

CHAPTER 424

CONSUMER TRANSACTIONS — INSURANCE

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SUBCHAPTER I

GENERAL PROVISIONS

424.101 Short title. This chapter shall be known and may be cited as Wisconsin consumer act—insurance.

History: 1971 c. 239.

424.102 Scope. This chapter applies to agreements between a creditor and a debtor under which insurance is provided or is to be provided in relation to consumer credit transactions.

History: 1971 c. 239; 1973 c. 3

Wisconsin consumer act—a critical analysis. Heiser, 57 MLR 389.

Wisconsin consumer act—a freak out? Barrett, Jones, 57 MLR 483.

424.103 Application of general definitions. The definitions in s. 421.301 shall apply to ch. 424.

History: 1973 c. 3

SUBCHAPTER II

CONSUMER CREDIT INSURANCE

424.201 Definition "consumer credit insurance". "Consumer credit insurance" means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include:

(1) Insurance provided in relation to a consumer credit transaction in which a payment is scheduled more than 60 months after the extension of credit;

(2) Insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring customers of the creditor; or

(3) Insurance indemnifying the creditor against loss due to the customer's default.

History: 1971 c. 239; 1973 c. 3

424.202 Charge for insurance. (1) Except as otherwise provided in this chapter and subject to the provisions on additional charges (s. 422.202), and maximum charges (s. 422.201) a creditor may agree to provide insurance, and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by him.

(2) This chapter does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

History: 1971 c. 239

424.203 Conditions applying to insurance to be provided by creditor. (1) When the parties agree that consumer credit insurance shall be provided, at the time the indebtedness is incurred there shall be delivered to the customer the individual policy, a group certificate of insurance, a copy of the application for such insurance or a notice of proposed insurance.

(2) The evidence of insurance provided pursuant to sub. (1) shall set forth the name and home office address of the insurer, the name or names of the customers, the premium or amount of payment by the customer, if any, separately for credit life insurance and credit accident and sickness insurance, the amount, term and a brief

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description of the coverage provided, including all exclusions and exceptions.

(3) Within 30 days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the customer if it is not delivered at the time the indebtedness is incurred.

(4) Within 10 days from the date the indebtedness is incurred, the customer shall be permitted to return the policy, certificate of insurance or the notice of proposed insurance to the creditor and to receive a refund of any premium paid for the insurance if he is not satisfied with the insurance for any reason. Such insurance shall then be void and the parties will be in the same position as if no certificate, policy or notice of proposed insurance had been issued. Conspicuous notice of the right to return the policy, certificate of insurance or notice of proposed insurance shall be furnished with or in the policy, certificate or notice of proposed insurance.

(5) A violation of this section is subject to s. 425.303.

History: 1971 c. 239; 1973 c. 3 ss. 59, 69.

424.204 Maximum charge by creditor for insurance. (1) Except as provided in sub. (2), if a creditor contracts for or receives a charge for insurance, the amount charged for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the customer is determined, conforming to any rate filings required by law and made by the insurer with the commissioner of insurance.

(2) A creditor who provides consumer credit insurance in relation to an open-end credit plan may calculate the charge to the customer in each billing cycle by applying the current premium rate to either:

(a) The average daily unpaid balance of the obligation in the cycle;

(b) The unpaid balance of the obligation or a median amount within a specified range of unpaid balances of the obligation on approximately the same day of the cycle. The day of the cycle need not be the day used in calculating the finance charge (s. 422.201), but the specified range shall be the range used for that purpose; or

(c) The unpaid balances of principal calculated according to the actuarial method.

(3) A violation of this section is subject to s. 425.304.

History: 1971 c. 239

424.205 Refund or credit required. (1) Upon prepayment in full of a consumer credit transaction by the proceeds of consumer credit insurance, the customer or his estate is entitled

to a refund of any portion of a separate charge for insurance which by reason of prepayment is retained by the original creditor or any assignee or returned to either of them by the insurer.

(2) This chapter does not require the creditor to grant a refund or credit if all the refunds and credits due to the customer under chs. 421 to 427 amount to less than \$1 and, except as provided in sub. (1), does not require the creditor to account to the debtor for any portion of a separate charge for insurance because:

(a) The insurance is terminated by performance of the insurer's obligation;

(b) The creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or

(c) The creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

(3) Except as provided in sub. (2), the creditor shall promptly make or cause to be made an appropriate refund or credit to the customer with respect to any separate charge made to him for insurance if:

(a) The insurance is not provided or is provided for a shorter term than that for which the charge to the debtor for insurance was computed; or

(b) The insurance terminates prior to the end of the term for which it was written because of prepayment in full or otherwise.

(4) A refund or credit required by sub. (3) is appropriate as to amount if it is computed according to either s. 422.209 or a method prescribed or approved by the commissioner of insurance.

History: 1971 c. 239; 1979 c. 89

424.206 Deferral, refinancing and consolidation agreements. (1) The creditor may not receive a separate charge for insurance in connection with a deferral (s. 422.204), a refinancing (s. 422.205) or a consolidation (s. 422.206) unless:

(a) The customer agrees in writing at the time of deferral, refinancing or consolidation that a specific charge may be made;

(b) The customer is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which he would have been entitled had there been no deferral, refinancing or consolidation;

(c) The customer receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated (s. 424.205); and

(d) The charge does not exceed the amount permitted by this chapter (s. 424.204).

(2) A creditor may not contract for or receive a separate charge for insurance which duplicates insurance with respect to which the creditor has previously contracted for or received a separate charge.

(3) A violation of this section is subject to the provisions of s. 425.303.

History: 1971 c. 239.

424.207 Term of insurance. (1) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence no later than when the customer becomes obligated to the creditor or when the customer applies for the insurance, whichever is later except as follows:

(a) If any required evidence of insurability is not furnished until more than 30 days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or

(b) If the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

(2) In the case where the commencement of the insurance is delayed, the customer to the extent he has paid a premium charge for any period of time before the insurance became effective, shall be entitled to a rebate or credit of such premium according to s. 424.205.

(3) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the obligation, except as follows:

(a) If the insurance relates to an open-end credit plan, the term need extend only until the payment of the account and may be sooner terminated after at least 30 days' notice to the customer; or

(b) If the customer is advised in writing in a clear and conspicuous manner that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.

(4) The term of the insurance shall not extend more than 15 days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the customer or as an incident to a deferral, refinancing or consolidation agreement.

History: 1971 c. 239.

424.208 Amount of insurance. (1) The initial amount of credit life insurance shall not exceed the total amount repayable under the

contract of indebtedness however the indebtedness may be repayable, but:

(a) In cases where an indebtedness is repayable in substantially equal instalments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater; and

(b) In cases where credit life insurance is provided on consumer credit transactions for an agricultural purpose, such insurance may be written up to the amount of the loan commitment on a nondecreasing or level-term plan.

(2) The total amount of indemnity payable by credit accident and sickness insurance in the event of a disability, shall not exceed the aggregate of the periodic scheduled unpaid instalments of the indebtedness, and the amount of each periodic indemnity payable shall not exceed the original indebtedness divided by the number of periodic instalments.

History: 1971 c. 239; 1973 c. 3 ss. 60, 69.

Legislative Council Note, 1973: [As to sub (1) (intro.)] Clarifies the application of this subsection to open-end accounts. As the section reads prior to amendment, it could be construed to mean that maximum credit life insurance coverage would be determined by the account balance at the time the insurance was initially contracted for. However, the intent is that the amount of insurance fluctuate with, but never exceed, the account balance in open-end credit accounts. For verification, see s. 424.204 (2), which uses the current account balance to determine the premium charge. [Bill 432-A]

424.209 Filing and approval of rates and forms. (1) No individual or group policy, certificate of insurance, notice of proposed insurance, application for insurance, endorsement or rider relating to credit life insurance or credit accident and sickness insurance delivered or issued for delivery in this state, or the schedule of premium rates or charges pertaining thereto, may be issued, delivered or used in this state until a copy of the form thereof has been filed with the commissioner of insurance, nor until the expiration of 30 days after it has been so filed unless the commissioner shall sooner give written approval thereto. The commissioner, within 30 days after the filing of any such form, may disapprove such form or rate schedule if the benefits provided are unreasonable in relation to the premiums to be charged, or if the form contains a provision which is unjust, unfair, inequitable, misleading, deceptive or encourages misrepresentation of the policy, or is contrary to chs. 600 to 646 or any rule adopted thereunder. The benefits provided by any such policy shall be presumed reasonable in relation to the premium to be charged if the ratio of losses incurred to premiums earned is, or may reasonably be expected to be, 50% for credit life insurance and for credit accident and sickness insurance 60% or such lower loss ratio as designated by the commissioner to afford reasonable allowance

for expenses for a particular plan of coverage. If the ratio of losses incurred to premiums earned is less than or can reasonably be expected to be less than the prescribed standards, the benefits provided shall be presumed unreasonable in relation to the premiums charged. Determination of the reasonable relation of benefits to premiums shall be made by the commissioner for each policy form filed for such approval. Premium rate standards for other benefit plans shall be actuarially consistent with the prescribed rate standards. The commissioner may limit the use of any such form for those creditors or customers whose experience was the basis for approval and such other creditors or customers likely to experience similar mortality or morbidity.

(2) Not later than 6 months after March 1, 1973, the commissioner of insurance, by rule, shall adopt premium rates for credit life and credit accident and sickness insurance based upon the loss ratio standards set forth in sub. (1), which rates shall be acceptable without further justification. No charge may be made for credit life or credit accident and sickness insurance which exceeds such premium rates except as provided in this subsection. The commissioner of insurance from time to time shall raise or lower the acceptable premium charges permitted for such insurance for any particular creditor, class of creditor or class of transaction whenever he determines that the actual loss experience for that particular creditor, class of creditor or class of transactions produces a ratio of losses to premiums which differs substantially, based on credible data for a relevant period of time, from the loss ratio standards established by sub. (1).

(3) No individual policy of credit accident and sickness insurance or group policy of credit accident and sickness insurance may be delivered or issued for delivery in this state if the benefits are payable after a waiting period of less than 14 days, regardless of whether the payment of benefits is retroactive to the first day of disability.

(4) If a group credit life insurance policy or group credit accident and sickness insurance policy is delivered to a policyholder which is not a Wisconsin corporation or other resident and does not have its principal office in Wisconsin, the forms to be filed by the insurer with the commissioner of insurance are the group certificates and notices of proposed insurance. He shall approve them if:

(a) They provide the information that would be required if the group policy were delivered in this state;

(b) The applicable premium rates or charges do not exceed those established by chs. 421 to 427 or by rules adopted thereunder; and

(c) They do not contain provisions which are unjust, unfair, inequitable or deceptive, or encourage misrepresentation of the coverages, or are contrary to chs. 600 to 646, or of any rule adopted thereunder.

History: 1971 c. 239; 1973 c. 3; 1977 c. 339 s. 43; 1979 c. 89.

SUBCHAPTER III

PROPERTY INSURANCE

424.301 Restrictions on property insurance. (1) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless:

(a) The insurance covers a substantial risk of loss or damage to property which is allowable collateral under s. 422.417 for the credit transaction;

(b) The amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and

(c) The term of the insurance is reasonable in relation to the terms of credit.

(2) The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

(3) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed exclusive of charges for the insurance is \$800 or more, and the value of the property is \$800 or more.

History: 1971 c. 239; 1973 c. 3

Legislative Council Note, 1973: [As to sub. (1) (a)] Clarifies the scope of allowable property insurance. This paragraph sets forth one of the conditions necessary for property insurance. However, as it reads prior to amendment, no insurance could be taken on any household furnishings, regardless of whether the transaction involved a security interest in them. The effect of the amendment is to allow insurance on any permitted collateral, regardless of its nature. Therefore, if a creditor has a security interest in household furnishings, he will be able to protect his interest by the use of insurance against loss or damage. [Bill 432-A]

424.302 Insurance on creditor's interest only. If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not wilfully caused by the customer is on the debtor only to the extent of any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor.

History: 1971 c. 239

424.303 Cancellation by creditor. (1) A creditor shall not request cancellation of a policy

of property or liability insurance except after the customer's default (s. 425.103), or in accordance with a written agreement by the customer at any time other than when the original transaction is entered into. In either case the cancellation does not take effect until written notice is delivered to the customer or mailed to him at his address as stated by him. The notice shall state that the policy may be canceled on a date not less than 30 days after the notice is delivered, or, if the notice is mailed, not less than 33 days after it is mailed.

(2) Following cancellation, the customer shall be entitled to a rebate or credit for any prepaid charges which represent the premium for a period following cancellation.

(3) This section shall not apply to a contract issued by an insurance premium finance company licensed under s. 138.12.

History: 1971 c. 239; 1973 c. 3.

SUBCHAPTER IV

ADMINISTRATION

424.401 Cooperation between administrator and commissioner of insurance. The

administrator and the commissioner of insurance shall consult and assist one another in maintaining compliance with this chapter. They may jointly or severally pursue investigations, prosecute suits and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the administrator is informed of a violation or suspected violation by an insurer of this chapter, or of chs. 600 to 646, rules and regulations of this state, the administrator shall advise the commissioner of insurance of the circumstances, and the commissioner of insurance may act under the laws of this state.

History: 1971 c. 239; 1973 c. 3; 1977 c. 339 s. 43; 1979 c. 89.

424.402 Administrative action of commissioner of insurance. To the extent that his responsibility under this chapter requires, the commissioner of insurance shall issue rules with respect to insurers and with respect to refunds (s. 424.205), forms, schedules of premium rates and charges (s. 424.209), and his approval or disapproval thereof and, in case of violation, may make an order for compliance.

History: 1971 c. 239