



## 1995 SENATE BILL 450

December 13, 1995 - Introduced by Senator ADELMAN. Referred to Committee on Education and Financial Institutions.

1     **AN ACT to create** 186.46, 214.597, 215.39 and 224.19 of the statutes; **relating**  
2     **to:** customer service charges imposed by a financial institution.

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*Analysis by the Legislative Reference Bureau*

This bill permits a court to reduce or eliminate a service charge (for example, a nonsufficient funds charge or a transaction charge) that a financial institution imposes on a customer if the court finds that the service charge is unconscionable.

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

3     **SECTION 1.** 186.46 of the statutes is created to read:  
4     **186.46 Unconscionable service charges. (1) DEFINITION.** In this section,  
5     “financial institution” has the meaning given in s. 705.01 (3).  
6     **(2) UNCONSCIONABILITY.** If a court as a matter of law finds that a service charge  
7     imposed by a financial institution on a customer is unconscionable, the court shall,  
8     in addition to the remedies authorized under sub. (4), either refuse to enforce the  
9     service charge against the customer, or so limit the application of any unconscionable  
10    aspect as to avoid an unconscionable result.

1           **(3) FACTORS.** Without limiting the scope of sub. (2), the court may consider,  
2 among other things, any of the following as pertinent to the issue of  
3 unconscionability:

4           (a) Costs incurred by the financial institution in providing a service.

5           (b) Maintenance of the safety and soundness of the financial institution.

6           (c) That there exists a gross disparity between the price of a service and its  
7 value as measured by the price at which similar services are readily obtainable by  
8 other customers, or by other tests of true value.

9           (d) That the practice may enable a financial institution to take advantage of  
10 the inability of customers reasonably to protect their interests by reason of physical  
11 or mental infirmities, illiteracy or inability to understand the language of the  
12 agreement, ignorance or lack of education or similar factors.

13           (e) That the terms of the transaction require a customer to waive legal rights.

14           (f) That the terms of the transaction require a customer to unreasonably  
15 jeopardize money or property beyond the money or property immediately at issue in  
16 the transaction.

17           (g) That the natural effect of the practice would reasonably cause or aid in  
18 causing a customer to misunderstand the true nature of the transaction or the  
19 customer's rights and duties under the transaction.

20           (h) That the writing purporting to evidence the obligation of the customer in  
21 the transaction contains terms or provisions or authorizes practices prohibited by  
22 law.

23           (i) Definitions of unconscionability in statutes, rules, regulations, rulings and  
24 decisions of legislative, administrative or judicial bodies.

1           **(4) REMEDIES.** (a) A financial institution that violates this section is liable to  
2 the customer in an amount equal to 3 times the actual damages sustained as a result  
3 of the violation.

4           (b) A customer entitled to relief under par. (a) is also entitled to recover costs,  
5 disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1).

6           **SECTION 2.** 214.597 of the statutes is created to read:

7           **214.597 Unconscionable service charges. (1) DEFINITION.** In this section,  
8 “financial institution” has the meaning given in s. 705.01 (3).

9           **(2) UNCONSCIONABILITY.** If a court as a matter of law finds that a service charge  
10 imposed by a financial institution on a customer is unconscionable, the court shall,  
11 in addition to the remedies authorized under sub. (4), either refuse to enforce the  
12 service charge against the customer, or so limit the application of any unconscionable  
13 aspect as to avoid an unconscionable result.

14           **(3) FACTORS.** Without limiting the scope of sub. (2), the court may consider,  
15 among other things, any of the following as pertinent to the issue of  
16 unconscionability:

17           (a) Costs incurred by the financial institution in providing a service.

18           (b) Maintenance of the safety and soundness of the financial institution.

19           (c) That there exists a gross disparity between the price of a service and its  
20 value as measured by the price at which similar services are readily obtainable by  
21 other customers, or by other tests of true value.

22           (d) That the practice may enable a financial institution to take advantage of  
23 the inability of customers reasonably to protect their interests by reason of physical  
24 or mental infirmities, illiteracy or inability to understand the language of the  
25 agreement, ignorance or lack of education or similar factors.

1 (e) That the terms of the transaction require a customer to waive legal rights.

2 (f) That the terms of the transaction require a customer to unreasonably  
3 jeopardize money or property beyond the money or property immediately at issue in  
4 the transaction.

5 (g) That the natural effect of the practice would reasonably cause or aid in  
6 causing a customer to misunderstand the true nature of the transaction or the  
7 customer's rights and duties under the transaction.

8 (h) That the writing purporting to evidence the obligation of the customer in  
9 the transaction contains terms or provisions or authorizes practices prohibited by  
10 law.

11 (i) Definitions of unconscionability in statutes, rules, regulations, rulings and  
12 decisions of legislative, administrative or judicial bodies.

13 **(4) REMEDIES.** (a) A financial institution that violates this section is liable to  
14 the customer in an amount equal to 3 times the actual damages sustained as a result  
15 of the violation.

16 (b) A customer entitled to relief under par. (a) is also entitled to recover costs,  
17 disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1).

18 **SECTION 3.** 215.39 of the statutes is created to read:

19 **215.39 Unconscionable service charges. (1) DEFINITION.** In this section,  
20 "financial institution" has the meaning given in s. 705.01 (3).

21 **(2) UNCONSCIONABILITY.** If a court as a matter of law finds that a service charge  
22 imposed by a financial institution on a customer is unconscionable, the court shall,  
23 in addition to the remedies authorized under sub. (4), either refuse to enforce the  
24 service charge against the customer, or so limit the application of any unconscionable  
25 aspect as to avoid an unconscionable result.

1           **(3) FACTORS.** Without limiting the scope of sub. (2), the court may consider,  
2 among other things, any of the following as pertinent to the issue of  
3 unconscionability:

4           (a) Costs incurred by the financial institution in providing a service.

5           (b) Maintenance of the safety and soundness of the financial institution.

6           (c) That there exists a gross disparity between the price of a service and its  
7 value as measured by the price at which similar services are readily obtainable by  
8 other customers, or by other tests of true value.

9           (d) That the practice may enable a financial institution to take advantage of  
10 the inability of customers reasonably to protect their interests by reason of physical  
11 or mental infirmities, illiteracy or inability to understand the language of the  
12 agreement, ignorance or lack of education or similar factors.

13           (e) That the terms of the transaction require a customer to waive legal rights.

14           (f) That the terms of the transaction require a customer to unreasonably  
15 jeopardize money or property beyond the money or property immediately at issue in  
16 the transaction.

17           (g) That the natural effect of the practice would reasonably cause or aid in  
18 causing a customer to misunderstand the true nature of the transaction or the  
19 customer's rights and duties under the transaction.

20           (h) That the writing purporting to evidence the obligation of the customer in  
21 the transaction contains terms or provisions or authorizes practices prohibited by  
22 law.

23           (i) Definitions of unconscionability in statutes, rules, regulations, rulings and  
24 decisions of legislative, administrative or judicial bodies.

1           **(4) REMEDIES.** (a) A financial institution that violates this section is liable to  
2 the customer in an amount equal to 3 times the actual damages sustained as a result  
3 of the violation.

4           (b) A customer entitled to relief under par. (a) is also entitled to recover costs,  
5 disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1).

6           **SECTION 4.** 224.19 of the statutes is created to read:

7           **224.19 Unconscionable service charges. (1) DEFINITION.** In this section,  
8 “financial institution” has the meaning given in s. 705.01 (3).

9           **(2) UNCONSCIONABILITY.** If a court as a matter of law finds that a service charge  
10 imposed by a financial institution on a customer is unconscionable, the court shall,  
11 in addition to the remedies authorized under sub. (4), either refuse to enforce the  
12 service charge against the customer, or so limit the application of any unconscionable  
13 aspect as to avoid an unconscionable result.

14           **(3) FACTORS.** Without limiting the scope of sub. (2), the court may consider,  
15 among other things, any of the following as pertinent to the issue of  
16 unconscionability:

17           (a) Costs incurred by the financial institution in providing a service.

18           (b) Maintenance of the safety and soundness of the financial institution.

19           (c) That there exists a gross disparity between the price of a service and its  
20 value as measured by the price at which similar services are readily obtainable by  
21 other customers, or by other tests of true value.

22           (d) That the practice may enable a financial institution to take advantage of  
23 the inability of customers reasonably to protect their interests by reason of physical  
24 or mental infirmities, illiteracy or inability to understand the language of the  
25 agreement, ignorance or lack of education or similar factors.

1 (e) That the terms of the transaction require a customer to waive legal rights.

2 (f) That the terms of the transaction require a customer to unreasonably  
3 jeopardize money or property beyond the money or property immediately at issue in  
4 the transaction.

5 (g) That the natural effect of the practice would reasonably cause or aid in  
6 causing a customer to misunderstand the true nature of the transaction or the  
7 customer's rights and duties under the transaction.

8 (h) That the writing purporting to evidence the obligation of the customer in  
9 the transaction contains terms or provisions or authorizes practices prohibited by  
10 law.

11 (i) Definitions of unconscionability in statutes, rules, regulations, rulings and  
12 decisions of legislative, administrative or judicial bodies.

13 **(4) REMEDIES.** (a) A financial institution that violates this section is liable to  
14 the customer in an amount equal to 3 times the actual damages sustained as a result  
15 of the violation.

16 (b) A customer entitled to relief under par. (a) is also entitled to recover costs,  
17 disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1).

18 **SECTION 5. Effective date.**

19 (1) This act takes effect on the first day of the 3rd month beginning after  
20 publication.

21 (END)