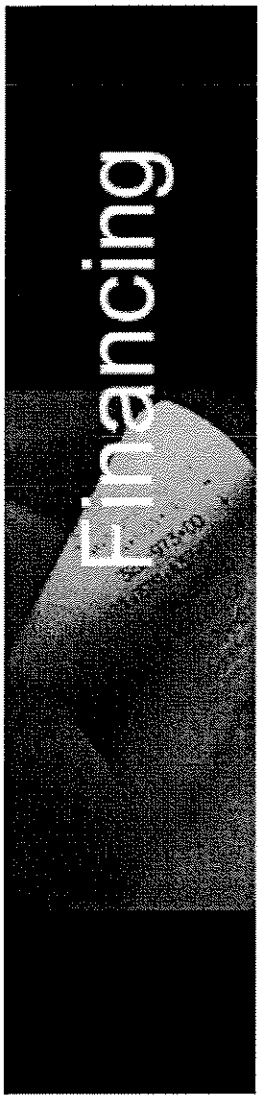
Wisconsin Department of Financial Institutions
Strengthening Wisconsin's Financial Future



Payday Loans

You've probably heard the advertisements on the radio or seen them in the newspaper:

NEED CASH UNTIL PAYDAY?
YOU CAN GET $50 TO $500 WITHIN 15 MINUTES!
NO CREDIT CHECKS.

SOUND APPEALING? Today there are many companies offering to make **"payday loans," "check loans,"** or **"payroll advance loans."** These are all just different terms for the same type of loan transaction.

If you are considering a **"payday loan,"** keep reading…..

Before You Begin….

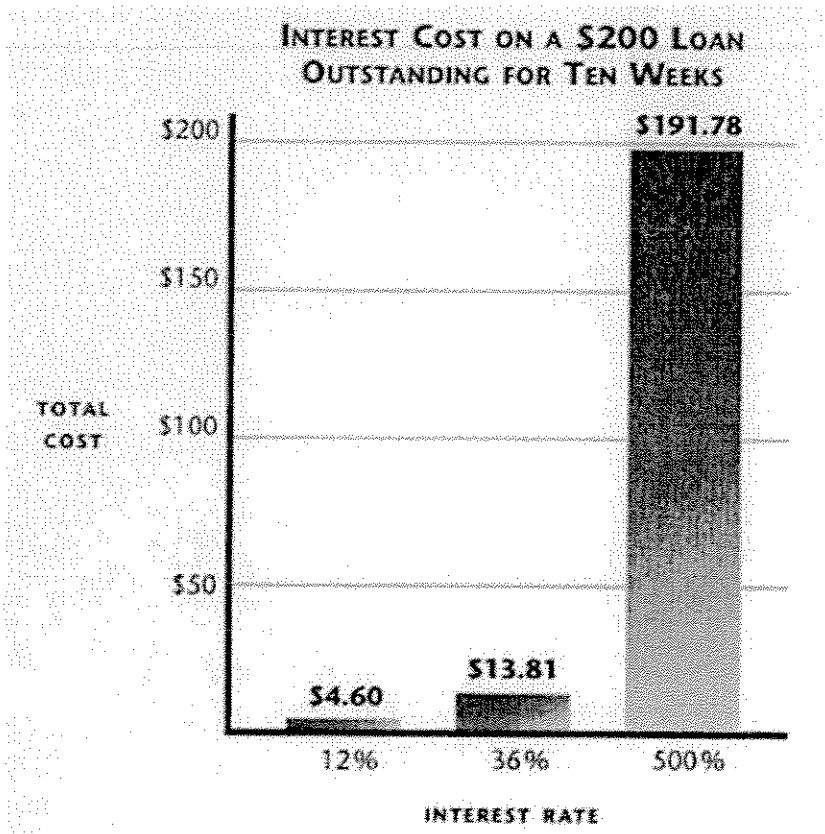
These loans are not an effective solution for your long term monetary needs!

Payday loans may be helpful when you are having temporary cash flow problems or are facing a financial emergency and need money on a **short-term** basis. You should attempt to pay your loan in full when it matures. If you are unable to do that, you should make every effort to pay at least part of the amount financed before you renew the transaction.

Interest Costs you money!

It's important to pay particular attention to the interest rate on payday loans. The rate on a payday loan may be 500% per year or more. Borrowing $200 for 2 weeks at 500% will cost you $38.36. Compare this to borrowing $200 for 2 weeks at 36% ($2.76) or 12% ($.92).

If this loan is refinanced four times, the cost difference increases dramatically! In fact, it will cost you nearly $200 to borrow $200 for ten weeks:



YOU SHOULD AVOID TAKING OUT MULTIPLE PAYDAY LOANS!

If you already have one payday loan outstanding, you should avoid taking out another such loan. When you have more than one payday loan outstanding, you may find it very difficult to pay the required finance charge payments, much less paying all or a portion of the amount financed when the loan comes due. If you need a larger, longer-term loan, you should seek other, more traditional, lending sources.

PAYDAY LOANS: HOW THEY WORK

Payday loans work like this:

- You fill out an application and provide the lender with items such as paycheck stubs and a photo ID.
- You sign a loan agreement, write a postdated check to the lender, and receive your money.
- Your check is held until your loan payment is due - usually two

weeks. The lender then deposits your check - unless you have replaced the check or have already repaid the loan.

The loan agreement that you are required to sign is a legal document that obligates you to repay the loan. It also sets forth a lot of important information. Be sure to take note of the following items:

Amount Financed: The amount of credit provided to you or on your behalf. (This is typically the amount of cash you will receive.)

Finance Charge: The **dollar amount** the credit will cost you, or the amount of interest you pay for receiving the credit.

Annual Percentage Rate (APR): The cost of your credit as a yearly rate. Because these loans are small, short-term transactions, the APR is typically quite high. In Wisconsin, there are no laws that limit the interest rate that a lender can charge.

Total of Payments: The amount you will have paid after you have made all payments as scheduled. (This is the amount that you will write your postdated check out for.)

YOUR RESPONSIBILITIES

The loan agreement you sign legally obligates you to repay the loan. Make sure to read the contract before signing it and retain your copy for your records.

If you have not renewed the loan or paid it in full, make sure you have sufficient funds in your checking account on the due date of the loan so your check clears when the lender deposits it.

If you cannot or do not repay the loan, the lender can seek a money judgment against you for the face amount of the check and court costs; and, if they were disclosed in the contract, any late charges, interest after maturity, and NSF fees. Once a money judgment is obtained, a lender may attempt to garnish your wages.

Many lenders also list past due accounts with the credit bureau. This may affect your ability to get credit in the future.

OTHER CONSIDERATIONS

If you pay the loan in full prior to its due date you are entitled to a partial

refund of the finance charge.

If you are married and your spouse does not sign the loan agreement, the lender is required to give your spouse a written notice that you obtained the loan.

IF YOU HAVE QUESTIONS

The Department of Financial Institutions (DFI) is a state agency that licenses and regulates companies that make consumer loans in Wisconsin where the interest rate is over 18% per annum. This includes the payday loan companies. You may contact DFI Licensed Financial Services at 608-261-9555.

DFI also licenses and regulates adjustment service companies, commonly referred to as debt counselors or consumer credit counselors. These companies help debtors set up and keep on a budget. A list of the adjustment service companies licensed by DFI. You may also contact DFI Licensed Financial Services at 608-261-9555 for the name of the adjustment service company nearest you.

CHAPTER 138

MONEY AND RATES OF INTEREST

138.01 Money. The money of account of this state shall be the dollar, cent and mill; and all accounts in public offices, and other public accounts, and, except as provided in ss. 806.30 to 806.44, all proceedings in courts shall be kept and had in conformity to this regulation.

History: 1991 a. 236.

138.02 Contracts not affected. Nothing contained in s. 138.01 shall vitiate or affect any account, charge or entry originally made or any note, bond or other instrument expressed in any other money of account; but, except as provided in ss. 806.30 to 806.44, the same shall be reduced to dollars or parts of a dollar as hereinbefore directed in any suit thereupon.

History: 1991 a. 236.

138.03 Judgments, how computed. Except as provided in ss. 806.30 to 806.44, in all judgments or decrees rendered by any court of justice for any debt, damages or costs and in all executions issued thereon the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions; and no judgment or other proceeding shall be considered erroneous for such omissions. In actions or proceedings under ss. 806.30 to 806.44, the court, in the interest of justice, may direct that all evidence submitted to the jury and the jury verdict be in U.S. dollars at a rate of exchange established by the court. The court shall convert the jury verdict to the foreign money at that rate of exchange.

History: 1991 a. 236.

138.04 Legal rate. The rate of interest upon the loan or forbearance of any money, goods or things in action shall be $5 upon the $100 for one year and according to that rate for a greater or less sum or for a longer or a shorter time; but parties may contract for the payment and receipt of a rate of interest not exceeding the rate allowed in ss. 138.041 to 138.056, 138.09 to 138.12, 218.0101 to 218.0163, or 422.201, in which case such rate shall be clearly expressed in writing.

History: 1981 c. 45 s. 51; 1999 a. 31.

A creditor is entitled to interest on a liquidated claim from the time payment was due by the terms of the contract and, if no time is specified, then from the time demand was made or from commencement of the action. Estreen v. Bluhm, 79 Wis. 2d 142, 255 N.W.2d 473 (1977).

A merchant who first informed the customer of the 24% interest to be charged on an open account in statements of the account provided after the account was opened violated s. 422.302 (2). The merchant was only entitled to interest under this section. Severson Agri–Service, Inc. v. Lander, 172 Wis. 2d 269, 493 N.W.2d 230 (Ct. App. 1992).

The writing expressing the interest to be charged need not be subscribed by the party charged. Advance Concrete Forms v. Mc Cann Const. 916 F.2d 412 (1990).

Prejudgment interest in Wisconsin personal injury cases. Brennan. WBB Aug. 1983.

138.041 Federal rate parity. (1) In order to prevent discrimination against state–chartered financial institutions with respect to interest rates, state–chartered banks, credit unions and savings banks may take, receive, reserve and charge on any loan or forbearance made on or after April 6, 1980 and before November 1, 1981, and on any renewal, refinancing, extension or modification made on or after April 6, 1980 and before November 1, 1981, of any loan or forbearance, interest at a federal rate prescribed for federally chartered banks, credit unions and savings banks, respectively, notwithstanding any other statutes. The federal rate described in this section does not include any rate permitted under a federal law which refers to a rate limit established by a state law which does not apply to state–chartered banks, credit unions or savings banks.

(2) In order to prevent discrimination against state–chartered financial institutions with respect to interest rates, state–chartered banks, credit unions, savings and loan associations and savings banks may take, receive, reserve and charge on any loan or forbearance made on or after November 1, 1981 and before November 1, 1984, or after October 31, 1987, and on any renewal, refinancing, extension or modification made on or after November 1, 1981 and before November 1, 1984, or after October 31, 1987, of any loan or forbearance, interest at a federal rate prescribed for federally chartered banks, credit unions, savings and loan associations and savings banks, respectively, notwithstanding any other statutes. The federal rate described in this section does not include any rate permitted under a federal law which refers to a rate limit established by a state law which does not apply to state–chartered banks, credit unions, savings and loan associations or savings banks.

History: 1979 c. 168; 1981 c. 45; 1991 a. 221.

138.05 Maximum rate; prepayment, disclosure; corporations. (1) Except as authorized by other statutes, no person shall, directly or indirectly, contract for, take or receive in money, goods or things in action, or in any other way, any greater sum or any greater value, for the loan or forbearance of money, goods or things in action, than:

(a) At the rate of $12 upon $100 for one year computed upon the declining principal balance of the loan or forbearance;

(b) With respect to loans or forbearances repayable in substantially equal weekly or monthly installments and the face amounts of which include predetermined interest charges, at the rate of $6 upon $100 for one year computed upon that portion of the original principal amount of any such loan or forbearance, not including interest charges, for the time of such loan or forbearance, disregarding part payments and the dates thereof; and

(c) With respect to loans or forbearances repayable in installments other than of the type described in par. (b), the amount of interest may be predetermined at the rate set forth in par. (a) at the time the loan is made on the basis of the agreed rate of interest and the principal balances agreed to be outstanding and stated in the note or loan contract as an addition to the principal; provided that if any agreed balance of principal or principal and interest combined or any installment of principal or principal and interest combined is prepaid in full by cash or renewal the unearned interest shall be refunded as provided in sub. (2) (b). In the computation of interest upon any bond, note, or other instrument or agreement, interest shall not be compounded, nor shall the interest thereon be construed to bear interest, unless an agreement to that effect is

clearly expressed in writing, and signed by the party to be charged therewith.

(2) Any loan for which the rate of interest charged exceeds $10 per $100 for one year computed upon the declining principal balance may be prepaid by the borrower at any time in whole or in part. Upon prepayment of any such loan in full by cash, renewal or refinancing, the borrower shall be entitled to a refund of unearned interest charged which shall be determined as follows:

(a) On any such loan which is repayable in substantially equal, successive installments at approximately equal intervals of time and the face amount of which includes predetermined interest charges, the amount of such refund shall be as great a proportion of the total interest charged as the sum of the balances scheduled to be outstanding during the full installment periods commencing with the installment date nearest the date of prepayment bears to the sum of the balances scheduled to be outstanding for all installment periods of the loan.

(b) On any other such loan, the amount of such refund shall not be less than the difference between the interest charged and interest, at the rate contracted for, computed upon the unpaid principal balances of the loan from time to time outstanding prior to prepayment in full.

(3) A contract to make loans or an evidence of indebtedness may provide for a rate of interest or penalty payable upon the principal amount of an extension of a loan or forbearance or upon any amount in default under a loan or forbearance which shall not exceed the rate allowed in sub. (1) (a).

(4) Any person making a loan for which interest is agreed to be paid at a rate exceeding the rate of $10 upon $100 for one year computed upon the declining principal of the loan shall, at or prior to making such loan, deliver to the borrower a statement, which may be incorporated in a copy of the evidence of indebtedness, setting forth all of the terms of the transaction in clear and distinct language, including:

(a) The rate of interest agreed upon in terms either of simple interest computed on the declining principal balance or of the actual interest cost in money, and

(b) A statement that the loan may be prepaid in full or in part and that, if the loan is prepaid in full, the borrower may receive a refund of interest charged.

(5) This section shall not apply to loans to corporations or limited liability companies.

(6) This section does not apply to transactions governed by chs. 421 to 427 and 429 or to discounts described in s. 422.201 (8).

(7) This section does not apply to any loan or forbearance in the amount of $150,000 or more made after May 26, 1978 unless secured by an encumbrance on a one− to four−family dwelling which the borrower uses as his or her principal place of residence. For the purposes of this section, a loan is deemed a loan which is in the amount of $150,000 or more if:

(a) The outstanding principal indebtedness under the loan initially exceeds $150,000; or

(b) The parties to the loan agree that the principal indebtedness may exceed $150,000 at some time during the term of the loan and, when the agreement was made, the principal indebtedness was reasonably expected to exceed $150,000 notwithstanding the fact that less than $150,000 in the aggregate was initially or later advanced.

(8) (a) This section does not apply to any loan or forbearance which is made on or after April 6, 1980 and prior to November 1, 1981, or to any refinancing, renewal, extension, modification or prepayment on or after April 6, 1980 and prior to November 1, 1981, of any loan or forbearance, unless it is made by a federally chartered or state−chartered savings and loan association, except this section does apply to forbearances occurring primarily for personal, family or household purposes for which the only charge is a penalty or late charge for nonpayment when due.

(b) This section does not apply to loans made within 2 years after November 1, 1981, if made pursuant to loan commitments made on or after April 6, 1980 and prior to November 1, 1981, unless made by a federally chartered or state−chartered savings and loan association.

(c) This section does not apply to any loan or forbearance which is made on or after November 1, 1981, or to any refinancing, renewal, extension, modification or prepayment on or after November 1, 1981, of any loan or forbearance, except this section does apply to forbearances occurring primarily for personal, family or household purposes for which the only charge is a penalty or late charge for nonpayment when due.

History: 1971 c. 239; 1975 c. 407; 1977 c. 401, 444; 1979 c. 10 s. 24; 1979 c. 168; 1981 c. 45; 1993 a. 112; 1995 a. 328, 329; 1997 a. 35.

Cross−reference: See s. 551.33 (7) regarding licensed broker−dealers.

Cross−reference: See s. 422.201 regarding finance charges on consumer credit transactions.

A revolving charge plan is usurious if the interest charged exceeds 12% per year. State v. J. C. Penney Co. 48 Wis. 2d 125, 179 N.W.2d 641 (1970).

A check credit agreement providing that interest was to be computed each month and become part of the balance for the next computation did not violate the statute, although the rate was one per cent per month. First Wisconsin National Bank v. Oby, 52 Wis. 2d 1, 188 N.W.2d 454 (1971).

A roofing and siding contract with a cash price of $2,660 or 60 payments of $61.72 is time−price differential transaction. Mortgage Associates, Inc. v. Siverhus, 63 Wis. 2d 650, 218 N.W.2d 266 (1974).

An individual guarantor of a corporate indebtedness cannot interpose the defense of usury if the defense is not available to the corporation as the principal obligor. Sundseth v. Roadmaster Body Corp. 74 Wis. 2d 61, 245 N.W.2d 919 (1976).

This section did not apply to a loan to a limited partnership whose 2 general partners were an individual and a corporation. Wild, Inc. v. Citizens Mortgage Inv. Trust, 95 Wis. 2d 430, 290 N.W.2d 567 (Ct. App. 1980).

The sale of an interest−bearing note at a discount is not usurious unless it is found to be a cloak or cover for what is in reality a usurious loan. Val Zimmermann Corp. v. Leffingwell, 107 Wis. 2d 86, 318 N.W.2d 781 (1982).

This section applies to a loan to a corporation and an individual as coborrowers. Williams v. Security Savings & Loan Ass'n. 120 Wis. 2d 480, 355 N.W.2d 370 (Ct. App. 1984).

While a retail seller is not prohibited by s. 138.05 (3), Stats. 1969, from including in a note a provision requiring the payment of 25% of the unpaid balance as a fee for collection of the account, such a provision is enforceable only to the extent that it reasonably relates to the actual collection expenses incurred. 59 Atty. Gen. 76.

Loan fees that relate to the amount borrowed rather than to identifiable expenses incurred as a result of the particular transaction must be considered as interest for purposes of ch. 138. These loan fees are to be amortized over the contract term of the loan to determine the actual rate. A subsequent voluntary prepayment will not render an otherwise legal rate usurious, subject to sub. (2). 65 Atty. Gen. 67.

Charges imposed on the seller of property as a condition of granting a loan to the buyer are includable as interest under this section to the extent that the charges are passed on to the buyer. 68 Atty. Gen. 398.

Bona fide commitment fees are not interest under this section. 69 Atty. Gen. 28.

The Penney decision and revolving charge accounts. 54 MLR 223.

A description of the modification of Wisconsin's usury laws. Brown and Patrick, 65 MLR 309 (1982).

Usury and the time−price exception; revolving charge accounts; enjoining usury as a public nuisance. 1971 WLR 298.

Usury and the time−price differential. 1975 WLR 246.

138.051 Residential mortgage loans. (1) In this section:

(a) "Contract rate" means the initial rate contracted to be paid on the principal of a loan from time to time.

(b) "Loan" means a loan, other than a loan made by a federally chartered or state−chartered savings and loan association, secured by a first lien real estate mortgage on, or an equivalent security interest in, a one− to 4−family dwelling which the borrower uses as his or her principal place of residence and which is:

1. Made on or after April 6, 1980 and prior to November 1, 1981;

2. Refinanced, renewed, extended or modified on or after April 6, 1980 and prior to November 1, 1981; or

3. Made within 2 years after November 1, 1981, pursuant to a loan commitment made on or after April 6, 1980 and prior to November 1, 1981.

(2) A loan may be prepaid by the borrower at any time in whole or in part without premium or penalty. Upon prepayment of a loan in full by cash, renewal or refinancing, the borrower is entitled to a refund of unearned interest charged determined as follows:

(a) On a loan which is repayable in substantially equal, successive installments at approximately equal intervals of time and the face amount of which includes predetermined interest charges, the amount of such refund shall be as great a proportion of the total interest charged as the sum of the balances scheduled to be outstanding during the full installment periods commencing with the installment date nearest the date of prepayment bears to the sum of the balances scheduled to be outstanding for all installment periods of the loan.

(b) On any other loan, the amount of the refund shall not be less than the difference between the interest charged and interest, at the rate contracted for, computed upon the unpaid principal balance of the loan from time to time outstanding prior to prepayment in full.

(3) For purposes of computing a refund under sub. (2), interest does not include:

(a) Identifiable and separately itemized charges for services incident to the loan if they are bona fide and paid to 3rd parties unrelated to the lender;

(b) Fees, discounts or other sums actually imposed by government national mortgage association, federal national mortgage association, federal home loan mortgage corporation or any other governmentally sponsored or private secondary mortgage market purchaser of a loan from the original lender; and

(c) A loan administration fee charged by a lender, not to exceed 2% of the principal amount of any construction loan and one percent of the principal amount of any other loan.

(4) For the purpose of calculating the rate of interest on a loan scheduled to be paid in installments under sub. (2), the parties may agree that any installment paid within 30 days prior to or after the scheduled due date will be considered to have been paid on the due date.

(5) A bank, credit union or savings bank which originates a loan and which requires an escrow to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow of not less than 5.25% per year. This subsection applies to any refinancing, renewal, extension or modification of the loan on or after November 1, 1981.

(6) Delinquency charges on a loan shall not exceed an amount determined by application of the contract rate to the unpaid amount, including interest accrued and unpaid, until paid or maturity of the obligation, whether by acceleration or otherwise, whichever first occurs. Interest imposed after maturity may not exceed the contract rate applied to the amount due on the date of maturity.

(7) This section does not apply to a loan insured, or committed to be insured, or secured by mortgage or trust deed insured by the U.S. secretary of housing and urban development, insured, guaranteed or committed to be insured or guaranteed under 38 USC 1801 to 1827 or insured or committed to be insured under 7 USC 1921 to 1995.

(8) The contract rate is not subject to rate limitations imposed under this chapter or ss. 218.0101 to 218.0163 or under s. 422.201.

History: 1979 c. 168; 1981 c. 45; 1991 a. 221; 1999 a. 31.

138.052 Residential mortgage loans. (1) In this section:

(a) "Contract rate" means the rate contracted to be paid from time to time on the principal of a loan.

(b) "Loan" means a loan secured by a first lien real estate mortgage on, or an equivalent security interest in, a one– to 4–family dwelling which the borrower uses as his or her principal place of residence and which is made, refinanced, renewed, extended or modified on or after November 1, 1981, but does not include a mobile home transaction as defined in s. 138.056 (1) (c).

(c) "Loan administration" means a lender's processing of a loan and includes review, underwriting and evaluation of the loan application, document processing and preparation and administration of the loan closing, but does not include appraisals, inspections, surveys, credit reports or other activities incidental to loan origination and normally taking place outside the office of the lender or performed by 3rd persons.

(d) "Person related to" has the meaning given under s. 421.301 (32) and (33).

(2) (a) 1. A loan may be prepaid by the borrower at any time in whole or in part.

2. Except as provided in s. 428.207, the parties may agree that if a prepayment is made within 5 years of the date of the loan, then the lender shall receive an amount not exceeding 60 days' interest at the contract rate on the amount by which the aggregate principal prepayments for a 12–month period exceeds 20% of the original amount of the loan.

3. If a prepayment is made 5 or more years from the date the loan is made, no premium or penalty may be received by the lender. This subdivision applies notwithstanding any refinancing, renewal, extension or modification of the loan.

(b) Upon prepayment of a loan in full by cash, renewal or refinancing, the borrower is entitled to a refund of unearned interest paid. Unearned interest is that portion of any prepaid charge, excluding amounts permitted under sub. (3), multiplied by the number of unexpired payment periods as of the date of prepayment and divided by the total number of payment periods, plus, at the option of the lender, either:

1. The portion of interest which is allocable to all unexpired payment periods as scheduled. Except as otherwise agreed by the parties under sub. (4), a payment period is unexpired if prepayment is made within 15 days after the payment's due date. The unearned interest is the interest which, assuming all payments are made as scheduled, would be earned for each unexpired payment period by applying to unpaid balances of principal, according to the actuarial method, the contract rate on the date of prepayment. The creditor may decrease the annual interest rate to the next multiple of 0.25%.

2. The total interest charge less all prepaid interest charges and the amount determined by applying the contract rate, according to the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

(3) For purposes of computing a refund under sub. (2) (b), interest does not include any of the following:

(a) Identifiable and separately itemized charges for services incident to the loan if they are bona fide and paid to 3rd parties.

(b) Fees, discounts or other sums actually imposed by the government national mortgage association, the federal national mortgage association, the federal home loan mortgage corporation or other governmentally sponsored secondary mortgage market purchaser of the loan or any private secondary mortgage market purchaser of the loan who is not a person related to the original lender.

(c) A loan administration fee charged by a lender, including fees paid to 3rd parties for loan administration services, not exceeding 2% of the principal amount of any construction loan and 2% of the principal amount of any other loan.

(d) The amount of any prepayment charge authorized under sub. (2) (a) 2. and received.

(e) Loan commitment fees.

(f) Amounts paid to the lender by any person other than the borrower.

(4) For the purpose of calculating the rate of interest under sub. (2) (b), the parties may agree that any installment paid within 30 days prior to or after the scheduled due date is paid on the due date.

(5) (a) Except as provided in pars. (am) and (b), a bank, credit union, savings bank, savings and loan association or mortgage banker which originates a loan after January 31, 1983, and before January 1, 1994, and which requires an escrow to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow of not less than 5.25% per year, unless the escrow funds are held by a 3rd party in a noninterest–bearing account.

(am) 1. Except as provided in par. (b) and unless the escrow funds are held by a 3rd party in a noninterest−bearing account, a bank, credit union, savings bank, savings and loan association or mortgage banker which originates a loan on or after January 1, 1994, or a loan subject to subd. 3. and which requires an escrow to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow at the variable interest rate established under subd. 2.

2. a. Annually, the division of banking for banks, savings and loan associations, and savings banks, and the office of credit unions for credit unions, shall determine the interest rate that is the average of the interest rates paid, rounded to the nearest one−hundredth of a percent, on regular passbook deposit accounts by institutions under the division's or office's jurisdiction at the close of the last quarterly reporting period that ended at least 30 days before the determination is made.

b. Within 5 days after the date on which the determination is made, the division of banking shall calculate the average, rounded to the nearest one−hundredth of a percent, of the rates determined by the division of banking and the office of credit unions and report that interest rate to the revisor of statutes within 5 days after the date on which the determination is made.

c. The revisor of statutes shall publish the average rate in the next publication of the Wisconsin administrative register. The published interest rate shall take effect on the first day of the first month following its publication and shall be the interest rate used to calculate interest on escrow accounts that are subject to this subdivision until the next year's interest rate is published under this subd. 2. c.

3. The interest rate published under subd. 2. c. also applies to loans originated after January 31, 1983, and before January 1, 1994, if an interest rate is not specified in the loan agreement.

(b) The parties may agree to waive payment of all or part of the interest required under par. (a) or (am) if more than 75% of the lender's interest in the loan is sold to a 3rd party who is not a person related to the lender and the escrow funds are held by the 3rd party.

(5m) (a) In this subsection, "escrow agent" means a person who receives escrow payments on behalf of itself or another person.

(b) 1. Except as provided in par. (e), if an escrow is required to assure the payment of property taxes, a bank, credit union, savings bank, savings and loan association or mortgage banker which originates a loan on or after July 1, 1988, shall, before the loan closing, provide the borrower with a written notice clearly stating that the borrower may require the escrow agent to make payments in any manner specified in subd. 3. from the amount escrowed to pay property taxes and the responsibilities of the borrower and escrow agent as provided in subds. 4. and 5.

2. Except as provided in par. (e), if an escrow is required to assure the payment of property taxes for a loan originated before July 1, 1988, the escrow agent shall send, by November 15, 1988, written notice to the borrower clearly stating that the borrower may require the escrow agent to make payments in any manner specified in subd. 3. from the amount escrowed to pay property taxes and the responsibilities of the borrower and escrow agent as provided in subds. 4. and 5.

3. Except as provided in par. (e), a borrower may require an escrow agent who receives escrow payments to assure the payment of the borrower's property taxes to do any of the following, if the borrower notifies the escrow agent as provided in subd. 4. and if the borrower is current in his or her loan payments:

a. Except as provided in subd. 3m., by December 20, send to the borrower a check in the amount of the funds held in escrow for the payment of property taxes, made payable to the borrower and the town, city or village treasurer authorized to collect the tax.

b. Pay the property taxes by December 31, if the escrow agent has received a tax statement for that property by December 20.

c. Pay the property taxes when due.

3m. In its sole discretion, an escrow agent may send a check under subd. 3. a. that is made payable only to the borrower.

4. To require the escrow agent to make payments in any of the manners specified in subd. 3., the borrower shall send, by November 1, written notice to the escrow agent specifying the manner, from the 3 choices under subd. 3., that the borrower wants the escrow agent to make payments. Except as provided in subd. 5. b., once notified, the escrow agent shall annually make payments in that manner unless the borrower is not current in his or her loan payments or unless otherwise notified in writing by the borrower by November 1.

5. a. If the borrower chooses to receive payments as provided in subd. 3. a. or receives payment under subd. 3m., the borrower shall annually, by March 31, send to the person to whom the borrower makes his or her loan payments a copy of the receipt for paid property taxes.

b. If the borrower fails to comply with subd. 5. a., the borrower loses the option of receiving payments that year in the manner specified in subd. 3. a. During the next year, the borrower may again receive payments under subd. 3. a. if the borrower renotifies the escrow agent by sending written notice to the escrow agent by November 1 of the next year and if the borrower is current in his or her loan payments.

6. If the borrower sends the check received under subd. 3. a. to the town, city or village treasurer after the county has assumed responsibility for collecting property taxes, the town, city or village treasurer shall accept the check and pay over to the county treasurer the amount of the check. If the amount of the check sent by the borrower to the town, city or village treasurer exceeds the amount of property taxes owed by the borrower, the town, city or village treasurer shall refund the excess amount to the borrower and, if the county has assumed responsibility for collecting property taxes, pay over to the county treasurer the remaining amount of the check.

(c) A borrower may establish an escrow account required for the payment of taxes and insurance in a financial institution, as defined in s. 710.05 (1) (c), of the borrower's choice if the escrow agent fails to comply with par. (b) 3., unless the lender or person to whom the loan is sold or released demonstrates that the financial institution is incapable of servicing the escrow account.

(d) If a borrower establishes an escrow account under par. (c), the borrower shall annually, by March 31, send to the person to whom the borrower makes his or her loan payments verification of the amounts which the borrower deposited in the escrow account during the previous 12 months and copies of receipts for taxes and insurance paid during the previous 12 months.

(e) Paragraphs (b) to (d) do not apply to an escrow required in connection with a loan to assure the payment of property taxes, whether the loan is originated before, on or after May 3, 1988, if it is the practice of the escrow agent to, by December 20, pay to the borrower the amount held in escrow for the payment of property taxes or to send the borrower a check in the amount of the funds held in escrow for the payment of property taxes, made payable to the borrower and the treasurer authorized to collect the tax. If the escrow agent in any year chooses not to make the payment by December 20 for any reason other than because the borrower is not current in his or her loan payments, the escrow agent shall send, by October 15 of that year, written notice to the borrower clearly stating that the borrower may require the escrow agent to make payments in any manner specified in par. (b) 3. from the amount escrowed to pay property taxes and the responsibilities of the borrower and escrow agent as provided in par. (b) 4. and 5.

(6) The parties may agree to imposition of a late payment charge not exceeding 5% of the unpaid amount of any installment not paid on or before the 15th day after its due date. For purposes of this subsection, payments are applied first to current install-

ments and then to delinquent installments. A delinquency charge may be imposed only once on any installment.

(7) Interest imposed on the amount due after acceleration or maturity of a loan may not exceed the contract rate.

(7e) A bank, credit union, savings bank, savings and loan association, mortgage banker or any other lender which receives an application for a loan after November 1, 1988, shall do all of the following:

(a) If an application receives adverse action, provide a written statement of the reasons for the action when the action is communicated to the applicant, except that delivery of a notice of adverse action conforming to the requirements of 15 USC 1601 to 1693r and the regulations adopted under that law satisfies the requirements of this paragraph.

(b) Before accepting an application or fee in connection with a loan, deliver to the potential loan applicant a written disclosure which clearly states all of the following:

1. Whether an application fee or other charge paid by an applicant in connection with a loan application is refundable in whole or in part if the application is denied or the loan is not closed.

2. Whether the terms of the agreement to make the loan, including but not limited to the interest rate and any fees charged in connection with the loan, are fixed through the date of the loan closing.

3. If the lender may change the terms of the agreement to make the loan if the loan is not closed on or before the date agreed upon, the specific terms which the lender may change.

(7m) (a) A lender shall notify the borrower as provided in par. (b) if on or after May 3, 1988, the payment, collection or other loan or escrow services related to the loan are sold or released.

(b) The notice required under par. (a) shall be in writing and shall include the name, address and telephone number of the party to whom servicing of the loan is sold or released. The lender shall deliver the notice to the borrower by mail or personal service within 15 working days after servicing of the loan is sold or released.

(7s) A person who receives loan or escrow payments on behalf of itself or another person shall do all of the following:

(a) Respond to a borrower's inquiry within 15 days after receiving the inquiry.

(b) Consider that a loan payment by check, or other negotiable or transferable instrument, is made on the date on which the check or instrument is physically received, except that the person may charge back an uncollected loan payment.

(8) This section does not apply to a loan insured, or committed to be insured, or secured by mortgage or trust deed insured by the U.S. secretary of housing and urban development, insured, guaranteed or committed to be insured or guaranteed under 38 USC 1801 to 1827 or insured or committed to be insured under 7 USC 1921 to 1995.

(9) Chapters 421 to 427 and subch. I of ch. 428 do not apply to the refinancing, modification, extension, renewal or assumption of a loan which had an original principal balance in excess of $25,000 if the unpaid principal balance of the loan has been reduced to $25,000 or less.

(10) This section does not apply to any of the following:

(a) A loan to a corporation or a limited liability company.

(b) A loan that is primarily for a business purpose or for an agricultural purpose, as defined in s. 421.301 (4).

(11) The contract rate is not subject to rate limitations imposed under this chapter or ss. 218.0101 to 218.0163 or under s. 422.201.

(12) (a) Any lender violating sub. (2) (b), (5), (5m) (b) 1., (6), (7), (7e), (7m) or (7s), or an escrow agent, as defined in sub. (5m) (a), violating sub. (5m) (b) 2., is liable to the borrower for $500 plus actual damages, costs and reasonable attorney fees.

(b) Paragraph (a) does not apply to an unintentional mistake corrected by the lender on demand.

History: 1981 c. 45, 100, 314; 1987 a. 359, 360, 403; 1989 a. 31, 56; 1991 a. 90, 92; 1993 a. 68, 112; 1995 a. 27, 336; 1999 a. 9, 31; 2003 a. 33, 257.

Federal law preemption of this section as applied to federally chartered savings institutions regulated by the federal home loan bank board is discussed. Wisconsin League of Financial Inst. v. Galecki, 707 F Supp. 401 (W.D. Wis. 1989).

138.053 Regulation of interest adjustment provisions.

(1) REQUIRED CONTRACT PROVISIONS. No contract between a borrower and a lender secured by a first lien real estate mortgage on, or an equivalent security interest in, an owner–occupied residential property containing not more than 4 dwelling units may authorize the lender to increase the borrower's contractual rate of interest unless the contract provides that:

(a) No increase may occur until 3 years after the date of the contract;

(b) No increase may occur unless the borrower is given at least 4 months' written notice of the lender's intent to increase the rate of interest, during which notice period the borrower may repay his or her obligation without penalty;

(c) The amount of the initial interest rate increase may not exceed $1 per $100 for one year computed upon the declining principal balance;

(d) The amount of any subsequent interest rate increase may not exceed $1 per $200 for one year computed upon the declining principal balance;

(e) The interest rate may not be increased more than one time in any 12–month period; and

(f) The loan may be prepaid without penalty at any time at which the interest rate in effect exceeds the originally stated interest rate by more than $2 per $100 for one year computed upon the declining principal balance.

(2) DISCLOSURES REQUIRED. No lender may make a loan secured by a first lien real estate mortgage on, or an equivalent security interest in, an owner–occupied residential property containing not more than 4 dwelling units providing for prospective changes in the rate of interest unless it has clearly and conspicuously disclosed to the borrower in writing:

(a) That the interest rate is prospectively subject to change;

(b) That notice of any interest adjustment must be given 4 months prior to any increase; and

(c) Any prepayment rights of the borrower upon receiving notice of such change.

(3) NOTICE OF INTEREST ADJUSTMENT. Notices provided under sub. (2) shall be mailed to the borrower at his or her last–known post–office address and shall clearly and concisely disclose:

(a) The effective date of the interest rate increase;

(b) The increased interest rate and the extent to which the increased rate will exceed the interest rate in effect immediately before the increase;

(c) The amount of the borrower's contractual monthly principal and interest payment before and after the effective date of the increase;

(d) Any right of the borrower to voluntarily increase his or her contractual principal and interest payment;

(e) Whether as a result of the increase a lump sum payment may be necessary at the end of the loan term;

(f) Whether an additional number of monthly payments may be required; and

(g) The borrower's right to prepay within 4 months without a prepayment charge.

(4) APPLICABILITY. (a) This section does not apply to variable rate contracts, nor to loans or forbearances to corporations or limited liability companies.

(b) This section applies only to transactions initially entered into on or after June 12, 1976 and before November 1, 1981.

History: 1975 c. 387; 1981 c. 45; 1993 a. 112.

"Due on sale" provision of note and mortgage was enforceable. Mutual Fed. S. & L. Asso. v. Wisconsin Wire Wks. 71 Wis. 2d 531, 239 N.W.2d 20.

138.055 Variable rate contracts. (1) REQUIRED CONTRACT PROVISIONS. No contract between a borrower and a lender secured by a first lien real estate mortgage on, or an equivalent security interest in, an owner–occupied residential property containing not more than 4 dwelling units may contain a variable interest rate clause unless the contract provides that:

(a) When an increase in the interest rate is permitted by a movement upward of a prescribed index, a decrease in the interest rate is also required by a downward movement of the prescribed index subject to pars. (b) to (f);

(b) The rate of interest shall not change more than once during any 6–month period;

(c) Any singular change in the interest rate shall not exceed the rate of $1 per $200 for one year computed upon the declining principal balance and the total variance in such rate shall at no time exceed a rate equal to $2.50 per $100 for one year computed on the declining principal balance greater or lesser than the rate originally in effect;

(d) Decreases required by the downward movement of the prescribed index shall be mandatory. Increases permitted by the upward movement of the prescribed index shall be optional with the lender. Changes in the interest rate shall only be made when the prescribed index changes a minimum of one–tenth of one percent;

(e) The fact that a lender may not have invoked an increase, in whole or in part, shall not be deemed a waiver of the lender's right to invoke an increase at any time thereafter within the limits imposed by this section;

(f) The rate shall not change during the first semiannual period of the loan; and

(g) The borrower may prepay the loan in whole or in part within 90 days of notification of any increase in the rate of interest without a prepayment charge.

(2) DISCLOSURES REQUIRED. No lender may make a loan secured by a first lien real estate mortgage on, or an equivalent security interest in, an owner–occupied residential property containing not more than 4 dwelling units containing a variable interest rate provision unless it has clearly and conspicuously disclosed to the borrower in writing prior to execution of the loan documents:

(a) That the loan contract contains a variable interest rate;

(b) The index used in applying any variable interest rate changes contemplated in the note and its current base; and

(c) Any prepayment rights of the borrower upon receiving notice of any such change.

(3) NOTICE OF INTEREST ADJUSTMENT. When a change in the interest rate is required or permitted by a movement in the prescribed index, the lender shall give notice to the borrower by mail, addressed to the borrower's last–known post–office address, not less than 30 days prior to any change in interest rate, which notice shall clearly and concisely disclose:

(a) The effective date of the interest rate change;

(b) The interest rate change, and if an increase, the extent to which the increased rate will exceed the rate in effect immediately before the increase;

(c) The changes in the index which caused the interest rate change;

(d) The amount of the borrower's contractual monthly principal and interest payments before and after the effective date of the change in the interest rate;

(e) Whether as a result of an increase in the interest rate a lump sum payment may be necessary at the end of the loan term; and

(f) The borrower's right to prepay the loan within 90 days after said notice without a prepayment charge if the notice required an increase in interest rate.

(4) INDEX. In determining any variable interest rate changes permitted under this section, a lender shall use either the index published by the federal home loan bank of Chicago based on the cost of all funds to Wisconsin member institutions or an index approved by:

(b) The office of credit unions, if the lender is a credit union;

(c) The commissioner of insurance, if the lender is an insurance company; or

(d) The division of banking for all other lenders.

(5) APPLICABILITY. (a) This section does not apply to loans or forbearances to corporations or limited liability companies.

(b) This section applies only to transactions initially entered into on or after June 12, 1976 and before November 1, 1981.

History: 1975 c. 387; 1981 c. 45; 1991 a. 221; 1993 a. 112; 1995 a. 27; 1999 a. 9; 2003 a. 33.

Variable rate mortgages: The transition phase. 61 MLR 140.

138.056 Variable rate loans. (1) DEFINITIONS. In this section:

(a) "Approved index" means any of the following:

1. The national average mortgage contract rate for major lenders on the purchase of previously occupied homes, as computed by the federal home loan bank board.

2. The monthly average of weekly auction rates on U.S. treasury bills with a maturity of 3 months or 6 months made available by the federal reserve board.

3. The monthly average yield on U.S. treasury securities adjusted to a constant maturity of 1, 2, 3 or 5 years, made available by the federal reserve board.

4. An index readily verifiable by borrowers and beyond the control of an individual lender and approved by:

b. The office of credit unions, if the lender is a credit union;

c. The commissioner of insurance, if the lender is an insurance company; or

d. The division of banking for all other lenders.

(b) "Dwelling" includes a cooperative housing unit and a mobile home.

(bm) "Mobile home" means a vehicle designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used, or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction. "Mobile home" includes the mobile home structure, including the plumbing, heating and electrical systems and all appliances and all other equipment carrying a manufacturer's warranty.

(c) "Mobile home transaction" means a consumer credit sale, as defined in s. 421.301 (9), of or a consumer loan, as defined in s. 421.301 (12), secured by a first lien or equivalent security interest in a mobile home.

(d) "Variable rate loan" means a mobile home transaction or a loan as defined in s. 138.052 (1) (b), the terms of which permits the interest rate to be increased or decreased.

(2) REQUIRED TERMS. A variable rate loan contract shall:

(a) Provide for a term of not more than 40 years.

(b) Use an approved index if it provides for adjustments to the interest rate corresponding to an index. The initial index value shall be the most recently available value of the index prior to the date of closing of the loan. The interest rate at adjustment shall reflect the difference, in reference to the interest rate of the variable rate loan at the date of closing, between the initial index value and the index value most recently available as of the date notice of the interest rate adjustment is mailed under sub. (4) except the lender may decrease the interest rate or decline to increase the interest rate at any time. The interest rate shall be decreased to reflect any downward movement of the index except to the extent the decrease offsets increases in the index not implemented as

an action against the lender or personal representative the amount of interest, principal and charges paid on such loan or forbearance but not more than $2,000 of principal, if the action is brought within the time provided by s. 893.62.

(4) Any borrower to whom a lender or agent of a lender fails to provide the statement required in s. 138.05 (4) with respect to a loan or forbearance may by himself or herself or his or her personal representative recover in an action against the lender or the lender's personal representative an amount equal to all interest and charges paid upon such loan or forbearance but not less than $50 plus reasonable attorney fees incurred in such action.

(5) Notwithstanding subs. (1) to (4), if any violation of s. 138.05, 138.051 or 138.052 is the result of an unintentional mistake which the lender or agent of the lender corrects upon demand, such unintentional violation shall not affect the enforceability of any provision of the loan contract as so corrected nor shall such violation subject the lender or the agent of the lender to any penalty or forfeiture specified in this section.

(6) In connection with a sale of goods or services on credit or any forbearance arising therefrom prior to October 9, 1970, there shall be no allowance of penalties under this section for violation of s. 138.05, except as to those transactions on which an action has been reduced to a final judgment as of May 12, 1972.

(7) Notwithstanding sub. (6), a seller shall, with respect to a transaction described in sub. (6), refund or credit the amount of interest, to the extent it exceeds the rate permitted by s. 138.05 (1) (a), which was charged in violation of s. 138.05 and paid by a buyer since October 8, 1968, upon individual written demand therefor made on or before March 1, 1973, and signed by such buyer. A seller who fails within a reasonable time after such demand to make such refund or credit of excess interest shall be liable in an individual action in an amount equal to 3 times the amount thereof, together with reasonable attorney fees.

(8) This section does not apply to a loan or forbearance made on or after November 1, 1981.

History: 1971 c. 308; 1979 c. 168 s. 21; 1979 c. 323, 355; 1981 c. 45 ss. 4, 51; 1993 a. 482, 490.

Sub. (7) is constitutional. Wiener v. J. C. Penney Co. 65 Wis. 2d 139, 222 N.W.2d 149 (1974).

Class actions for the recovery of usurious interest charged by revolving credit plans are not precluded by (3). Mussallem v. Diners' Club, Inc. 69 Wis. 2d 437, 230 N.W.2d 717 (1975).

Sub. (6) is constitutional. 60 Atty. Gen. 198.

138.09 Precomputed loan law. (1d) In this section, "division" means the division of banking.

(1m) (a) Before any person may do business under this section or charge the interest authorized by sub. (7) and before any creditor other than a bank, savings bank, savings and loan association or credit union may assess a finance charge on a consumer loan in excess of 18% per year, that person shall first obtain a license from the division. Applications for a license shall be in writing and upon forms provided for this purpose by the division. An applicant at the time of making an application shall pay to the division a nonrefundable $300 fee for investigating the application and a $500 annual license fee for the period terminating on the last day of the current calendar year. If the cost of the investigation exceeds $300, the applicant shall upon demand of the division pay to the division the amount by which the cost of the investigation exceeds the nonrefundable fee.

(b) 1. Except as provided in par. (c), an application under par. (a) for a license shall contain the following:

a. If the applicant is an individual, the applicant's social security number.

b. If the applicant is not an individual, the applicant's federal employer identification number.

2. The division may not disclose any information received under subd. 1. to any person except as follows:

a. The division may disclose information under subd. 1. to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

b. The division may disclose information under subd. 1. a. to the department of workforce development in accordance with a memorandum of understanding under s. 49.857.

(c) 1. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a license, shall submit a statement made or subscribed under oath or affirmation to the division that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development.

2. Notwithstanding sub. (3) (b), any license issued or renewed in reliance upon a false statement submitted by an applicant under subd. 1. is invalid.

(2) The division may also require the applicant to file with the division, and to maintain in force, a bond in which the applicant shall be the obligor, in a sum not to exceed $5,000 with one or more corporate sureties licensed to do business in Wisconsin, whose liability as such sureties shall not exceed the sum of $5,000 in the aggregate, to be approved by the division, and such bond shall run to the state of Wisconsin for the use of the state and of any person or persons who may have a cause of action against the obligor of the bond under the provisions of this section. Such bonds shall be conditioned that the obligor will conform to and abide by each and every provision of this section, and will pay to the state or to any person or persons any and all moneys that may become due or owing to the state or to such person or persons from the obligor under and by virtue of the provisions of this chapter.

(3) (a) Upon the filing of such application and the payment of such fee, the division shall investigate the relevant facts. Except as provided in par. (am), if the division shall find that the character and general fitness and the financial responsibility of the applicant, and the members thereof if the applicant is a partnership, limited liability company or association, and the officers and directors thereof if the applicant is a corporation, warrant the belief that the business will be operated in compliance with this section the division shall thereupon issue a license to said applicant to make loans in accordance with the provisions of this section. If the division shall not so find, the division shall deny such application.

(am) The division may not issue a license under this section to an applicant if any of the following applies:

1. The applicant fails to provide any information required under sub. (1m) (b).

2. The department of revenue certifies under s. 73.0301 that the applicant is liable for delinquent taxes.

3. The applicant fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings.

4. The applicant is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857.

(b) Every license shall remain in force and effect until suspended or revoked in accordance with this section or surrendered by the licensee, and every licensee shall, on or before each December 10, pay to the division the annual license fee for the next succeeding calendar year.

(c) Such license shall not be assignable and shall permit operation under it only at or from the location specified in the license at which location all loans shall be consummated, but this provision shall not prevent the licensee from making loans under this section which are not initiated or consummated by face to face contact away from the licensed location if permitted by the division in writing or by rule or at an auction sale conducted or clerked by a licensee.

(d) A separate license shall be required for each place of business maintained by the licensee. Whenever a licensee shall change the address of its place of business to another location within the same city, village or town the licensee shall at once give

interest rate increases. An increase in the index permitting the lender to increase the interest rate but declined by the lender for any rate adjustment interval may be carried over and applied in succeeding interest rate adjustment intervals to the extent the increase is not offset by subsequent decreases in the index. The variable rate loan contract may provide for minimum interest rate change increments which shall apply to both increases and decreases. The variable rate loan contract may limit interest rate decreases only if interest rate increases are restricted at least to the same extent.

(c) Provide for no more than a one percent increase in the interest rate not more than once each 6 months and permit decreases in the interest rate to be made at any time, if it does not provide for adjustments to the interest rate corresponding to an approved index. If an increase is waived, the lender may at any time increase the interest rate to a rate equal to the interest rate if all increases were made at the first opportunity.

(3) FEES AND PENALTIES PROHIBITED. (a) A variable rate loan involving a mobile home transaction or using an approved index may be prepaid at any time in whole or in part without penalty. Other variable rate loans may be prepaid in whole or part without penalty within 30 days after notice of an increase in the interest rate and, except as provided in s. 428.207, with the prepayment penalty under s. 138.052 (2) (a) 2. and 3. if prepayment is made before or after the 30–day period. This paragraph controls if there is a conflict with s. 138.052 (2) (a).

(b) No costs or fees may be charged in connection with adjustment to the interest rate of a variable rate loan or an adjustment to the payment, principal balance or term implementing an interest rate adjustment.

(4) NOTICE OF INTEREST PAYMENT CHANGES. (a) If a change in the interest rate occurs, the lender shall give the borrower notice of the change:

1. At least 30 days before the change if an increase in periodic payments other than the final payment is required.

2. Not later than 15 days after any other change.

(b) The notice shall be mailed to the borrower's last–known address and shall contain all of the following information:

1. The effective date of the interest rate change.

2. The amount of the interest rate change.

3. The changes in any index which cause the interest rate change.

4. The amount of the contractual monthly principal and interest payments required as a result of the change.

5. The prepayment rights of the borrower.

(5) NEGATIVE AMORTIZATION. The principal balance of a variable rate loan may be increased to implement an interest rate adjustment only if within 10 years after the loan is made, and at least every 5 years thereafter, the payment amount is adjusted to a level at least sufficient to amortize the loan at the then existing interest rate and principal balance over the remaining term of the loan. The payment amount shall be maintained at least at that level until subsequently adjusted under this subsection, except that the payment amount shall be decreased to reflect any decrease in the interest rate.

(6) DISCLOSURE. Before making a variable rate loan, the lender shall disclose all of the following information to at least one of the borrowers:

(a) That the loan contract contains a variable interest rate provision.

(b) An identification of any approved index used in the loan contract and the current base of the approved index.

(c) The borrower's prepayment rights on receiving notice of a change in the interest rate.

(d) That a notice of any interest rate increase must be given to the borrower.

(7) PRIORITY. Any interest accrued or added to the principal of a variable rate loan to implement an interest rate adjustment retains the priority of the original mortgage or equivalent security interest.

(8) APPLICABILITY. This section does not apply to any of the following:

(a) A loan or forbearance to a corporation or a limited liability company.

(b) A loan that is primarily for a business purpose or for an agricultural purpose, as defined in s. 421.301 (4).

(c) A reverse mortgage loan, as defined in s. 138.058 (1) (b).

(d) A transaction initially entered into before November 1, 1981.

History: 1981 c. 45; 1983 a. 232; 1985 a. 325; 1991 a. 221; 1993 a. 88, 112; 1995 a. 27, 336; 1999 a. 9, 53; 2003 a. 33, 257.

Cross Reference: See also ss. DFI–SB 13.02 and DFI–SL 13.04, Wis. adm. code.

138.057 Penalties. Any lender who intentionally violates s. 138.053, 138.055 or 138.056 is liable to the borrower for all excess interest collected, plus interest thereon at the rate of 5% per year. In addition, the borrower may recover actual damages, including incidental and consequential damages, sustained by reason of the violation.

History: 1975 c. 387; 1977 c. 26; 1981 c. 45 s. 51.

138.058 Reverse mortgage loans. (1) DEFINITIONS. In this section:

(a) "Qualified lender" means a lender approved by the federal department of housing and urban development to enter into a loan insured by the federal government under 12 USC 1715z–20.

(b) "Reverse mortgage loan" means a loan, or an agreement to lend, which is secured by a first mortgage on the borrower's principal residence, is insured by the federal government under 12 USC 1715z–20 and requires repayment as specified in the loan agreement under any of the following conditions:

1. All the borrowers have died.

2. All the borrowers have sold the residence or conveyed title to the residence.

3. All the borrowers have moved permanently from the residence.

4. Any other condition specified in 12 USC 1715z–20.

(2) REVERSE MORTGAGES PERMITTED. A qualified lender may enter into reverse mortgage loans.

(3) TREATMENT OF REVERSE MORTGAGE LOAN PROCEEDS BY PUBLIC BENEFIT PROGRAMS. (a) Reverse mortgage loan payments made to a borrower shall be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means–tested programs of aid to individuals.

(b) Undisbursed funds shall be treated as equity in a borrower's residence and not as proceeds from a loan for the purpose of determining eligibility and benefits under means–tested programs of aid to individuals.

(c) This subsection applies to any law relating to payments, allowances, benefits or services provided on a means–tested basis by this state, including supplemental security income, low–income energy assistance, property tax deferral, medical assistance and general assistance.

History: 1993 a. 88.

138.06 Effect of usury and penalties. (1) All instruments, contracts or securities providing a rate of interest exceeding the rate allowed in s. 138.05, 138.051 or 138.052 shall be valid and effectual to secure the repayment of the principal amount loaned in excess of $2,000; but no interest may be recovered thereon except upon bottomry and respondentia bonds and contracts.

(2) Any lender or agent of a lender who violates s. 138.05, 138.051 or 138.052 may be fined not less than $25 nor more than $500, or imprisoned not more than 6 months, or both.

(3) Any borrower who paid interest on a loan or forbearance at a rate greater than the rate allowed in s. 138.05, 138.051 or 138.052 may personally or by personal representative recover in

written notice thereof to the division, which shall replace the original license with an amended license showing the new address, provided the location meets with the requirements of par. (e). No change in the place of business of a licensee to a different city, village or town shall be permitted under the same license.

(e) 1. Except as provided in subd. 2., a licensee may conduct, and permit others to conduct, at the location specified in its license, any one or more of the following businesses not subject to this section:

a. A business engaged in making loans for business or agricultural purposes or exceeding $25,000 in principal amount, except that all such loans having terms of 49 months or more are subject to sub. (7) (gm) 2. or 4.

b. A business engaged in making first lien real estate mortgage loans under ss. 138.051 to 138.06.

c. A loan, finance or discount business under ss. 218.0101 to 218.0163.

d. An insurance business.

e. A currency exchange under s. 218.05.

f. A seller of checks business under ch. 217.

2. A licensee may not sell merchandise or conduct other business at the location specified in the license unless written authorization is granted to the licensee by the division.

(f) Every licensee shall make an annual report to the division for each calendar year on or before March 15 of the following year. The report shall cover business transacted by the licensee under the provisions of this section and shall give all reasonable and relevant information that the division may require. The reports shall be made upon forms furnished by the division and shall be signed and verified by the oath or affirmation of the licensee if an individual, one of the partners if a partnership, a member or manager if a limited liability company or an officer of the corporation or association if a corporation or association. Any licensee operating under this section shall keep the records affecting loans made pursuant to this section separate and distinct from the records of any other business of the licensee.

(4) (a) The division for the purpose of discovering violations of this chapter may cause an investigation to be made of the business of the licensee transacted under this section, and shall cause an investigation to be made of convictions reported to the division by any district attorney for violation by a licensee of this chapter. The place of business, books of account, papers, records, safes and vaults of said licensee shall be open to inspection and examination by the division for the purpose of such investigation and the division may examine under oath all persons whose testimony the division may require relative to said investigation. The division may, upon notice to the licensee and reasonable opportunity to be heard, suspend or revoke such license after such hearing if:

1. The licensee has violated any provision of this chapter and if the division determines such violation justifies the suspension or revocation of the license;

2. Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the division in refusing to issue such license; and

3. The licensee has failed to pay the annual licensee fee or to maintain in effect the bond, if any, required under sub. (2).

(b) The division shall restrict or suspend a license under this section if, in the case of a licensee who is an individual, the licensee fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or is delinquent in making court–ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. A licensee whose license is restricted or suspended under this paragraph is entitled to a notice and hearing only as provided in a memorandum of understanding entered into under s. 49.857 and is not entitled to a hearing under par. (a).

(c) The division shall revoke a license under this section if the department of revenue certifies that the licensee is liable for delinquent taxes under s. 73.0301. A licensee whose license is revoked under this paragraph for delinquent taxes is entitled to a hearing under s. 73.0301 (5) (a) but is not entitled to a hearing under par. (a).

(5) No licensee shall advertise, print, display, publish, distribute or broadcast or cause to be printed, displayed, published, distributed or broadcast in any manner any statement with regard to the rates, terms or conditions for the lending of money, credit, goods or things in action which is false or calculated to deceive. With respect to matters specifically governed by s. 423.301, compliance with such section satisfies the requirements of this section.

(6) (a) Except as provided in par. (b), the licensee shall keep such books and records in the licensee's place of business as in the opinion of the division will enable the division to determine whether the provisions of this chapter are being observed. Every such licensee shall preserve the records of final entry used in such business, including cards used in the card system, if any, for a period of at least 2 years after the making of any loan recorded therein.

(b) A licensee may keep the books and records specified in par. (a) at a single location inside or outside of this state if the books and records are kept at a location licensed under this section. The licensee shall organize the books and records by the place of business where the records originated and shall keep the books and records separate from other records for business conducted at that location. Actual costs incurred by the division to examine books and records maintained outside of this state shall be paid by the licensee.

(7) (a) In this section:

1. "Precomputed loan" means a loan in which the debt is expressed as a sum comprising the principal and the amount of interest computed in advance.

2. "Principal" means the total of:

a. The amount paid to, received by or paid or payable for the account of the borrower; and

b. To the extent that payment is deferred: the amount actually paid or to be paid by the licensee for registration, certificate of title or license fees if not included in subd. 2. a.; and additional charges permitted under this section.

(b) A licensee may charge, contract for or receive a rate of interest for a loan or forbearance made prior to April 6, 1980, which does not exceed the greater of either of the following:

1. With respect to installment loans or forbearances which are repayable in substantially equal successive installments at approximately equal intervals, and where the principal does not exceed $3,000 excluding any interest authorized under this section, and where the scheduled maturity of the loan contract is not more than 36 months and 15 days from the date of making, interest may be deducted in advance at a rate not in excess of $9.50 per $100 per year on that part of the loan not exceeding $1,000 and $8 per $100 per year on any remainder. Interest shall be computed at the time the loan is made on the face amount of the contract for the full term of the contract, notwithstanding the requirement for installment repayments. The face amount of the loan contract or note may exceed $3,000 by the amount of interest deducted in advance. On contracts which are one year or any number of whole years, the charge shall be computed proportionately on even calendar months.

2. With respect to any loan of any amount, at a rate not to exceed 18% per year computed on the declining unpaid principal balances of the loan from time to time outstanding, calculated according to the actuarial method, but this does not limit or restrict the manner of contracting for the interest, whether by way of

add−on, discount or otherwise, so long as the rate of interest does not exceed that permitted by this paragraph.

(bm) A licensee may charge, contract for or receive a rate of interest for a loan or forbearance made on or after April 6, 1980 and prior to November 1, 1981, which does not exceed the greater of either of the following:

1. With respect to installment loans or forbearances which are repayable in substantially equal successive installments at approximately equal intervals, and where the principal does not exceed $3,000 excluding any interest authorized under this section, and where the scheduled maturity of the loan contract is not more than 36 months and 15 days from the date of making, interest may be deducted in advance at a rate not in excess of $9.50 per $100 per year on that part of the loan not exceeding $2,000 and $8 per $100 per year on any remainder. Interest shall be computed at the time the loan is made on the face amount of the contract for the full term of the contract, notwithstanding the requirement for installment repayments. The face amount of the loan contract or note may exceed $3,000 by the amount of interest deducted in advance. On contracts which are one year or any number of whole years, the charge shall be computed proportionately on even calendar months.

2. With respect to any loan of any amount, at a rate not to exceed 19% per year computed on the declining unpaid principal balances of the loan from time to time outstanding, calculated according to the actuarial method, but this does not limit or restrict the manner of contracting for the interest, whether by way of add−on, discount or otherwise, so long as the rate of interest does not exceed that permitted by this paragraph.

(bn) 1. A licensee may charge, contract for or receive a rate of interest, calculated according to the actuarial method, which may not exceed the greater of the following for a loan or forbearance of less than $3,000 entered into on or after November 1, 1981 and before November 1, 1984:

a. Twenty−three percent per year.

b. A rate of 6% in excess of the interest rate applicable to 2−year U.S. treasury notes as determined under subd. 3. a.

c. A rate of 6% in excess of the interest rate applicable to 6−month U.S. treasury bills as determined under subd. 3. b.

2. A licensee may charge, contract for or receive a rate of interest, calculated according to the actuarial method, which may not exceed the greater of the following for a loan or forbearance of $3,000 or more entered into on or after November 1, 1981 and before November 1, 1984:

a. Twenty−one percent per year.

b. A rate of 6% in excess of the interest rate applicable to 2−year U.S. treasury notes as determined under subd. 3. a.

c. A rate of 6% in excess of the interest rate applicable to 6−month U.S. treasury bills as determined under subd. 3. b.

3. a. For purposes of subds. 1. b. and 2. b., the interest rate applicable to 2−year U.S. treasury notes for any calendar year quarter is the average annual interest rate determined by the last auction of the notes in the preceding calendar year quarter, increased to the next multiple of 0.5% if the average annual interest rate includes a fractional amount.

b. For purposes of subds. 1. c. and 2. c., the interest rate applicable to 6−month U.S. treasury bills for any month is the average annual discount interest rate determined by the last auction of the bills in the preceding month, increased to the next multiple of 0.5% if the average annual discount interest rate includes a fractional amount.

4. Information regarding the amount of the maximum finance charge under subds. 1. and 2. for any month or calendar year quarter shall be available at the office of the division.

5. This paragraph does not restrict the manner of contracting for interest, whether by add−on, discount or otherwise, if the interest rate does not exceed the rate under this paragraph.

(bp) A loan, whether precomputed or based upon the actuarial method, made after October 31, 1984, is not subject to any maximum interest rate limit.

(c) 1. Where the interest is precomputed, the interest may be calculated on the assumption that all scheduled payments will be made when due and the effect of prepayment is governed by the provision on rebate upon prepayment. If a loan is prepaid out of the proceeds of a new loan made under this section, the principal of such new loan may include any unpaid charges on the prior loan which have accrued before the making of the new loan, unless the prior loan was precomputed in which event the principal of the new loan may include the balance remaining after making the required rebate plus any accrued charges.

2. For the purpose of computing interest under this section, whether at the maximum rate or less, a day shall be considered one−thirtieth of a month when such computation is made for a fraction of a month. Loan contracts providing for installments payable at monthly intervals may provide for a first period between the date of the contract and the first installment due date of not more than 45 days and not less than 15 days. Where the first period is greater or lesser than one month, interest may be charged only for each day in the first period, at a rate not to exceed one−thirtieth of the interest which would be applicable to a first installment period of one month, but such first period may be considered a monthly interval for purposes of determining rebates. Where the first period is greater than one month, any additional interest charge shall be earned and may be added to and collected at the time of the first installment payment.

3. In lieu of deducting the interest and charging the delinquency and deferral charges authorized in this section, a licensee may contract for and receive a rate of charge not exceeding that rate which, computed on scheduled unpaid balances of the proceeds of the loan contract, would produce an amount of charge equal to the total of the interest which may be deducted from such loan contract under this section, and such rate of charge may be computed on actual unpaid principal balances from time to time outstanding until the loan is fully paid. When such rate of charge is made in lieu of other charges, the provisions relating to refunds and delinquency charges shall not apply to such loans.

4. If 2 installments or parts thereof of a precomputed loan are not paid on or before the 10th day after their scheduled or deferred due dates, a licensee may elect to convert the loan from a precomputed loan to one in which the interest is computed on unpaid balances actually outstanding. In this event the licensee shall make a rebate pursuant to the provisions on rebate upon prepayment as of the due date of an unpaid installment, and thereafter may charge interest from the due date as provided in subd. 3. or by par. (b) 2. and no further delinquency or deferral charges shall be made. The rate of interest may equal but not exceed the annual percentage rate of finance charge which was disclosed to the borrower when the loan was made. The rate of interest shall be computed on actual unpaid balances of the contract as reduced by the rebate for the time that such balances are actually outstanding from the due date as of which the rebate was made until the contract is fully paid.

(d) 1. No loan of $3,000 or less, excluding interest, scheduled to be repaid in substantially equal installments at equal periodic intervals shall provide for a scheduled repayment of principal more than 36 months and 15 days from the date of the contract if the principal exceeds $700, nor more than 24 months and 15 days from the date of the contract if the principal is $700 or less.

2. A licensee may make loans under a continuing loan agreement which provides for future or additional advances under the same instrument if at the time of each new advance of money, any existing unpaid balance is reduced by any required rebate and the resulting amount plus the additional money advanced plus interest, official fees and premiums or identifiable charges for insurance, if any, are combined, and for the purpose of the limitations

of subd. 1. only, the date of the loan contract shall be deemed the date of said advance.

(e) 1. With respect to a precomputed loan which is scheduled to be repaid in substantially equal installments, the parties may agree to a delinquency charge on any installment not paid in full on or before the 10th day after its scheduled or deferred due date, in an amount not to exceed 5% of the unpaid amount of the installment. The delinquency charge may be collected only once on any one installment but may be collected when due or at any time thereafter.

2. With respect to other loans the delinquency charge shall not exceed the rate allowed under par. (b), computed upon the unpaid principal balance exclusive of interest on the loan.

3. Notwithstanding subds. 1. and 2., delinquency charges on precomputed consumer loans shall be governed by s. 422.203.

(f) 1. Subject to subds. 2. and 3., with respect to a precomputed loan, the parties before or after default may agree in writing to a deferral of all or part of any unpaid installment, and the licensee may make and collect a charge computed in the same manner as the deferral charge computed in accordance with s. 422.204 (1) to (5) whether or not the loan under this section is a consumer loan.

2. In addition to the deferral charge, the licensee may make appropriate additional charges. 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 charge.

3. The parties may agree in writing at any time, including at the time of a precomputed loan that if an installment is not paid within 30 days after its due date, the licensee may grant a deferral and make charges under this section, if a notice is sent to the customer advising the customer of the amount of the deferral charge, the period of deferral and that if the installment is prepaid before maturity that a proportionate refund of the deferral charge will be given. No deferral charge may be made for a period after the date that such a lender elects to accelerate the maturity of the agreement.

4. Notwithstanding subds. 1., 2. and 3., deferral charges on precomputed consumer loans shall be governed by s. 422.204.

(g) Except as provided in par. (gm), upon prepayment in full by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest as provided in this paragraph. If the combined rebate of interest and credit insurance premiums otherwise required is less than $1, no rebate need be made. The refunds shall be determined as follows:

1. On a loan where the interest is precomputed and which is repayable in substantially equal successive installments at approximately equal intervals, whether or not the precomputed loan is a consumer loan, the amount of rebate shall be computed under s. 422.209 (2) (a) except for any additional interest charge covered under subd. 3.

2. For any other loan, the amount of the rebate of interest shall not be less than the difference between the interest charged and the interest earned at the agreed rate computed upon the unpaid principal balances, exclusive of interest, of the transaction prior to payment in full.

3. If the first payment period is greater than one month and additional interest is charged as permitted under par. (c) 2., the additional interest charged for the extension of the first payment period is considered wholly earned on the first installment date and is not considered in computing rebates.

(gm) 1. Upon prepayment in full of a loan entered into on or after November 1, 1981 and before November 1, 1984, and which has a term of less than 49 months, by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest as provided in this paragraph. If the combined rebate of interest and credit insurance premiums otherwise required is less than $1, no rebate need be made. The refunds shall be determined as follows:

a. On a loan where the interest is precomputed and which is repayable in substantially equal successive installments at approximately equal intervals, the amount of rebate shall be computed under s. 422.209 (2) (a) except for any additional interest charge under par. (c) 2.

b. For any other loan, the amount of the rebate of interest may not be less than the difference between the interest charged and the interest earned at the agreed rate, computed upon the unpaid principal balance.

c. If the first payment period is greater than one month and additional interest is charged under par. (c) 2., the additional interest is earned on the first installment date and may not be considered in computing rebates.

2. Upon prepayment in full of a loan for personal, family, household or agricultural purposes, of $25,000 or less, entered into on or after November 1, 1981 and before August 1, 1987, and which has a term of 49 months or more and upon prepayment in full of any loan entered into on or after May 10, 1984 and before August 1, 1987, and which has a term of more than 49 months, by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest under s. 422.209 (2) (b). If the combined rebate of interest and credit insurance premiums otherwise required is less than $1, no rebate need be made. If the first payment period is greater than one month and additional interest is charged under par. (c) 2., the additional interest is earned on the first installment date and may not be considered in computing rebates.

3. Upon prepayment in full of a loan of less than $5,000 which is entered into on or after August 1, 1987, and which has a term of less than 37 months, by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest as provided in this subdivision. If the combined rebate of interest and credit insurance premiums otherwise required is less than $1, no rebate need be made. The refunds shall be determined as follows:

a. On a loan where the interest is precomputed and which is repayable in substantially equal successive installments at approximately equal intervals, the amount of rebate shall be computed under s. 422.209 (2) (a) except for any additional interest charge under par. (c) 2.

b. For any other loan, the amount of the rebate of interest may not be less than the difference between the interest charged and the interest earned at the agreed rate, computed upon the unpaid principal balance.

c. If the first payment period is greater than one month and additional interest is charged under par. (c) 2., the additional interest is earned on the first installment date and may not be considered in computing rebates.

4. Upon prepayment in full of a loan of $5,000 or more or a loan of less than $5,000 if for a term of 37 months or more, entered into on or after August 1, 1987, by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest computed under s. 422.209 (2) (b) 1. or 2. The licensee may determine whether the rebate is computed under s. 422.209 (2) (b) 1. or 2. If the combined rebate of interest and credit insurance premiums otherwise required is less than $1, no rebate need be made. If the first payment period is greater than one month and additional interest is charged under par. (c) 2., the additional interest is earned on the first installment date and may not be considered in computing rebates.

(h) A licensee may require property insurance, and may accept, but shall not require, credit life insurance or credit accident and sickness insurance or both, if such insurance is issued in accordance with ch. 424, whether or not the loan is a consumer loan.

(i) In addition to interest, the licensee may charge:

1. The additional charges allowed in s. 422.202 whether or not the loan is a consumer loan;

2. An amount sufficient to cover the fee for filing the termination statement required by s. 409.513 on loans secured by mer-

chandise other than a motor vehicle, a manufactured home, or a boat; and

3. On motor vehicle loans, the actual filing fee required for filing with the department of transportation under ch. 342 or, on boat loans, the filing fee required for filing with the department of natural resources under ch. 30.

(j) No licensee may divide or encourage a borrower to divide any loan for the purpose of obtaining a higher rate of finance charge than would otherwise be permitted under this section.

(jm) 1. Subject to subd. 2., a licensee may charge, in addition to interest, a loan administration fee on a consumer loan, including a refinancing or loan consolidation, if all of the following conditions are met:

a. The loan administration fee does not exceed 2% of the principal in the consumer loan, refinancing or consolidation.

b. The loan administration fee is charged for a consumer loan that is secured primarily by an interest in real property or in a mobile home, as defined in s. 138.056 (1) (bm).

2. Notwithstanding subd. 1., if a licensee charges a loan administration fee on a consumer loan that is prepaid from the proceeds of a new loan made by the same licensee within 6 months after the prior loan, then the licensee shall reduce any loan administration fee on the new loan by the amount of the loan administration fee on the prior loan.

3. A loan administration fee charged under this paragraph may be included in the amount financed in the consumer loan. The loan administration fee is earned by the licensee when charged and need not be refunded under par. (gm) 3. or 4. A licensee who charges a loan administration fee under this paragraph may not also retain a loan administration fee under s. 422.209 (1m) in connection with the same consumer loan transaction.

(k) All consumer loans as defined in s. 421.301 (12) shall be governed by chs. 421 to 427, but to the extent that chs. 421 to 427 are inconsistent with this section, this section shall govern.

(8) Every licensee shall:

(a) Deliver to the borrower, at the time a loan is made, a statement in the English language showing in clear and distinct terms the amount and date of the note and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, the amount of interest, the proceeds of the loan after deducting such interest, a description of the payment schedule and the default charge. Disclosures made in accordance with the federal consumer credit protection act and regulation Z shall be deemed to comply with such disclosures. The statement shall also indicate that the borrower may prepay the borrower's loan in whole or in part and that if the loan is prepaid in full the borrower will receive a refund of interest as provided by this section. The statement shall also indicate the percentage per year of interest charged in the transaction.

(b) Give to the borrower a plain and complete receipt for all cash payments made on account of any such loan at the time such payments are made.

(c) Permit payments of the loan in whole or in part prior to its maturity.

(d) Upon repayment of the loan in full mark indelibly every obligation, other than a security agreement, signed by the borrower with the word "Paid" or "Canceled" and cancel and return any note. When there is no outstanding secured obligation such licensee shall restore any pledge, cancel and return any assignment, cancel and return any security agreement given to the licensee by the borrower and file a termination statement terminating any filed financing statement.

(e) Take no note, promise to pay, security nor any instrument in which blanks are left to be filled in after the loan has been made except that a detailed description or inventory of the security may be filled in, with the written consent of the borrower within 10 days thereafter.

(9) (a) No person, except as authorized by statutes, shall directly or indirectly charge, contract for or receive any interest or consideration greater than allowed in s. 138.05 upon the loan, use or forbearance of money, goods or things in action, or upon the loan, use or sale of credit. The foregoing prohibition shall apply to any person who as security for any such loan, use or forbearance of money, goods or things in action, or for any such loan, use or sale of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who by any device or pretense of charging for his or her services or otherwise seeks to obtain a greater compensation than is authorized by this section.

(b) No loan made under this section, for which a greater rate or amount of interest, than is allowed by this section, has been contracted for or received, wherever made, shall be enforced in this state, and every person in any wise participating therein in this state shall be subject to this section. If a licensee makes an excessive charge as the result of an unintentional mistake, but upon demand makes correction of such mistake, the loan shall be enforceable and treated as if no violation occurred at the agreed rate. Nothing in this paragraph shall limit any greater rights or remedies afforded in chs. 421 to 427 to a customer in a consumer credit transaction.

(10) Any person, partnership or corporation and the several officers and employees thereof who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or imprisoned for not more than 6 months or both.

(11) The division may employ necessary examiners or other personnel from time to time and fix their compensation.

(12) No person, association, partnership or corporation doing business under the authority of any law of this state or of the United States relating to banks, savings banks, trust companies, savings or building and loan associations, or credit unions shall be eligible to become a licensee under this section.

History: 1971 c. 60, 125, 239, 307; 1973 c. 2, 243; 1975 c. 407; 1977 c. 29 s. 1654 (7) (b); 1977 c. 444; 1979 c. 110 s. 60 (13); 1979 c. 168; 1981 c. 45 ss. 11 to 16, 51; 1983 a. 36, 192, 385; 1985 a. 127; 1987 a. 27; 1989 a. 31; 1991 a. 39, 221; 1993 a. 112, 184, 368, 482, 490; 1995 a. 27, 225, 272; 1997 a. 27, 191, 237; 1999 a. 9, 31, 32, 53; 2001 a. 10, 107.

Installment sellers are not precluded by s. 138.09, 1973 stats., from charging precomputed interest. First National Bank of Wisconsin Rapids v. Dickinson, 103 Wis. 2d 428, 308 N.W.2d 910 (Ct. App. 1981).

A municipal ordinance that dictates where a state–licensed payday loan operation may locate its business and what hours it may operate has nothing to do with the state's regulation of the loans themselves and its licensing of loan providers and is not preempted by state law. The Payday Loan Store of Wisconsin, Inc. v. City of Madison, 333 F. Supp. 2d (2004).

Wisconsin has compelling interest in applying statutory regulations to banking activities on Indian reservations. 80 Atty. Gen. 337.

138.10 Pawnbrokers. (1) DEFINITIONS. In this section:

(a) "Pawnbroker" includes any person who engages in the business of lending money on the deposit or pledge of personal property, other than choses in action, securities, or written evidences of indebtedness; or purchases personal property with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price.

(b) "Pawnbroking" means the business of a pawnbroker as defined in this section.

(c) "Pawn ticket" means the card, book, receipt or other record furnished to the pledgor at the time a loan is granted containing the terms of the contract for a loan.

(d) "Person" includes an individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint–stock company or any group of individuals however organized.

(e) "Pledge" means an article or articles deposited with a pawnbroker as security for a loan in the course of the pawnbroker's business as defined in par. (a).

(f) "Pledgor" means the person who obtains a loan from a pawnbroker and delivers a pledge into the possession of a pawn-

broker, unless the person discloses that he or she is or was acting for another in which case a "pledgor" means the disclosed principal.

(2) MAXIMUM LOAN. Unless made by a person licensed under s. 138.09, a pawnbroker's loan may not exceed $150.

(2m) PAWNBROKING BY LICENSED LENDERS. The division of banking may promulgate rules regulating the conduct of pawnbroking by persons licensed under s. 138.09.

(4) MAXIMUM INTEREST OR CHARGES. A pawnbroker shall not charge, contract for or receive interest in excess of 3% per month on any loan or balance thereon and such interest shall not be increased by charging commission, discount, storage or other charge directly or indirectly, nor by compound interest; provided, however, that when the interest herein specified amounts to less than $1 per month, the minimum charge shall be $1 for the first month and 50 cents for each succeeding month during the loan period.

(4m) WHEN LIMIT ON MAXIMUM INTEREST DOES NOT APPLY. Subsection (4) does not apply to a pawnbroker's loan made after October 31, 1984 and before November 1, 1987.

(5) COMPUTATION OF INTEREST OR CHARGES. The interest and charges authorized by this section shall be computed at the rates specified on the actual principal balance of the loan due for the actual time which has elapsed from the date of the loan to the date of payment. For the purpose of calculation of interest and charges permitted under this section, a year shall be 12 calendar months, and a month shall be one calendar month, or any fractional part thereof. A calendar month shall be any period from a certain date in one month to the same date in the next succeeding month.

(6) FORFEITURE. A pawnbroker who charges, contracts for or receives interest or charges greater than permitted under this section shall forfeit both principal and interest, and shall return the pledge upon demand of the pledgor and surrender of the pawn ticket, without tender or payment of principal or interest.

(7) PENALTY. Any pawnbroker who shall refuse to comply with sub. (6) shall, upon conviction, be punished by imprisonment in the county jail not more than one year or by fine not exceeding $500.

(8) SALE OF PLEDGE. Upon default in the payment of any loan, a pawnbroker may sell the pledge upon the conditions contained in this section.

(a) A pawnbroker may sell a pledge at private sale for an amount not less than that agreed to by the pledgor, which amount shall be stipulated on the pawn ticket and shall not be less than 125% of the amount of the loan. A pledge which cannot be sold at private sale at the minimum price agreed to by the pledgor must be sold at public auction, which sale shall be conducted in the manner provided by s. 779.48 (1).

(b) No unredeemed pledge may be sold before the expiration of 90 days after the due date of the loan unless otherwise specifically authorized in writing by the pledgor. The authority to sell an unredeemed pledge prior to the expiration of 90 days after the due date of the loan must be given by the pledgor on a date subsequent to the due date of the loan.

(c) An unredeemed pledge must be sold within 12 months of the due date of a loan. No interest or charges permitted under this section may be collected on a loan after the expiration of 12 months of the due date of a loan, whether the loan is renewed or the loan is paid and the pledge redeemed.

(9) NOTICE OF SALE. A pawnbroker shall not sell any pledge unless due notice of such contemplated sale has been forwarded to the pledgor by registered mail to the address given by the pledgor at the time of obtaining the loan or to such new address of the pledgor, as shown on the pawnbroker's record. Notice of the contemplated sale of a pledge shall be mailed to the pledgor not less than 30 days prior to the date of sale. Such notice shall state total amount of principal, interest and charges due on the loan as of the date of the notice.

(10) DISPOSITION OF PROCEEDS. The proceeds from the sale of a pledge shall be applied in the order specified, to the following purposes: Payment of the auctioneer's charges if sold at public auction, or commission for selling not to exceed 5% if sold at private sale; payment of principal of the loan; payment of the interest on the loan permitted under this section, and payment of the charges on the loan permitted under this section; payment of postage for mailing notice to the pledgor of the contemplated sale or notice of the surplus. The surplus, if any, shall be paid to the pledgor or such other person who would have been entitled to redeem the pledge had it not been sold.

(11) NOTICE OF SURPLUS. Notice of any surplus from the sale of a pledge shall be forwarded to the pledgor within 10 days of the date of sale by registered mail to the address given by the pledgor at the time of obtaining the loan or to such new address of the pledgor, of which the pawnbroker has received notice.

(12) REVERSION OF SURPLUS. If a surplus remaining from the sale of a pledge is not paid or claimed within one year from the date of sale, such surplus shall revert to the pawnbroker. The pawnbroker shall not be required to pay any interest on an unpaid surplus.

History: 1979 c. 32 s. 92 (9); 1981 c. 45; 1983 a. 189; 1989 a. 257; 1993 a. 482; 1997 a. 27.

138.12 Insurance premium finance companies.

(1) DEFINITIONS. For purposes of this section:

(a) "Division" means the division of banking.

(b) "Insurance premium finance company" means a person engaged in the business of entering into insurance premium finance agreements.

(c) "Licensee" means an insurance premium finance company holding a license issued by the division under this section.

(d) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract together with a service charge or interest charge as authorized and limited by this chapter.

(2) SCOPE. This section shall not apply to:

(a) Any insurance company or agent defined in s. 628.02, any savings and loan association, savings bank, sales finance company, motor vehicle installment seller, bank, trust company, licensed lender or credit union authorized to do business in this state, but such organizations, if otherwise eligible, are exempt from the licensing under this section, but subs. (9) to (12) and any rules promulgated by the division pertaining to such subsections shall be applicable to all premium finance transactions entered into by such organizations in this state if an insurance policy or any rights thereunder is made the security or collateral for repayment of the debt.

(b) The inclusion of insurance in connection with an installment sale of a motor vehicle or other goods and services.

(d) Life insurance.

(3) LICENSES. (a) No person except those listed in sub. (2) (a) shall engage in the business of financing insurance premiums in this state without first having obtained a license. Any person who engages in the business of financing insurance premiums in this state without obtaining a license may be fined not more than $200.

(b) The annual license fee is $500 and shall be paid to the division. Licenses may be renewed May 1 of each year upon payment of the annual fee.

(c) The person to whom the license or the renewal thereof is issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the division requires. The division may, at any time, require the applicant fully to disclose the identity of all stockholders, partners, members, managers, officers and employees, and the division may refuse to issue or renew a license in the name of any person if the division is not satisfied that any

officer, employee, stockholder, partner, member or manager thereof, who may materially influence the applicant's conduct, meets the standards of this section.

(d) 1. Except as provided in par. (e), an application for a license under this section shall contain the following:

a. If the applicant is an individual, the applicant's social security number.

b. If the applicant is not an individual, the applicant's federal employer identification number.

2. The division may not disclose any information received under subd. 1. to any person except as follows:

a. The division may disclose information under subd. 1. to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

b. The division may disclose information under subd. 1. a. to the department of workforce development in accordance with a memorandum of understanding under s. 49.857.

(e) 1. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a license under this section, shall submit a statement made or subscribed under oath or affirmation to the division that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development.

2. Any license issued or renewed in reliance upon a false statement submitted by an applicant under subd. 1. is invalid.

(4) INVESTIGATION. (a) Upon the filing of an application and the payment of the required fees under par. (am) 1., the division shall make an investigation of each applicant and shall issue a license if the division finds the applicant is qualified in accordance with this section. If the division does not so find, the division shall, within 30 days after the division has received the application, notify the applicant and, at the request of the applicant, give the applicant a full hearing, except as follows:

1. An applicant whose application is denied under par. (b) 5. is entitled to a hearing under s. 73.0301 (5) (a) but is not entitled to a hearing under this paragraph.

2. An applicant whose application is denied under par. (b) 6. is entitled to notice and a hearing only as provided in a memorandum of understanding entered into under s. 49.857 and is not entitled to a hearing under this paragraph.

(am) 1. An applicant shall pay to the division a nonrefundable $300 license investigation fee and a $500 annual license fee for the period ending on the next April 30.

2. If the cost of the investigation exceeds $300, the applicant shall, upon demand of the division, pay the amount by which the cost of the investigation exceeds the nonrefundable fee.

(b) The division shall issue or renew a license when the division is satisfied that the person to be licensed satisfies all of the following, as applicable:

1. Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for.

2. Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for.

3. If a corporation, is a corporation incorporated under the laws of this state or a foreign corporation authorized to transact business in this state.

3L. If a limited liability company, is organized under the laws of this state or a foreign limited liability company authorized to transact business in this state.

4. Has provided the information required under sub. (3) (d) 1.

5. Has not been certified by the department of revenue under s. 73.0301 as being liable for delinquent taxes.

6. If an individual, has not failed to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings and is not delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857.

(5) REVOCATION OR SUSPENSION. (a) The division may revoke or suspend the license of any insurance premium finance company if the division finds any of the following:

1. Any license issued to such company was obtained by fraud.

2. There was any misrepresentation in the application for the license.

3. The holder of such license has otherwise shown himself or herself untrustworthy or incompetent to act as a premium finance company.

4. The company has violated any provision of this section.

5. The company has been rebating part of the service charge as allowed and permitted herein to any insurance agent or insurance broker or any employee of an insurance agent or insurance broker or to any other person as an inducement to the financing of any insurance policy with the premium finance company.

(am) 1. The division shall deny an application for a license renewal if any of the following applies:

a. The applicant has failed to provide the information required under sub. (3) (d) 1.

b. The department of revenue has certified under s. 73.0301 that the applicant is liable for delinquent taxes under s. 73.0301. An applicant whose renewal application is denied under this subd. 1. b. is entitled to a hearing under s. 73.0301 (5) (a) but is not entitled to a hearing under par. (b).

c. In the case of a licensee who is an individual, the applicant fails to comply, after appropriate notice, with a subpoena or warrant that is issued by the department of workforce development or a county child support agency under s. 59.53 (5) and that is related to paternity or child support proceedings or the applicant is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An applicant whose renewal application is denied under this subd. 1. c. is entitled to a notice and hearing under s. 49.857 but is not entitled to a hearing under par. (b).

2. The division shall restrict or suspend the license of any insurance premium finance company if the division finds that, in the case of a licensee who is an individual, the licensee fails to comply, after appropriate notice, with a subpoena or warrant that is issued by the department of workforce development or a county child support agency under s. 59.53 (5) and that is related to paternity or child support proceedings or the licensee is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. A licensee whose license is restricted or suspended under this subdivision is entitled to a notice and hearing under s. 49.857 but is not entitled to a hearing under par. (b).

3. The division shall revoke the license of any insurance premium finance company if the department of revenue has certified under s. 73.0301 that the licensee is liable for delinquent taxes under s. 73.0301. A licensee whose license is revoked under this subdivision for delinquent taxes is entitled to a hearing under s. 73.0301 (5) (a) but is not entitled to a hearing under par. (b).

(b) Before the division revokes, suspends or refuses to renew the license of any premium finance company, the division shall give the company an opportunity to be fully heard and to introduce evidence in the company's behalf. In lieu of revoking or suspending the license for any of the causes enumerated in this subsection, after hearing, the division may subject the premium finance com-

pany to a penalty of not more than $200 for each offense when in the division's judgment the division finds that the public interest would not be harmed by the continued operation of such company. The amount of any penalty under this paragraph shall be paid by the company to the division for the use of the state. At any hearing under this subsection, the division may administer oaths to witnesses. Anyone testifying falsely, after having been administered the oath, shall be subject to the penalty of perjury.

(c) Any action of the division in refusing to issue or renew a license shall be subject to review under subch. III of ch. 227.

(6) RECORDS. (a) Every licensee shall maintain records of its premium finance transactions and the records shall be open to an examination and investigation by the division. The division may make an examination of the books, records and accounts of any licensee as the division deems necessary. The division shall determine the cost of an examination and that cost shall be assessed against and paid by the licensee so examined. The division may, at any time, require any licensee to bring such records as the division directs to the division for examination.

(b) Every licensee shall preserve its records of such premium finance transactions, including cards used in a card system, for at least 3 years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form or other form authorized under s. 220.285 shall constitute compliance with this requirement.

(7) RULES AND REGULATIONS. The division may make and enforce such reasonable rules as are necessary to carry out this section, but such rules shall not be contrary to nor inconsistent with this section.

(8) PREMIUM FINANCE AGREEMENTS. (a) A premium finance agreement shall:

1. Be dated, signed by or on behalf of the insured, and the printed portion thereof shall be in at least 8–point type,

2. Contain the name and place of business of the insurance agent or insurance broker negotiating the related insurance contract, the name and residence or the place of business of the insured as specified by the insured, the name and place of business of the premium finance company to which installment or other payments are to be made, a description of the insurance contracts, including term and type of policy, the premiums for which are advanced or to be advanced under the agreement and the amount of the premiums therefor; and

3. Set forth the following items where applicable:

a. The total amount of the premiums,

b. The amount of the down payment,

c. The principal balance (the difference between items a and b),

d. The amount of the service charge,

e. The balance payable by the insured (sum of items c and d),

f. The number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.

(b) The items set forth in par. (a) 3. need not be stated in the sequence or order in which they appear and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(9) SERVICE CHARGES. A premium finance company shall not charge, contract for, receive or collect a service charge other than as permitted by this subsection unless it is a licensed lender regulated under sub. (10).

(a) The service charge shall be computed on the balance of the premiums due, after subtracting the down payment made by the insured in accordance with the premium finance agreement, from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final installment of the premium finance agreement is payable.

(b) The service charge may not exceed the interest rate authorized under s. 422.201 (2) (bm) per year plus an additional charge of $10 per premium finance agreement, but, if the principal balance is $50 or less there shall be no additional charge, and if the principal balance is more than $50 but not more than $100, the additional charge is $6.

(bm) Paragraph (b) applies only to a premium finance agreement in which the related insurance contract is for personal, family or household use entered into before November 1, 1984. The service charge for any other premium finance agreement shall be as agreed by the parties to the agreement.

(c) The service charge shall be computed on the principal balance of a premium finance agreement payable in successive monthly installments substantially equal in amount for a period of one year. On a premium finance agreement providing for installments extending for a period less than or greater than one year, the service charge shall be computed proportionately.

(d) Notwithstanding the provisions of any premium finance agreement, any insured may prepay the obligation in full at any time. In such event, the insured shall receive a refund credit. The amount of such refund credit shall represent at least as great a proportion of the service charge as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of installments in the agreement. Where the amount of the refund credit is less than $1, no refund need be made. If in addition to the service charge an additional charge was imposed, such additional charge need not be refunded nor taken into consideration in computing the refund credit.

(10) CHARGES BY LICENSED LENDERS; REBATES. (a) A lender licensed under s. 138.09 may charge interest as provided in that section for a loan involving a premium finance agreement.

(b) The interest shall be computed on the balance of the premiums due, after subtracting the down payment made by the insured in accordance with the premium finance agreement, from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final installment of the premium finance agreement is payable.

(c) Notwithstanding the provisions of any premium finance agreement, any insured may prepay the obligation in full at any time. In such event the insured shall receive a rebate as provided under s. 138.09.

(d) Except as provided in sub. (12) to the contrary, s. 138.09 applies to a loan involving a premium finance agreement made by a licensed lender.

(11) DELINQUENCY OR DEFAULT CHARGE. (a) A premium finance agreement may provide for the payment by the insured of a delinquency or default charge of $1 to a maximum of 5% of any delinquent installment which is in default for a period of 5 days or more. If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge of $15. A premium finance agreement may also provide for the payment of statutory attorneys' fees and statutory court costs if the agreement is referred for collection to an attorney not a salaried employee of the insurance premium finance company.

(b) This subsection does not apply to loans by licensed lenders regulated under s. 138.09.

(12) CANCELLATION. When a premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract listed in the agreement, the following applies:

(a) Not less than 10 days' written notice shall be mailed to the insured of the intent of the insurance premium finance company to cancel the insurance contract unless the default is cured prior to the date stated in the notice. The insurance agent or insurance broker indicated on the premium finance agreement shall also be mailed 10 days' notice of such action.

(b) Pursuant to the power of attorney or other authority referred to above, the insurance premium finance company may cancel on behalf of the insured by mailing to the insurer written

notice stating when thereafter the cancellation shall be effective, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself or herself, but without requiring the return of the insurance contract. The insurance premium finance company shall also mail a notice of cancellation to the insured at the insured's last–known address and to the insurance agent or insurance broker indicated on the premium finance agreement. Compliance by the premium finance company with the provisions of the premium finance agreement or par. (a), shall not be a condition of effective cancellation hereunder.

(c) Where statutory, regulatory or contractual restrictions provide that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee or other 3rd party, the insurer shall give the prescribed notice on behalf of itself or the insured to such governmental agency, mortgagee or other 3rd party within a reasonable time after the day it receives the notice of cancellation from the premium finance company. When the above restrictions require the continuation of insurance beyond the effective date of cancellation specified by the premium finance company such insurance shall be limited to the coverage to which such restrictions relate and to the persons they are designed to protect.

(d) Whenever a financed insurance contract is canceled the insurer shall return whatever unearned premiums are due under the insurance contract to the insurance premium finance company for the account of the insured, and such action by the insurer shall be deemed to satisfy the insurer's obligations under the insurance contract which relate to the return of unearned premiums. If the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund such excess to the insured but no such refund shall be required if it amounts to less than $1.

(13) NO FILING NECESSARY. No filing of the premium finance agreement or recording of a premium finance transaction shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors or assigns.

(14) ESTABLISHED INSURANCE PREMIUM FINANCE COMPANIES. Any person or corporation engaged in the business of an insurance premium finance company on May 19, 1970, may continue in operation under this section but shall obtain a license by January 1, 1970.

(15) APPLICABILITY OF CHS. 421 TO 427 TO THIS SECTION. All consumer loans as defined in chs. 421 to 427 made by licensees under this section shall be governed by this section to the extent that chs. 421 to 427 are inconsistent with this section.

History: 1971 c. 40 s. 93; 1971 c. 125 s. 478; 1971 c. 239; Stats. 1971 s. 138.12; 1975 c. 371 s. 50; 1975 c. 372; 1977 c. 444 ss. 4 to 6, 11; 1981 c. 45; 1983 a. 189; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 336; 1991 a. 39, 221; 1993 a. 112, 482; 1995 a. 27; 1997 a. 191, 237; 1999 a. 9, 32, 83.

138.20 Discrimination in granting credit or loans prohibited. (1) RULE. No financial organization, as defined under ss. 71.04 (8) (a) and 71.25 (10) (a), or any other credit granting commercial institution may discriminate in the granting or extension of any form of loan or credit, or of the privilege or capacity to obtain any form of loan or credit, on the basis of the applicant's physical condition, developmental disability as defined in s. 51.01 (5), sex or marital status; provided, however, that no such organization or institution shall be required to grant or extend any form of loan or credit to any person who such organization or institution has evidence demonstrating the applicant's lack of legal capacity to contract therefor or to contract with respect to any mortgage or security interest in collateral related thereto.

(1m) SPOUSAL CREDIT. A violation of s. 766.56 (1) is a violation of sub. (1).

(2) PENALTY. Any person violating this section may be fined not more than $1,000. Each individual who is discriminated against under this section constitutes a separate violation.

History: 1973 c. 88; 1975 c. 275; 1977 c. 418 s. 929 (55); 1983 a. 186; 1985 a. 37; 1987 a. 312 s. 17.

NOTE: As to sub. (1m), see notes in 1985 Wis. Act 37, marital property trailer bill.

Cross Reference: See also chs. DFI–SB 8 and DFI–SL 8, Wis. adm. code.

Chapter DFI–Bkg 80

WISCONSIN CONSUMER ACT

Note: Chapter Bkg 80 was renumbered Chapter DFI–Bkg 80 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498.

DFI–Bkg 80.01 Wisconsin consumer act rules; organization. In order to facilitate the organization of rules promulgated under the Wisconsin consumer act and to assist interested persons in relating the rules to the act, each rule shall refer to specific sections of the act. The rules shall be published so as to retain the numerical order of the sections of the act to which they refer. However, each statutory reference does not constitute the sole statutory authority for any particular rule.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.05 General definitions; consumer credit transactions. Acquisition of a leasehold interest in real property by a customer from a merchant is not a consumer lease within the meaning of s. 421.301 (11), Stats. For laws governing the leasing of real estate see ch. 704, Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.06 General definitions; customer. A person seeks or acquires real or personal property, services, money or credit for personal, family, household or agricultural purposes within the meaning of s. 421.301 (17), Stats., when such real or personal property, services, money or credit is to be used primarily, that is 50% or more, for one or more of these purposes.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.07 General definitions; finance charge. A delinquency or default charge is not a finance charge within the meaning of s. 421.301 (20), Stats., if imposed for actual unanticipated late payment, delinquency, default or other such occurrence. However, when a merchant's billings are not paid in full within a stipulated time period and under such circumstances the merchant does not, in fact, regard such accounts in default (For example, by customarily failing to institute collection activity or by continuing to extend credit) and imposes charges periodically for delaying payment of such accounts from time to time until paid, the charge so imposed comes within the definition of a finance charge and the credit so extended comes within the definition of open–end credit.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.08 General definitions; official fees. Official fees within the meaning of s. 421.301 (26) (a), Stats., shall include any fee charged by a register of deeds or the secretary of state for the filing or recording of any instrument of conveyance or other document for the purpose of perfecting a security interest for which the parties have contracted.

Note: See also s. DFI–Bkg 80.352.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.09 General definitions; required deposit balance. The definition of "required deposit balance" in s. 421.301 (38), Stats., together with the definition of "amount financed" requires that the required deposit balance be deducted from the amount financed for the purpose of calculating the finance charge and making disclosures. The purpose is to accurately disclose to the customer the amount of funds or credit of which he or she will have actual use, and thus the creditor is required to deduct from the funds advanced any compensating balance the creditor requires to be maintained with him or her. Consequently, the term does not apply to a deposit balance or deposit investment maintained by the customer with a financial

institution other than the creditor, which is taken by the creditor as collateral for the advance made. The reference to "any investment" refers to deposit-type investments such as "share accounts" maintained with savings and loan associations, credit unions or mutual savings banks. The term "investment" in s. 421.301 (38), Stats., does not include investment securities of the type defined in ch. 408, Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73; correction made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1991, No. 432.

DFI-Bkg 80.201 Finance charge for consumer credit transactions; per diem charge. Charges under s. 422.201, Stats., on consumer transactions other than those pursuant to an open-end plan where the finance charge is computed on the declining unpaid principal balance from time to time outstanding may be computed on actual unpaid balances at 1/360th of the annual rate for the actual number of days outstanding provided the use of this method shall be disclosed conspicuously together with all other disclosures required by subch. III of ch. 422, Stats., and provided the finance charge obtained by the application of this method does not exceed the maximum charge permissible under the act.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

DFI-Bkg 80.22 Finance charge for consumer credit transactions; credit cards and coupon books. With respect to a consumer credit transaction involving the receipt or acceptance by a customer of any credit card, plate, merchandise certificate, letter of credit, coupon book or other like credit device, except gift certificates purchased by a customer for use by a person other than the customer, the unpaid balance in such transaction within the meaning of s. 422.201, Stats., shall include only the cash value of any money, property, labor or services, not including the credit device itself, acquired by the actual use or redemption of such credit device together with authorized additional charges. For example, where a customer receives a coupon book or several merchandise certificates in the amount of $200 and subsequently redeems one coupon or certificate in the amount of $25, the customer's unpaid balance upon which a finance charge may be assessed is limited to the $25 cash value of the goods or services which the customer has actually received. This rule shall not apply to merchandise certificates acquired by a customer pursuant to an open-end plan if:

(1) Acquisition of certificates is not a condition of the extension of credit to the customer,

(2) Unused certificates may be returned at any time for full credit to the customer's account,

(3) The acquisition cost is not billed to the customer for at least one month, and does not bear a finance charge for a minimum period of 2 months, after the certificate is acquired, and

(4) The customer is given notice, at least 15 days prior to the imposition of a finance charge, of the date by which any unused certificates must be returned to avoid imposition of finance charges on the price thereof.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

DFI-Bkg 80.221 Finance charge for consumer credit transactions; actuarial method-compounding. The term "actuarial method" as used in s. 422.201, Stats., shall mean the method by which that portion of each payment not applicable to an escrow account is applied first to any finance charge or permitted additional charge accrued from the time of any prior payment or from the time credit is extended and the remainder, if any, is applied to the unpaid amount financed. With the exception of the calculation of delinquency charges, amounts remitted may be applied to interest and charges and then to principal on the most delinquent instalment due and then to interest and charges on the next instalment proceeding to more current instalments until the amount remitted is exhausted. For purposes of computing the finance charge under s. 422.201 (10m), Stats., a merchant may calculate the finance charge on an unpaid balance which includes unpaid finance charges.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73; am. Register, July, 1983, No. 331, eff. 8-1-83; correction made under s. 13.93 (2m) (b) 7., Stats., Register April 2002 No. 556.

DFI-Bkg 80.23 Maximum charges; precision and rounding. When preparing charts and tables, programming electronic devices or performing numerical calculations in connection with ss. 422.201, 422.204, and 422.209, Stats., any number of decimal places may be used to express the multiplying factor, provided that such factor shall be carried out at least to the nearest ten-thousandth or if expressed as a percent to the nearest one-hundredth of a percent. Where the number of decimal places used exceeds the minimum, the final digit may be rounded. In any case, the same multiplier must be used consistently with regard to all calculations in the transaction, including computation of interest, deferrals or rebates. Where the multiplier complies with this rule, the final product may be rounded to the nearest cent provided that products of 5 mills and over shall be rounded upward.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

DFI-Bkg 80.241 Finance charge for consumer credit transactions; minimum finance charge. Section 422.201 (9), Stats., provides for the election of a minimum finance charge by any merchant, including licensees under subch. I of ch. 218, Stats., who are limited to the election provided by this section notwithstanding the minimum time price differential provisions of s. 218.01 (6) (b) 7., Stats.

Note: Section 218.01 (6) (b) 7. was repealed by 1995 Wis. Act 329.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73; am. Register, July, 1983, No. 331, eff. 8-1-83.

DFI-Bkg 80.26 Additional charges; cost of insurance. Disclosure of the cost of insurance as an additional charge under s. 422.202 (1) (b) and (c), Stats., must include written notice to the customer of the term of such insurance together with the dollar charge for such term. Where the term of the insurance is the same as the term of the transaction a disclosure of that fact shall be an adequate disclosure of the term of the insurance.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73; am. Register, October, 1980, No. 298, eff. 11-1-80.

DFI-Bkg 80.261 Additional charges; equivalent security interest. The term"equivalent security interest" as used in s. 422.202 (2) (b), Stats., shall include a seller's interest under a land contract or a first lien deed of trust, and a second mortgage where there are no intervening liens and the mortgagee holds the first mortgage on the subject property. For cross reference application of this definition, see also ss. 422.303 (4), 422.306 (2), 422.408 (6), 422.409 (2) and 422.411 (2), Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

DFI-Bkg 80.262 Additional charges; title examinations. Title examinations within the meaning of s. 422.202 (2) (a), Stats., shall include the fee for a written title opinion prepared by an attorney upon examination of the abstract of title to the real property which is the subject of the consumer credit transaction on which the charge is assessed.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73; am. Register, October, 1980, No. 298, eff. 11-1-80.

DFI-Bkg 80.263 Additional charges, appraisals, copies. A creditor shall provide the customer, before any payment is due, with a copy of any appraisal for which the customer, in connection with a consumer credit transaction, is assessed an additional charge pursuant to s. 422.202 (2) (d), Stats.

History: Cr. Register, October, 1980, No. 298, eff. 11-1-80.

DFI-Bkg 80.264 Credit insurance; signature placement. A customer desiring consumer credit insurance shall separately sign his or her name pursuant to s. 422.202 (2s) (a) 1. b., Stats., on the same page as all other required insurance disclosures

required under s. 422.202 (2s) (a) 1., Stats.; on a line specifically designed for the signature.

History: Cr. Register, February, 1993, No. 446, eff. 3–1–93.

DFI–Bkg 80.271 Delinquency charges; deferred instalment. Where the parties have agreed to a delinquency charge in accordance with s. 422.203, Stats., and instalments have subsequently been deferred, the merchant may collect a delinquency charge on any deferred instalment which is not paid in full on or before the 10th day after its deferred due date unless such instalment is again deferred.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.28 Deferral charges; unilateral deferral at no cost. Notwithstanding s. 422.204, Stats., any number of the instalments may be deferred unilaterally by the creditor without the notice that would otherwise be required provided there is no charge for such deferral.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.281 Deferral charges; alternative computation. The methods for computing deferral charges described in s. 422.204 (1) (a) and (b), Stats., are alternatives and a creditor may elect to use either method to the extent that he or she can apply it to the particular transaction. However, if the transaction is not one to which s. 422.204 (1) (a), Stats., could apply, for example, because of irregular payments, then the creditor must compute the deferral pursuant to s. 422.204 (1) (b), Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73; correction made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1991, No. 432;correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1993, No. 449.

DFI–Bkg 80.29 Deferral charges; "rule of 78". The portion of the precomputed finance charge attributable to the final instalment of the original schedule of payments as used in s. 422.204 (1) (a), Stats., shall mean the pre–payment rebate calculated according to the Rule of 78 if the transaction is for a term of less than 37 months in which the amount financed is less than $5000 and entered into on or after August 1, 1987 or the actuarial method in all other cases, if the contract were prepaid in full on the payment date immediately preceding final originally scheduled maturity.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73; am. Register, July, 1983, No. 331, eff. 8–1–83; am. Register, February, 1993, No. 446, eff. 3–1–93.

DFI–Bkg 80.30 Notice of non–performance. Written notice of non–performance by a customer pursuant to s. 422.207, Stats., shall be by personal delivery of such notice to the customer or by mailing such notice by regular, registered or certified mail to the customer's last known address. Where notice is by mail, notice shall be deemed given on the day of mailing. Unless otherwise demonstrated by either party a period of 10 days exclusive of the date on which notice is deemed given shall be presumptively a reasonable time within which to perform.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.301 Rebate on prepayment; irregular instalment amounts or due dates. The unearned portion of the precomputed finance charge on consumer credit transactions described in s. 422.209 (3), Stats., having terms of less than 37 months in which the amount financed is less than $5000 and entered into on or after August 1, 1987 shall be computed in accordance with the provisions of s. 138.05 (2) (b), Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73; am. Register, February, 1993, No. 446, eff. 3–1–93.

DFI–Bkg 80.311 General requirements and provisions; consummation. For the purpose of disclosing all information required by subch. III of ch. 422, Stats., a transaction shall be considered consummated at the time a contractual relationship is created between a merchant and a customer irrespective of the time of performance of either party.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.32 Disclosure customer copies. For purposes of s. 422.302 (3), Stats., documents which evidence the customer's obligation shall include documents which evidence an obligation to pay as well as those which evidence an obligation to perform including, but not limited to, a mortgage and a security agreement.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.321 Form requirements other than open–end—set off. As a condition to the exercise of a right of set off a merchant shall in accordance with s. 422.302, Stats., conspicuously disclose his or her right to apply any amounts owed by the merchant to the customer against any amounts owed by the customer to the merchant. No merchant shall exercise a right to set off prior to giving the customer notice of his or her right to cure any default, if applicable, and waiting the appropriate number of days in accordance with s. 425.105, Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73; corrections made under s. 13.93 (2m) (b) 5. and 7., Stats., Register, December, 1991, No. 432.

DFI–Bkg 80.331 Form requirements other than open–end—microfilm copies. A creditor may retain copies of documents as required by s. 422.303 (5), Stats., by microfilm or other similar photographic process provided such creditor is able to reproduce individual permanent photo copies which retain substantially the same print size as the original document.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.34 Prohibition of blank writings. 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. Pursuant to s. 422.304, Stats., a general clause or statement in a contract to the effect that spaces which are not filled in are inapplicable to the particular transactions does not satisfy the requirement of this section and may not be relied upon by the creditor.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.341 Notice to obligors. In addition to the language required by s. 422.305 (1), Stats., a merchant may include within the explanation of personal obligation a form number, the date of execution, instructions for completion, and a union printing label. Paragraph (a) of the explanation may provide that the obligation of the person signing it includes all extensions, renewals or deferrals of the particular transaction in which there is no advance of or increase in the amount of the principal or increase in the rate of finance charge.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73; am. Register, October, 1980, No. 298, eff. 11–1–80.

DFI–Bkg 80.35 Notice to obligors; open–end accounts. In cases where a person assumes liability on an open–end account, paragraph (a) of the Explanation of Personal Obligation under s. 422.305, Stats., shall be modified to read as follows: "(a) You have agreed to pay amounts owing or to be owing in the future as a result of charges made by . . . (name of customer) on his or her charge account with . . . (name of creditor) in an amount not exceeding $ _____." Paragraph (b) of the Explanation must contain the following statement: "If you wish to terminate your guarantee with respect to future transactions, you must notify . . . (name of creditor) in writing." An explanation of the form described in this rule will satisfy the requirements of s. 422.305, Stats., and no further notice or Explanation of Personal Obligation need be given the person with respect to subsequent individual purchases or loans on the account. However, in case of any subsequent change in the terms of the account which would increase or extend the contingent liability of the person, where the merchant was authorized to make unilateral changes from time to time under the original terms of the account, an explanation of such change must be given to the person in accordance with s. 422.415, Stats. Such notice shall conspicuously disclose that if the person

wishes to terminate the guarantee with respect to future transactions, the person must notify the creditor in writing.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73; am., Register, October, 1980, No. 298, eff. 11-1-80.

DFI-Bkg 80.351 Customer liability; open-end credit. In order to obligate a person for an obligation arising out of an open-end credit plan, the merchant must pursuant to s. 422.305, Stats., obtain the signature of that person on the writing evidencing the consumer credit transaction. Compliance with this rule requires that the customer to be held contractually liable sign one of the following:

(1) An open-end credit agreement setting forth all of the terms of the open-end credit plan including the credit disclosures required by s. 422.301, Stats.,

(2) A credit application which expressly states that each person signing the application will be obligated according to the terms of the open-end credit agreement referred to in sub. (1), provided the creditor mails or delivers to each customer who signs the application a copy of the open-end credit agreement before that customer makes any charges on the account, or

(3) A transaction receipt which expressly states that each person signing the receipt will be obligated according to the terms of the open-end credit agreement referred to in sub. (1), provided the creditor has mailed or delivered a copy of the open-end credit agreement to that customer before that customer makes any charges on the account.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73; r. and recr., Register, October, 1980, No. 298, eff. 11-1-80.

DFI-Bkg 80.352 Receipts; accounting; evidence of payment; release of any security interest. The creditor may satisfy an obligation to release any security interest under s. 422.306 (4), Stats., by either 1) recording the necessary instrument and forwarding the same to the customer or designee by mail or by return on the instrument or 2) by delivering the necessary instrument fully completed and executed to the customer's designee, but in no instance to the customer, for recording. The recording or filing fee may be treated as an official fee within the meaning of s. 421.301 (26), Stats. Where the transaction is secured by a lien on a motor vehicle and the title is not in the possession of the creditor, the creditor may satisfy the requirements of this subsection by mailing a completed release of lien to the customer together with an envelope addressed to the department of motor vehicles, bureau of vehicle registration, postage prepaid, and a letter of instruction advising the customer to forward the release and title to the department to obtain release of the secured party's interest.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73; corrections made under s. 13.93 (2m) (b) 5. and 7., Stats., Register, December, 1991, No. 432.

DFI-Bkg 80.353 Refund anticipation loan; before the customer enters into a refund anticipation loan. "Before the customer enters into a refund anticipation loan" as used in s. 422.310 (1) (intro.), Stats., means prior to the customer being asked to sign an application containing a loan agreement or a loan agreement where there is no application for a refund anticipation loan.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

DFI-Bkg 80.354 Refund anticipation loan; reasonable length of time to expect refund. The anticipated length of time called for in s. 422.310 (1) (f), Stats., in which the customer can reasonably expect to receive a tax refund shall be no more than 14 days.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

DFI-Bkg 80.355 Refund anticipation loan; estimated annual percentage rate. (1) For the purpose of s. 422.310 (1) (h), Stats., the requirement to disclose the estimated annual percentage rate shall be fulfilled by doing one of the following:

(a) Calculating the rate pursuant to 12 CFR 226.17 (c) (2) for the anticipated amount of the refund and the length of time within which it can reasonably be expected the tax refund will be received as a result of an electronically filed tax return as determined under s. DFI-Bkg 80.354.

(b) Distributing a chart titled "representative range of loan amounts" with headings for: total loan amount, amount financed, finance charge, estimated payment period, and annual percentage rate. The representative loan amounts shall be in $300 increments starting with $300 and ending with $3,000 and represent the anticipated refund amount.

(2) The disclosures shall be made in accordance with 12 CFR 226.18.

(3) For the purpose of calculating the annual percentage rate at the time the loan is actually made, the disclosure shall be based upon the actual amount of the loan and the length of time within which it can reasonably be expected the tax refund will be received as a result of the electronically filed tax return as determined under s. DFI-Bkg 80.354.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

DFI-Bkg 80.356 Refund anticipation loan; charges or fees for electronically filing an income tax return. For the purposes of s. 422.310 (1) (b) and (2), Stats., charges or fees assessed by a creditor, including a loan arranger, for checking tax return information, data entry of the tax return information, and costs of transmitting the tax return by computer modem are included in the charges and fees for electronically filing an income tax return.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

DFI-Bkg 80.36 Receipts; accounting; evidence of payment; customer inquiries. Should a customer or an authorized representative question in writing any bill or statement of a merchant, or of an assignee where notice of assignment pursuant to s. 422.409, Stats., has been given, such merchant or assignee shall in accordance with s. 422.306, Stats., respond specifically to the issue or dispute raised by the customer within 30 days of receipt of such inquiry, or, in the case of transactions evidenced by open-end credit plans not later than 2 complete billing cycles (in no event more than 90 days) from receipt of such inquiry. Inquiries made on an instrument of payment of [or] the returnable portion of the billing statement need not be acknowledged if the creditor conspicuously discloses this requirement on the statement or other disclosure to customers regarding the correction of billing errors. A reasonably disputed debt under s. 427.104 (1) (f), Stats., shall include an indebtedness questioned under this rule from the date of notice to the merchant to the date the merchant's response is made.

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73; am., Register, October, 1980, No. 298, eff. 11-1-80.

DFI-Bkg 80.361 Assignment of earnings prohibited; revocation. In any case where a merchant takes an assignment of earnings subject to s. 422.404, Stats., for payment or as security for payment of an obligation the assignment shall contain on its face a statement in substantially the following language: "THE CUSTOMER MAY TERMINATE THIS ASSIGNMENT AT ANY TIME WITHOUT PENALTY."

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

DFI-Bkg 80.37 Notice of assignment; joint obligor customers. Where a consumer credit transaction involves joint obligor customers, one copy of a Notice of Assignment as described in s. 422.409, Stats., may be forwarded to all such customers who reside at the same last known address at the time the notice is given, if addressed to all such joint obligor customers. In all other cases a separate notice must be sent to each joint obligor

customer. The same procedure shall be observed with respect to giving the following notices under the act: Notice of unilateral deferral, s. 422.204 (8), Stats.; Notice of non–performance, s. 422.207 (1), Stats.; Notice of right to cancel, s. 423.203, Stats.; Notice to cancel property insurance, s. 424.303 (1), Stats.; Notice of right to cure default, s. 425.104 (1), Stats.; the distribution of open–end credit agreements to potential customers pursuant to s. DFI–Bkg 80.351.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73; am. Register, October, 1980, No. 298, eff. 11–1–80.

DFI–Bkg 80.371 Notice of assignment; address of customer. The notification of assignment under s. 422.409, Stats., shall be addressed to the last address furnished by any customer to the assignor if such address is different from the address contained in the contract. The same procedure shall be observed with respect to giving the following notices under the act: Notice of unilateral deferral, s. 422.204 (8), Stats.; Notice of nonperformance, s. 422.207 (1), Stats.; Notice of right to cancel, s. 423.203, Stats.; Notice to cancel property insurance, s. 424.303 (1), Stats.; Notice of right to cure default, s. 425.104 (1), Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.38 Restriction on liability in consumer lease. A reasonable charge for excess mileage in the case of a motor vehicle lease as established by reasonable standards of the industry as observed in the relevant market area with respect to the mileage and the rate per mile shall be considered a charge for damages to the leased property within the meaning of s. 422.412, Stats., provided that the mileage allowance and the charge per excess mile shall be conspicuously stated in the original lease agreement.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.391 Restrictions on security interest; proceeds. A security interest with respect to a consumer credit sale as described in s. 422.417 (1), Stats., may include repair or replacement parts in the property sold as well as proceeds of the property subject to s. 409.306, Stats., regarding proceeds.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.392 Waivers prohibited; dwelling. For the purposes of s. 422.419 (1) (a), Stats., the term "dwelling" shall include, any garage, shed, barn or other building on the premises whether attached or unattached.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.44 Consumer approval transaction; duty of customer. In any case where a customer gives notice of cancellation and the merchant fails to perform the merchant's obligation pursuant to s. 423.204, Stats., the duty of the customer under s. 423.205, Stats., to take reasonable care of the goods in the customer's possession shall cease 40 days after notice of cancellation is given.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73; am., Register, October, 1980, No. 298, eff. 11–1–80.

DFI–Bkg 80.61 Cure of default; commencing legal action. The phrase"commence any action" as used in s. 425.105 (1), Stats., refers only to the commencement of legal proceedings in a court of law.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.62 Cure of default; date of notice and tender. For the purposes of s. 425.105 (2), Stats., notice of the customer's right to cure a default is deemed given on the date of mailing and the date of tender of performance shall be the date of mailing or personally delivering the amount of all unpaid instalments, deferral and delinquency charges which are due and unpaid.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.63 Exempt property; garnishee summons. In order to assist each employer in determining and applying the applicable wage exemption standard, in the case of any garnishment involving a consumer credit transaction governed by s. 425.106, Stats., the garnishee summons should bear the legend "Consumer Credit Transaction Garnishee Summons"placed opposite the identification of parties in the legend and the last paragraph of the form set forth in s. 812.04 (2), Stats., should be modified to conform with the requirements of s. 425.106 (1) (a), Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73; am. Register, October, 1980, No. 298, eff. 11–1–80.

DFI–Bkg 80.64 Exempt property; medical services. For the purposes of s. 425.106, Stats., the term "medical services" shall include the cost of hospital accommodations.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.65 Exempt property; wages. Where an employee's pay period is one calendar week or less, the exempt wage under s. 425.106 (1) (a) 2., Stats., shall be equal to the exemption for an employee with the same number of exemptions paid on a calendar week basis as determined by the formula in this section regardless of the number of hours actually worked by the employee during such pay period. Where the employee's pay period is a multiple of whole calendar weeks (for example where the pay period is every 2 weeks, 3 weeks, or 4 weeks) the exempt wage is equal to the weekly rate determined by the formula in this subsection times the number of calendar weeks in such pay period. Where an employee's pay period is greater than one calendar week and is other than a multiple of whole calendar weeks (for example where the pay period is every 10 days, 15 days, or semi–monthly) the exempt wage is equal to the sum of the exemption for each calendar week plus an amount equal to one–seventh of the weekly rate for such employee for each additional day in such pay period.

Note: Section 425.106 (1) (a) was repealed and recreated by 1993 Wis. Act 80. There is no sub. (1) (a) 2.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.655 Exempt property; subsistence allowance. The term "unpaid earnings" in s. 425.106 (1) (a), Stats., means the customer's earnings remaining after all deductions required by law to be withheld. If the subsistence allowance described in s. 425.106 (1) (a) 1., Stats., is greater than the allowance described in s. 425.106 (1) (a) 2., Stats., less all deductions required by law to be withheld, the customer is entitled to the exemption described in s. 425.106 (1) (a) 1., Stats.

Note: Section 425.106 (1) (a) was repealed and recreated by 1993 Wis. Act 80. There is no sub. (1) (a) 1. and 2.

History: Cr. Register, October, 1980, No. 298, eff. 11–1–80.

DFI–Bkg 80.66 Body attachments. The term "warrant" as used in s. 425.113, Stats., refers to warrants issued pursuant to s. 816.05, Stats., and does not limit or effect the power of a court to issue an order or attachment pursuant to s. 816.03, Stats., where a person has failed to appear at a supplemental examination.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73; am., Register, October, 1980, No. 298, eff. 11–1–80; am. Register, July, 1983, No. 331, eff. 8–1–83.

DFI–Bkg 80.67 Voluntary surrender of collateral. Pursuant to s. 425.204, Stats., a creditor may notify a customer of his or her right to voluntarily surrender the collateral. Such a notice will not be considered a request or demand pursuant to s. 425.204 (3), Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73; corrections made under s. 13.93 (2m) (b) 5. and 7., Stats., Register, December, 1991, No. 432.

DFI–Bkg 80.68 Nonjudicial enforcement limited; surrender of collateral. Where a merchant requests or demands the return of collateral, after providing the customer with notice of default and opportunity to cure as required by s. 425.105, Stats., a release of the collateral by the customer is not a surrender

under ss. 425.204 (3), and 425.206 (1) (a), Stats., if the merchant; 1) fails to provide a notice to the customer which clearly informs the customer of the right to a hearing on the issue of default before any repossession; 2) misrepresents any material fact or state of the law to the customer; or 3) violates any provision of ch. 427, Stats. The notice contained in s. 425.105 (1), Stats., is not required if the collateral has been abandoned by the customer.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73; am. Register, October, 1980, No. 298, eff. 11–1–80; am. Register, July, 1983, No. 331, eff. 8–1–83; correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1993, No. 449.

DFI–Bkg 80.69 Restrictions on deficiency judgments; amount owing. The phrase "amount owing at the time of default" as used in s. 425.209, Stats., shall mean the unpaid balance of the account excluding any unearned finance or additional charges but including any unpaid deferral or deficiency charges.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.70 Restrictions on deficiency judgments; repossession. For purposes of s. 425.209, Stats., the term "repossession" shall include action to recover collateral pursuant to s. 425.205, Stats., and possession of the collateral as a result of a surrender of the collateral as described in ss. 425.204 (3) and 425.206 (1) (a), Stats., where such surrender is not a voluntary surrender.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.71 Restrictions on deficiency judgments; renouncing rights in collateral. Prior to obtaining the statement of a customer renouncing rights in the collateral pursuant to s. 425.209 (2), Stats., the merchant shall notify the customer by written notice that by signing the statement the customer waives all rights to recover any surplus that may result from the sale of the collateral.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.80 Investigatory powers; merchant's records. Merchants shall maintain copies of records of all consumer transactions subject to the act and all advertisements, printings, displays, publications or distributions the terms of which relate to the extension of consumer credit in order to permit an investigation pursuant to s. 426.106, Stats., for a period not less than that during which a customer may bring an action with respect to such transaction or advertisement as limited by s. 425.307, Stats.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.81 Powers of administrator; penalty. The term "penalty" as used in s. 426.104 (4) (a), Stats., is limited to those statutory penalties referred to in ss. 425.302 (1) (a), 425.303 (1), 425.304 (1), 425.305 (1) and 426.301, Stats., and does not preclude a customer from obtaining judgment for actual damages sustained.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73.

DFI–Bkg 80.82 Powers of administrator; submission for approval. Acts, practices or procedures provided to the administrator pursuant to s. 426.104 (4) (b), Stats., shall be submitted as follows:

(1) The submission shall be typed or mechanically reproduced.

(2) The submission shall include an original and 3 copies submitted by personal delivery, registered mail or certified mail return receipt requested;

(3) The submission of a form to replace a previously submitted form shall denote all changes from the previously submitted form to be approved by underlining or setting forth in a conspicuous manner those changes on the submitted forms;

(4) The submitted form shall be accompanied by a cover letter explaining the purpose for the form and any changes from a previously submitted form to be approved.

History: Cr. Register, June, 1973, No. 210, eff. 7–1–73; r. and recr. Register, July, 1994, No. 463, eff. 8–1–94.

DFI–Bkg 80.85 Discrimination on the basis of sex or marital status; unconscionable conduct. (1) DECLARATION OF POLICY. It is the declared policy of the state of Wisconsin that no person shall be discriminated against in the granting or extension of any form of credit, or in the capacity or privilege of obtaining any form of credit, on the basis of the applicant's sex or marital status. Such discrimination is hereby declared by the secretary of the department of financial institutions to be unconscionable conduct under authority of s. 426.108, Stats. The purpose of this rule is to eliminate discrimination in the granting of consumer credit on the basis of sex or marital status and to outline steps by which merchants can avoid such unlawful conduct. This regulation shall not apply to merchants chartered by any Wisconsin administrative agency which issues a regulation prohibiting discrimination in the granting of consumer credit on the basis of sex or marital status.

(2) UNCONSCIONABLE CONDUCT. Discrimination in the extension of consumer credit by a merchant to a customer on the basis of the sex or marital status of the customer shall be an unconscionable credit practice prohibited pursuant to s. 426.108, Stats. Discrimination in the extension of consumer credit on the basis of the customer's sex or marital status shall mean any denial of credit, increase in the charge for credit, restriction on the amount or use of credit, a different application procedure or the application of different credit criteria based on the customer's sex or marital status and shall include, but not be limited to:

(a) The application of different credit criteria resulting in less favorable treatment in the granting of credit to women,

(b) A requirement that a customer who is contractually liable reapply for credit upon a change in name or marital status or a termination of credit to a customer who is contractually liable following a change in the customer's name or marital status without evidence of an unfavorable change in the customer's credit worthiness,

(c) A refusal to grant credit to a qualified customer in that person's birth–given first name and surname or a birth–given first name and a combined surname,

(d) A requirement that a spouse co–sign the credit application, debt instrument, or other document signed by the applicant spouse unless such signature is required by statute or such requirement is imposed without regard to sex or marital status on all similarly qualified customers who apply for a similar type and amount of credit except that with respect to secured credit the signature of a spouse on a document necessary to create a valid lien, convey clear title or waive inchoate or survivorship rights to property, may be required where the merchant's standards of credit worthiness require without regard to the applicant's sex or marital status security or collateral as a condition of the extension of credit in the amount requested,

(e) To evaluate any source of income including maintenance, alimony and child support on any basis other than its amount, its regularity and the period of receipt as of the date of the application together with any particular factors affecting the likelihood of continued payment, and

(f) Requesting information about birth control practices or child bearing intentions or capability of any customer or customer's spouse.

(3) WRITTEN CREDIT POLICY. The management of each financial organization as defined in s. 71.04 (8) (a), Stats., each person or organization licensed under s. 138.09, Stats., and each credit card issuer shall adopt a detailed statement of its policy of nondiscrimination in extending consumer credit including its commit-

ment to avoid the specific prohibited practices set forth in this regulation. This statement of policy shall be available to any customer upon request at each office where extensions of credit are made, except that in the case of credit card issuers, the statement shall be furnished upon request of an applicant directed to any office from which such cards are issued. A copy of such policy statement shall be filed with the office of the secretary of the department of financial institutions upon request by that office. Such written policy shall be applied impartially to each person seeking credit.

(4) NOTICE OF ACTION AND RETENTION OF RECORDS. Each merchant shall within a reasonable time after receiving a credit application notify the customer of action taken on the application and shall upon request provide a customer whose application has been denied with the reasons for such denial, including the fact that information supplied by the customer cannot be verified if that is the case. A record of all reasons for denial or a record of the denial form number and each alternative therein applied to the customer along with the credit application and all other related documentation shall be retained by the merchant in reasonable order accessible by reference to the name of the customer, for a period of 15 months from the date of notice of action on each credit application.

History: Cr. Register, January, 1976, No. 241, eff. 2–1–76; correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1993, No. 449.

DFI–Bkg 80.86 Unsolicited credit cards; unconscionable conduct. It is an unconscionable credit practice, pursuant to s. 426.108, Stats., for any credit grantor to issue a credit card in the name of any person under terms which purport to create the contractual liability of that person in any manner inconsistent with s. DFI–Bkg 80.351 unless the person to be held liable personally requested the creditor to issue the card and open the account.

History: Cr. Register, October, 1980, No. 298, eff. 11–1–80.

DFI–Bkg 80.87 Sale of credit card numbers; unconscionable conduct. It is an unconscionable credit practice, pursuant to s. 426.108, Stats., for any person to sell the credit card account numbers of any other person to another for any purpose.

History: Cr. Register, February, 1993, No. 446, eff. 3–1–93.

DFI–Bkg 80.88 Auto brokering. Pursuant to s. 426.108, Stats., it is an unconscionable credit practice for any person, who is not a party or assignee of a party to the lease contract, instalment sales agreement or other security agreement, to assist in, cause, arrange or otherwise engage in an actual or purported transfer or assignment of a motor vehicle, where such transaction is not permitted under the terms of the lease contract, instalment sales agreement or other security agreement.

History: Cr. Register, February, 1993, No. 446, eff. 3–1–93.

DFI–Bkg 80.90 Registration fees. The registration fee required to be paid pursuant to s. 426.202 (1m), Stats., shall be 0.006% of the year–end balance, as defined in s. 426.202 (1m) (a) 3., Stats., except the fee shall not be less than $25 nor greater than $2,800.

History: Emerg. cr. eff. 12–3–01; CR 02–001: cr. Register April 2002 No. 556, eff. 5–1–02.

CHAPTER 421

CONSUMER TRANSACTIONS — GENERAL PROVISIONS AND DEFINITIONS

SUBCHAPTER I

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

421.101 Short title. Chapters 421 to 427 shall be known and may be cited as the Wisconsin consumer act.

History: 1971 c. 239.

421.102 Purposes; rules of construction. (1) Chapters 421 to 427 shall be liberally construed and applied to promote their underlying purposes and policies.

(2) The underlying purposes and policies of chs. 421 to 427 are:

(a) To simplify, clarify and modernize the law governing consumer transactions;

(b) To protect customers against unfair, deceptive, false, misleading and unconscionable practices by merchants;

(c) To permit and encourage the development of fair and economically sound consumer practices in consumer transactions; and

(d) To coordinate the regulation of consumer credit transactions with the policies of the federal consumer credit protection act.

(3) A reference to a provision of chs. 421 to 427 includes reference to a related rule or order of the administrator adopted under chs. 421 to 427.

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

Consumer act penalties are improper when the underlying contract is tainted with illegality. Shea v. Grafe, 88 Wis. 2d 538, 274 N.W.2d 670 (1979).

The consumer act may constitutionally regulate sales to residents by out−of−state mail order retailer. Aldens, Inc. v. LaFollette, 552 F.2d 745.

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

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

Protection for consumers against unfair and deceptive business. Jeffries, 57 MLR 559.

An overview of the Wisconsin consumer act. Stute, 1973 WBB No. 1.

Private enforcement of consumer laws in Wisconsin. Waxman. WBB May 1983.

Wisconsin consumer credit laws before and after the consumer act. Crandall, 1973 WLR 334.

Usury and the time−price differential. 1975 WLR 246.

Mandatory Arbitration of Consumer Rights Cases. Schneider & Quirk. Wis. Law. Sept. 2002.

421.103 Applicable law. (1) Unless superseded by the particular provisions of chs. 421 to 427, chs. 401 to 411 and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement chs. 421 to 427.

(2) Unless terms used in chs. 421 to 427 are defined by particular provisions of chs. 421 to 427, they shall have the meaning given them in chs. 401 to 411 and 429, if they are defined in chs. 401 to 411 and 429.

(3) Unless superseded by the particular provisions of chs. 421 to 427 parties to a consumer transaction have all of the obligations, duties, rights and remedies provided in chs. 401 to 411 which apply to the transaction.

(4) Chapters 421 to 427 shall not preempt the administration or enforcement of ch. 100. Conduct proscribed under s. 423.301, 426.108, 426.109 or 426.110 may also constitute violations of s. 100.18 or 100.20.

History: 1971 c. 239; 1979 c. 89, 177; 1991 a. 148, 304, 315; 1995 a. 329.

421.104 Construction against implied repeal. Chapters 421 to 427 being a general act intended as a unified coverage of the subject matter of such chapters, no part of chs. 421 to 427 shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

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

421.106 Settlement of claims; agreement to forego rights; waiver. (1) Except as otherwise provided in chs. 421 to 427, a customer may not waive or agree to forego rights or benefits under chs. 421 to 427.

(2) A claim by a customer against a merchant for an excess charge, other violation of chs. 421 to 427 or civil penalty, or a claim against a customer for default or breach of a duty imposed by chs. 421 to 427, if disputed in good faith, may be settled by agreement.

(3) A claim, whether or not disputed, against a customer may be settled for less value than the amount claimed.

(4) A settlement in which the customer waives or agrees to forego rights or benefits under chs. 421 to 427 is invalid if the court as a matter of law finds the settlement to be unconscionable at the time it was made. In this regard the court may consider the competence of the customer as measured by his or her education, ability to speak and read the language of the contract, and his or her prior consumer experience; any deception or coercion practiced upon the customer; the nature and extent of the legal advice received by the customer; and the value of the consideration.

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

421.107 Effect of chapters 421 to 427 on powers of organizations. (1) Except as specifically provided, chs. 421 to 427 prescribe maximum charges for all consumer credit transactions and displace existing limitations on the powers of creditors based on maximum charges.

(2) Except as specifically provided, with respect to sellers of goods or services, lessors of goods, small loan companies, licensed lenders, consumer and sales finance companies and commercial banks and trust companies, chs. 421 to 427 displace existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in sub. (1), chs. 421 to 427 do not displace limitations on powers of credit unions, savings banks, sav-

ings and loan associations or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subs. (1) and (2), chs. 421 to 427 do not displace:

(a) Limitations on powers of supervised financial organizations (s. 421.301 (43)), with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land or other similar restrictions designed to protect deposits; or

(b) Limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

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

421.108 Obligation of good faith. Every agreement or duty within chs. 421 to 427 imposes an obligation of good faith in its performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

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

SUBCHAPTER II

SCOPE AND JURISDICTION

421.201 Territorial application. (1) Except as otherwise provided in this section, chs. 421 to 427 apply to consumer transactions made in this state and to modifications including refinancings, consolidations and deferrals, made in this state, of consumer credit transactions wherever made.

(2) For the purposes of chs. 421 to 427, a consumer transaction or modification of a consumer transaction is made in this state if:

(a) A writing signed by the customer and evidencing the obligation or an offer of the customer is received by the merchant in this state; or

(b) The merchant induces the customer who is a resident of this state to enter into the transaction by face–to–face solicitation or by mail or telephone solicitation directed to the particular customer in this state.

(3) With respect to a transaction pursuant to an open–end credit plan, chs. 421 to 427 apply if the customer is a resident of this state and the open–end creditor or a merchant honoring a credit card issued by the open–end creditor, is a resident of this state or furnishes, mails or delivers the goods, services or credit to a resident of this state while the customer is within this state or receives a writing signed by the customer and evidencing the transaction in this state.

(4) Chapter 427 applies to any debt collection activity in this state, including debt collection by means of mail or telephone communications directed to customers in this state.

(5) Subchapters I and II of ch. 425, relating to creditors' remedies, including applicable penalties, apply to actions or other proceedings brought in this state to enforce rights arising from consumer transactions or extortionate extensions of credit, wherever made, but conduct, action or proceedings to recover collateral or goods subject to a motor vehicle consumer lease shall be governed by the law of the state where the collateral or goods subject to a motor vehicle consumer lease are located at the time of recovery unless the collateral or goods subject to a motor vehicle consumer lease are owned by a Wisconsin resident, who has removed the collateral or goods from this state only for purposes of transportation to or use in the resident's employment or for temporary periods which do not exceed 15 days.

(6) If a consumer transaction, or modification thereof, is made in another state with a customer who is a resident of this state when the transaction or modification is made, the following provisions apply as though the transaction occurred in this state:

(a) A creditor, or assignee of the creditor's rights, may collect through actions or other proceedings charges only to the extent permitted by ch. 422; and

(b) A merchant may not enforce rights against the customer to the extent that the provisions of the agreement violate subch. IV of ch. 422 or ch. 423.

(7) Except as provided in sub. (4) or (5), a consumer transaction or modification thereof, made in another state with a customer who was not a resident of this state when the consumer transaction or modification was made, is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(8) For the purposes of chs. 421 to 427, the residence of a customer is the address given by the customer as his or her residence in any writing signed by the customer in connection with a consumer transaction. The given address is presumed to be unchanged until the merchant knows or has reason to know of a new or different address.

(9) Notwithstanding other provisions of this section:

(a) Except as provided in sub. (4) or (5), chs. 421 to 427 do not apply if the customer is not a resident of this state at the time of a consumer transaction and the parties then agree that the law of his or her residence applies; and

(b) Chapters 421 to 427 apply if the customer is a resident of this state at the time of a consumer transaction and the parties then agree that the law of this state applies.

(10) Except as provided in sub. (9), the following terms of a writing executed by a customer are invalid with respect to consumer transactions, or modifications thereof, to which chs. 421 to 427 apply:

(a) That the law of another state shall apply;

(b) That the customer consents to the jurisdiction of another state; and

(c) That fixes venue.

History: 1971 c. 239; 1975 c. 407, 421; 1979 c. 89; 1991 a. 316; 1995 a. 329.

Notwithstanding sub. (5), s. 425.206 governed repossession outside of the state when a contract provided for enforcement under the "internal law" of Wisconsin. First Wisconsin National Bank of Madison v. Nicolaou, 85 Wis. 2d 393, 270 N.W.2d 582 (Ct. App. 1978).

A corporation that repossessed the vehicle outside of the state was not subject to the Wisconsin police power. Patrin v. Chrysler Credit Corp. 530 F. Supp. 736 (1982).

421.202 Exclusions. Chapters 421 to 427 do not apply to:

(1) Extensions of credit to organizations (s. 421.301 (28));

(2) Transactions in which all parties are organizations (s. 421.301 (28));

(3) Charges for delayed payment and any discount allowed for early payment in transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates such charges or discounts, or if such charges or discounts are made in connection with the furnishing of electric service by an electric cooperative organized and operating on a nonprofit basis under ch. 185;

(4) The ceilings on rates and charges of a licensed pawnbroker if these ceilings are established by statute or ordinance;

(5) The sale of insurance by an insurer, except as otherwise provided in ch. 424;

(6) Consumer credit transactions in which the amount financed exceeds $25,000, motor vehicle consumer leases in which the total lease obligation exceeds $25,000 or other consumer transactions in which the cash price exceeds $25,000;

(7) Transactions subject to ch. 428;

(8) Transactions in securities accounts or securities transactions by or with a broker–dealer, as defined in s. 551.02 (3), licensed under ch. 551; or

(9) Leases of motor vehicles that are not motor vehicle consumer leases under s. 421.301 (25m).

(10) Transactions that are primarily for an agricultural purpose, except that this subsection does not exclude transactions that are primarily for an agricultural purpose from ch. 427 and except that this subsection does not exclude credit transactions that are primarily for an agricultural purpose from s. 422.210.

History: 1971 c. 239; 1973 c. 18; 1975 c. 207; 1979 c. 89; 1995 a. 329; 1997 a. 302.

Consumer leases are subject to the exclusionary provision of sub. (6). "Amount financed" means the purchase price or cash price for property leased. American Industrial Leasing Co. v. Geiger, 118 Wis. 2d 140, 345 N.W.2d 527 (Ct. App. 1984).

421.203 Partial exclusion for governmentally insured or guaranteed transactions. **(1)** Consumer credit transactions, not governed by ch. 428, which are made, insured or guaranteed by the federal government or any agency thereof, or by any federal instrumentality chartered under the federal farm credit act of 1971 (P.L. 92−181; 85 stats. 583; 12 USC 2001 et seq.), or by the department of veterans affairs shall be subject to only those provisions set forth in sub. (2).

(2) This chapter, ss. 422.203 (2), 422.305, 422.306, 422.404, 422.406 to 422.409, 422.411, 422.417 and 422.418, ch. 425 except ss. 425.103 to 425.105, and chs. 426 and 427.

History: 1973 c. 18; 1979 c. 10; 1997 a. 302; 2005 a. 22.

SUBCHAPTER III

DEFINITIONS

421.301 General definitions. In addition to definitions appearing in chs. 422 to 427, in chs. 421 to 427:

(1) "Actuarial method" means the method, defined by rules adopted by the administrator, of allocating payments made on a debt between amount financed and finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed.

(2) "Administrator" means the administrator designated in s. 426.103.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. Sections 402.202 and 411.202 and any other provisions on parol or extrinsic evidence shall be inoperative to exclude or limit the admissibility of evidence relating to agreements governed by chs. 421 to 427.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a person, other than an organization, which cultivates, plants, propagates or nurtures those agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(5) "Amount financed" in a consumer credit transaction means the total of the following items from which any prepaid finance charge or required deposit balance has been excluded:

(a) In a consumer credit sale, the cash price of the real or personal property or services, less the amount of any down payment whether made in cash or in property traded in, or, in a consumer loan, the amount paid to, receivable by or paid or payable to the customer or to another person in the customer's behalf;

(b) In a consumer credit sale, the amount actually paid or to be paid by the creditor pursuant to an agreement with the customer to discharge a security interest in or a lien on property traded in; and

(c) To the extent not included in par. (a) or (b):

1. Any applicable sales, use, excise or documentary stamp taxes;

2. Amounts actually paid or to be paid by the creditor for registration, certificate of title or license fees; and

3. Additional charges permitted by s. 422.202.

(6) "Business day" means any calendar day except Saturday and Sunday, and except the following business holidays: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving and Christmas.

(7) "Cash price" means the price at which property or services are offered, in the ordinary course of business, for sale for cash, and may include:

(a) The cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications and improvements; and

(b) Taxes, to the extent imposed on the cash sale.

(8) "Conspicuous" means that the term or clause is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

(9) "Consumer credit sale" means a sale of goods, services or an interest in land to a customer on credit where the debt is payable in installments or a finance charge is imposed and includes any agreement in the form of a bailment of goods or lease of goods or real property if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods or real property involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods or real property upon full compliance with the terms of the agreement.

(10) "Consumer credit transaction" means a consumer transaction between a merchant and a customer in which real or personal property, services or money is acquired on credit and the customer's obligation is payable in installments or for which credit a finance charge is or may be imposed, whether such transaction is pursuant to an open−end credit plan or is a transaction involving other than open−end credit. The term includes consumer credit sales, consumer loans, consumer leases and transactions pursuant to open−end credit plans.

(11) "Consumer lease" means a lease of goods which a merchant makes to a customer for a term exceeding 4 months.

Cross Reference: See also s. DFI−Bkg 80.05, Wis. adm. code.

(12) "Consumer loan" means a loan made by a lender to a customer which is payable in installments or for which a finance charge is or may be imposed, and includes transactions pursuant to an open−end credit plan other than a seller credit card.

(13) "Consumer transaction" means a transaction in which one or more of the parties is a customer for purposes of that transaction.

(14) "Credit" means the right granted by a creditor to a customer to defer payment of debt, to incur debt and defer its payment or to purchase goods, services or interests in land on a time price basis.

(15) "Credit card" means any card, plate, merchandise certificate, letter of credit, coupon book or other like credit device existing for the purpose of obtaining money, property, labor or services on credit pursuant to an open−end credit plan.

(16) "Creditor" means a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by or procuring consumer credit from 3rd persons.

(17) "Customer" means a person other than an organization (s. 421.301 (28)) who seeks or acquires real or personal property, services, money or credit for personal, family or household purposes or, for purposes of ch. 427 only, for agricultural purposes. A person other than a customer may agree to be governed by chs. 421 to 427 with respect to all aspects of a transaction and in such

event such person shall be deemed a customer for all purposes of chs. 421 to 427 with respect to such transaction.

Cross Reference: See also s. DFI–Bkg 80.06, Wis. adm. code.

(18) "Earnings" means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program. "Earnings" does not include renewal commissions payable to a licensed insurance agent.

(19) "Federal consumer credit protection act" means the consumer credit protection act (P.L. 90–321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that act.

(20) "Finance charge" means the sum of all charges, payable directly or indirectly by the customer as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the creditor or any other person on behalf of the customer to the creditor or to a 3rd party unless the creditor had no notice or knowledge of the charges paid or payable to the 3rd party. The term does not include any charge with respect to a motor vehicle consumer lease. The term includes the following types of charges to the extent they are not permitted additional charges under s. 422.202, delinquency charges under s. 422.203 or deferral charges under s. 422.204:

(a) Interest, time price differential and any amount payable under a discount or other system of additional charges;

(b) Service, transaction, activity or carrying charge;

(c) Loan fee, points, finder's fee or similar charge;

(d) Fee for an appraisal, investigation or credit report;

(e) Any charge imposed by a creditor upon another creditor for purchasing or accepting an obligation of a customer if the customer is required to pay any part of that charge in cash, as an addition to the obligation or as a deduction from the proceeds of the obligation;

(f) Premium or other charge for guarantee or insurance protecting the creditor against the customer's default or other credit loss;

(g) Charges or premiums for credit life, accident or health insurance, written in connection with any consumer credit transaction to the extent they are not permitted as additional charges under s. 422.202;

(h) Charges or premiums for insurance, written in connection with any action against loss of or damage to property or against liability arising out of the ownership or use of property to the extent they are not permitted as additional charges under s. 422.202; and

(i) Refund anticipation loan fees.

Cross Reference: See also s. DFI–Bkg 80.07, Wis. adm. code.

(21) "Goods" has the meaning given in s. 409.102 (1) (ks) and includes goods not in existence at the time the transaction is entered into and goods which are or are to become fixtures.

(22) "Lender" means a merchant regularly engaged in the business of making consumer loans.

(23) "Loan" includes:

(a) The creation of debt by the lender's payment of or agreement to pay money to the customer or to a 3rd party for the account of the customer;

(b) The creation of debt by a credit to an account with the lender upon which the customer is entitled to draw immediately;

(c) The creation of debt pursuant to a credit card or similar arrangement other than pursuant to a seller credit card;

(d) The forbearance by a lender of debt arising from a loan.

(24) "Merchandise certificate" means a writing issued by a seller not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(25) "Merchant" means a person who regularly advertises, distributes, offers, supplies or deals in real or personal property, services, money or credit in a manner which directly or indirectly results in or is intended or designed to result in, lead to or induce a consumer transaction. The term includes but is not limited to a seller, lessor, manufacturer, creditor, arranger of credit and any assignee of or successor to such person. The term also includes a person who by his or her occupation holds himself or herself out as having knowledge or skill peculiar to such practices or to whom such knowledge or skill may be attributed by his or her employment as an agent, broker or other intermediary.

(25m) "Motor vehicle consumer lease" has the meaning given for "consumer lease" in s. 429.104 (9).

(26) "Official fees" means:

(a) Fees and charges which actually are or actually will be paid for determining the existence of or for perfecting a security interest related to a consumer credit transaction to the extent that such fees and charges do not exceed those fees and charges prescribed by law for payment to public officials; and

(b) Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the consumer credit transaction, if the premium does not exceed the amount payable to the insurer and the fees and charges described in par. (a) which would otherwise be payable.

(27) (a) "Open–end credit plan" means consumer credit extended on an account pursuant to a plan under which:

1. The creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check or other device, as the plan may provide;

2. The customer has the privilege of paying the balance in full or in installments;

3. A finance charge may be computed by the creditor from time to time on an outstanding unpaid balance; and

4. The creditor has treated the transaction as open–end consumer credit for purposes of any disclosures required under the federal consumer credit protection act.

(b) The term does not include negotiated advances under an open–end real estate mortgage or a letter of credit.

(c) A credit plan shall not be considered an open–end credit plan, even though it meets the criteria listed in par. (a) 1., 2. and 3., if the creditor treats the transaction as other than open–end credit for each extension of credit for purposes of any disclosures required under the federal consumer credit protection act.

(28) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, limited liability company, partnership, cooperative or association other than a cooperative organized under ch. 185 which has gross annual revenues not exceeding $5 million.

(29) "Other than open–end credit" means consumer credit other than an open–end credit plan itself, or other than consumer credit transactions pursuant to an open–end credit plan, and includes precomputed transactions.

(30) "Payable in installments" means that payment is required or permitted by agreement to be made in:

(a) Two or more installments, excluding the down payment in a consumer credit sale, with respect to an obligation arising from a consumer credit transaction for which a finance charge is or may be imposed;

(b) More than 4 installments, excluding the down payment in a consumer credit sale, in any other consumer credit transaction; or

(c) Two or more installments if any installment other than the down payment is more than twice the amount of any other installment, excluding the down payment.

(31) "Person" includes a natural person, and an organization.

(32) "Person related to" with respect to a natural person means:

(a) The spouse of the natural person;

(b) A brother, brother−in−law, sister, sister−in−law of the natural person;

(c) An ancestor or lineal descendant, by blood or adoption, of the natural person or that person's spouse; and

(d) Any other relative, by blood, marriage or adoption, of the natural person or that person's spouse who shares the same home with the natural person.

(33) "Person related to" with respect to an organization means:

(a) A person directly or indirectly controlling the organization, controlled by the organization or, who together with the organization, is under common control;

(b) An officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) The spouse of a natural person related to the organization; and

(d) A relative by blood, marriage or adoption of a person related to the organization who shares the same home with that person.

(34) "Personal property" includes but is not limited to goods.

(35) "Precomputed" with respect to a consumer credit transaction means a consumer credit transaction, other than a motor vehicle consumer lease, in which debt is expressed as a single sum comprised of the amount financed and the finance charge computed in advance.

(36) "Prepaid finance charge" means any finance charge paid separately, in cash or otherwise, directly or indirectly to the creditor or with the creditor's knowledge to another person or withheld by the creditor from the proceeds of the credit extended.

(37) "Presumed" or "presumption" means that the trier of the issue must find the existence of that which is presumed unless and until evidence is introduced which would support a contrary finding.

(37m) "Refund anticipation loan" means an agreement under which a creditor arranges to be repaid for a loan directly from the proceeds of a customer's income tax refund.

(37r) "Refund anticipation loan fees" include charges, fees or other consideration imposed by a creditor for making a refund anticipation loan. "Refund anticipation loan fees" does not include any charge, fee or other consideration usually imposed by the creditor in the ordinary course of business for nonloan services, such as fees for tax return preparation or fees for electronic filing of tax returns.

(38) "Required deposit balance" means any deposit balance or any investment which the creditor requires the customer to make, maintain or increase in a specified amount or proportion as a condition to the extension of credit except:

(a) Amounts paid into an escrow account which are permitted additional charges under s. 422.202;

(b) A deposit balance which will be wholly applied toward satisfaction of the customer's obligation in the transaction;

(c) A deposit balance or investment which was in existence prior to the extension of credit and which is offered by the customer as security for that extension of credit; and

(d) A deposit balance or investment which is acquired or established from the proceeds of an extension of credit made for that purpose, which the creditor does not require as a condition to the extension of credit, and which is acquired or established at the written request of the customer.

Cross Reference: See also s. DFI−Bkg 80.09, Wis. adm. code.

(39) "Sale of services" means furnishing or agreeing to furnish services and includes arranging to have services furnished by another.

(40) "Security interest" means a real property mortgage, deed of trust, seller's interest in real estate under a land contract, any interest in property which secures payment or performance of an obligation under ch. 409 or any other consensual or confessed lien whether or not recorded.

(41) "Seller credit card" means an arrangement pursuant to an open−end credit plan in which a person gives to a customer the privilege of using a credit card, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, a person related to that person or others licensed or franchised to do business under that person's business or trade name or designation.

(42) (a) "Services" includes:

1. Work, labor and other personal services;

2. Privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and

3. Insurance provided in connection with a consumer credit transaction.

(b) "Services" does not include any services of common carriers if the tariffs, rates, charges, costs or expenses of such common carriers are required by law to be filed with or approved by the federal government or any official, department, division, commission or agency of the United States.

(43) "Supervised financial organization" means a person:

(a) Organized, chartered or holding an authorization certificate under the laws of this state or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and

(b) Subject to supervision by an official or agency of this state or of the United States.

(43m) "Total lease obligation" means the sum of all of the following with respect to a motor vehicle consumer lease:

(a) All scheduled periodic payments under the lease.

(b) Capitalized cost reduction, as defined in s. 429.104 (6).

(44) "Transaction" means an agreement between 2 or more persons, whether or not the agreement is a contract enforceable by action, and includes the making of and the performance pursuant to that agreement.

History: 1971 c. 239; 1973 c. 3; 1975 c. 407; 1979 c. 10, 89; 1983 a. 7; 1991 a. 148, 316; 1993 a. 111, 112; 1995 a. 329; 1997 a. 302; 1999 a. 162; 2001 a. 10; 2005 a. 22.

A "rent−to−own" transaction was a consumer credit sale even though the customer was not contractually obligated to make installment payments. Palacios v. ABC TV & Stereo Rental, 123 Wis. 2d 79, 365 N.W.2d 882 (Ct. App. 1985).

An option to purchase at the conclusion of a lease for appliances at a price equal to 11% of the total lease payments was a consumer credit sale under sub. (9). Rent−a−Center, Inc. v. Hall, 181 Wis. 2d 244, 510 N.W.2d 789 (Ct. App. 1993).

If a lessor of personal property is bound for a period exceeding 4 months, a consumer lease under sub. (11) exists even though the lessee may exercise an option to purchase the leased goods less than 4 months after the beginning of the lease period. LeBakken Rent−to−Own v. Warnell, 223 Wis. 2d 582, 589 N.W.2d 425 (Ct. App. 1998), 98−1569.

To determine if an option price is nominal under sub. (9), a court may consider: 1) the relation of the option price to the item's fair market value, 2) the relation of the option price to the total rental price, 3) the relationship between the option price and the original price of the goods, or 4) whether the lessee has "any sensible alternative" to exercising the option. LeBakken Rent−to−Own v. Warnell, 223 Wis. 2d 582, 589 N.W.2d 425 (Ct. App. 1998), 98−1569.

An agreement necessary to establish that there is an obligation "payable in installments" under sub. (30), which is required for there to be a "consumer credit transaction" under sub. (10), must be made before services are rendered. Permitting a debtor to pay over time only after attempts to collect in full have failed does not render the transaction a consumer credit transaction. Dean Medical Center, S.C. v. Conners, 2000 WI App 202, 238 Wis. 2d 636, 618 N.W.2d 194, 99−2091.

A person who, along with her fiance, signed a credit application but did not sign the subsequent retail installment agreement was a customer under sub. (17). Sub. (17) addresses personal, family, or household purposes. When a woman is engaged to the father of her child and they are purchasing a car together, they apparently are doing so for anticipated personal, family, and household purposes. Zehetner v. Chrysler Financial Company, LLC, 2004 WI App 80, 272 Wis. 2d 628, 679 N.W.2d 919, 03−1473.

The applicability of the consumer act to rent−to−own contracts is discussed. Burny v. Thorn, 944 F. Supp. 762 (1996).

421.401 Venue. (1) The venue for a claim arising out of a consumer transaction or a consumer credit transaction is the county:

(a) Where the customer resides or is personally served;

(b) Where collateral securing a consumer credit transaction is located; or

(c) Where the customer sought or acquired the property, services, money or credit which is the subject of the transaction or signed the document evidencing his or her obligation under the terms of the transaction.

(2) When it appears from the return of service of the summons or otherwise that the county in which the action is pending under sub. (1) is not a proper place of trial for such action, unless the defendant appears and waives the improper venue, the court shall act as follows:

(a) Except as provided in par. (b), if it appears that another county would be a proper place of trial, the court shall transfer the action to that county.

(b) If the action arises out of a consumer credit transaction, the court shall dismiss the action for lack of jurisdiction.

(3) If there are several defendants, and if venue is based on residence, venue may be in the county of residence of any of them.

History: 1983 a. 228; 1987 a. 208.

An improperly venued action arising from a consumer credit transaction "shall be dismissed for lack of jurisdiction" under sub. (2) (b). When the court fails to dismiss, the action is invalid. Kett v. Community Credit Plan, Inc. 228 Wis. 2d 1, 596 N.W.2d 786 (1999), 97−3626.

Although voluntarily dismissed, prosecution of improperly venued actions violated the consumer act, and the defendants were prevailing parties under s. 425.308 entitled to attorney fees. Community Credit Plan, Inc. v. Johnson, 228 Wis. 2d 30, 596 N.W.2d 799 (1999), 97−0574.

CHAPTER 422

CONSUMER CREDIT TRANSACTIONS

Cross–reference: See definitions in s. 421.301.

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) and (3).

(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–chartered savings 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:

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.

(bm) 1. The finance charge, calculated according to the actuarial method, may not exceed the greater of the following for a consumer credit transaction entered into on or after November 1, 1981 and before November 1, 1984:

a. Eighteen percent per year.

b. A rate of 6% in excess of the interest rate applicable to 6–month U.S. treasury bills as determined under subd. 2.

2. For purposes of subd. 1. b., the interest rate applicable to 6–month U.S. treasury bills for any month is the average annual discount interest rate determined by the last auction of the bills in the preceding month, increased to the next multiple of 0.5% if the average annual discount interest rate includes a fractional amount.

3. Information regarding the amount of the maximum finance charge under subd. 1. for any month shall be available at the office of the administrator.

(bn) A consumer credit transaction entered into after October 31, 1984, is not subject to any maximum limit on finance charges.

(3) For licensees under s. 138.09 and under ss. 218.0101 to 218.0163, the finance charge, calculated according to those sections, may not exceed the maximums permitted in ss. 138.09 and 218.0101 to 218.0163, respectively.

(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, the merchant may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate sub. (2) or (3) 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) or (3) 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 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) or (3) with respect to a customer who does not pay in full within such time.

(9) Notwithstanding sub. (2) or (3), 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.

(10m) A finance charge determined by application of a periodic rate shall be determined by applying the periodic rate to one of the following:

(a) The average daily balance of the account.

(b) The unpaid balance of the account on the last day of the billing cycle after first deducting all payments, credits and refunds during the billing cycle.

(c) The median amount within a specified range within which the unpaid balance as calculated according to par. (a) or (b) is included. A charge may be made under 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.

(10s) Regardless of the date that 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.

(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.

(12m) This section does not apply to consumer credit sales of or consumer loans secured by a first lien on or equivalent security interest in mobile homes as defined in s. 138.056 (1) (bm), if the sales or loans are made on or after 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; 1981 c. 45, 160; 1983 a. 389; 1985 a. 29; 1987 a. 27; 1989 a. 56; 1991 a. 316; 1995 a. 328, 329; 1997 a. 35, 302; 1999 a. 9, 31, 53.

Cross Reference: See also ch. DFI−Bkg 80, Wis. adm. code.

The scope of apparent agency may embrace the making of a usurious loan. Hollingsworth v. American Finance Corp. 86 Wis. 2d 172, 271 N.W.2d 872 (1978).

The sale of an interest−bearing note at a discount is not usurious unless it is found to be a cloak or cover for what is in reality a usurious loan. Val Zimmermann Corp. v. Leffingwell, 107 Wis. 2d 86, 318 N.W.2d 781 (1982).

Accord and satisfaction is not a defense to a claim of usury under the consumer act. Clark v. Aetna Finance Corp. 115 Wis. 2d 581, 340 N.W.2d 747 (Ct. App. 1983).

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

(a) Official fees and taxes.

(b) Charges or premiums for insurance against loss of or damage to property in which the creditor takes a security interest or to property leased under a motor vehicle consumer lease or against liability arising out of the ownership or use of property in which the creditor takes a security interest or of property leased under a motor vehicle consumer lease, if all of the following conditions are met:

1. A clear, conspicuous and specific statement in writing is furnished by the creditor to the customer setting forth the cost and term 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.

2. The creditor mails or delivers to the customer a notice of the customer's right to cancel the insurance obtained from or through the merchant in accordance with s. 424.304.

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

(d) With respect to a consumer credit transaction which is other than one pursuant to an open−end credit plan and which is entered into on or after May 17, 1988, a charge not to exceed $15 for each check presented for payment to a creditor which is returned unsatisfied because the drawer does not have an account with the drawee, does not have sufficient funds in his or her account or does not have sufficient credit with the drawee.

(e) With respect to a motor vehicle consumer lease, any reasonable fee or charge that is conspicuously disclosed in writing to the prospective lessee before execution of the motor vehicle consumer lease, is agreed upon by the lessor and lessee and is not prohibited by chs. 421 to 427 and 429.

(2) With respect to a consumer credit transaction which involves a mobile home transaction as defined in s. 138.056 (1) (c) or 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.

(2m) With respect to an open−end credit plan, regardless of when the plan was entered into:

(a) A creditor may charge, collect and receive other fees and charges, in addition to the finance charge authorized under s. 422.201, 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.

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

(2s) (a) A creditor may contract for and collect from the borrower, or include in the amount financed, any of the following:

1. Charges or premiums for consumer credit insurance, as defined in s. 424.201, consisting of consumer credit life insurance, credit accident and sickness insurance and credit unemployment insurance against loss of income of debtors resulting from either labor disputes or involuntary unemployment if all of the following conditions are met:

a. The insurance coverage is not required by the creditor and that fact is clearly and conspicuously disclosed in writing to the customer.

b. Any customer desiring the insurance coverage gives a specific, separately signed, affirmative written indication of the desire after receiving written disclosure of the cost and term of the insurance.

2. Charges or premiums for insurance other than insurance described in subds. 1., 3. and 4., subs. (1) (b) and (2) (a) and s. 421.301 (20) (f) if all of the following conditions are met:

a. The insurance coverage is not required by the creditor and that fact is clearly and conspicuously disclosed in writing to the customer.

b. Any customer desiring the insurance coverage gives a specific, separately signed, affirmative written indication of the desire after receiving written disclosure of the cost and term of the insurance.

c. The creditor mails or delivers to the customer a notice of the customer's right to cancel the insurance in accordance with s. 424.401.

3. Charges or fees for future service contracts or motor club service contracts if all of the following conditions are met:

a. Membership is not required as a condition of the extension of credit.

b. The term of the membership does not exceed one year or the creditor mails or delivers to the customer a notice of the customer's right to cancel the contract or membership in accordance with s. 424.401.

4. Charges or fees for mechanical breakdown, extended warranty or maintenance service contracts or insurance if purchase of the contract or insurance is not required as a condition of the extension of credit.

5. Other charges not constituting finance charges as approved by written opinion of the administrator or not disapproved under s. 426.104 (4) (b).

(b) 1. Notwithstanding par. (a), in a consumer credit transaction other than one pursuant to an open–end credit plan, a creditor may sell and finance the products described in par. (a) 2., 3. and 4. without regard to the limitations contained in those subdivisions or in s. 424.301 (1) to (3) if the transaction is solely to purchase the products described in par. (a) 2., 3. and 4. and if the transaction is not evidenced by a credit contract that is signed by the customer on the same day as a contract evidencing any other consumer credit transaction with the creditor.

2. Notwithstanding par. (a), in a consumer credit transaction pursuant to an open–end credit plan, a creditor may sell and finance the products described in par. (a) 2., 3. and 4. without regard to the limitations contained in those subdivisions or in s. 424.301 if the transaction is solely to purchase the products described in par. (a) 2., 3. and 4. and if the transaction is not evidenced by a credit document that is signed by the customer on the same day as the document evidencing consummation of the open–end credit plan.

(3) (a) For purposes of chs. 421 to 427, any charge not authorized by this section shall be considered part of the finance charge. An additional charge authorized by this section but assessed in a manner inconsistent with this section is not part of the finance charge unless, except with respect to the charges under sub. (1), the creditor requires the charge as an incident to or a condition of the extension of credit.

(b) Except as otherwise provided in chs. 421 to 427, assessing an additional charge which is not authorized by this section and which is not included by the creditor as part of the finance charge, or which is authorized by this section but assessed in a manner inconsistent with this section, is a violation subject to s. 425.304.

(c) A merchant may not, in the same transaction, be subject to the penalty in s. 138.09 (9) (b), 218.0161 or 425.305 and the penalty in s. 425.304, based on the assessment of the same additional charges.

History: 1971 c. 239; 1973 c. 3; 1975 c. 362, 371, 372, 375, 407, 422; 1979 c. 89; 1981 c. 45, 314; 1983 a. 389; 1985 a. 29, 256; 1987 a. 399; 1993 a. 71, 150; 1995 a. 328, 329; 1997 a. 252; 1999 a. 31.

Cross Reference: See also ss. DFI–Bkg 80.263 and 80.264, Wis. adm. code.

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 installment not paid in full on or before the 10th day after its scheduled or deferred due date in an amount not to exceed $10 or 5% of the unpaid amount of the installment, whichever is less.

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

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

(4) (a) With respect to a consumer credit transaction, interest after the final scheduled maturity date may 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 may not exceed the maximum rate permitted by s. 138.05 (1) (a), if the transaction is entered into prior to April 6, 1980, but if such interest is charged no delinquency charge may be taken on the final scheduled installment.

(c) With respect to a consumer credit transaction, 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 November 1, 1981, but if interest is charged no delinquency charge may be taken on the final scheduled installment.

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

History: 1971 c. 239; 1979 c. 10, 168; 1981 c. 45; 1991 a. 39; 1997 a. 302.

A fee that is required in order to allow the reinstatement of payments after a default is a delinquency charge. Burny v. Thorn, 944 F. Supp. 762 (1996).

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 installments, 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 installments at approximately equal intervals, if the deferral is made as of an installment due date and the payment dates for all wholly unpaid installments are deferred for one or more full installment 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 installment of the original schedule of payments multiplied by the total number of installments to be deferred and by the number of full installment 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 installment which is in default, it shall be first so applied, and such installment shall not then be deferred or subject to the deferral charge.

(5) No installment 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) (am) In addition to any requirements of form established by the administrator, a deferral agreement shall meet all of the following requirements:

1. The agreement shall be in writing and signed by the customer.

2. The agreement shall incorporate by reference the transaction to which the deferral applies.

3. The agreement shall state each installment 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.

4. The agreement shall clearly set forth the dollar amount of the charge for each installment to be deferred and the total dollar amount to be paid by the customer for the deferral.

(e) This subsection does not apply to deferral charges made under sub. (8).

(8) The parties may agree in writing at the time of a precomputed consumer transaction, refinancing or consolidation that if an installment 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 the customer 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; 1991 a. 316; 1999 a. 85.

Cross Reference: See also s. DFI–Bkg 80.281, Wis. adm. code.

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 installment cannot be deferred. However, this is not the case; see s. 422.204 (1) (intro.), which clearly allows the deferment of part of an installment. This change also has a minor substantive effect—the deferral charge on the deferment of part of an installment 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 and 429, agree that the customer will perform certain duties with respect to preserving or insuring collateral or goods subject to a motor

vehicle consumer lease, if such duties are reasonable in relation to the risk of loss of or damage to the collateral or goods. 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 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; 1995 a. 329; 1997 a. 302.
Cross Reference: See also s. DFI–Bkg 80.30, Wis. adm. code.

422.208 Right to prepay. Subject to s. 422.209 and, with respect to a motor vehicle consumer lease, s. 429.207, 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; 1995 a. 329.

422.209 Rebate on prepayment. (1) Except as provided in sub. (1m), 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.

(1m) (a) In the event of prepayment under sub. (1), a merchant may retain a loan administration fee that meets all of the following conditions:

1. The loan administration fee does not exceed 2% of the amount financed in the precomputed consumer credit transaction, refinancing or consolidation.

2. The loan administration fee is for a consumer loan that is secured primarily by an interest in real property or in a mobile home, as defined in s. 138.056 (1) (bm).

(b) Notwithstanding par. (a), if a merchant retains any portion of a loan administration fee charged on a loan that is prepaid from the proceeds of a new loan made by the same merchant within 6 months after the prior loan, then the merchant shall reduce any loan administration fee on the new loan by the amount of the loan administration fee on the prior loan that was retained by the merchant.

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

1. Consumer credit transactions entered into before November 1, 1981.

2. Consumer credit transactions having initial terms of less than 49 months entered into on or after November 1, 1981 and before August 1, 1987.

3. Consumer credit transactions in which the amount financed is less than $5,000, which have initial terms of less than 37 months and which are entered into on or after August 1, 1987.

(b) The unearned portion of the finance charge on consumer credit transactions described in par. (c) is, at the option of the creditor, either of the following:

1. The portion of the finance charge which is allocable to all unexpired payment periods as scheduled or deferred. A payment period is unexpired if prepayment is made within 15 days after the payment's due date. The unearned finance charge is the finance charge which, assuming all payments are made as scheduled or deferred, would be earned for each unexpired payment period by applying to unpaid balances of principal, according to the actuarial method, the annual percentage rate disclosed to the customer under subch. III. The creditor may decrease the annual interest rate to the next multiple of 0.25%.

2. The finance charge less the amount determined by applying the annual percentage rate disclosed to the customer under subch. III, according to the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

(c) Paragraph (b) applies to all of the following:

1. Consumer credit transactions which have terms of 49 months or more and which are entered into after November 1, 1981 and before August 1, 1987.

2. Consumer credit transactions in which the amount financed is $5,000 or more and which are entered into on or after August 1, 1987.

3. Consumer credit transactions in which the amount financed is less than $5,000, which have initial terms of 37 months or more and which are entered into on or after August 1, 1987.

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

(4) (a) Except as provided in par. (b), the unearned portion of a deferral charge is the deferral charge multiplied by the number of unexpired payment periods as of the date of prepayment and divided by the total number of installments deferred.

(b) If the unearned finance charge is calculated under sub. (2) (b), the deferral charge shall be refunded in full.

(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.

(6m) For purpose of this section, the finance charge in a mobile home transaction as defined in s. 138.056 (1) (c) does not include fees, discounts, or other sums actually imposed by the government national mortgage association, the federal national mortgage association, the federal home loan mortgage corporation or other governmentally sponsored secondary mortgage mar-

ket purchaser of the loan or any private secondary mortgage market purchaser of the loan who is not a person related to the original lender.

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

History: 1971 c. 239; 1979 c. 89; 1981 c. 45 ss. 41 to 44, 51; 1987 a. 27; 1995 a. 272; 1997 a. 302; 1999 a. 9, 53.

422.210 Agricultural credit transactions. (1) PERMISSIBLE FINANCE CHARGES AND FEES. With respect to a credit transaction that it is primarily for an agricultural purpose, a creditor may not charge, collect or receive any finance charge or fee unless the charge or fee is clearly disclosed in writing to the customer and that is agreed to by the creditor and the customer.

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

History: 1997 a. 302.

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 installments (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.

When a merchant first informed the customer of 24% interest to be charged on an open account in statements of the account provided after the account was opened, sub. (2) and s. 422.308 were violated and the merchant was only entitled to interest under s. 138.04. Severson Agri–Service, Inc. v. Lander, 172 Wis. 2d 269, 493 N.W.2d 230 (Ct. App. 1992).

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 or a motor vehicle consumer lease, 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; 1995 a. 329.

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.

Cross Reference: See also s. DFI–Bkg 80.34, Wis. adm. code.

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.

Cross Reference: See also s. DFI–Bkg 80.351, Wis. adm. code.

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 the customer 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 the customer's 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; 1991 a. 316.

Cross Reference: See also s. DFI–Bkg 80.36, Wis. adm. code.

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.

422.308 Open–end credit disclosures. (1) With regard to every open–end credit plan between a creditor, wherever located, and a customer who is a resident of this state and who is applying for the open–end credit plan from this state, every application for the open–end credit plan, including every application contained in an advertisement, shall be appropriately divided and captioned by its various sections and shall set forth all of the following:

(a) The annual percentage rate or, if the rate may vary, a statement that it may do so and of the circumstances under which the rates may increase, any limitations on the increase and the effects of the increase.

(b) The date or occasion upon which the finance charge begins to accrue on a transaction.

(c) Whether any annual fee is charged and the amount of the fee.

(d) Whether any other charges or fees may be charged, what they may be charged for and the amounts of the charges or fees.

(2) With regard to every open–end credit plan between a creditor, wherever located, and a customer who is a resident of this state and who is given the opportunity to enter into an open–end credit plan while present in any establishment located in this state but who is not required to complete an application under sub. (1), the customer shall be given a notice prior to entering into the

open–end credit plan. The notice shall be appropriately divided and captioned by its various sections and shall set forth all of the information in sub. (1) (a) to (d).

(3) The administrator shall publish an annual creditors' noncompliance report on November 1. The report shall set forth the names of creditors that the administrator knows, or reasonably believes, to have violated this section during the preceding 12 months, unless the administrator knows or reasonably believes that the violation or violations were the result of unintentional good faith error.

(4) A violation of this section is subject to s. 425.304 unless the violation was the result of an unintentional good faith error.

(5) If any part of this section is found unconstitutional with regard to a creditor solely or in any part because the creditor is located outside of this state, that part of this section shall not apply to any creditor located within this state.

History: 1985 a. 244.

When a merchant first informed the customer of 24% interest to be charged on an open account in statements of the account provided after the account was opened, s. 422.302 and subs. (1) and (2) were violated and the merchant was only entitled to interest under s. 138.04. Severson Agri–Service, Inc. v. Lander, 172 Wis. 2d 269, 493 N.W.2d 230 (Ct. App. 1992).

422.310 Refund anticipation loans. (1) In addition to any other requirements under this subchapter, a creditor shall disclose all of the following in writing to a customer on a form that is signed by the customer before the customer enters into a refund anticipation loan:

(a) Any refund anticipation loan fees.

(b) Any charge or fee for electronically filing an income tax return.

(c) The total dollar amount of all charges and fees under pars. (a) and (b).

(d) The anticipated length of time, within 2 business days, by which the customer will receive the refund anticipation loan proceeds.

(e) That the customer may electronically file an income tax return without obtaining a refund anticipation loan.

(f) The anticipated length of time within which the customer could reasonably expect to receive a tax refund if the income tax return is filed electronically and the customer does not request a refund anticipation loan.

(g) That the customer is responsible for repayment of the refund anticipation loan and refund anticipation loan fees even if the income tax refund is not paid or is paid in a lower amount than was anticipated.

(h) The estimated annual percentage rate, based on the size of the refund anticipation loan, the refund anticipation loan fees and the anticipated maturity date of the refund anticipation loan. The anticipated maturity date shall be the date disclosed under par. (f).

(2) A creditor may not impose a different fee or charge for electronically filing an income tax return on a customer who obtains a refund anticipation loan than the creditor imposes on a customer who does not obtain a refund anticipation loan.

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

History: 1993 a. 111.

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) Except as provided in sub. (1m), 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) with respect to a consumer credit transaction other than a transaction which is one of the following:

(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.

(1m) 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) with respect to a consumer credit transaction other than a transaction which is one of the following:

(a) Pursuant to an open–end credit plan.

(b) Not precomputed and on which the annual percentage rate disclosed under subch. III is not more than 18% 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 November 1, 1981, and before November 1, 1984.

(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 down payment 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 down payment that does not exceed 20% of the cash price, has a due date not later than the due date of the 2nd installment 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 the customer cannot obtain such separate financing;

(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; or

(e) The unequal or irregular payment is the first scheduled payment and results from the inclusion of interest charged for a first installment 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 installment 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.

(5) This section does not apply to a mobile home transaction as defined in s. 138.056 (1) (c) made on or after November 1, 1981 and before November 1, 1984, if:

(a) The transaction complies with s. 138.056; or

(b) The unequal or irregular payment is the final scheduled payment of the transaction, and the merchant agrees to refinance the final scheduled payment at a rate of interest not in excess of the rate disclosed pursuant to subch. III of ch. 422 by more than one percent multiplied by the number of 6–month periods in the term of the immediately prior mobile home transaction.

(6) This section does not apply to consumer credit transactions entered into on or after November 1, 1984.

History: 1971 c. 239; 1977 c. 444; 1979 c. 168; 1981 c. 45; 1983 a. 36; 1987 a. 27; 1991 a. 316; 1995 a. 225; 1997 a. 302.

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 does not apply to loans made by an 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; 1981 c. 20, 391.

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 the creditor's behalf, to confess judgment.

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

History: 1971 c. 239; 1991 a. 316.

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 the holder 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; 1991 a. 316.

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 that party's 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 the subsequent assignee's assignor at the time of the assignment to the subsequent assignee 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; 1991 a. 316.

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 the lender's 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 the seller's or lessor's 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 the seller or lessor 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 the lender 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; 1991 a. 316.

The lender liability limits under sub. (4) do not limit the liability of lenders subject to the Home Improvement Trade Practices Code promulgated under s. 100.20. Jackson v. DeWitt, 224 Wis. 2d 877, 592 N.W.2d 262 (Ct. App. 1999), 98–0493.

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 the assignee does so the customer may pay the assignor.

(2) The notification of assignment shall be in writing and addressed to the customer at the customer's 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 the customer 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; 1991 a. 316.

Cross Reference: See also ss. DFI–Bkg 80.36 and 80.37, Wis. adm. code.

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 fees. (1) Except as provided in subs. (2) and (2m), with respect to a consumer credit transaction no term of a writing may provide for the payment by the customer of attorney 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 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 employee 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.

(2m) A lender licensed under s. 138.09 may contract for the customer's payment of reasonable attorney fees actually incurred by the licensed lender to foreclose a mortgage or equivalent security interest in residential real property, but the customer is liable for attorney fees only if all of the following conditions are satisfied:

(a) The fees are payable to a licensed attorney who is not an employee of the licensed lender.

(b) The fees do not exceed 5% of the amount of the judgment entered against the customer, or $100 in the event a judgment is not entered and the dispute is settled before 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; 1993 a. 368, 490; 1997 a. 302.

Legislative Council Note, 1973: Broadens the range of residential real estate transactions in which the limited amount of attorney 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 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, 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; 1997 a. 302.

422.413 Limitation on default charges. (1) Except as provided in sub. (2g), 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 or goods subject to a motor vehicle consumer lease and such other charges as are specifically authorized by chs. 421 to 427 and 429.

(2g) In any consumer credit transaction in which the collateral is a motor vehicle as defined in s. 340.01 (35), a trailer as defined in s. 340.01 (71), a snowmobile as defined in s. 340.01 (58a), a boat as defined in s. 30.50 (2), an aircraft as defined in s. 114.002 (3), or a mobile home as defined in s. 138.056 (1) (bm), a writing evidencing the transaction may provide for the creditor's recovery of all of the following expenses, if the expenses are reasonable and bona fide:

(a) Expenses of taking and holding the collateral if paid to persons not related to the creditor.

(b) Travel and transportation expenses of the creditor or the creditor's employees in taking possession of the collateral.

(c) 1. If the collateral is not redeemed by the customer under s. 425.208, the greater of expenses determined under subd. 2. or of all of the following expenses of preparing the collateral for sale if paid to persons not related to the creditor:

a. Expenses for cleaning and restoring the appearance of the collateral, not to exceed $100.

b. Expenses for repair of damage to the collateral if covered by insurance, not to exceed the lesser of any deductible amount or $250.

c. Expenses for mechanical repairs to the collateral, not to exceed $200.

2. Expenses for any repair to the collateral which increase the selling price of the collateral, not to exceed the amount by which the selling price is increased because of the repairs, if paid to persons not related to the creditor. The selling price of the collateral before repairs shall be established by any reasonable method, at no cost to the customer.

(2r) Notwithstanding s. 409.615 (1), the proceeds of any disposition of collateral referred to in sub. (2g) shall be applied in the following order to:

(a) Any expenses described in sub. (2g) (a) subject to the restriction set forth in sub. (2g) (a).

(b) Any expenses described in sub. (2g) (b) subject to the restriction set forth in sub. (2g) (b).

(c) Any expenses described in sub. (2g) (c) 1., subject to the restrictions set forth in sub. (2g) (c) 1. (intro.), in the order, and subject to the limitations on amounts, set forth in sub. (2g) (c) 1. a. to c., or in sub. (2g) (c) 2., subject to the limitation described in that subdivision.

(d) The satisfaction of indebtedness secured by the security interest under which the disposition of the collateral is made.

(e) Any expenses described in sub. (2g) (c) 1. in excess of the limitations on amounts set forth in sub. (2g) (c) 1. a. to c., in the order set forth in sub. (2g) (c) 1. a. to c.

(f) The satisfaction of indebtedness secured by any subordinate security interest in the collateral, subject to the restrictions set forth in s. 409.615 (1) (c) and (2).

(g) Payment to the customer.

(3) A violation of this section is subject to s. 425.304.
History: 1971 c. 239; 1973 c. 2; 1979 c. 10; 1983 a. 389; 1985 a. 331; 1993 a. 368; 1995 a. 329; 1997 a. 302; 1999 a. 9, 53; 2001 a. 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 change in the terms of open−end credit plans that is adverse to the interests of the customer with respect to any outstanding balances or that imposes or alters a charge permitted under s. 422.202 (2m). 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 that is adverse to the interests of the customer with respect to outstanding balances or that imposes or alters a charge permitted under s. 422.202 (2m) may be made if any of the following conditions is met:

(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 90 days prior to the effective date of such change.

(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; 1981 c. 45 s. 51; 1993 a. 150; 1995 a. 328.

422.4155 Notice of termination of liability. (1) In an open−end credit plan in which more than one person may be obligated for extensions of credit, any person may terminate his or her liability for future extensions of credit under the plan by giving written notice to the creditor of the person's termination of liability. The person's liability for future extensions of credit under the plan shall continue as to loans extended to, or purchases made by, any other person under the plan for 15 business days after the creditor's receipt of the termination notice. The terminating person's liability may not exceed the greater of the requested and contracted for credit limit under the plan or the balance outstanding under the plan on the receipt of the termination notice plus $500.

(2) Notwithstanding sub. (1), a person remains liable for loans extended to, or purchases made by, the person after giving the termination notice.
History: 1981 c. 45.

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 the customer's 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; 1991 a. 316.

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; and

(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.

(2) With respect to a consumer lease, except as otherwise provided in s. 429.205 with respect to a motor vehicle consumer lease, a lessor may not take a security interest in any property owned or leased by 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.

(3) With respect to a consumer loan, in addition to the limitations on security interests required by 12 CFR 227.13 (d), 12 CFR 535.2 (a) (4) or 16 CFR 444.2 (a) 4, if any, a lender may not take a security interest, other than a purchase money security interest, in:

(a) Clothing of the customer and the customer's 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; 1981 c. 20, 391; 1985 a. 256; 1989 a. 359; 1991 a. 316; 1995 a. 329; 1997 a. 302.

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, 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; 1997 a. 302.

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 the merchant's 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 the merchant's 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 the merchant's 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; 1991 a. 316.

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.

422.421 Variable rate transaction. (1) DEFINITIONS. In this section:

(a) "Approved index" means any relevant index approved by the administrator that is beyond the control of the creditor and is verifiable by the customer.

(b) 1. "Consummation" with respect to a variable rate transaction other than one pursuant to an open–end credit plan means the time at which a customer becomes contractually obligated on the variable rate transaction.

2. "Consummation" with respect to a variable rate transaction pursuant to an open–end credit plan means the time at which a creditor accepts a customer's application and authorizes the customer's participation in the plan or the time at which an amendment to an existing open–end credit plan is accepted by or becomes binding on the customer under sub. (11) or s. 422.415.

(c) "Variable rate transaction" means any open–end credit plan and any consumer credit transaction other than one pursuant to an open–end credit plan, the terms of which permit the rate of finance charge to be adjusted from time to time during the term of the plan or transaction other than by an adjustment under s. 422.415, but does not include any consumer credit transaction the terms of which permit only the rates of finance charge that are initially numerically specified in any document evidencing the plan or transaction.

(2) VARIABLE RATE TRANSACTIONS PERMITTED. Creditors may engage in variable rate transactions subject to the conditions and limitations of this section.

(3) APPROVED INDEX ADJUSTMENTS. (a) Adjustments in the rate of finance charge of a variable rate transaction that are based upon changes in an approved index shall be made in accordance with provisions set forth in the documents evidencing the variable rate transaction including provisions specifying all of the following:

1. The method of determining approved index values.

2. The relationship between approved index values and the rates of finance charge.

3. The method of implementing the adjustments.

4. The frequency of adjustments.

5. Any limits on the magnitude of adjustments.

6. Any minimum increments of adjustments.

7. The method of implementing any rounding of the rates of finance charge.

(b) The provisions under par. (a) 5. may specify limited magnitudes of decreases in the rate of finance charge if the provisions specify limited magnitudes of increases that are at least as restrictive.

(c) If a creditor fails at any time to increase the rate of finance charge to the extent permitted by the provisions under par. (a), the creditor may not carry over and add any portion of the increase to any subsequent adjustment. Failure at any time to increase the rate of finance charge to the extent permitted by the provisions under par. (a) does not affect in any way the creditor's right to prospectively reestablish the relationship between approved index values and the rates of finance charge in accordance with the provisions under par. (a).

(4) OTHER ADJUSTMENTS. (a) Adjustments in the rate of finance charge of a variable rate transaction that are not based upon changes in an approved index shall be made in accordance with provisions set forth in the documents evidencing the variable rate transaction, including provisions specifying all of the following:

1. If based upon changes in an index other than an approved index, the method of determining index values.

2. If based upon changes in an index other than an approved index, the relationship between index values and the rates of finance charge.

3. The method of implementing the adjustments.

4. The frequency of adjustments.

5. Any limits on the magnitude of adjustments.

6. Any minimum increments of adjustments.

7. The method of implementing any rounding of the rates of finance charge.

(b) The provisions under par. (a) may not specify an increase in the rate of finance charge in excess of 2% plus any carry over permitted under par. (d) for each 12–month period commencing with the consummation of the variable rate transaction.

(c) The provisions under par. (a) may not specify a date for adjustment that is earlier than 3 months after the date of consummation of the variable rate transaction.

(d) If a creditor fails to increase the rate of finance charge during a 12–month period under par. (b) to the extent permitted by the provisions under par. (a), the increase may be carried over and added to any adjustment in the rate of finance charge otherwise permitted by the provisions under par. (a) but only during the succeeding 12–month period and subject to the limitations of par. (e).

(e) The maximum increase which may be carried over to a succeeding 12–month period under par. (d) is the difference between the rate of finance charge as of the commencement of the preceding 12–month period plus 2% and the highest rate of

finance charge actually imposed during that 12–month period, or one percent, whichever is less.

(5) NOTICE. (a) 1. Except as provided in par. (b), a creditor shall mail or deliver to the customer written notice of every change implementing an adjustment in the rate of finance charge in a variable rate transaction. The notice shall be mailed or delivered to the customer at the customer's last–known address appearing on the records of the creditor. If the variable rate transaction involves more than one customer, notice given to any customer satisfies this requirement.

2. The notice under subd. 1. shall be mailed or delivered at least 15 days prior to the effective date of the adjustment if the adjustment is implemented in whole or in part by a change in the amount of a periodic payment, other than the final payment, previously disclosed to the customer.

3. The notice under subd. 1. shall be mailed or delivered not later than 30 days after the effective date of the adjustment if the adjustment is implemented by any change other than a change under subd. 2.

(b) 1. The requirements of par. (a) do not apply to a creditor if the adjustment is made in a variable rate transaction pursuant to an open–end credit plan that is based upon changes in an approved index.

2. The requirements of par. (a) do not apply to a creditor if the adjustment is made in a variable rate transaction, other than a transaction pursuant to an open–end credit plan, that is based upon changes in an approved index if the change does not cause a change in the amount of a periodic payment, other than the final payment, previously disclosed to the customer.

(c) If the final payment in a variable rate transaction, other than one pursuant to an open–end credit plan, exceeds the final payment disclosed to the customer prior to consummation by more than 50% but not less than $100 as a result of adjustments in the rate of finance charge during the term of the variable rate transaction, the creditor shall give the customer written notice of the estimated amount of the final payment at least 90 days but not more than 180 days prior to the due date of the final payment. The notice shall be mailed or delivered to the customer at the customer's last–known address appearing on the records of the creditor. If the variable rate transaction involves more than one customer, notice given to any customer satisfies this requirement. Notwithstanding the terms of the variable rate transaction, the final payment shall not be due until the later of the originally scheduled due date or 90 days after mailing or delivering the notice and the customer shall not be in default during that period if the customer continues to make payments in the scheduled amounts and with the scheduled frequency in effect immediately prior to the final payment until the total amount due has been paid in full.

(6) MAXIMUM RATE. (a) For any variable rate transaction, other than one pursuant to an open–end credit plan, entered into before November 1, 1984, the maximum rate of finance charge for any payment period may not exceed the limit set forth in s. 422.201 (2) (bm) as determined on the earlier of the first day of the payment period or the day notice is given under sub. (5) for the payment period.

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

(7) ADJUSTMENTS AFTER MATURITY DATE. (a) Notwithstanding s. 422.203, adjustments in the rate of finance charge based upon changes in an approved index may continue to be made after the final scheduled maturity date if the adjustments are made in accordance with the requirements of sub. (3) governing adjustments made prior to the final scheduled maturity date.

(b) Notwithstanding s. 422.203, adjustments in the rate of finance charge not based upon an approved index may continue to be made after the final scheduled maturity date if the adjustments are made in accordance with the requirements of sub. (4) governing adjustments made prior to the final scheduled maturity date, and if the adjustments are not less favorable to the customer than contemporaneous adjustments made prior to the final scheduled maturity dates of similar variable rate transactions between other customers and the creditor.

(8) CHANGES IN ORIGINAL SCHEDULE OF PAYMENTS. The original schedule of payments for variable rate transactions that are subject to s. 422.402 shall comply with the requirements of s. 422.402. Any change made in the original schedule of payments to implement adjustments under sub. (3) or (4) is not a violation of s. 422.402.

(9) CHANGES IN OPEN–END CREDIT PLANS. Any change made in the terms of an open–end credit plan to implement adjustments under sub. (3) or (4) is not a violation of s. 422.415.

(10) PREPAYMENT. Upon prepayment in full of the unpaid balance of a variable rate transaction, an amount not less than the unearned portion of the finance charge, if any, calculated according to s. 422.209 (2) (b) shall be rebated to the customer.

(11) AMENDMENTS TO OPEN–END CREDIT PLANS. (a) Parties to an open–end credit plan entered into before or within 6 months after September 1, 1984, may agree to an amendment to the plan in accordance with the requirements of sub. (3) or (4) to permit the rate of finance charge for existing and future balances to be adjusted from time to time in accordance with the provisions of this section, only as provided under pars. (b) and (c) or under s. 422.415.

(b) An amendment under par. (a) may be made if the customer accepts the amendment as provided in par. (c) and if all of the following conditions are met:

1. The creditor gives written notice of the amendment to the customer by mail, addressed to the customer's last–known address appearing on the records of the creditor, not more than 60 days and not less than 30 days prior to the effective date of the amendment.

2. The notice under subd. 1. provides for acceptance or rejection by the customer as provided in either or both of the following:

a. If a self–addressed reply card is enclosed with the notice, the notice states that the customer accepts the amendment unless a reply card rejecting the amendment is mailed or delivered to the creditor by a date specified in the notice which is not less than 20 days after the date of mailing of the notice.

b. The notice states that the customer accepts the amendment if the customer enters into a consumer credit transaction under the plan at any time more than 15 days after the date of mailing of the notice.

(c) The customer shall have accepted the amendment if the customer fails to mail or deliver the reply card as provided in the notice under par. (b) 2. a., or if the customer enters into a transaction as provided in the notice under par. (b) 2. b.

(d) If a customer rejects an amendment as provided in the notice under par. (b) 2., the creditor shall permit the customer to pay existing balances under existing terms and the creditor may either close the account to future transactions or continue the account under existing terms.

(12) PENALTY. A violation of this section is subject to s. 425.304, except that failure to give the notice required under sub. (5) (c) does not subject a creditor to the penalty provided in s. 425.302 or 425.304.

History: 1983 a. 389; 1985 a. 29; 1987 a. 27; 1995 a. 328; 1997 a. 302.

SUBCHAPTER V

CREDIT SERVICES ORGANIZATIONS

422.501 Definitions. In this subchapter:

(1) "Buyer" means a natural person or customer who is solicited to purchase or who purchases the services of a credit services organization.

(1m) "Consumer reporting agency" has the meaning given in 15 USC 1681a (f).

(2) (a) "Credit services organization" means a person or merchant who, with respect to the extension of credit by others, sells, provides or performs, or represents that the person will sell, provide or perform, any of the following services in return for the payment of money or for other valuable consideration:

1. Improving a buyer's credit record, credit history or credit rating.

2. Arranging for or obtaining an extension of credit for a buyer.

3. Providing advice or assistance to a buyer with regard to subd. 1. or 2.

(b) "Credit services organization" does not include any of the following:

1. A person organized, chartered or holding a license or authorization certificate to make loans or extensions of credit pursuant to the laws of this state or the United States and who is subject to regulation and supervision by an official or agency of this state or the United States.

2. A bank or savings and loan association whose deposits or accounts are insured by the federal deposit insurance corporation, or a credit union whose deposits or accounts are insured by the national credit union administration.

3. A nonprofit organization described under section 501 (c) (3) of the internal revenue code and exempt from taxation under section 501 (a) of the internal revenue code.

4. A person licensed as an adjustment service company under s. 218.02 if the person is acting within the course and scope of that license.

5. A person licensed as a real estate broker or salesperson under ch. 452 if the person is acting within the course and scope of that license.

6. A person licensed to practice law in this state if the person is rendering services within the course and scope of his or her practice as an attorney at law.

7. A broker–dealer or agent licensed under s. 551.31 if the broker–dealer or agent is acting within the course and scope of that license.

8. A person registered as a mortgage banker, loan originator or mortgage broker under s. 224.72 if the person is acting within the course and scope of that registration.

9. A consumer reporting agency, if the consumer reporting agency is acting within the scope of assembling or evaluating consumer credit information on consumers for the purpose of furnishing consumer reports, as defined in 15 USC 1681a (d), to 3rd parties.

(3) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, that is offered or granted for debt that is incurred primarily for personal, family or household purposes.

History: 1991 a. 244; 1995 a. 27; 1997 a. 145, 302.

422.502 Registration requirements. (1) A person may not act as a credit services organization unless the person has been issued a certificate of registration from the administrator and the person has complied with the bond or letter of credit requirements under sub. (3).

(2) A person desiring to act as a credit services organization shall apply to the administrator for a certificate of registration on a form prescribed by the administrator and shall pay the administrator a registration fee of $100.

(3) (a) A person desiring to act as a credit services organization shall obtain a surety bond that is issued by a surety company admitted to do business in this state or an irrevocable letter of credit from a federally insured bank or savings and loan association located in this state. The bond or letter of credit shall be in an amount equal to $25,000.

(b) The credit services organization shall file a copy of the bond or letter of credit with the administrator.

(c) The bond or letter of credit shall be in favor of this state for the benefit of any person who is damaged by a violation of this subchapter. The bond or letter of credit shall also be in favor of any person damaged by a violation of this subchapter.

(d) A person claiming against the bond or letter of credit for a violation of this subchapter may maintain an action at law against the credit services organization and against the surety or financial institution. The surety or financial institution may be liable only for actual damages and not for punitive damages. The aggregate liability of the surety or financial institution to all persons damaged by a credit services organization's violation of this subchapter may not exceed the amount of the bond or letter of credit.

(4) A certificate of registration as a credit services organization expires on December 1 of the even–numbered year after issuance. A credit services organization may renew a certificate of registration by submitting to the administrator a renewal application and a $100 renewal fee on or before the expiration date of the existing certificate of registration. A credit services organization shall refile a bond or letter of credit that satisfies sub. (3) as part of the renewal application.

History: 1991 a. 244; 1999 a. 85.

422.503 Prohibited activities. (1) A credit services organization, and its salespersons, agents and representatives who offer or sell the services of the credit services organization, may not do any of the following:

(a) Charge or receive any money or other valuable consideration solely for referral of the buyer to a merchant who will or may extend credit to the buyer, if the credit extended to the buyer is upon substantially the same terms as is credit that is available to the general public.

(b) Make, or counsel or advise any buyer to make, any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit, with respect to a buyer's credit worthiness, credit standing or credit capacity.

(c) Make or use any untrue or misleading representations in the offer or sale of the services of the credit services organization or engage, directly or indirectly, in any act, practice or course of business that operates or would operate as a fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization.

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

History: 1991 a. 244.

422.504 Information statement. (1) Before the execution of a contract or agreement between the buyer and a credit services organization or before the credit services organization receives from the buyer any money or other valuable consideration, the credit services organization shall provide the buyer a written statement that includes all of the information required under sub. (2). The credit services organization shall maintain for a period of 2 years an exact copy of the statement that is signed by the buyer to acknowledge receipt of the statement.

(2) The information statement under sub. (1) shall include all of the following information:

(a) Notice of the buyer's right to review any file on the buyer maintained by a consumer reporting agency; the buyer's right to obtain a copy of that file; the approximate price the buyer may be charged by the consumer reporting agency for a copy of the file; and the buyer's right to obtain a copy of the buyer's file free of

charge from the consumer reporting agency if the buyer requests the copy within 30 days after the buyer receives notice of a denial of credit.

(b) Notice of the buyer's right to dispute the completeness or accuracy of any item contained in any file on the buyer maintained by a consumer reporting agency.

(c) A description of the services to be performed by the credit services organization for or on behalf of the buyer and the total amount the buyer will be charged for the services.

(d) Notice of the buyer's right to proceed against the bond or letter of credit obtained by the credit services organization, a description of procedures that the buyer is to follow to proceed against the bond or letter of credit, and the name and address of the surety company that issued the bond or the name and address of the financial institution that issued the letter of credit.

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

History: 1991 a. 244.

422.505 Contracts. (1) Every contract between a buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, shall be dated and shall be signed by the buyer. The contract shall include all of the following:

(a) A conspicuous statement, in not less than 10–point boldface type and in immediate proximity to the space reserved for the signature of the buyer, as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT OF THE 5TH DAY AFTER THE DATE OF THE TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(b) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person.

(c) A description of the services to be performed by the credit services organization for or on behalf of the buyer, including all guarantees or promises of full or partial refunds, and the estimated date by which such services are to be performed or the estimated length of time for performing such services.

(d) The credit services organization's principal business address and the name and address of its agent in this state, other than the department of financial institutions, who is authorized to receive service of process.

(e) A conspicuous statement, in not less than 8–point boldface type, as follows: "THIS CREDIT SERVICES ORGANIZATION IS REGISTERED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS at .... (insert address)."

(f) Any disclosures required under subch. III.

(2) (a) The contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract and easily detachable, and which shall contain the following statement in not less than 10–point type and written in the same language as used in the contract:

NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, within 5 days after the date on which the contract is signed.

If you cancel, any payment made by you under this contract will be returned within 15 days following receipt by .... (name of credit services organization) of your cancellation notice.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to .... (name of credit services organization) at .... (address of credit services organization), ... (place of business, if different from address) not later than midnight .... (date). I hereby cancel this transaction.

.... (Date)

.... (Buyer's signature)

(b) A copy of the fully completed contract and any other document the credit services organization requires the buyer to sign shall be given to the buyer at the time the contract or document is signed.

(3) A credit services organization's breach of a contract under this section or of any obligation arising from such a contract is a violation of this subchapter.

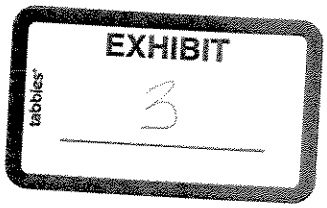
(4) A violation of this section is subject to s. 425.305.

History: 1991 a. 244; 1995 a. 27, 216.

422.506 Waiver. (1) A waiver by a buyer of any provision of this subchapter shall be void and unenforceable. An attempt by a credit services organization to have a buyer waive any right under this subchapter is a violation of this subchapter.

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

History: 1991 a. 244.



WISCONSIN CONSUMER PROTECTION ROUNDTABLE

LOCAL GOVERNMENT ACTIONS

Jim Walrath, Volunteer Attorney for Legal Aid Society of Milwaukee, Inc.

September 21, 2005

I. WHAT ARE LOCAL GOVERNMENTS DOING ABOUT THE PROLIFERATION IN THEIR JURISDICTIONS AND THE CONCENTRATIONS OF PAYDAY LENDERS AND TITLE LENDERS IN PARTICULAR NEIGHBORHOODS?

II. MAY A MUNICIPALITY CONSTITUTIONALLY CLASSIFY THESE BUSINESSES AS "SPECIAL USES," THEREBY GIVING THE MUNICIPALITY GREATER CONTROL OVER THE LOCATION AND OPERATION OF SUCH BUSINESSES?

Payday Loan Store of Wisconsin, Inc. v. City of Madison

III. WHAT EVIDENCE IS RELEVANT IN DETERMINING WHETHER A SPECIAL USE PERMIT SHOULD BE GRANTED FOR SUCH BUSINESSES?

Is evidence limited to the land use impacts of such businesses? Aycox d/b/a Loan Max v. Milwaukee Board of Zoning Appeals

May the municipality consider not only evidence of traffic impacts but also criminal conduct associated with such businesses? Title Lenders Inc. d/b/a USA Payday Loans v. Board of Zoning Appeals

May the municipality consider the effects of such businesses on low income consumers?

IV. WHAT STRATEGIES SHOULD BE PURSUED TO PROVE ADVERSE "SECONDARY EFFECTS" OF SUCH BUSINESSES?

PAYDAY LENDING ZONING LAW/LEGISLATION

TYPE OF ZONING LAW	JURISDICTION	PRINCIPAL CONTACT
Special Use: Limits Hours and Locations	**Madison, WI**	
Special Use Restrictions	**Pima County, AZ**	Chuck Huckleberry, County Administrator
Special Use Restrictions	**Colonial Heights, VA**	Richard Anzolut, Jr. City Manager
Special Use Restrictions	**National City, CA**	Mayor Nick Inzunza
Conditional use process allows commission to subject payday loan/check cashing institutions to restrictions necessary to ensure that the public health, safety and welfare are served. Also, facilities may not be located any closer to one another or to residential zones than 600 feet. May not exceed one per every 5000 of the population of the city. Requires minimum security, restricts hours of operation and prevents all establishments from certain districts of the city.	**South Salt Lake City, UT**	
Business cannot be located less than 1,000 feet from the nearest payday business within the city of Oakland. Restricts vicinity to 500 feet from certain businesses. Requirements on lighting. Cannot open earlier than 7:00 AM and cannot remain open later than 7:00 PM Monday through Saturday. No loitering. Security requirements.	**Oakland, CA**	
Auto Title Loan restriction: requirements on disclosure of information to borrower. Requires title loan agreement to contains certain statements. Maximum interest rate cannot exceed standards set in Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. Special license requirements.	**Jacksonville, FL**	
Conditional use permit for "small loan business." Limits business to commercial areas C-2 and C-3	**Arnold, MO**	Arnold City Council Mary Holden
Creates a separate license category for payday lending - $400 for business license v. $750 regular bank.	**St. John, MO**	City Council
Create a classification for payday institutions different from "financial institutions."	**Berkeley, MO**	City Council Gwen Verges First Ward
Per capita limit if one store per 15,000 residents (proposed ordinance)	**St. Joseph, MO**	
Conditional use process that allows a site-specific review by the board of supervisors.	**Chesterfield, VA**	Thomas Jacobson Director of Planning
Special use permit requirement. Payday/Auto title loan may not be located closer than 200 feet from any residential zone/use. Hours of operation for payday/auto title loan cannot extend beyond the hours of 8 AM to 11 PM. Requirements on	**Las Vegas, NV**	City Council Michael McDonald Councilman

interior space for payday loan institution. No payday loan institution may be located closer than 1,000 feet from any other payday loan institution.		
Conditional use permit for each location. Require public hearing for each request.	**St. Louis County, MO**	County Council & Planning Commission
City Zoning Code does not prohibit or permit check cashing services – decision on a case-by-case basis.	**Ft. Lauderdale, FL** **Pembroke Pines**	Board of Adjustment Saul Shechter, board member & Mayor Alex Fekete
Zoning does not include check cashing.	**Burlington, VT**	Planning Department
Special use permit	**Glendale Heights, IL**	Village Planning Commission
Change zone classification from a service district to special use which would require public hearing	**Chicago, IL**	City Council Alderman Toni Preckwinkle
Special use permit required. Minimum separation of 200 feet from any residential use. Minimum separation of 1,000 feet required from any other check cashing service. Annual license fee of $300 to the county.	**Clark County, NV**	
Conditional use permit. Limits hours of operation from 7AM to 10PM. Minimum security requirements include burglar alarm, operable public address system, and full time security guard who must be approved by the police chief.	**South Gate, CA**	
Conditional use permit. Limited to service business district and limited/general industrial districts. Restricts amount of signage allowed in the windows.	**City of North Kansas City, MO**	
In an area zoned for commercial mixed use development, check cashing establishments are not allowed. Regulation is designed to improve image of the commercial corridor that is experiencing "economic and aesthetic blight."	**Sacramento, CA**	
Conditional use permit	**Santa Monica, CA**	

i. Oakland, California
    1. Check cashing/payday lending must not be located closer than 1,000 feet from another check casher/payday lender.
    2. Check casher/ payday lender must be at least 500 feet away from:
        a. Community education civic activities (schools)
        b. State or federally chartered banks, savings associations, credit union or industrial loan company.
        c. Community assembly civic activities (churches) or
        d. Liquor stores (excluding full service restaurants or liquor stores with 25 or more full time employees.)
    3. The surrounding area must have a lighting plan to identify people from 50 feet away.
    4. Store fronts must have glass or transparent glazing: signs cover only 30% of store front.
    5. Ordinance limits hours of operation from 7am to 7pm.
    6. Graffiti must be removed within 72 hours.
    7. No exterior payphones.
    8. Litter must be removed twice daily from in front of and around the premises.
    9. Each location must have at least one uniformed security guard at all times.

ii. Sacramento, California
    1. In an area zoned for commercial mixed use development, check cashing establishments are not allowed.
    2. Regulation is designed to improve image of the commercial corridor that is experiencing "economic and aesthetic blight."

iii. City of North Kansas City, Missouri
    1. Restricts payday lenders and check cashers from doing business in certain zones.
    2. Restricts amount of signage allowed in the windows.

iv. South Gate, California
    1. Limits hours of operation from 7am to 10pm.
    2. Minimum security requirements:
        a. Burglar alarm,
        b. Operable public address system, and
        c. Full time security guard who must be approved by police chief.

v. Clark County, Nevada
    1. Annual license fee of $300 to the county.

vi. South Salt Lake City, Utah
    1. Restricts parking facilities
    2. Requires minimum security
    3. Restricts hours of operation
    4. Reserves right to enforce other regulations for the public health, safety and welfare

5. Restricts vicinity to 600 feet from the nearest residential zone (some exceptions)
6. Restricts the number of facilities to 1 for every 5,000 people.
7. Prevents all check cashing establishments from certain districts of city.

vii. Las Vegas, Nevada
1. Regulates payday lenders and check cashers:
   a. Building design and color scheme
   b. No temporary signs
   c. Signs cannot cover more than 20% of the window
      i. No flashing lights or neon signs
      ii. Cannot indicate store hours or whether store is open or closed
      iii. Store hours may be from 8am to 11pm.
   d. 1500 square foot minimum with ample space for customer waiting area.
   e. May not be within 200 feet from residences
   f. Must be 1000 feet away from each other.

viii. National City, California (proposed ordinance)
1. No forum selection allowed outside of San Diego County (treated as unconscionable).
2. Recognizes payday lenders as having a predatory effect on military personnel, the elderly, the economically disadvantaged
3. Indicates that payday lenders have an adverse impact on economic growth and lower tax revenues.
4. Ordinance regulates aesthetics of building (no bars on windows etc.) and signage (no neon lights, black letters on white background)
   a. Violation is a misdemeanor
5. Must file a copy of the report required by Cal. Fin. Code § 23026 (above) with City Manager or Finance Director.
6. Only one loan per family as opposed to state law, which limits payday loans to one person.
   a. This prohibits a spouse from taking out a payday loan when the other spouse already has. Also, a family cannot go to another payday lender to escape this rule. Moreover, a 30-day cooling off period is needed before a family member may take out another payday loan.
7. No new fees are allowed for extending time of repayment.
8. Customer may voluntarily repay the payday loan at any time prior to the agreed upon due date.
9. Requires payday lenders to obtain a business license with the city.
10. Violation of numbers 1, 5, 6, 7, and 8 above is a ground for the denial, revocation, or suspension of payday lender's business license.
11. Payday lenders must inquire if customer works for the military.

4

12. Payday lenders must inquire if customer has loans with any other payday lender.
    a. Violation of 10 or 11 above is a misdemeanor
13. Other special provisions applicable to military personnel.
14. Prohibits payday lenders from changing owners or location (with threat of losing business license.)
15. Severability Clause (if a court strikes down one section, all other sections are still valid.)
16. There is a transition provision of 6 months for current payday lenders to comply with ordinances.
17. Misdemeanors are punished with a penalty of either a fine of $1,000 or imprisonment of up to 6 months.

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WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
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Telephone (608) 266-1880
Facsimile (608) 267-0640
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DISTRICT I

July 1, 2002

To:

Hon. Mel Flanagan, Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th Street
Milwaukee, WI 53233

John Barrett, Circuit Court Clerk
Appeals Processing Division
901 N. 9th Street, Room G-8
Milwaukee, WI 53233

S. Todd Farris
John D. Finerty
Brian C. Randall
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330 East Kilbourn Ave., #1250
Milwaukee, WI 53202-3145

Thomas O. Gartner
Asst. City Attorney
200 E. Wells St., 8th Floor
Milwaukee, WI 53202-3551

You are hereby notified that the Court has entered the following opinion and order:

01-2780 Roderick Aycox, d/b/a Loan Max v. City of Milwaukee Board of Zoning Appeals (L.C. #00 CV 10735)

Before Wedemeyer, P.J., Fine and Schudson, JJ.

Roderick Aycox, d/b/a Loan Max, appeals from a circuit court order affirming a decision of the City of Milwaukee Board of Zoning Appeals that denied Loan Max's special use application to operate a title loan business in a local business zoning district. Loan Max argues that the Board "proceeded on an incorrect theory of law and exceeded its authority when it denied [the] special use." Upon review of the briefs and record, this court concludes at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (1999-2000).[1] Because we conclude that the Board should afford the parties the

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

6

opportunity to present additional evidence, and should provide specific findings supporting its decision, we reverse the circuit court's order.

Loan Max proposed to operate its title loan business in an existing building located in a zoning district that permits such a special use. The City's professional staff recommended to the Board that it grant the special use application. At the public hearing on the application, however, the alderman representing the district where the building was located stated that while he had no land-use objection to the application, he was politically and philosophically opposed to the title loan business and did not want another outlet in his district. The Board denied the application and the circuit court affirmed the Board's decision.

A decision by a local zoning board of appeals to grant or deny a special use application must be supported by substantial evidence. *See* ***Clark v. Waupaca County Bd. of Adjustment***, 186 Wis. 2d 300, 304, 519 N.W.2d 782 (Ct. App. 1994). "Substantial evidence is evidence of such convincing power that reasonable persons could reach the same decision as the board." ***Id.*** A decision that is not supported by substantial evidence is arbitrary and capricious. *See* ***Snyder v. Waukesha County Zoning Bd. of Adjustment***, 74 Wis. 2d 468, 476, 247 N.W.2d 98 (1976). We owe no deference to a decision that is not supported by findings explaining the decision. *See* ***Ledger v. City of Waupaca Bd. of Appeals***, 146 Wis. 2d 256, 262, 430 N.W.2d 370 (Ct. App. 1988).

Here, because the common council determined that a title loan business is a generally acceptable use of the property at issue, the Board was confined to determining whether the proposed use reflected in the application met the criteria in the special use ordinance,

7

MILWAUKEE, WI., CODE § 295-59-5.5-c.[2] The evidence submitted to the Board came from two sources—the City's professional staff and the alderman who testified at the hearing.

A "Hearing Summary" prepared by the city's professional staff offered the following relevant evidence:

> The Department of Neighborhood Services noted: "DNS believes that this use can be developed in a manner that will be consistent with the Milwaukee Building Code. The plan of operation appears to be enforceable."
>
> The Department of Public Works noted: "Provided the proposed use is developed and operated according to the plans submitted, DPW believes the use can be operated in a manner which will not have a significant adverse impact on traffic circulation, parking or any use of the public right-of-way."
>
> The Department of City Development noted: "Based on a review of the information submitted by the appellant relative to this proposal and without benefit of any testimony which may be presented at the Board of Zoning Appeals hearing, the Department of City Development finds that the criteria for a special use ... have been met...."

---

[2] This municipal ordinance directs the board to make the following findings to grant a special use application:

> c-1. Protection of Public Health, Safety and Welfare. The use will be designed, located and operated in a manner so that the public health, safety and welfare is protected.
>
> c-2. Protection of Property. The use, value and enjoyment of other property in the neighborhood will not be substantially impaired or diminished by the establishment, maintenance or operation of the special use.
>
> c-3. Traffic and Pedestrian Safety. Adequate measures have been or will be taken to provide safe pedestrian and vehicular access.
>
> c-4. Consistency with Comprehensive Plan. The special use will be designed, located and operated in a manner consistent with the city's comprehensive plan.

The Board's own staff concluded:

> Based on the evidence submitted by the applicant, the information received from the departments and the case summary, the [Board] staff recommends that the proposed use be granted based on the criteria being met and recommends that this use be approved for a period of ten (10) years, provided the applicant complies with any and all conditions listed below.

The alderman testified that he had no objection to the application on land-use grounds:

> Mr. Chairman, let me be perfectly clear that, first of all, from a land use standpoint, I don't have an objection to the - - to what Loan Max is attempting to do, and I don't think it would have a detrimental impact from a land use perspective, ...

He then testified, however, that he was strongly opposed on philosophical grounds because "the interest rates they charge are so exorbitant." He also opposed the application because he already has a title loan company, a "pay day loan store," and two check-cashing stores within his district.

Loan Max argues that the alderman's political and philosophical views do not constitute substantial evidence on which the Board could base its denial of the special use permit. MILWAUKEE, WI., CODE § 295-59-5.5-c-2, however, provides: "Protection of Property. The use, value and enjoyment of other property in the neighborhood will not be substantially impaired or diminished by the establishment, maintenance or operation of the special use." The alderman's views, particularly regarding the impact of similar enterprises in the district, could be relevant to those criteria.

Still, from the limited evidentiary record developed before the Board, and from the Board's limited findings and explanation for its decision, it is not possible to determine whether the Board's decision was supported by substantial evidence. *See* ***Ledger***, 146 Wis. 2d at 262.

Accordingly, we reverse the circuit court's order and direct that the case be remanded to the Board for the parties to be given the opportunity to present additional evidence, for the Board to make specific findings under the criteria of MILWAUKEE, WI., CODE § 295-59-5.5-c, and for the Board to render its decision in accordance with its findings.

Upon the foregoing reasons,

IT IS ORDERED that the circuit court's order is summarily reversed pursuant to WIS. STAT. RULE 809.21(1).

Cornelia G. Clark
Clerk of Court of Appeals

10

1082-2004-94

JW

P. 4

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

TITLE LENDERS, INC., d/b/a USA PAYDAY LOANS,

Plaintiffs,

vs.

BOARD OF ZONING APPEALS,

Defendant.

DECISION and ORDER

Case No. 04-CV-000115

Plaintiff, Title Lenders, Inc., d/b/a USA PAYDAY LOANS ("Title Lenders"), seeks judicial review of the decision of the City of Milwaukee Board of Zoning Appeals ("Board") denying an application for a special use permit. Plaintiff contends that the decision was without evidentiary support and was arbitrary and unreasonable. This Court, having reviewed the record along with the submissions by the parties and for the reasons stated herein, affirms the decision of the Board.

STANDARD OF REVIEW

This action is an appeal by way of certiorari under Wis. Stat. §62.23(7)(e)10. Review by certiorari is narrow in scope and limited to the record made before the administrative body. Ledger v. City of Waupaca Board of Appeals, 146 Wis. 2d 256, 261 (Ct. App. 1988). Under traditional standards of common law certiorari review, judicial review is limited to:

(1) whether the Board kept within its jurisdiction;
(2) whether it proceeded on a correct theory of law;
(3) whether its action was arbitrary, oppressive or unreasonable and

represented its will and not its judgment; and

(4) whether the Board might reasonably make the order or determination in question, based on the evidence.

State v. Outagamie County Board of Adjustment, 244 Wis. 2d 613, 630 (2001)

A board's determination will be found arbitrary or capricious if it is unreasonable or without any rational basis. Snyder v. Waukesha County Zoning Board of Adjustment, 74 Wis.2d 468, 476 (1976). However, there is a presumption of correctness and validity to decisions made by the board. State ex rel. Spinner v. Kenosha County Board of Adjustments, 223 Wis.2d 99, 104 (Ct. App. 1998). The board's decision is to be upheld if it is supported by substantial evidence in the record. See Clark v. Waupaca County Board of Adjustment, 186 Wis.2d 300, 304 (Ct. App. 1994). In other words, the board's decisions should be upheld if any reasonable view of the evidence sustains such findings. Snyder, 74 Wis.2d at 476. The Court may not substitute its own decision for that given to the board by the legislature. Id.

ANALYSIS

Title Lenders is a licensed loan agency pursuant to Wis. Stat. §138.09 and is the leaseholder of property located at 714 North Broadway in the City of Milwaukee. (the "Property") The Property is zoned C9F(B) which allows a payday loan agency as a special use according to Milwaukee zoning ordinances. Plaintiff submitted an application ("Application") for a special use permit on June 19, 2002. On October 17, 2002, after proper notice, the Board held a hearing on the Application. At this hearing two Board members, initially stated that they believed the criteria for a special use permit had been met. In addition, the Department of Public Works ("DPW"), the Department of City Development ("DCD"), and the Department of

12

Neighborhood Services ("DNS") did not file objections to the Application. The Board decided to adjourn the hearing to obtain more information regarding Title Lenders.

Another hearing was held on December 12, 2002, and the Board decided to adjourn the hearing again because they had received an objection from a property owner, Towne Realty, and wanted more time to investigate this complaint. In addition, Attorney Walrath from the Legal Aid Society ("Legal Aid") asked for time to present evidence to substantiate Legal Aid's basis for opposing the Application. Subsequently, Legal Aid submitted extensive materials and testimony concerning the payday loan industry and Title Lenders.

A third public hearing was held on October 16, 2003. Testimony was taken from a number of persons including neighboring property owners. At this hearing, DCD changed its previous opinion of the Application and stated that they now believed that Title Lenders would have a negative impact on the development of this area of downtown Milwaukee. On November 6, 2003, the Board held a final hearing and denied the Application. A written decision was issued on December 10, 2003.

Title Lenders contends that the Board made a determination that was unsupported by the evidence. Title Lenders contrasts the evidence it submitted regarding their specific operations with the generalizations about other loan agencies submitted by Legal Aid. Title Lenders denies that it has the same practices and experience that was cited by Legal Aid. For example, Title Lenders is a member of the Community Financial Services Association of America ("CFSA") and has adopted the CFSA Best Practices. Customers of Title Lenders rarely defaulted on their loans. Title Lenders contends that the Board failed to evaluate its application based on its particular location, not on some generalized evidence of other loan agencies' practices. In

addition, despite the unsubstantiated arguments by adjacent property owners, their expert testified that the payday loan agency would have no adverse impact on property values.

Title Lenders also argues that the decision by the Board was arbitrary and unreasonable. The Board did not take all the evidence into consideration, but simply voted based on their preconceived notions of the payday loan industry.

The Board contends that the denial of the Application was premised on its evaluation that Title Lenders business in this particular location, in the heart of downtown Milwaukee, was not appropriate. It notes that a number of immediate neighbors to the Property appeared and opposed the Application. Their opposition indicated concern as to the impact that Title Lenders' proposed use would have upon property values in the affected area of Downtown Milwaukee as well as upon the public health, safety, and welfare generally.

The Board was presented with a difficult case. The Board held several hearings on this matter and took all of the evidence into consideration. At the end of all the testimony, the Board concluded that a payday loan agency: (1) attracts clientele that are in financial trouble or unable to manage money; (2) may attract robbers and other criminals to the area; and (3) did not comport with the efforts of the DCD to develop this area. The Board was also concerned with that there was another payday loan agency in the immediate area. The Board considered all the evidence and found that this location was not appropriate for Title Lenders.

The City of Milwaukee Zoning Code provides that no special use permit shall be granted unless the board, after due notice to the parties of interest, finds that the following facts and conditions exist, and so indicates in the minutes of its proceedings or it decision:

> (1) Protection of Public Health, Safety and Welfare. The use will be designed, located and operated in a manner so that the public health, safety, and welfare is protected;

14

(2) Protection of Property. The use, value and enjoyment of other property in the neighborhood will not be substantially impaired or diminished by the establishment, maintenance or operation of the special use;

(3) Traffic and Pedestrian Safety. Adequate measures have been or will be taken to provide safe pedestrian and vehicular access; and

(4) Consistency with Comprehensive Plan. The special use will be designed, located and operated in a manner consistent with the city's comprehensive plan.

§§295-311-2-d and 295-311-2-d-1 through d-4, Milwaukee Code of Ordinances.

The factors that the Board focused on were protection of health, safety and welfare, protection of property and consistency with comprehensive plan. There was substantial testimony on both sides of these issues. The record demonstrates that the Board was aware of its obligation to decide each application on a case-by-case basis. It recognized that payday loans are a lawful commercial business. But the Board also took into account negative information submitted from those objecting to the Application. After taking into account the relevant factors the Board determined that the granting of this Application would have a negative impact on property values and on the efforts to revitalize this area of downtown Milwaukee.

A board's decision is arbitrary if it is unreasonable or lacks a rational basis. Snyder, 74 Wis.2d at 476. The Board took all the testimony into consideration and made a determination based on the information provided. There was no unreasonableness or lack of a rational basis simply because the Board gave some evidence more weight. It is apparent that the Board found of great significance the opinion of DCD as stated at the October 13, 2003, hearing that the approval of the Application would have a negative effect on the development of downtown. This opinion was shared by a number of immediate neighbors of the Property. The Court may not substitute its own decision for that of the Board if any reasonable view of the evidence would

15

support the Board's findings. Based on the presumption of validity and correctness the Court upholds the Board's determination.

CONCLUSION

THEREFORE, IT IS HEREBY ORDERED that the decision of the Board of Zoning Appeals is hereby affirmed and this action is dismissed.

Dated at Milwaukee, Wisconsin this 29th day of July, 2004.

BY THE COURT:

CIRCUIT COURT MILWAUKEE CO. WISCONSIN SEAL

/s/ HON. PATRICIA D. McMAHON

Honorable Patricia McMahon
Circuit Court Judge
Branch 18

*333 F. Supp. 2d 800, *; 2004 U.S. Dist. LEXIS 17577, **

THE **PAYDAY LOAN** STORE OF WISCONSIN, INC. d/b/a MADISON'S CASH EXPRESS, Plaintiff, v. CITY OF MADISON, Defendant.

04-C-0365-C

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

333 F. Supp. 2d 800; 2004 U.S. Dist. LEXIS 17577

August 31, 2004, Decided

PRIOR HISTORY: Payday Loan Store of Wis., Inc. v. City of Madison, 339 F. Supp. 2d 1058, 2004 U.S. Dist. LEXIS 15830 (W.D. Wis., Aug. 5, 2004)

DISPOSITION: [1]** Defendant City of Madison's motion for summary judgment granted.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff, a **payday loan** store owner, brought an action against defendant city pursuant to 42 U.S.C.S. § 1983, alleging that the city had enacted an ordinance that violated the owner's rights to equal protection and due process, was unconstitutionally vague, and was preempted by state law. The city filed a motion for summary judgment.

OVERVIEW: The owner operated a 24-hour store that provided a number of services, including short-term licensed **payday loans,** a state-licensed currency exchange and check cashing operation, notary services, bill paying, and facsimile and copy services. The city passed an ordinance that provided that no **payday loan** business or currency exchange operation could be open between the hours of 9 p.m. and 6 a.m. The court held that there was no equal protection violation because the owner could not show that the city lacked any rational basis for legislating the nighttime closing of **payday loan** stores. The court held that the city council could speculate rationally that people emerging from a **payday loan** store with large amounts of money in their pockets would be involved in crime, either as victims of robbery or as customers for illegal drugs or prostitution. The court held that there was no due process violation because the claim rested on the same ground as the equal protection claim. The court also held that the city ordinance was not vague because persons of ordinary intelligence could understand the ordinance's prohibition and there was no danger of arbitrary or discriminatory enforcement.

OUTCOME: The court granted the city's motion for summary judgment.

CORE TERMS: payday, ordinance, currency, nighttime, customer, licensed, equal protection, regulation, state law, summary judgment, preempted, night, preliminary injunction, economic regulation, savings, neighborhood, legitimately, intelligence, unsupported, discovery, traffic, common council, rational basis, lighting, lending, succeed, supplemental jurisdiction, unconstitutionally vague, equal protection claim, similarly situated

LexisNexis(R) Headnotes

Constitutional Law > Equal Protection > Scope of Protection

HN1 To succeed on a claim that a legislative decision is violative of equal protection rights, a plaintiff must show that the legislation burdens a suspect class, affects

17

fundamental rights, or is not rationally related to any legitimate goal of government.

Constitutional Law > Equal Protection > Scope of Protection
HN2 When dealing with economic regulation, any conceivable basis for the classification is sufficient to justify it. Parties challenging legislation under the equal protection clause cannot succeed so long as it is evident from all the considerations presented to the legislature, and those of which the court can take judicial notice, that the question is at least debatable.

Constitutional Law > Equal Protection > Scope of Protection
HN3 When the legislature has or could have had some evidence before it that reasonably supports a classification, challengers cannot prevail merely by tendering evidence in court that the legislature was mistaken.

Constitutional Law > Fundamental Freedoms > Overbreadth & Vagueness
Governments > Legislation > Overbreadth & Vagueness
HN4 Vague laws present two kinds of problems. The first is that persons of ordinary intelligence will not know how to conform their conduct to the law. The second is the lack of explicit standards for application of the law, with the consequence that persons charged with enforcement of the law may act arbitrarily and discriminatorily. The vagueness doctrine is enforced most strictly when the law interferes with free expression or the exercise of other constitutional rights. Economic regulation is subject to a less stringent analysis because such regulation usually deals with a narrower subject and those affected by it are more likely to consult the law, seeking clarification if necessary, in order to plan their behavior. Moreover, legislation that has civil rather than criminal penalties is given great leeway because the consequences of imprecision are qualitatively less severe.

Constitutional Law > Equal Protection > Scope of Protection
Constitutional Law > Substantive Due Process > Scope of Protection
HN5 The various freedoms preserved by Wis. Const. art. I, § 1, are substantially the equivalent of the due-process and equal-protection-of-the-laws clauses of the Fourteenth Amendment to the United States Constitution.

Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Supplemental Jurisdiction
HN6 When deciding to exercise supplemental jurisdiction, a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity.

Governments > Local Governments > Duties & Powers
HN7 Municipalities have the power to act for the government and good order of the city and for the health, safety and welfare of the public, Wis. Stat. § 62.11(5), only when dealing with the local affairs and government of municipalities, Wis. Const. art. XI, § 3, and they lack the power to legislate with regard to matters of statewide concern.

COUNSEL: For City of Madison, DEFENDANT: Michael P May, City Attorney, Madison, WI USA.

JUDGES: BARBARA B. CRABB, District Judge.

OPINIONBY: BARBARA B. CRABB

OPINION: [*802] OPINION AND ORDER

18

This is a civil action brought pursuant to 42 U.S.C. § 1983. Plaintiff The **Payday Loan** Store of Wisconsin contends that defendant City of Madison has enacted an ordinance that violates plaintiff's rights to equal protection and due process and is unconstitutionally vague. In addition, plaintiff contends that the ordinance is preempted by state law.

When plaintiff filed its complaint, it sought a preliminary injunction to prevent defendant from enforcing the allegedly unconstitutional ordinance. Defendant responded to the motion and submitted a motion for summary judgment at the same time, asserting that the legal principles determining the motions were the same. Defendant asked that its motion for summary judgment be addressed without allowing plaintiff time for discovery, arguing that any discovery would be unnecessary. I agreed that discovery would not assist plaintiff (because legislative decisions are "not subject to courtroom **[**2]** factfinding and may be based on rational speculation unsupported by evidence or empirical data," FCC v. Beach Communications, Inc., 508 U.S. 307, 315, 124 L. Ed. 2d 211, 113 S. Ct. 2096 (1993)), and gave its counsel an opportunity to advise the court whether he wanted an opportunity for additional briefing; he wrote to the court on August 12, 2004, to say that additional briefing would not be necessary and that the court should proceed to decide the motion.

I conclude that defendant's motion for summary judgment must be granted because plaintiff cannot show that defendant lacked any rational basis for legislating the nighttime closing of **payday loan** stores. Without such a showing, plaintiff cannot succeed on its claim that it was denied equal protection or that it was denied substantive due process. The clear wording of the ordinance defeats plaintiff's claim that it is unconstitutionally vague. Finally, plaintiff lacks any support for its contention that the ordinance is preempted by state law.

For the purpose of deciding this motion, I find from the findings of fact proposed by the parties in connection with the two motions that the following facts are material and undisputed. **[**3]**

UNDISPUTED FACTS

Plaintiff The **Payday Loan** Store of Wisconsin, Inc., d/b/a Madison's Cash Express, is a Wisconsin corporation with its principal place of business in Chicago, Illinois. Defendant City of Madison is a body corporate and politic that may sue and be sued.

Plaintiff is a financial services company that operates five branches in Madison, Wisconsin. On November 7, 2003, it opened a new facility at 2722 East Washington Avenue. As of the time of the hearing on the motion for preliminary injunction, the facility was open 24 hours a day, seven days a week and was the only 24-hour business of its type in Madison.

All of plaintiff's **payday loan** customers have checking accounts and a large percentage of its check cashing customers have bank accounts. Plaintiff provides a number of services, including short-term licensed loans known as "**payday loans,**" a currency exchange and check cashing operation, notary services, bill paying and facsimile and copy services. Plaintiff sells stamps, envelopes and bus passes and maintains a stand-alone ATM in its lobby.

[*803] Plaintiff is licensed by the Wisconsin Department of Financial Institutions to make short-term licensed loans. In a typical **[**4]** transaction, a borrower presents a paycheck stub, photo identification and a recent bank statement, completes a loan application and submits a post-dated check. Plaintiff completes a note and other loan documents and makes certain disclosures to the customer. It holds the post-dated check until the loan comes due and thereafter applies the check to pay off the loan unless the customer pays the loan in full before it has come due. Plaintiff charges $ 22 for each $ 100 borrowed for a two-week licensed loan.

Plaintiff is licensed by the Wisconsin Department of Financial Institutions to operate a

19

community currency exchange business. In return for a fee, it agrees to cash payroll checks, insurance proceed checks, government checks and other third-party checks.

When plaintiff invested in the East Washington facility, it did so in anticipation that it would be able to operate 24 hours a day. When it began its planning, the business was a permitted use under defendant's zoning ordinance.

Plaintiff takes a number of steps to maintain security for its operation, including proper lighting, the use of safes and hourly sweeps and surveillance of all of its stores. The lighting inside and outside **[**5]** the store make the parking lot and store open to view.

On November 4, 2003, defendant's Common Council proposed a new ordinance, entitled "Hours of Operation for **Payday Loan** Businesses." Section (2) of the ordinance provided that no **payday loan** business could be open between the hours of 9 pm and 6 am. At a public meeting held on January 6, 2004, the council voted to adopt the ordinance with one dissenting vote. The mayor approved the ordinance on January 9, 2004 and it became effective fifteen days later.

On or about February 10, 2004, defendant agreed not to enforce the payday lending ordinance against plaintiff's currency exchange business pending a review of the language of the ordinance and plaintiff agreed not to make **payday loans** during the prohibited hours. On February 24, 2004, Alderperson Markle presented amendments to the ordinance to broaden the definition of **payday loan** business to include community currency exchange businesses. The Common Council adopted the amendments on May 18, 2004; the mayor approved them on May 24, 2004; and they took effect on June 8, 2004.

The ordinance does not prohibit ATM's, supermarkets, convenience stores and other similar businesses from **[**6]** disbursing cash between 9 pm and 6 am. Some ATM's allow eligible customers to take cash advances on their credit cards 24 hours a day.

OPINION

A. Equal Protection

*HN1*To succeed on a claim that a legislative decision is violative of equal protection rights, a plaintiff must show that the legislation burdens a suspect class, affects fundamental rights or is not rationally related to any legitimate goal of government. Johnson v. Daley, 339 F.3d 582, 585 (7th Cir. 2003). Plaintiff does not suggest that it is a member of a suspect class or that it has a fundamental right to run a **payday loan** operation 24 hours a day. Its entire case rests on its contention that the **payday loan** ordinance treats similarly situated entities differently. It allows the nighttime operation of ATM's and retailers that provide cash back from purchases while requiring **payday loan** stores to close at night. Moreover, it allows many businesses **[*804]** to operate between 9 pm and 6 am although they have the potential to affect residential neighborhoods through excessive noise and lights, while requiring payday stores to close during those hours. Plaintiff maintains that these distinctions are discriminatory **[**7]** and unsupported by a rational basis.

Plaintiff argues that it makes no sense to force it to close while allowing other businesses and ATM's to dispense cash throughout the night. If it is dangerous for individuals to leave its facility with large sums of case, it is equally dangerous for them to leave an ATM or a store that returns cash back on purchases. Defendant denies that ATM's and grocery stores are similarly situated to plaintiff because both of these facilities limit to well under $ 2000 the amount of cash that they will allow customers to withdraw or that they will give back on a purchase. Defendant argues that it had at least six reasons for differentiating between **payday loan** stores and other commercial establishments and ATMS: (1) Closing a cash-based business that advertises loans of up to $ 2,000 that can be obtained in minutes will

20

deter nighttime crime activity; (2) persons who want to borrow money at 3 am may use that money to buy illegal drugs or engage in prostitution; (3) exiting a **payday loan** store at 3 am may make a person a target for criminal activity; (4) if police calls to payday stores are unnecessary, limited police resources can be devoted to other needs; **[**8]** (5) the presence of a 24-hour **payday loan** store sends a message that the neighborhood is of low quality; and (6) prohibiting **payday loan** stores from operating overnight will reduce the influx of non-residents traveling into a given neighborhood late at night to obtain cash.

It is not necessary (or permissible) to decide whether plaintiff's reasons for the ordinance are compelling or whether there is objective evidence to support them. HN2 When dealing with economic regulation, any "conceivable basis" for the classification is sufficient to justify it. Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 364, 35 L. Ed. 2d 351, 93 S. Ct. 1001 (1973). Parties challenging legislation under the equal protection clause cannot succeed so long as "it is evident from all the considerations presented to [the legislature], and those of which [the court can] take judicial notice, that the question is at least debatable.'" Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 463, 66 L. Ed. 2d 659, 101 S. Ct. 715 (1981) (quoting United States v. Carolene Products Co., 304 U.S. 144, 153-54, 82 L. Ed. 1234, 58 S. Ct. 778 (1938)).

HN3 When the legislature has or could have had some evidence before **[**9]** it that reasonably supports a classification, challengers cannot prevail "merely by tendering evidence in court that the legislature was mistaken." Clover Leaf Creamery, 449 U.S. at 464. For this reason, it is irrelevant whether plaintiff's proposed facts show that serious crime is not a problem in the area of its East Washington Avenue store, that the actual number of police calls to plaintiff's stores is low, that plaintiff has taken steps to ensure the security of its employees and customers and that defendant had no evidence before it that plaintiff's stores are more apt to disturb nearby residences than are other businesses in the same area. It is irrelevant that Dr. Rick Lovell, an expert in the study of crime, crime patterns and crime deterrence and suppression, adduced evidence purporting to show that defendant's ordinance was based on misapprehensions about the relation of crime to the **payday loan** business and about the effectiveness of legislating against the nighttime operation of **payday loan** businesses in deterring crime. Legislative decisions "may be based on rational **[*805]** speculation unsupported by evidence or empirical data." Beach Communications, 508 U.S. at 315. **[**10]**

As I noted in the order denying plaintiff's motion for a preliminary injunction, "the city council could speculate rationally that people emerging from a **payday loan** store with large amounts of money in their pockets would be involved in crime, either as victims of robbery or as customers for illegal drugs or prostitution." Aug. 5, 2004 Order, dkt. # 33, at 3. It goes without saying that communities have an interest in preventing crime. Whether the **payday loan** ordinance is the best method of prevention is not the issue. It is the legislative body's prerogative to choose the steps it wishes to take to advance its goals. National Paint & Coatings v. City of Chicago, 45 F.3d 1124, 1127 (7th Cir. 1995).

It is not relevant that the legislation leaves unregulated other conduct that seems equally undesirable. Legislatures are permitted to legislate in small increments and deal with the problems they deem most acute. Johnson, 339 F.3d at 586-87 (citing Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 489, 99 L. Ed. 563, 75 S. Ct. 461 (1995)). Thus, it does not matter whether plaintiff has evidence that users of ATM machines are just as likely **[**11]** targets for robbers as are customers of **payday loan** stores, or whether other commercial establishments on East Washington Avenue are noisier, have brighter lighting or attract more nighttime traffic. The common council could have believed that closing **payday loan** stores at night would help reduce crime and help reduce the total amount of nighttime traffic, noise and bright lights in the area. The legislature need not address all 24-hour operations at one time. "Scope-of-coverage provisions" are virtually unreviewable" because the government "must be allowed leeway to approach a perceived problem incrementally."

21

Beach Communications, 508 U.S. at 316. "If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied." Minnesota ex rel. Pearson v. Probate Court of Ramsey County, 309 U.S. 270, 275, 84 L. Ed. 744, 60 S. Ct. 523 (1940). Because plaintiff cannot show that the council could not have believed that the **Payday loan** ordinance would help reduce crime, nighttime traffic and noise, it has failed to show that the regulation violates its equal protection rights.

B. Due Process **[**12]**

Plaintiff asserted a claim of violation of due process, but it rests on the same ground as his equal protection claim that the ordinance has no rational basis. Plaintiff is not asserting that it was denied any procedural rights to which it was entitled. Therefore, its due process claim falls with its equal protection claim. Minnesota v. Clover Leaf Creamery Co., 449 U.S. 459, 470 n.12, 66 L. Ed. 2d 659 (1981) ("From our conclusion under equal protection, however, it follows *a fortiori* that the [ban on plastic nonreturnable milk containers] does not violate the Fourteenth Amendment's Due Process Clause: National Paint, 45 F.3d at 1129 (refusing to consider claim that ordinance violates substantive due process rights; "economic regulation must be evaluated under equal protection principles"); see also Albright v. Oliver, 510 U.S. 266, 273, 127 L. Ed. 2d 114, 114 S. Ct. 807 (1994) ("Where a particular amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, that amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims. **[**13]** '")

[*806] C. Vagueness

Plaintiff argues that the ordinance does not give the "person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." Grayned v. City of Rockford, 408 U.S. 104, 108, 33 L. Ed. 2d 222, 92 S. Ct. 2294 (1972). It contends that the ordinance does not provide fair notice of the extent to which it may operate between 9 pm and 6 am because it does not make clear whether plaintiff can continue to offer services other than currency exchange and **payday loans** during the nighttime hours.

HN4 Vague laws present two kinds of problems. The first is the one just noted, which is that persons of ordinary intelligence will not know how to conform their conduct to the law. The second is the lack of explicit standards for application of the law, with the consequence that persons charged with enforcement of the law may act arbitrarily and discriminatorily. Grayned, 408 U.S. at 108-09.

The vagueness doctrine is enforced most strictly when the law interferes with free expression or the exercise of other constitutional rights. Brockert v. Skornicka, 711 F.2d 1376, 1381 (7th Cir. 1983). Economic regulation **[**14]** is subject to a less stringent analysis because such "regulation usually deals with a narrower subject and those affected by it are more likely to consult the law, seeking clarification if necessary, in order to plan their behavior." Id. (citing Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498, 71 L. Ed. 2d 362, 102 S. Ct. 1186 (1982)). Moreover, legislation that has civil rather than criminal penalties is given great leeway "because the consequences of imprecision are qualitatively less severe." Id. at 498-99.

The **payday loan** ordinance is economic regulation that imposes only civil sanctions. Therefore, it does not require the high degree of clarity that would be necessary for an ordinance that impinged on free speech or another constitutional right. Nevertheless, it is clear both on its face and as applied. It prohibits any **payday loan** business from being open between 9 pm and 6 am. Plaintiff operates a **payday loan** business that cannot be open during the prohibited hours, even if plaintiff is not engaging in the business of making **payday loans** or operating a currency exchange during that time. The ordinance does not prohibit "engaging **[**15]** in **payday loan** activities" during nighttime hours; it says that

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the business cannot be open. Persons of ordinary intelligence can understand the ordinance's prohibition. Law enforcement personnel can enforce the ordinance: if a **payday loan** business is open after 9 pm or before 6 am, it is in violation of the ordinance and subject to a civil fine. The ordinance poses no danger of arbitrary or discriminatory enforcement.

D. Wisconsin Constitution

It is not necessary to address plaintiff's allegations of violations under the equal protection and due process violations of the Wisconsin Constitution. Plaintiff concedes that there is no substantial difference between the federal and the state provisions. Plt.'s Reply Br., dkt. # 27, at 3. State ex rel. Briggs & Stratton v. Noll, 100 Wis. 2d 650, 657, 302 N.W.2d 487 (1981) ("'It is well settled by Wisconsin case law that HN5 the various freedoms preserved by sec. 1, art. I, Wis. Const., are substantially the equivalent of the due-process and equal-protection-of-the-laws clauses of the Fourteenth amendment to the United States constitution.'" (quoting Haase v. Sawicki, 20 Wis. 2d 308, 121 N.W.2d 876 (1963)). **[**16]**

Therefore, the conclusions I have reached concerning plaintiff's federal constitutional **[*807]** claims are equally applicable to its state constitutional claims.

E. Preemption by State Law

For its last argument, plaintiff contends that the ordinance is preempted by state law. Like plaintiff's state constitutional issues, this argument does not implicate any federal issue and it would be permissible to dismiss it on that ground, rather than exercise supplemental jurisdiction over it. 28 U.S.C. § 1367(c)(3). However, I believe it would advance judicial efficiency to decide it along with the federal questions. Burrell v. City of Mattoon 378 F.3d 642 (7th Cir. 2004); see also City of Chicago v. International College of Surgeons, 522 U.S. 156, 173, 139 L. Ed. 2d 525, 118 S. Ct. 523 (1997) ("HN6 When deciding to exercise supplemental jurisdiction, 'a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity.'") (quoting Carnegie-Mellon University. v. Cohill, 484 U.S. 343, 350, 98 L. Ed. 2d 720, 108 S. Ct. 614 (1988)). I will address the preemption issue for the sake of judicial **[**17]** economy because it does not raise any novel, complex or unsettled issue of state law.

It is undisputed that HN7 municipalities have the power to act for the government and good order of the city and for the health, safety and welfare of the public, Wis. Stat. § 62.11(5), only when dealing with the local affairs and government of municipalities, Wis. Const. Art. XI, § 3, and that they lack the power to legislate with regard to matters of statewide concern. Plaintiff argues that the ordinance oversteps defendant's authority in two respects. First, it provides that a **payday loan** operation and a currency exchange operation cannot be operated together in Madison and must be at least 5,000 feet from each other, in direct violation of the express provision in Wis. Stat. § 138.09(3)(e) le that such businesses may be run out of the same building. Second, the state regulates **payday loan** businesses and community currency exchange businesses and defendant's ordinance violates the spirit of the state regulatory system by disallowing legitimately licensed businesses from operating.

As to the first challenge, plaintiff has failed to show that it has **[**18]** any standing to raise it. The provision requiring 5,000 feet of separation between **payday loan** businesses does not apply to any of plaintiff's businesses now in operation in Madison (and it is highly doubtful that the ordinance prohibits the operation of **payday loan** and currency exchange businesses on the same premises). If and when plaintiff is denied permission to open another such business because of this restriction, it may be able to satisfy the elements of standing, which require an injury in fact, a causal relation between the injury and the challenged conduct and a likelihood that the injury will be redressed by a favorable decision, Lee v. City

23

of Chicago, 330 F.3d 456, 468 (7th Cir. 2003) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 119 L. Ed. 2d 351, 112 S. Ct. 2130 (1992)). At this time, when plaintiff has not shown that it is suffering or about to suffer "an invasion of a legally protected interest that is concrete and particularized," id., this court lacks jurisdiction to entertain plaintiff's challenge to the ordinance as preempted by state law.

As to the second challenge, plaintiff has not established any conflict between the state's **[**19]** regulations of plaintiff's **payday loan** and currency exchange operations and the ordinance. The state regulations concern licensing and the regulation of consumer transactions, including record keeping and limitations on advertising. They have nothing to do with hours of operation or location of businesses.

[*808] Plaintiff maintains that the ordinance "violates the spirit of the state regulatory system by disallowing legitimately licensed businesses from operating." Plt.'s Br., dkt. # 4, at 46. Plaintiff misstates the effect of the ordinance. It does not prevent legitimately licensed businesses from operating; it merely says where they can operate and during what hours. It does not violate the spirit of the state regulatory system.

Plaintiff cites a Wisconsin case, Anchor Savings & Loan Ass'n Co. v. Madison Equal Opportunities Comm'n, 120 Wis. 2d 391, 355 N.W. 2d 234 (1984), in support of its position, but that case is nothing like this one. In Anchor Savings, the issue was whether a state-chartered savings and loan had acted properly in denying a loan to a divorced man. The savings and loan had considered the applicant's court-ordered support and maintenance payments **[**20]** as fixed expenses, disqualifying him for a loan, whereas if he had been married, the same money would have deemed flexible expenses and he would have been granted a loan. The applicant complained to the Madison Equal Opportunities Commission, which held that Anchor had violated a local ordinance prohibiting creditors from discriminating on the basis of marital status. Anchor appealed, contending that the City lacked authority to regulate its lending practices. The Supreme Court of Wisconsin agreed, holding that the commission's decision conflicted with the comprehensive legislative scheme governing all aspects of credit and lending.

Telling a state-chartered savings and loan association how to calculate a loan applicant's qualifications for a loan is a far cry from telling a state-licensed **payday loan** operation where it may locate its business and what hours it may operate. These latter matters have nothing to do with the state's legislation and regulations regarding the loans themselves and the licensing and responsibilities of loan providers.

I conclude that defendant has shown that it is entitled to summary judgment on all of the claims raised by plaintiff in its complaint. **[**21]**

ORDER

IT IS ORDERED that defendant City of Madison's motion for summary judgment is GRANTED. The clerk of court is directed to enter judgment for defendant City and close this case.

Entered this 31st day of August, 2004.

BY THE COURT:

BARBARA B. CRABB

District Judge

34

Form CA-43

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May 7, 2003

Craig Zetley, Chairman
Board of Zoning Appeals
809 North Broadway, 1st Floor
Milwaukee, WI 53202

RECEIVED
MAY 7 2003
BOARD OF ZONING APPEALS
CITY OF MILWAUKEE

Re: Payday Loan or Title Loan Agencies
BOZA Case Numbers 24480, 24481, and 24482

Dear Mr. Zetley:

In your letter of February 27, 2003, you have requested the advice of this office concerning the range of information that can be considered by the Board of Zoning Appeals ("Board") when interpreting and applying the criteria set forth in the Zoning Code ("Code") for issuance of special-use permits to "payday loan" or "title loan" agencies (sometimes collectively referred to in this opinion as the "payday loan" industry). Section 295-311-2-d-1 of the Code, sets forth the following as one of the criteria applicable to evaluation of any application for a special-use permit:

> Protection of Public Health, Safety, and Welfare. The use will be designed, located, and operated in a manner so that the public health, safety, and welfare is protected.

The question concerning the scope of the Board's authority has arisen as a consequence of certain business practices associated with the operation of "payday loan" or "title loan" agencies, which have engendered controversy. These include such matters as lending practices, interest rates, and loan "rollovers." Your question is directed at whether such matters may be considered by the Board as factors governing its determination on special-use permit applications submitted by such businesses. We have additionally reviewed correspondence that has been transmitted to you by counsel for Payday Loan Store of Wisconsin, Inc., an applicant for three special-use permits that are now pending before the Board, and for Legal Action of Wisconsin, Inc., an opponent of the pending applications. Given that these permit applications refer to "payday loan" agencies, our discussion will focus upon that line of business; we note, however, that we are not aware of any distinction between "payday loan" and "title loan" agencies with respect to the specific issue raised by your letter of February 27, 2003.

25

A "payday loan" agency (more precisely entitled a "deferred deposit" agency) is a business that provides short-term loans to individuals at very high rates of interest. Typically, in a "payday loan" arrangement, the following steps occur:

1. The borrower will provide to the lender items such as a paycheck stub, photo identification, and/or a recent bank statement;

2. The borrower then completes a loan application and submits a post-dated check to the lender and in return receives cash proceeds of the loan, which will be less than the face amount of the check;

3. The post-dated check is then held by the lender until the loan is due—usually a period of two weeks or thereabouts reflecting the fact that such loans are generally intended to get the borrower through the period until his or her next payday (hence the term "payday loan"); and

4. At the due date, the lender will deposit the check unless the borrower is able to pay the loan in full (generally the face amount of the check) at that time or unless the lender and the borrower agree to "roll over" the loan for an additional period.

The "payday loan" industry is regulated by the Wisconsin Department of Financial Institutions under § 138.09, *Wis. Stats.* and other applicable statutes, particularly the Wisconsin Consumer Act (chs. 421-427, *Wis. Stats.*) and its implementing regulations, which may be found at Wis. Adm. Code ch. DFI-Bkg 80. One noteworthy feature of this regulatory scheme is that loans made thereunder that are either "precomputed" or "based upon the actuarial method," after October 31, 1984, are not subject to any maximum interest-rate limit. § 138.09(7)(bp), *Wis. Stats.*

With the foregoing in mind, we now turn to a discussion of the applicable legal principles. The pending permit applications request the issuance of a special-use permit. A "special use" is defined in § 295-102-619 of the Code as follows:

> SPECIAL USE means a use which is generally acceptable in a particular zoning district but which, because of its characteristics and the characteristics of the zoning district in which it would be located, requires review on a case-by-case

basis to determine whether it should be permitted, conditionally permitted, or denied.

Thus, a "payday loan" agency is a lawful use, the operation of which both the State and the City have seen fit to permit. Whether such a use will, in fact, be permitted to operate at any particular location is subject to case-by-case review by the Board, in accordance with the special-use permit criteria set forth in § 295-311-2-d of the Code. The key in this respect is case-by-case review. If a type of use is designated as a "special use" in a particular zoning district, the Board cannot simply permit or ban all such uses on a blanket basis, but must instead perform that review with respect to each application, as directed by the Code.

The extent of the Board's discretion in evaluating special-use permit applications submitted by "payday loan" agencies and similar businesses is governed by the measure of the City's "police power." The Code (ch. 295, Milwaukee Code of Ordinances) represents a traditional and extremely well-established vehicle for the exercise of police powers vested in the City. *See* § 62.11(5), *Wis. Stats.*; *Willow Creek Ranch, LLC v. Town of Shelby*, 2000 WI 56, 235 Wis.2d 409, 611 N.W.2d 693; *State ex rel. American Oil Company v. Bessent*, 27 Wis.2d 537, 135 N.W.2d 317 (1965). Indeed, the adoption of a comprehensive zoning code represents the primary vehicle by which a municipality promotes the public health, safety, and welfare through regulation of the use of land within its jurisdiction. *Village of Euclid, OH v. Ambler Realty Company*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926); *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974); *City of Milwaukee v. Leavitt*, 31 Wis.2d 72, 142 N.W.2d 169 (1966). Notably, the literal text of § 295-311-2-d-1 of the Code, setting forth the special-use criterion referenced in your letter of February 27, 2003 is stated in explicit police-power terms—*i.e.*, whether the use in question "will be designed, located, and operated in a manner so that the public health, safety, and welfare is protected." The Board has broad discretion to hear testimony and apply this criterion to the full extent necessary to assure protection of the public health, safety, and welfare. The City, in the exercise of its police-power, has delegated this authority to the Board.

The question before us thus concerns the legitimate extent of the Board's authority to regulate the operations of the "payday loan" industry as an exercise of its delegated police powers and under the "public welfare" criterion of the special-use permit ordinance, § 295-311-2-d-1 of the Code. We have found no cases directly relevant to this inquiry, but we can provide some guidance through the application of well-established principles.

27

It cannot be fairly disputed (and counsel for Payday Loan Store of Wisconsin, Inc. acknowledges) that the Board may exercise such regulatory authority over traditional land-use criteria, including (but not necessarily limited to) those enumerated in the special-use conditions set forth by §§ 295-311-2-d-2 through 2-d-4 and 295-311-e of the Code. It also cannot be fairly disputed (and counsel for Payday Loan Store of Wisconsin, Inc. also acknowledges) that the definition of a "special use" set forth in § 295-201-619 of the Code authorizes the Board "to conduct a location specific inquiry to see if the proposed special use creates conflicts with the characteristics of the location and surrounding neighborhood."

The difficulty is that your inquiry reaches beyond consideration of traditional land-use criteria or other site-specific considerations. It implicates the broader question of whether (and if so, to what extent) the Board may exercise its delegated police powers to regulate the lending practices and other business conduct of the "payday loan" industry—and, if it disapproves of that conduct, whether it may consequently deny or limit the issuance of special-use permits to applicants from that industry. This question is far more problematic, particularly as this industry is, as earlier noted, a lawful enterprise that the State has not chosen to prohibit or (in the case of interest rates charged on loans made after October 31, 1984) even to limit. Thus, we must consider whether the Board may intervene in an area where the State has chosen not to.

The available case law provides no reliable guidance applicable to this specific context. We have found two Wisconsin cases supporting a broad construction of the type of "public welfare" criterion implicated here. In those cases, however, the secondary impacts of the land use in question were significantly more tangible and directly applicable to the general public than the comparable adverse secondary impacts here (*i.e.*, the risk of loan defaults by "payday loan" customers and the resultant financial distress and potential bankruptcies).

First, we consider the decision of the Wisconsin Supreme Court in *Edward Kraemer & Sons, Inc. v. Sauk County Board of Adjustment*, 183 Wis.2d 1, 515 N.W.2d 256 (1994). In that case, the Court upheld the board's broad discretion to consider generalized effects on public welfare in its evaluation of an application submitted by a mining corporation for a "special exception" that would authorize it to extract minerals on land zoned for agricultural use. The Court specifically rejected the contention that the board's discretion was limited to consideration of only the specific standards enumerated in the zoning ordinance applicable to "mining extraction" activities and ruled that the board may also consider standards of general applicability that may be pertinent to consideration of the impact of a proposed use upon the "public welfare." In this respect, the Court stated as follows:

> . . . [T]he "public health, safety and welfare" standard, is a general standard that provides the Board with flexibility and discretion to consider how a proposed special exception could affect the public welfare. The standard allows the Board to consider potential harm to individuals living near the proposed mineral extraction site, including exposure to health hazards from the dust and threats to safety posed by blasting. The public health, safety and welfare standard is also broad enough to enable the Board to consider the generalized effects on the public welfare that concern the Board in this case—harm to the public that would result from partial destruction of a natural area that both permit supporters and opponents agree is of great geologic importance.

183 Wis.2d at 11, 515 N.W.2d at 260. The court also rejected the contention that the application of the "public welfare" standard by the board constituted an impermissible delegation of legislative authority. *Id.*, 183 Wis.2d at 14-15, 515 N.W.2d at 261-262. The environmental harm described by the Court, however, was more directly related to the proposed land use and more likely to affect the general public in the vicinity of the mine, than the risks of harm posed by the grant of a special-use permit to a "payday loan" agency.

In a more recent case the Wisconsin Court of Appeals confirmed that the "general welfare" component of the criteria applicable to special use permits may be broadly construed by boards of appeal to include consideration of positive, community-wide secondary impacts of a proposed use. *Sills v. Walworth County Land Management Committee*, 2002 WI 111, 254 Wis. 2d 538, 648 N.W.2d 878 [petition for review denied 2002 WI 109, 254 Wis. 2d 261 648 N.W.2d 477] dealt with the review of the grant of a conditional use permit by the Walworth County Land Management Committee. The facts in that case involve a request to permit the creation and operation of a public museum at a historic estate located on Geneva Lake. In reaching its decision to grant the conditional use permit, the Walworth County Land Management Committee considered not only traditional zoning factors such as traffic and impact upon property values but also the historic benefit of preserving the site as a public museum.

The Court of Appeals, in upholding the Committee's decision concluded that "the phrase general welfare" has a broad meaning encompassing a wide range of areas." 648 N.W.2d at 883. The Court went on to say that it was " . . . persuaded that the general welfare is promoted by the preservation of historical sites and maintenance of museums to educate the public and to inspire patriotism and respect for our history." 648 N.W.2d at 884. As is the case with the Code, the

Walworth County ordinance set forth as its stated purpose the promotion of the general welfare of Walworth County, including comfort, health, safety, prosperity and aesthetics. 648 N.W.2d at 883. The decision supports a broad interpretation of the general welfare and acknowledges that "the weight to be accorded all of this evidence was within the discretion of the Committee." 648 N.W.2d at 885, citing *Delta Biological Resources Inc. v. Bd. of Zoning Appeals*, 160 Wis. 2d 905, 915, 467 N.W.2d 164 (Ct. App. 1991).

Similarly, zoning boards of appeal have been accorded considerable discretion to regulate matters that influence the physical and visual environment, such as aesthetics and architectural design. *See, e.g., Gabriel v. Village of Wind Point*, 157 Wis.2d 668, 460 N.W.2d 800 (Ct. App. 1990); *Racine County v. Plourde*, 38 Wis.2d 403, 157 N.W.2d 591 (1968); *State ex rel. Saveland P.A. Corp. v. Wieland*, 269 Wis. 262, 69 N.W.2d 217 (1955); McQuillin, *The Law of Municipal Corporations* (2000 rev.), Vol. 8 at §§ 25.29-25.31. And, in a few contexts, zoning regulations excluding certain businesses from particular zoning districts or sections of a local jurisdiction have been upheld on the basis of proven adverse secondary impacts upon the general public in those specific geographical areas. Such situations most frequently arise with respect to regulation of the location of adult bookstores and movie houses or other adult businesses. *See, e.g., City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976); however, the permissible scope of such regulation may not extend so far as to ban an adult or other lawful use from locating anywhere within a jurisdiction. *Town of Wayne v. Bishop*, 210 Wis. 218, 565 N.W.2d 201 (Ct. App. 1997).

Thus, while the available case law seems to accord significant discretion to the Board in applying the "public welfare" component of the special-use permit criteria contained in § 295-311-2-d-1 of the Code, it does not indicate that that discretion is unlimited or that it might extend to regulation of a "payday loan" agency's lending and other business practices. Such matters have no bearing upon the appearance or physical environment of the locations in which "payday loan" agencies choose to operate; nor do they affect the compatibility between those agencies and neighboring land uses. Nor does this situation resemble the adult-use context in the sense of implicating proven adverse secondary impacts upon the general public arising from the very nature of the business and resulting from its location in particular zoning districts or areas of the jurisdiction. While adverse secondary impacts may certainly be felt by that segment of the "payday loan" industry's customer base that falls into default on their loan-repayment obligations, there is, to our knowledge, no proof demonstrating that the existence or operation of the industry, in and of itself, is somehow inimical to the interests of the general public. Indeed, it can be argued to the contrary—*i.e.*, that the "payday loan" industry fills a needed market niche in

providing short-term credit to a class of borrowers who, for a variety of reasons, find such credit to be necessary or useful, even at very high rates of interest and other loan charges.

A second item of concern is the significant possibility that a reviewing court would find State preemption of regulation of the "payday loan" industry's business practices. The police power does not extend to matters preempted by State statute or regulation. Municipalities may not pass ordinances or make regulations that "infringe the spirit of a state law or are repugnant to the general power of the state." *Anchor Savings & Loan Assn. v. Madison Equal Opportunities Commission*, 120 Wis.2d 391, 396, 355 N.W.2d 234, 237 (1984); *Fox v. City of Racine*, 225 Wis. 542, 545, 275 N.W. 513, 514 (1937). Further, "a municipality cannot lawfully forbid what the legislature has expressly licensed, authorized or required, or authorize what the legislature has expressly forbidden." *Fox v. City of Racine, supra*, 225 Wis. at 545, 275 N.W. at 514; *DeRosso Landfill Company, Inc. v. City of Oak Creek*, 200 Wis.2d 642, 651, 547 N.W.2d 770, 773 (1996); *Wisconsin's Environmental Decade v. Department of Natural Resources*, 85 Wis.2d 518, 529, 271 N.W.2d 69, 74 (1978).

In this instance, the legislature has passed a comprehensive statutory scheme for the regulation of all branches of the credit industry (including its "payday loan" component), including provisions for regulation of rates of interest (ch. 138, *Wis. Stats.*) and of the industry's consumer-lending practices (chs. 421-427, *Wis. Stats.*). Significantly, in § 138.09(7)(bp), *Wis. Stats.*, the legislature made, and consciously expressed, its choice not to impose any fixed maximum rate of interest upon the precise categories of loans most commonly offered by "payday loan" agencies. This statutory scheme is supplemented by a regulatory regime under the auspices of the Department of Financial Institutions. In *Anchor Savings & Loan Assn. v. Madison Equal Opportunities Commission, supra*, the Wisconsin Supreme Court ruled that the City of Madison did not have the power to regulate the credit practices of a state-chartered savings and loan association, invalidating an ordinance barring discrimination in mortgage lending on the basis of marital status on the grounds that it was pre-empted by state legislation. Notably, this included the legislature's adoption of "a complex and comprehensive statutory structure dealing with all aspects of credit and lending in ch. 138, Stats., which governs rates of interest, variable rate contracts, federal rate parity, residential mortgages and credit discrimination." 120 Wis.2d at 397-398, 355 N.W.2d at 238. The Supreme Court also specifically rejected the contention that the Madison ordinance came within the City's "home-rule" powers under Art. XI § 3(1). Not coincidentally, the subject matter of the *Anchor Savings & Loan* case is closely related to that encompassed by this opinion, and the source of the State preemption in that case is one of the

very same chapters of the Wisconsin Statutes (ch. 138) implicated in the regulation of the credit practices of the "payday loan" industry.

We have also searched for non-Wisconsin cases that might provide guidance on the issue of the application of zoning regulations to the "payday loan" industry, and have found two such cases, both from Missouri. The decisions in these cases, however, are not directed to the specific inquiry raised by your letter and are thus of limited value. In *State ex rel. Sunshine Enterprises of Missouri, Inc. v. Board of Adjustment of the City of St. Ann*, 64 S.W.3d 210 (Mo. Sup. Ct. 2002), the Missouri Supreme Court invalidated a local zoning ordinance prohibiting the location of "short-term loan establishments" anywhere within the City of St. Ann, on the grounds that it conflicted with a state statute classifying "personal services" businesses and financial institutions as "permitted uses" within "general commercial districts." Although Wisconsin appears to have not adopted a comparable statute, this decision is consistent with the general principle, noted above, that "a municipality cannot lawfully forbid what the legislature has expressly licensed, authorized or required." In *Missouri Title Loans, Inc. v. City of St. Louis Board of Adjustment*, 62 S.W.3d 408 (Mo. Ct. App. E.D. 2001), the Missouri Court of Appeals upheld a determination by the board to deny a conditional-use permit to a "title loan" agency on the basis of an evidentiary record indicating that the grant of that permit would decrease neighborhood property values, increase traffic, and attract undesirable business invitees. Such a determination, however, was not premised upon a general "public welfare" conditional-use criterion comparable to § 295-311-2-d-1 of the Code and would be more akin to an application of a protection-of-property criterion such as that found in § 295-311-2-d-2 of the Code.

Thus, while we do not necessarily agree with the suggestion of counsel for Payday Loan Store of Wisconsin, Inc. that the "public welfare" criterion set forth in § 295-311-2-d-1 of the Code refers only to matters related to "land use," we do not believe that the scope of that criterion is unlimited. The text of the Zoning Code states that a special-use permit shall not be granted unless the Board makes a finding that the proposed use will be "operated in a manner that the public health, safety, and welfare is protected." That text does encompass not only "land use" issues, but also those matters within the traditional reach of the City's police powers under § 62.11(5) *Wis. Stats.* We caution, however, that there is a significant risk that it would not encompass any attempt to regulate the lending or other business practices of the "payday loan" industry, and that the courts may very well invalidate any determination by the Board upon an application submitted by a "payday loan" agency based in whole or in part upon any such attempt. Further, we believe that any such attempt may be preempted by existing State

legislation and administrative regulation applicable to regulation of the credit practices and related operations of the "payday loan" industry.

If you have any further questions concerning this matter, please contact this office for further guidance.

Very truly yours,

GRANT F. LANGLEY
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September 24, 2003

Mr. Craig Zetley
Chairperson
Board of Zoning Appeals for the City of Milwaukee
809 North Broadway, 1st Floor
Milwaukee, WI 53202

Alderman Don Richards
City of Milwaukee Common Council
200 East Wells Street
Milwaukee, WI 53202

RE: Item No. 25065, Variance Application of First Payday Loans of Wisconsin for Payday Loan Operation at 6902 North 76th Street

Dear Chairman Zetley and Alderman Richards:

This letter is submitted in opposition to the pending variance request from First Payday Loans of Wisconsin, an Illinois company, to operate a payday loan store at 6902 North 76th Street, Milwaukee. Legal Aid opposes the pending application because of the adverse effects expanded payday lending operations will have in the City of Milwaukee--effects that would be inconsistent with the "public interest." The City Attorney's Office has ruled that BOZA, according to available case law, is accorded "significant discretion...in applying the 'public welfare' component of the special-use permit criteria contained in § 295-311-2-d-1 of the [Zoning] Code." (May 7, 2003 letter from the Office of the City Attorney to BOZA.) A variance request must meet a similar "public interest" standard.

Legal Aid, accordingly, submits three concrete bases for the Board of Zoning Appeals to deny the pending application based on appropriate "public interest" discretionary factors.[1]

[1] Materials referenced in this letter will be offered at scheduled hearings as attachments. The expert report of Professor Christopher Lewis Peterson is, however, enclosed.

1. **Adverse Impact Resulting From the "Clustering" of Payday Lending Operations: The Oversaturation of 76th Street**

The proposed location at 6902 North 76th Street will likely overload northwest neighborhoods of the City of Milwaukee with clusters of high-cost, long-term debt pushers. As of February 2003, Legal Aid determined that, of the 69 payday lending locations in Milwaukee County, 61% were located within city limits. Other "fringe banking" businesses follow the same pattern: 86% of the check cashers or currency exchanges in the Milwaukee County are located within the city; and 100% of the pawnbrokers in Milwaukee County are located within the city. These operations have not just "clustered" within the City of Milwaukee, as opposed to outlying areas, the easily observable fact is that these businesses tend to cluster in certain areas or neighborhoods of the city. As of February 2003, 61% of the payday loan store locations in the City of Milwaukee were located on just three thoroughfares.

The one City of Milwaukee street that contains more payday lending than any other is 76th Street, which already has eleven outlets on that street, and another five within ten blocks. Along 76th Street, there was one cluster at 3906, 4750, 4760 and 4847 North 76th Street, plus 7600 W. Capitol Drive. Another cluster was found at 5910, 6404, 6520, 6863 and 6864 North 76th Street. A final cluster was found at 7941 and 8066 North 76th Street.

The obvious fact is that First Payday loans now intends to add to this payday loan imbalance on North 76th Street, by adding a location at 6902 North 76th Street. Circumstances will only worsen if the payday loan applicant, QC Financial, is allowed to open up an outlet at 6454 North 76th Street.

The oversaturation or clustering of other payday loan and fringe banking operations in city neighborhoods predictably has negative consequences for other businesses in the area. This clustering effect tends to suggest to visitors, and other prospective business developers, that these particular neighborhoods are troubled by high numbers of credit-risk residents. Of course, the clustering effect ends up denigrating the quality of these neighborhoods, when the truth is that they have viable economies with large numbers of hardworking, income-producing, asset-building families. The clustering effect of fringe banking businesses (including payday lenders), in short, sends the wrong message--certainly, a message that is contrary to the economic development interests of the city and the public welfare. These adverse impacts are detailed by Christopher Lewis Peterson, University of Florida, Levin College of Law, in his expert report to BOZA.

Given the tendency of these businesses to oversaturate these areas and to cluster on particular thoroughfares, many municipalities are now turning to licensing maximums and per capita formulas. St. Joseph, Missouri, for example, has proposed to limit payday lending operations to one outlet for every 15,000 residents. If that formula were used in the City of Milwaukee, the city would welcome no more than 40 payday loan outlets. However, as of February 2003, the city had already exceeded that number, and now First Payday Loans and others plan to make the numbers even higher.

2. Adverse Impact of Payday Lending on Nonprofit Services: The Increased Burden on Consumer Counseling Nonprofits

It is fairly predictable that expanded payday loan operations in the City of Milwaukee will lead to an increasing burden on the resources of nonprofits, such as Consumer Credit Counseling Services (CCCS). These charitable entities, usually funded by local United Way campaigns with every limited dollars, have reported serious increases in client numbers and problems directly attributable to payday lending excesses. For example, the following newspaper accounts are relevant:

> July 9, 2000, The Record: "It's been a real problem," said Sue Becerra, Executive Director of the Consumer Credit Counseling Service of Mid-Counties, a Stockton-based non-profit that helps people overcome debt. 'The number of clients we've seen who've gotten in trouble over payday loans has increased 500% over the last year.'"
>
> January 31, 2000, Akron Beacon Journal: Bob Frazer of Dayton Consumer Credit Counseling Services said "His surveys show that the average CCCS client has 4 open, or unpaid, payday loans and that some have up to 30. Said Frazer, 'It's a trap.'"
>
> September 19, 1999, Dayton Daily News: "Officials from the Consumer Credit Counseling Services of Miami Valley as well as the Legal Aid Society of Dayton, said that they are serving more clients who try to bale themselves out of financial waterfalls with payday loans only to see them eventually file for bankruptcy."
>
> February 21, 1999, Indianapolis Star: Melinda Wright of Consumer Credit Counseling Service "noted a sharp increase in clients with payday loans in the past 6 months."

Payday lending has had a similar effect on the nonprofit services offered by the Legal Aid Society of Milwaukee. The City of Milwaukee should be concerned about the negative impact that may result from expanded payday lending operations insofar as they draw down the limited nonprofit resources available to assist financially-stressed families.

Likewise, the City of Milwaukee should be concerned about the drain that will result on the court systems, state and local consumer protection agencies, as well as the effects that will follow for other local businesses, such as landlords, telephone companies, utilities, and medical providers. Typically, payday lenders, with their far more aggressive collection efforts, nose out these vital service industries when "short-term" payday loans overwhelm their customers with spiraling long-term debt. These adverse impacts are also detailed by Assistant Professor Christopher Lewis Peterson of the University of Florida, Levin College of Law, in his expert report for BOZA.

3. <u>First Payday Loans' Misleading Operation Plan: The Long-Term Debt Coverup</u>

First Payday's "plan of operation" which was filed with BOZA on June 20, 2003, deliberately misstates, in our view, the nature of the operation and its goals. First Payday (at page 1) states:

> "Our goal is to ensure that individuals have an opportunity to receive *short-term*, small personal loans, typically under $500, when an emergency arises. The loans that we offer are not offered by other lending institutions because of the administrative costs and burden. Our lending office is specialized to assist people who typically have a difficult time obtaining emergency funds."

(Emphasis added.)

There are at least three fundamental flaws in this "plan of operation" description. First, it has been firmly established through scholarly research that payday lenders cannot operate as profitable businesses if their customers were to receive just single installment loans for one, short, single loan term. By representing their product to be "short-term" loans, First Payday misrepresents the true "long-term" debt consequences of its business. Indeed, the payday lending business model requires that customers become chronic borrowers, burdened with *long-term* debt through the process of repeated "rollovers" or renewals of their short-term loans. Payday lenders, such as First Payday, make money by getting desperate consumers to take out multiple short-term loans so that they can be rolled over into long-term debt. This point is well-documented in the article by Dr. Michael A. Stegman, MacRae Professor of Public Policy and Business as the University of North Carolina at Chapel Hill, in his *Economic Development Quarterly* article,

February, 2003 entitled, *Payday Lending: A Business Model that Encourages Chronic Borrowing*.

In another study, Professor John P. Caskey, Professor of Economics at Swarthmore College, reviewed raw data gathered by the Wisconsin Department of Financial Institutions specific to payday loan customers in the State of Wisconsin. His conclusions directly contradict the claims of First Payday. Caskey concludes in his April 2002 report, *The Economics of Payday Lending*, at page 25:

> "[T]he data are consistent with the charge that more payday loan customers are frequent borrowers who may well be trapped in a persistent and costly debt cycle. Over 40% of the longer-term payday loan customers in Wisconsin, for example, had 20 or more loan transactions over the course of a year. Assuming that they borrowed the average amount for Wisconsin customers ($245) and that they paid an average finance charge ($49) with each transaction, they would have each spent at least $980 in finance charges in order to keep a $245 loan outstanding for most of a year."

Second, First Payday represents that it is offering loan products that "are not offered by other lending institutions...." However, as explained in greater detail above, the City of Milwaukee has been inundated with payday lending and auto title lending outlets. There simply is no shortage of alternative financial service institutions, especially in the geographic area proposed to be served by First Payday on North 76th Street.

Third, payday lenders, such as First Payday, do not provide debt counseling services or any other service that is "specialized to assist people" in the best ways to deal with their needs for emergency funds. In fact, the payday lending business model requires that lenders offer their products for the undisclosed, yet paramount purpose of dragging customers into chronic, long-term, high-cost debt. This paramount purpose completely negates any business purpose to provide "specialized" assistance in the form of debt counseling or debt management services. The Board of Zoning Appeals should note that First Payday's plan of operation materials noticeably omit any reference to the annual interest rate, annual percentage rate, the finance charges, the return check charges, the delinquency charges, and other costs or charges that it plans to impose on its customers. Inasmuch as it is the applicant's burden to establish that its operations will be run consistent with the public welfare, and given First Payday's history of excessive loan charges, more information should be disclosed.

CONCLUSION

For the foregoing reasons, the Legal Aid Society of Milwaukee submits that the proposed expansion of payday loan outlets to include the First Payday location at 6902 North 76th Street is contrary to the public interest. Further, we doubt that First Payday can establish either the "exceptional circumstances" or "hardship" elements that must also be proven to obtain a zoning variance.

Very truly yours,

LEGAL AID SOCIETY OF MILWAUKEE, INC.

JAMES A. WALRATH
Executive Director

JAW/vlv
Enc.

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