

**ORDER OF THE STATE OF WISCONSIN, DEPARTMENT OF FINANCIAL
INSTITUTIONS, OFFICE OF CONSUMER AFFAIRS
ADOPTING RULES**

- 1 The Wisconsin Department of Financial Institutions, Office of Consumer Affairs proposes an
2 order to amend ss. DFI—Bkg 80.85(1) and (2), and create s. DFI—Bkg 80.85(5), relating to
3 prohibited bases for discriminating in the extension of consumer credit.

Analysis Prepared by the Office of Consumer Affairs

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

Statutory authority: ss. 426.108 and 227.11(2), Stats.

Related statute or rule: None.

Explanation of agency authority: Pursuant to s. 426.104, Stats., the department administers the Wisconsin Consumer Act.

Summary of proposed rule: The objective of the rule is to amend ss. DFI—Bkg 80.85(1) and (2), and create s. DFI—Bkg 80.85(5). The purpose of this rule is to expand the prohibited bases for discriminating in the extension of consumer credit. Currently the Wisconsin Consumer Act makes discrimination on the basis of sex or marital status in the granting or extension of credit an unconscionable credit practice. The rule makes discrimination on a prohibited basis in the granting or extension of credit an unconscionable credit practice. The rule defines prohibited basis to include the already existing bases as well as additional bases. These additional bases are age provided the applicant has the capacity to enter into a binding contract, race, creed, religion, color, disability, marital status, sex, national origin, ancestry, sexual orientation, or membership in the military forces of the United States or this state; that all or part of the applicant's income derives from any public assistance program; and that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law.

Summary of and preliminary comparison with existing or proposed federal regulation: 12 CFR 202 identifies similar prohibited bases.

Comparison with rules in adjacent states: Minnesota, Iowa, Illinois and Michigan have comparable laws.

Summary of factual data and analytical methodologies: The department reviewed federal regulations relating to prohibited bases for discriminating in the extension of consumer credit, as well as laws adopted by adjacent states regarding the same.

Analysis and supporting documentation used to determine effect on small business: The entities affected by this rule do not meet the definition of a small business as set forth in s. 227.114, Stats.; therefore, there is no effect on small business.

Summary of Final Regulatory Flexibility Analysis: This proposed rule will have no adverse impact on small businesses.

Summary of Comments received by Legislative Review Committees: No comments were received.

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. 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 regarding the proposed rule may also be submitted via the department's website contact page, e-mail the secretary. Written comments must be received by the conclusion of the department's hearing regarding the proposed rule.

For substantive questions on the rule, contact Paul Egide, Director, Department of Financial Institutions, Office of Consumer Affairs, P.O. Box 8041, Madison, WI 53708-8041, tel. (608) 267-3518.

Pursuant to the statutory authority referenced above, the Department of Financial Institutions, Office of Consumer Affairs, adopts the following:

4 SECTION 1. DFI—Bkg 80.85 (title), DFI—Bkg 80.05(1) and DFI—Bkg 80.85(2) are
5 amended to read:

6 **DFI-Bkg 80.85 Discrimination ~~on the basis of sex or marital status~~; unconscionable conduct. (1)**

7 DECLARATION OF POLICY. It is the declared policy of the state of Wisconsin that no person shall be
8 discriminated against in the granting or extension of any form of credit, or in the capacity or privilege of
9 obtaining any form of credit, ~~on the basis of the applicant's sex or marital status~~ a prohibited basis. Such
10 discrimination is hereby declared by the secretary of the department of financial institutions to be
11 unconscionable conduct under authority of s. 426.108, [http://folio.legis.state.wi.us/cgi-](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=48013170&infobase=stats.nfo&jump=426.108&softpage=Document)
12 [bin/om_isapi.dll?clientID=48013170&infobase=stats.nfo&jump=426.108&softpage=Document](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=48013170&infobase=stats.nfo&jump=426.108&softpage=Document)

13 - JUMPDEST 426.108Stats. The purpose of this rule is to eliminate discrimination in the granting of
14 consumer credit on ~~the basis of sex or marital status~~ a prohibited basis and to outline steps by which
15 merchants can avoid such unlawful conduct. This regulation shall not apply to merchants chartered by
16 any Wisconsin administrative agency which issues a regulation prohibiting discrimination in the granting
17 of consumer credit on ~~the basis of sex or marital status~~ a prohibited basis.

18 (2) UNCONSCIONABLE CONDUCT. Discrimination in the extension of consumer credit by a
19 merchant to a customer on ~~the basis of the sex or marital status of the customer~~ a prohibited basis shall be
20 an unconscionable credit practice prohibited pursuant to s. 426.108, [http://folio.legis.state.wi.us/cgi-](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=48013170&infobase=stats.nfo&jump=426.108&softpage=Document)
21 [bin/om_isapi.dll?clientID=48013170&infobase=stats.nfo&jump=426.108&softpage=Document](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=48013170&infobase=stats.nfo&jump=426.108&softpage=Document)

22 - JUMPDEST 426.108Stats. Discrimination in the extension of consumer credit on ~~the basis of the~~
23 ~~customer's sex or marital status~~ a prohibited basis shall mean any denial of credit, increase in the charge
24 for credit, restriction on the amount or use of credit, a different application procedure or the application of
25 different credit criteria based on ~~the customer's sex or marital status~~ a prohibited basis and shall include,
26 but not be limited to:

27 SECTION 2. DFI—Bkg 80.85(5) is created to read:

28 (5) DEFINITIONS: In this section:

29 (a) "Disability" means a physical or mental impairment that substantially limits one or more of the major
30 life activities, a record of having such an impairment or being regarded as having such an impairment.

31 (b) "Prohibited basis" means any of the following:

32 1. Age provided the applicant has the capacity to enter into a binding contract, race, creed, religion, color,
33 disability, marital status, sex, national origin, ancestry, sexual orientation, or membership in the military
34 forces of the United States or this state.

35 2. That all or part of the applicant's income derives from any public assistance program.

36 3. That the applicant has in good faith exercised any right under the Consumer Credit Protection Act or
37 any state law.

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

Dated: _____

Agency: _____

Paul Egede, Director
Department of Financial Institutions
Office of Consumer Affairs