



1995 ASSEMBLY BILL 830

January 29, 1996 - Introduced by Representatives KAUFERT, MEYER, HANSON, HUEBSCH, BRANCEL, FREESE, JOHNSRUD, MURAT, OLSEN, TRAVIS, GREEN, JENSEN, HOVEN, ZIEGELBAUER, BALDUS and ALBERS, cosponsored by Senators SCHULTZ, ANDREA, BURKE, PETAK, DRZEWIECKI, SHIBILSKI, WELCH, GROBSCHMIDT, DARLING and JAUCH. Referred to Committee on Financial Institutions.

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

Analysis by the Legislative Reference Bureau

Current law places certain limitations on the maximum interest that can be charged in consumer credit transactions entered into under an open-end credit plan, such as credit card accounts. These limitations depend upon when the open-end credit plan was entered into. For example, with respect to transactions under an open-end credit plan that is entered into on or after November 1, 1981, the parties generally may not agree to the payment by the customer of a finance charge in excess of 18% per year calculated according to the actuarial method. This bill repeals these limitations and provides that, regardless of the date on which 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.

Current law also limits the charges and fees, other than finance charges, that may be imposed on consumer credit transactions under an open-end credit plan. Under current law, the parties may generally agree only to the following types of charges, other than finance charges: 1) a charge not to exceed \$10 in any billing cycle in which the creditor does not receive at least the minimum payment due; 2) a charge not to exceed 50 cents in any billing cycle in which the balance is less than \$33.34; 3) a charge for certain cash advances 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; 4) a charge

not to exceed \$10 in any billing cycle in which the unpaid balance exceeds the credit limit under the plan; and 5) a charge not to exceed \$15 for certain dishonored checks presented for payment to a creditor. This bill repeals these limitations and instead provides that a creditor may charge, collect and receive other fees and charges, in addition to the finance charge authorized under current law, 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.

Under current federal law, national banks, state-chartered federally insured depository institutions, insured branches of foreign banks, credit unions and savings and loan associations are generally permitted to charge "interest at the rate allowed by the laws of the state" in which the bank, institution or branch is located. This bill provides that, for purposes of this federal law, the charges and fees discussed in the previous paragraph may be charged, collected and received by the creditor "as interest". The bill also provides that, for purposes of these federal laws, the terms and conditions of an open-end credit plan, including the following provisions, are material to the determination of the interest rate: 1) provisions relating to the method of determining the balance upon which the interest or finance charge is applied; 2) provisions regarding the time periods within which fees and charges are applied or within which they may be avoided; 3) default provisions; 4) cancellation provisions; 5) choice of law provisions; and 6) provisions regarding changes in the terms and conditions of the open-end credit plan.

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

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

2 138.05 (6) This section does not apply to transactions governed by chs. 421 to
3 427 or to discounts described in s. 422.201 (8) ~~or (10) (e)~~.

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

5 **403.806 Liability for worthless check or draft.** Any person who issues a
6 check or other draft which is not honored upon presentment, because the drawer does
7 not have an account with the drawee or because the drawer does not have sufficient
8 funds in his or her account or sufficient credit with the drawee, is liable for all
9 reasonable costs and expenses in connection with the collection of the amount for
10 which such check or draft was written, except recovery is not permitted under this

1 section if a person licensed under s. 138.09 or any other person collected or could have
2 collected a charge for that check or other draft under s. 422.202 (1) (d) or (2m) (~~em~~).

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

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

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

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

7 422.201 (**10s**) Regardless of the date that an open-end credit plan is entered
8 into, the parties may agree to the payment by the customer of a finance charge at any
9 periodic rate.

10 **SECTION 7.** 422.202 (2m) of the statutes is repealed and recreated to read:

11 422.202 (**2m**) With respect to an open-end credit plan, regardless of when the
12 plan was entered into:

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

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

22 (c) For purposes of 12 USC 85, 1463 (g), 1785 and 1831d, the terms and
23 conditions of an open-end credit plan, including the following provisions, are
24 material to the determination of the interest rate:

1 1. Provisions relating to the method of determining the balance upon which the
2 interest or finance charge is applied.

3 2. Provisions regarding the time periods within which fees and charges are
4 applied or within which they may be avoided.

5 3. Default provisions.

6 4. Cancellation provisions.

7 5. Choice of law provisions.

8 6. Provisions regarding changes in the terms and conditions of the open-end
9 credit plan.

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

11 422.415 (1) Except as provided in sub. (2), no creditor shall make any change
12 in the terms of open-end credit plans that is adverse to the interests of the customer
13 with respect to any outstanding balances or that imposes or alters a charge permitted
14 under s. 422.202 (2m) (a) to (em) or (e). For the purposes of this section, a change shall
15 be presumed to be adverse if the result thereof is to increase the rate of the finance
16 charge or the amount of the periodic payment due. Outstanding balances shall be
17 determined on the assumption that all payments shall be credited first to any finance
18 charges that may be due and then to the payment of debts in the order in which the
19 entries to the account showing the debts were made.

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

21 422.415 (2) (intro.) A change that is adverse to the interests of the customer
22 with respect to outstanding balances or that imposes or alters a charge permitted
23 under s. 422.202 (2m) (a) to (em) or (e) may be made if any of the following conditions
24 is met:

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

1 422.421 (1) (c) “Variable rate transaction” means any open-end credit plan and
2 any consumer credit transaction other than one pursuant to an open-end credit plan,
3 the terms of which permit the rate of finance charge to be adjusted from time to time
4 during the term of the plan or transaction other than by an adjustment under s.
5 ~~422.201 (10m)~~ or 422.415, but does not include any consumer credit transaction the
6 terms of which permit only the rates of finance charge that are initially numerically
7 specified in any document evidencing the plan or transaction.

8 **SECTION 11.** 422.421 (6) (a) 1. of the statutes is renumbered 422.421 (6) (a).

9 **SECTION 12.** 422.421 (6) (a) 2. of the statutes is renumbered 422.421 (6) (c) and
10 amended to read:

11 422.421 (6) (c) The maximum rate of finance charge established under subd.
12 ~~1. par. (a)~~ shall continue in effect for the entire term of the payment period regardless
13 of any changes in the limit set forth in s. 422.201 (2) (bm) during the payment period.

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

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

16 426.201 (5) No person is subject to this section solely by reason of offering the
17 discount described in s. 422.201 (8) ~~or (10) (e)~~.

18 **(END)**