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9-21-01

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 AN ACT *to repeal* 100.18 (12); *to renumber* 423.301; *to renumber and amend*
2 138.052 (9), 411.103 (1) (e), 421.202 (6) and 429.104 (9); *to amend* 100.18 (11)
3 (b) 2., 100.26 (4), 138.09 (3) (e) 1. a., 422.201 (3), 423.302, 425.304 (1), 426.110
4 (14), 428.101 (3), 788.01 and 788.015; *to repeal and recreate* 138.09 (title);
5 and *to create* 100.18 (10v), 138.052 (9) (b), 138.14, 411.103 (1) (e) 1., 411.103
6 (1) (e) 2., 421.202 (6) (b), 422.308 (2g), 422.308 (2r), 422.422, 423.301 (1) (title),
7 423.301 (2), 423.301 (3), 428.101 (4), 429.104 (9) (a) 1., 429.104 (9) (a) 2. and
8 429.104 (9) (h) of the statutes; **relating to:** the scope of the Wisconsin
9 Consumer Act, the Wisconsin Motor Vehicle Consumer Lease Act, and the law
10 with regard to fraudulent representations and deceptive advertising; liability
11 and required disclosures under the Wisconsin Consumer Act; the authority of
12 licensed lenders; the regulation of certain motor vehicle dealers, salespersons,
13 and sales finance companies; the regulation of consumer leases under the
14 uniform commercial code; arbitration of controversies arising out of consumer

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

Analysis by the Legislative Reference Bureau

Transactions of \$50,000 or less

Under current law, a transaction in which a consumer is granted credit in an amount of \$25,000 or less and which is entered into for personal, family, or household purposes (consumer credit transaction) is generally subject to the Wisconsin Consumer Act (consumer act). In addition, certain motor vehicle leases that are entered into by a consumer for personal, family, household, or agricultural purposes are subject to the Wisconsin Motor Vehicle Consumer Lease Act (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.

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.

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

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assessed in the transaction, *up to a maximum of \$5,000*, or the customer's actual damages.

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

This bill increases to \$500,000 the maximum amount of penalties available under this type of class action lawsuit.

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.

Arbitration of consumer claims

Currently, the parties to any contract, including a contract that evidences a consumer credit transaction, generally may agree to settle by arbitration any controversy that arises out of the contract or out of the refusal to perform as required under the contract. This bill limits the ability of the parties to a consumer credit transaction to agree in advance to arbitrate a controversy that arises out of the transaction. Under the bill, no agreement between the parties to a consumer credit transaction may require the parties to arbitrate any controversy that arises out of the transaction, or out of a failure to perform as required under the transaction, and that arises after the date of the transaction. However, under the bill, the parties to a consumer credit transaction may agree in writing to submit a controversy to arbitration, if the parties enter into the agreement after the date on which the controversy arises.

Fraudulent representations and deceptive advertising

Under current law, no person may distribute an untrue statement in an advertisement with the intent to induce the public to enter into any contract with the person. In addition to this general prohibition on deceptive advertising, no merchant may advertise any statement or representation with regard to the extension of consumer credit that is false, misleading, or deceptive. The department of agriculture, trade and consumer protection (DATCP) may prosecute a person who distributes deceptive advertising. With certain exceptions, a person who distributes deceptive advertising may be fined not less than \$50 nor more than \$200. In addition, a person injured by deceptive advertising may sue and generally may recover any pecuniary loss together with reasonable attorney fees. Furthermore, a consumer who enters into a transaction resulting from a misleading statement with regard to the extension of credit may sue to void the transaction, recover amounts paid pursuant to the transaction, and recover reasonable attorney fees.

This bill specifies that certain representations regarding an open-end credit plan are both deceptive advertising and false, misleading, or deceptive statements regarding consumer credit. Under this bill, a merchant may not indicate to a consumer that the merchant has preapproved an extension of credit to the consumer under an open-end credit plan and then extend credit to the consumer under terms that are less financially favorable to the consumer than those indicated. In addition, this bill prohibits a merchant from refusing to extend credit after indicating preapproval of an extension of credit under an open-end credit plan. It is not a defense to a violation of this bill for the merchant to indicate that its preapproval of an extension of credit is subject to the merchant's investigation of the consumer's financial information. However, under this bill it is not a violation for the merchant to extend credit on different terms, or refuse to extend credit, because of an adverse change in the financial circumstances of the consumer.

A violation of these provisions would be subject to a forfeiture of not less than \$50 nor more than \$200. In addition, this bill retains the private cause of action and the authority of DATCP to prosecute violations in current law.

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

Payday loans

Under current law, a lender other than a bank, savings bank, savings and loan association, or credit union generally must obtain a license from the division of banking in 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 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,

1 pursuant to the customer's response to the communication, to make an extension of
2 credit to the customer under an open-end credit plan with rates, terms, or conditions
3 that are less financially favorable to the customer than those communicated.

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

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

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

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

23 3. Subdivision 1. does not apply to a refusal to extend credit under an open-end
24 credit plan, if the refusal resulted from an adverse change in the financial
25 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.** 100.18 (11) (b) 2. of the statutes is amended to read:

4 100.18 (11) (b) 2. Any person suffering pecuniary loss because of a violation of
5 this section by any other person may sue in any court of competent jurisdiction and
6 shall recover such pecuniary loss, together with costs, including reasonable attorney
7 fees, ~~except that no attorney fees may be recovered from a person licensed under ch.~~
8 ~~452 while that person is engaged in real estate practice, as defined in s. 452.01 (6).~~
9 Any person suffering pecuniary loss because of a violation by any other person of any
10 injunction issued under this section may sue for damages therefor in any court of
11 competent jurisdiction and shall recover twice the amount of such pecuniary loss,
12 together with costs, including reasonable attorney fees, ~~except that no attorney fees~~
13 ~~may be recovered from a person licensed under ch. 452 while that person is engaged~~
14 ~~in real estate practice, as defined in s. 452.01 (6).~~

15 **SECTION 3.** 100.18 (12) [✓] of the statutes is repealed.

16 **SECTION 4.** 100.26 (4) [✓] of the statutes is amended to read:

17 100.26 (4) Any person who violates s. 100.18 (1) to (8) ~~or~~, (10), or (10v) or
18 100.182 is subject to a civil forfeiture of not less than \$50 nor more than \$200 for each
19 violation.

20 **SECTION 5.** 138.052 (9) [✓] of the statutes is renumbered 138.052 (9) (a) and
21 amended to read:

22 138.052 (9) (a) Chapters 421 to 428 do not apply to the refinancing,
23 modification, extension, renewal, or assumption of a loan which had an original
24 principal balance in excess of \$25,000 if the unpaid principal balance of the loan has
25 been reduced to \$25,000 or less and the refinancing, modification, extension,

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

3 **SECTION 6.** 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 7.** 138.09 (title) ✓ of the statutes is repealed and recreated to read:

11 **138.09 (title) Licensed lenders.**

12 **SECTION 8.** 138.09 (3) (e) 1. a. ✓ of the statutes is amended to read:

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

19 **SECTION 9.** 138.14 ✓ of the statutes is created to read:

20 **138.14 Payday loan providers. (1) DEFINITIONS.** In this section:

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

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

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

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

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

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

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

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

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

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

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

21 (5) REPORTING AND RECORDKEEPING. (a) On or before March 15, every payday
22 loan provider shall make an annual report to the division and shall pay any
23 reasonable filing fee imposed by the division. The report shall cover business
24 relating to payday loans made by the payday loan provider during the preceding
25 calendar year and shall include any relevant information required by the division.

1 The report shall be made upon forms provided by the division and shall be signed and
2 verified by the oath or affirmation of the payday loan provider if an individual, one
3 of the partners if a partnership, a member or manager if a limited liability company,
4 or an officer of the corporation or association if a corporation or association. A payday
5 loan provider that is licensed under s. 138.09 may include the information required
6 to be reported under this paragraph in the payday loan provider's report under s.
7 138.09 (3) (f), if the information required under this paragraph is stated separately
8 in the report from information relating to the payday loan provider's other business.

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

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

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

20 SECTION 10. 411.103 (1) (e) ✓ of the statutes is renumbered 411.103 (1) (e) (intro)
21 and amended to read:

22 411.103 (1) (e) (intro.) "Consumer lease" means a lease that a lessor regularly
23 engaged in the business of leasing or selling makes to a lessee who is an individual
24 and who takes under the lease primarily for a personal, family, or household purpose,

1 if the total payments to be made under the lease contract, excluding payments for
2 options to renew or buy, do not exceed ~~\$25,000~~, the following:

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

4 411.103 (1) (e) 1. For a lease entered into before the effective date of this
5 subdivision [revisor inserts date], \$25,000.

6 SECTION 12. 411.103 (1) (e) 2. of the statutes is created to read:

7 411.103 (1) (e) 2. For a lease entered into on or after the effective date of this
8 subdivision [revisor inserts date], \$50,000.

9 SECTION 13. 421.202 (6) of the statutes is renumbered 421.202 (6) (a) and
10 amended to read:

11 421.202 (6) (a) Consumer credit transactions in which the amount financed
12 exceeds \$25,000, motor vehicle consumer leases in which the total lease obligation
13 exceeds \$25,000, or other consumer transactions in which the cash price exceeds
14 \$25,000, if the consumer credit transaction, motor vehicle consumer lease, or other
15 consumer transaction was entered into before the effective date of this paragraph
16 [revisor inserts date].

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

18 421.202 (6) (b) Consumer credit transactions in which the amount financed
19 exceeds \$50,000, motor vehicle consumer leases in which the total lease obligation
20 exceeds \$50,000, or other consumer transactions in which the cash price exceeds
21 \$50,000, if the consumer credit transaction, motor vehicle consumer lease, or other
22 consumer transaction was entered into on or after the effective date of this paragraph
23 [revisor inserts date].

24 SECTION 15. 422.201 (3) of the statutes is amended to read:

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1 422.201 (3) ~~For~~ Notwithstanding sub. (2), for licensees under s. 138.09 and
2 under ss. 218.0101 to 218.0163 and for payday loan providers under s. 138.14, the
3 finance charge, ~~calculated according to those sections,~~ may not exceed the applicable
4 maximums permitted in and calculated under ss. 138.09, 138.14, and 218.0101 to
5 218.0163, ~~respectively.~~

6 **SECTION 16.** 422.308 (2g) [✓] of the statutes is created to read:

7 422.308 (2g) (a) This paragraph applies to every open–end credit plan under
8 which a customer obtains credit pursuant to an application described under sub. (1)
9 or pursuant to a transaction described under sub. (2). If the annual percentage rate
10 under the open–end credit plan is fixed for a specified period of time and then
11 automatically increases or becomes a variable rate, the creditor under the open–end
12 credit plan, before the first transaction is made under the open–end credit plan, shall
13 provide the customer the following notice, on a separate document in not less than
14 12–point boldface type:

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

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

7 SECTION 17. 422.308 (2r) ✓ of the statutes is created to read:

8 422.308 (2r) (a) This paragraph applies to every open-end credit plan under
9 which a customer obtains credit pursuant to an application described under sub. (1)
10 or pursuant to a transaction described under sub. (2). If the creditor under the
11 open-end credit plan furnishes the customer with a periodic statement that states
12 a minimum monthly payment due under the open-end credit plan, the creditor shall
13 include, as part of or along with the periodic statement, a notice in not less than
14 12-point boldface type indicating the total amount of finance charges the customer
15 would pay if he or she entered into no transactions under the open-end credit plan
16 after the date of the periodic statement and paid off the debt owing under the
17 open-end credit plan by making only the minimum monthly payment every month.
18 If the customer is unable to pay off the debt owing under the open-end credit plan
19 by making the minimum monthly payment every month, the notice shall so indicate.

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

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

1 that arises out of the consumer credit transaction or out of a failure to perform as
2 required under the consumer credit transaction.

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

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

9 SECTION 19. 423.301[✓] of the statutes is renumbered 423.301 (1).

10 SECTION 20. 423.301 (1) (title)[✓] of the statutes is created to read:

11 423.301 (1) (title) GENERAL PROHIBITION.

12 SECTION 21. 423.301 (2)[✓] of the statutes is created to read:

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

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

24 (c) Paragraph (a) does not apply to an extension of credit under an open-end
25 credit plan with different rates, terms, or conditions than those communicated to a

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

5 **SECTION 22.** 423.301 (3) of the statutes is created to read:

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

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

16 (c) Paragraph (a) does not apply to a refusal to extend credit under an open-end
17 credit plan, if the refusal resulted from an adverse change in the financial
18 circumstances of the customer between the date on which the merchant
19 communicates preapproval and the date on which the merchant refuses to extend
20 credit.

21 **SECTION 23.** 423.302 of the statutes is amended to read:

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

1 **SECTION 24.** 425.304 (1) ✓ of the statutes is amended to read:

2 425.304 (1) Twice the amount of the finance charge in connection with the
3 transaction, except that the liability under this subsection shall not be less than \$100
4 nor greater than ~~\$1,000~~ \$5,000; or

5 **SECTION 25.** 426.110 (14) ✓ of the statutes is amended to read:

6 426.110 (14) A merchant shall not be liable in a class action for specific
7 penalties under s. 425.302 (1) (a), 425.303 (1), 425.304 (1), 425.305 (1) or 429.301 (1)
8 for which it would be liable in individual actions by reason of violations of chs. 421
9 to 427 and 429 or of conduct prescribed in sub. (2) unless it is shown by a
10 preponderance of the evidence that the violation was a wilful and knowing violation
11 of chs. 421 to 427 and 429. ~~No~~ A recovery in an action under this subsection may not
12 exceed ~~\$100,000~~ the lesser of \$500,000 or 1% of the net worth of the merchant liable
13 in the action.

14 **SECTION 26.** 428.101 (3) ✓ of the statutes is amended to read:

15 428.101 (3) Loans made on or after November 1, 1981, and before the effective
16 date of this subsection [revisor inserts date], by a creditor to a customer and which
17 are secured by a first lien real estate mortgage or equivalent security interest if the
18 amount financed is \$25,000 or less.

19 **SECTION 27.** 428.101 (4) ✓ of the statutes is created to read:

20 428.101 (4) Loans made on or after the effective date of this subsection
21 [revisor inserts date], by a creditor to a customer and which are secured by a first lien
22 real estate mortgage or equivalent security interest if the amount financed is
23 \$50,000 or less.

24 **SECTION 28.** 429.104 (9) ✓ of the statutes is renumbered 429.104 (9) (a) (intro) and
25 amended to read:

1 429.104 (9) (a) (intro.) “Consumer lease” or “lease” means a lease entered into
2 in this state that transfers the right of possession and use by a natural person of a
3 motor vehicle primarily for a personal, family, household, or agricultural purpose, for
4 a period of time exceeding 4 months, if the total lease obligation, excluding any option
5 to purchase or otherwise become owner of the motor vehicle at the expiration of the
6 consumer lease, does not exceed \$25,000. ~~The term does not include a credit sale, as~~
7 ~~defined under 12 CFR 226.2 (a) (16).~~ the following:

8 **SECTION 29.** 429.104 (9) (a) 1. [✓] of the statutes is created to read:

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

11 **SECTION 30.** 429.104 (9) (a) 2. [✓] of the statutes is created to read:

12 429.104 (9) (a) 2. For a lease entered into on or after the effective date of this
13 subdivision [revisor inserts date], \$50,000.

14 **SECTION 31.** 429.104 (9) (b) [✓] of the statutes is created to read:

15 429.104 (9) (b) “Consumer lease” or “lease” does not include a credit sale, as
16 defined under 12 CFR 226.2 (a) (16).

17 **SECTION 32.** 788.01 [✓] of the statutes is amended to read:

18 **788.01 Arbitration clauses in contracts enforceable.** ~~A~~ Except as
19 provided in s. 422.422, a provision in any written contract to settle by arbitration a
20 controversy thereafter arising out of the contract, or out of the refusal to perform the
21 whole or any part of the contract, or an agreement in writing between 2 or more
22 persons to submit to arbitration any controversy existing between them at the time
23 of the agreement to submit, shall be valid, irrevocable and enforceable except upon
24 such grounds as exist at law or in equity for the revocation of any contract. This
25 chapter shall not apply to contracts between employers and employees, or between

1 employers and associations of employees, except as provided in s. 111.10, nor to
2 agreements to arbitrate disputes under s. 101.143 (6s) or 230.44 (4) (bm).

3 **SECTION 33.** 788.015[✓] of the statutes is amended to read:

4 **788.015 Agreement to arbitrate real estate transaction disputes.** ~~A~~
5 Except as provided in s. 422.422, a provision in any written agreement between a
6 purchaser or seller of real estate and a real estate broker, or between a purchaser and
7 seller of real estate, to submit to arbitration any controversy between them arising
8 out of the real estate transaction is valid, irrevocable and enforceable except upon
9 any grounds that exist at law or in equity for the revocation of any agreement. The
10 agreement may limit the types of controversies required to be arbitrated and specify
11 a term during which the parties agree to be bound by the agreement.

12 **SECTION 34. Initial applicability.**

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

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

22 (3) **DECEPTIVE PREAPPROVALS.** The treatment of sections 100.18 (10v), 100.26 (4),
23 and 423.302 of the statutes, the renumbering of section 423.301 of the statutes, and
24 the creation of sections 423.301 (1) (title), (2), and (3) of the statutes first apply an

1 extension of credit or refusal to extend credit that takes place pursuant to a direct
2 communication of preapproval made on the effective date of this subsection.

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

5 (5) CLASS ACTIONS UNDER THE WISCONSIN CONSUMER ACT. The treatment of
6 section 426.110 (14) of the statutes first applies to actions arising on the effective date
7 of this subsection.

8 (6) PENALTIES UNDER THE WISCONSIN CONSUMER ACT. The treatment of section
9 425.304 (1) of the statutes first applies to violations occurring on the effective date
10 of this subsection.

11 **SECTION 35. Effective dates.** This act takes effect on the day after publication
12 except as follows:

13 (1) TRANSACTIONS OF \$50,000 OR LESS. The treatment of sections 138.09 (title) and
14 (3) (e) 1. a. and 428.101 (3) and (4) of the statutes, the renumbering and amendment
15 of sections 138.052 (9), 411.103 (1) (e), 421.202 (6), and 429.104 (9) of the statutes,
16 and the creation of sections 138.052 (9) (b), 411.103 (1) (e) 1. and 2., 421.202 (6) (b),
17 and 429.104 (9) (a) 1. and 2. and (b) of the statutes take effect on the first day of the
18 6th month beginning after publication.

19 (2) PAYDAY LOANS. The treatment of sections 138.14 and 422.201 (3) of the
20 statutes takes effect on the first day of the 6th month beginning after publication.

21 (END)

2001 BILL

1 AN ACT to renumber and amend 421.301 (9); and to create 421.301 (9) (b) and
 2 421.301 (37v) of the statutes; relating to: specifying that certain rent-to-own
 3 agreements are subject to the Wisconsin Consumer Act.

Analysis by the Legislative Reference Bureau

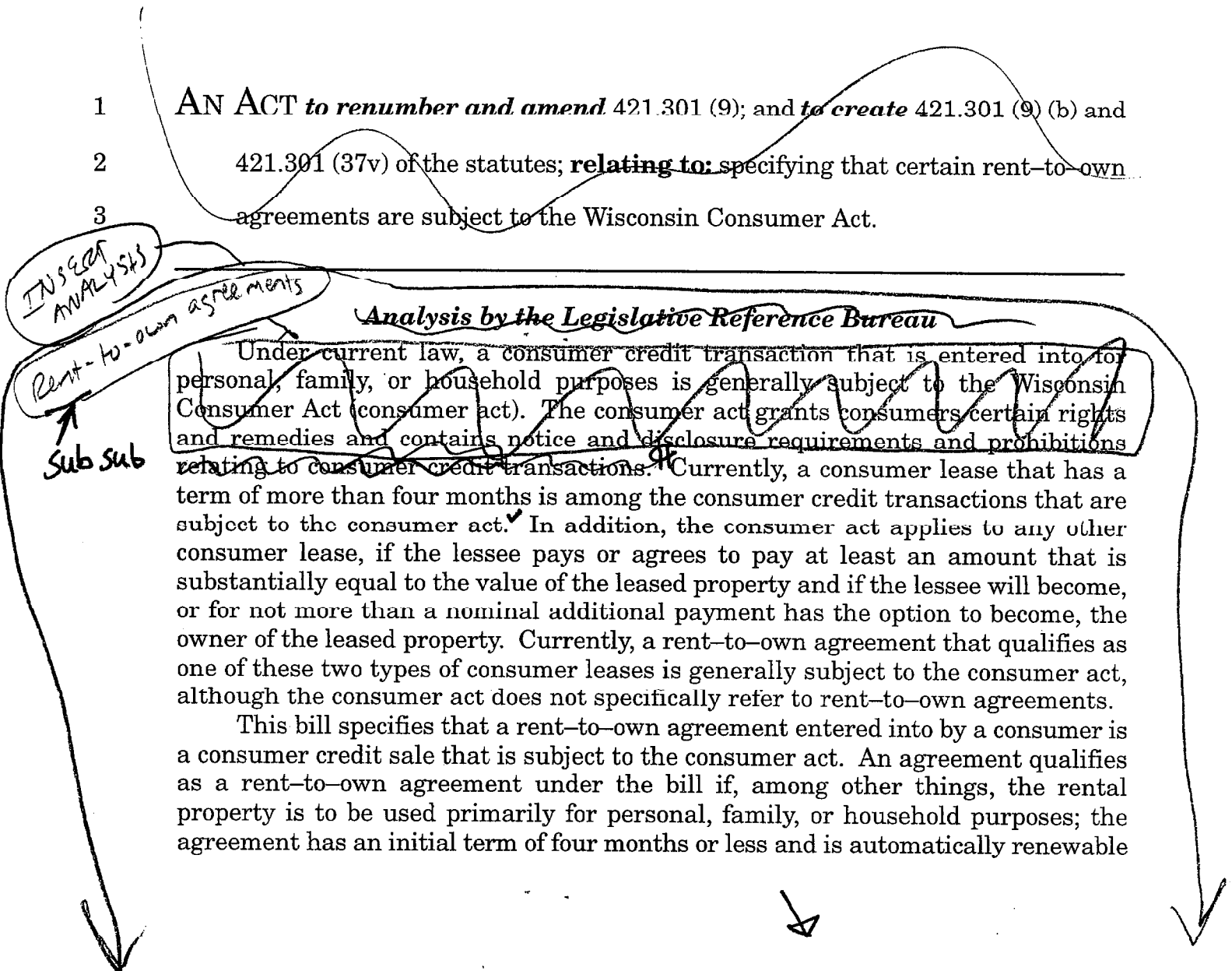
Under current law, a consumer credit transaction that is entered into for personal, family, or household purposes is generally subject to the Wisconsin Consumer Act (consumer act). The consumer act grants consumers certain rights and remedies and contains notice and disclosure requirements and prohibitions relating to consumer credit transactions. Currently, a consumer lease that has a term of more than four months is among the consumer credit transactions that are subject to the consumer act. In addition, the consumer act applies to any other consumer lease, if the lessee pays or agrees to pay at least an amount that is substantially equal to the value of the leased property and if the lessee will become, or for not more than a nominal additional payment has the option to become, the owner of the leased property. Currently, a rent-to-own agreement that qualifies as one of these two types of consumer leases is generally subject to the consumer act, although the consumer act does not specifically refer to rent-to-own agreements.

This bill specifies that a rent-to-own agreement entered into by a consumer is a consumer credit sale that is subject to the consumer act. An agreement qualifies as a rent-to-own agreement under the bill if, among other things, the rental property is to be used primarily for personal, family, or household purposes; the agreement has an initial term of four months or less and is automatically renewable

INSERT ANALYSIS

Rent-to-own agreements

Sub sub



INS ANALYSIS
CONT.

BILL

with each payment after the initial term; the agreement does not require the consumer to renew the agreement beyond the initial term; and the agreement permits, but does not require, the consumer to acquire ownership of the personal property.

(LMS)

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

INS 98
11-23

1 SECTION 1. 421.301 (9) of the statutes is renumbered 421.301 (9) (intro.) and
2 amended to read:

3 421.301 (9) (intro.) "Consumer credit sale" means a sale of goods, services or
4 an interest in land to a customer on credit where the debt is payable in instalments
5 or a finance charge is imposed and includes any all of the following:

6 (a) Any agreement in the form of a bailment of goods or lease of goods or real
7 property if the bailee or lessee pays or agrees to pay as compensation for use a sum
8 substantially equivalent to or in excess of the aggregate value of the goods or real
9 property involved and it is agreed that the bailee or lessee will become, or for no other
10 or a nominal consideration has the option to become, the owner of the goods or real
11 property upon full compliance with the terms of the agreement.

12 SECTION 2. 421.301 (9) (b) of the statutes is created to read:

13 421.301 (9) (b) A rent-to-own agreement.

14 SECTION 3. 421.301 (37v) of the statutes is created to read:

15 421.301 (37v) "Rent-to-own agreement" means an agreement between a
16 merchant and a customer for the use of personal property if all of the following
17 conditions are met:

18 (a) The personal property that is rented under the agreement is to be used
19 primarily for personal, family, or household purposes.

INS 11-23
cont

BILL

1
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7

(b) The agreement has an initial term of 4 months or less and is automatically renewable with each payment after the initial term.

(c) The agreement does not obligate or require the customer to renew the agreement beyond the initial term.

(d) The agreement permits, but does not obligate, the customer to acquire ownership of the personal property. *Lead us*

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3442/P2dn
RJM:jld:ch

3
↑
stays

July 9, 2001 } new date

NO # is the same as the "P2" version, except this draft incorporates LRB-3541/1, regarding rent-to-own agreements. This draft NO #

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:

The remainder of this drafter's note is taken from the "P1" version

1. It was unclear from the instructions whether you wanted to incorporate the payday loan provisions of SB-84 or create provisions limiting payday loan interest at 26%. This draft incorporates SB-84. Among other things, SB-84 limits fees and interest in payday loans at 5% of the amount of the payday loan. Please let me know if I have misunderstood your intent.
2. The instructions indicated that the draft should require clearer disclosure of teaser interest rates. I had to fill in a lot of the details of this instruction and I may have done so in a manner that you do not intend. Although federal law generally preempts the state from regulating the content of applications for credit cards (see 15 USC 1610 (e)), there are other ways to accomplish the intent of this instruction. This draft requires a detailed disclosure to be made before the customer enters into a transaction under the open-end credit plan. This timing gets the notice to the customer before he or she uses the credit. The creditor in many cases could include the disclosure along with the initial disclosures required under the federal Truth In Lending Act (see 12 CFR 226.6).

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

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

3. The provision increasing the maximum liability under a class action for certain violations of the consumer act first applies to actions arising on the date on which the provision becomes law. This treatment, in effect, grandfathers any creditors that may have made a business decision to permit ongoing violations of the consumer act and

risk the current \$100,000 liability. Another option would be to apply the increased maximum to actions *filed* on the date on which the provision becomes law. This option may be viewed by some as unfair because it may penalize creditors that would have conformed their behavior to the law had they known their liability was subject to the increased maximum.

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

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

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

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3442/P3dn
RJM:jld:kjf

September 20, 2001

Senator Burke:

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

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

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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.

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

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

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

Barman, Mike

From: Marchant, Robert
Sent: Friday, September 21, 2001 1:30 PM
To: Barman, Mike
Subject: FW: LRB 3442/P3

Mike, would you please take care of this. Please check to make sure Burke is the requester.

Let me know if you are not able to take care of this. Thanks.

Rob

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

From: Bjork, Tanya
Sent: Friday, September 21, 2001 1:19 PM
To: Marchant, Robert
Subject: LRB 3442/P3

Please email me the draft and notes you sent hard copy.

Thanks

Updated
Request Sheet
SO next version
will be e-mailed
when submitted
09-21-01
GMB

Barman, Mike

From: Barman, Mike
Sent: Friday, September 21, 2001 2:41 PM
To: Sen.Burke
Subject: LRB-3442/P3 (requested by Tanya Bjork)



01-3442/P3



01-3442/P3dn

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

Marchant, Robert

To: Bjork, Tanya
Subject: Consumer draft

Tanya--

I am back from my leave and I wanted to touch base with you regarding the consumer act draft. Have you received any further recommendations from the consumer law folks? My notes reflect that we are awaiting further information regarding financial privacy.

Robert J. Marchant
Legislative Attorney
State of Wisconsin Legislative Reference Bureau
608-261-4454

10-2-01 mtg. w/ Burke's
staff, etc.

1 Delete next-to-own price

2 Add the disclosure on pg. 14 to each billing statement, too.
OK re: presumption

NOTE Electronic notice? This draft
has writes.

3 Change mutual apps per DISC opt-out Maybe unconst./due
process?

4 425.302 ↑ \$500
.303 ↑ ~~\$1000~~ \$1000


5 Add the ATM/debit card limit into WI law, even though it is
already in rule.

6 426.110 (3) RP
Dir. App to cases filed


7 426.104 (4) Am so that it only provides safe harbor from
administrative enforcement by DFI, ~~not~~ ^{not} consent by consumer.

End of October w/ T-govny target for intro.


Want to hear from Burke's office re: financial privacy

DFI-Bkg 14.07 Allocation of liability.DFI-Bkg 14.07(1) 


(1) BETWEEN BANK AND THIRD PARTIES. Each activity authorized under s. 221.0303, Stats., shall be conducted in accordance with a written agreement between the bank and any participating merchant, service center, data processor or other third party, setting out the manner in which liability from errors, malfunctions or the unauthorized use of a customer bank communications terminal will be allocated between the parties.

DFI-Bkg 14.07(2) 


(2) LIMITED CUSTOMER LIABILITY FOR UNAUTHORIZED USE.

DFI-Bkg 14.07(2)(a) 


(a) The liability of a customer of a bank for the unauthorized use of a plastic card or other means providing the customer access to a customer bank communications terminal may not exceed the lesser of the following:

DFI-Bkg 14.07(2)(a)1. 

1. \$50.

DFI-Bkg 14.07(2)(a)2. 

2. The amount of any money, property or services obtained by its unauthorized use prior to the time the bank is notified of, or otherwise becomes aware of, circumstances which lead to the belief that unauthorized access to the customer's account may be obtained. Notice is sufficient when the customer takes such steps as may reasonably be required in the ordinary course of business to provide the bank with the pertinent information.

DFI-Bkg 14.07(2)(b) 

(b) A customer furnishing another person with a plastic card or other means of access to the customer's account through a customer bank communications terminal shall be deemed to authorize all transactions that may be accomplished by that means, until the customer has given actual notice to the bank that further transactions are unauthorized.

10/24/01

tcf Sara at consumer law clinic

create 610.70 (8) to read "An insurer who discloses personal medical information in a manner inconsistent with sub. (5) shall be liable for actual damages, exemplary damages of not more than \$25,000, costs, and attorney fees."

Other than that, there are no further drafting instructions.

in editing
late on
10-24

500 N

RMR

DWOTE

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Regenerate ↓

1 AN ACT *to repeal* 100.18 (12); *to renumber* 423.301; *to renumber and amend*
 2 138.052 (9), 411.103 (1) (e), 421.202 (6), 421.301 (9) and 429.104 (9); *to amend*
 3 100.18 (11) (b) 2., 100.26 (4), 138.09 (3) (e) 1. a., 422.201 (3), 423.302, 425.304
 4 (1), 426.110 (14), 428.101 (3), 788.01 and 788.015; *to repeal and recreate*
 5 138.09 (title); and *to create* 100.18 (10v), 138.052 (9) (b), 138.14, 411.103 (1) (e)
 6 1., 411.103 (1) (e) 2., 421.202 (6) (b), 421.301 (9) (b), 421.301 (37v), 422.308 (2g),
 7 422.308 (2r), 422.422, 423.301 (1) (title), 423.301 (2), 423.301 (3), 428.101 (4),
 8 429.104 (9) (a) 1., 429.104 (9) (a) 2. and 429.104 (9) (b) of the statutes; **relating**
 9 **to:** the scope of the Wisconsin Consumer Act, the Wisconsin Motor Vehicle
 10 Consumer Lease Act, and the law with regard to fraudulent representations
 11 and deceptive advertising; liability and required disclosures under the
 12 Wisconsin Consumer Act; liability under the Wisconsin Motor Vehicle Consumer Lease Act;
 13 the authority of licensed lenders; the regulation of
 14 certain motor vehicle dealers, salespersons, and sales finance companies; the
 15 regulation of consumer leases under the uniform commercial code; arbitration
 of controversies arising out of consumer credit transactions; deceptive

establishing a penalty for unauthorized disclosure of personal medical information by an insurer;

Liability for unauthorized, remote access to certain depository accounts; ✓

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

Analysis by the Legislative Reference Bureau

Transactions of \$50,000 or less

Under current law, a transaction in which a consumer is granted credit in an amount of \$25,000 or less and which is entered into for personal, family, or household purposes (consumer credit transaction) is generally subject to the Wisconsin Consumer Act (consumer act). In addition, certain motor vehicle leases that are entered into by a consumer for personal, family, household, or agricultural purposes are subject to the Wisconsin Motor Vehicle Consumer Lease Act (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.

motor vehicle ✓

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.

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

Rent-to-own agreements

Currently, a consumer lease that has a term of more than four months is among the consumer credit transactions that are subject to the consumer act. In addition, the consumer act applies to any other consumer lease, if the lessee pays or agrees to pay at least an amount that is substantially equal to the value of the leased property and if the lessee will become, or for not more than a nominal additional payment has the option to become, the owner of the leased property. Currently, a rent-to-own

For other violations, the merchant is liable for actual damages, plus \$25 or \$100, depending upon the violation. The bill increases these dollar amounts to \$500 and \$1,000.

agreement that qualifies as one of these two types of consumer leases is generally subject to the consumer act, although the consumer act does not specifically refer to rent-to-own agreements.

This bill specifies that a rent-to-own agreement entered into by a consumer is a consumer credit sale that is subject to the consumer act. An agreement qualifies as a rent-to-own agreement under the bill if, among other things, the rental property is to be used primarily for personal, family, or household purposes; the agreement has an initial term of four months or less and is automatically renewable with each payment after the initial term; the agreement does not require the consumer to renew the agreement beyond the initial term; and the agreement permits, but does not require, the consumer to acquire ownership of the personal property.

Liability under the consumer act *INSERT ANALYSIS B*

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 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

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

and class action provisions

The changes to the penalties provided under this bill first apply to actions commenced on the day these changes take effect.

and with each subsequent billing statement, until the rate ceases to increase or becomes variable

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

Arbitration of consumer claims

Currently, the parties to any contract, including a contract that evidences a consumer credit transaction, generally may agree to settle by arbitration any controversy that arises out of the contract or out of the refusal to perform as required under the contract. This bill limits the ability of the parties to a consumer credit transaction to agree in advance to arbitrate a controversy that arises out of the transaction. Under the bill, no agreement between the parties to a consumer credit transaction may require the parties to arbitrate any controversy that arises out of the transaction, or out of a failure to perform as required under the transaction, and that arises after the date of the transaction. However, under the bill, the parties to a consumer credit transaction may agree in writing to submit a controversy to arbitration, if the parties enter into the agreement after the date on which the controversy arises.

Fraudulent representations and deceptive advertising

Under current law, no person may distribute an untrue statement in an advertisement with the intent to induce the public to enter into any contract with the person. In addition to this general prohibition on deceptive advertising, no merchant may advertise any statement or representation with regard to the extension of consumer credit that is false, misleading, or deceptive. The department of agriculture, trade and consumer protection (DATCP) may prosecute a person who distributes deceptive advertising. With certain exceptions, a person who distributes deceptive advertising may be fined not less than \$50 nor more than \$200. In addition, a person injured by deceptive advertising may sue and generally may recover any pecuniary loss together with reasonable attorney fees. Furthermore, a consumer who enters into a transaction resulting from a misleading statement with regard to the extension of credit may sue to void the transaction, recover amounts paid pursuant to the transaction, and recover reasonable attorney fees.

This bill specifies that certain representations regarding an open-end credit plan are both deceptive advertising and false, misleading, or deceptive statements regarding consumer credit. Under this bill, a merchant may not indicate to a consumer that the merchant has preapproved an extension of credit to the consumer under an open-end credit plan and then extend credit to the consumer under terms that are less financially favorable to the consumer than those indicated. In addition, this bill prohibits a merchant from refusing to extend credit after indicating preapproval of an extension of credit under an open-end credit plan. It is not a defense to a violation of this bill for the merchant to indicate that its preapproval of an extension of credit is subject to the merchant's investigation of the consumer's financial information. However, under this bill it is not a violation for the merchant

to extend credit on different terms, or refuse to extend credit, because of an adverse change in the financial circumstances of the consumer.

A violation of these provisions would be subject to a forfeiture of not less than \$50 nor more than \$200. In addition, this bill retains the private cause of action and the authority of DATCP to prosecute violations in current law.

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

Payday loans

Under current law, a lender other than a bank, savings bank, savings and loan association, or credit union generally must obtain a license from the division of banking in ~~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 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:

Handwritten notes in circles:
- "INSERT ANALYSIS A" with a checkmark and an arrow pointing to the paragraph starting "For further information..."
- "Insert Anal C" with a checkmark and an arrow pointing to the paragraph starting "The people of the state..."
- "PJK Budget 10/5-1" with a checkmark and an arrow pointing to the section header "The people of the state..."

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

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

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

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

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

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

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

19 3. Subdivision 1. does not apply to an extension of credit under an open-end
20 credit plan with different rates, terms, or conditions than those communicated to the
21 customer, if the difference in rates, terms, or conditions resulted from an adverse
22 change in the financial circumstances of the customer between the date on which the
23 merchant communicates preapproval and the date on which the merchant makes the
24 extension of credit.

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

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

10 3. Subdivision 1. does not apply to a refusal to extend credit under an open-end
11 credit plan, if the refusal resulted from an adverse change in the financial
12 circumstances of the customer between the date on which the merchant
13 communicates preapproval and the date on which the merchant refuses to extend
14 credit.

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

16 100.18 (11) (b) 2. Any person suffering pecuniary loss because of a violation of
17 this section by any other person may sue in any court of competent jurisdiction and
18 shall recover such pecuniary loss, together with costs, including reasonable attorney
19 fees, ~~except that no attorney fees may be recovered from a person licensed under ch.~~
20 ~~452 while that person is engaged in real estate practice, as defined in s. 452.01 (6).~~

21 Any person suffering pecuniary loss because of a violation by any other person of any
22 injunction issued under this section may sue for damages therefor in any court of
23 competent jurisdiction and shall recover twice the amount of such pecuniary loss,
24 together with costs, including reasonable attorney fees, ~~except that no attorney fees~~

1 ~~may be recovered from a person licensed under ch. 452 while that person is engaged~~
2 ~~in real estate practice, as defined in s. 452.01 (6).~~

3 **SECTION 3.** 100.18 (12) of the statutes is repealed.

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

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

8 **SECTION 5.** 138.052 (9) of the statutes is renumbered 138.052 (9) (a) and
9 amended to read:

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

16 **SECTION 6.** 138.052 (9) (b) of the statutes is created to read:

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

23 **SECTION 7.** 138.09 (title) of the statutes is repealed and recreated to read:

24 **138.09 (title) Licensed lenders.**

25 **SECTION 8.** 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 9.** 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 10.** 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 11.** 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 12.** 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 13.** 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

✓
 Insert 11-7
 Insert 11-8
 ✓

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 14. 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] ^{keep period}

12 SECTION 15. 421.301 (9) of the statutes is renumbered 421.301 (9) (intro.) and
13 amended to read:

14 421.301 (9) (intro.) "Consumer credit sale" means a sale of goods, services or
15 an interest in land to a customer on credit where the debt is payable in instalments
16 or a finance charge is imposed and includes any all of the following:

17 (a) Any agreement in the form of a bailment of goods or lease of goods or real
18 property if the bailee or lessee pays or agrees to pay as compensation for use a sum
19 substantially equivalent to or in excess of the aggregate value of the goods or real
20 property involved and it is agreed that the bailee or lessee will become, or for no other
21 or a nominal consideration has the option to become, the owner of the goods or real
22 property upon full compliance with the terms of the agreement.

23 SECTION 16. 421.301 (9) (b) of the statutes is created to read:

24 421.301 (9) (b) A rent-to-own agreement.

25 SECTION 17. 421.301 (37v) of the statutes is created to read:

1 421.301 (37v) "Rent-to-own agreement" means an agreement between a
2 merchant and a customer for the use of personal property if all of the following
3 conditions are met:

4 (a) The personal property that is rented under the agreement is to be used
5 primarily for personal, family, or household purposes.

6 (b) The agreement has an initial term of 4 months or less and is automatically
7 renewable with each payment after the initial term.

8 (c) The agreement does not obligate or require the customer to renew the
9 agreement beyond the initial term.

10 (d) The agreement permits, but does not obligate, the customer to acquire
11 ownership of the personal property.

12 SECTION 18. 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 19. 422.308 (2g) of the statutes is created to read:

19 422.308 (2g) (a) This paragraph applies to every open-end credit plan under
20 which a customer obtains credit pursuant to an application described under sub. (1)
21 or pursuant to a transaction described under sub. (2). If the annual percentage rate
22 under the open-end credit plan is fixed for a specified period of time and then
23 automatically increases or becomes a variable rate, the creditor under the open-end
24 credit plan, ~~before the first transaction is made under the open-end credit plan,~~ shall

before the first transaction is made under the open-end credit plan and with each subsequent billing statement, until the annual percentage rate ceases to automatically increase or becomes variable. If the notice is mailed to the customer, it shall be mailed

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 par. (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 20. 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

1 12-point boldface type indicating the total amount of finance charges the customer
2 would pay if he or she entered into no transactions under the open-end credit plan
3 after the date of the periodic statement and paid off the debt owing under the
4 open-end credit plan by making only the minimum monthly payment every month.
5 If the customer is unable to pay off the debt owing under the open-end credit plan
6 by making the minimum monthly payment every month, the notice shall so indicate.

7 SECTION 21. 422.422 of the statutes is created to read:

8 **422.422 Arbitration of controversies under consumer credit**
9 **transactions.** (1) PROHIBITED ARBITRATION AGREEMENTS. Except as provided in sub.
10 (2), no agreement between the parties to a consumer credit transaction may contain
11 a provision requiring the parties to submit to arbitration a controversy that arises
12 after the date on which the parties enter into the consumer credit transaction and
13 that arises out of the consumer credit transaction or out of a failure to perform as
14 required under the consumer credit transaction.

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

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

21 SECTION 22. 423.301 of the statutes is renumbered 423.301 (1).

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

23 423.301 (1) (title) GENERAL PROHIBITION.

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

1 423.301 (2) DECEPTIVE PREAPPROVED RATES, TERMS, OR CONDITIONS OF OPEN-END
2 CREDIT PLANS. (a) No merchant may directly communicate to a customer, or cause to
3 be directly communicated to a customer, that the merchant has preapproved an
4 extension of credit to the customer under an open-end credit plan and then,
5 pursuant to the customer's response to the communication, make an extension of
6 credit to the customer under an open-end credit plan with rates, terms, or conditions
7 that are less financially favorable to the customer than those communicated.

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

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

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

19 423.301 (3) DECEPTIVE PREAPPROVAL OF OPEN-END CREDIT PLANS. (a) No merchant
20 may refuse to extend credit to a customer under an open-end credit plan if the
21 customer requests the extension of credit in response to a direct communication from
22 the merchant, or a direct communication caused by the merchant, indicating that the
23 merchant has preapproved the extension of credit to the customer under an
24 open-end credit plan.

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

5 (c) Paragraph (a) does not apply to a refusal to extend credit under an open-end
6 credit plan, if the refusal resulted from an adverse change in the financial
7 circumstances of the customer between the date on which the merchant
8 communicates preapproval and the date on which the merchant refuses to extend
9 credit.

10 SECTION 26. 423.302 of the statutes is amended to read:

11 **423.302 Remedies and penalty.** In addition to any other remedy provided
12 by law, a customer who has been induced to consummate a consumer credit
13 transaction as a result of an advertising or communication in violation of s. 423.301
14 shall be entitled to a recovery from the merchant in accordance with s. 425.305.

15 SECTION 27. 425.304 (1) of the statutes is amended to read:

16 425.304 (1) Twice the amount of the finance charge in connection with the
17 transaction, except that the liability under this subsection shall not be less than \$100
18 nor greater than ~~\$1,000~~ \$5,000; or

19 SECTION 28. 426.110 (14) of the statutes is amended to read:

20 426.110 (14) A merchant shall not be liable in a class action for specific
21 penalties under s. 425.302 (1) (a), 425.303 (1), 425.304 (1), 425.305 (1) or 429.301 (1)
22 for which it would be liable in individual actions by reason of violations of chs. 421
23 to 427 and 429 or of conduct prescribed in sub. (2) unless it is shown by a
24 preponderance of the evidence that the violation was a wilful and knowing violation
25 of chs. 421 to 427 and 429. ~~No~~ A recovery in an action under this subsection may not

INSERT 17-14

INSERT 17-18

1 exceed ~~\$100,000~~ the lesser of \$500,000 or 1% of the net worth of the merchant liable
2 in the action.

3 **SECTION 29.** 428.101 (3) of the statutes is amended to read:

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

8 **SECTION 30.** 428.101 (4) of the statutes is created to read:

9 428.101 (4) Loans made on or after the effective date of this subsection ...
10 [revisor inserts date], by a creditor to a customer and which are secured by a first lien
11 real estate mortgage or equivalent security interest if the amount financed is
12 \$50,000 or less.

13 **SECTION 31.** 429.104 (9) of the statutes is renumbered 429.104 (9) (a) (intro) and
14 amended to read:

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

22 **SECTION 32.** 429.104 (9) (a) 1. of the statutes is created to read:

23 429.104 (9) (a) 1. For a lease entered into before the effective date of this
24 subdivision ... [revisor inserts date], \$25,000.

25 **SECTION 33.** 429.104 (9) (a) 2. of the statutes is created to read:

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1 429.104 (9) (a) 2. For a lease entered into on or after the effective date of this
2 subdivision [revisor inserts date], \$50,000.

3 SECTION 34. 429.104 (9) (b) of the statutes is created to read:

4 429.104 (9) (b) "Consumer lease" or "lease" does not include a credit sale, as
5 defined under 12 CFR 226.2 (a) (16).

6 SECTION 35. 788.01 of the statutes is amended to read:

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

17 SECTION 36. 788.015 of the statutes is amended to read:

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

1 SECTION 37. Initial applicability.

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

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

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

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

18 (5) ~~DAMAGES IN CS~~ CLASS ACTIONS UNDER THE WISCONSIN CONSUMER ACT. The treatment of
19 section 426.110 (14) of the statutes first applies to actions ~~arising~~ commenced on the effective date
20 of this subsection. 425.302(1)(a), 425.303(1), and

21 (6) PENALTIES UNDER THE WISCONSIN CONSUMER ACT. The treatment of sections
22 425.304 (1) of the statutes first applies to violations occurring actions commenced on the effective date
23 of this subsection.

24 SECTION 38. Effective dates. This act takes effect on the day after publication
25 except as follows:

PK
Insert 20-23

LPS - INSERTS OUT OF ORDER

INSERT ANALYSIS A

Unauthorized use of ATM card

automatic teller machine (

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

ATM
==

INSERT ANALYSIS B

the department of financial institutions (

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

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

INSERT 11-8

SECTION 1. 224.15 ✓ of the statutes is created to read:

224.15 ✓ **Liability for unauthorized, remote access to customer's account.** (1) DEFINITIONS. (a) "Automatic teller machine" means a terminal or other facility or installation, attended or unattended, that is not located at the principal place of business or at a branch or remote facility of a depository institution and through which customers and depository institutions may engage, by means of either

the direct transmission of electronic impulses to and from a depository institution or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a depository institution, in transactions ^{that} ~~which~~ are incidental to the conduct of the business of a depository institution and ^{that} ~~which~~ are otherwise permitted by law. ^{Fix} (2) Automated teller machine" also includes all equipment, regardless of location, ^{that} ~~which~~ is interconnected with an automated teller machine and ^{that} ~~which~~ is necessary to transmit, route, and process electronic impulses in order to enable the automated teller machine to perform any function for which it is designed.

(b) "Depository institution" means a bank, savings bank, savings and loan association, or credit union.

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

1. ^{Fifty dollars} \$50

2. The amount of any money, property, or services [✓] obtained by the unauthorized use of the plastic card or other means of access prior to the time the depository institution is notified of, or otherwise becomes aware of, circumstances ^{that} ~~which~~ lead to the belief that unauthorized access to the customer's account may be obtained. Notice is sufficient when the customer takes such steps as may reasonably be required in the ordinary course of business to provide the depository institution with the pertinent information.

(b) A customer who furnishes another person with a plastic card or other means of providing access to the customer's account through an automated teller machine shall be deemed to authorize all transactions that may be accomplished by that

means, until the customer gives actual notice to the depository institution that further transactions are unauthorized.

INSERT 17-14

SECTION 2. 425.302 (1) (a) of the statutes is amended to read:

425.302 (1) (a) ~~Twenty five dollars~~ \$500; and

Five hundred

SECTION 3. 425.303 (1) of the statutes is amended to read:

425.303 (1) ~~One hundred dollars~~ \$1,000; and

thousand

History: 1971 c. 239.

INSERT 17-18

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

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

History: 1971 c. 239; 1977 c. 196 s. 131; 1979 c. 89; 1983 a. 524; 1985 a. 256; 1991 a. 316; 1995 a. 27, 216, 329; 1997 a. 35.

(b) Any act, practice or procedure which has been submitted to the administrator in writing and either approved in writing by the administrator or not disapproved by the administrator within 60 days after its submission to the administrator shall not be deemed to be a violation of chs. 421 to 427 and 429 or any other statute to which chs. 421 to 427 and 429 refer in any administrative proceeding conducted by the administrator or the official or agency having supervisory authority



over the person alleged to have committed the violation, notwithstanding that the approval of the administrator or nondisapproval by the administrator may be subsequently amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

History: 1971 c. 239; 1977 c. 196 s. 131; 1979 c. 89; 1983 a. ~~64~~; 1985 a. 256; 1991 a. 316; 1995 a. 27, 216, 329; 1997 a. 35.

SECTION 5. 426.110 (3) of the statutes is repealed.

INSERT 20-20

initial
app

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

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3442/P3ins
PJK.

DJK
inserts

INSERT ANAL C

Unauthorized disclosure of medical information by insurer

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

(END OF INSERT ANAL C)

INSERT 5-1

1 **SECTION 1.** 51.30 (4) (a) ✓ of the statutes is amended to read:
2 51.30 (4) (a) *Confidentiality of records.* Except as otherwise provided in this
3 chapter and ss. 118.125 (4), 610.70 (3) and (5) (ac) ✓, 905.03, and 905.04, all treatment
4 records shall remain confidential and are privileged to the subject individual. Such
5 records may be released only to the persons designated in this chapter or ss. 118.125
6 (4), 610.70 (3) and (5) (ac) ✓, 905.03, and 905.04, or to other designated persons with
7 the informed written consent of the subject individual as provided in this section.
8 This restriction applies to elected officials and to members of boards appointed under
9 s. 51.42 (4) (a) or 51.437 (7) (a).

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; s. 13.93 (1) (b).

(END OF INSERT 5-1)

INSERT 11-7

10 **SECTION 2.** 146.82 (2) (b) ✓ of the statutes is amended to read:
11 146.82 (2) (b) Except as provided in s. 610.70 (3) and (5) (ac) ✓, unless authorized
12 by a court of record, the recipient of any information under par. (a) shall keep the

1 information confidential and may not disclose identifying information about the
2 patient whose patient health care records are released.

History: 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215, 233, 380, 399; 1989 a. 31, 102, 334, 336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; 1999 a. 32, 78, 83, 114, 151; s. 13.93 (1) (b).

(END OF INSERT 11-7)

INSERT 19-5

3 SECTION 3. 610.70 (5) of the statutes is renumbered 610.70 (5) (ac).

4 SECTION 4. 610.70 (5) (bc) of the statutes is created to read:

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

(END OF INSERT 19-5)

INSERT 20-23

9 initial #
app (e) UNAUTHORIZED INSURER DISCLOSURE. The treatment of sections 51.30 (4) (a)
10 and 146.82 (2) (b) of the statutes, the renumbering of section 610.70 (5) of the
11 statutes, and the creation of section 610.70 (5) (bc) of the statutes first apply to
12 personal medical information disclosures made on the effective date of this
13 subsection.

(END OF INSERT 20-23)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3442/1dn

RJM:.....

↑
Jld

Senator Burke:

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

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

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3442/1dn

RJM:jld:pg

November 9, 2001

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

Barman, Mike

From: Marchant, Robert
Sent: Tuesday, January 22, 2002 2:43 PM
To: Barman, Mike
Cc: Bjork, Tanya
Subject: FW: Co-sponsorship LRB 3442/1: Consumer Protection

Mike--

Per the email below, please jacket this proposal for introduction in the Senate by Sen. Burke.

Thanks.

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

From: Bjork, Tanya
Sent: Tuesday, January 22, 2002 2:40 PM
To: Marchant, Robert
Subject: FW: Co-sponsorship LRB 3442/1: Consumer Protection

Can I get this jacketed for the senate asap?

Thanks.

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

From: Sen.Burke
Sent: Thursday, January 03, 2002 4:54 PM
To: *Legislative All Asscmbly; *Legislative All Senate
Subject: Co-sponsorship LRB 3442/1: Consumer Protection



co-sponsorship
memo for amendi.



01-34421.pdf