

# State of Wisconsin



1995 Assembly Bill 830

Date of enactment: **May 2, 1996**  
Date of publication\*: **May 16, 1996**

## 1995 WISCONSIN ACT 328

AN ACT to repeal 422.201 (2) (c), 422.201 (10), 422.201 (10m) (a), 422.201 (10m) (b), 422.201 (10m) (d), 422.201 (10m) (e), 422.201 (10m) (f), 422.201 (10m) (g), 422.201 (10m) (h) and 422.421 (6) (b); to renumber 422.421 (6) (a) 1.; to renumber and amend 422.201 (10m) (c), 422.202 (2m) and 422.421 (6) (a) 2.; to amend 138.05 (6), 403.806, 422.415 (1), 422.415 (2) (intro.), 422.421 (1) (c) and 426.201 (5); and to create 422.201 (10s), 422.202 (2m) (a) and 422.202 (2m) (c) of the statutes; relating to: permissible finance charges and other charges for open-end credit plans under the Wisconsin consumer act and a study of the open-end consumer credit market.

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

**SECTION 1.** 138.05 (6) of the statutes is amended to read:

138.05 (6) This section does not apply to transactions governed by chs. 421 to 427 or to discounts described in s. 422.201 (8) ~~or (10) (e)~~.

**SECTION 2.** 403.806 of the statutes is amended to read:

**403.806 Liability for worthless check or draft.** Any person who issues a check or other draft which is not honored upon presentment, because the drawer does not have an account with the drawee or because the drawer does not have sufficient funds in his or her account or sufficient credit with the drawee, is liable for all reasonable costs and expenses in connection with the collection of the amount for which such check or draft was written, except recovery is not permitted under this section if a person licensed under s. 138.09 or any other person collected or could have collected a charge for that check or other draft under s. 422.202 (1) (d) or (2m) ~~(em)~~.

**SECTION 3.** 422.201 (2) (c) of the statutes is repealed.

**SECTION 4.** 422.201 (10) of the statutes is repealed.

**SECTION 5b.** 422.201 (10m) (a) of the statutes is repealed.

**SECTION 5e.** 422.201 (10m) (b) of the statutes is repealed.

**SECTION 5h.** 422.201 (10m) (c) of the statutes is renumbered 422.201 (10m), and 422.201 (10m) (intro.) and (c), as renumbered, are amended to read:

422.201 (10m) (intro.) A finance charge determined by application of a periodic rate ~~not in excess of those permitted in par. (d) or (e)~~ shall be determined by applying the periodic rate ~~permitted in par. (d) or (e)~~ to one of the following:

(c) The median amount within a specified range within which the unpaid balance as calculated according to ~~subd. 1. or 2. par. (a) or (b)~~ is included. A charge may be made under this ~~subdivision~~ paragraph only if the creditor, subject to classifications and differentiations the creditor may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not exceed the charge resulting from applying that percentage to the lowest amount within the

\* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

range by more than 8% of the charge on the median amount.

**SECTION 5L.** 422.201 (10m) (d) of the statutes is repealed.

**SECTION 5p.** 422.201 (10m) (e) of the statutes is repealed.

**SECTION 5r.** 422.201 (10m) (f) of the statutes is repealed.

**SECTION 5u.** 422.201 (10m) (g) of the statutes is repealed.

**SECTION 5y.** 422.201 (10m) (h) of the statutes is repealed.

**SECTION 6.** 422.201 (10s) of the statutes is created to read:

422.201 (10s) Regardless of the date that an open-end credit plan is entered into, the parties may agree to the payment by the customer of a finance charge at any periodic rate.

**SECTION 7e.** 422.202 (2m) of the statutes is renumbered 422.202 (2m) (b), and 422.202 (2m) (b) (intro.), 1., 2., 3. (intro.) and 5., as renumbered, are amended to read:

422.202 (2m) (b) (intro.) This paragraph does not apply after January 31, 1997, unless the attorney general publishes the opinion under par. (a) no later than that date. Except as provided in ~~pars. (a) to (em) subds. 1. to 3m.~~, with respect to consumer credit transactions entered into under an open-end credit plan on or after November 1, 1981, the parties may agree to the payment by the customer of the following charges in addition to the finance charge:

1. A charge not to exceed \$10 in any billing cycle in which the creditor does not receive at least the minimum payment due on or before the 5th day after the payment's due date, as agreed by the parties. Any charge imposed under this ~~paragraph subdivision~~ may not be included in any outstanding balance for purposes of calculating any finance charge or minimum payment.

2. A charge not to exceed 50 cents in any billing cycle in which there are at least 28 calendar days and where the balance as ~~calculated in s. 422.201 (10m)~~ is less than \$33.34. If the charge permitted in this ~~paragraph subdivision~~ is imposed, no finance charge may be imposed ~~under s. 422.201 (10m)~~ nor may the charge permitted in ~~par. (a) subd. 1.~~ be imposed or collected.

3. (intro.) For each cash advance under an open-end credit plan other than by a seller credit card or an overdraft checking loan, a charge not to exceed the greater of \$2 or 2% of the amount of the cash advance, up to a maximum of \$5 per cash advance. In this ~~paragraph subdivision~~:

5. This ~~subsection paragraph~~ does not prohibit charge which the administrator has determined not to be finance charges prior to November 1, 1981.

**SECTION 7m.** 422.202 (2m) (a) of the statutes is created to read:

422.202 (2m) (a) If the attorney general determines that the charge described under par. (b) 1. is not interest within the meaning of 12 USC 85, as interpreted by the U.S. supreme court through December 31, 1996, the attorney general shall issue an opinion which so states and shall publish the opinion in the Wisconsin administrative register no later than February 1, 1997.

**SECTION 7s.** 422.202 (2m) (c) of the statutes is created to read:

422.202 (2m) (c) This paragraph applies beginning on February 1, 1997, unless the attorney general has published the opinion under par. (a) by that date. With respect to an open-end credit plan, regardless of when the plan was entered into:

1. A creditor may charge, collect and receive other fees and charges, in addition to the finance charge authorized under s. 422.201, that are agreed upon by the creditor and the customer. These other fees and charges may include periodic membership fees, cash advance fees, charges for exceeding a designated credit limit, charges for late payments, charges for providing copies of documents and charges for the return of a dishonored check or other payment instrument.

2. For purposes of 12 USC 85, 1463 (g), 1785 and 1831d, both the finance charge under s. 422.201 and charges permitted under subd. 1. are interest and may be charged, collected and received as interest by a creditor.

**SECTION 8.** 422.415 (1) of the statutes is amended to read:

422.415 (1) Except as provided in sub. (2), no creditor shall make any change in the terms of open-end credit plans that is adverse to the interests of the customer with respect to any outstanding balances or that imposes or alters a charge permitted under s. 422.202 (2m) ~~(a) to (em) or (e)~~. For the purposes of this section, a change shall be presumed to be adverse if the result thereof is to increase the rate of the finance charge or the amount of the periodic payment due. Outstanding balances shall be determined on the assumption that all payments shall be credited first to any finance charges that may be due and then to the payment of debts in the order in which the entries to the account showing the debts were made.

**SECTION 9.** 422.415 (2) (intro.) of the statutes is amended to read:

422.415 (2) (intro.) A change that is adverse to the interests of the customer with respect to outstanding balances or that imposes or alters a charge permitted under s. 422.202 (2m) ~~(a) to (em) or (e)~~ may be made if any of the following conditions is met:

**SECTION 10.** 422.421 (1) (c) of the statutes is amended to read:

422.421 (1) (c) "Variable rate transaction" means any open-end credit plan and any consumer credit transaction other than one pursuant to an open-end credit plan, the terms of which permit the rate of finance charge to be

adjusted from time to time during the term of the plan or transaction other than by an adjustment under s. ~~422.201 (10m)~~ or 422.415, but does not include any consumer credit transaction the terms of which permit only the rates of finance charge that are initially numerically specified in any document evidencing the plan or transaction.

**SECTION 11.** 422.421 (6) (a) 1. of the statutes is re-numbered 422.421 (6) (a).

**SECTION 12.** 422.421 (6) (a) 2. of the statutes is re-numbered 422.421 (6) (c) and amended to read:

422.421 (6) (c) The maximum rate of finance charge established under ~~subd. 1. par. (a)~~ shall continue in effect for the entire term of the payment period regardless of any changes in the limit set forth in s. 422.201 (2) (bm) during the payment period.

**SECTION 13.** 422.421 (6) (b) of the statutes is repealed.

**SECTION 14.** 426.201 (5) of the statutes is amended to read:

426.201 (5) No person is subject to this section solely by reason of offering the discount described in s. 422.201 (8) ~~or (10)(e)~~.

**SECTION 15. Nonstatutory provisions.**

(1) REVIEW OF THE OPEN-END CONSUMER CREDIT MARKET. Beginning 24 months after the effective date of this subsection, the administrator designated in section 426.103 of the statutes shall review the open-end consumer credit lending market in this state and report on the advantages and disadvantages that this market presents for the consumers, lenders and economy of this state. The administrator shall submit the results of the review to the legislature in the manner provided in section 13.172 (2) of the statutes no later than the first day of the 30th month beginning after the effective date of this subsection.