



State of Wisconsin
Department of Financial Institutions

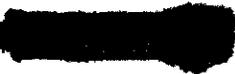
Tommy G. Thompson, Governor

John F. Kundert, Secretary

January 12, 2001



RE: Advice Regarding Prepaid Finance Charges

Dear 

This letter is in response to your letter dated January 10, 2001. In your letter you asked for this department's interpretation, under s. 426.104(4), Stats., of the Wisconsin Consumer Act's application to the issue of prepaid finance charges on simple interest consumer credit transactions.

I have consulted the department's general counsel and based on his legal review, I would like to provide you with the responses to your questions. Specifically, your questions (and our responses) are:

- 1) Are all prepaid finance charges, assuming such charges are properly disclosed to the consumer as "prepaid finance charges," considered to be earned at consummation in simple interest consumer credit transactions? Is this answer the same regardless of whether the prepaid finance charges are paid to the creditor, or instead, to another third party performing services in connection with the transaction?

Prepaid finance charges are earned at consummation and must be included in disclosures made to the consumer as required by the Federal Consumer Credit Protection Act and subch. III, ch. 422, Stats. The answer is the same regardless of whether the prepaid finance charges are paid to the creditor or, instead, to another third party.

- 2) If the answers to question #1 are yes, then may the prepaid finance charges be retained by the creditor or a third party in their entirety upon prepayment in full of a simple interest consumer credit transaction?

Yes. All prepaid finance charges are earned at consummation and may be retained in their entirety in simple interest credit transactions. Section 422.209, Stats., only regulates the issue of the rebate of unearned finance charges upon prepayment of a loan in a situation involving a precomputed consumer credit transaction. With respect to a simple interest consumer credit transaction, the Wisconsin Consumer

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Act does not require a rebate of prepaid finance charges upon prepayment of the extension of credit.

- 3) If prepaid finance charges are retained upon prepayment in full of a simple interest consumer credit transaction, would that practice constitute a prohibited prepayment penalty under s. 422.208, Stats.?

No. As stated previously by this department, these charges do not constitute prepayment penalties in violation of s. 422.208, Stats.

- 4) Is there a limit under the Wisconsin Consumer Act on the amount of prepaid finance charges paid to a creditor or to another third party performing services in a simple interest consumer credit transaction?

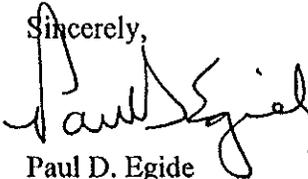
No. Assuming these charges are properly disclosed in accordance with the Wisconsin Consumer Act, the only restrictions provided by the Wisconsin Consumer Act are those sections dealing with unconscionable practices, and clear and concise advertising.

Therefore, in summary and for the above reasons, under our authority contained in s. 426.104(4), Stats., the following practice is approved:

With respect to simple interest transactions, prepaid finance charges are earned at consummation. Upon prepayment in full, such charges are not required to be rebated and such retention does not constitute a prepayment penalty. While the amount of the charges is without an express quantitative limit, Wisconsin Consumer Act provisions concerning unconscionable practices, and clear and concise advertising apply to all consumer credit transactions within its jurisdiction.

This letter is intended to rescind and replace the letter on this issue dated November 10, 2000. Therefore, the effectiveness of the October 22, 1996 and August 20, 1997 letters referenced in the November 10, 2000 letter is reinstated. As of January 12, 2001, to the extent this current letter conflicts with either the October 22, 1996 letter or the August 20, 1997 letter, this letter controls for purposes of s. 426.104, Stats.

Sincerely,



Paul D. Egid
Director