

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/15/2004**

Received By: **mlief**

Wanted: **01/20/2004**

Identical to LRB:

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

By/Representing: **tom powell**

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

Drafter: **mlief**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies: **RNK**

Submit via email: **YES**

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

Carbon copy (CC:) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Penalties under the Wisconsin Consumer Act

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mlief 01/15/2004	wjackson 01/16/2004		_____			
/1			jfrantze 01/20/2004	_____	lemery 01/20/2004		
/2	mlief	wjackson	rschlue	_____	Inorthro	sbasford	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/23/2004	01/23/2004	01/23/2004	_____	01/23/2004	01/26/2004	
				_____		sbasford	
				_____		01/26/2004	

FE Sent For:

*none  
needed*

<END>

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/15/2004**

Received By: **mlief**

Wanted: **01/20/2004**

Identical to LRB:

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

By/Representing: **tom powell**

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

Drafter: **mlief**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies: **RNK**

Submit via email: **YES**

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

Carbon copy (CC:) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Penalties under the Wisconsin Consumer Act

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mlief 01/15/2004	wjackson 01/16/2004		_____			
/1			jfrantze 01/20/2004	_____	lemery 01/20/2004		
/2	mlief	wjackson	rschlue	_____	Inorthro		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/23/2004	01/23/2004	01/23/2004 _____		01/23/2004		

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 01/15/2004

Received By: mlief

Wanted: 01/20/2004

Identical to LRB:

For: Terese Berceau (608) 266-3784

By/Representing: tom powell

This file may be shown to any legislator: NO

Drafter: mlief

May Contact:

Addl. Drafters:

Subject: Trade Regulation - other

Extra Copies: RNK

Submit via email: YES

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Penalties under the Wisconsin Consumer Act

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mlief 01/15/2004	wjackson 01/16/2004		_____			
/1		1/2 Wlj 1/23	jfrantze 01/20/2004	_____	lemery 01/20/2004		

Handwritten signatures and dates: 23, 24

FE Sent For:

**<END>**

2003 DRAFTING REQUEST

Bill

Received: 01/15/2004

Received By: mlief

Wanted: 01/20/2004

Identical to LRB:

For: Terese Berceau (608) 266-3784

By/Representing: tom powell

This file may be shown to any legislator: NO

Drafter: mlief

May Contact:

Addl. Drafters:

Subject: Trade Regulation - other

Extra Copies: RNK

Submit via email: YES

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Penalties under the Wisconsin Consumer Act

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mlief	1 NLj 1/16	Jo 1/19	Jo/ls 1/20			

FE Sent For:

<END>



State of Wisconsin  
2003 - 2004 LEGISLATURE

4043/1  
LRB-288272  
RM:wlj:rs  
MSL

2003 BILL

To ed  
1/15

due  
1/20

(LPS:  
Can  
you  
get  
the  
12?  
RM was  
run  
already.)

REGEN

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, open-end credit plan billing~~  
10 ~~statements, payments under certain open-end credit plans, transactions~~  
11 ~~excluded from the~~ <sup>penalties under the</sup> ~~Wisconsin Consumer Act, authority of licensed lenders,~~  
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**

***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

ANAL - starts here

remedies not required of or available for other transactions and generally

41 The Wisconsin Consumer Act (WCA) governs <sup>(any)</sup> transaction in an amount of \$25,000 or less ~~that~~ that is entered into for personal, family, or household purposes. The WCA imposes obligations and affords

**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       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 **INSERT 12-20 →** **SECTION 21,** 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~~<sup>#</sup> 425.302 of the statutes is repealed.

4 SECTION ~~25~~<sup>#</sup> 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~~<sup>#</sup> 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~~<sup>#</sup> 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.

STET

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****SECTION 35. Initial applicability.**

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

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

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

~~(4) SCOPE OF CONSUMER ACT. The treatment of sections 138.052 (9), 138.09 (3) (e) 1. a., 411.103 (1) (e), 421.202 (6), 428.101 (3) and (4), 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 first apply to transactions entered into on the effective date of this subsection.~~

**SECTION ~~35~~<sup>#</sup> Effective date.**

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

(END)

(INSERT 12-20)

# 422.421 (12) ; AM

422.421 (12) <sup>E</sup>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 or~~ 425.304.

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*

---



2003 BILL RMR

To cd 1/23  
Due Mon 1/26

Repeal

transactions excluded from and

1 AN ACT to repeal 425.302; to renumber and amend 425.303 (intro.); to amend  
2 422.421 (12), 425.301 (3), 425.304 (1) and 426.110 (14); and to create 425.303  
3 (2m) of the statutes; relating to: penalties under the Wisconsin Consumer Act

and Authority of licensed lenders, and

delete period

INS-  
ANAL

Analysis by the Legislative Reference Bureau

consumer leases under the Uniform Commercial Code

The Wisconsin Consumer Act (WCA) governs any transaction in an amount of \$25,000 or less that is entered into for personal, family, or household purposes. The WCA imposes obligations and affords remedies not required of or available for other transactions and generally 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.

penalty

INS 1-4  
4

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

SECTION 1. 422.421 (12) of the statutes is amended to read:

**BILL**

1           422.421 (12) PENALTY. A violation of this section is subject to s. 425.304, except  
2 that failure to give the notice required under sub. (5) (c) does not subject a creditor  
3 to the penalty provided in s. ~~425.302~~ or 425.304.

4           **SECTION 2.** 425.301 (3) of the statutes is amended to read:

5           425.301 (3) Notwithstanding any other section of chs. 421 to 427, a customer  
6 shall not be entitled to recover specific penalties provided in s. ~~425.302 (1) (a)~~,  
7 425.303 (1) (a), 425.304 (1) or 425.305 (1) if the person violating chs. 421 to 427 shows  
8 by a preponderance of the evidence that the violation was not intentional and  
9 resulted from a bona fide error notwithstanding the maintenance of procedures  
10 reasonably adapted to avoid any such error.

11           **SECTION 3.** 425.302 of the statutes is repealed.

12           **SECTION 4.** 425.303 (intro.) of the statutes is renumbered 425.303 (1) (intro.),  
13 and 425.303 (1) (a), as renumbered, is amended to read:

14           425.303 (1) (a) ~~One hundred~~ Five hundred dollars; and

15           **SECTION 5.** 425.303 (2m) of the statutes is created to read:

16           425.303 (2m) This section applies to all violations for which no other remedy  
17 is specifically provided.

18           **SECTION 6.** 425.304 (1) of the statutes is amended to read:

19           425.304 (1) Twice the amount of the finance charge in connection with the  
20 transaction, except that the liability under this subsection shall not be less than \$100  
21 \$500 nor greater than ~~\$1,000~~ \$5,000; or

22           **SECTION 7.** 426.110 (14) of the statutes is amended to read:

23           426.110 (14) A merchant shall not be liable in a class action for specific  
24 penalties under s. ~~425.302 (1) (a)~~, 425.303 (1) (a), 425.304 (1), 425.305 (1) or 429.301  
25 (1) for which it would be liable in individual actions by reason of violations of chs. 421

**BILL**

1 to 427 and 429 or of conduct prescribed in sub. (2) unless it is shown by a  
2 preponderance of the evidence that the violation was a willful and knowing violation  
3 of chs. 421 to 427 and 429. No recovery in an action under this subsection may exceed  
4 \$100,000.

**SECTION 8. Effective date.**

5 (1) This act takes effect on the first day of the 2nd month beginning after  
6 publication.  
7

8 (END)

**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 ~~2~~ <sup>#</sup> 39** 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~~ <sup>#</sup> 41** 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

JWS  
1-4



## ASSEMBLY BILL

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

3 ~~SECTION 7~~<sup>#</sup> 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 61~~<sup>#</sup> 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 64~~<sup>#</sup> 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 64~~<sup>#</sup> 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 69~~<sup>#</sup> 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                   \*  
 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 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<sup>#</sup>** 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<sup>#</sup>** 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<sup>#</sup>** 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 19~~ <sup>\*</sup> 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~~ <sup>\*</sup> 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~~ <sup>\*</sup> 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~~ <sup>\*</sup> **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~~ <sup>1</sup> 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

the renumbering and amendment of sections 138.052 (9), 411.103 (1) (e),  
and 421.202 (6) 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~~<sup>#</sup> Effective date.**

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

7 (END)

*end  
INS 1-4*

**BILL*****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 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.

***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.

JWS  
AN/AZ

**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.

end  
INS.  
AWAL

*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

**Basford, Sarah**

---

**From:** Powell, Thomas  
**Sent:** Monday, January 26, 2004 11:14 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-4043/2 Topic: Penalties under the Wisconsin Consumer Act

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

Draft review: LRB 03-4043/2 Topic: Penalties under the Wisconsin Consumer Act