



State of Wisconsin
1997 - 1998 LEGISLATURE
April 1998 Special Session

LRB-5247/1
KSH:kmg&jlg:jf

ASSEMBLY BILL 3

May 12, 1998 - Introduced by COMMITTEE ON ASSEMBLY ORGANIZATION, by request of Governor Tommy G. Thompson. Referred to Joint committee on Finance.

1 **AN ACT to repeal** 422.201 (12), 422.203 (4) (b), 422.402 (1) (c), 422.402 (1m) (c),
2 422.413 (2), 422.417 (1) (e), 424.208 (1) (b), 424.301 (1) (b) 4., 425.114 and
3 425.206 (1) (d); **to consolidate, renumber and amend** 424.208 (1) (intro.) and
4 (a); **to amend** 421.203 (1), 421.301 (17), 422.201 (8), 422.203 (4) (a), 422.203 (4)
5 (c), 422.207 (1), 422.209 (2) (b) 1., 422.209 (2) (b) 2., 422.411 (1), 422.412,
6 422.413 (1), 422.417 (1) (c), 422.417 (1) (d), 422.417 (2), 422.418 (2), 422.421 (6)
7 (a), 422.501 (3), 423.201, 425.103 (2) (a), 425.206 (1) (b), 425.206 (1) (c), 425.207
8 (2), 425.208 (1) (intro.) and 425.208 (1) (cm); and **to create** 421.202 (10) and
9 422.210 of the statutes; **relating to:** excluding agricultural transactions from
10 provisions of the Wisconsin 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. Current law contains a number of exclusions, 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. The bill amends the

WCA to generally exclude agricultural transactions from the WCA. An agricultural transaction is a transaction whose purpose is related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by certain persons who cultivate, plant, propagate or nurture those agricultural products. Although the bill generally excludes agricultural transactions from the WCA, the bill does create one provision in WCA which applies to agricultural credit transactions. This provision prohibits a creditor from charging a finance charge or fee for an agricultural credit transaction, unless the charge or fee is clearly disclosed in writing and agreed to by the creditor and the customer.

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 (10) of the statutes is created to read:

2 421.202 (10) Transactions that are primarily for an agricultural purpose,
3 except that credit transactions that are primarily for an agricultural purpose are
4 subject to s. 422.210.

5 **SECTION 2.** 421.203 (1) of the statutes is amended to read:

6 421.203 (1) Consumer credit transactions, not governed by ch. 428, which are
7 made, insured or guaranteed by the federal government or any agency thereof, or by
8 any federal instrumentality chartered under the federal farm credit act of 1971 (P.L.
9 92-181; 85 stats. 583; 12 USC 2001 et seq.), or by the department of veteran's affairs
10 shall be subject to only those provisions set forth in sub. (2).

11 **SECTION 3.** 421.301 (17) of the statutes is amended to read:

12 421.301 (17) "Customer" means a person other than an organization (s.
13 421.301 (28)) who seeks or acquires real or personal property, services, money or
14 credit for personal, family, or household ~~or~~ agricultural purposes. A person other
15 than a customer may agree to be governed by chs. 421 to 427 with respect to all

1 aspects of a transaction and in such event such person shall be deemed a customer
2 for all purposes of chs. 421 to 427 with respect to such transaction.

3 **SECTION 4.** 422.201 (8) of the statutes is amended to read:

4 422.201 (8) That portion of the finance charge consisting of an amount equal
5 to a discount of 5% or less of the stated price which is offered to induce payment in
6 full within a stated period of time in connection with ~~a sale for agricultural purposes~~
7 ~~or~~ a sale of particular goods and services for which credit is not otherwise available
8 from the merchant shall not be included in the finance charge for the purpose of
9 determining the maximum rate of finance charge under sub. (2) or (3) with respect
10 to a customer who does not pay in full within such time.

11 **SECTION 5.** 422.201 (12) of the statutes is repealed.

12 **SECTION 6.** 422.203 (4) (a) of the statutes is amended to read:

13 422.203 (4) (a) With respect to a consumer credit transaction ~~other than one~~
14 ~~primarily for an agricultural purpose~~, interest after the final scheduled maturity
15 date may not exceed the greater of either 12% per year or the annual rate of finance
16 charge assessed on that transaction if the transaction is entered into on or after April
17 6, 1980 and prior to November 1, 1981, and may not exceed the maximum rate
18 permitted by s. 138.05 (1) (a), if the transaction is entered into prior to April 6, 1980,
19 but if such interest is charged no delinquency charge may be taken on the final
20 scheduled instalment.

21 **SECTION 7.** 422.203 (4) (b) of the statutes is repealed.

22 **SECTION 8.** 422.203 (4) (c) of the statutes is amended to read:

23 422.203 (4) (c) With respect to a consumer credit transaction ~~other than one~~
24 ~~primarily for an agricultural purpose~~, interest after the final scheduled maturity
25 date shall not exceed the greater of either 12% per year or the annual rate of finance

1 charge assessed on that transaction if the transaction is entered into on or after
2 November 1, 1981, but if interest is charged no delinquency charge may be taken on
3 the final scheduled instalment.

4 **SECTION 9.** 422.207 (1) of the statutes is amended to read:

5 422.207 (1) With respect to a consumer credit transaction the parties may, to
6 the extent not prohibited by chs. 421 to 427 and 429, agree that the customer will
7 perform certain duties with respect to preserving or insuring collateral or goods
8 subject to a motor vehicle consumer lease, if such duties are reasonable in relation
9 to the risk of loss of or damage to the collateral or goods. If the customer fails to so
10 perform the creditor may, if authorized by the agreement, pay for the performance
11 of such duties on behalf of the customer. The amount paid may be added to the
12 unpaid balance of the customer's obligation, if, in the absence of performance, the
13 merchant has made all expenditures on behalf of the customer in good faith and in
14 a commercially reasonable manner and ~~except in the case of a transaction for an~~
15 ~~agricultural purpose where the collateral is perishable and threatens to decline~~
16 ~~speedily in value,~~ the merchant has given the customer written notice of the
17 nonperformance and reasonable opportunity after such notice to so perform.

18 **SECTION 10.** 422.209 (2) (b) 1. of the statutes is amended to read:

19 422.209 (2) (b) 1. The portion of the finance charge which is allocable to all
20 unexpired payment periods as scheduled or deferred. A payment period is unexpired
21 if prepayment is made within 15 days after the payment's due date. The unearned
22 finance charge is the finance charge which, assuming all payments are made as
23 scheduled or deferred, would be earned for each unexpired payment period by
24 applying to unpaid balances of principal, according to the actuarial method, the
25 annual percentage rate disclosed to the customer under subch. III ~~or, in the case of~~

1 a transaction for an agricultural purpose, the annual percentage rate based on the
2 finance charge. The creditor may decrease the annual interest rate to the next
3 multiple of 0.25%.

4 **SECTION 11.** 422.209 (2) (b) 2. of the statutes is amended to read:

5 422.209 (2) (b) 2. The finance charge less the amount determined by applying
6 the annual percentage rate disclosed to the customer under subch. III ~~or, in the case~~
7 ~~of a transaction for an agricultural purpose, the annual percentage rate based on the~~
8 ~~finance charge~~, according to the actuarial method, to the unpaid balances for the
9 actual time those balances were unpaid up to the date of prepayment.

10 **SECTION 12.** 422.210 of the statutes is created to read:

11 **422.210 Agricultural credit transactions. (1)** PERMISSIBLE FINANCE
12 CHARGES AND FEES. With respect to a credit transaction that it is primarily for an
13 agricultural purpose, a creditor may not charge, collect or receive any finance charge
14 or fee unless the charge or fee is clearly disclosed in writing to the customer and that
15 is agreed to by the creditor and the customer.

16 **(2) PENALTY.** A violation of this section is subject to s. 425.304.

17 **SECTION 13.** 422.402 (1) (c) of the statutes is repealed

18 **SECTION 14.** 422.402 (1m) (c) of the statutes is repealed.

19 **SECTION 15.** 422.411 (1) of the statutes is amended to read:

20 422.411 (1) Except as provided in subs. (2) and (2m), with respect to a consumer
21 credit transaction no term of a writing may provide for the payment by the customer
22 of attorney fees. ~~Notwithstanding subs. (2) and (2m), a consumer credit transaction~~
23 ~~may not provide for the payment by the customer of attorney fees if the transaction~~
24 ~~is for an agricultural purpose.~~

25 **SECTION 16.** 422.412 of the statutes is amended to read:

1 **422.412 Restriction on liability in consumer lease.** In a consumer lease
2 other than one for an agricultural purpose, the obligation of a customer upon
3 expiration of the lease may not exceed the average payment allocable to a monthly
4 period under the lease. This limitation does not apply to charges for damages to the
5 leased property occasioned by other than normal use or for other default.

6 **SECTION 17.** 422.413 (1) of the statutes is amended to read:

7 422.413 (1) Except as provided in ~~subs. (2) and sub. (2g)~~, no term of a writing
8 evidencing a consumer credit transaction may provide for any charges as a result of
9 default by the customer other than reasonable expenses incurred in the disposition
10 of collateral or goods subject to a motor vehicle consumer lease and such other
11 charges as are specifically authorized by chs. 421 to 427 and 429.

12 **SECTION 18.** 422.413 (2) of the statutes is repealed.

13 **SECTION 19.** 422.417 (1) (c) of the statutes is amended to read:

14 422.417 (1) (c) Real property to which the property sold is affixed, or which is
15 maintained, repaired or improved as a result of the sale of the property or services,
16 if the obligation secured is \$1,000 or more; and

17 **SECTION 20.** 422.417 (1) (d) of the statutes is amended to read:

18 422.417 (1) (d) Goods of the consumer which were the subject of a prior
19 transaction with the seller which is consolidated (s. 422.206) with the consumer
20 credit sale, or if the consumer credit sale is made pursuant to an open-end credit
21 plan, goods previously purchased by the consumer pursuant to the plan, subject
22 however to s. 422.418; and.

23 **SECTION 21.** 422.417 (1) (e) of the statutes is repealed.

24 **SECTION 22.** 422.417 (2) of the statutes is amended to read:

1 422.417 (2) With respect to a consumer lease, except as otherwise provided in
2 s. 429.205 with respect to a motor vehicle consumer lease, a lessor may not take a
3 security interest in any property owned or leased by the customer other than the
4 leased goods to secure the lessor's obligations under the lease. This subsection does
5 not prohibit a security interest in a cash security deposit for a consumer lease of
6 motor vehicles ~~or agricultural equipment.~~

7 **SECTION 23.** 422.418 (2) of the statutes is amended to read:

8 422.418 (2) For the purpose of determining the extent to which a consolidated
9 obligation is secured after a consolidation of consumer sales ~~other than sales~~
10 ~~primarily for an agricultural purpose~~, and after a consolidation of consumer loans in
11 which one or more of the loans consolidated is secured by a purchase money security
12 interest in property of the type described in s. 422.417 (3) (a), payments received by
13 the creditor after a consolidation agreement are deemed to have been first applied
14 to the payment of obligations arising from the transactions first made. To the extent
15 that obligations are paid pursuant to this section, security interests in items of
16 property terminate as the obligation originally incurred with respect to each item is
17 paid.

18 **SECTION 24.** 422.421 (6) (a) of the statutes is amended to read:

19 422.421 (6) (a) ~~Except as provided in s. 422.201 (12), for~~ For any variable rate
20 transaction, other than one pursuant to an open-end credit plan, entered into before
21 November 1, 1984, the maximum rate of finance charge for any payment period may
22 not exceed the limit set forth in s. 422.201 (2) (bm) as determined on the earlier of
23 the first day of the payment period or the day notice is given under sub. (5) for the
24 payment period.

25 **SECTION 25.** 422.501 (3) of the statutes is amended to read:

1 422.501 (3) “Extension of credit” means the right to defer payment of debt or
2 to incur debt and defer its payment, that is offered or granted for debt that is incurred
3 primarily for personal, family, or household ~~or agricultural~~ purposes.

4 **SECTION 26.** 423.201 of the statutes is amended to read:

5 **423.201 Definition.** “Consumer approval transaction” means a consumer
6 transaction other than a sale or lease or listing for sale of real property, or a sale of
7 goods at auction, ~~the sale or lease of goods for an agricultural purpose or a loan made~~
8 ~~to finance the sale of goods at auction for an agricultural purpose~~ 1) which is initiated
9 by face-to-face solicitation away from a regular place of business of the merchant
10 or by mail or telephone solicitation directed to the particular customer and 2) which
11 is consummated or in which the customer’s offer to contract or other writing
12 evidencing the transaction is received by the merchant away from a regular place of
13 business of the merchant and involves the extension of credit or is a cash transaction
14 in which the amount the customer pays exceeds \$25. “Consumer approval
15 transaction” shall in no event include a catalog sale which is not accompanied by any
16 other solicitation or a consumer loan conducted and consummated entirely by mail.

17 **SECTION 27.** 424.208 (1) (intro.) and (a) of the statutes are consolidated,
18 renumbered 424.208 (1) and amended to read:

19 424.208 (1) The initial amount of credit life insurance shall not exceed the total
20 amount repayable under the contract of indebtedness however the indebtedness may
21 be repayable, but:—(a)—~~In~~ in cases where an indebtedness is repayable in
22 substantially equal instalments, the amount of insurance shall at no time exceed the
23 scheduled or actual amount of unpaid indebtedness, whichever is greater; ~~and.~~

24 **SECTION 28.** 424.208 (1) (b) of the statutes is repealed.

25 **SECTION 29.** 424.301 (1) (b) 4. of the statutes is repealed.

1 **SECTION 30.** 425.103 (2) (a) of the statutes is amended to read:

2 425.103 **(2)** (a) With respect to a transaction other than one pursuant to an
3 open-end plan; if the interval between scheduled payments is 2 months or less, to
4 have outstanding an amount exceeding one full payment which has remained unpaid
5 for more than 10 days after the scheduled or deferred due dates, or the failure to pay
6 the first payment or the last payment, within 40 days of its scheduled or deferred due
7 date; if the interval between scheduled payments is more than 2 months, to have all
8 or any part of one scheduled payment unpaid for more than 60 days after its
9 scheduled or deferred due date; or, if the transaction is scheduled to be repaid in a
10 single payment, to have all or any part of the payment unpaid for more than 40 days
11 after its scheduled or deferred due date; ~~or in the case of a transaction for an~~
12 ~~agricultural purpose, the failure to pay the first or the only instalment when due or~~
13 ~~to pay any other instalment within 40 days of its original or deferred due date.~~ For
14 purposes of this paragraph the amount outstanding shall not include any
15 delinquency or deferral charges and shall be computed by applying each payment
16 first to the instalment most delinquent and then to subsequent instalments in the
17 order they come due;

18 **SECTION 31.** 425.114 of the statutes is repealed.

19 **SECTION 32.** 425.206 (1) (b) of the statutes is amended to read:

20 425.206 **(1)** (b) Judgment for the merchant has been entered in a proceeding
21 for recovery of collateral or leased goods under s. 425.205, or for possession of the
22 collateral or leased goods under s. 425.203 (2); or

23 **SECTION 33.** 425.206 (1) (c) of the statutes is amended to read:

24 425.206 **(1)** (c) The merchant has taken possession of collateral or leased goods
25 pursuant to s. 425.207 (2); ~~or,~~

1 **SECTION 34.** 425.206 (1) (d) of the statutes is repealed.

2 **SECTION 35.** 425.207 (2) of the statutes is amended to read:

3 425.207 (2) A merchant who reasonably believes that a customer has
4 abandoned collateral or goods subject to a consumer lease may take possession of
5 such collateral or leased goods and preserve it. However, the customer may recover
6 such collateral or leased goods upon request unless at the time of request the
7 customer has surrendered the collateral or leased goods, or judgment for the
8 merchant has been entered in a proceeding for recovery of collateral or leased goods
9 under s. 425.205 or in a judgment described in s. 425.203 (2). A merchant taking
10 possession of collateral or leased goods pursuant to this section shall promptly send
11 notification to the customer's last-known address of such action and of the
12 customer's right to recover such collateral or leased goods under this section. If the
13 collateral or leased goods are recovered by the customer pursuant to this section, it
14 shall be returned to the customer at the location where the merchant took possession
15 of such collateral or leased goods pursuant to this section or, at the option of the
16 merchant, at such other location designated by the customer; and any expense
17 incurred by the merchant in taking possession of, holding and returning the
18 collateral or leased goods to the customer shall be borne by the merchant. If after
19 taking possession of collateral or leased goods pursuant to this subsection, the
20 merchant perfects the right to possession through a surrender by the customer or a
21 judgment under s. 425.203 (2) or 425.205, the customer is liable for the expenses set
22 forth in s. 409.504 (1). In determining such expenses, leased goods shall be
23 considered collateral under s. 409.504 (1). However, a customer is not liable for
24 expenses of holding the collateral or leased goods from the time the merchant takes
25 possession until the merchant perfects the right to possession in the manner

1 provided in this subsection. ~~This subsection shall not apply to collateral recovered~~
2 ~~in accordance with s. 425.114.~~

3 **SECTION 36.** 425.208 (1) (intro.) of the statutes is amended to read:

4 425.208 (1) (intro.) For a period of 15 days following exercise by the creditor of
5 nonjudicial enforcement rights (s. 425.206) or issuance of process (s. 425.205) with
6 regard to the collateral, the customer shall, ~~except in a transaction for an~~
7 ~~agricultural purpose if otherwise agreed in writing after default,~~ be entitled to
8 redeem the goods by tendering:

9 **SECTION 37.** 425.208 (1) (cm) of the statutes is amended to read:

10 425.208 (1) (cm) If a writing evidencing the consumer credit transaction so
11 provides, expenses the creditor is entitled to recover under s. 422.413 (2) ~~and (2g) (a)~~
12 and (b); plus

13 (END)