

SOON

PN NR

2003 BILL

LPS' Inserts are out of order.

REGEN

1 AN ACT to repeal 422.421 (5) (b) 1.; to renumber 422.421 (5) (b) 2. and 423.301;
2 to amend 100.26 (4), 422.418 (3) and (4), 422.421 (5) (a) and 423.302; and to
3 create 100.18 (10v), 422.308 (2m), 422.422, 423.301 (1) (title), 423.301 (2) and
4 423.301 (3) of the statutes; relating to: deceptive preapproval of open-end
5 credit plans, open-end credit plan billing statements, payments under certain
6 open-end credit plans, and providing penalties

INSERT 1-6

Analysis by the Legislative Reference Bureau

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

certain consumer transactions and

Deceptive preapproval

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 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

BILL

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.

Billing statements

Under current law, a transaction in which a consumer is granted credit in an amount of \$25,000 or less and into which is entered 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,

INVEST
2A

BILL

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.

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 communicate directly to a customer, or cause to
12 communicate directly to a customer, that the merchant has preapproved an
13 extension of credit to the customer under an open-end credit plan and then,
14 pursuant to the customer’s response to the communication, to make an extension of
15 credit to the customer under an open-end credit plan with rates, terms, or conditions
16 that are less financially favorable to the customer than those communicated.

17 2. Except as provided under subd. 3., it is not a defense to a violation of subd.

18 1. that the merchant’s preapproval of an extension of credit to the customer is made

DUBS
3A

BILL

1 subject to the merchant's review of the customer's financial information,
2 creditworthiness, credit standing, or credit capacity.

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

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

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

18 3. Subdivision 1. does not apply to a refusal to extend credit under an open-end
19 credit plan, if the refusal resulted from an adverse change in the financial
20 circumstances of the customer between the date on which the merchant
21 communicates preapproval and the date on which the merchant refuses to extend
22 credit.

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

BILL

INSER
5-3
3

1 100.26 (4) Any person who violates s. 100.18 (1) to (8) ~~or~~, (10), or (10v) or
2 100.182 is subject to a civil forfeiture of not less than \$50 nor more than \$200 for each
3 violation.

4 **SECTION 3.** 422.308 (2m) of the statutes is created to read:

5 422.308 (2m) (a) This subsection applies to every open-end credit plan under
6 which a customer obtains credit pursuant to an application described under sub. (1)
7 or pursuant to a transaction described under sub. (2) and for which the creditor under
8 the open-end credit plan furnishes the customer a periodic statement that states the
9 amount due under the open-end credit plan.

10 (b) If the periodic statement states a minimum payment due under the
11 open-end credit plan and if the creditor is permitted under the open-end credit plan
12 to increase the interest rate applicable to the outstanding balance as a result of the
13 customer's failure to make the minimum payment, the creditor shall include, as part
14 the periodic statement, the following notice: "FAILURE TO MAKE A MINIMUM
15 PAYMENT BY THE DUE DATE MAY CAUSE AN INCREASE IN YOUR
16 INTEREST RATE."

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

23 (d) If the interest rate applicable to the outstanding balance under the
24 open-end credit plan is scheduled to increase on a specific date, the creditor shall
25 include, as part of the two periodic statements preceding the date on which the

BILL

1 increase is to take effect, the following notice: “THE INTEREST RATE
2 APPLICABLE TO YOUR OUTSTANDING BALANCE IS SCHEDULED TO
3 INCREASE TO [FILL IN NEW PERCENTAGE INTEREST RATE] ON [FILL IN
4 DATE OF INCREASE].”

5 (e) Any notice required under par. (b) to (d) shall be displayed in 12–point bold
6 face type or 12 point type of a color different from the color of other type included in
7 the statement.

8 **SECTION 4.** 422.418 (3) and (4) of the statutes are amended to read:

9 422.418 (3) Payments Except as provided in s. 422.422, payments received by
10 the creditor upon an open–end credit plan are deemed, for the purpose of
11 determining the amount of the unpaid balance secured by the various security
12 interests, to have been applied first to the payment of finance charges in the order
13 of their entry to the account, and then to the payment of the respective amounts
14 financed in the order in which the entries to the account were made.

15 (4) If Except as provided in s. 422.422, if obligations consolidated or financed
16 pursuant to an open–end credit plan arise from 2 or more transactions made on the
17 same day, payments received by the creditor are deemed, for the purpose of
18 determining the amount of the obligation secured by the various security interests,
19 to have been applied first to the payment of the smallest obligation.

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

21 422.421 (5) (a) 1. Except as provided in par. (b), a creditor shall mail or deliver
22 to the customer written notice of every change implementing an adjustment in the
23 rate of finance charge in a variable rate transaction. The notice shall be mailed or
24 delivered to the customer at the customer’s last–known address appearing on the
25 records of the creditor. If the variable rate transaction involves more than one

BILL

1 customer, notice given to any customer satisfies this ~~requirement~~ subdivision.

2 Notices given in compliance with s. 422.308 (2m) (d) satisfy this subdivision.

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

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

12 **SECTION 6.** 422.421 (5) (b) 1. of the statutes is repealed.

13 **SECTION 7.** 422.421 (5) (b) 2. of the statutes is renumbered 422.421 (5) (b).

14 **SECTION 8.** 422.422 of the statutes is created to read:

15 **422.422 Application of payments under certain open-end credit plans.**

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

23 **SECTION 9.** 423.301 of the statutes is renumbered 423.301 (1).

24 **SECTION 10.** 423.301 (1) (title) of the statutes is created to read:

25 **423.301 (1) (title) GENERAL PROHIBITION.**

DWSS/ST
7-132

BILL

1 **SECTION 11.** 423.301 (2) of the statutes is created to read:

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

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

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

19 **SECTION 12.** 423.301 (3) of the statutes is created to read:

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

BILL

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, creditworthiness,
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 13.** 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.

Handwritten notes: "DUSM 9-23" with arrows pointing to lines 12 and 14.

15 **SECTION 14. Initial applicability.**

16 (1) **DECEPTIVE PREAPPROVAL.** The treatment of sections 100.18 (10v), 100.26 (4),
17 423.301 (2) and (3), and 423.302 of the statutes first applies to an extension of credit
18 or refusal to extend credit that takes place pursuant to a direct communication of
19 preapproval made on the effective date of this subsection.

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

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

Handwritten notes: "DUSM 9-23" with a circle around the number 23.

24 **SECTION 15. Effective date.**

INSERTS

1999 SENATE BILL 170

May 20, 1999 - Introduced by Senator BURKE, cosponsored by Representative MUSSER. Referred to Committee on Judiciary and Consumer Affairs.

1 AN ACT to renumber and amend 138.052 (9), 411.103 (1) (e), 421.202 (6) and
2 429.104 (9); to amend 138.09 (3) (e) 1. a. and 428.101 (3); and to create 138.052
3 (9) (b), 411.103 (1) (e) 1., 411.103 (1) (e) 2., 421.202 (6) (b), 428.101 (4), 429.104
4 (9) (a) 1., 429.104 (9) (a) 2. and 429.104 (9) (b) of the statutes; relating to:

5 transactions excluded from the Wisconsin Consumer Act, authority of licensed
6 lenders and consumer leases under the uniform commercial code

INSERT 1-4

INSERT 2A

Analysis by the Legislative Reference Bureau

Wisconsin Consumer Act

Under current law, a transaction that is in an amount of \$25,000 or less and that is entered into for personal, family or household purposes is generally subject to the Wisconsin Consumer Act (consumer act). The consumer act provides obligations, remedies, and penalties that current law generally does not require for other transactions. In addition to other exceptions, the consumer act does not apply to certain transactions relating to a first lien residential mortgage that originally had a principal amount in excess of \$25,000. Thus, if the original principal amount of a mortgage was greater than \$25,000, a refinancing of the mortgage would not be subject to the consumer act, even if the mortgage has a current balance of \$25,000 or less.

This bill expands current law by increasing the coverage of the consumer act to include a personal, family or household transaction that is in an amount of \$50,000

75,000

Scope of

SENATE BILL 170

or less. In addition, this bill narrows the mortgage refinancing exception to the consumer act to exclude certain transactions relating to a first lien residential mortgage with an original principal amount in excess of ~~\$50,000~~ \$75,000

Uniform commercial code ^{and licensed lenders}

Wisconsin's version of the uniform commercial code treats the parties to a commercial lease differently from the parties to a consumer lease that is in the amount of \$25,000 or less. 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 the amount of ~~\$50,000~~ \$75,000 or less.

Licensed lenders

This bill makes conforming changes to the licensed lender law in order to maintain existing consistency with the consumer act.

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

LPS: Please proof amended stats. w/ folio

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

INSERT
5-3

1 SECTION [#] 4. 138.052 (9) of the statutes is renumbered 138.052 (9) (a) and
2 amended to read:

3 138.052 (9) (a) Chapters 421 to 428 do not apply to the refinancing,
4 modification, extension, renewal or assumption of a loan which had an original
5 principal balance in excess of \$25,000 if the unpaid principal balance of the loan has
6 been reduced to \$25,000 or less and the refinancing, modification, extension, renewal
7 or assumption takes place before the effective date of this paragraph ... [revisor
8 inserts date].

9 SECTION [#] 2. 138.052 (9) (b) of the statutes is created to read:

10 138.052 (9) (b) 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 ~~\$50,000~~ if the unpaid principal balance of the loan has
13 been reduced to ~~\$50,000~~ or less and the refinancing, modification, extension, renewal

\$ 75,000

SENATE BILL 170

1 or assumption takes place on or after the effective date of this paragraph [revisor
2 inserts date].

3 SECTION ~~3~~[#]. 138.09 (3) (e) 1. a. of the statutes is amended to read:

4 138.09 (3) (e) 1. a. A business engaged in making loans for business or
5 agricultural purposes ~~or, loans before the effective date of this subdivision 1. a.~~
6 ~~[revisor inserts date], exceeding \$25,000 in principal amount, or loans on or after the~~
7 ~~effective date of this subdivision 1. a. [revisor inserts date], exceeding \$50,000 in~~
8 ~~principal amount, except that all such loans having terms of 49 months or more are~~
9 subject to sub. (7) (gm) 2. or 4. \$75,000

10 SECTION ~~4~~[#]. 411.103 (1) (e) of the statutes is renumbered 411.103 (1) (e) (intro)
11 and amended to read:

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

17 SECTION ~~5~~[#]. 411.103 (1) (e) 1. of the statutes is created to read:

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

20 SECTION ~~6~~[#]. 411.103 (1) (e) 2. of the statutes is created to read:

21 411.103 (1) (e) 2. For a lease entered into on or after the effective date of this
22 subdivision [revisor inserts date], ~~\$50,000~~ \$75,000

23 SECTION ~~7~~[#]. 421.202 (6) of the statutes is renumbered 421.202 (6) (a) and
24 amended to read:

SENATE BILL 170

1 421.202 (6) (a) Consumer credit transactions in which the amount financed
 2 exceeds \$25,000, motor vehicle consumer leases in which the total lease obligation
 3 exceeds \$25,000 or other consumer transactions in which the cash price exceeds
 4 \$25,000, if the consumer credit transaction, motor vehicle consumer lease or other
 5 consumer transaction was entered into before the effective date of this paragraph

6 [revisor inserts date];

\$75,000

7 SECTION 9. 421.202 (6) (b) of the statutes is created to read:

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

13 [revisor inserts date];

leading to

14 SECTION 9. 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 10. 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.

\$75,000

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

INSCR 9-14B

SENATE BILL 170

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 12. 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 13. 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.~~ \$75,000

14 SECTION 14. 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). *(end is)*

17 ~~SECTION 15. Initial applicability~~

18 ~~(1) This act~~ ^{apply} first ~~applies~~ to transactions entered into on the effective date of this
19 subsection.

20 SECTION 16. Effective date.

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

23 (END)

*Insert
9-23*

(4) SCOPE OF CONSUMER ^(C6) LEASE. The treatment of sections 138.052 (9), 138.09 (3)(e) 1. a, 411.103 (1)(e), 421.202 (6), 428.101 (3), ~~and~~ ^{and} 429.104 (9) of the statutes and the creation of sections 138.052 (9)(b), 411.103 (1)(e) 1. and 2., and 421.202 (6)(b) of the statutes

No B

INSERT 3A

Penalties under the Wisconsin Consumer Act

Generally, the consumer act currently provides three different penalties for specified violations. The lowest penalty is \$25 plus actual damages. This bill deletes this penalty. The next lowest penalty is \$100 plus actual damages. This bill increases this penalty to \$500 plus actual damages and applies this penalty to all violations that are currently subject to the lowest penalty. The highest penalty is twice the amount of the finance charge in the applicable transaction (with a minimum of \$100 and a maximum of \$1,000) or actual damages. This bill increases this penalty to twice the amount of the finance charge in the applicable transaction (with a minimum of \$500 and a maximum of \$5,000) or actual damages.

INSERT 7-13

SECTION ~~4~~[#]. 422.421 (12) of the statutes is amended to read:

422.421 (12) PENALTY. A violation of this section is subject to s. 425.304, except that failure to give the notice required under sub. (5) (c) does not subject a creditor to the penalty provided in s. ~~425.302~~ 425.303 or 425.304.

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

INSERT 9-14A

SECTION ~~4~~[#]. 425.301 (3) of the statutes is amended to read:

425.301 (3) Notwithstanding any other section of chs. 421 to 427, a customer shall not be entitled to recover specific penalties provided in s. ~~425.302 (1) (a), 425.303 (1) (a), 425.304 (1) or 425.305 (1)~~ if the person violating chs. 421 to 427 shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

History: 1971 c. 239; 1975 c. 407; 1979 c. 89; 1985 a. 25; 1999 a. 31.

SECTION ~~4~~[#]. 425.302 of the statutes is repealed.

SECTION ~~4~~[#]. 425.303 (intro.) of the statutes is renumbered 425.303 (1) (intro.) and 425.303 (1) (a), as renumbered, is amended to read **[LPS check component!]**:

425.303 (1) (a) ~~One hundred~~ ^{Five hundred} dollars ~~\$100~~; and

History: 1971 c. 239.

Please check component

plain

SECTION ~~§~~[#] 425.303 (2m)[↓] of the statutes is created to read:

425.303 (2m) This section ~~now~~^{new} applies to all violations for which no other remedy is specifically provided.

SECTION ~~§~~[#] 425.304 (1)[↓] of the statutes is amended to read:

425.304 (1) Twice the amount of the finance charge in connection with the transaction, except that the liability under this subsection shall not be less than \$100 ~~\$500~~ nor greater than ~~\$1,000~~ \$5,000; or

History: 1971 c. 239.

SECTION ~~§~~[#] 426.110 (14)[↓] of the statutes is amended to read:

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

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

Emery, Lynn

From: Powell, Thomas
Sent: Friday, September 12, 2003 10:59 AM
To: LRB.Legal
Subject: Draft review: LRB 03-2832/2 Topic: Credit card advertising, rates, and disclosures

It has been requested by <Powell, Thomas> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-2832/2 Topic: Credit card advertising, rates, and disclosures

Lief, Madelon

From: Powell, Thomas
Sent: Thursday, January 15, 2004 10:41 AM
To: Lief, Madelon
Subject: RE: Redraft of LRB-2832

Thanks Lonnie,

I went through all of my old e-mail to Robert, and didn't find anything on the re-draft instructions, so I must have sent it all as hardcopy.

Thanks for your comments, though. I forwarded them to the UW folks, but haven't heard back yet. Seeing as we are on a tight schedule, the instructions are pretty simple:

Drop 422.422 and 423.301 (2) and (3) (despite the questionable pre-emption issue) and separate out all of the penalty adjustments under the Wisconsin Consumer Act into a separate bill.

thanks much

Tom Powell

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

From: Lief, Madelon
Sent: Thursday, January 15, 2004 9:53 AM
To: Powell, Thomas
Subject: Redraft of LRB-2832

Dear Tom--I left you a voice mail message about the redraft, saying that I did not yet have the redraft instructions from you. If you can't find the emails that Rob sent you, just verify what sections you want removed from the bill. I will be out of the office from Friday until next Wed., so I would need to get the draft to our editors before 4:30 today. Also, I am not sure I understand the logic of removing created s. 423.301 (2) & (3) from the bill. If in fact the TILA preempts Wisconsin law on credit disclosure information, it would preempt WI law regardless of the chapter in which it appears. I don't understand why the UW clinic thinks that TILA credit disclosure regulations do not apply to misrepresentation issues under the WCA. Perhaps they have in mind something contained in case law or the federal regulations on this point that they don't cite in their memo, but absent that, it seems that they are placing form over substance. The preemption provision applies to any state law, regardless of how the legislature chooses to characterize it by placing it in ch. 100, as opposed to ch. 423. As a practical matter, it probably makes more sense to limit the placement of this language to one chapter, particularly one that offers more generous remedies for consumers. I just wanted you to know, though, that I am not sure that you will avoid a preemption issue by eliminating the language in ch. 423.

Lonnie

Madelon (Lonnie) Lief
Senior Legislative Attorney
Legislative Reference Bureau
608-267-7380
madelon.lief@legis.state.wi.us

December 16, 2003

Representative Terese Berceau, 76th District
State Capitol
P.O. Box 8952
Madison, Wisconsin 53709

Re: Changes and Amendments to the Wisconsin Consumer Act

Dear Representative Berceau,

Earlier this fall, you asked the UW Law School's Consumer Law Litigation Clinic to review your proposed changes to the Wisconsin Consumer Act ("WCA"). Your bill stipulates that certain representations regarding an open-end credit plan are deceptive and misleading, and requires additional disclosures that must be included in periodic billing statements issued by a creditor pursuant to an open-end credit plan. Additionally, the bill expands current law by increasing the coverage of the WCA from \$25,000 to \$75,000 and increases penalties under the Act.

This memo provides a two-part analysis of the bill. Part I of this memo outlines issues raised by provisions on disclosures and business practices in open-ended credit solicitations and periodic statements. Part II of the memo discusses the proposed increased scope and penalties of the WCA. In reviewing the legislation, we looked at the history of the Wisconsin Consumer Act, case law, and possible federal preemption issues that may affect the proposed state law.

PART I: OPEN-END CREDIT DISCLOSURES AND SOLICITATIONS

In reviewing the changes and amendments outlined in your bill, we examined the policy considerations of the proposed law, relevant case law, and potential conflicts with federal law. Specifically, we looked at the federal Truth in Lending Act (TILA), which is designed to protect consumers in credit transactions by requiring clear disclosure of costs

and key terms of the lending arrangement. State disclosure rules are altered, annulled, or affected by TILA only to the extent they are inconsistent with federal law. TILA states that:

The provisions ... of this title shall supersede any provision of the law of any State relating to the disclosure of information in any credit or charge card application or solicitation which is subject to the requirements of section 1637(c) [disclosure in credit and charge card applications and solicitations] of this title or any renewal notice which is subject to the requirements of section 1637(d) [disclosure prior to renewal] of this title, except that any State may employ or establish State laws for the purpose of enforcing the requirements of such section.”¹

Consumer credit provisions of TILA are administered by the Federal Reserve Board under “Regulation Z.” Regulation Z rules apply to each individual or business that offers or extends credit to consumers.

Our analysis begins by reviewing the provisions in your bill most vulnerable to a federal preemption challenge. We then summarize the remaining provisions and our observations in a table.

Proposed changes to §423.301(2) Deceptive Preapproved Rates, Terms of Conditions of Open-end Credit and §423.301(3) Deceptive Preapproval of Open-End Credit Plans²

The purpose of this section is to prevent “bait and switch” tactics, where creditors offer consumers open-end credit or specific terms of credit, and upon a subsequent credit

¹ See U.S.C. §1610 (e)

² §423.301(2) Deceptive Preapproved Rates, Terms of Conditions of Open-end Credit (a) No merchant shall directly communicate to a customer, or cause to be directly communicated to a customer, that the merchant has preapproved an extension of credit to the customer under an open-end credit plan and then, pursuant to the customer’s response to the communication, make an extension of credit to the customer under an open-end credit plan with rates, terms, or conditions that are less financially favorable to the customer than those communicated. (b) Except as provided under par.(c), it is not a defense to a violation of par.(a) that the merchant’s approval of an extension of credit to the customer is made subject to the merchant’s review of the customer’s financial information, creditworthiness, credit standing, or credit capacity. (c) Paragraph (a) does not apply to an extension of credit under an open-end credit plan with different rates, terms, or conditions than those communicated to a customer, if the difference in rates, terms, or conditions resulted from an adverse change in the financial circumstances of the customer between the date on which the merchant communicates preapproval and the date on which the merchant makes the extension of credit.

§423.301(3) Deceptive Preapproval of Open-End Credit Plans (a) No merchant shall refuse to extend credit to a customer under an open-end credit plan if the customer requests the extension of credit in response to a direct communication from the merchant, or a direct communication caused by the merchant, indicating that the merchant has preapproved the extension of credit to the customer under an open-end credit plan. (b) Except as provided under par.(c), it is not a defense to a violation of par.(a) that the merchant’s approval of an extension of credit to the customer is made subject to the merchant’s review of the customer’s financial information, creditworthiness, credit standing, or credit capacity. (c) Paragraph (a) does not apply to a refusal to extend credit under an open-end credit plan, if the refusal resulted from an adverse change in the financial circumstances of the customer between the date the merchant communicates preapproval and the date on which the merchant refuses to extend credit.

check, either offer credit under less favorable terms or not at all. This hurts consumers with poor credit history who are often targeted, and encouraged to apply under the false premise of open-end credit with favorable terms. The consumer's application for additional credit then becomes part of the consumer's financial history, and could potentially hurt their credit record. This provision creates a rebuttable presumption that such tactics by creditors are false or misleading.

TILA has an explicit preemption clause applicable to disclosure of credit information on credit or charge card applications, solicitations, or periodic statements. Regulation Z, section 226.28 states, "A State law is inconsistent if it requires a creditor to make disclosures or take action that contradicts the requirement of the Federal Law." TILA does not prohibit creditors from including additional disclosures, such as contractual provisions and explanation of contract terms. Section 226.5 of Regulation Z states that general disclosure requirements do not prohibit, "...adding to the required disclosures such items as contractual provisions, explanation of contract terms, state disclosures and translations." For example, a creditor's solicitation containing a disclaimer that "rates may change" or "subject to review of your financial circumstances" would not be misleading under TILA. Thus, TILA implicitly allows lenders to include a disclaimer stating a pre-approved solicitation or terms and conditions of an open-end credit plan may be subject to review of a customer's financial circumstances. This law may preempt enforcement of section 423.301(2) and (3) of your bill.

Your bill, however, also expands Wis. Stat. section 100.18 to include language identical to the proposed sections 423.301(2) and (3). Thus, your purpose may be achieved by treating the creditor's conduct as a misrepresentation under section 100.18, versus a credit solicitation issue vulnerable to federal preemption under Chapter 423.

WJ TILA credit disclosure regulations do not apply to misrepresentation issues under the WCA. Therefore, removing sections 423.301(2)(3) and retaining section 100.18(10v)(b)(c)³ could save the legislation from possible preemption under TILA.

³ §100.18(10v)(b) *Deceptive preapproved rates, terms, or conditions*. 1. It is deceptive advertising for a merchant to communicate directly to a customer, or cause to communicate directly 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 credit to the customer under an open-end credit plan with rates, terms, or conditions that are less financially favorable to the customer than those communicated. 2. Except as provided under subd. 3, it is not a defense to a violation of subd. 1. that the merchant's preapproval of an extension of credit to the customer is made subject to the merchant's review of the customer's financial information, creditworthiness, credit standing or credit capacity. 3. Subdivision 1. does not apply to an extension of credit under an open-end credit plan with different rates, terms or conditions than those communicated to the customer, if the difference in rates, term, or conditions resulted from an adverse change in the financial circumstances of the customer between the date on which the merchant communicates preapproval and the date on which the merchant makes an extension of credit.

(c) *Deceptive preapproval*. 1. It is deceptive advertising for a merchant to refuse to extend credit to a customer under an open-end credit plan if the customer requests the extension of credit in response to a direct communication from the merchant or a direct communication caused by the merchant, indicating that the merchant has preapproved the extension of credit to the customer under an open-end credit plan. 2. Except as provided under subd. 3, it is not a defense to a violation of subd. 1. that the merchant's preapproval of an extension of credit to the customer is made subject to the merchant's review of the customer's financial information, creditworthiness, credit standing or credit capacity. 3. Subdivision 1. does not apply to a refusal to extend credit under an open-end credit plan with different rates, terms or conditions than those communicated to the customer, if the refusal resulted from an adverse change in the financial

Additionally, the penalties under section 100.18 are more favorable to consumers than those under Chapter 425. Under section 100.18 (11)(b), violations may result in recovery of twice the amount of pecuniary loss, together with costs, including attorney fees. This remedy provides far more relief to consumers vulnerable to creditors' "bait and switch" tactics than the remedy available under section 425.305, which only cancels the consumer's payment obligations. Stricter damages also provide creditors more incentive to follow the law, and are consistent with the objectives of your bill's provisions increasing penalties for violations under the WCA. *See* proposed §425.303(1), 425.304(1). Therefore, we believe proposed section 100.18(10v)(b)(c) protects consumers without the risk of federal preemption under TILA.

§422.422 Application of payments under certain open-end credit plans.⁴

The purpose of this provision is to prohibit lenders from offering "teaser" rates for some uses of open-end credit, and then apply a fine print clause allowing the financial institution to apply payments to a lower rate charge first. For example, a consumer pays a higher than advertised rate for a cash advance. The consumer subsequently pays more for their credit than they originally bargained for. Additionally, rules for differentiating interest rates for different uses of credit are complex, and not likely to be remembered by most consumers. By limiting such behavior by creditors, it promotes more ease and information regarding credit payments for consumers.

This provision is vulnerable to federal preemption challenge. While it does not trigger TILA issues as it does not pertain to open-end credit disclosures, other federal laws may apply. We agree with the Legislative Reference Bureau drafter's note that federal banking laws and existing case law may preempt this provision, and render it applicable only to Wisconsin financial institutions.

As the drafting committee noted, federal law allows financial institutions to follow the interest rate regulations of the states in which they are located. *See Marquette Nat'l Bank v. First Omaha Serv. Corp.*, 439 U.S. 299 (1978). Although section 422.422 does not address the *setting* of interest rates, but rather the *application of payments* to purchases subject to changing interest rates, it could trigger a similar challenge based on laws related to business practices of financial institutions. Thus, this statute may be preempted by federal banking laws.

A recent case held that a state statute imposing substantial (monetary and non-monetary) burdens on national financial institutions may constitute a significant interference with national banks' powers under the National Bank Act (NBA). *Am. Bankers Ass'n v. Lockyer*, 2003 U.S. Dist. LEXIS 4320. Although this California case is

circumstances of the customer between the date on which the merchant communicates preapproval and the date on which the merchant refuses to extend credit.

⁴ 422.422 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 and 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.

not binding in Wisconsin, section 422.422 could provoke a similar challenge. This section may impose financial burdens on financial institutions by prioritizing the application of payments to purchases subject to a higher interest rate. While federal banking laws such as the NBA are beyond the scope of our initial research, we suspect that section 422.422 may conflict with the NBA and other federal banking laws. This would put Wisconsin financial institutions at a competitive disadvantage. Additionally, if it is unattractive for credit card issuers to offer lower rates of interest, many may discontinue offering lower interest rates for any period or type of transaction at all, opting instead to apply the same (higher) interest rate to the entire balance for the entire period. In this way, a proposal intended to help consumers may actually harm them.

Proposed §422.308 (2m)(b-e) Disclosure and form of writings.

The intent of these provisions is to inform consumers that introductory, “teaser” rates may expire (§422.308 (2m)(b)), warn the consumer when they are scheduled to increase (§422.308 (2m)(d)), and make consumers aware of purchases subject to a security interest (§422.308(2m)(c)). All of these provisions enable consumers to make more informed decisions regarding the use of their credit cards.

Based on our initial research and analysis, we believe there are no significant conflicts between the proposals and federal law, specifically TILA. The following table provides a summary of our analysis:

Draft Legislation	Issue
<p>§422.308 (2m)(b) If the periodic statement states a minimum payment due under the open-end credit plan 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 a minimum payment, the creditor shall include, as part of the periodic statement, the following notice: “FAILURE TO MAKE A MINIMUM PAYMENT BY THE DUE DATES MAY CAUSE AN INCREASE IN YOUR INTEREST RATE.”</p>	<p>The Legislative Reference Bureau flagged a possible preemption issue by citing a California federal district court case, where a similar California law was preempted by various federal banking laws. This decision, however, is not binding in Wisconsin.</p> <p>The California law was very different from the current proposal because it required creditors to calculate the total cost a cardholder will incur if (s)he repays the outstanding balance on a credit card by remitting only the minimum payment and required creditors to institute a hotline to determine cost. Wisconsin’s proposed legislation imposes a minimal burden to financial institutions.</p>

Draft Legislation	Issue
<p>§422.308 (2m)(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 SEE CREDIT EXTENDED TO YOU UNDER THIS [CREDIT CARD OR PLAN] TO PURCHASE ITEMS, THE CREDITOR MAY OBTAIN A SECURITY INTEREST IN THOSE ITEMS."</p>	<p>There do not appear to be any preemption issues with TILA.</p>
<p>§422.308 (2m)(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]."</p>	<p>There do not appear to be any significant preemption issues with TILA. TILA requires notice of the change in terms be provided at least 15 days before the change takes effect.</p> <p>Therefore, two periodic statements preceding date of increase is at least 15 days prior to change.</p>
<p>§422.308 (2m) (e) Any notice required under par. (b) to (d) shall be displayed in 12-point bold face type or 12 point type of a color different from the color of other typed included in the statement</p>	<p>TILA does not require disclosures other than terms of finance charges and annual percentage rates to be more conspicuous, i.e., segregated from other materials, located in any particular place on the disclosure statement, or that numerical amounts or percentages to be in any particular type size.</p> <p>This provision, however, generally satisfies the policy goals of TILA which require clear disclosure of key terms of the lending arrangement and all costs.</p>

PART II: INCREASING COVERAGE AND PENALTIES OF THE WISCONSIN CONSUMER ACT

We believe your proposal to increase the scope and penalties of the WCA are important and attainable goals, and do not raise the preemption issues applicable to some of the provisions discussed above. We would like to provide you with the historical context of these proposals, along with arguments to assist you in passing this legislation that we believe is critical to the development of Wisconsin's consumer protection law.

Historical Overview

The Wisconsin Consumer Act became effective March 1, 1973. It modernized and clarified Wisconsin's consumer credit laws and provided new consumer protections regulating consumer credit transactions and debt collection.

The WCA's private enforcement provisions are critically important. Crandall, *The Wisconsin Consumer Act: Wisconsin Consumer Credit Laws Before and After*, 73 WLR 334, 377 (1973). These provisions allow consumers to protect their individual rights while simultaneously assisting public authorities in achieving compliance for the ultimate benefits of all consumers. *Id.*

Civil penalties were included in the WCA as an incentive for consumers to bring actions where actual damages (i.e., out of pocket losses) are minimal. *Id.* These penalties are also intended to deter further violations by the creditor. Therefore, they must be of sufficient amount to achieve these goals.

In November 1996, DFI Secretary Richard Dean appointed the Wisconsin Consumer Act Review Committee in response to requests from both consumers and the industry to modernize and improve the WCA. The Secretary instructed the committee to review the WCA and recommend ways to achieve these goals while balancing the rights of consumers and creditors.

One recommendation by the WCA Review Committee was to increase the scope and penalties of the WCA to reflect current economic conditions and practices. For example, the WCA currently applies to consumer credit transactions in which the amount financed is \$25,000 or less. Your proposal, like that of the Review Committee, seeks to raise this jurisdictional limit to \$75,000. Your bill also narrows the mortgaging finance exception to exclude certain transactions relating to a first lien residential mortgage with an original principal amount in excess of \$75,000⁵. In addition, this bill increases the minimum penalties for violations of the WCA from \$25 plus actual damages to \$500 plus

⁵ 411.104(1)(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed the following: 1. for a lease entered into before the effective date of this subsection..., \$25,000. 2. For lease entered into on or after the effective date of this subdivision..., \$75,000.

actual damages⁶, and increases the highest penalty to twice the amount of the finance charge (with a minimum of \$500 and a maximum of \$5000) or actual damages⁷.

The current cap of \$25,000 does not reflect modern consumer credit transactions. While this limit covered many non-real estate consumer transactions in the early 1970's, it has not kept pace with inflation and the cost of consumer goods over the past thirty years. For example, the average cost of an automobile is five times higher than it was 25 years ago⁸. The cost of living has more than tripled since the WCA became effective. The U.S. Census Bureau lists the consumer price index at 88.9 in 1975, and 261.9 in 2002. Thousands of consumer transactions that would have been covered under WCA in the 1970's are excluded from its protections today. Increasing the cap on the WCA to \$75,000 reflects the contemporary realities regarding open-end credit in Wisconsin.

The WCA's civil penalties have not been increased since the statute was enacted in 1973. While minimal at their inception, they have become trivial over time. The WCA requires that its remedies must be liberally administered to the end that "the customer as the aggrieved party shall be put in at least as good a position as if the creditor had fully complied with [the WCA]" Wis. Stat. §425.301(1) The current penalties for violation of the WCA, set in the early 1970's, are too low to meet this requirement or to deter practices by unscrupulous creditors

Increasing penalties against creditors would also mirror increases in the cost of credit to the consumer over the past decade. In 1994, the legislature amended the WCA to double the maximum fees that creditors may impose on Wisconsin consumers for various transactions, including charges for inability to make a minimum payment due and returned checks. Shortly thereafter, caps on credit card interest rates in Wisconsin were completely eliminated. While financial institutions have increased interest rates, fees and penalties, consumer remedies against deceitful business practices have remained stagnant and utterly inadequate.

The banking industry cannot deny the proposition that the credit card industry has experienced tremendous growth over the last twenty years. Financial institutions have increased the cost of credit to thousands of consumers, while penalties enforcing open-end credit violations have not kept pace. This seriously compromises the tender balance between the interests of consumers and businesses. The increased penalties proposed in your bill would remedy this disparity.

Summary

Overall, your proposed legislation provides Wisconsin consumers much needed, modernized consumer protections. We recommend that DFI further review these provisions to ensure they are workable. Jim Jeffries of the Attorney General's office has also expressed an interest in this legislation. We met with him last week, and he has

⁶ 424.303(1)(a) ~~One hundred~~ Five hundred dollars

⁷ 424.304(1) Twice the amount of the finance charge in connection with the transaction, except that the liability under this subsection shall not be less than \$100 \$500 nor greater than \$1,000 \$5,000;

⁸ McCann, Hugh, "Engineers Get Cracking on Costs; Growing Affordability Issue Dictates New Thinking," *Ward's Autoworld*, November 1, 1995; also available at <http://waw.wardsauto.com/magazinearticle.asp?magazinearticleid=26203&magazineid=50&siteID=26&rel easeid=3392&mode=print>

tentatively offered to employ his staff to assist in further research and analysis of these issues.

We hope you find this memo helpful. If you have any questions regarding our analysis of your proposed changes and amendments to the WCA, please do not hesitate to contact us.

Sincerely,



Katherine Kaufka
Legal Intern



Marsha Mansfield
Clinical Assistant Professor

Cc: ~~Tom Powell, Wisconsin State Assembly~~
Jim Jeffries, Office of Attorney General

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

Due
Tues
1/20

2003 BILL

RMR

TO editing
1/15

Pres

1 AN ACT *to repeal* 422.421 (5) (b) 1. and 425.302; *to renumber* 422.421 (5) (b) 2.
 2 and 423.301; *to renumber and amend* 138.052 (9), 411.103 (1) (e), 421.202 (6),
 3 425.303 (intro.) and 429.104 (9); *to amend* 100.26 (4), 138.09 (3) (e) 1. a.,
 4 422.418 (3) and (4), 422.421 (5) (a), 422.421 (12), 423.302, 425.301 (3), 425.304
 5 (1), 426.110 (14) and 428.101 (3); and *to create* 100.18 (10v), 138.052 (9) (b),
 6 411.103 (1) (e) 1., 411.103 (1) (e) 2., 421.202 (6) (b), 422.308 (2m), 422.422,
 7 423.301 (1) (title), 423.301 (2), 423.301 (3), 425.303 (2m), 428.101 (4), 429.104
 8 (9) (a) 1., 429.104 (9) (a) 2. and 429.104 (9) (b) of the statutes; **relating to:**
 9 deceptive ~~preapproval of open-end credit plans~~ ^{preapproved rates, terms, or conditions} open-end credit plan billing
 10 statements; ~~payments under certain open-end credit plans~~ transactions
 11 excluded from the Wisconsin Consumer Act; authority of licensed lenders; ^{and}
 12 consumer leases under the Uniform Commercial Code ^{and providing penalties}

Analysis by the Legislative Reference Bureau

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

BILL

Deceptive preapproval ^{(B+E) ed} ^{(B) + (I)} *(rates, terms, or conditions)*

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 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 ^{to refuse} ~~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.

it is deceptive advertising for

it is deceptive advertising for

Scope of Wisconsin Consumer Act

Under current law, a transaction that is in an amount of \$25,000 or less and that is entered into for personal, family, or household purposes is generally subject to the Wisconsin Consumer Act (consumer act). The consumer act provides obligations, remedies, and penalties that current law generally does not require for other transactions. In addition to other exceptions, the consumer act does not apply to certain transactions relating to a first lien residential mortgage that originally had a principal amount in excess of \$25,000. Thus, if the original principal amount of a mortgage was greater than \$25,000, a refinancing of the mortgage would not be subject to the consumer act, even if the mortgage has a current balance of \$25,000 or less.

This bill expands current law by increasing the coverage of the consumer act to include a personal, family, or household transaction that is in an amount of \$75,000 or less. In addition, this bill narrows the mortgage refinancing exception to the consumer act to exclude certain transactions relating to a first lien residential mortgage with an original principal amount in excess of \$75,000.

BILL***Uniform Commercial Code and licensed lenders***

Wisconsin's version of the Uniform Commercial Code treats the parties to a commercial lease differently from the parties to a consumer lease that is in the amount of \$25,000 or less. For example, a lessee under a consumer lease may recover attorney 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 the amount of \$75,000 or less. This bill also makes conforming changes to the licensed lender law to maintain existing consistency with the consumer act.

Billing statements

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.

Penalties under the Wisconsin Consumer Act

Generally, the consumer act currently provides three different penalties for specified violations. The lowest penalty is \$25 plus actual damages. This bill deletes this penalty. The next lowest penalty is \$100 plus actual damages. This bill

BILL

increases this penalty to \$500 plus actual damages and applies this penalty to all violations that are currently subject to the lowest penalty. The highest penalty is twice the amount of the finance charge in the applicable transaction (with a minimum of \$100 and a maximum of \$1,000) or actual damages. This bill increases this penalty to twice the amount of the finance charge in the applicable transaction (with a minimum of \$500 and a maximum of \$5,000) or actual damages.

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 communicate directly to a customer, or cause to
12 communicate directly to a customer, that the merchant has preapproved an
13 extension of credit to the customer under an open-end credit plan and then,
14 pursuant to the customer's response to the communication, to make an extension of
15 credit to the customer under an open-end credit plan with rates, terms, or conditions
16 that are less financially favorable to the customer than those communicated.

17 2. Except as provided under subd. 3., it is not a defense to a violation of subd.

18 1. that the merchant's preapproval of an extension of credit to the customer is made

BILL

1 subject to the merchant's review of the customer's financial information,
2 creditworthiness, credit standing, or credit capacity.

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

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

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

18 3. Subdivision 1. does not apply to a refusal to extend credit under an open-end
19 credit plan, if the refusal resulted from an adverse change in the financial
20 circumstances of the customer between the date on which the merchant
21 communicates preapproval and the date on which the merchant refuses to extend
22 credit.

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

BILL

1 100.26 (4) Any person who violates s. 100.18 (1) to (8) ~~or~~, (10), or (10v) or
2 100.182 is subject to a civil forfeiture of not less than \$50 nor more than \$200 for each
3 violation.

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

6 138.052 (9) (a) Chapters 421 to 428 do not apply to the refinancing,
7 modification, extension, renewal or assumption of a loan which had an original
8 principal balance in excess of \$25,000 if the unpaid principal balance of the loan has
9 been reduced to \$25,000 or less and the refinancing, modification, extension, renewal
10 or assumption takes place before the effective date of this paragraph [revisor
11 inserts date].

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

13 138.052 (9) (b) Chapters 421 to 428 do not apply to the refinancing,
14 modification, extension, renewal or assumption of a loan which had an original
15 principal balance in excess of \$75,000 if the unpaid principal balance of the loan has
16 been reduced to \$75,000 or less and the refinancing, modification, extension, renewal
17 or assumption takes place on or after the effective date of this paragraph [revisor
18 inserts date].

19 **SECTION 5.** 138.09 (3) (e) 1. a. of the statutes is amended to read:

20 138.09 (3) (e) 1. a. A business engaged in making loans for business or
21 agricultural purposes ~~or, loans before the effective date of this subdivision 1. a.~~
22 [revisor inserts date], exceeding \$25,000 in principal amount, or loans on or after the
23 effective date of this subd. 1. a. [revisor inserts date], exceeding \$75,000 in
24 principal amount, except that all such loans having terms of 49 months or more are
25 subject to sub. (7) (gm) 2. or 4.

BILL

1 **SECTION 6.** 411.103 (1) (e) of the statutes is renumbered 411.103 (1) (e) (intro.)
2 and amended to read:

3 411.103 (1) (e) (intro.) “Consumer lease” means a lease that a lessor regularly
4 engaged in the business of leasing or selling makes to a lessee who is an individual
5 and who takes under the lease primarily for a personal, family, or household purpose,
6 if the total payments to be made under the lease contract, excluding payments for
7 options to renew or buy, do not exceed \$25,000. the following:

8 **SECTION 7.** 411.103 (1) (e) 1. of the statutes is created to read:

9 411.103 (1) (e) 1. For a lease entered into before the effective date of this
10 subdivision [revisor inserts date], \$25,000.

11 **SECTION 8.** 411.103 (1) (e) 2. of the statutes is created to read:

12 411.103 (1) (e) 2. For a lease entered into on or after the effective date of this
13 subdivision [revisor inserts date], \$75,000.

14 **SECTION 9.** 421.202 (6) of the statutes is renumbered 421.202 (6) (a) and
15 amended to read:

16 421.202 (6) (a) Consumer credit transactions in which the amount financed
17 exceeds \$25,000, motor vehicle consumer leases in which the total lease obligation
18 exceeds \$25,000 or other consumer transactions in which the cash price exceeds
19 \$25,000, if the consumer credit transaction, motor vehicle consumer lease or other
20 consumer transaction was entered into before the effective date of this paragraph
21 [revisor inserts date];

22 **SECTION 10.** 421.202 (6) (b) of the statutes is created to read:

23 421.202 (6) (b) Consumer credit transactions in which the amount financed
24 exceeds \$75,000, motor vehicle consumer leases in which the total lease obligation
25 exceeds \$75,000 or other consumer transactions in which the cash price exceeds

BILL

1 \$75,000, if the consumer credit transaction, motor vehicle consumer lease or other
2 consumer transaction was entered into on or after the effective date of this paragraph
3 [revisor inserts date];

4 **SECTION 11.** 422.308 (2m) of the statutes is created to read:

5 422.308 (2m) (a) This subsection applies to every open-end credit plan under
6 which a customer obtains credit pursuant to an application described under sub. (1)
7 or pursuant to a transaction described under sub. (2) and for which the creditor under
8 the open-end credit plan furnishes the customer a periodic statement that states the
9 amount due under the open-end credit plan.

10 (b) If the periodic statement states a minimum payment due under the
11 open-end credit plan and if the creditor is permitted under the open-end credit plan
12 to increase the interest rate applicable to the outstanding balance as a result of the
13 customer's failure to make the minimum payment, the creditor shall include, as part
14 the periodic statement, the following notice: "FAILURE TO MAKE A MINIMUM
15 PAYMENT BY THE DUE DATE MAY CAUSE AN INCREASE IN YOUR
16 INTEREST RATE."

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

23 (d) If the interest rate applicable to the outstanding balance under the
24 open-end credit plan is scheduled to increase on a specific date, the creditor shall
25 include, as part of the two periodic statements preceding the date on which the

BILL

1 increase is to take effect, the following notice: "THE INTEREST RATE
2 APPLICABLE TO YOUR OUTSTANDING BALANCE IS SCHEDULED TO
3 INCREASE TO [FILL IN NEW PERCENTAGE INTEREST RATE] ON [FILL IN
4 DATE OF INCREASE]."

5 (e) Any notice required under par. (b) to (d) shall be displayed in 12-point bold
6 face type or 12 point type of a color different from the color of other type included in
7 the statement.

8 **SECTION 12.** 422.418 (3) and (4) of the statutes are amended to read:

9 ~~422.418 (3) Payments Except as provided in s. 422.422, payments received by
10 the creditor upon an open-end credit plan are deemed, for the purpose of
11 determining the amount of the unpaid balance secured by the various security
12 interests, to have been applied first to the payment of finance charges in the order
13 of their entry to the account, and then to the payment of the respective amounts
14 financed in the order in which the entries to the account were made.~~

15 ~~(4) If Except as provided in s. 422.422, if obligations consolidated or financed
16 pursuant to an open-end credit plan arise from 2 or more transactions made on the
17 same day, payments received by the creditor are deemed, for the purpose of
18 determining the amount of the obligation secured by the various security interests,
19 to have been applied first to the payment of the smallest obligation.~~

20 **SECTION 13.** 422.421 (5) (a) of the statutes is amended to read:

21 422.421 (5) (a) 1. Except as provided in par. (b), a creditor shall mail or deliver
22 to the customer written notice of every change implementing an adjustment in the
23 rate of finance charge in a variable rate transaction. The notice shall be mailed or
24 delivered to the customer at the customer's last-known address appearing on the
25 records of the creditor. If the variable rate transaction involves more than one

BILL

1 customer, notice given to any customer satisfies this ~~requirement~~ subdivision.

2 Notices given in compliance with s. 422.308 (2m) (d) satisfy this subdivision.

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

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

12 **SECTION 14.** 422.421 (5) (b) 1. of the statutes is repealed.

13 **SECTION 15.** 422.421 (5) (b) 2. of the statutes is renumbered 422.421 (5) (b).

14 ~~**SECTION 16.** 422.421 (12) of the statutes is amended to read:~~

15 ~~422.421 (12) PENALTY. A violation of this section is subject to s. 425.304, except~~
16 ~~that failure to give the notice required under sub. (5) (c) does not subject a creditor~~
17 ~~to the penalty provided in s. 425.302 425.303 or 425.304.~~

18 ~~**SECTION 17.** 422.422 of the statutes is created to read:~~

19 ~~**422.422 Application of payments under certain open-end credit plans.**~~

20 ~~If the creditor under an open-end credit plan charges the consumer under the~~
21 ~~open-end credit plan a different annual percentage rate depending upon the purpose~~
22 ~~for which credit is used under the open-end credit plan, payments received by the~~
23 ~~creditor shall be applied first to the payment of that portion of the outstanding~~
24 ~~balance that is subject to the highest annual percentage rate, and then to each~~

BILL

1 remaining portion of the outstanding balance, in descending order depending upon
2 the annual percentage rate applicable to each portion.

3 **SECTION 18.** 423.301 of the statutes is renumbered 423.301 (1).

4 **SECTION 19.** 423.301 (1) (title) of the statutes is created to read:

5 423.301 (1) (title) GENERAL PROHIBITION.

6 **SECTION 20.** 423.301 (2) of the statutes is created to read:

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

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

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

24 **SECTION 21.** 423.301 (3) of the statutes is created to read:

BILL

1 ~~423.301 (3) DECEPTIVE PREAPPROVAL OF OPEN-END CREDIT PLANS. (a) No merchant~~
2 ~~shall refuse to extend credit to a customer under an open-end credit plan if the~~
3 ~~customer requests the extension of credit in response to a direct communication from~~
4 ~~the merchant, or a direct communication caused by the merchant, indicating that the~~
5 ~~merchant has preapproved the extension of credit to the customer under an~~
6 ~~open-end credit plan.~~

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

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

16 ~~SECTION 22. 423.302 of the statutes is amended to read:~~

17 ~~**423.302 Remedies and penalty.** In addition to any other remedy provided~~
18 ~~by law, a customer who has been induced to consummate a consumer credit~~
19 ~~transaction as a result of an advertising or communication in violation of s. 423.301~~
20 ~~shall be entitled to a recovery from the merchant in accordance with s. 425.305.~~

21 ~~SECTION 23. 425.301 (3) of the statutes is amended to read:~~

22 ~~425.301 (3) Notwithstanding any other section of chs. 421 to 427, a customer~~
23 ~~shall not be entitled to recover specific penalties provided in s. 425.302 (1) (a),~~
24 ~~425.303 (1) (a), 425.304 (1) or 425.305 (1) if the person violating chs. 421 to 427 shows~~
25 ~~by a preponderance of the evidence that the violation was not intentional and~~

BILL

1 resulted from a bona fide error notwithstanding the maintenance of procedures
2 reasonably adapted to avoid any such error.

3 ~~SECTION 24. 425.302 of the statutes is repealed.~~

4 ~~SECTION 25. 425.303 (intro.) of the statutes is renumbered 425.303 (1) (intro.),
5 and 425.303 (1) (a), as renumbered, is amended to read:~~

6 ~~425.303 (1) (a) One hundred Five hundred dollars; and~~

7 ~~SECTION 26. 425.303 (2m) of the statutes is created to read:~~

8 ~~425.303 (2m) This section applies to all violations for which no other remedy
9 is specifically provided.~~

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

11 ~~425.304 (1) Twice the amount of the finance charge in connection with the
12 transaction, except that the liability under this subsection shall not be less than \$100
13 \$500 nor greater than \$1,000 \$5,000; or~~

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

15 ~~426.110 (14) A merchant shall not be liable in a class action for specific
16 penalties under s. 425.302 (1) (a), 425.303 (1) (a), 425.304 (1), 425.305 (1) or 429.301
17 (1) for which it would be liable in individual actions by reason of violations of chs. 421
18 to 427 and 429 or of conduct prescribed in sub. (2) unless it is shown by a
19 preponderance of the evidence that the violation was a willful and knowing violation
20 of chs. 421 to 427 and 429. No recovery in an action under this subsection may exceed
21 \$100,000.~~

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

23 ~~428.101 (3) Loans made on or after November 1, 1981, and before the effective
24 date of this subsection [revisor inserts date], by a creditor to a customer and which~~

BILL

1 are secured by a first lien real estate mortgage or equivalent security interest if the
2 amount financed is \$25,000 or less.

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

4 428.101 (4) Loans made on or after the effective date of this subsection
5 [revisor inserts date], by a creditor to a customer and which are secured by a first lien
6 real estate mortgage or equivalent security interest if the amount financed is
7 \$75,000 or less.

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

10 429.104 (9) (a) (intro.) “Consumer lease” or “lease” means a lease entered into
11 in this state that transfers the right of possession and use by a natural person of a
12 motor vehicle primarily for a personal, family, household or agricultural purpose, for
13 a period of time exceeding 4 months, if the total lease obligation, excluding any option
14 to purchase or otherwise become owner of the motor vehicle at the expiration of the
15 consumer lease, does not exceed \$25,000. ~~The term does not include a credit sale, as~~
16 ~~defined under 12 CFR 226.2 (a) (16).~~ the following:

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

18 429.104 (9) (a) 1. For a lease entered into before the effective date of this
19 subdivision [revisor inserts date], \$25,000.

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

21 429.104 (9) (a) 2. For a lease entered into on or after the effective date of this
22 subdivision [revisor inserts date], \$75,000.

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

24 429.104 (9) (b) “Consumer lease” or “lease” does not include a credit sale, as
25 defined under 12 CFR 226.2 (a) (16).

BILL1 **SECTION 35. Initial applicability.**

2 (1) DECEPTIVE PREAPPROVAL. The treatment of sections 100.18 (10v) ^{and} 100.26 (4) ~~and~~
3 ~~423.301 (2) and (3), and 423.302~~ of the statutes first applies to an extension of credit
4 or refusal to extend credit that takes place pursuant to a direct communication of
5 preapproval made on the effective date of this subsection.

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

8 (3) PAYMENTS. The treatment of section 422.418 (3) and (4) ~~and 422.418~~ of the
9 statutes first applies to payments received on the effective date of this subsection.

10 ³~~4~~ (4) SCOPE OF CONSUMER ACT. The treatment of sections 138.052 (9), 138.09 (3)
11 (e) 1. a., 411.103 (1) (e), 421.202 (6), 428.101 (3) and (4), and 429.104 (9) of the statutes
12 and the creation of sections 138.052 (9) (b), 411.103 (1) (e) 1. and 2., and 421.202 (6)
13 (b) of the statutes first apply to transactions entered into on the effective date of this
14 subsection.

15 **SECTION 36. Effective date.**

16 (1) This act takes effect on the first day of the 2nd month beginning after
17 publication.

18

(END)

Due Monday

Lief, Madelon

From: Powell, Thomas
Sent: Tuesday, January 20, 2004 3:46 PM
To: Lief, Madelon
Subject: Consumer Act Changes re-draft

Lonnie,

I'm sorry if I wasn't clear on the drafting instructions for the re-draft of LRB 2832/2. As requested you dropped 422.422 and 423.301(2) and (3), and you moved the Consumer Act penalties to a separate bill. Thank you for your hard work this, and your speed.

However, I think I was vague in explaining how we wanted the bill split. so we are requesting one more small change -- and hope that it can be done without too much extra work. We're almost there!

Here's what we are looking for:

We want the initial bill split in two along its natural boundaries:

- 1) Open-end credit disclosures and solicitations; and
 - 2) Increasing coverage and penalties of the Wisconsin Consumer Act.
- So, along with the penalties being in a separate bill, also shift over the language dealing with the following:
- 1) "Scope of the Consumer Act" (ex. increasing the coverage of the consumer act to include a personal, family, or household transaction that is in an amount of \$75,000 or less. In addition, narrow the mortgage refinancing exception to the consumer act to exclude certain transactions relating to a first lien residential mortgage with an original principal amount in excess of \$75,000); and
 - 2) "Uniform Commercial Code and Licensed Lenders" (ex. Expand the applicability of Uniform Commercial Code provisions to cover a consumer lease that is in the amount of \$75,000 or less. Also, make conforming changes to the licensed lender law to maintain existing consistently with the consumer act).

I am sorry I wasn't clearer in my re-drafting instructions to you.
Can you please call to give me an estimated time for this?
Thanks again.

Tom Powell
Research Assistant to Rep. Terese Berceau



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2832/3 ⁴
RJM:wlj:pg
MSL

2003 ASSEMBLY BILL

RMR

To editing
1/23
Due Mon, 1/26

Re Regm

1 AN ACT to repeal 422.421 (5) (b) 1.; to renumber 422.421 (5) (b) 2.; to renumber
 2 and amend 138.052 (9), 411.103 (1) (e), 421.202 (6) and 429.104 (9); to amend
 3 100.26 (4), 138.09 (3) (e) 1. a., 422.421 (5) (a) and 428.101 (3); and to create
 4 100.18 (10v), 138.052 (9) (b), 411.103 (1) (e) 1., 411.103 (1) (e) 2., 421.202 (6) (b),
 5 422.308 (2m), 428.101 (4), 429.104 (9) (a) 1., 429.104 (9) (a) 2. and 429.104 (9)
 6 (b) of the statutes; relating to: deceptive preapproved rates, terms, or
 7 conditions, ^{and} open-end credit plan billing statements, ^{and providing a penalty} ~~and transactions excluded~~
 8 ~~from the Wisconsin Consumer Act, authority of licensed lenders, and consumer~~
 9 ~~leases under the Uniform Commercial Code.~~

Analysis by the Legislative Reference Bureau

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

Deceptive preapproved rates, terms, or conditions

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

ASSEMBLY BILL

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 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 deceptive advertising. Under this bill, it is deceptive advertising for a merchant to 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, it is deceptive advertising for a merchant to refuse 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.

Scope of Wisconsin Consumer Act

Under current law, a transaction that is in an amount of \$25,000 or less and that is entered into for personal, family, or household purposes is generally subject to the Wisconsin Consumer Act (consumer act). The consumer act provides obligations, remedies, and penalties that current law generally does not require for other transactions. In addition to other exceptions, the consumer act does not apply to certain transactions relating to a first lien residential mortgage that originally had a principal amount in excess of \$25,000. Thus, if the original principal amount of a mortgage was greater than \$25,000, a refinancing of the mortgage would not be subject to the consumer act, even if the mortgage has a current balance of \$25,000 or less.

This bill expands current law by increasing the coverage of the consumer act to include a personal, family, or household transaction that is in an amount of \$75,000 or less. In addition, this bill narrows the mortgage refinancing exception to the consumer act to exclude certain transactions relating to a first lien residential mortgage with an original principal amount in excess of \$75,000.

Uniform Commercial Code and licensed lenders

Wisconsin's version of the Uniform Commercial Code treats the parties to a commercial lease differently from the parties to a consumer lease that is in the amount of \$25,000 or less. For example, a lessee under a consumer lease may recover attorney 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

ASSEMBLY BILL

Uniform Commercial Code provisions to cover a consumer lease that is in the amount of \$75,000 or less. This bill also makes conforming changes to the licensed lender law to maintain existing consistency with the consumer act.

Billing statements

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]."

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).

ASSEMBLY BILL

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

2 (b) *Deceptive preapproved rates, terms, or conditions.* 1. It is deceptive
3 advertising for a merchant to communicate directly to a customer, or cause to
4 communicate directly to a customer, that the merchant has preapproved an
5 extension of credit to the customer under an open-end credit plan and then,
6 pursuant to the customer's response to the communication, to make an extension of
7 credit to the customer under an open-end credit plan with rates, terms, or conditions
8 that are less financially favorable to the customer than those communicated.

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

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

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

24 2. Except as provided under subd. 3., it is not a defense to a violation of subd.
25 1. that the merchant's preapproval of an extension of credit to the customer is made

ASSEMBLY BILL

1 subject to the merchant's review of the customer's financial information,
2 creditworthiness, credit standing, or credit capacity.

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

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

9 100.26 (4) Any person who violates s. 100.18 (1) to (8) or, (10), or (10v) or
10 100.182 is subject to a civil forfeiture of not less than \$50 nor more than \$200 for each
11 violation.

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

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

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

21 138.052 (9) (b) Chapters 421 to 428 do not apply to the refinancing,
22 modification, extension, renewal or assumption of a loan which had an original
23 principal balance in excess of \$75,000 if the unpaid principal balance of the loan has
24 been reduced to \$75,000 or less and the refinancing, modification, extension, renewal

ASSEMBLY BILL

1 or assumption takes place on or after the effective date of this paragraph [revisor
2 inserts date]

3 **SECTION 5.** 138.09 (3) (e) 1. a. of the statutes is amended to read:

4 138.09 (3) (e) 1. a. A business engaged in making loans for business or
5 agricultural purposes ~~or, loans before the effective date of this subdivision 1. a.~~
6 ~~[revisor inserts date], exceeding \$25,000 in principal amount, or loans on or after the~~
7 ~~effective date of this subd. 1. a. [revisor inserts date], exceeding \$75,000 in~~
8 ~~principal amount, except that all such loans having terms of 49 months or more are~~
9 ~~subject to sub. (7) (gm) 2. or 4.~~

10 **SECTION 6.** 411.103 (1) (e) of the statutes is renumbered 411.103 (1) (e) (intro.)
11 and amended to read:

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

17 **SECTION 7.** 411.103 (1) (e) 1. of the statutes is created to read:

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

20 **SECTION 8.** 411.103 (1) (e) 2. of the statutes is created to read:

21 411.103 (1) (e) 2. For a lease entered into on or after the effective date of this
22 subdivision [revisor inserts date], \$75,000.

23 **SECTION 9.** 421.202 (6) of the statutes is renumbered 421.202 (6) (a) and
24 amended to read:

ASSEMBLY BILL

1 421.202 (6) (a) Consumer credit transactions in which the amount financed
2 exceeds \$25,000, motor vehicle consumer leases in which the total lease obligation
3 exceeds \$25,000 or other consumer transactions in which the cash price exceeds
4 \$25,000, if the consumer credit transaction, motor vehicle consumer lease or other
5 consumer transaction was entered into before the effective date of this paragraph
6 [revisor inserts date];

7 **SECTION 10.** 421.202 (6) (b) of the statutes is created to read:

8 421.202 (6) (b) Consumer credit transactions in which the amount financed
9 exceeds \$75,000, motor vehicle consumer leases in which the total lease obligation
10 exceeds \$75,000 or other consumer transactions in which the cash price exceeds
11 \$75,000, if the consumer credit transaction, motor vehicle consumer lease or other
12 consumer transaction was entered into on or after the effective date of this paragraph
13 ... [revisor inserts date];

14 **SECTION 11.** 422.308 (2m) of the statutes is created to read:

15 422.308 (2m) (a) This subsection applies to every open-end credit plan under
16 which a customer obtains credit pursuant to an application described under sub. (1)
17 or pursuant to a transaction described under sub. (2) and for which the creditor under
18 the open-end credit plan furnishes the customer a periodic statement that states the
19 amount due under the open-end credit plan.

20 (b) If the periodic statement states a minimum payment due under the
21 open-end credit plan and if the creditor is permitted under the open-end credit plan
22 to increase the interest rate applicable to the outstanding balance as a result of the
23 customer's failure to make the minimum payment, the creditor shall include, as part
24 the periodic statement, the following notice: "FAILURE TO MAKE A MINIMUM

ASSEMBLY BILL

1 PAYMENT BY THE DUE DATE MAY CAUSE AN INCREASE IN YOUR
2 INTEREST RATE.”

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

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

16 (e) Any notice required under par. (b) to (d) shall be displayed in 12-point bold
17 face type or 12 point type of a color different from the color of other type included in
18 the statement.

19 **SECTION 12.** 422.421 (5) (a) of the statutes is amended to read:

20 422.421 (5) (a) 1. Except as provided in par. (b), a creditor shall mail or deliver
21 to the customer written notice of every change implementing an adjustment in the
22 rate of finance charge in a variable rate transaction. The notice shall be mailed or
23 delivered to the customer at the customer’s last-known address appearing on the
24 records of the creditor. If the variable rate transaction involves more than one

ASSEMBLY BILL

1 customer, notice given to any customer satisfies this requirement subdivision.

2 Notices given in compliance with s. 422.308 (2m) (d) satisfy this subdivision.

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

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

12 **SECTION 13.** 422.421 (5) (b) 1. of the statutes is repealed.

13 **SECTION 14.** 422.421 (5) (b) 2. of the statutes is renumbered 422.421 (5) (b).

14 **SECTION 15.** 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 16.** 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 \$75,000 or less.

24 **SECTION 17.** 429.104 (9) of the statutes is renumbered 429.104 (9) (a) (intro.)
25 and amended to read:

ASSEMBLY BILL

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 18.** 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 19.** 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], \$75,000.

14 **SECTION 20.** 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 21. Initial applicability.**

18 (1) **DECEPTIVE PREAPPROVAL.** The treatment of sections 100.18 (10v) and 100.26
19 (4) of the statutes first applies to an extension of credit or refusal to extend credit that
20 takes place pursuant to a direct communication of preapproval made on the effective
21 date of this subsection.

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

24 (3) **SCOPE OF CONSUMER ACT.** The treatment of sections 138.052 (9), 138.09 (3)
25 (e) 1. a., 411.103 (1) (e), 421.202 (6), 428.101 (3) and (4), and 429.104 (9) of the statutes

ASSEMBLY BILL

1 and the creation of sections 138.052 (9) (b), 411.103 (1) (e) 1. and 2., and 421.202 (6)
2 (b) of the statutes first apply to transactions entered into on the effective date of this
3 subsection.

4 **SECTION 22. Effective date.**

5 (1) This act takes effect on the first day of the 2nd month beginning after
6 publication.

7 (END)

Emery, Lynn

From: Emery, Lynn
Sent: Monday, January 26, 2004 11:33 AM
To: Rep.Berceau
Subject: LRB-2832/4 (attached as requested)



03-2832/4

Lynn Emery
Program Assistant
Legislative Reference Bureau
608-266-3561
lynn.emery@legis.state.wi.us