

2005 DRAFTING REQUEST

Bill

Received: 02/22/2005

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Tom Powell**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - WCA**

Extra Copies:

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:

Wisconsin Consumer Act applicability and remedies

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> |
|--------------|-----------------------|------------------------|------------------------|----------------|------------------------|------------------------|-----------------|
| /? | mkunkel 03/09/2005 | kfollett 03/10/2005 | | _____ | | | State |
| /1 | | | rschluet 03/10/2005 | _____ | lemery 03/10/2005 | | State |
| /2 | mkunkel 03/10/2005 | kfollett 03/10/2005 | pgreensl 03/10/2005 | _____ | sbasford 03/10/2005 | sbasford 03/10/2005 | |

FE Sent For:

AA
intro.

<END>

2005 DRAFTING REQUEST

Bill

Received: 02/22/2005

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Tom Powell**

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

Drafter: **mkunkel**

May Contact:

Adl. Drafters:

Subject: **Fin. Inst. - WCA**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

*PA: Please jacket
"1/2"
- MOK*

Pre Topic:

No specific pre topic given

Topic:

Wisconsin Consumer Act applicability and remedies

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> |
|--------------|-----------------------|-------------------------|------------------------|----------------|----------------------|-----------------|-----------------|
| /? | mkunkel 03/09/2005 | kfollett 03/10/2005 | | | | | State |
| /1 | | <i>12/10/05</i> 3/10 | rschluet 03/10/2005 | <i>3/10/05</i> | lemery 03/10/2005 | | |

FE Sent For:

3/10/05

<END>

2005 DRAFTING REQUEST

Bill

Received: 02/22/2005

Received By: mkunkel

Wanted: As time permits

Identical to LRB:

For: Terese Berceau (608) 266-3784

By/Representing: Tom Powell

This file may be shown to any legislator: NO

Drafter: mkunkel

May Contact:

Addl. Drafters:

Subject: Fin. Inst. - WCA

Extra Copies:

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:

Wisconsin Consumer Act applicability and remedies

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> |
|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| /? | mkunkel | | | | | | |

FE Sent For:

<END>

Kunkel, Mark

From: Powell, Thomas
Sent: Monday, February 21, 2005 11:13 AM
To: Kunkel, Mark
Subject: re-drafts of consumer bills

Mark,

I believe Lonnie Lief sent you our request for the re-drafting of two bill from last session (which Lonnie originally drafted) AB981 (LRB 2832/4) and AB982 (LRB 4043/2).

AB 981 is good as it is -- no suggested changes.

AB 982 -- only one addition. To increase the cap on class actions under the Wisconsin Consumer Act from \$100,000 to \$500,000, or one percent (1%) of the defendant's net worth, whichever is smaller. [I believe this is found at WI stats. 426.110(14)].

Thanks,
Tom Powell



Affects
S. 138.052(a)
428.101
(3)
(4)

WISCONSIN LEGISLATIVE COUNCIL
ACT MEMO

| | |
|--|--|
| <p>2003 Wisconsin Act 257 [2003 Assembly Bill 792]</p> | <p>Regulation of Certain High-Cost Loans</p> |
| <p>2003 Acts: www.legis.state.wi.us/2003/data/acts/</p> | <p>Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm</p> |

Act 257 creates several prohibitions and requirements applicable to certain high-cost, or “covered” loans. The Act defines “covered loan” as a consumer transaction that involves real property located in this state, that is secured by the consumer’s principal dwelling, and in which either: (1) the annual percentage rate at consummation will exceed, by more than 8% for first-lien loans or by more than 10% for subordinate-lien loans, the yield on specified U.S. Treasury securities; or (2) the total points and fees payable by the consumer at or before loan closing will exceed the greater of 6% of the total loan amount or \$400.

The Act defines “lender” as a person who originates a covered loan and to whom the covered loan is initially payable. “Lender” does not include an assignee of a covered loan or any person who, for at least 12 consecutive months, has failed to originate any covered loans.

PROHIBITIONS AND REQUIREMENTS

Significant provisions of the Act include the following:

1. With certain exceptions, no lender may make a covered loan that requires, or that permits the lender to require, a payment that is more than twice as large as the average of all earlier scheduled payments.
2. No lender may make a covered loan that permits the lender or an assignee of the loan to demand payment of the outstanding balance before the original maturity date, except in specific cases such as default, fraud, or material misrepresentation by the consumer.
3. With certain exceptions, no lender may make a covered loan with a payment schedule that causes the principal balance to increase.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

MDK: ksf

BU Friday 3/11 PM

2003 ASSEMBLY BILL 982

PWF

- 2226/11

RM NOT RMA

March 11, 2004 - Introduced by Representatives BERCEAU, YOUNG, POCAN, HINES and J. LEHMAN, cosponsored by Senator RISSER. Referred to Committee on Rules.

Regen

remedies

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 and ~~penalties~~ under the Wisconsin Consumer Act
 6 and authority of licensed lenders and consumer leases under the Uniform
 7 Commercial Code.

Analysis by the Legislative Reference Bureau

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.

except for certain high-cost loans

INSERT 2A

ASSEMBLY BILL 982

the application of

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~~

Under this bill, the different treatment applies to

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.~~

BF § 1a

Remedies

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 2B

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9

SECTION 1. 138.052 (9) of the statutes is renumbered 138.052 (9) (a) and amended to read:

as affected by 2003 Wisconsin Act 257

427 and subch. I of ch. 138

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

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

ASSEMBLY BILL 982

SECTION 2

427 and Subch. I of ch.

1 138.052 (9) (b) Chapters 421 to 428 do not apply to the refinancing,
2 modification, extension, renewal, or assumption of a loan which had an original
3 principal balance in excess of \$75,000 if the unpaid principal balance of the loan has
4 been reduced to \$75,000 or less and the refinancing, modification, extension, renewal,
5 or assumption takes place on or after the effective date of this paragraph [revisor
6 inserts date].

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

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

SECTION 4. 411.103 (1) (e) of the statutes is renumbered 411.103 (1) (e) (intro.)

and amended to read:

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

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

22 411.103 (1) (e) 1. For a lease entered into before the effective date of this
23 subdivision [revisor inserts date], \$25,000.

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

ASSEMBLY BILL 982

SECTION 6

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

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

5 421.202 (6) (a) Consumer credit transactions in which the amount financed
6 exceeds \$25,000, motor vehicle consumer leases in which the total lease obligation
7 exceeds \$25,000 or other consumer transactions in which the cash price exceeds
8 \$25,000, if the consumer credit transaction, motor vehicle consumer lease, or other
9 consumer transaction was entered into before the effective date of this paragraph
10 [revisor inserts date];

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

12 421.202 (6) (b) Consumer credit transactions in which the amount financed
13 exceeds \$75,000, motor vehicle consumer leases in which the total lease obligation
14 exceeds \$75,000, or other consumer transactions in which the cash price exceeds
15 \$75,000, if the consumer credit transaction, motor vehicle consumer lease, or other
16 consumer transaction was entered into on or after the effective date of this paragraph
17 [revisor inserts date];

18 SECTION 9. 428.101 (3) of the statutes is amended to read:

19 428.101 (3) Loans made on or after November 1, 1981, and before the effective
20 date of this subsection [revisor inserts date], by a creditor to a customer and which
21 are secured by a first lien real estate mortgage or equivalent security interest if the
22 amount financed is \$25,000 or less.

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

24 428.101 (4) Loans made on or after the effective date of this subsection
25 [revisor inserts date], by a creditor to a customer and which are secured by a first lien

As affected by 2003 Wisconsin Act 257,

and if the loan is not subject to subch. II

LPS: plain text

INSERT 4-17

ASSEMBLY BILL 982

1 real estate mortgage or equivalent security interest if the amount financed is
2 \$75,000 or less. *and if the loan is not subject to subch. II*

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

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

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

13 429.104 (9) (a) 1. For a lease entered into before the effective date of this
14 subdivision [revisor inserts date], \$25,000.

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

16 429.104 (9) (a) 2. For a lease entered into on or after the effective date of this
17 subdivision [revisor inserts date], \$75,000.

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

19 429.104 (9) (b) "Consumer lease" or "lease" does not include a credit sale, as
20 defined under 12 CFR 226.2 (a) (16).

21 **SECTION 15. Initial applicability.**

22 (1) The treatment of sections 138.09 (3) (e) 1. a, *and* 428.101 (3) and (4), *and* 429.104
23 (9) of the statutes, the renumbering and amendment of sections 138.052 (9), 411.103
24 (1) (e), *and* 421.202 (6) of the statutes, and the creation of sections 138.052 (9) (b),

ASSEMBLY BILL 982

SECTION 15

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

3 **SECTION 16. Effective date.**

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

6 (END)

INSERT 6-2

3 and 429.104 and
(9) (a) 1. and 2.
and (b)

D-Note

1

INSERT 2A:

The bill also makes changes to the licensed lender law to conform to the foregoing changes to the consumer act. (The licensed lender law requires licensure of certain lenders who are not banks, savings banks, savings and loan associations, or credit unions.)

2

INSERT 2B:

Under current law, the consumer act generally provides three different remedies to customers affected by violations of the act. The first remedy is \$25 plus actual damages. The bill deletes this remedy. The second remedy under current law is \$100 plus actual damages. The bill changes this remedy to \$500 plus actual damages and applies this remedy to all violations that are subject to the first remedy under current law. The third remedy under current law is twice the amount of the finance charge in the applicable transaction, subject to a minimum of \$100 and a maximum of \$1,000, or actual damages. The bill changes the foregoing minimum to \$500 and the foregoing maximum to \$5,000.

Current law also imposes a \$100,000 limit on recoveries in class actions against merchants who violate the consumer act. This bill changes the limit to \$100,000 or ^{percent} 1% of a merchant's net worth, whichever is greater.

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

3

INSERT 4-17:

4

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

5

422.421 (12) PENALTY. A violation of this section is subject to s. 425.304, except

6

that failure to give the notice required under sub. (5) (c) does not subject a creditor

7

to the penalty provided in s. ~~425.302~~ or 425.304.

8

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

SECTION 2, 425.301 (3) of the statutes is amended to read:

9

425.301 (3) Notwithstanding any other section of chs. 421 to 427, a customer

10

shall not be entitled to recover specific penalties provided in s. 425.302 (1) (a),

11

425.303 (1) (a), 425.304 (1) or 425.305 (1) if the person violating chs. 421 to 427 shows

12

by a preponderance of the evidence that the violation was not intentional and

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

History: 1971 c. 239; 1975 c. 407; 1979 c. 89; 1985 a. 256; 1999 a. 31.

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

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

6 425.303 (1) (intro.) A person who commits a violation to which this section
7 applies is liable to the customer in an amount equal to all of the following:

8 (a) ~~One~~ Five hundred dollars; ~~and.~~

History: 1971 c. 239.

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

10 425.303 (2m) This section applies to all violations for which no other remedy
11 is specifically provided.

12 ~~SECTION 6.~~ 425.304 (intro.) of the statutes is amended to read:

13 ~~425.304~~ (intro.) *Remedy and penalty for certain violations.* A person who commits a violation to which this section applies
14 is liable to the customer in an amount equal to the greater of the following:

History: 1971 c. 239.

15 ~~SECTION 7.~~ 425.304 (1) of the statutes is amended to read:

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

History: 1971 c. 239.

19 ~~SECTION 8.~~ 426.110 (14) of the statutes is amended to read:

20 426.110 (14) A merchant shall not be liable in a class action for specific
21 penalties under s. ~~425.302~~ (1) (a), 425.303 (1) (a), 425.304 (1), 425.305 (1) or 429.301
22 (1) for which it would be liable in individual actions by reason of violations of chs. 421
23 to 427 and 429 or of conduct prescribed in sub. (2) unless it is shown by a

1 preponderance of the evidence that the violation was a willful and knowing violation
 2 of chs. 421 to 427 and 429. No recovery in an action under this subsection may exceed
 3 \$100,000 or ^{percent} 1% of the merchant's net worth, whichever is greater.

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

INSERT 6A:

The renumbering and amendment of section 425.303 of the statutes

5 [#] (2) The treatment of sections 422.421 (12), 425.301 (3), 425.302, ~~425.303~~,
 6 425.304 (intro.) and (1), and 426.110 (14) of the statutes, and the creation of section
 7 425.303 (2m) of the statutes first apply to violations committed on the effective date
 8 of this subsection.

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

LRB-2226/1dn

MDK: [Signature]

Date

Rep. Berceau:

This bill is a redraft of 2003 AB 982. Please note the following:

1. There was a drafting error in 2003 AB 982. Although the analysis described changes to the "penalties" under the Wisconsin Consumer Act, the changes were omitted from the bill itself. This bill includes those changes. Please confirm that you want the changes in the bill.
2. On a point related to item 1 above, I revised the analysis to refer to "remedies" instead of "penalties". The term "penalty" usually refers to a criminal fine or a civil forfeiture that is paid to the state, rather than to an individual plaintiff.
3. In the proposed ^{percent} amendment of s. 426.110 (14), I changed the class action award limit to \$100,000 or 1% of a merchant's net worth, *whichever is greater*. I think this is consistent with your intent, even though the language you provided referred to whichever amount is *lesser*. If I've misunderstood your intent, please let me know.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2226/1dn
MDK:kjf:rs

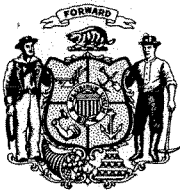
March 10, 2005

Rep. Berceau:

This bill is a redraft of 2003 AB 982. Please note the following:

1. There was a drafting error in 2003 AB 982. Although the analysis described changes to the "penalties" under the Wisconsin Consumer Act, the changes were omitted from the bill itself. This bill includes those changes. Please confirm that you want the changes in the bill.
2. On a point related to item 1 above, I revised the analysis to refer to "remedies" instead of "penalties." The term "penalty" usually refers to a criminal fine or a civil forfeiture that is paid to the state, rather than to an individual plaintiff.
3. In the proposed amendment of s. 426.110 (14), I changed the class action award limit to \$100,000 or 1 percent of a merchant's net worth, *whichever is greater*. I think this is consistent with your intent, even though the language you provided referred to whichever amount is *lesser*. If I've misunderstood your intent, please let me know.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2226/1

MDK:kjf:ts

2

2005 BILL

Tomorrow
3/11
PM

RM
HAS
BEEN
RUN

Regen

1 AN ACT to repeal 425.302; to renumber and amend 138.052 (9), 411.103 (1) (e),
2 421.202 (6), 425.303 and 429.104 (9); to amend 138.09 (3) (e) 1. a., 422.421 (12),
3 425.301 (3), 425.304 (intro.), 425.304 (1), 426.110 (14) and 428.101 (3); and to
4 create 138.052 (9) (b), 411.103 (1) (e) 1., 411.103 (1) (e) 2., 421.202 (6) (b),
5 425.303 (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: transactions excluded from and remedies under
7 the Wisconsin Consumer Act and authority of licensed lenders and consumer
8 leases under the Uniform Commercial Code.

Analysis by the Legislative Reference Bureau

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, except for certain high-cost loans, 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.

This bill expands the application of the consumer act to include a personal, family, or household transaction that is in an amount of \$75,000 or less. In addition,

BILL

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.

The bill also makes changes to the licensed lender law to conform to the foregoing changes to the consumer act. (The licensed lender law requires licensure of certain lenders who are not banks, savings banks, savings and loan associations, or credit unions.)

Uniform Commercial Code

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. Under this bill, the different treatment applies to a consumer lease that is in the amount of \$75,000 or less.

Remedies under the Wisconsin Consumer Act

Under current law, the consumer act generally provides three different remedies to customers affected by violations of the act. The first remedy is \$25 plus actual damages. The bill deletes this remedy. The second remedy under current law is \$100 plus actual damages. The bill changes this remedy to \$500 plus actual damages and applies this remedy to all violations that are subject to the first remedy under current law. The third remedy under current law is twice the amount of the finance charge in the applicable transaction, subject to a minimum of \$100 and a maximum of \$1,000, or actual damages. The bill changes the foregoing minimum to \$500 and the foregoing maximum to \$5,000.

Current law also imposes a \$100,000 limit on recoveries in class actions against merchants who violate the consumer act. This bill changes the limit to ~~\$100,000~~ ^{\$500,000} or 1 percent of a merchant's net worth, whichever is greater.

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.** 138.052 (9) of the statutes, as affected by 2003 Wisconsin Act 257,
2 is renumbered 138.052 (9) (a) and amended to read:

3 138.052 (9) (a) Chapters 421 to 427 and subch. I of ch. 428 do not apply to the
4 refinancing, modification, extension, renewal or assumption of a loan which had an
5 original principal balance in excess of \$25,000 if the unpaid principal balance of the
6 loan has been reduced to \$25,000 or less and the refinancing, modification,

BILL

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

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

4 138.052 (9) (b) Chapters 421 to 427 and subch. I of ch. 428 do not apply to the
5 refinancing, modification, extension, renewal, or assumption of a loan which had an
6 original principal balance in excess of \$75,000 if the unpaid principal balance of the
7 loan has been reduced to \$75,000 or less and the refinancing, modification,
8 extension, renewal, or assumption takes place on or after the effective date of this
9 paragraph [revisor inserts date].

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

11 138.09 (3) (e) 1. a. A business engaged in making loans for business or
12 agricultural purposes ~~or~~ loans before the effective date of this subd. 1. a. [revisor
13 inserts date], exceeding \$25,000 in principal amount, or loans on or after the effective
14 date of this subd. 1. a. [revisor inserts date], exceeding \$75,000 in principal
15 amount, except that all such loans having terms of 49 months or more are subject to
16 sub. (7) (gm) 2. or 4.

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

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

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

BILL

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

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

4 411.103 (1) (e) 2. For a lease entered into on or after the effective date of this
5 subdivision [revisor inserts date], \$75,000.

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

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

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

15 421.202 (6) (b) Consumer credit transactions in which the amount financed
16 exceeds \$75,000, motor vehicle consumer leases in which the total lease obligation
17 exceeds \$75,000, or other consumer transactions in which the cash price exceeds
18 \$75,000, if the consumer credit transaction, motor vehicle consumer lease, or other
19 consumer transaction was entered into on or after the effective date of this paragraph
20 [revisor inserts date];

21 **SECTION 9.** 422.421 (12) of the statutes is amended to read:

22 422.421 (12) PENALTY. A violation of this section is subject to s. 425.304, except
23 that failure to give the notice required under sub. (5) (c) does not subject a creditor
24 to the penalty provided in s. ~~425.302~~ or 425.304.

25 **SECTION 10.** 425.301 (3) of the statutes is amended to read:

BILL

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

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

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

10 425.303 (1) (intro.) A person who commits a violation to which this section
11 applies is liable to the customer in an amount equal to all of the following:

12 (a) ~~One~~ Five hundred dollars; ~~and~~.

13 **SECTION 13.** 425.303 (2m) of the statutes is created to read:

14 425.303 (2m) This section applies to all violations for which no other remedy
15 is specifically provided.

16 **SECTION 14.** 425.304 (intro.) of the statutes is amended to read:

17 **425.304 Remedy and penalty for certain violations.** (intro.) A person who
18 commits a violation to which this section applies is liable to the customer in an
19 amount equal to the greater of the following:

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

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

24 **SECTION 16.** 426.110 (14) of the statutes is amended to read:

BILL

\$500,000

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

8 **SECTION 17.** 428.101 (3) of the statutes, as affected by 2003 Wisconsin Act 257,
9 is amended to read:

10 428.101 (3) Loans made on or after November 1, 1981, and before the effective
11 date of this subsection [revisor inserts date], by a creditor to a customer and which
12 are secured by a first lien real estate mortgage or equivalent security interest if the
13 amount financed is \$25,000 or less and if the loan is not subject to subch. II.

14 **SECTION 18.** 428.101 (4) of the statutes is created to read:

15 428.101 (4) Loans made on or after the effective date of this subsection
16 [revisor inserts date], by a creditor to a customer and which are secured by a first lien
17 real estate mortgage or equivalent security interest if the amount financed is
18 \$75,000 or less and if the loan is not subject to subch. II.

19 **SECTION 19.** 429.104 (9) of the statutes is renumbered 429.104 (9) (a) (intro.)
20 and amended to read:

21 429.104 (9) (a) (intro.) "Consumer lease" or "lease" means a lease entered into
22 in this state that transfers the right of possession and use by a natural person of a
23 motor vehicle primarily for a personal, family, household or agricultural purpose, for
24 a period of time exceeding 4 months, if the total lease obligation, excluding any option
25 to purchase or otherwise become owner of the motor vehicle at the expiration of the

BILL

1 consumer lease, does not exceed \$25,000. ~~The term does not include a credit sale, as~~
2 ~~defined under 12 CFR 226.2 (a) (16).~~ the following:

3 **SECTION 20.** 429.104 (9) (a) 1. of the statutes is created to read:

4 429.104 (9) (a) 1. For a lease entered into before the effective date of this
5 subdivision [revisor inserts date], \$25,000.

6 **SECTION 21.** 429.104 (9) (a) 2. of the statutes is created to read:

7 429.104 (9) (a) 2. For a lease entered into on or after the effective date of this
8 subdivision [revisor inserts date], \$75,000.

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

10 429.104 (9) (b) “Consumer lease” or “lease” does not include a credit sale, as
11 defined under 12 CFR 226.2 (a) (16).

12 **SECTION 23. Initial applicability.**

13 (1) The treatment of sections 138.09 (3) (e) 1. a. and 428.101 (3) and (4) of the
14 statutes, the renumbering and amendment of sections 138.052 (9), 411.103 (1) (e),
15 421.202 (6), and 429.104 (9) of the statutes, and the creation of sections 138.052 (9)
16 (b), 411.103 (1) (e) 1. and 2., 421.202 (6) (b), and 429.104 (9) (a) 1. and 2. and (b) of
17 the statutes first apply to transactions entered into on the effective date of this
18 subsection.

19 (2) The treatment of sections 422.421 (12), 425.301 (3), 425.302, 425.304 (intro.)
20 and (1), and 426.110 (14) of the statutes, the renumbering and amendment of section
21 425.303 of the statutes, and the creation of section 425.303 (2m) of the statutes first
22 apply to violations committed on the effective date of this subsection.

23 **SECTION 24. Effective date.**

