



2005 SENATE BILL 694

April 18, 2006 - Introduced by Senators COGGS, MILLER and RISSER, cosponsored by Representatives YOUNG, GRIGSBY, SINICKI, KESSLER, FIELDS, POCAN, LEHMAN and BERCEAU, by request of Attorney General Peggy A. Lautenschlager. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT** *to renumber* 425.107 (1); *to amend* 421.202 (intro.), (1), (2), (3), (4), (5),
2 (6), (7) and (8), 425.107 (3) and 425.107 (5); and *to create* 425.107 (1g), 425.107
3 (1s) and 426.301 (3) of the statutes; **relating to:** transactions and
4 unconscionable practices subject to, and remedies under, the Wisconsin
5 Consumer Act.

Analysis by the Legislative Reference Bureau

Under current law, the Wisconsin Consumer Act (WCA) generally applies to all consumer transactions made in the state, unless a specific exclusion applies. The WCA provides obligations, remedies, and penalties that current law generally does not require for transactions that are not subject to the WCA. Current law contains a number of exclusions from the WCA, including an exclusion for consumer credit transactions in which the amount financed exceeds \$25,000 and other consumer transactions in which the cash price exceeds \$25,000. This bill amends this exclusion so that the WCA does not apply to consumer credit transactions in which the amount financed exceeds \$75,000 and to other consumer transactions in which the cash price exceeds \$75,000.

Current law also specifies the remedies that apply if a court finds that a person has engaged in unconscionable conduct that violates the WCA. Current law specifies the factors that a court may consider in determining whether conduct is unconscionable. This bill provides that certain types of credit discrimination are presumed to be unconscionable. Specifically, the bill provides that discrimination by

SENATE BILL 694

a merchant against a customer with respect to a credit transaction that is subject to the WCA is presumed to be unconscionable if the discrimination is based on any of the following: 1) the customer's age, if the customer has the capacity to enter into the transaction; 2) the customer's race, color, national origin, ancestry, religion, creed, marital status, sex, sexual orientation, or service in the national guard or U.S. armed forces; 3) the fact or belief that the customer has a disability; 4) the fact that all or part of the customer's income is derived from any public assistance; or 5) the fact that the customer has in good faith exercised any right under the federal Consumer Credit Protection Act or state law. The bill defines "disability" as a physical or mental impairment that substantially limits one or more major life activities.

Current law also allows the Department of Financial Institutions to bring an action against a person who violates the WCA for civil forfeitures. This bill allows a court in such an action to order that damages be paid to any person who incurs a pecuniary loss as a result of the violation.

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.** 421.202 (intro.), (1), (2), (3), (4), (5), (6), (7) and (8) of the statutes
2 are amended to read:

3 **421.202 Exclusions.** (intro.) Chapters 421 to 427 do not apply to any of the
4 following:

5 **(1)** Extensions of credit to organizations (s. 421.301 (28));

6 **(2)** Transactions in which all parties are organizations (s. 421.301 (28));

7 **(3)** Charges for delayed payment and any discount allowed for early payment
8 in transactions under public utility or common carrier tariffs if a subdivision or
9 agency of this state or of the United States regulates such charges or discounts, or
10 if such charges or discounts are made in connection with the furnishing of electric
11 service by an electric cooperative organized and operating on a nonprofit basis under
12 ch. 185;

SENATE BILL 694

1 (4) The ceilings on rates and charges of a licensed pawnbroker if these ceilings
2 are established by statute or ordinance;

3 (5) The sale of insurance by an insurer, except as otherwise provided in ch. 424;

4 (6) Consumer credit transactions in which the amount financed exceeds
5 ~~\$25,000~~ \$75,000, motor vehicle consumer leases in which the total lease obligation
6 exceeds ~~\$25,000~~ \$75,000 or other consumer transactions in which the cash price
7 exceeds ~~\$25,000~~; \$75,000.

8 (7) Transactions subject to ch. 428;

9 (8) Transactions in securities accounts or securities transactions by or with a
10 broker-dealer, as defined in s. 551.02 (3), licensed under ch. 551; ~~or~~.

11 **SECTION 2.** 425.107 (1) of the statutes is renumbered 425.107 (1m).

12 **SECTION 3.** 425.107 (1g) of the statutes is created to read:

13 425.107 (1g) In this section, “disability” means a physical or mental
14 impairment that substantially limits one or more major life activities.

15 **SECTION 4.** 425.107 (1s) of the statutes is created to read:

16 425.107 (1s) Without limiting the scope of sub. (1m), discrimination by a
17 merchant against a customer with respect to a consumer credit transaction, shall be
18 presumed to be unconscionable if it is based on any of the following:

19 (a) The customer’s age, if the customer has the capacity to enter into the
20 consumer credit transaction.

21 (b) The customer’s race, color, national origin, ancestry, religion, creed, marital
22 status, sex, sexual orientation, or service in the national guard or U.S. armed forces.

23 (c) The fact or belief that the customer has or has had a disability.

24 (d) The fact that all or part of the customer’s income is derived from any public
25 assistance program.

SENATE BILL 694**SECTION 4**

1 (e) The fact that the customer has in good faith exercised any right under 15
2 USC 1601 to 1677 or state law.

3 **SECTION 5.** 425.107 (3) of the statutes is amended to read:

4 425.107 (3) Without limiting the scope of sub. (1) (1m), the court may consider,
5 among other things, all of the following as pertinent to the issue of unconscionability:

6 (a) That the practice unfairly takes advantage of the lack of knowledge, ability,
7 experience or capacity of customers;.

8 (b) That those engaging in the practice know of the inability of customers to
9 receive benefits properly anticipated from the goods or services involved;.

10 (c) That there exists a gross disparity between the price of goods or services and
11 their value as measured by the price at which similar goods or services are readily
12 obtainable by other customers, or by other tests of true value;.

13 (d) That the practice may enable merchants to take advantage of the inability
14 of customers reasonably to protect their interests by reason of physical or mental
15 infirmities, illiteracy or inability to understand the language of the agreement,
16 ignorance or lack of education or similar factors;.

17 (e) That the terms of the transaction require customers to waive legal rights;.

18 (f) That the terms of the transaction require customers to unreasonably
19 jeopardize money or property beyond the money or property immediately at issue in
20 the transaction;.

21 (g) That the natural effect of the practice would reasonably cause or aid in
22 causing customers to misunderstand the true nature of the transaction or their
23 rights and duties thereunder;.

SENATE BILL 694

1 (h) That the writing purporting to evidence the obligation of the customer in
2 the transaction contains terms or provisions or authorizes practices prohibited by
3 law; and,

4 (i) Definitions of unconscionability in statutes, regulations, rulings, and
5 decisions of legislative, administrative, or judicial bodies.

6 **SECTION 6.** 425.107 (5) of the statutes is amended to read:

7 425.107 (5) In addition to the protections afforded in sub. (1) (1m), the customer
8 shall be entitled upon a finding of unconscionability to recover from the creditor or
9 the person responsible for the unconscionable conduct a remedy and penalty in
10 accordance with s. 425.303.

11 **SECTION 7.** 426.301 (3) of the statutes is created to read:

12 426.301 (3) A court may, prior to entry of final judgment under sub. (1) or (2),
13 order that damages be paid to any person for any pecuniary loss incurred as a result
14 of a violation.

15 **SECTION 8. Initial applicability.**

16 (1) The treatment of section 421.202 (6) of the statutes first applies to consumer
17 credit transactions, motor vehicle consumer leases, and other consumer transactions
18 entered into, extended, modified, or renewed on the effective date of this subsection.

19 (2) The treatment of section 425.107 (1s) of the statutes first applies to practices
20 occurring on the effective date of this subsection.

21 (3) The treatment of section 426.301 (3) first applies to pecuniary losses
22 incurred on the effective date of this subsection.

23 (END)