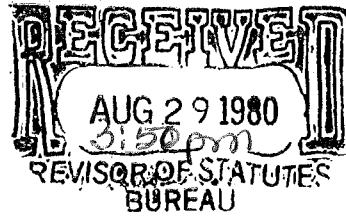


Bkg 71, 72, 80



STATE OF WISCONSIN)
OFFICE OF COMMISSIONER OF BANKING) SS

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, T. E. Pederson, Deputy Commissioner of Banking, and custodian of the official records of said office, do hereby certify that the annexed rule, relating to the Wisconsin Consumer Act, was duly approved and adopted by this office on the 2nd day of July, 1980.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Office of Commissioner of Banking in the City of Madison, this 29th day of August A.D. 1980.



T. E. Pederson

T. E. Pederson
Deputy Commissioner of Banking

Revd eff. date 11-1-80

ORDER OF THE OFFICE OF COMMISSIONER OF BANKING, ADOPTING, AMENDING AND REPEALING RULES

Relating to rules concerning small loan companies and the Wisconsin Consumer Act

Analysis prepared by the Office of Commissioner of Banking

1. Bkg. 71.01 and 72.01 have been repealed because the implementing legislation, Ch. 214, Stats., has been repealed.
2. Bkg. 80.210 has been amended to include a reference to the equivalent annual percentage rate in the sample loan described in the rule to make it clear that licensees can make loans in which the APR exceeds 18% pursuant to the discount formula in Sec. 138.09(7)(b)1, Wis. Stats.
3. Bkg. 80.26 is amended to include the reference to Sec. 422.202(1)(b), Wis. Stats., which was erroneously omitted when the regulation was originally issued.
4. The amendment to Bkg. 80.262 is necessary to reflect a renumbering of the statute.
5. Bkg. 80.263 requires that in order to charge a customer for an appraisal as a permissible additional charge the creditor would have to provide the customer with a copy of it.
6. Bkg. 80.341 is amended to reflect the change from "co-signer" to "obligor" in Sec. 422.305, Wis. Stats., as amended by Ch. 10, Laws of 1979. Reference to inclusion of an acknowledgment of receipt has been deleted because a reference to it is expressly contained in Sec. 422.305, Wis. Stats., as amended.
7. This amendment to Bkg. 80.35 simply picks up the change from "co-signer" to "obligor" in the amendment to Sec. 422.305, in Ch. 10, Laws of 1979.
8. Sec. 422.305, Wis. Stats., as amended by Ch. 10, Laws of 1979, effective June 15, 1979, requires that before any person may be held liable on any extension of consumer credit, that customer must sign the document evidencing the consumer credit transaction. This amendment prohibits the "no signature order" in extensions of closed end credit. Bkg. 80.351 describes the circumstances under which a customer can be held liable on an open end credit plan. The rule describes those types of documents which, if signed by the customer, satisfy the requirements of the statute. Any person who does not sign an open end credit agreement or who does not sign one of the other documents and receive a copy of the open end credit agreement cannot be held liable for charges posted to the account evidenced by that agreement. However, any person who signs the necessary documents in accordance with the regulation may be responsible for each individual purchase and loan including charges made by other parties to the account before such person signs as a party to the contract and is mailed or otherwise delivered the required disclosures. The amendment to Sec. 422.305, Wis. Stats., and the implementing rule assure mutual assent to the terms of any consumer credit transaction.
9. Bkg. 80.36 is amended to parallel the longer response period afforded creditors under the Fair Credit Billing Act in responding to inquiries on open end credit plans. The amendment makes the rule consistent with the requirements

of the federal consumer credit protection act. Consistency between that act and the Wisconsin Consumer Act is an underlying policy of the Wisconsin Statute. See 12 C.F.R. 226.7.

10. Bkg. 80.37 is amended to provide for the distribution of open end credit agreements to several potential customers who reside at the same address. Several individuals may sign an application for an open end credit plan or a person who is orally solicited or who signs a credit application may ask the credit grantor to issue a card to another person. Each person who would become obligated for all purchases under the terms of the open end credit agreement as a result of signing either the application form or a transaction receipt must first be mailed or delivered a copy of the open end credit agreement before the individual uses the account. If that person resides at the same address as one of the original applicants, this requirement can be satisfied by mailing one copy of the open end credit agreement addressed to both of them.

11. Bkg. 80.44 is amended to correct an error in the cited statutory section and to remove the word "his".

12. The definition of default with respect to a first or last installment has been clarified in Ch. 10, Laws of 1979, and Bkg. 80.60 is no longer necessary.

If the interval between payments is 2 months or less default with respect to the first or last installment is the failure to pay that installment within 40 days of its due date unless the transaction is for an agricultural purpose in which case default is the failure to pay the first or last installment on its scheduled due date.

13. Bkg. 80.63 is amended because of a renumbering of the garnishment statute.

14. Bkg. 80.655 is created to make it clear that the wage exemption described in Sec. 425.106(1)(a)2, Wis. Stats., is to be based upon the customer's disposable income. This rule is consistent with the legislative history of this section of the Wisconsin Consumer Act. In the absence of this rule some creditors have attempted to penalize customers who have low wages by calculating the exemption under Sec. 425.106(1)(a)2, Wis. Stats., on the customer's earnings before taxes are deducted. A customer with a \$200 weekly wage and 2 dependents would be entitled to an exemption of \$150 assuming a \$3 per hour minimum wage. However, if the customer had a \$40 tax liability, that customer would take home \$110 if that exemption is calculated on gross earnings which is less than 75% of the customer's net earnings, i.e. \$120 as calculated under Sec. 425.106(1)(a)1, Wis. Stats. These creditors urge that since the potential exemption of \$150 is greater than 75% of disposable income the customer must accept this result even though the customer's subsistence allowance is actually less and the amount subject to garnishment is greater. The legislative history of this section does not support this result.

15. Bkg. 80.66 is amended to reflect a renumbering of the statutes.

16. Bkg. 80.68 is amended to make it clear that the procedures outlined in it apply to cases of non-voluntary surrender where the customer is surrendering the collateral pursuant to a request or demand by the creditor.

17. The purpose of Bkg. 80.86 is to prohibit the practice of opening charge accounts in the names of individuals who have not personally asked the creditor to open the account and subsequently asserting the contractual liability of that person, who may have no knowledge of the existence of the account.

Pursuant to the authority vested in the Office of the Commissioner of Banking by sections 227.014 and 426.107, Wis. Stats., the agency hereby repeals, amends and adopts rules interpreting Chapters 214 and 421 through 427, Wis. Stats., as follows:

1. Chapters Bkg. 71 and Bkg. 72 are repealed.

2. Bkg. 80.210 is amended to read:

Bkg. 80.210 Finance charge for consumer credit transactions; maximum rates under section 422.201(3), ~~Wis.~~ Stats. The maximum discount rate on loans in which the principal (exclusive of interest) does not exceed \$3,000 is $9\frac{1}{2}\%$ per year on that part of the face amount of the note (total payments) not exceeding \$1,000 and 8% per year on any remainder of the face amount. Discount loans may be made for any number of whole months (excluding any irregular first instalment period) up to the maximum maturity, e.g. loans of 6, 17, 24, etc. months are permitted. On contracts for periods which are less or greater than one year, or which are not a multiple of one year, the discount rate shall be computed proportionately ($1/12$ of the annual discount rate) for each month. See Sec. 138.09(7)(b)1, ~~Wis.~~ Stats.*

Example: Total of payments = \$1345.20 (24 X \$56.05); Interest (Finance Charge) = \$245.23 ($9\frac{1}{2}\%$ X 2 years X \$1,000 plus 8% X 2 years X \$345.20); Amount Financed = \$1,099.97 ($\$1345.20 - \245.23); Annual Percentage Rate = 20.13%.

3. Bkg. 80.26 is amended to read:

Bkg. 80.26 Additional charges; cost of insurance. Disclosure of the cost of insurance as an additional charge under ~~required by~~ section 422.202(1)(b) and (c), Stats. must include written notice to the customer of the term of such insurance together with and the dollar charge for such term. Where the term of the insurance is the same as the term of the transaction a disclosure of that fact shall be an adequate disclosure of the term of the insurance.

4. Bkg. 80.262 is amended to read:

Bkg. 80.262 Additional charges; title examinations. Title examinations within the meaning of ~~s. 422.202(2)(b)1 of the act~~ section 422.202(2)(a)

*Note: Maximum rate applicable to loans made prior to April 6, 1980.

Stats. shall include the fee for a written title opinion prepared by an attorney upon examination of the abstract of title to the real property which is the subject of the consumer credit transaction on which the charge is assessed.

5. Bkg. 80.263 is created to read:

Bkg. 80.263 Additional charges, appraisals, copies. A creditor shall provide the customer, before any payment is due, with a copy of any appraisal for which the customer, in connection with a consumer credit transaction, is assessed an additional charge pursuant to Sec. 422.202(2)(d), Stats.

6. Bkg. 80.341 is amended to read:

Bkg. 80.341 Notice to ~~co-signers~~ obligors. In addition to the language required by section 422.305(1), Stats., a merchant may include within the explanation of ~~co-signer~~ personal obligation a form number, the date of execution, instructions for completion, and a union printing label. ~~and an acknowledgment for execution by the co-signer that he has received a copy of the form.~~ Subparagraph (a) of the Explanation may provide that the obligation of the person signing it includes all extensions, renewals or deferrals of the particular transaction in which there is no advance of or increase in the amount of the principal or increase in the rate of finance charge.

7. Bkg. 80.35 is amended to read:

Bkg. 80.35 Notice to ~~co-signer~~ obligors; open end accounts.
In cases where a ~~co-signer~~ person assumes liability on an open end account, sub. (a) of the Explanation of ~~Co-Signer~~ Personal Obligation under ~~s.~~ section 422.305, Stats., shall be modified to ~~include, in addition to the information set forth in the Act, in lieu of the current dollar amount of the transaction,~~ "an amount not exceeding \$----" read as follows: "(a) You have agreed to pay amounts owing or to be owing in the future as a result of charges made by . . . (name of customer) on his or her charge account with . . . (name of creditor) in an amount not exceeding \$." Sub. (b) of the Explanation must contain the following statement ~~that if the co-signer wishes to terminate the~~

~~guarantee with respect to any future transactions on the amount, the co-signer must give written notice to the creditor:~~ "If you wish to terminate your guarantee with respect to future transactions, you must notify . . .(name of creditor) in writing." An explanation of the form described in this rule will satisfy the requirements of ~~s~~ section 422.305, Stats., and no further notice or Explanation of ~~Co-Signer~~ Personal Obligation need be given the ~~co-signer~~ person with respect to subsequent individual purchases or loans under on the account. However, in case of any subsequent change in the terms of the account which would increase or extend the contingent liability of the ~~co-signer~~ person, ~~whether~~ where the merchant was authorized to make unilateral changes from time to time under the original terms of the account, an explanation of such change must be given to the ~~co-signer~~ person ~~together with a new Explanation of Co-Signer Obligation which must be executed by the co-signer~~ in accordance with section 422.415, Stats. Such notice shall conspicuously disclose that if the person wishes to terminate the guarantee with respect to future transactions, the person must notify the creditor in writing.

8. Bkg. 80.351 is repealed and recreated to read:

Bkg. 80.351 Customer liability; open end credit. In order to obligate a person for an obligation arising out of an open end credit plan, the merchant must pursuant to section 422.305, Stats., obtain the signature of that person on the writing evidencing the consumer credit transaction. Compliance with this rule requires that the customer to be held contractually liable sign one of the following:

- (1) An open end credit agreement setting forth all of the terms of the open end credit plan including the credit disclosures required by section 422.301, Stats.,
- (2) A credit application which expressly states that each person signing the application will be obligated according to the terms of the open end credit agreement referred to in subsection (1) above, provided the creditor mails or delivers to each customer who signs the application a copy of the open end credit agreement before that customer makes any charges on the account, or

(3) A transaction receipt which expressly states that each person signing the receipt will be obligated according to the terms of the open end credit agreement referred to in subsection (1) above, provided the creditor has mailed or delivered a copy of the open end credit agreement to that customer before that customer makes any charges on the account.

9. Bkg. 80.36 is amended to read:

Bkg. 80.36 Receipts; accounting; evidence of payment; customer inquiries.

Should a customer or an authorized his representative question in writing any bill or statement of a merchant, or of an assignee where notice of assignment pursuant to section 422.409, Stats., has been given, such merchant or assignee shall in accordance with section 422.306, Stats., respond specifically to the specific question, issue or dispute raised by the customer within 30 days of receipt of such inquiry, or, in the case of transactions evidenced by open end credit plans not later than 2 complete billing cycles (in no event more than 90 days) from receipt of such inquiry, ~~provided such inquiry is not made.~~ Inquiries made on an instrument of payment of the returnable portion of the billing statement need not be acknowledged if the creditor conspicuously discloses this requirement on the ~~instrument or~~ statement or other disclosure to customers regarding the correction of billing errors. A reasonably disputed debt under section 427.104(1)(f), Stats., shall include an indebtedness questioned under this rule from the ~~due~~ date of notice to the merchant ~~the merchant's response~~ to the date the merchant's such response is made.

10. Bkg. 80.37 is amended to read:

Bkg. 80.37 Notice of assignment; joint obligor customers. Where a consumer credit transaction involves joint obligor customers, one copy of a Notice of Assignment as described in s. 422.409 may be forwarded to all such customers who reside at the same last known address at the time the notice is given, if addressed to all such joint obligor customers. In all other cases a separate notice must be sent to each joint obligor customer. The same procedure shall be observed with respect to giving the following notices under the act: Notice of unilateral deferral,

s. 422.204 (8); Notice of non-performance, s. 422.207 (1); Notice of right to cancel, s. 423.203; Notice to cancel property insurance, s. 424.303 (1); Notice of right to cure default, s. 425.104 (1); the distribution of open end credit agreements to potential customers pursuant to Bkg. 80.351.

11. Bkg. 80.44 is amended to read:

Bkg. 80.44 Consumer approval transaction; duty of customer. In any case where a customer ~~given~~ gives notice of cancellation and the merchant fails to perform ~~his~~ the merchant's obligation pursuant to ~~s. section~~ 423.204, ~~of the act~~ Stats., the duty of the customer under ~~s. section~~ ~~425.205~~ 423.205, Stats., to take reasonable care of the goods in ~~his~~ the customer's possession shall cease 40 days after notice of cancellation is given.

12. Bkg. 80.60 is repealed.

13. Bkg. 80.63 is amended to read:

Bkg. 80.63 Exempt property; garnishee summons. In order to assist each employer in determining and applying the applicable wage exemption standard, in the case of any garnishment involving a consumer credit transaction governed by ~~s. section~~ 425.106, Stats., the garnishee summons should bear the legend "Consumer Credit Transactions Garnishee Summons" placed opposite the identification of parties in the legend and the last paragraph of the form set forth in ~~s. 267.04(2)~~, section 812.04(2), Stats. should be modified to conform with the requirements of ~~s. section~~ 425.106(1)(a) ~~of the act,~~ Stats.

14. Bkg. 80.655 is created to read:

Bkg. 80.655 Exempt property; subsistence allowance. The term "unpaid earnings" in section 425.106(1)(a), Stats., means the customer's earnings remaining after all deductions required by law to be withheld. If the subsistence allowance described in section 425.106(1)(a)1, Stats., is greater than the allowance described in section 425.106(1)(a)2, Stats., less all deductions required by law to be withheld, the customer is entitled to the exemption described in section 425.106(1)(a)1, Stats.

15. Bkg. 80.66 is amended to read:

Bkg. 80.66 Body attachments. The term "warrant" as used in section 425.113, Wis. Stats., refers to warrants issued pursuant to section 273.05 816.05, Stats., and does not limit or effect the power of a court to issue an order or attachment pursuant to section 295.04, Stats., where a person has failed to appear at a supplemental examination.

16. Bkg. 80.68 is amended to read:

Bkg. 80.68 Nonjudicial enforcement limited; surrender of collateral. ~~A customer will not be deemed to have surrendered the collateral~~ Where a merchant requests or demands the return of collateral, after providing the customer with notice of default and opportunity to cure as required by section 425.103, Stats., a release of the collateral by the customer is not a surrender under sections 425.204(3), and 425.205(1)(a), Stats., where such a surrender is not a voluntary surrender, if the merchant; (1) fails to provide a notice to the customer which clearly informs the customer of ~~his~~ the right to a hearing on the issue of default before any repossession; (2) ~~the merchant~~ misrepresents any material fact or state of the law to the customer; or (3) ~~the merchant~~ violates any provision of Chapter 427, Wis. Stats. The notice contained in subsection (1) of this rule is not required if the collateral has been abandoned by the customer.

17. Bkg. 80.86 is created to read:

Bkg. 80.86 Unsolicited credit cards; unconscionable conduct. It is an unconscionable credit practice, pursuant to section 426.108, Stats., for any credit grantor to issue a credit card in the name of any person under terms which purport to create the contractual liability of that person in any manner inconsistent with Bkg. 80.351 unless the person to be held liable personally requested the creditor to issue the card and open the account.

The rules, amendments and repeals contained in this proposed order shall take effect on the first day of the month following its publication in the Wisconsin Administrative register.

Office of the Commissioner of Banking

A handwritten signature in cursive script that reads "T. E. Pederson".

T. E. Pederson, Deputy Commissioner

July 2, 1980



State of Wisconsin \ OFFICE OF COMMISSIONER OF BANKING

August 29, 1980

ERICH MILDENBERG
COMMISSIONER

WILLIAM G. NOBLE
ADMINISTRATOR

DIVISION OF CONSUMER CREDIT
30 WEST MIFFLIN STREET
MADISON, WISCONSIN 53703

Mr. Gary L. Poulson
Office of the Revisor of Statutes
411 West State Capitol Building
Madison, WI 53702

RE: Administrative Rules

Dear Gary:

Enclosed please find one certified copy and several additional copies of regulations recently promulgated by this office. The regulations affect Chapters 71 and 80 of the Banking Regulations. The regulations were promulgated on July 2, 1980, and filed with the appropriate standing committees. A meeting on the regulations was held before the Assembly Committee on Commerce and Consumer Affairs on August 7, 1980. However, the regulations were reported out of that committee without objection.

Very truly yours,

A handwritten signature in cursive script that reads 'Robert A. Patrick'.

Robert A. Patrick
Attorney

RAP:ato
Encs.