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Clearinghouse Rule 08-071

**PROPOSED ORDER OF THE STATE OF WISCONSIN,  
DEPARTMENT OF FINANCIAL INSTITUTIONS**

**DIVISION OF CORPORATE AND CONSUMER SERVICES  
ADOPTING RULES**

2 The Wisconsin Department of Financial Institutions, Division of Corporate and Consumer  
3 Services proposes an order to create s. DFI – WCA 1.84 relating to unconscionable conduct.

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**Analysis Prepared by the Department of Financial Institutions, Division of Corporate and Consumer Services**

Statute(s) interpreted: s. 426.108, Stats.

Statutory authority: ss. 425.107 (2), 426.104(1)(e), 426.108 and 227.11(2), Stats.

Related statute or rule: s. 425.107, Stats.

Explanation of agency authority: Pursuant to chs. 421 to 427 and 429, the department administers the Wisconsin Consumer Act.

Summary of proposed rule: The objective of the rule is to create s. DFI – WCA 1.84. Pursuant to s. 426.108, Stats., the administrator of the Wisconsin Consumer Act shall promulgate rules declaring specific conduct in consumer credit transactions and the collection of debts arising from consumer credit transactions to be unconscionable and prohibiting the use of those unconscionable acts. The purpose of the rule is to set forth that it is an unconscionable and prohibited practice for any merchant to preclude a customer from asserting claims or seeking remedies available under the Wisconsin Consumer Act, including bringing, joining or participating in efforts to obtain class-wide relief.

Summary of and preliminary comparison with existing or proposed federal regulation: The department is aware of no such federal regulation.

Comparison with rules in adjacent states: The department is aware of no such rules.

Summary of factual data and analytical methodologies: The department reviewed factors the Wisconsin legislature set forth in s. 426.108, Stats., that the administrator of the Wisconsin Consumer Act shall consider in declaring specific conduct unconscionable and prohibited, as well as recent Wisconsin court rulings regarding unconscionability and class-relief (*Wisconsin Auto Title Loans, Inc. v. Jones*, 290 Wis. 2d 514 (2006) and *Coady et al v. Cross Country Bank et al*, 299 Wis. 2d 420 (2007)). Furthermore, in the department’s experience, nearly all consumer credit transactions are contracts of adhesion, and creditors generally have greater bargaining power,

business acumen and experience than consumers do. This can result in terms that are unreasonably favorable to merchants.

Analysis and supporting documentation used to determine effect on small business: The rule imposes no new regulatory obligations or burdens on small business; therefore, the rule has no additional significant economic impact.

### Agency Contact Persons

To obtain a copy of the proposed rule or fiscal estimate at no charge, to submit written comments regarding the proposed rule, or for questions regarding the agency's internal processing of the proposed rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@dfi.state.wi.us. A copy of the proposed rule may also be obtained and reviewed at the Department of Financial Institution's website, www.wdfi.org. Written comments must be received by the conclusion of the department's hearing regarding the proposed rule.

For substantive questions on the rule, contact Cheryll Olson-Collins, Administrator, Wisconsin Department of Financial Institutions, Division of Corporate and Consumer Services, P.O. Box 7846, Madison, WI 53708-7846, tel. (608) 266-6810, e-mail cheryll.olsoncollins@dfi.state.wi.

Pursuant to the statutory authority referenced above, the Department of Financial Institutions, Division of Corporate and Consumer Services adopts the following:

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4 SECTION 1. Section DFI – WCA 1.84 is created to read as follows:

5 **DFI – WCA 1.84 Preclusion of claims or remedies; unconscionable conduct.** It is an  
6 unconscionable and prohibited practice, pursuant to s. 426.108, Stats., for any merchant to  
7 preclude, by contract or otherwise, a customer from asserting claims or seeking remedies available  
8 under the Wisconsin Consumer Act, including bringing, joining or participating in efforts to obtain  
9 class-wide relief.

10 **Effective date.** This rule takes effect as provided in s. 227.22 (2) (intro.), Stats.

Dated:

Agency:

Cheryll Olson-Collins, Administrator  
Wisconsin Department of Financial Institutions  
Division of Corporate and Consumer Services