

**2003 DRAFTING REQUEST**

**Bill**

Received: **06/11/2003**

Received By: **rkite**

Wanted: **Soon**

Identical to LRB:

For: **Terese Berceau (608) 266-3784**

By/Representing: **Tom Powell**

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

Drafter: **mlief**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other  
Fin. Inst. - miscellaneous**

Extra Copies: **RNK**

Submit via email: **YES**

Requester's email: **Rep.Berceau@legis.state.wi.us**

Carbon copy (CC:) to: **robert.marchant@legis.state.wi.us**

**Pre Topic:**

No specific pre topic given

**Topic:**

Credit card advertising, rates, and disclosures

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 07/16/2003 rmarchan 07/18/2003	wjackson 07/30/2003		_____			State
/1	rmarchan 09/05/2003	wjackson 09/10/2003	rschluet 07/30/2003	_____	sbasford 07/30/2003		State

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/2			rschluet 09/10/2003	_____	mbarman 09/10/2003	lemery 09/12/2003	State
/3	mlief 01/15/2004	wjackson 01/19/2004	pgreensl 01/20/2004	_____	lnorthro 01/20/2004	lnorthro 01/20/2004	State
/4	mlief 01/23/2004	wjackson 01/23/2004	pgreensl 01/23/2004	_____	sbasford 01/23/2004	sbasford 01/23/2004	

FE Sent For:

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At  
Intro.

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*1/2008 P8115*

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*9-163*

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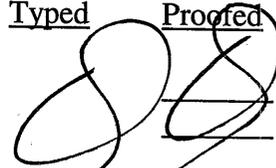
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1?	rkite 07/16/2003 rmarchan	1 WJ 7/30					

Handwritten notes: 7-30-3 pb

FE Sent For:

<END>

University of Wisconsin-Madison



The Puellicher Center for  
Banking Education

School of Business

Grainger Hall  
975 University Avenue  
Madison, Wisconsin 53706-1323  
Telephone 608/265-4488  
Fax 608/262-6265

Richard L. Dean  
Secretary  
Department of Financial Institutions  
State of Wisconsin  
345 W. Washington Ave.  
Madison, WI 53708

1998

Dear Secretary Dean:

Enclosed is my report describing the deliberations and recommendations of the Wisconsin Consumer Act Review Committee.

Given the number of meetings we had and the long period over which we deliberated, I cannot guarantee that the report includes all the viewpoints of all the members on all of the issues discussed by the Committee. I have, however, made every effort to present the nature of the discussion in a balanced manner. I hope I have captured the essence of both creditor and debtor positions on the issues we reviewed. It probably goes without saying, though, that my efforts to be fair do not absolve me of blame for any errors I might have made trying to represent individual Committee member's positions on the issues.

You should note that while the report is mine alone, I did give all Committee members the opportunity to comment on a draft of the report. Several did respond to my offer and I have incorporated their comments into this final report.

I hope you are pleased with the report. I firmly believe that the Committee's goal was to recommend revisions to the Act that would make credit work better for both borrowers and lenders. If the Committee's work has a meaningful impact on revisions of the Wisconsin Consumer Act that accomplish that goal, all the unselfish time and effort put in by Committee members will have been well spent.

Sincerely,

James M. Johannes  
Associate Dean, Undergraduate Programs  
Director, Puellicher Center for Banking Education

**RECOMMENDATION 20:**

Create a provision with a rebuttable presumption that advertising is false or misleading under sec. 423.301 and sec. 100.18 where a credit card or other open-end credit application or solicitation states that it is "pre-approved" unless the consumer will receive credit in accordance with the terms advertised subject to a review of changed circumstances. Create a provision that provides that any inconsistencies between these new requirements and any subsequent federal legislation on the same subject that is substantially similar to the new state legislation be resolved in favor of the federal legislation to avoid the applicability of inconsistent state and federal laws.

**EXPLANATION:**

Sec. 423.301 prohibits false, misleading, or deceptive advertising. This recommendation would create the presumption that "pre-approved" offers are false or misleading if the customer does not receive credit with the advertised terms unless the customer's circumstances have changed since the offer was made. A provision that would indicate that any inconsistencies between these new requirements and federal law be resolved in favor of federal law is to be created.

**Statutory sections that will be affected if this item is adopted: 423.301, 100.18.**

<b>Arguments For:</b>	<b>Arguments Against:</b>
<p>Many consumers receive "pre-approved" credit card offers which often involve what amounts to a "bait and switch" where the card is either not issued or not issued with terms as favorable as the advertised terms. After adoption of this recommendation, these advertisements will be considered false or misleading unless the creditor proves that the customer's circumstances have adversely changed since the time the offer was made, making it no longer valid.</p>	<p>This may decrease the credit offered to Wisconsin consumers because credit card companies would be afraid of running afoul of this law inadvertently. No harm is done to the consumer by an offer of a "pre-approved" card that does not end up resulting in the issuance of a credit card or a line of credit as great as the consumer would like. It is better to ensure that the credit granted is reasonable than to follow through with such offers and grant credit that turns out in retrospect not to be wise.</p> <p>Section 100.18 is beyond the scope of this review committee's work, as it is outside the WCA.</p>

Require that periodic billing statements include the following information, in print that is either larger or a different color than other print in the statement, and on the front of the form:

a. Except where not true the following statement-- "FAILURE TO MAKE A MINIMUM PAYMENT BY THE DUE DATE MAY CAUSE AN INCREASE IN YOUR INTEREST RATE."

b. Where the card issuer takes a security interest in items purchased with the card, the following statement—"WHEN YOU USE THIS CREDIT CARD, THE ISSUER MAY OBTAIN A SECURITY INTEREST IN ITEMS PURCHASED WITH THE CARD."

c. Where any temporary interest rate is scheduled to end at a predetermined date, information about the timing and size of any interest rate increase in the two billing statements immediately preceding the predetermined rate increase.

EXPLANATION:

The committee recommends disclosures pertaining to the following items be included on customers' monthly (or other period, where applicable) open-end credit (e.g., credit cards) billing statements: a statement that the interest rate may be increased if payments aren't made on time, a statement that a security interest may be taken on items purchased with a line of credit, and a regular reminder (on at least two billing statements) that a temporary interest rate will be increased and by what amount.

Statutory sections that will be affected if this item is adopted: a new statutory section would need to be created.

By a vote of 7-5-2, the committee recommends that the above disclosures be required on periodic billing statements in open-end credit plans.

Arguments For:	Arguments Against:
<p>Some credit card solicitations are deceptive. Many solicitations include special introductory rates that expire some time not long after the card is issued. Proposals 5(a) and 5(c) are directed at these problems as they seek to warn people who applied for credit cards expecting to pay the low introductory rates that later expire.</p> <p>This proposal would require credit card issuers to inform consumers when the issuer is taking a security interest in the items being purchased with their credit card. Consumers are often unaware of which purchases are subject to a security interest, and such a disclosure would enable consumers to make more informed decisions about which credit card to use for a particular purpose.</p>	<p>This proposal requires redundant disclosures. All of the information required to be disclosed in this proposal must already be made part of the account agreement. In addition, if consumers are savvy enough to effectively use disclosures included on periodic billing statements to make decisions regarding which credit card to use with respect to security interests, then they are savvy enough to glean this information from the contract itself.</p> <p>As to subpart "a", there should already be sufficient incentives for consumers to make the required payment by the due date.</p> <p>In lieu of requiring additional disclosures on billing statements, the A-list proposal of requiring creditors to provide consumers with a copy of their open-end agreement at</p>
<p><i>This proposal would help ensure that when consumers accept a "teaser rate" offer, they at least know what they are doing.</i></p>	<p><i>no charge may be a more cost-effective option.</i></p>

**RECOMMENDATION 30:**

Require that when a card issuer charges the same cardholder a different APR for different uses of the card (e.g., balance transfers versus purchases), all payments by the cardholder be credited to the balance that carries the highest APR.

**EXPLANATION:**

The committee recommends that, on accounts with more than one interest rate, payments be applied to the balance carrying the highest interest rate.

**Statutory sections that will be affected if this item is adopted: a new statutory section would need to be created.**

This recommendation passed the Committee by a vote of 9-2-3.

<b>Arguments For:</b>	<b>Arguments Against:</b>
<p>It may be fraudulent for lenders to offer a "teaser" rate for some uses of the card (e.g., cash advances and balance transfers) and then apply a fine print clause allowing the bank to apply payments to lower rate charges before higher rate ones. When this happens, in effect, the debtor ends up paying a higher than advertised rate for the cash advance.</p>	<p>Pursuant to statutes and case law, out-of-state national and federally insured state depository institutions are not subject to the provisions of the Wisconsin Consumer Act relating to interest. Therefore, this provision will apply only to financial institutions chartered or originating in Wisconsin, putting these institutions at a competitive disadvantage.</p>
<p>Rules for differentiating interest rates for different uses of credit may be complex and, therefore, not likely to be remembered by most consumers. Some credit card issuers, particularly those, who engage in mass mailing and telephone solicitation, charge different interest rates for different uses of the card, so a consumer carrying a balance may be subject to several different interest rates. Because consumers may be generally unaware of these different rates, any payment made should be applied to the balance carrying the highest interest rate.</p>	<p>If it is made unattractive for credit card issuers to offer lower rates of interest, many may discontinue offering lower interest rates for any period at all, opting instead to apply the same (higher) interest rate to the entire balance for the entire period.</p>
<p>In addition, this recommendation makes it simple for creditors to determine how to apply payments.</p>	

8-1-03

PLM MR

DWJTB

2001 BILL

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Stats. w/ Folio.

LPS:  
Inserts are  
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and there  
are inserts  
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re-fer

open-end credit plan billing under  
statements; payments under  
certain open-end credit plans

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

INVEST  
ANALYSIS A ↓

sub-sub  
Deceptive preapproval

Analysis by the Legislative Reference Bureau

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

This bill specifies that certain representations regarding an open-end credit plan (typically, a credit card) are both deceptive advertising and false, misleading, or deceptive statements regarding consumer credit. Under this bill, a merchant may not indicate to a consumer that the merchant has preapproved an extension of credit

**BILL**

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

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

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

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

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

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

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

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

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

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

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

(b) *Deceptive preapproved rates, terms, or conditions.* 1. It is deceptive

advertising for a merchant to directly communicate to a customer, or cause to be

<sup>communicate</sup>  
directly ~~communicated~~ to a customer, that the merchant has preapproved an

extension of credit to the customer under an open-end credit plan and then,

pursuant to the customer's response to the communication, to make an extension of

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**BILL**

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

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

one word

6 worthiness, credit standing, or credit capacity.

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

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

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

one word

21 worthiness, credit standing, or credit capacity.

22 3. Subdivision 1. does not apply to a refusal to extend credit under an open-end  
23 credit plan, if the refusal resulted from an adverse change in the financial  
24 circumstances of the customer between the date on which the merchant

**BILL**

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

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

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

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

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

9 423.301 (1) (title) GENERAL PROHIBITION.

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

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

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

22 (c) Paragraph (a) does not apply to an extension of credit under an open-end  
23 credit plan with different rates, terms, or conditions than those communicated to a  
24 customer, if the difference in rates, terms, or conditions resulted from an adverse  
25 change in the financial circumstances of the customer between the date on which the

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**BILL**

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

3 **SECTION 6.** 423.301 (3) <sup>✓</sup> of the statutes is created to read:

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

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

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

19 **SECTION 7.** 423.302 <sup>✓</sup> of the statutes is amended to read:

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

24 **SECTION 8. Initial applicability.**

BILL

DECEPTIVE PRE-APPROVAL

The treatment of sections 100.18(10v), 100.26(4), 423.301(2) and (3), and 423.302 of the statutes

1 (1) This act first applies an extension of credit or refusal to extend credit that  
2 takes place pursuant to a direct communication of preapproval made on the effective  
3 date of this subsection.

(END)

NONSTATS

(2) DISCLOSURES The treatment of section 422.308(2m) of the statutes first applies to periodic statements provided on the effective date of this subsection.

(3) PAYMENTS The treatment of sections 422.418(3) and (4) and 422.422 of the statutes first applies to payments received on the effective date of this subsection.

EFFECTIVE DATE.

SEC. 7. Eff. date.

~~NOT~~

This act takes effect on the first day of the 2nd month beginning after publication.

INSERT ANALYSIS A

This bill makes several changes with regard to the regulation of open-end credit plans (typically, credit cards). Significant changes include the following:

INSERT ANALYSIS B

***Billing statements***

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 is generally subject to the Wisconsin Consumer Act (consumer act). Currently, a creditor under an open-end credit plan that is within the scope of the consumer act must make certain disclosures with regard to the open-end credit plan. For example, if the rate of interest under the open-end credit plan is subject to adjustment, the creditor generally must provide notice of the adjustment before putting it into effect. This bill requires additional disclosures that must be included in any periodic billing statement issued by a creditor pursuant to an open-end credit plan that is within the scope of the consumer act.

Under this bill, if the periodic billing statement states a minimum payment due and if the open-end credit plan permits the creditor to increase the consumer's interest rate for failure to make the minimum payment, the periodic billing statement must say "FAILURE TO MAKE A MINIMUM PAYMENT BY THE DUE DATE MAY CAUSE AN INCREASE IN YOUR INTEREST RATE." If the open-end credit plan permits the creditor to take a security interest in property purchased through the use of credit extended under the open-end credit plan, the periodic statement must say "WHEN YOU USE CREDIT EXTENDED TO YOU UNDER THIS [CREDIT CARD OR PLAN] TO PURCHASE ITEMS, THE CREDITOR MAY OBTAIN A SECURITY INTEREST IN THOSE ITEMS." Finally, if the interest rate under the open-end credit plan is scheduled to increase on a specific date, the two periodic statements preceding the date of the increase must say "THE INTEREST RATE APPLICABLE TO YOUR OUTSTANDING BALANCE IS SCHEDULED TO INCREASE TO [NEW PERCENTAGE INTEREST RATE] ON [DATE OF INCREASE]."

***Crediting payments***

Currently, a creditor under an open-end credit plan that is subject to the consumer act may charge the consumer under the open-end credit plan a different interest rate depending upon the purpose for which credit is used. For example, credit used to pay off a credit card or loan balance may be subject to a different interest rate than credit otherwise used under the plan. This bill requires the creditor to apply payments received from the consumer first to the payment of that portion of the outstanding balance that is subject to the highest annual percentage rate, and then to each remaining portion of the outstanding balance, in descending order depending upon the annual percentage rate applicable to each portion.

Initial  
Cap  
first  
Word  
only.

END  
INSERT  
ANALYSIS B

INSERT 2-15 to INSERT 4-6



(c) If the creditor is permitted under the open-end credit plan to take a security interest in property purchased through the use of credit extended under the open-end credit plan, the creditor shall include, as part of the periodic statement, the following notice: "WHEN YOU USE CREDIT EXTENDED TO YOU UNDER THIS [CREDIT CARD OR PLAN] TO PURCHASE ITEMS, THE CREDITOR MAY OBTAIN A SECURITY INTEREST IN THOSE ITEMS."

(d) If the interest rate applicable to the outstanding balance under the open-end credit plan is scheduled to increase on a specific date, the creditor shall include, as part of the two periodic statements preceding the date on which the increase is to take effect, the following notice: "THE INTEREST RATE APPLICABLE TO YOUR OUTSTANDING BALANCE IS SCHEDULED TO INCREASE TO [FILL IN NEW PERCENTAGE INTEREST RATE] ON [FILL IN DATE OF INCREASE]."

END INSERT 2-15  
INSERT 4-7 ✓

SECTION ~~A~~ 422.418 (3) and (4) of the statutes are amended to read:

422.418 (3) Payments Except as provided in s. 422.422, payments received by the creditor upon an open-end credit plan are deemed, for the purpose of determining the amount of the unpaid balance secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account, and then to the payment of the respective amounts financed in the order in which the entries to the account were made.

(4) If Except as provided in s. 422.422, if obligations consolidated or financed pursuant to an open-end credit plan arise from 2 or more transactions made on the same day, payments received by the creditor are deemed, for the purpose of

determining the amount of the obligation secured by the various security interests, to have been applied first to the payment of the smallest obligation.

History: 1971 c. 239; 1973 c. 3; ~~1987~~ 1987 a. 302.

**SECTION ~~422.421~~ 422.421 (5) (a)** of the statutes is amended to read:

422.421 (5) (a) 1. Except as provided in par. (b), a creditor shall mail or deliver to the customer written notice of every change implementing an adjustment in the rate of finance charge in a variable rate transaction. The notice shall be mailed or delivered to the customer at the customer's last-known address appearing on the records of the creditor. If the variable rate transaction involves more than one customer, notice given to any customer satisfies this requirement subdivision.  
Notices given in compliance with s. 422.308 (2m) (d) satisfy this subdivision plain

2. The notice under subd. 1. shall be mailed or delivered at least 15 days prior to the effective date of the adjustment if the adjustment is implemented in whole or in part by a change in the amount of a periodic payment, other than the final payment, previously disclosed to the customer. This subdivision does not apply to notices given in compliance with s. 422.308 (2m) (d).

3. The notice under subd. 1. shall be mailed or delivered not later than 30 days after the effective date of the adjustment if the adjustment is implemented by any change other than a change under subd. 2. This subdivision does not apply to notices given in compliance with s. 422.308 (2m) (d).

History: 1983 a. 389; 1985 a. 29; ~~1987~~ 1987 a. 27; 1995 a. 328; 1997 a. 302.

**SECTION ~~422.421~~ 422.421 (5) (b) 1.** of the statutes is repealed.

**SECTION ~~422.421~~ 422.421 (5) (b) 2.** of the statutes is renumbered 422.421 (5) (b).

**SECTION ~~422.422~~ 422.422** of the statutes is created to read:

**422.422 Application of payments under certain open-end credit plans.**

If the creditor under an open-end credit plan charges the consumer under the

open-end credit plan a different annual percentage rate depending upon the purpose for which credit is used under the open-end credit plan, payments received by the creditor shall be applied first to the payment of that portion of the outstanding balance that is subject to the highest annual percentage rate, and then to each remaining portion of the outstanding balance, in descending order depending upon the annual percentage rate applicable to each portion.

BILL

Solid

FAILURE TO MAKE A MINIMUM PAYMENT BY THE DUE DATE MAY CAUSE AN INCREASE IN YOUR INTEREST RATE

1 SECTION 422.308 (2m) of the statutes is created to read:

2 422.308 (2m) (a) This subsection applies to every open-end credit plan under

3 which a customer obtains credit pursuant to an application described under sub. (1)

4 ~~or pursuant to a transaction described under sub. (2) and obtains a credit card~~ *for which the creditor under the open-end credit plan furnishes the customer a periodic statement that states the amount due under the open-end credit plan*

5 Except as otherwise provided in this paragraph, if the creditor under the open-end

6 ~~credit plan furnishes the customer with a~~ *and if the creditor is permitted under the open-end credit plan to increase the interest rate applicable to the outstanding balance as a result of the customer's failure to make the minimum payment* periodic statement ~~that~~ states a minimum

7 payment due under the open-end credit plan, the creditor shall include, as part of

8 ~~the following notice~~ *the following notice* ~~the notice in not less than 12-point boldface type~~ *with the periodic statement, a notice in not less than 12-point boldface type*

9 indicating the length of time it will take the customer to pay off the debt owing under  
10 the open-end credit plan and the total amount of finance charges that the customer  
11 will pay if the customer enters into no transactions under the open-end credit plan  
12 after the date of the periodic statement and makes only the minimum payment every  
13 billing cycle. If the customer is unable to pay off the debt owing under the open-end  
14 credit plan by making only the minimum payment every billing cycle, the notice shall  
15 so indicate.

16 ~~(e) If the notice required under par. (a) is provided as part of the periodic~~ *Any*  
17 ~~statement, the notice shall be displayed in a box, some portion of which is located one~~ *b) to (d)*  
18 ~~inch or less from the statement of the minimum payment due. If the notice is~~  
19 ~~provided along with the periodic statement, the notice shall include a restatement~~  
20 ~~of the minimum payment due and shall be displayed in a box, some portion of which~~  
21 ~~is located one inch or less from the restatement of the minimum payment due.~~

SECTION 2. Initial applicability.

22 (1) This act first applies to periodic statements provided on the effective date  
23 of this subsection.

SECTION 3. Effective date.

*12-point bold face type or 12-point type of a color different from the color of other type included in the statements*

*LEW ins*

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

LRB-2832/1dn

RJM:.....

W/LJ

Representative Berceau:

Attached is the draft you requested to implement three recommendations of the Wisconsin Consumer Act Review Committee. As you review the draft, please note the following issues:

1. Legislation to implement recommendation 20 has been previously introduced as 1999 SB-169 (introduced by Sen. Burke, cosponsored by Rep. Musser). This draft includes the provisions from that bill.

a. Like 1999 SB-169, these provisions prohibit certain practices <sup>g</sup> rather than create a presumption of liability. These provisions also provide an exception if the change in credit terms resulted from an adverse change in the consumer's financial condition. This method of drafting integrates these provisions more cleanly into the existing <sup>structure</sup> ~~structure~~ of s. 100.18, stats., and more clearly expresses the intended result.

b. Please review the penalties in proposed ss. 100.26 (4) <sup>✓</sup> and 423.302 <sup>✓</sup> to ensure that they are consistent with your intent.

c. These provisions only apply to a merchant who "directly communicates" or causes a "direct communication" with a consumer regarding a pre-approved open-end credit plan. Like 1999 SB-169, this draft does not define "direct communication." You may want to do so. For example, should the term include television, radio, or print advertising, telemarketing, e-mail, and direct mail addressed to the consumer?

d. Please note that DATCP, in the fiscal estimate it prepared for 1999 SB-169, indicated that it would need an increase <sup>in</sup> its appropriation to fund an FTE regulation compliance investigator position, in order to enforce the prohibitions established in that bill. Let <sup>me</sup> ~~us~~ know if you would like to include an appropriation increase for this purpose.

2. Recommendation 29 is reflected in proposed s. 422.308 (2m) <sup>✓</sup>. Please note that I altered the required disclosures somewhat for more specificity and clarity. I also clarified that the disclosures had to be in 12-point type. **DNOTE INSERT** <sup>✓</sup>

3. Recommendation 30 is reflected in proposed s. 422.422. Please note that it was not clear how this provision is intended to interact with other provisions in current law

dealing with the manner in which payments are to be applied. See proposed s. 422.418 (3) and (4). You may want to have DFI review these provisions to ensure that they are workable. Also, please note that federal law generally permits federally chartered financial institutions located in other states and state-chartered financial institutions located in other states to follow the interest rate regulations of those states rather than Wisconsin law when soliciting Wisconsin consumers. See 12 U.S.C. 85, 1831d, and 1463(g) and *Marquette Nat'l Bank v. First Omaha Serv. Corp.*, 439 U.S. 299 (1978). As a result, proposed s. 422.422, in large part, would likely apply only to Wisconsin financial institutions and, thus, may put Wisconsin financial institutions at a competitive disadvantage.

Please feel free to contact me if you have any questions or desire any changes to this draft.

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-1552/1dn  
RJM:jld:jf

~~January 23, 2003~~

NOTE INSERT

~~Senator Hansen:~~

~~Attached is the draft you requested requiring certain disclosures to be included with credit card billing statements.~~ Please note that California recently enacted a similar law, which was in large part declared unenforceable by a federal district court in *Am. Bankers Ass'n v. Lockyer*, 2002 U.S. Dist. LEXIS 24521. According to the court, much of the California law was preempted by various federal laws and regulations concerning federally chartered financial institutions. This court decision is not binding in Wisconsin, but ~~this draft~~ would be open to a similar challenge. One option for modifying the draft ~~in order~~ to lessen the risk of it being declared preempted by federal law would be to require inclusion of only one, standardized warning statement, such as "Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance." There is a chance that such a requirement could be enforced against national banks and federal credit unions (though possibly not against federally chartered savings and loans).

If you have any questions or desire any changes, please feel free to call.

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

Here provisions

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

LRB-2832/1dn  
RJM:wlj:rs

July 30, 2003

Representative Berceau:

Attached is the draft you requested to implement three recommendations of the Wisconsin Consumer Act Review Committee. As you review the draft, please note the following issues:

1. Legislation to implement recommendation 20 has been previously introduced as 1999 SB-169 (introduced by Sen. Burke, cosponsored by Rep. Musser). This draft includes the provisions from that bill.
  - a. Like 1999 SB-169, these provisions prohibit certain practices rather than create a presumption of liability. These provisions also provide an exception if the change in credit terms resulted from an adverse change in the consumer's financial condition. This method of drafting integrates these provisions more cleanly into the existing structure of s. 100.18, stats., and more clearly expresses the intended result.
  - b. Please review the penalties in proposed ss. 100.26 (4) and 423.302 to ensure that they are consistent with your intent.
  - c. These provisions apply only to a merchant who "directly communicates" or causes a "direct communication" with a consumer regarding a preapproved open-end credit plan. Like 1999 SB-169, this draft does not define "direct communication." You may want to do so. For example, should the term include television, radio, or print advertising, telemarketing, e-mail, and direct mail addressed to the consumer?
  - d. Please note that DATCP, in the fiscal estimate it prepared for 1999 SB-169, indicated that it would need an increase in its appropriation to fund an FTE regulation compliance investigator position to enforce the prohibitions established in that bill. Let me know if you would like to include an appropriation increase for this purpose.
2. Recommendation 29 is reflected in proposed s. 422.308 (2m). Please note that I altered the required disclosures somewhat for more specificity and clarity. I also clarified that the disclosures had to be in 12-point type. Please note that California recently enacted a similar law, which was in large part declared unenforceable by a federal district court in *Am. Bankers Ass'n v. Lockyer*, 2002 U.S. Dist. LEXIS 24521. According to the court, much of the California law was preempted by various federal laws and regulations concerning federally chartered financial institutions. This court

decision is not binding in Wisconsin, but these provisions would be open to a similar challenge. One option for modifying the draft to lessen the risk of it being declared preempted by federal law would be to require inclusion of only one, standardized warning statement. There is a chance that such a requirement could be enforced against national banks and federal credit unions (though possibly not against federally chartered savings and loans).

3. Recommendation 30 is reflected in proposed s. 422.422. Please note that it was not clear how this provision is intended to interact with other provisions in current law dealing with the manner in which payments are to be applied. See proposed s. 422.418 (3) and (4). You may want to have DFI review these provisions to ensure that they are workable. Also, please note that federal law generally permits federally chartered financial institutions located in other states and state-chartered financial institutions located in other states to follow the interest rate regulations of those states rather than Wisconsin law when soliciting Wisconsin consumers. See 12 U.S.C. 85, 1831d, and 1463(g) and *Marquette Nat'l Bank v. First Omaha Serv. Corp.*, 439 U.S. 299 (1978). As a result, proposed s. 422.422, in large part, would likely apply only to Wisconsin financial institutions and, thus, may put Wisconsin financial institutions at a competitive disadvantage.

Please feel free to contact me if you have any questions or desire any changes to this draft.

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

**Marchant, Robert**

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**From:** Powell, Thomas  
**Sent:** Friday, August 22, 2003 2:46 PM  
**To:** Marchant, Robert  
**Subject:** draft lrb2832

Robert,

Thank you for the draft of LRB2832.

I reviewed it, and your drafter's notes, with Prof. Steve Meili at the UW Law School's Consumer Consumer Law Litigation Clinic.

As to the questions you raise in your notes:

- 1.a. (no comment)
- 1.b. Penalties are okay. No change.
- 1.c. Leave as is. We will leave "direct communication" unspecified.
- 1.d. Please don't include an appropriation increase.
2. Leave as is. The UW Law School will be providing ammunition on the pre-emption issue.
3. Leave as is for now. Prof. Meili will review with DFI and offer any amendments at a later date.

There are also three new additions we would like to include in a re-draft of the bill:

1) Remove the penalties for violations in sec. 425.302 (\$25), and make the penalty under sec. 425.303 (\$100 and actual damages) applicable to all violations of the Wisconsin Consumer Act for which no other remedy is specifically provided. Also, increase the \$100 limit to \$500.

2) Increase the penalties available for violations in sec. 425.304 from a minimum of \$100 and a maximum of \$1,000 to a minimum of \$500 and a maximum of \$5,000.

3) Increase the \$25,000 cap on Wisconsin Consumer Act coverage to a \$75,000.  
sec. 421.202(6)

Thank you for all your good work on this.

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*Tom Powell*  
*Research Assistant to Rep. Terese Berceau*

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