CHAPTER 422

CONSUMER CREDIT TRANSACTIONS

SUBCHAPTER I

GENERAL PROVISIONS

422.101 Short title. This chapter shall be known and may be cited as Wisconsin consumer act—consumer credit transactions.

History: 1971 c. 239.

422.102 Scope. This chapter applies to consumer credit transactions.

History: 1971 c. 239.

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

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

Creditor's responsibilities and duties under the Wisconsin consumer act. Holbrook, Bugge, 1973 WBB No. 1.

Real estate implications of the Wisconsin consumer act. Horton, 1973 WBB No. 1.

The effect of the Wisconsin consumer act on farm credit. Miller, 1973 WBB No. 2.

SUBCHAPTER II

MAXIMUM CHARGES

422.201 Finance charge for consumer credit transactions. (1) With respect to a consumer credit transaction other than one pursuant to an open-end credit plan, the parties may agree to the payment by the customer of a finance charge not in excess of that permitted by subs. (2) to (4).

(2) (a) The finance charge, calculated according to the actuarial method, may not exceed the equivalent of the total of the following for a consumer credit transaction entered into on or after April 6, 1980 and prior to November 1, 1981, other than by a federally chartered or state-charteredsavings and loan association:

1. Eighteen percent per year on that part of the unpaid balance of the amount financed which is $1,000 or less; and

2. Fifteen percent per year on that part of the unpaid balance of the amount financed which is more than $1,000.

(b) The finance charge, calculated according to the actuarial method, may not exceed the equivalent of the total of the following for a consumer credit transaction entered into prior to April 6, 1980, after October 31, 1981 or at any time by a federally chartered or state-chartered savings and loan association:

1. Eighteen per cent per year on that part of the unpaid balance of the amount financed which is $500 or less; and

2. Twelve per cent per year on that part of the unpaid balance of the amount financed which is more than $500.

(c) A purchase, cash advance or other debit transaction entered into by a customer under an open-end credit plan in existence on April 6, 1980 is subject to the limit on finance charges provided under par. (b), except a purchase, cash

advance or other debit transaction entered into on or after April 6, 1980 and prior to November 1, 1981, is subject to par. (a) if the creditor mails or delivers to the customer a written notice of a finance charge to be applied which is greater than permitted under par. (b) at least 15 days prior to the beginning date of a billing cycle and the customer makes the purchase, obtains the cash advance or enters into the debit transaction on or after that date.

(3) For licensees under s. 138.09 and under s. 218.01, the finance charge, calculated according to those sections, may not exceed the maximums permitted in ss. 138.09 and 218.01, respectively.

(4) For sellers of farm equipment, farm implements and farm tractors, other than licensees under s. 218.01, the finance charge on the sale of equipment may not exceed 18% per year for consumer credit transactions entered into on or after April 6, 1980 and prior to November 1, 1981, and may not exceed the Class 2 rate for motor vehicles, as specified in s. 218.01 (6) (b), for consumer credit transactions entered into prior to April 6, 1980 or after October 31, 1981, and calculated in accordance with that section.

(5) For the purposes of this section:

(a) The finance charge may be calculated on the assumption that all scheduled payments will be made when due;

(b) The dollar amount of finance charge shall include the prepaid finance charge excluded from the amount financed; and

(c) The effect of prepayment is governed by the provisions on rebate upon prepayment under s. 422.209.

(6) For the purposes of this section, the term of a consumer credit transaction other than one pursuant to an open-end credit plan commences with the date the credit is granted or, if goods are delivered, services performed or proceeds of a loan paid 10 days or more after that date, with the date of commencement of delivery or performance. Differences in lengths of months are disregarded and a day may be counted as one-thirtieth of a month.

(7) Subject to classifications and differentiations the merchant may reasonably establish, he may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate sub. (2), (3) or (4) as the case may be if:

(a) When applied to the median amount within each range, it does not exceed the maximum permitted by sub. (2), (3) or (4) as the case may be; and

(b) When applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to par. (a) by more than 8% of the rate calculated according to par. (a).

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

(9) Notwithstanding sub. (2), (3) or (4), a merchant may contract for and receive a minimum finance charge with respect to a transaction other than one pursuant to an open-end credit plan, of not more than $5 when the amount financed does not exceed $75, or $7.50 when the amount financed exceeds $75.

(10) With respect to consumer credit transactions pursuant to an open-end credit plan the parties may agree to the payment by the customer of a finance charge not in excess of those permitted by sub. (2) or (3), whichever is applicable.

(a) A finance charge shall be deemed not to exceed such rates, if it is determined by applying a periodic rate not in excess of those specified in par. (b) or (c) to:

1. The average daily balance of the account;

2. The unpaid balance of the account on the last day of the billing cycle calculated after first deducting all payments, credits and refunds during the billing cycle; or

3. The median amount within a specified range within which the unpaid balance as calculated according to subd. 1 or 2 is included. A charge may be made pursuant to this 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 range by more than 8% of the charge on the median amount.

(b) If the billing cycle is monthly, the maximum periodic rate is 1.5% of that part of the amount specified in par. (a) to which the rate of 18% per year may be applied under sub. (2), 1.25% of that part of such amount to which the rate of 15% per year may be applied under sub. (2), and one percent of that part of such amount to which the rate of 12% per year may be applied under sub. (2); except that for licensees under s. 138.09 the maximum periodic rate shall

not exceed a periodic rate equivalent to the rate permitted under s. 138.09, as determined by the administrator.

(c) If the billing cycle is not monthly, the maximum periodic rates are those percentages which bear the same relation to the percentages specified in par. (b) as the number of days in the billing cycle bears to 30.

(d) Irrespective of variations from cycle to cycle, a billing cycle is "monthly" for purposes of this section if the average length of 12 successive cycles is not less than 30 or more than 32 days.

(e) If the availability of the discount is disclosed to all prospective buyers, that portion of the finance charge consisting of an amount equal to a discount of 5% or less of the stated price which is offered by a merchant either in connection with a sale for agricultural purposes, or to induce immediate payment in full rather than by use of a credit card shall not be included in the finance charge for the purpose of determining the maximum rate of finance charge under this subsection with respect to a customer who either elects to use a credit card or to have such agricultural transaction posted to the customer's open-end account.

(11) Anything to the contrary in this chapter notwithstanding, with respect to consumer credit sales and consumer loans secured by real property and insured or guaranteed by the federal government, or any agency or instrumentality thereof, this chapter shall not prohibit or limit any charges which are required by statutes, rules or regulations of such government, agency or instrumentality.

(12) Except as provided in sub. (4), this section does not apply to a consumer credit transaction primarily for an agricultural purpose if the transaction occurs on or after April 6, 1980 and prior to November 1, 1981.

(13) A violation of this section is subject to s. 425.305.

History: 1971 c. 239; 1973 c. 2; 1979 c. 10, 168, 176.

Scope of apparent agency may embrace making of usurious loan. Hollingsworth v. American Finance Corp. 86 W (2d) 172, 271 NW (2d) 872 (1978).

422.202 Additional charges. (1) In addition to the finance charge permitted by this subchapter, a merchant may bargain for and receive the following additional charges in connection with a consumer credit transaction:

(a) Official fees and taxes;

(b) Charges or premiums for credit life insurance, as defined in s. 201.04 (3c), 1973 stats., credit accident and sickness insurance, as defined in s. 201.04 (4a), 1973 stats., or credit unemployment insurance, against loss of income of debtors resulting from either labor disputes or involuntary unemployment, if:

1. The insurance coverage is not required by the creditor and this fact is clearly and conspicuously disclosed in writing to the customer; and

2. Any customer desiring such insurance coverage gives specific dated and separately signed affirmative written indication of such desire after receiving written disclosure to him of the cost of such insurance;

(c) Charges or premiums for life insurance, other than credit life insurance, and accident and sickness insurance other than credit accident and sickness insurance, if the amount of such insurance does not exceed the amount of the outstanding indebtedness and the term of such insurance does not exceed the term of the indebtedness, and for insurance against loss of or damage to property or against liability arising out of the ownership or use of property, if a clear, conspicuous and specific statement in writing is furnished by the creditor to the customer setting forth the cost of the insurance if obtained from or through the merchant and stating that the customer may choose the person through which the insurance is to be obtained; and

(d) Charges in real property transactions as provided in sub. (2).

(2) With respect to a consumer credit transaction which involves the extension of credit secured by an interest in real property, the parties may agree to the payment by the customer of the following charges in addition to the finance charge, if they will be paid to persons not related to the merchant, are reasonable in amount, bona fide and not for the purpose of circumvention or evasion of this subchapter:

(a) Fees or premiums for title examination, title insurance or similar purpose;

(b) Fees for preparation of a deed, settlement statement or other documents;

(c) Fees for notarizing deeds and other documents;

(d) Appraisal fees; and

(e) Survey costs.

(3) For the purposes of chs. 421 to 427, any charge not authorized by this section shall be considered part of the finance charge.

History: 1971 c. 239; 1973 c. 3; 1975 c. 362, 371, 372, 375, 407, 422; 1979 c. 89.

Legislative Council Note, 1973: [As to sub. (1) (c)] Allows creditors to treat so-called "mortgage redemption insurance" as an additional charge. This is insurance written on long-term obligations, such as mortgages, which would not qualify as credit insurance, as that term is defined, because of its longer term. The effect of this amendment is to allow premiums for such insurance to be treated as additional charges, similar to insurance defined as "credit insurance", as long as the amount and term does not exceed the outstanding balance and term of the indebtedness.

[As to sub. (2) (b) (intro.)] Broadens the range of real estate transactions in which specified additional charges may be made. As the section reads prior to the above amendment, only the creditor holding a first mortgage or equivalent security interest may pass on these incidental charges, which include such items as title examination or title insurance fees,

and fees for deed preparation, notarizing documents and appraisals to the extent that they are customarily borne by the customer in a cash transaction. The problem which arises from this approach is that these costs are incurred by other creditors in real estate transactions, but these creditors are unable to treat them in the same manner as the first mortgage; i.e., pass them on to the customer. The change made by this section is designed to insure equal treatment of purchase money creditors, regardless of the priority of their security interest, creditors refinancing a first mortgage and creditors financing substantial improvements of real property. [Bill 432-A]

422.203 Delinquency charges. (1) With respect to a consumer credit transaction other than one pursuant to an open-end credit plan, the parties may agree to a delinquency charge on any instalment not paid in full on or before the 10th day after its scheduled or deferred due date in an amount not to exceed $3 or 3% of the unpaid amount of the instalment, whichever is less.

(2) No delinquency charge may be collected on an instalment which is paid in full on or before the 10th day after its scheduled or deferred due date even though an earlier maturing instalment or a delinquency charge on an earlier instalment may not have been paid in full. For purposes of this subsection payments are applied first to current instalments and then to delinquent instalments.

(3) A delinquency charge under sub. (1) may be collected only once on an instalment however long it remains in default. A delinquency charge may not be collected for a late instalment if, with respect to that instalment, there has been a deferral.

(4) (a) With respect to a consumer credit transaction other than one primarily for an agricultural purpose, interest after the final scheduled maturity date shall not exceed the greater of either 12% per year or the annual rate of finance charge assessed on that transaction if the transaction is entered into on or after April 6, 1980 and prior to November 1, 1981, and shall not exceed the maximum rate permitted by s. 138.05 (1) (a), if the transaction is entered into prior to April 6, 1980 or after October 31, 1981, but if such interest is charged no delinquency charge may be taken on the final scheduled instalment.

(b) With respect to a consumer credit transaction primarily for an agricultural purpose, interest after maturity of any scheduled instalment shall not exceed the greater of either 12% per year or an amount determined by applying the annual rate of finance charge assessed on that transaction to that instalment until paid, but if such interest is charged, no delinquency charge may be taken on such instalment. This paragraph does not apply to a consumer credit transaction primarily for an agricultural purpose if the transaction occurs on or after April 6, 1980 and prior to November 1, 1981.

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

History: 1971 c. 239; 1979 c. 10, 168.

422.204 Deferral charges. (1) With respect to a precomputed consumer credit transaction, the parties may at any time agree in writing to a deferral of all or part of one or more unpaid instalments, and the creditor may make and collect a charge but:

(a) With respect to a precomputed transaction which is scheduled to be repaid in substantially equal successive instalments at approximately equal intervals, if the deferral is made as of an instalment due date and the payment dates for all wholly unpaid instalments are deferred for one or more full instalment periods and the maturity is extended for a corresponding period, the deferral charge shall not exceed the portion of the precomputed finance charge attributable to the final instalment of the original schedule of payments multiplied by the total number of instalments to be deferred and by the number of full instalment periods in the deferment period; or

(b) If the deferral is not made pursuant to par. (a) the deferral charge shall not exceed the rate previously disclosed to the customer pursuant to the provisions on disclosure in subch. III, applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in the lengths of months, but proportionally for a part of a month, counting each day as one-thirtieth of a month.

(2) A deferral charge may be collected at the time it is assessed or at any time thereafter.

(3) The deferment period is that period of time in which no payment is required or made by reason of the deferral.

(4) Any payment received at the time of the deferment may be applied first to the deferral charge and the remainder, if any, to the unpaid balance of the transaction, but if such payment is sufficient to pay, in addition to the appropriate delinquency charge, any instalment which is in default, it shall be first so applied, and such instalment shall not then be deferred or subject to the deferral charge.

(5) No instalment on which a delinquency charge has been collected shall be deferred or included in the computation of the deferral unless such delinquency charge is refunded to the customer or credited to the deferral charge.

(6) In addition to the deferral charge, the merchant may make appropriate additional charges as provided in s. 422.202. The amount

of such charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral.

(7) In addition to any requirements of form established by the administrator, a deferral agreement shall:

(a) Be in writing and signed by the customer;

(b) Incorporate by reference the transaction to which the deferral applies;

(c) State each instalment or part thereof in the amount to be deferred, the date or dates originally payable and either the date or dates agreed to become payable for the payment of the amounts deferred or the periods of deferral; and

(d) Clearly set forth the dollar amount of the charge for each instalment to be deferred and the total dollar amount to be paid by the customer for the deferral.

(e) This subsection shall not apply to deferral charges made pursuant to sub. (8).

(8) The parties may agree in writing at the time of a precomputed consumer transaction, refinancing or consolidation that if an instalment is not paid within 30 days after its due date, the creditor at any time may unilaterally grant a deferral and make charges as provided in this section if a notice is sent to the customer at least 10 days prior to deferral advising him of the total dollar amount of the deferral charge and the periods of deferral, but such deferral shall not be allowed if the customer has a valid claim or defense against the creditor for the payment not made. Only one such unilateral deferral on a consumer credit transaction may be made during any 12-month period.

(9) No deferral charge may be made for a period after the date that the creditor elects to accelerate the maturity of the agreement.

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

History: 1971 c. 239; 1973 c. 3

Legislative Council Note, 1973: Clarifies the meaning of ss. 422.204 (5) and (6). The reference in sub. (5) to "partial payment" is phrased in a manner which infers that part of an instalment cannot be deferred. However, this is not the case; see s. 422.204 (1) (intro.), which clearly allows the deferment of part of an instalment. This change also has a minor substantive effect—the deferral charge on the deferment of part of an instalment will always have to be calculated using the rate of finance charge previously disclosed to the buyer [s. 422.204 (1) (b)], rather than possibly refunding the partial payment and calculating the deferral charge using the "unit" method [s. 422.204 (1) (a)] if the transaction otherwise qualifies for such treatment.

The cross-reference language added in sub. (6) has the effect of specifying with greater exactitude those additional charges allowable in a deferral situation. [Bill 432-A]

422.205 Finance charge on refinancing. **(1)** With respect to a consumer credit transaction other than one pursuant to an open-end credit plan, the merchant may by agreement with the customer refinance the unpaid balance and may bargain for and receive a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted in s. 422.201.

(2) For the purpose of determining the finance charge permitted in refinancing, the amount financed resulting from the refinancing shall constitute the total of the following:

(a) The amount which the customer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment under s. 422.209 on the date of refinancing, except that for the purpose of computing this amount no minimum finance charge under s. 422.201 (9) shall be allowed; and

(b) Appropriate additional charges under s. 422.202, included for the period of refinancing.

(3) The maximum period for payments resulting from refinancing under this section shall not exceed the periods provided in s. 422.403 commencing with the date of refinancing, but the outstanding balances for the purposes of that section shall be based on the amount financed resulting from such refinancing.

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

History: 1971 c. 239; 1979 c. 10 s. 24.

422.206 Finance charge on consolidation. **(1)** If a customer owes an unpaid balance to a creditor with respect to a consumer credit transaction and becomes obligated on another consumer credit transaction or desires to enter into another consumer credit transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments.

(2) The unpaid balance with respect to the previous transaction shall be determined under s. 422.205 and the amount financed resulting therefrom shall be consolidated by adding to it the amount financed with respect to the subsequent transaction. The creditor may contract for and receive a finance charge based on the aggregate amount financed resulting from consolidation at a rate not exceeding that permitted by s. 422.201.

(3) The maximum period for payments resulting from consolidation under this section shall not exceed the periods provided for in s. 422.403 commencing with the date of consolidation but the outstanding balances for the purposes of that section shall be based on the amount of the consolidated outstanding balance.

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

History: 1971 c. 239

422.207 Advances to perform agreements of customer. **(1)** With respect to a

consumer credit transaction the parties may, to the extent not prohibited by chs. 421 to 427, agree that the customer will perform certain duties with respect to preserving or insuring collateral if such duties are reasonable in relation to the risk of loss of or damage to the collateral. If the customer fails to so perform the creditor may, if authorized by the agreement, pay for the performance of such duties on behalf of the customer. The amount paid may be added to the unpaid balance of the customer's obligation, if, in the absence of performance, the merchant has made all expenditures on behalf of the customer in good faith and in a commercially reasonable manner and except in the case of a transaction for an agricultural purpose where the collateral is perishable and threatens to decline speedily in value, the merchant has given the customer written notice of the nonperformance and reasonable opportunity after such notice to so perform.

(2) Within a reasonable time after advancing any sums pursuant to sub. (1), the merchant shall state to the customer in writing the amount of the sums advanced, any charges with respect to this amount and any revised payment schedule and, if the duties of the customer performed by the merchant pertain to insurance, a brief description of the insurance paid for including the type and amount of coverages.

(3) A finance charge may be made for sums advanced pursuant to sub. (1) at a rate not exceeding the rate stated to the customer pursuant to the provisions on disclosure in subch. III, or if no disclosure is required then at the annual rate of finance charge assessed on that transaction. With respect to an open-end credit plan the amount of the advance may be added to the unpaid balance of the account and the merchant may make a finance charge not exceeding that permitted by s. 422.201.

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

History: 1971 c. 239; 1979 c. 10, 89.

422.208 Right to prepay. Subject to s. 422.209, the customer may prepay in full or in any part, at any time without penalty, the unpaid balance of any consumer credit transaction other than a transaction secured by a first lien mortgage or equivalent security interest on real estate with an original term of 10 years or more and on which the annual percentage rate disclosed pursuant to subch. III is 10% or less.

History: 1971 c. 239.

422.209 Rebate on prepayment. (1) Upon prepayment in full of the unpaid balance of a precomputed consumer credit transaction, refinancing or consolidation, an amount not less than the unearned portion of the finance charge calculated according to this section shall be rebated to the customer. If the total of all rebates, refunds and credits to be paid to the customer under chs. 421 to 427 is less than $1, no rebate need be made.

(2) The unearned portion of the precomputed finance charge on consumer credit transactions repayable in substantially equal successive instalments at approximately equal intervals shall be equal to at least that portion of the finance charge which the sums of the instalment balances of the obligation scheduled to be outstanding after the instalment date nearest the date of prepayment bears to the sum of all instalment balances originally scheduled to be outstanding under the obligation. For the purpose of determining the instalment date nearest the date of prepayment when payments are monthly, any prepayment made on or before the 15th day following an instalment due date shall be deemed to have been made as of the instalment due date, and if prepayment occurs on or after the 16th day it shall be deemed to have been made on the succeeding instalment due date. This method of calculating rebates may be referred to as the "rule of 78" or "sum of the digits" method.

(3) With respect to other precomputed consumer credit transactions, the administrator may prescribe by rule the refund formula consistent with sub. (2) taking into account the irregularity of instalment amounts and due dates.

(4) In the event of deferral, the unearned portion of the finance charge and deferral charge shall be computed as follows:

(a) If deferred pursuant to s. 422.204 (1) (a) the unearned portion of the finance charge and deferral charge shall be computed according to the rule of 78 calculated with regard to the extended maturity date. For the purposes of such calculation, the instalments deferred shall fall due in the same order as provided for in the original schedule of payments and the balances attributable to the deferred instalment periods shall be the same as were attributable to the instalment periods originally. When the rebate is so computed, a separate rebate of the deferral charge is not required; or

(b) If otherwise deferred pursuant to s. 422.204, the unearned portion of the finance charge shall be computed without regard to the deferral as provided in sub. (2) according to the original schedule, and the unearned portion of the deferral shall be computed separately and 1) if the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the finance

charge, or 2) if any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the finance charge.

(5) This section does not preclude the collection or retention by the creditor of delinquency charges under s. 422.203 for delinquencies or payments due prior to prepayment.

(6) If the maturity of the obligation is accelerated for any reason and judgment is obtained, the customer is entitled to the same rebate as if payment in full had been made on the date judgment is entered against the customer.

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

History: 1971 c. 239; 1979 c. 89.

SUBCHAPTER III

DISCLOSURE AND FORM OF WRITINGS

422.301 Requirements of federal act. In addition to the disclosures required by the federal consumer credit protection act, if any, the creditor shall disclose to the customer to whom credit is extended the information required by this subchapter. With respect to every consumer credit sale payable in instalments (s. 421.301 (30)) upon which no separate finance charge is stated or imposed (s. 421.301 (20)) the creditor shall make disclosures in accordance with the federal consumer credit protection act, to the extent applicable, whether or not such act requires such disclosures to be made.

History: 1971 c. 239; 1979 c. 10.

The functions of disclosure regulation in consumer transactions. Whitford, 1973 WLR 400.

422.302 General requirements and provisions. (1) The information required by this subchapter to be disclosed by the creditor to the customer to whom credit is extended:

(a) Shall be made clearly and conspicuously;

(b) Shall be in writing;

(c) Except as provided in s. 422.303 and in rules adopted by the administrator, need not be contained in a single writing or made in the order set forth in chs. 421 to 427;

(d) May be supplemented by additional information or explanations supplied by the creditor, but none shall be stated, utilized or placed so as to mislead or confuse the customer or contradict, obscure or detract attention from the information required by this subchapter to be disclosed; and so long as the additional information or explanations do not have the effect of circumventing, evading or unduly complicating the information required to be disclosed by this subchapter; and

(e) Need be made only to the extent applicable and only as to those items for which the creditor makes a separate charge to the customer.

(2) The creditor shall disclose all information required by this subchapter before the transaction is consummated; such disclosures may be made on the face of the writing evidencing the transaction.

(3) Before any payment is due, the creditor shall furnish the customer with an exact copy of each instrument, document, agreement and contract which is signed by the customer and which evidences the customer's obligation. If there is more than one customer, delivery of copies of the documents to one of them constitutes compliance with this subsection.

(4) Anything to the contrary in chs. 421 to 427 notwithstanding, the sale of insurance under ch. 424 shall not be considered a sale requiring separate disclosure other than as provided in s. 422.202 (1).

History: 1971 c. 239; 1979 c. 10, 89.

422.303 Form requirements other than open-end or discount. (1) In a consumer credit sale other than one pursuant to an open-end credit plan or a credit sale in which the only finance charge is a prompt payment discount as described in s. 422.201 (8), the customer's obligation to pay the total of payments shall be evidenced by a single instrument, which shall include, in addition to the other disclosures required by this subchapter, the signature of the seller, the signature of the customer, the date on which it was signed and a description of any property the customer transfers to the seller as a trade-in.

(2) The terms of such instrument evidencing a consumer credit sale shall be set forth in not less than 8-point standard type, or such similar type as is prescribed in rules adopted by the administrator, to the extent that larger type is not specifically required by chs. 421 to 427.

(3) Except as provided in sub. (4), every writing evidencing the customer's obligation to pay under a consumer credit transaction other than one pursuant to an open-end credit plan, shall contain immediately above or adjacent to the place for the signature of the customer, a clear, conspicuous, printed or typewritten notice in substantially the following language:

NOTICE TO CUSTOMER

(a) DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.

(b) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

(c) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

(d) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

(4) The notice described in sub. (3) (a) is not required when no terms appear on the reverse side of the writing. The notice described in sub. (3) (d) is not required with respect to a consumer credit transaction secured by a first lien mortgage or equivalent security interest on real property, the original term of which is 10 years or more.

(5) The creditor shall retain a copy of such writing evidencing a consumer credit transaction, other than one pursuant to an open-end credit plan, and of any proposal for a consumer credit transaction which the merchant has required or requested the customer to sign and which the customer has signed during contract negotiations, for a period of one year after the last payment scheduled under the transaction, or one year after the transaction has been repaid in full, whichever is sooner. The creditor shall supply the customer with copies of such documents upon any demand of the customer made within such period; one copy shall be furnished at no charge; and subsequent copies shall be furnished on the condition that the customer pay the creditor's reasonable costs of preparing and forwarding the copy. Copies supplied under this subsection are in addition to those copies required by s. 422.302.

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

History: 1971 c. 239; 1973 c. 3; 1975 c. 407; 1979 c. 10, 89.

Legislative Council Note, 1973: Makes clear that this section refers to copies of documents given subsequently to documents furnished in the original transaction. Section 422.302 (3) requires that a copy of each document signed by the customer and evidencing his obligation be given to the customer before the first payment is due. This section is intended to refer to additional copies of such documents, furnished to the customer during the course of repaying the obligation. The added language inserted in sub. (5) further clarifies this intent. [Bill 432-A]

422.304 Prohibition of blank writings. (1) Every writing evidencing a consumer credit transaction shall be completed as to all essential provisions prior to the signing thereof by the parties, and no creditor shall induce, encourage or otherwise permit the customer to sign a writing containing blank spaces which are to be filled in after it is signed except for a space provided for the identifying numbers of goods if not available at the time of the transaction. Blanks relating to price, charges or terms of payment which are inapplicable to a transaction must be filled in a manner which reveals their inapplicability unless their inapplicability is clearly and conspicuously indicated.

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

History: 1971 c. 239.

422.305 Notice to obligors. (1) No natural person is obligated to assume personal liability for payment of an obligation arising out of a consumer credit transaction unless the person, in addition to signing the writing evidencing the consumer credit transaction, or a separate guaranty or similar instrument, also either receives a copy of each instrument, document, agreement and contract which is signed by the customer and which evidences the customer's obligation to pay, or signs and receives at the time of signing a separate instrument in substantially the following language:

EXPLANATION OF
PERSONAL OBLIGATION

(a) You have agreed to pay the total of payments under a consumer credit transaction between .....(name of customer) and .....(name of merchant) made on .....(date of transaction) for .....(description of purpose of credit, i.e. sale or loan) in the amount of $.....

(b) You will be liable and fully responsible for payment of the above amount even though you may not be entitled to any of the goods, services or loan furnished thereunder.

(c) You may be sued in court for the payment of the amount due under this consumer credit transaction even though the customer named above may be working or have funds to pay the amount due.

(d) This explanation is not the agreement under which you are obligated, and the guaranty or agreement you have executed must be consulted for the exact terms of your obligations.

(e) You are entitled now, or at any time, to one free copy of any document you sign evidencing this transaction.

(f) The undersigned acknowledges receipt of an exact copy of this notice.

.....(Signature)

(2) The notice must be printed, typed or otherwise reproduced in a size and style equal to at least 10-point boldface type or such similar type as prescribed by the administrator, and shall contain only the matter above set forth and the address of the merchant.

(3) This notice shall not be required to be given to a merchant who endorses or is otherwise liable for payment to an assignee or holder of the customer's obligation.

(4) The notice required by this section shall not act to increase or decrease the liability of a cosigner.

(5) Taking or arranging for a person to sign an instrument in violation of this section is a violation subject to s. 425.304.

History: 1971 c. 239; 1973 c. 3; 1979 c. 10.

422.306 Receipts; accounting; evidence of payment. (1) The creditor shall furnish the customer, without request, a written receipt for each payment made in cash, or any other time the method of payment does not itself provide evidence of payment.

(2) At any time after consummation of a consumer credit transaction other than one pursuant to an open-end credit plan, the creditor, upon written request by the customer, shall furnish to the customer a written statement of the amounts and specifying the dates of payments received and charges imposed, together with the unpaid balance at the time of the statement. With respect to transactions secured by a first lien mortgage, or equivalent security interest, on real property such statement need specify only the dates and amounts of payments received and charges imposed during the previous 12 months, and the unpaid balance remaining at the time of the statement. The customer shall be entitled to one such statement free of charge once every 12 months. Additional statements shall be furnished if the customer pays the creditor's reasonable costs of preparing and furnishing the statement.

(3) With respect to an open-end credit plan, the creditor shall at any time upon written request by the customer, furnish to the customer a written statement, which may consist of copies of the periodic statements furnished to the customer under the plan, specifying the dates and amounts of purchases or loan credit extended and payments received during the previous 12 months, and the unpaid balance remaining at the time of the statement. The customer shall be entitled to one such statement at a charge not in excess of $1 once every 12 months. Additional statements shall be furnished if the customer pays the creditor's reasonable costs of preparing and furnishing the statement.

(4) Within 45 days after payment by the customer of all sums for which he is obligated under a consumer credit transaction other than one pursuant to an open-end credit plan, the creditor shall give or forward to the customer instruments which acknowledge payment in full, and release of any security interest when there is no outstanding secured obligation, and furnish to the customer or his designee evidence of the release or assignment to such designee of any recorded lien on real estate and termination of any filed financing statement which perfected such security interest.

History: 1971 c. 239.

422.307 Estimates or approximations. If at the time disclosures must be made, an amount or other item of information required to be disclosed or needed to determine a required disclosure is unknown or not available to the creditor, and a reasonable effort has been made to ascertain it, the creditor may use an estimated amount or approximation of the information, if:

(1) The estimate or approximation is clearly identified as such, is reasonable and is based on the best information available to the creditor; and

(2) The estimate or approximation is not used for the purpose of circumventing or evading the disclosure requirements of this subchapter.

History: 1971 c. 239.

SUBCHAPTER IV

LIMITATIONS ON AGREEMENTS AND PRACTICES

422.401 Scope. This subchapter applies to consumer credit transactions.

History: 1971 c. 239.

422.402 Balloon payments prohibited. (1) With respect to a consumer credit transaction other than a transaction which is a) pursuant to an open-end credit plan, b) not precomputed and on which the annual percentage rate disclosed under subch. III is less than 16.5% for a consumer credit sale in which the seller retains a security interest in real estate which is the subject of the sale or any consumer loan, either of which is entered into on or after April 6, 1980 and prior to November 1, 1981, or 12% for any other consumer credit transaction or c) a transaction primarily for an agricultural purpose, no merchant shall enter into an agreement which requires a schedule of payments under which any one payment is not equal or substantially equal to all other payments, or under which the intervals between any consecutive payments differ substantially except as permitted in sub. (2) or (3).

(2) The parties may agree to payments that are not substantially equal to other payments or are paid at unequal intervals if:

(a) The customer's livelihood is dependent upon income that is seasonal or otherwise not regular, such payments are in accordance with the needs of the customer and a notice in substantially the following language is set forth immediately below the customer's signature in 12-point boldface type, or its equivalent as prescribed by the administrator:

WARNING

The amounts of payments or the dates on which they are payable under this agreement are not equal. Do not sign this paper unless you are certain that this payment schedule meets your needs.

(b) The unequal or irregular payment is part of an agreed downpayment received by the creditor contemporaneously with or prior to the consummation of the transaction;

(c) The unequal or irregular payment is part of an agreed downpayment that does not exceed 20% of the cash price, has a due date not later than the due date of the 2nd instalment of the transaction and is excluded from the amount financed upon which the finance charge is computed, and if it is the mutual understanding of the customer and the creditor that such a partial payment will be separately financed the customer has the right to rescind the transaction without penalty if he cannot obtain such separate financing; or

(d) The unequal or irregular payment is the final scheduled payment and is less than, or not more than 10% greater than, the average amount of the other scheduled payments, if such other payments are substantially equal.

(e) The unequal or irregular payment is the first scheduled payment and results from the inclusion of interest charged for a first instalment period of not more than 45 days or less than 15 days as permitted under s. 138.09 (7) (c) 2.

(3) In the event that sub. (2) (a) applies, the customer shall have the right at any time to refinance the unequal or irregular instalment pursuant to s. 422.205 for refinancing, except that the rate shall not exceed the rate disclosed in the original transaction pursuant to subch. III of ch. 422.

(4) Taking or arranging for the customer to sign an instrument in violation of this section shall be subject to s. 425.304.

History: 1971 c. 239; 1977 c. 444; 1979 c. 168.

422.403 Maximum periods of repayment. **(1)** With respect to a consumer credit transaction other than one pursuant to an open-end credit plan or one pursuant to s. 138.09, no merchant shall initially schedule payments to be paid in full:

(a) Over a period of more than 25 months if the total of payments is $700 or less;

(b) Over a period of more than 37 months if the total of payments is more than $700, but does not exceed $1,400; or

(c) Over a period of more than 49 months if the total of payments is more than $1,400, but does not exceed $2,000, unless the transaction is for the acquisition of or substantial improvement to real property in which case such period shall not exceed 61 months.

(2) With respect to a consumer credit transaction other than one pursuant to an open-end credit plan or one pursuant to s. 138.09, which is for the purpose of an improvement to real property and in which the annual percentage rate disclosed under subch. III is 15% or less, no merchant may initially schedule payments to be paid in full:

(a) Over a period of more than 25 months if the total of payments is $300 or less;

(b) Over a period of more than 48 months if the total of payments is more than $300, but does not exceed $1,000; or

(c) Over a period of more than 60 months if the total of payments is more than $1,000, but does not exceed $2,000.

(3) The periods specified in subs. (1) and (2) shall commence with the date of first payment or when the finance charge begins to accrue, whichever is earlier.

(4) This section shall not apply to loans made, guaranteed or funded by federal or state agencies and loans made, guaranteed or funded by nonprofit educational institutions or foundations qualifying under section 501 (c) (3) of the internal revenue code, for purposes of post-high school education.

(4m) This section shall not apply to loans made by any administrative agency within the executive branch established under ch. 15.

(5) Taking or arranging for the customer to sign an instrument in violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1973 c. 3, 4, 243.

422.404 Assignment of earnings. **(1)** No merchant shall take or arrange for an assignment of earnings of the customer for payment or as security for payment of an obligation arising out of a consumer transaction unless such assignment is revocable at will by the customer.

(2) A revocable assignment of earnings made as payment or as security for payment of an obligation arising out of a consumer credit transaction, which would otherwise expire under s. 241.09, shall be deemed to be renewed for a term not to exceed 6 months if:

(a) The original authorization contained a conspicuous notice of the customer's right to revoke;

(b) Prior to expiration, the merchant mails a notice to the customer which conspicuously states that the assignment of earnings is revocable, and that it shall continue to run for not more than 6 additional months, unless the merchant receives notice of revocation; and

(c) The customer does not revoke the assignment.

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

History: 1971 c. 239; 1973 c. 3

422.405 Authorization to confess judgment prohibited. (1) No merchant shall take or accept from the customer a warrant or power of attorney or other authorization for the creditor, or other person acting on his behalf, to confess judgment.

(2) A violation of this section is subject to s. 425.305.

History: 1971 c. 239.

422.406 Negotiable instruments. (1) In a consumer credit sale or lease transaction, no seller or lessor shall take a negotiable instrument (s. 403.104), other than a check, as evidence of the obligation of the customer.

(2) In a consumer loan transaction which constitutes an interlocking loan (s. 422.408), no creditor shall take a negotiable instrument (s. 403.104), other than a check, as evidence of the obligation of the customer.

(3) The holder to whom an instrument issued in violation of this section is negotiated, notwithstanding that he may otherwise be a holder in due course of such instrument, is subject to all claims and defenses of the customer against the payee, subject to sub. (4).

(4) Such holder's liability under this section is limited to:

(a) The amount owing to the holder on such instrument at the time the holder receives notice of a claim or defense of the customer against such payee; plus

(b) If the customer has obtained a judgment against such payee and execution with bond is issued within one year after judgment and is returned unsatisfied, the amount paid by the customer to the holder before the holder received notice of the claim or defense of the customer, if such claim is made against the holder within 2 years after such judgment is returned unsatisfied. Any judgment against the payee, other than a default judgment, shall be binding on the holder.

(5) Taking or arranging for the customer to sign an instrument in violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1973 c. 2.

422.407 Defenses assertable against an assignee. (1) With respect to a consumer credit transaction other than a consumer loan which is not an interlocking consumer loan (s. 422.408), an assignee of the rights of a creditor is subject to all claims and defenses of the customer against the assignor arising out of the transaction notwithstanding an agreement to the contrary, subject to sub. (2).

(2) An agreement by the customer not to assert against an assignee a claim or defense arising from a consumer credit transaction is enforceable only by an assignee not related to the assignor who acquires the customer's contract in good faith and for value, who gives the customer notice of the assignment as provided in s. 422.409 and who, within 12 months after the mailing of the notice of assignment, has not received notice of the customer's claim or defense. In the event that such assignee further assigns the customer's obligation to another party not related to the original assignor, in good faith and for value, such party may enforce an agreement by the customer not to assert claims or defenses, only to the extent that his assignor could do so under this section, and any notice by the customer to the original or subsequent assignees is effective as to such party. Such good faith assignee's liability under this section is limited to:

(a) The amount owing to the assignee with respect to the consumer credit transaction at the time the assignee received notice of a claim or defense of the customer against the assignor; plus

(b) If the customer has obtained a judgment against the assignor and execution with bond is issued within one year after judgment and is returned unsatisfied, the amount paid by the customer to the assignee before the assignee received notice of the claim or defense of the customer, if such claim is made against the assignee within 2 years after execution is returned unsatisfied. Any judgment against the assignor, other than a default judgment, shall be binding on the assignee.

(2m) (a) In the event that an assignee, who is related to the assignor or who takes the assignment not in good faith or not for value, further assigns the customer's obligation to a subsequent assignee not related to any prior assignor and who takes the assignment in good faith and for value, such subsequent assignee's liability is limited to that provided for in sub. (2) if his assignor at the time of the assignment to him gives the notice required in s. 422.409 (2), subject to par. (b).

(b) The notice given under s. 422.409 (2) need not name the subsequent assignee. In such cases it shall state that payments may be made to the assignor, and shall otherwise comply with the requirements of s. 422.409 (2).

(3) Any assignee does not acquire a customer's contract in good faith within the meaning of subs. (2) and (2m) if the assignee has

knowledge, including knowledge from his or her course of dealing with other customers of the assignor or from the assignor or the assignee's records, or written notice of violations of chs. 421 to 427, of conduct of the kind described in s. 426.108, or of substantial complaints by such other customers that such assignor fails or refuses to perform his or her contracts with such customers and fails to remedy their complaints.

(4) No term of an agreement may confer upon an assignee greater immunity from claims and defenses of the customer against the assignor than is permitted in this section. No term of an agreement purporting to waive defenses against an assignee is enforceable unless the agreement makes conspicuous reference to this section and to the customer's right to assert such claim or defense against an assignee within 12 months after being furnished a notice of assignment.

(5) Except where execution with bond is returned unsatisfied under sub. (2) (b) or where the assignor is in bankruptcy, receivership or other insolvency proceedings or cannot be found within the state, any claims or defenses of the customer under this section can only be asserted as a matter of counterclaim, defense to or set-off against a claim by the assignee.

(6) Taking or arranging for the customer to sign an instrument in violation of this section is subject to s. 425.304.

History: 1971 c. 239; 1973 c. 3; 1979 c. 89

Legislative Council Note, 1973: Sections 39, 40 and 41 revise s. 422.407 so that it accomplishes its intended purpose, which is to enable a good faith assignee of a customer's contract, and his good faith assignees, to enforce an agreement by the customer not to raise claims and defenses against assignees of the contract, once 12 months have passed following the initial good faith assignment.

New s. 422.407 (2m), created by this act, accomplishes the same result in those cases where the first assignment is made to a related assignee, who further assigns the contract to an unrelated good faith assignee. This latter arrangement is not dealt with by present s. 422.407. New (2m) also recognizes existing business patterns in that it allows the related assignee to service an account, although the contract has been further assigned to an unrelated good faith assignee. In these cases the good faith assignee receives the protection of this section, provided the customer has been given the required notice of assignment. [Bill 432-A]

422.408 Interlocking loans. (1) The lender in an interlocking consumer loan is subject to the claims and defenses the consumer may have against the seller or lessor in the consumer transaction for which the proceeds of the loan are used, subject to sub. (3).

(2) For purposes of this section, a consumer transaction pursuant to a seller credit card shall be deemed to be a consumer loan transaction if the transaction is other than a purchase or lease of goods or services from the issuer of the seller credit card, from a person related to such issuer or from others licensed or franchised to do business solely under the business or trade name or designation of such issuer.

(3) For purposes of this section, a consumer loan transaction is an "interlocking consumer loan" if the creditor knows or has reason to know that all or a meaningful part of the proceeds of the loan are used to pay all or part of the customer's obligations to the seller or lessor under a consumer sale or lease, and if:

(a) The lender is a person related to the seller or lessor;

(b) The lender supplies to the seller or lessor, or the seller or lessor prepares, documents used to evidence the loan, other than sales slips or drafts used to evidence purchases pursuant to an open-end credit plan;

(c) The lender directly or indirectly pays to the seller or lessor any commission, finder's fee or other similar consideration based upon or measured by the consumer loan;

(d) The lender has recourse to the seller or lessor for nonpayment of the consumer loan transaction through a guaranty, maintenance of a reserve account or otherwise, but this paragraph shall not apply to transactions pursuant to a credit card issued by a lender not related to the seller or lessor;

(e) The lender has knowledge, including knowledge from his course of dealing with other customers of the seller or lessor or from the lender's records, or written notice of substantial complaints by such other customers, that such seller or lessor fails or refuses to perform his contracts with them and that such merchant fails to remedy such complaints within a reasonable time; or

(f) The loan exceeds $100, is disbursed directly to the seller or lessor and is made pursuant to a credit card to finance a purchase from a seller's or lessor's place of business in this state, if the seller or lessor has a direct or indirect contractual relationship with the issuer permitting him to honor the credit card.

(4) To the extent that a lender under an interlocking consumer loan is subject to claims or defenses of the customer against a merchant under this section, the lender's liability is limited to claims or defenses arising from the consumer transaction financed by the proceeds of the loan, and may not exceed that portion of the unpaid balance of the loan at the time the lender has notice of the claim or defense, which the proceeds used to pay all or part of the customer's obligation on which the claim is based bears to the entire amount financed of the loan, unless the customer has obtained a judgment against the merchant and execution thereon has been returned unsatisfied, in which event the lender shall in addition be liable in a similar manner for the proportionate amount paid by the customer

to the lender with respect to the interlocking consumer loan before the lender received notice of the claim or defense of the customer.

(5) With respect to a loan which constitutes an interlocking consumer loan solely by reason of sub. (3) (f), the lender shall be liable as provided in sub. (4) only if he receives notice of the customer's claim or defense within 12 months after the transaction is charged against the customer's account, and the unpaid balance of such a loan for purposes of sub. (4) shall be determined pursuant to the method set forth in s. 422.418.

(6) This section shall not apply to consumer loans extended for the purpose of acquiring residential real property which are secured by a first lien mortgage or equivalent security interest on such property and on which the annual percentage rate disclosed pursuant to subch. III is less than 12%.

History: 1971 c. 239.

Consumer defenses in interlocking loans and credit card transactions; recent statutes, policies and a proposal. Littlefield, 1973 WLR 471.

422.409 Notice of assignment. (1) The customer is authorized to pay the assignor until the customer receives notification of assignment of the rights to payment pursuant to a consumer credit transaction and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the customer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the customer may pay the assignor.

(2) The notification of assignment shall be in writing and addressed to the customer at his address as stated in the contract, shall be accompanied by a copy of the contract or shall identify the contract, describe the goods or services, state the names of the assignor and the customer, the name and address of the assignee, the number, amount and due dates or periods of payments scheduled to repay the indebtedness and, except in the case of a transaction secured by a first lien mortgage or equivalent security interest for the purpose of the acquisition of a dwelling, the total of payments. A provision in the assigned contract that the customer waives or will not assert claims or defenses against the assignee under s. 422.407 (2) shall not be effective unless the notification of assignment also contains a clear and conspicuous statement that the customer has 12 months within which to notify the assignee in writing of any complaints, claims or defenses he may have against the assignor and that if the customer does not give such notice, the assignee or subsequent assignees will have the right to enforce the contract free of such claims or defenses subject to chs. 421 to 427.

History: 1971 c. 239; 1973 c. 2, 3.

422.410 Statements of compliance or performance. Statements in the form of acknowledgments, certificates of performance or otherwise, signed by the customer, to the effect that there has been compliance with any of the requirements of chs. 421 to 427 or performance by the other party or parties to the transaction shall create no presumption that the facts recited in such statements are true.

History: 1971 c. 239; 1979 c. 89.

422.411 Attorney's fees. (1) Except as provided in sub. (2), with respect to a consumer credit transaction no term of a writing may provide for the payment by the customer of attorney's fees.

(2) With respect to a consumer transaction in which credit is extended for the purpose of acquiring or refinancing the acquisition of residential real property, which is secured by a first lien or purchase money mortgage or equivalent security interest on such property, and on which the annual percentage rate disclosed pursuant to subch. III is 12% or less, the creditor may contract for the customer's payment of reasonable attorney's fees actually incurred by the creditor, but the customer shall be liable for such fees only to the extent:

(a) Such fees are payable to a licensed attorney who is not an employe of the creditor; and

(b) Such fees do not exceed 5% of the amount of the judgment entered against the customer, or $100 in the event no judgment is so entered and the dispute is settled prior to judgment.

(3) Taking or arranging for the customer to sign an instrument in violation of this section is subject to s. 425.304.

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

Legislative Council Note, 1973: Broadens the range of residential real estate transactions in which the limited amount of attorney's fees allowed by the Wisconsin consumer act can be contracted for. The amendment's effect is to allow all first lien and purchase money creditors, and creditors refinancing a first lien or purchase money transaction, to contract for attorney's fees. As the section now reads, only purchase money first mortgagees may contract for them. As amended, all such creditors will be treated in an equal manner. [Bill 432-A]

422.412 Restriction on liability in consumer lease. In a consumer lease other than one for an agricultural purpose, the obligation of a customer upon expiration of the lease may not exceed the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the

leased property occasioned by other than normal use or for other default.

History: 1971 c. 239.

422.413 Limitation on default charges. **(1)** Except as provided in sub. (2), no term of a writing evidencing a consumer credit transaction may provide for any charges as a result of default by the customer other than reasonable expenses incurred in the disposition of collateral and such other charges as are specifically authorized by chs. 421 to 427.

(2) In the case of a transaction for an agricultural purpose, a writing evidencing a consumer credit transaction may provide for expenses of taking and holding collateral and in the case of collateral other than automobiles, as defined in s. 340.01 (4), station wagons, as defined in s. 340.01 (61), and trucks other than farm trucks, as defined in s. 340.01 (18), for the expenses of preparing the collateral for sale.

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

History: 1971 c. 239; 1973 c. 2; 1979 c. 10.

422.414 Use of multiple agreements. **(1)** No creditor shall divide or otherwise encourage the customer or customers to become obligated at the same time on more than one consumer loan, more than one consumer credit sale, or one or more interlocking consumer loans (s. 422.408) and consumer credit sale for the purpose of obtaining a higher rate of finance charge than would otherwise be permitted under chs. 421 to 427.

(2) Multiple agreements which arise out of substantially the same transaction shall be presumed to be in violation of this section.

(3) A violation of this section is subject to s. 425.305.

History: 1971 c. 239; 1979 c. 89.

422.415 Changes in open-end credit terms. **(1)** Except as provided in sub. (2), no creditor shall make any changes in the terms of open-end credit plans which are adverse to the interests of the customer with respect to any outstanding balances. 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.

(2) A change adverse to the interests of the customer may be made with respect to outstanding balances if:

(a) The change is required by legislation, regulations or administrative rules becoming effective after the date of the agreement with the customer and the creditor has mailed or delivered to the customer written notice disclosing such proposed change not less than 3 months prior to the effective date of such change or such lesser period of time as may be available before such change is required to be made;

(b) The change is made within 3 months of March 1, 1973 or within 3 months after the repeal or expiration of any federal legislation, administrative order, rule, guideline or regulation, the purpose of which was to limit or freeze finance charges or other charges, in effect on March 1, 1973, whichever is later;

(c) The creditor mails or otherwise delivers to the customer a written disclosure of the proposed change not less than one year prior to the effective date of such change; or

(d) The customer agrees in writing to a change other than a change made to apply a finance charge permitted by the treatment of s. 422.201 (2) by chapter 168, laws of 1979, to a balance outstanding on April 6, 1980.

(3) No term of a writing executed by the customer shall constitute authorization for a creditor to unilaterally make changes in the terms of the credit plan, which are otherwise prohibited by this section.

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

History: 1971 c. 239; 1979 c. 168.

422.416 Referral transactions prohibited. **(1)** With respect to a consumer transaction no merchant shall give or offer to give a rebate or discount or otherwise pay or offer to pay value to the customer as an inducement for a consumer transaction in consideration of his giving to the creditor the names of prospective customers, or otherwise aiding the creditor in entering into a transaction with another customer or, without being limited by any of the foregoing, performing any other act or the occurrence of any other event, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the customer enters into the agreement.

(2) A violation of this section is subject to s. 425.305.

History: 1971 c. 239.

422.417 Restrictions on security interests. **(1)** With respect to a consumer credit sale a seller may take a security interest only in:

(a) The property sold;

(b) Goods upon which the property sold is installed or to which it is annexed, or goods upon

which the services sold are performed, if the obligation secured is $500 or more;

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

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

(e) Agricultural products or agricultural equipment then owned by the customer or acquired or to be acquired in the future.

(2) With respect to a consumer lease, a lessor may not take a security interest in any property of the customer other than the leased goods to secure the lessor's obligations under the lease. This subsection does not prohibit a security interest in a cash security deposit for a consumer lease of motor vehicles or agricultural equipment.

(3) With respect to a consumer loan, a lender may not take a security interest, other than a purchase money security interest, in:

(a) Clothing of the customer and his dependents and the following, if they are not fixtures: dining table and chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch and chairs, cooking utensils and kitchenware; or

(b) Real property if the obligation secured is less than $1,000.

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

History: 1971 c. 239; 1973 c. 3; 1975 c. 406, 407, 421.

422.418 Security interests: consolidations; open-end credit plans. (1) The parties may agree in a consolidation agreement under s. 422.206 that the creditor may secure the consolidated obligation by a security interest in property in which the creditor has an existing security interest as a result of the prior transaction which is one of those agreed to become consolidated.

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

(3) Payments received by the creditor upon an open-end credit plan are deemed, for the purpose of determining the amount of the unpaid balance secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account, and then to the payment of the respective amounts financed in the order in which the entries to the account were made.

(4) If obligations consolidated or financed pursuant to an open-end credit plan arise from 2 or more transactions made on the same day, payments received by the creditor are deemed, for the purpose of determining the amount of the obligation secured by the various security interests, to have been applied first to the payment of the smallest obligation.

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

422.419 Waivers prohibited. (1) No contract evidencing a consumer credit transaction may contain any provision by which:

(a) The merchant or other person acting on his behalf is given authority to enter the customer's dwelling or to commit any breach of the peace in the course of taking possession of collateral securing the transaction;

(b) The customer waives any right of action against the merchant, or other person acting on his behalf, for any breach of the peace or other illegal act committed in the course of taking possession of such collateral; or

(c) The customer executes a power of attorney or similar instrument appointing the merchant, or other person acting on his behalf, as the customer's agent in the taking of possession of such collateral.

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

History: 1971 c. 239.

422.420 Cosigner charges. No term of a writing signed by a cosigner and made pursuant to a consumer credit transaction may:

(1) Provide for payment by the cosigner of any fees or charges which could not be imposed upon the customer as part of the transaction; or

(2) Operate to remove from the cosigner any rights or protections given the customer under chs. 421 to 427.

History: 1973 c. 3.