legislation. We'd like this drafted as one large bill. Please feel free to contact Steve Meili and Cory Mason for assistance. Thanks again.



CONFIDENTIAL



**Center for Public
Representation, Inc.**

Stephen E. Meili
of Counsel

c/o Consumer Law Litigation Clinic
975 Bascom Mall
Madison, WI 53706

608/263-6283 Fax: 608/262-5485



**STATE BAR
of WISCONSIN**

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P.O. Box 7158
Madison, WI 53707-7158
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INTERNET: www.wisbar.org

Cory Mason
Government Relations
Coordinator

(608) 250-6128
(800) 444-9404, ext. 6128
cmason@wisbar.org

Marchant, Robert

From: Carrier, Ethan
Sent: Tuesday, June 19, 2001 8:51 AM
To: Marchant, Robert
Subject: RE: Consumer protection package

Robert,
Sounds fine to me. -oh, by the way, I think there may have been some information in the materials I sent you about banning the ATM surcharge. We do not want that in this bill, so just ignore it.
Thanks again,
-Ethan

-----Original Message-----

From: Marchant, Robert
Sent: Monday, June 18, 2001 3:01 PM
To: Carrier, Ethan
Subject: Consumer protection package

Ethan--

Although I am currently inundated with work for the budget, I did take a few moments to review the material you sent regarding consumer protection legislation. Most of the instructions are straight-forward. However, there are a few items with regard to privacy and the disclosure of interest rates that require more detailed instructions. When the budget clears and I am able to devote some time to your request, it may be helpful to meet and flesh out more detailed instructions with regard to these proposals. Does that sound alright to you?

Robert J. Marchant
Legislative Attorney
State of Wisconsin Legislative Reference Bureau
robert.marchant@legis.state.wi.us

Consumer Protection Legislation Summary:

Consumer Credit Transactions:

- ✓ 1) Raise the Wisconsin Consumer Act (WCA) jurisdictional limit from \$25,000 to \$50,000 (LRB-0535, Robert J. Marchant, Legislative Attorney, Sept. 29, 2000).
- ✓ 2) Increase the maximum statutory penalties for many WCA violations from \$1,000 to \$5,000.

Class Action Suits:

- ✓ 1) Increase the WCA \$100,000 cap on damages in class action suits to \$500,000 or 1% of the business's net worth (as in the federal Truth in Lending Act).

Payday Loans (Currently Sen. Robson's SB84):

- ✓ 1) Cap the interest rates for Payday Loans at 26%.

These are not the same!

Deceptive Credit Card Advertising:

- 1) Regulate Credit Card Solicitations.

- ✓ a) Prohibit use of "pre-approved" language in solicitations (LRB-0534, Robert J. Marchant, Legislative Attorney, October 17, 2000).

- ✓ b) More clearly disclose "teaser interest rates".

- ✓ c) Reveal the total amount of interest payments someone would pay if they make the minimum payment each month.

ACA ✓ 2) Provide debit card customers with the same unauthorized use protection that credit card users receive.

- a) Maximum potential unauthorized use liability of \$50.

- b) Only liable for said potential \$50 of unauthorized use if:

- i) The debit card is an accepted card,

- ii) and the debit card customer has been given notice of his maximum potential unauthorized use liability,

- iii) and the debit card issuer has provided a way to identify the card user on the card (such as a signature or photograph).

- ✓ 3) Repeal the exemption for the insurance and real estate industries from Wisconsin's false advertising/misrepresentation statute.

Mandatory Arbitration Clauses in Consumer Contracts (LRB-0233, Robert J. Marchant, Legislative Attorney, October 13, 2000):

- 1) Ban all mandatory arbitration clauses in consumer contracts.

Privacy (Erpenbach):

- 1) Restrict the exchange of information between banks and insurance companies.

- 2) Provide remedies for consumers when a bank or insurance company violates this law.

CONSUMER PROTECTION PROPOSALS – FEBRUARY 2001

CONSUMER CREDIT TRANSACTIONS

Increase the jurisdictional limit, as well as statutory penalties, under the Wisconsin Consumer Act (WCA).

The Wisconsin Consumer Act's protections only apply to transactions under \$25,000. The cap was set over 25 years ago to govern most automobile purchases. Inflation since 1970 has reduced the scope of the WCA, rendering it inapplicable to many consumer transactions, including those involving many automobiles. The jurisdictional limit should be increased to at least \$50,000.

The current statutory penalties under the WCA, which have also remained stagnant since the early 1970s, are too weak to compel businesses to comply with the WCA. The maximum penalty for many WCA violations is \$1,000. This should be increased to \$5,000.

CLASS ACTION SUITS

Increase the \$100,000 cap on class action damages under the Wisconsin Consumer Act (§426.110(14)).

The WCA caps damages in class action suits at \$100,000. The cap is antiquated and anti-consumer. It makes class actions impractical since in even moderately sized class action each class member is limited to a small recovery. The cap ignores factors such as the number of class members, the harm they suffered, and the severity of the business's actions. In so doing, it unfairly limits the amount of relief a class member may receive.

The federal Truth in Lending Act (TILA), which mirrors the WCA in many respects, caps class action damages at \$500,000 or 1% of the business's net worth. With a similar provision, the WCA will adequately protect the rights of both consumers and businesses.

PAYDAY LOANS

Reintroduction of SB96, a bill introduced by Senator Robson to cap the interest rate on payday loans at 26%.

Payday loan companies attract lower income consumers by offering short-term loans without doing a credit check. But these loans come with exorbitant interest rates that typically exceed 500%. Because many consumers cannot repay the loan on time, they are forced to take out another payday loan with exorbitant fees, leading them into an ever-worsening cycle of debt. These sky-high interest rates are not necessary to keep payday lenders in business. The default rate on payday loans is nearly the same as it is for credit card debt. Twenty-one states regulate payday loans through caps on interest rates that range from 9.50% to 36%. The average cap is 26.31%.

DECEPTIVE CREDIT CARD ADVERTISING

Regulate credit card solicitations

Credit card companies engage in numerous false and misleading practices. For example, the “pre-approved” language on their advertisements is deceptive and misleading in at least two ways. Consumers who apply for “pre-approved” credit cards must still undergo a credit check and can be rejected. This rejection adversely affects the consumer’s credit rating because it is recorded on her credit history. Moreover, consumers who are approved for the cards often receive a card with terms less favorable than those advertised. Thus, credit cards companies should be prohibited from using “pre-approved” in their solicitations.

Credit card companies should also be required to 1) more clearly disclose ‘teaser interest rates’, which typically jump from low levels (4-5%) to high levels (17- 20%) within six months; and 2)

reveal the total amount of interest payments someone would pay if they make the minimum payment each month.

Provide debit card customers with the same unauthorized user protection that credit card users receive.

Federal regulations governing the unauthorized use of credit and debit cards differ substantially. Currently, a credit card customer is only liable for up to \$50 of unauthorized and will only be liable if the following conditions are met: 1) the credit card is an accepted card; 2) the credit card customer has been given notice of his maximum potential liability; and 3) the credit card issuer has provided a way to identify the card user on the card (such as a signature or photograph).

However, debit card customers do not enjoy the same protections: A debit card owner is liable for up to \$50 of unauthorized use if he reports his card missing within two days. If he reports the card missing after two days, he can be liable for up to \$500. This discrepancy is unfair.

Wisconsin should adopt the same limits on unauthorized use of debit cards that are applied to credit cards.

Repeal the exemption for the insurance and real estate industries from Wisconsin's false advertising/misrepresentation statute.

Insurance companies and real estate agencies are currently exempt from Wisconsin's false advertising law. These industries should operate under the same rules and regulations as other businesses. The administrative regulations that govern their behavior are not as effective as the Wisconsin statute, which provides for private remedies.

PROHIBIT MANDATORY ARBITRATION CLAUSES IN CONSUMER CONTRACTS.

Mandatory arbitration clauses are increasingly common in consumer contracts, including residential leases, HMO contracts, home sales, computer warranties, credit card offers, and bank

services. Arbitration is often costly to the consumer and takes place before an arbitrator frequently selected by the business without consumer input.

Mandatory arbitration removes a consumer's right to redress her grievance in court. The consumer should have the right to choose between arbitration and litigation. Small-claims court often affords the consumer a less expensive alternative than arbitration. Arbitration results are private and limited to the parties involved, whereas civil court complaints are a matter of public record, and can establish helpful precedent for other consumers.

BANK ATM SURCHARGES.

Nationally, the percentage of banks that have surcharge fees has increased dramatically in the last five years (from 15% in 1996 to 93% in 1999). In Wisconsin, 86% of banks and 25% of credit unions imposed surcharge fees in 1999. By assessing fees against non-customers, bank and credit unions force these consumers to pay twice for using the ATM once.

ATM fees are also anti-competitive. Testimony at a recent hearing at the US Senate Banking Committee revealed that surcharges are designed to run smaller banks out of business by encouraging consumers to switch to a bank with a more extensive ATM network that does not charge a fee to its consumers. The squashing of smaller banks will in turn limit the choices available to consumers.

PRIVACY

Increase consumers' right to privacy by restricting the exchange of information between banks and insurance companies.

Last year, President Clinton signed legislation that gives banks and insurance companies easier access to each other's consumer information. This law will decrease a consumer's right to privacy primarily because banks and insurers may use this information in prejudicial ways. The

law does not pre-empt states from providing their own citizens with greater protections than those under the federal law. Therefore, Wisconsin should restrict the exchange of information between banks and insurance companies and provide private remedies for consumers when a bank or insurance company violates the law.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

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

October 13, 2000

MEMORANDUM

To: Senator Burke

From: Robert J. Marchant, Legislative Attorney

Re: LRB-0233 Mandatory arbitration clauses under the Wisconsin consumer act

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.

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

LRB-0233/1dn
RJM:jld:km

October 13, 2000

Senator Burke:

Please review this bill carefully to ensure that it is consistent with your intent. In particular, please note the following:

1. The federal legislation you provided me with may be narrower in scope than the provision you intend to create in Wisconsin. The federal language would generally prohibit any consumer credit contract from requiring the parties to the contract to arbitrate any claim that later arises out of the contract. Thus, under the federal language, the parties would be allowed to enter into an arbitration agreement that would otherwise be prohibited, as long as the agreement was separate from the consumer credit contract.

This bill is broader in scope than the federal legislation. This bill prohibits any agreement to arbitrate a later-arising claim under a consumer credit transaction, whether or not the agreement to arbitrate is contained in the consumer credit contract or in a separate document. However, as requested, the bill permits the parties to a consumer credit transaction to agree to arbitrate a controversy after the controversy arises. Please let me know if I have misunderstood your intent.

2. The 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 of or have any questions regarding this provision.

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



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0233/1

RJM:jld:km

2001 BILL

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.

Analysis by the Legislative Reference Bureau

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.

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

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)



State of Wisconsin

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STEPHEN R. MILLER
CHIEF

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

September 29, 2000

MEMORANDUM

To: Senator Burke

From: Robert J. Marchant, Legislative Attorney

Rc: LRB-0535 Increase coverage of Wisconsin consumer act to include transactions of \$50,000 or less

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.

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**DRAFTER'S NOTE
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LEGISLATIVE REFERENCE BUREAU**

LRB-0535/1dn
RJM:hmh&cjs:pg

September 29, 2000

Senator Burke:

Please review this draft carefully to ensure that it is consistent with your intent.

In particular, please note that the draft requires a state fiscal estimate. In reviewing the drafting file for 1999 SB-170, the bill upon which this draft is based, I noticed that the department of agriculture, trade and consumer protection (DATCP) prepared the fiscal estimate for the bill. Because the department of financial institutions (DFI), rather than DATCP, administers the consumer act, the fiscal estimate for the bill may have been inaccurate.

I have redrafted the analysis to the bill in order to clarify its effect. Hopefully, this change alone would result in DFI, rather than DATCP, being directed to perform the fiscal estimate. However, if you desire a fiscal estimate for this draft, please call me so that I can attempt to guide the department of administration to have DFI prepare the estimate.

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



2001 BILL

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:** the
5 scope of the Wisconsin Consumer Act, and the Wisconsin Motor Vehicle
6 Consumer Lease Act; the authority of licensed lenders; the regulation of certain
7 motor vehicle dealers, salespersons, and sales finance companies; and the
8 regulation of consumer leases under the uniform commercial code.

Analysis by the Legislative Reference Bureau

Wisconsin Consumer Act and Wisconsin Motor Vehicle Consumer Lease Act

Under current law, certain transactions that are entered into by a consumer for personal, family, or household purposes are 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 (consumer lease act). The consumer act and the consumer lease act provide obligations, remedies, and penalties that current law generally does not require for other transactions. Currently, the consumer act and the consumer lease act apply only to transactions that are in an amount of \$25,000 or less.

BILL

1 renewal, or assumption takes place before the effective date of this paragraph
2 [revisor inserts date].

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

4 138.052 (9) (b) Chapters 421 to 428 do not apply to the refinancing,
5 modification, extension, renewal, or assumption of a loan which had an original
6 principal balance in excess of \$50,000 if the unpaid principal balance of the loan has
7 been reduced to \$50,000 or less and the refinancing, modification, extension,
8 renewal, or assumption takes place on or after the effective date of this paragraph
9 [revisor inserts date].

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

11 138.09 (3) (e) 1. a. A business engaged in making loans for business or
12 agricultural purposes ~~or loans before the effective date of this subdivision 1. a.~~
13 [revisor inserts date], exceeding \$25,000 in principal amount, or loans on or after the
14 effective date of this subdivision 1. a. [revisor inserts date], exceeding \$50,000 in
15 principal amount, except that all such loans having terms of 49 months or more are
16 subject to sub. (7) (gm) 2. or 4.

17 **SECTION 4.** 411.103 (1) (e) of the statutes is renumbered 411.103 (1) (e) (intro)
18 and amended to read:

19 411.103 (1) (e) (intro.) "Consumer lease" means a lease that a lessor regularly
20 engaged in the business of leasing or selling makes to a lessee who is an individual
21 and who takes under the lease primarily for a personal, family, or household purpose,
22 if the total payments to be made under the lease contract, excluding payments for
23 options to renew or buy, do not exceed \$25,000. the following:

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

BILL

1 **SECTION 10.** 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 11.** 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 12.** 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 13.** 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 14.** 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 15. Initial applicability.**

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

LRB-0534/1dn
RJM:jld:km

October 17, 2000

Senator Burke:

Please review this draft carefully to ensure that it is consistent with your intent.

In particular, please note that the department of agriculture, trade and consumer protection, in the fiscal estimate it prepared for 1999 SB-169, indicated that it would need an increase in its appropriation to fund 1.0 FTE regulation compliance investigator position, in order to enforce the prohibitions established in the bill. Let me know if you would like to include an appropriation for this purpose in the bill. In considering this issue, please be aware that the budget act may change or eliminate the affected appropriation if the bill is enacted before the budget act.

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

2001 BILL

1 **AN ACT to renumber** 423.301; **to amend** 100.26 (4) and 423.302; and **to create**
2 100.18 (10v), 423.301 (1) (title), 423.301 (2) and 423.301 (3) of the statutes;
3 **relating to:** deceptive preapproval of open-end credit plans and providing a
4 penalty.

Analysis by the Legislative Reference Bureau

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 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 (typically, a credit card) 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

BILL

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 this bill 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.

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

2 100.18 (10v) (a) *Definitions.* In this subsection:

3 1. "Customer" means a person other than an organization who seeks or
4 acquires credit for personal, family, or household purposes.

5 2. "Directly" means in person, by mail or electronic mail addressed to the
6 receiver, or by telephone.

7 3. "Merchant" has the meaning given in s. 421.301 (25).

8 4. "Open-end credit plan" has the meaning given in s. 421.301 (27).

9 5. "Organization" has the meaning given in s. 421.301 (28).

10 (b) *Deceptive preapproved rates, terms, or conditions.* 1. It is deceptive
11 advertising for a merchant to directly communicate to a customer, or cause to be
12 directly communicated to a customer, that the merchant has preapproved an
13 extension of credit to the customer under an open-end credit plan and then,
14 pursuant to the customer's response to the communication, to make an extension of

BILL

1 credit to the customer under an open-end credit plan with rates, terms, or conditions
2 that are less financially favorable to the customer than those communicated.

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

7 3. Subdivision 1. does not apply to an extension of credit under an open-end
8 credit plan with different rates, terms, or conditions than those communicated to the
9 customer, if the difference in rates, terms, or conditions resulted from an adverse
10 change in the financial circumstances of the customer between the date on which the
11 merchant communicates preapproval and the date on which the merchant makes the
12 extension of credit.

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

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

22 3. Subdivision 1. 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

BILL

1 communicates preapproval and the date on which the merchant refuses to extend
2 credit.

3 **SECTION 2.** 100.26 (4) of the statutes is amended to read:

4 100.26 (4) Any person who violates s. 100.18 (1) to (8) ~~or~~, (10), or (10v) or
5 100.182 is subject to a civil forfeiture of not less than \$50 nor more than \$200 for each
6 violation.

7 **SECTION 3.** 423.301 of the statutes is renumbered 423.301 (1).

8 **SECTION 4.** 423.301 (1) (title) of the statutes is created to read:

9 423.301 (1) (title) GENERAL PROHIBITION.

10 **SECTION 5.** 423.301 (2) of the statutes is created to read:

11 423.301 (2) DECEPTIVE PREAPPROVED RATES, TERMS, OR CONDITIONS OF OPEN-END
12 CREDIT PLANS. (a) No merchant shall directly communicate to a customer, or cause
13 to be directly communicated to a customer, that the merchant has preapproved an
14 extension of credit to the customer under an open-end credit plan and then,
15 pursuant to the customer's response to the communication, make an extension of
16 credit to the customer under an open-end credit plan with rates, terms, or conditions
17 that are less financially favorable to the customer than those communicated.

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 an extension of credit under an open-end
23 credit plan with different rates, terms, or conditions than those communicated to a
24 customer, if the difference in rates, terms, or conditions resulted from an adverse
25 change in the financial circumstances of the customer between the date on which the

BILL

1 merchant communicates preapproval and the date on which the merchant makes the
2 extension of credit.

3 **SECTION 6.** 423.301 (3) of the statutes is created to read:

4 **423.301 (3) DECEPTIVE PREAPPROVAL OF OPEN-END CREDIT PLANS.** (a) No merchant
5 shall refuse to extend credit to a customer under an open-end credit plan if the
6 customer requests the extension of credit in response to a direct communication from
7 the merchant, or a direct communication caused by the merchant, indicating that the
8 merchant has preapproved the extension of credit to the customer under an
9 open-end credit plan.

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

14 (c) Paragraph (a) 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 7.** 423.302 of the statutes is amended to read:

20 **423.302 Remedies and penalty.** In addition to any other remedy provided
21 by law, a customer who has been induced to consummate a consumer credit
22 transaction as a result of an advertising or communication in violation of s. 423.301
23 shall be entitled to a recovery from the merchant in accordance with s. 425.305.

24 **SECTION 8. Initial applicability.**

7-16-01
(budget permitting)

RWR

2001 BILL

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

INSERT REL A ✓

re-8

INSERT REL B ✓

INSERT REL C ✓

Analysis by the Legislative Reference Bureau

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.

~~NOT~~ 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

(consumer act)

INSERT ANALYSIS A

4

BILL

INSERT ANALYSIS B ✓

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.

INSERT ANALYSIS C ✓

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

INSERTS 2-1A to 2-1F, in alphabetical order

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.
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.

1
MHP INSERT

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.

14
MHP INSERT ✓

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.**

CS
*ARBITRATION: The treatment of sections 422, 422,
788.01, and 788.015 of the statutes*

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

17

(END)

INSERT 3-16 A to E in alphabetical order

INSERTS

2001 BILL

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: the
 5 scope of the Wisconsin Consumer Act, and the Wisconsin Motor Vehicle
 6 Consumer Lease Act; the authority of licensed lenders; the regulation of certain
 7 motor vehicle dealers, salespersons, and sales finance companies; and the
 8 regulation of consumer leases under the uniform commercial code;

Insert Rel A

Analysis by the Legislative Reference Bureau

Wisconsin Consumer Act and Wisconsin Motor Vehicle Consumer Lease Act

Under current law, certain transactions that are entered into by a consumer for personal, family, or household purposes are 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 (consumer lease act). The consumer act and the consumer lease act provide obligations, remedies, and penalties that current law generally does not require for other transactions. Currently, the consumer act and the consumer lease act apply only to transactions that are in an amount of \$25,000 or less.

Insert Analysis A

BILL

INSERT
ANALYSIS A
CONT

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

Motor vehicle dealers, salespersons, and sales finance companies

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.

Uniform commercial code

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 attorneys fees if a court holds that a portion of the lease resulted from 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 an amount of \$50,000 or less. ~~the~~ *lenders*

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:

INSERT
2-1 B

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,



INS 2-1B
COT

BILL

1 renewal, or assumption takes place before the effective date of this paragraph
2 [revisor inserts date].

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

4 138.052 (9) (b) Chapters 421 to 428 do not apply to the refinancing,
5 modification, extension, renewal, or assumption of a loan which had an original
6 principal balance in excess of \$50,000 if the unpaid principal balance of the loan has
7 been reduced to \$50,000 or less and the refinancing, modification, extension,
8 renewal, or assumption takes place on or after the effective date of this paragraph
9 [revisor inserts date]. *Line ms*

4 138.09 (Title)

INSERT
2-1C

See #. 3 RP+CR; 138.09 (Title) Licensed lenders.

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

11 138.09 (3) (e) 1. a. A business engaged in making loans for business or
12 agricultural purposes ~~or~~ loans before the effective date of this subdivision 1. a.
13 [revisor inserts date], exceeding \$25,000 in principal amount, or loans on or after the
14 effective date of this subdivision 1. a. [revisor inserts date], exceeding \$50,000 in
15 principal amount, except that all such loans having terms of 49 months or more are
16 subject to sub. (7) (gm) 2. or 4.

(B)

INSERT
2-1E

17 **SECTION 4.** 411.103 (1) (e) of the statutes is renumbered 411.103 (1) (e) (intro)
18 and amended to read:

19 411.103 (1) (e) (intro.) "Consumer lease" means a lease that a lessor regularly
20 engaged in the business of leasing or selling makes to a lessee who is an individual
21 and who takes under the lease primarily for a personal, family, or household purpose,
22 if the total payments to be made under the lease contract, excluding payments for
23 options to renew or buy, do not exceed \$25,000. the following:

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

BILL

INS 2-1E
CONT

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

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

4 411.103 (1) (e) 2. For a lease entered into on or after the effective date of this
5 subdivision [revisor inserts date], \$50,000.

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

8 421.202 (6) (a) Consumer credit transactions in which the amount financed
9 exceeds \$25,000, motor vehicle consumer leases in which the total lease obligation
10 exceeds \$25,000, or other consumer transactions in which the cash price exceeds
11 \$25,000; if the consumer credit transaction, motor vehicle consumer lease, or other
12 consumer transaction was entered into before the effective date of this paragraph
13 [revisor inserts date].

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

15 421.202 (6) (b) Consumer credit transactions in which the amount financed
16 exceeds \$50,000, motor vehicle consumer leases in which the total lease obligation
17 exceeds \$50,000, or other consumer transactions in which the cash price exceeds
18 \$50,000, if the consumer credit transaction, motor vehicle consumer lease, or other
19 consumer transaction was entered into on or after the effective date of this paragraph
20 [revisor inserts date]. (the ins)

2005324
2-14
B

21 SECTION 9. 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.



BILL

INS 2-14B
CONT

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

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

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

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

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

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

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

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

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

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

SECTION 15. Initial applicability.

BILL

LRB-0535/1
RJM:hmh:pg

DWS:GRT
3-16A

TRANSACTIONS OF \$50,000 OR LESS; The treatment of sections 138.052 (9), 411.103(1)(e), 421.202(6), and 429.104(9) of the Statutes, and the creation of sections 138.052(9)(b), 411.103(1)(e) 1. and 2., 421.202(6)(b), and 429.104(9)(a) 1. and 2. and (b) of the statutes

SECTION 15

subsection.

INSERT
3-16D

Fix component

SECTION 16. Effective date.

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

(END)

NO # the day after publication except as follows: (P) (H) (NO #)
(CS) TRANSACTIONS OF \$50,000 OR LESS. The treatment of sections 138.052(9)(b), 411.103(1)(e) 1. and 2., 421.202(6)(b), and 429.104(9)(a) 1. and 2. and (b) of the statutes take effect on

INSERTS

2001 BILL

1 AN ACT to renumber 423.301; to amend 100.26 (4) and 423.302; and to create
 2 100.18 (10v), 423.301 (1) (title), 423.301 (2) and 423.301 (3) of the statutes;
 3 relating to: deceptive preapproval of open-end credit plans and providing a
 4 penalty;

INSERT REL B

Analysis by the Legislative Reference Bureau

INSERT ANALYSIS

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 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 (typically, a credit card) 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

BILL

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. *(These provisions)*

A violation of ~~this bill~~ 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. *(end ins)*

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:

LS94
2-1A

SECTION 1. 100.18 (10v) of the statutes is created to read:

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

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

2. "Directly" means in person, by mail or electronic mail addressed to the receiver, or by telephone.

3. "Merchant" has the meaning given in s. 421.301 (25).

4. "Open-end credit plan" has the meaning given in s. 421.301 (27).

5. "Organization" has the meaning given in s. 421.301 (28).

(b) *Deceptive preapproved rates, terms, or conditions.* 1. It is deceptive advertising for a merchant to directly communicate to a customer, or cause to be directly communicated to a customer, that the merchant has preapproved an extension of credit to the customer under an open-end credit plan and then, pursuant to the customer's response to the communication, to make an extension of

INS 2-1A
cont

BILL

1 credit to the customer under an open-end credit plan with rates, terms, or conditions
2 that are less financially favorable to the customer than those communicated.

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

7 3. Subdivision 1. does not apply to an extension of credit under an open-end
8 credit plan with different rates, terms, or conditions than those communicated to the
9 customer, if the difference in rates, terms, or conditions resulted from an adverse
10 change in the financial circumstances of the customer between the date on which the
11 merchant communicates preapproval and the date on which the merchant makes the
12 extension of credit.

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

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

22 3. Subdivision 1. 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



BILL

1 communicates preapproval and the date on which the merchant refuses to extend
2 credit.

3 **SECTION 2.** 100.26 (4) of the statutes is amended to read:

4 100.26 (4) Any person who violates s. 100.18 (1) to (8) or, (10), or (10v) or
5 100.182 is subject to a civil forfeiture of not less than \$50 nor more than \$200 for each
6 violation. *Leads*

7 **SECTION 3.** 423.301 of the statutes is renumbered 423.301 (1).

8 **SECTION 4.** 423.301 (1) (title) of the statutes is created to read:

9 423.301 (1) (title) GENERAL PROHIBITION.

10 **SECTION 5.** 423.301 (2) of the statutes is created to read:

11 423.301 (2) DECEPTIVE PREAPPROVED RATES, TERMS, OR CONDITIONS OF OPEN-END
12 CREDIT PLANS. (a) No merchant shall directly communicate to a customer, or cause
13 to be directly communicated to a customer, that the merchant has preapproved an
14 extension of credit to the customer under an open-end credit plan and then,
15 pursuant to the customer's response to the communication, make an extension of
16 credit to the customer under an open-end credit plan with rates, terms, or conditions
17 that are less financially favorable to the customer than those communicated.

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 an extension of credit under an open-end
23 credit plan with different rates, terms, or conditions than those communicated to a
24 customer, if the difference in rates, terms, or conditions resulted from an adverse
25 change in the financial circumstances of the customer between the date on which the

Insert
2-14 A

BILL

MS 2-14A
cont

1 merchant communicates preapproval and the date on which the merchant makes the
2 extension of credit.

3 **SECTION 6.** 423.301 (3) of the statutes is created to read:

4 **423.301 (3) DECEPTIVE PREAPPROVAL OF OPEN-END CREDIT PLANS.** (a) No merchant
5 shall refuse to extend credit to a customer under an open-end credit plan if the
6 customer requests the extension of credit in response to a direct communication from
7 the merchant, or a direct communication caused by the merchant, indicating that the
8 merchant has preapproved the extension of credit to the customer under an
9 open-end credit plan.

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

14 (c) Paragraph (a) 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 7.** 423.302 of the statutes is amended to read:

20 **423.302 Remedies and penalty.** In addition to any other remedy provided
21 by law, a customer who has been induced to consummate a consumer credit
22 transaction as a result of an advertising or communication in violation of s. 423.301
23 shall be entitled to a recovery from the merchant in accordance with s. 425.305.

24 ~~**SECTION 8. Initial applicability.**~~

(end ms)

BILL

SECTION 8

DECEPTIVE PRE-APPROVALS. The treatment of sections 100.18 (10v), 100.26(4), 423.301, and 423.302 are the creation of sections 423.301 (1) (Title), (2), and (3) of the statutes

1
2
3
4

~~This act~~ first ~~applies~~ ^{apply} an extension of credit or refusal to extend credit that takes place pursuant to a direct communication of preapproval made on the effective date of this subsection.

~~END~~

INSERT
3-16 B

of the statutes, the renumbering of section 423.301 of the statutes,

INSERTS

2001 SENATE BILL 84

March 13, 2001 - Introduced by Senators ROBSON, BURKE, DECKER and HANSEN, cosponsored by Representatives GROTHMAN, MILLER, BERCEAU, BLACK, BOCK, BOYLE, CULLEN, J. LEHMAN, MORRIS-TATUM, MUSSER, POCAN, REYNOLDS, SCHNEIDER, SIMICKI, TURNER, WASSERMAN and WOOD. Referred to Committee on Privacy, Electronic Commerce and Financial Institutions.

INSERT REL C

1 ~~AN ACT to amend 422.201 (3), to repeal and recreate 138.09 (title); and to~~
2 ~~create 138.14 of the statutes; relating to: payday loan providers, and providing~~
3 ~~a penalty.~~

INSERT ANALYSES C

Analysis by the Legislative Reference Bureau

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 the department of financial institutions (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



SENATE BILL 84

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 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.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill. *Levens*

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

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

2 *2*
3 *INSERT*
4 *3-10*
5 138.09 (title) **Licensed lenders.**

6 SECTION 2. 138.14 of the statutes is created to read:

7 138.14 **Payday loan providers.** (1) DEFINITIONS. In this section:

8 (a) "Check" has the meaning given in s. 403.104 (6).

9 (b) "Department" means the department of financial institutions.

10 (c) "Division" means the division of banking.

11 (d) "Payday loan" means any of the following:

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

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

17 (e) "Payday loan provider" means a person, other than a bank, savings bank,
18 savings and loan association, or credit union, who makes payday loans in the
ordinary course of business.

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

SENATE BILL 84

INS 2-1D
cont

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.

SENATE BILL 84

INS 2-1D cont

SECTION 2

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

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

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

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

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

~~SECTION 4. Initial applicability.~~

~~(#) This act first applies to payday loans made on the effective date of this subsection.~~

~~SECTION 5. Effective date.~~

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

(END)

INS 2-1 F

INS 3-16 E

PAYDAY LOANS: The treatment of sections 138.14 and 422.201(3) of the statutes

end ins >

end ins >



State of Wisconsin
2001 - 2002 LEGISLATURE

P2
LRB-3442/B

RJM:jld:ch

July 20 (budget permitting)

RMNR
DWR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

and required disclosures

liability under the Wisconsin Consumer Act;

Reger

1 **AN ACT to renumber 423.301; to renumber and amend 138.052 (9), 411.103**
 2 **(1) (e), 421.202 (6) and 429.104 (9); to amend 100.26 (4), 138.09 (3) (e) 1. a.,**
 3 **422.201 (3), 423.302, 428.101 (3), 788.01 and 788.015; to repeal and recreate**
 4 **138.09 (title); and to create 100.18 (10v), 138.052 (9) (b), 138.14, 411.103 (1) (e)**
 5 **1., 411.103 (1) (e) 2., 421.202 (6) (b), 422.422, 423.301 (1) (title), 423.301 (2),**
 6 **423.301 (3), 428.101 (4), 429.104 (9) (a) 1., 429.104 (9) (a) 2. and 429.104 (9) (b)**
 7 **of the statutes; relating to:** the scope of the Wisconsin Consumer Act ^{Plain} ~~and~~ the
 8 Wisconsin Motor Vehicle Consumer Lease Act; the authority of licensed
 9 lenders; the regulation of certain motor vehicle dealers, salespersons, and sales
 10 finance companies; the regulation of consumer leases under the uniform
 11 commercial code; arbitration of controversies arising out of consumer credit

and the law with regard to fraudulent representations and deceptive advertising

1 transactions; deceptive preapproval of open-end credit plans; payday loan
2 providers; and providing a penalty.

Sub-sub

Transactions of \$50,000 or less ✓

Analysis by the Legislative Reference Bureau

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 (consumer lease act). The consumer act and the consumer lease act provide obligations, remedies, and penalties that current law generally does not require for other transactions. Currently, the consumer act and the 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 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.

✓ INSERT ANALYSIS A

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 attorneys fees if a court holds that a portion of the lease resulted from 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 an amount of \$50,000 or less.

Sub-sub

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

Sub-subs
Fraudulent representations
and deceptive advertising

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.

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 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 (~~typically a credit card~~) 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.

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 the department of financial institutions (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.

INSERT ANALYSIS B
Sub-Sub
Payday loans

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 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.

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. 100.18 (10v) of the statutes is created to read:

2 100.18 (10v) (a) *Definitions*. In this subsection:

3 1. "Customer" means a person other than an organization who seeks or
4 acquires credit for personal, family, or household purposes.

5 2. "Directly" means in person, by mail or electronic mail addressed to the
6 receiver, or by telephone.

7 3. "Merchant" has the meaning given in s. 421.301 (25).

8 4. "Open-end credit plan" has the meaning given in s. 421.301 (27).

9 5. "Organization" has the meaning given in s. 421.301 (28).

10 (b) *Deceptive preapproved rates, terms, or conditions*. 1. It is deceptive
11 advertising for a merchant to directly communicate to a customer, or cause to be
12 directly communicated to a customer, that the merchant has preapproved an
13 extension of credit to the customer under an open-end credit plan and then,
14 pursuant to the customer's response to the communication, to make an extension of

1 credit to the customer under an open–end credit plan with rates, terms, or conditions
2 that are less financially favorable to the customer than those communicated.

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

7 3. Subdivision 1. does not apply to an extension of credit under an open–end
8 credit plan with different rates, terms, or conditions than those communicated to the
9 customer, if the difference in rates, terms, or conditions resulted from an adverse
10 change in the financial circumstances of the customer between the date on which the
11 merchant communicates preapproval and the date on which the merchant makes the
12 extension of credit.

13 (c) *Deceptive preapproval.* 1. It is deceptive advertising for a merchant to refuse
14 to extend credit to a customer under an open–end credit plan if the customer requests
15 the extension of credit in response to a direct communication from the merchant, or
16 a direct communication caused by the merchant, indicating that the merchant, has
17 preapproved the extension of credit to the customer under an open–end credit plan.

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

22 3. Subdivision 1. 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

1 communicates preapproval and the date on which the merchant refuses to extend
2 credit.

3 **SECTION 2.** 100.26 (4) of the statutes is amended to read:

4 100.26 (4) Any person who violates s. 100.18 (1) to (8) ~~or~~ (10), or (10v) or
5 100.182 is subject to a civil forfeiture of not less than \$50 nor more than \$200 for each
6 violation.

7 **SECTION 3.** 138.052 (9) of the statutes is renumbered 138.052 (9) (a) and
8 amended to read:

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

15 **SECTION 4.** 138.052 (9) (b) of the statutes is created to read:

16 138.052 (9) (b) Chapters 421 to 428 do not apply to the refinancing,
17 modification, extension, renewal, or assumption of a loan which had an original
18 principal balance in excess of \$50,000 if the unpaid principal balance of the loan has
19 been reduced to \$50,000 or less and the refinancing, modification, extension,
20 renewal, or assumption takes place on or after the effective date of this paragraph
21 [revisor inserts date].

22 **SECTION 5.** 138.09 (title) of the statutes is repealed and recreated to read:

23 **138.09 (title) Licensed lenders.**

24 **SECTION 6.** 138.09 (3) (e) 1. a. of the statutes is amended to read:

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

7 **SECTION 7.** 138.14 of the statutes is created to read:

8 **138.14 Payday loan providers. (1) DEFINITIONS.** In this section:

9 (a) "Check" has the meaning given in s. 403.104 (6).

10 (b) "Department" means the department of financial institutions.

11 (c) "Division" means the division of banking.

12 (d) "Payday loan" means any of the following:

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

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

18 (e) "Payday loan provider" means a person, other than a bank, savings bank,
19 savings and loan association, or credit union, who makes payday loans in the
20 ordinary course of business.

21 **(2) MAXIMUM FEES AND INTEREST FOR PAYDAY LOANS.** Notwithstanding ss. 138.09
22 and 422.201 (9), no payday loan provider may charge, contract for, or receive fees and
23 interest for a payday loan in an aggregate amount that exceeds 5% of the amount of
24 the payday loan.

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

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

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

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

22 (b) Every payday loan provider shall keep the records relating to payday loans
23 made by the payday loan provider separate from the records of any other business
24 of the payday loan provider.

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

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

9 SECTION 8. 411.103 (1) (e) of the statutes is renumbered 411.103 (1) (e) (intro)
10 and amended to read:

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

16 SECTION 9. 411.103 (1) (e) 1. of the statutes is created to read:

17 411.103 (1) (e) 1. For a lease entered into before the effective date of this
18 subdivision [revisor inserts date], \$25,000.

19 SECTION 10. 411.103 (1) (e) 2. of the statutes is created to read:

20 411.103 (1) (e) 2. For a lease entered into on or after the effective date of this
21 subdivision [revisor inserts date], \$50,000.

22 SECTION 11. 421.202 (6) of the statutes is renumbered 421.202 (6) (a) and
23 amended to read:

24 421.202 (6) (a) Consumer credit transactions in which the amount financed
25 exceeds \$25,000, motor vehicle consumer leases in which the total lease obligation

1 exceeds \$25,000, or other consumer transactions in which the cash price exceeds
2 \$25,000; if the consumer credit transaction, motor vehicle consumer lease, or other
3 consumer transaction was entered into before the effective date of this paragraph
4 [revisor inserts date].

5 SECTION 12. 421.202 (6) (b) of the statutes is created to read:

6 421.202 (6) (b) Consumer credit transactions in which the amount financed
7 exceeds \$50,000, motor vehicle consumer leases in which the total lease obligation
8 exceeds \$50,000, or other consumer transactions in which the cash price exceeds
9 \$50,000, if the consumer credit transaction, motor vehicle consumer lease, or other
10 consumer transaction was entered into on or after the effective date of this paragraph
11 [revisor inserts date].

12 SECTION 13. 422.201 (3) of the statutes is amended to read:

13 422.201 (3) ~~For Notwithstanding sub. (2), for~~ licensees under s. 138.09 and
14 under ss. 218.0101 to 218.0163 and for payday loan providers under s. 138.14, the
15 finance charge, calculated according to those sections, may not exceed the applicable
16 maximums permitted in and calculated under ss. 138.09, 138.14, and 218.0101 to
17 218.0163, respectively.

18 SECTION 14. 422.422 of the statutes is created to read:

19 **422.422 Arbitration of controversies under consumer credit**
20 **transactions. (1) PROHIBITED ARBITRATION AGREEMENTS.** Except as provided in sub.
21 (2), no agreement between the parties to a consumer credit transaction may contain
22 a provision requiring the parties to submit to arbitration a controversy that arises
23 after the date on which the parties enter into the consumer credit transaction and
24 that arises out of the consumer credit transaction or out of a failure to perform as
25 required under the consumer credit transaction.

INSEAT
10-17

1 (2) PERMISSIBLE ARBITRATION AGREEMENTS. Subsection (1) does not prohibit the
2 parties to a consumer credit transaction from agreeing in writing to submit a
3 controversy to arbitration, if the parties enter into the agreement after the date on
4 which the controversy arises.

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

7 SECTION 15. 423.301 of the statutes is renumbered 423.301 (1).

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

9 423.301 (1) (title) GENERAL PROHIBITION.

10 SECTION 17. 423.301 (2) of the statutes is created to read:

11 423.301 (2) DECEPTIVE PREAPPROVED RATES, TERMS, OR CONDITIONS OF OPEN-END
12 CREDIT PLANS. (a) No merchant ~~shall~~ ^{may} directly communicate to a customer, or cause
13 to be directly communicated to a customer, that the merchant has preapproved an
14 extension of credit to the customer under an open-end credit plan and then,
15 pursuant to the customer's response to the communication, make an extension of
16 credit to the customer under an open-end credit plan with rates, terms, or conditions
17 that are less financially favorable to the customer than those communicated.

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 an extension of credit under an open-end
23 credit plan with different rates, terms, or conditions than those communicated to a
24 customer, if the difference in rates, terms, or conditions resulted from an adverse
25 change in the financial circumstances of the customer between the date on which the

1 merchant communicates preapproval and the date on which the merchant makes the
2 extension of credit.

3 **SECTION 18.** 423.301 (3) of the statutes is created to read:

4 **423.301 (3) DECEPTIVE PREAPPROVAL OF OPEN-END CREDIT PLANS.** (a) No merchant
5 ~~shall~~ ^{may} refuse to extend credit to a customer under an open-end credit plan if the
6 customer requests the extension of credit in response to a direct communication from
7 the merchant, or a direct communication caused by the merchant, indicating that the
8 merchant has preapproved the extension of credit to the customer under an
9 open-end credit plan.

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

14 (c) Paragraph (a) 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 19.** 423.302 of the statutes is amended to read:

20 **423.302 Remedies and penalty.** In addition to any other remedy provided
21 by law, a customer who has been induced to consummate a consumer credit
22 transaction as a result of an advertising or communication in violation of s. 423.301
23 shall be entitled to a recovery from the merchant in accordance with s. 425.305.

24 **SECTION 20.** 428.101 (3) of the statutes is amended to read:

INS 201
12-23-22

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

5 **SECTION 21.** 428.101 (4) of the statutes is created to read:

6 428.101 (4) Loans made on or after the effective date of this subsection
7 [revisor inserts date], by a creditor to a customer and which are secured by a first lien
8 real estate mortgage or equivalent security interest if the amount financed is
9 \$50,000 or less.

10 **SECTION 22.** 429.104 (9) of the statutes is renumbered 429.104 (9) (a) (intro) and
11 amended to read:

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

19 **SECTION 23.** 429.104 (9) (a) 1. of the statutes is created to read:

20 429.104 (9) (a) 1. For a lease entered into before the effective date of this
21 subdivision [revisor inserts date], \$25,000.

22 **SECTION 24.** 429.104 (9) (a) 2. of the statutes is created to read:

23 429.104 (9) (a) 2. For a lease entered into on or after the effective date of this
24 subdivision [revisor inserts date], \$50,000.

25 **SECTION 25.** 429.104 (9) (b) of the statutes is created to read:

1 429.104 (9) (b) “Consumer lease” or “lease” does not include a credit sale, as
2 defined under 12 CFR 226.2 (a) (16).

3 **SECTION 26.** 788.01 of the statutes is amended to read:

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

14 **SECTION 27.** 788.015 of the statutes is amended to read:

15 **788.015 Agreement to arbitrate real estate transaction disputes.** ~~A~~
16 Except as provided in s. 422.422, a provision in any written agreement between a
17 purchaser or seller of real estate and a real estate broker, or between a purchaser and
18 seller of real estate, to submit to arbitration any controversy between them arising
19 out of the real estate transaction is valid, irrevocable and enforceable except upon
20 any grounds that exist at law or in equity for the revocation of any agreement. The
21 agreement may limit the types of controversies required to be arbitrated and specify
22 a term during which the parties agree to be bound by the agreement.

23 **SECTION 28. Initial applicability.**

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 **SECTION 29. Effective dates.** This act takes effect on the day after publication
18 except as follows:

19 (1) TRANSACTIONS OF \$50,000 OR LESS. The treatment of sections 138.09 (title) and
20 (3) (e) 1. a. and 428.101 (3) and (4) of the statutes, the renumbering and amendment
21 of sections 138.052 (9), 411.103 (1) (e), 421.202 (6), and 429.104 (9) of the statutes,
22 and the creation of sections 138.052 (9) (b), 411.103 (1) (e) 1. and 2., 421.202 (6) (b),
23 and 429.104 (9) (a) 1. and 2. and (b) of the statutes take effect on the first day of the
24 6th month beginning after publication.

INSERT
15-16
16

INSERT ANALYSIS A

Liability under the consumer act

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.

Currently, with certain exceptions, the secretary of the department 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.

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 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. 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.

INSERT ANALYSIS B

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^{es} of insurance or real estate are subject to the law that generally prohibits fraudulent representations and deceptive advertising.

INSERT 6-2

SECTION 1. 100.18 (11) (b) 2. of the statutes is amended to read:

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

History: 1977 c. 29 s. 1650m (4); 1979 c. 89, 327, 350; 1981 c. 35³; 1983 a. 215; 1985 a. 284, 332; 1989 a. 31; 1991 a. 278; 1993 a. 158, 492; 1995 a. 27, 179; 1997 a. 111, 201.

SECTION 2. 100.18 (12) of the statutes is repealed.

INSERT 10-17

SECTION 3. 422.308 (2g) of the statutes is created to read:

422.308 (2g) (a) This paragraph applies to every open-end credit plan under which a customer obtains credit pursuant to an application described under sub. (1) or pursuant to a transaction described under sub. (2). If the annual percentage rate under the open-end credit plan is fixed for a specified period of time and then automatically increases or becomes a variable rate, the creditor under the open-end

credit plan, before the first transaction is made under the open-end credit plan, shall provide the customer the following notice, on a separate document in not less than 12-point boldface type:

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

(b) Except as otherwise provided in this paragraph, the creditor shall give the customer the notice required under paragraph (a) in person or shall mail the notice to the customer in an envelope marked in not less than 12-point boldface type "ATTENTION: IMPORTANT DISCLOSURE AS REQUIRED BY STATE OF WISCONSIN." If the customer is to receive a credit card under the open-end credit plan, the notice shall be delivered to the customer along with the credit card.

SECTION 4. 422.308 (2r) of the statutes is created to read:

422.308 (2r) (a) This paragraph applies to every open-end credit plan under which a customer obtains credit pursuant to an application described under sub. (1) or pursuant to a transaction described under sub. (2). If the creditor under the open-end credit plan furnishes the customer with a periodic statement that states a minimum monthly payment due under the open-end credit plan, the creditor shall

include, as part of or along with the periodic statement, a notice in not less than 12-point boldface type indicating the total amount of finance charges the customer would pay if he or she entered into no transactions under the open-end credit plan after the date of the periodic statement and paid off the debt owing under the open-end credit plan 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 shall so indicate.

INSERT 12-23

SECTION 5. 425.304 (1) of the statutes is amended to read:

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

History: 1971 c. 239.

SECTION 6. 426.110 (14) of the statutes is amended to read:

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

History: 1971 c. 239; 1975 c. 407; 1979 c. 89; 1985 a. 256; 1991 a. 316; 1995 a. 27, 225, 329; 1999 a. 85.

INSERT 15-16



NS 15-16
cont

initial app → ~~§~~ CLASS ACTIONS UNDER THE WISCONSIN CONSUMER ACT. ✓ The treatment of section 426.110 (14) ✓ of the statutes first applies to actions arising on the effective date of this subsection.

→ ~~§~~ PENALTIES UNDER THE WISCONSIN CONSUMER ACT. ✓ The treatment of section 425.304 (1) ✓ of the statutes first applies to violations occurring on the effective date of this subsection. ✓

Leads inserts >

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3442/P2dn

RJM:.....

date

Jld

Senator Burke:

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. Please note the following:

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 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. ^{on which} 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 ^{on which} 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 ^{or less} 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} ~~which~~ 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.

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.

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

the limitations

NO #

However, it is questionable whether these limitations, regardless of whether they are in the statutes or rules, may be enforced against federally chartered financial institutions,

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-8442/P2dn
RJM:jld:ch

July 9, 2001

Senator Burke:

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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.

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