(5) Persons intending to marry each other may enter into a marital property agreement as if married, but the marital property agreement becomes effective only upon their marriage.

(6) A marital property agreement executed before or during marriage is not enforceable if the spouse against whom enforcement is sought proves any of the following:

(a) The marital property agreement was unconscionable when made.

(b) That spouse did not execute the marital property agreement voluntarily.

(c) Before execution of the marital property agreement, that spouse:

1. Did not receive fair and reasonable disclosure, under the circumstances, of the other spouse's property or financial obligations; and

2. Did not have notice of the other spouse's property or financial obligations.

(7) (a) Unless the marital property agreement expressly provides otherwise, a marital property agreement that classifies a deferred employment benefit plan or an individual retirement account as marital property does not affect the operation of s. 766.62 (5).

(b) Unless the marital property agreement expressly provides otherwise, marital property agreement that classifies as marital property the noninsured spouse's interest in a policy that designates the other spouse as the owner and insured does not affect the operation of s. 766.61 (7). In this paragraph, "owner" has the meaning given in s. 766.61 (1) (a) and "policy" has the meaning given in s. 766.61 (1) (c).

(8) The issue of whether a marital property agreement is unconscionable is for the court to decide as a matter of law. In the event that legal counsel is retained in connection with a marital property agreement the fact that both parties are represented by one counsel or that one party is represented by counsel and the other party is not represented by counsel does not by itself make a marital property agreement unconscionable or otherwise affect its enforceability.

(9) (a) Modification or elimination of spousal support during the marriage may not result in a spouse having less than necessary and adequate support, taking into consideration all sources of support.

(b) If a marital property agreement modifies or eliminates spousal support so as to make one spouse eligible for public assistance at the time of dissolution of the marriage or termination of the marriage by death, the court may require the other spouse or the other spouse's estate to provide support necessary to avoid that eligibility, notwithstanding the marital property agreement.

(10) If the spouses agree in writing to arbitrate any controversies arising under this chapter or a marital property agreement, the arbitration agreement is enforceable under ch. 788.

(11) Married persons or persons intending to marry each other may record a marital property agreement in the county register of deeds office under s. 59.43 (1) (r).

(12) (a) A provision of a document signed before the determination date by spouses or unmarried persons who subsequently married each other, which provision affects the property of either of them and is enforceable by either of them without reference to this chapter, is not affected by this chapter except as provided otherwise in a marital property agreement made after the determination date.

(b) If a provision or an amendment to a provision in a document described under par. (a) is intended to negate, apply or modify any right or obligation which may be acquired under 1983 Wisconsin Act 186, 1985 Wisconsin Act 37, or a community property system, the provision or amendment is enforceable after the determination date if the document was enforceable when executed or, if it is executed after April 4, 1984, either was enforceable when executed or would be enforceable if it were executed after the determination date.

(c) This subsection does not affect a marital property agreement executed under s. 766.585.

(13) (a) With respect to a provision of a marital property agreement that is effective upon or after dissolution of the marriage or termination of the marriage by death, any statute of limitations applicable to enforcement of the provision is tolled until dissolution of the marriage or termination of the marriage by death, respectively.

(b) After the death of a spouse, no action concerning a marital property agreement may be brought later than 6 months after the inventory is filed under s. 858.01. If an amended inventory is filed, the action may be brought within 6 months after the filing of the amended inventory if the action relates to information contained in the amended inventory that was not contained in a previous inventory.

(c) The court may extend the 6–month period under par. (b) for cause if a motion for extension is made within the applicable 6–month period.

(14) Limitations on the effect of marital property agreements for state income tax purposes are set forth in ch. 71.

History: 1983 a. 186; 1985 a. 37, 403; 1991 a. 301; 1993 a. 160, 213; 1995 a. 201; 1997 a. 188.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

Whether property agreements are inequitable under s. 767.255 (11) [now (3) (L)] is discussed. Button v. Button, 131 Wis. 2d 84, 388 N.W.2d 546 (1986).

An annuity that transferred ownership from the owner to a "co–annuitant" on the owner's death was a joint account under s. 705.04 (1) and a contractual agreement that creates a nonprobate transfer under s. 705.20 (1). Both will defeat a marital agreement that does not make the transfer. Reichel v. Jung, 2000 WI App 151, 237 Wis. 2d 853, 616 N.W.2d 118, 99–1211.

Spouses may affirmatively waive the homestead protection in s. 706.02 (1) (f) in a premarital agreement. Jones v. Estate of Jones, 2002 WI 61, 253 Wis. 2d 158, 646 N.W.2d 280, 01–1025.

That sub. (3) (f) permits transfer of property without probate does not mean the parties may agree to no court involvement in implementing transfer of ownership and creating a reliable and public record of transfer. Sub. (3m) specifically makes agreements subject to the implementation mechanism of ch. 854. Maciolek v. City of Milwaukee Employes' Retirement System Annuity and Pension Board, 2005 WI App 74, ___ Wis. 2d ___, 695 N.W.2d 875, 04–1254.

Wisconsin's New Probate Code. Erlanger. Wis. Law. Oct. 1998.

A Decade Post–*Button v. Button*: Drafting Prenuptial Agreements. Garczynski. Wis. Law. Aug. 1999.

766.585 Marital property agreements before determination date. (1) After April 4, 1984, and before their determination date, spouses or unmarried persons who subsequently marry each other may execute a marital property agreement under s. 766.58, which is intended to apply only after their determination date, to the same extent that persons may execute a marital property agreement under s. 766.58 after their determination date. The marital property agreement does not apply before the persons' determination date. Upon application, the marital property agreement has the same effect as if executed after the persons' determination date.

(2) Notwithstanding the execution of the marital property agreement before the persons' determination date and notwithstanding the January 1, 1986, effective date of 1983 Wisconsin Act 186 and 1985 Wisconsin Act 37, the law in effect on the date when the marital property agreement applies, not on the date of execution of the marital property agreement, applies to the execution and enforceability or other legal effect of the marital property agreement.

(3) A document executed by spouses or unmarried persons who subsequently marry each other which is intended to apply in whole or in part before their determination date is governed by s. 766.58 (12).

History: 1985 a. 37, 332.

766.587 Statutory individual property classification agreement. (1) GENERALLY. (a) Spouses may execute a statutory individual property classification agreement under this section to classify all the property of the spouses, including property presently owned and property acquired in the future but before the agreement terminates, as the individual property of the owner.

Ownership of the property of the spouses is determined as if it were December 31, 1985. Except as provided in this section, s. 766.58 applies to an agreement under this section. Persons intending to marry each other may execute an agreement as if married, but the agreement becomes effective only upon their marriage. The form of the agreement is set forth in sub. (7).

(b) If, while an agreement is in effect, spouses acquire property as a joint tenancy exclusively between themselves or as survivorship marital property, the property is classified as the individual property of the owners and is owned as a joint tenancy. If, while an agreement is in effect, spouses acquire property held in a form as provided under s. 766.60 (1) or (2), the property is classified as the individual property of the owners and is owned as a tenancy in common.

(2) EXECUTION. An agreement under this section is executed when signed by both spouses.

(3) EFFECTIVE PERIOD. (a) An agreement under this section may be executed on or after January 1, 1986. If executed before January 1, 1986, it is effective on January 1, 1986, or upon the marriage of the parties, whichever is later. If executed on or after January 1, 1986, it is effective when executed or upon the marriage of the parties, whichever is later.

(b) An agreement under this section terminates on January 1, 1987. Termination does not affect the classification of property acquired before termination. Property acquired after termination is classified as provided under this chapter.

(4) ENFORCEABILITY. An agreement under this section is enforceable without the disclosure of a spouse's property or financial obligations to the other spouse.

(5) EFFECT ON SUPPORT AND AT DIVORCE. An agreement under this section does not affect the duty of support that spouses have to each other or the determination of property division under s. 767.255 or of maintenance payments under s. 767.26.

(6) RIGHTS OF SURVIVING SPOUSE. Notwithstanding the fact that an agreement under this section is in effect at, or has terminated before, the death of a spouse who is a party to the agreement, the surviving spouse may elect under s. 861.02. For the purpose of the election, in addition to the property described in s. 851.055, property acquired during marriage and after the determination date which would have been marital property but for the agreement is deferred marital property.

(7) STATUTORY INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT FORM. The following is the form for a statutory individual property classification agreement under this section:

NOTICE TO PERSONS WHO SIGN THIS AGREEMENT:

1. EFFECTIVE JANUARY 1, 1986, A NEW PROPERTY LAW, KNOWN AS THE MARITAL PROPERTY SYSTEM, GOVERNS THE PROPERTY RIGHTS OF MARRIED PERSONS IN WISCONSIN. UNDER THE MARITAL PROPERTY SYSTEM, EACH SPOUSE HAS A 50% OWNERSHIP INTEREST IN PROPERTY ACQUIRED DURING MARRIAGE DUE TO THE EFFORTS OF EITHER OR BOTH SPOUSES, SUCH AS WAGES, DEFERRED EMPLOYMENT BENEFITS, LIFE INSURANCE, INCOME FROM PROPERTY AND CERTAIN APPRECIATION OF PROPERTY. BY ENTERING INTO THIS AGREEMENT, YOU HAVE AGREED TO RELINQUISH YOUR RIGHTS TO AN AUTOMATIC OWNERSHIP INTEREST IN SUCH PROPERTY ACQUIRED DURING 1986.

2. CLASSIFICATION BY THIS AGREEMENT OF YOUR AND YOUR SPOUSE'S PROPERTY AS THE INDIVIDUAL PROPERTY OF THE OWNER MAY AFFECT YOUR ACCESS TO CREDIT, THE ACCUMULATION OF AND THE MANAGEMENT AND CONTROL OF PROPERTY BY YOU DURING YOUR MARRIAGE AND THE AMOUNT OF PROPERTY YOU HAVE TO DISPOSE OF AT YOUR DEATH.

3. THIS AGREEMENT TERMINATES ON JANUARY 1, 1987. IF YOU WISH TO CHANGE THIS AGREEMENT BEFORE JANUARY 1, 1987, OR IF YOU WISH TO CONTINUE TO CLASSIFY YOUR PROPERTY AS PROVIDED IN THIS AGREEMENT AFTER IT TERMINATES ON JANUARY 1, 1987, YOU MAY DO SO BY EXECUTING A NEW MARITAL PROPERTY AGREEMENT THAT COMPLIES WITH SECTION 766.58, WISCONSIN STATUTES.

4. THIS AGREEMENT DOES NOT AFFECT RIGHTS AT DIVORCE.

5. IN GENERAL, THIS AGREEMENT IS NOT BINDING ON CREDITORS UNLESS THE CREDITOR IS FURNISHED A COPY OF THE AGREEMENT BEFORE CREDIT IS EXTENDED. IN ADDITION, THIRD PARTIES OTHER THAN CREDITORS MIGHT NOT BE BOUND BY THIS AGREEMENT UNLESS THEY HAVE ACTUAL KNOWLEDGE OF THE TERMS OF THE AGREEMENT.

6. THIS AGREEMENT MAY AFFECT YOUR TAXES.

7. THIS AGREEMENT MAY AFFECT ANY PREVIOUS MARRIAGE AGREEMENT ENTERED INTO BY YOU AND YOUR SPOUSE.

8. THIS AGREEMENT DOES NOT ALTER THE LEGAL DUTY OF SUPPORT THAT SPOUSES HAVE TO EACH OTHER OR THAT A SPOUSE HAS TO HIS OR HER CHILDREN.

9. BOTH SPOUSES MUST SIGN THIS AGREEMENT. IF SIGNED BEFORE JANUARY 1, 1986, IT IS EFFECTIVE ON JANUARY 1, 1986, OR THE DATE THE PARTIES MARRY, WHICHEVER IS LATER. IF SIGNED ON OR AFTER JANUARY 1, 1986, IT IS EFFECTIVE ON THE DATE SIGNED OR THE DATE THE PARTIES MARRY, WHICHEVER IS LATER.

STATUTORY INDIVIDUAL
PROPERTY CLASSIFICATION AGREEMENT
(Pursuant to Section 766.587, Wisconsin Statutes)

This agreement is made and entered into by .... and ...., (husband and wife) (who intend to marry) (strike one).

The parties to this agreement agree to classify all their property, including property owned by them now and property acquired before January 1, 1987, as the individual property of the owning spouse, and agree that ownership of their property shall be determined as if it were December 31, 1985.

This agreement terminates on January 1, 1987.

Signature .... Date ....
Print Name
Here: ....
Address: ....
Signature .... Date ....
Print Name
Here: ....
Address: ....

[NOTE: Each spouse should retain a copy of the agreement for himself or herself.]

(8) OTHER MEANS OF CLASSIFICATION. This section is not the exclusive means by which spouses may, before January 1, 1987, classify their property as the individual property of the owner.

History: 1985 a. 37; 1987 a. 393 s. 53; 1997 a. 188.

766.588 Statutory terminable marital property classification agreement. (1) GENERALLY. (a) Spouses may execute an agreement under this section to classify the property of the spouses presently owned and property acquired, reclassified or created in the future, as marital property. Except as provided in this section, s. 766.58 applies to an agreement under this section. The form of the agreement is set forth in sub. (9). Persons intending to marry each other may execute an agreement as if married, but the agreement becomes effective only upon their determination date.

(b) Notwithstanding an agreement under this section:

1. The marital property interest of the nonemployee spouse in a deferred employment benefit plan or in assets in an individual retirement account that are traceable to the rollover of a deferred employment benefit plan terminates at the death of the nonemployee spouse if he or she predeceases the employee spouse; and

2. The marital property interest of a decedent spouse in a life insurance policy which designates the surviving spouse as the owner and insured is limited as provided under s. 766.61 (7).

(c) 1. If property is held as survivorship marital property under s. 766.60 (5) (a) or 766.605 at the time an agreement under this section becomes effective, or if property is held as or acquired as survivorship marital property under s. 766.60 (5) (a) or 766.605 while an agreement is in effect, the property remains survivorship marital property as long as it is so held.

2. A joint tenancy which is held exclusively between the spouses when an agreement under this section becomes effective or while an agreement is in effect is survivorship marital property.

3. A tenancy in common which is held exclusively between the spouses when an agreement under this section becomes effective or while an agreement is in effect is marital property.

4. With respect to a tenancy in common or joint tenancy not described under subds. 2. and 3. in which at least one spouse is a tenant when an agreement under this section becomes effective or while an agreement is in effect, to the extent the incidents of the tenancy in common or joint tenancy conflict with or differ from the incidents of marital property, the incidents of the tenancy in common or of the joint tenancy, including the incident of survivorship, control.

(d) 1. In this paragraph:

a. "Joint account" has the meaning given in s. 705.01 (4).

b. "Marital account" has the meaning given in s. 705.01 (4m).

2. An agreement under this section does not defeat the survivorship feature of a joint account under s. 705.04 (1).

3. An agreement under this section does not affect the ownership, under s. 705.04 (2m), of sums remaining on deposit in a marital account at the death of a party to the account, regardless of when the agreement became effective or the marital account was established.

(2) EXECUTION. An agreement under this section shall be signed by both parties to the agreement. An agreement under this section is executed when the signature of each party to the agreement is authenticated or acknowledged. The agreement executed shall conform to the requirements under sub. (9).

(3) EFFECTIVE DATE AND EFFECTIVE PERIOD. (a) An agreement under this section is effective when executed or upon the determination date, whichever is later.

(b) If the spouses have not completed the financial disclosure form under sub. (9) before or contemporaneously with execution of the agreement, the agreement terminates 3 years after the date that both spouses have signed the agreement, unless terminated earlier by one of the spouses under sub. (4).

(c) If the spouses have completed the financial disclosure form under sub. (9), the agreement terminates when the terms of the agreement no longer apply after dissolution or the death of a spouse, unless terminated earlier by one of the spouses under sub. (4).

(3m) LIMITATION ON EXECUTION OF 3−YEAR AGREEMENT. If spouses execute an agreement under this section which becomes effective for any period and if the spouses did not complete the financial disclosure form under sub. (9) for that agreement, the spouses may not execute a subsequent agreement under this section for the same marriage unless the financial disclosure form under sub. (9) is completed.

(4) TERMINATION BY ONE SPOUSE. (a) An agreement under this section terminates 30 days after a notice of termination is given under par. (b) by one spouse to the other spouse. An example of a termination form is set forth in sub. (9).

(b) Notice of termination is given to the other spouse on the date:

1. That a signed termination is personally delivered to the other spouse; or

2. That a signed termination is sent by certified mail to the address of the other spouse last known to the spouse giving notice of termination.

(c) This subsection does not affect the ability to amend, revoke or supplement an agreement under this section by separate marital property agreement under s. 766.58 (4).

(d) With respect to its effect on 3rd parties, a termination under this section shall be treated as a marital property agreement.

(5) ENFORCEABILITY. (a) If the spouses do not complete the financial disclosure form under sub. (9), the agreement terminates as provided under sub. (3) (b) and the agreement is enforceable without the disclosure of a spouse's property or financial obligations.

(b) If the spouses complete the financial disclosure form under sub. (9), the maximum duration of the agreement is 3 years after both spouses have signed the agreement if the spouse against whom enforcement is sought proves that the information on the disclosure form did not provide fair and reasonable disclosure, under the circumstances, of the other spouse's property or financial obligations. This paragraph applies notwithstanding the fact that a spouse had notice of the other spouse's property or financial obligations.

(c) Section 766.58 (6) (c) does not apply to an agreement under this section.

(6) EFFECT ON SUPPORT AND DIVORCE. An agreement under this section does not affect any of the following:

(a) The duty of support that spouses otherwise have to each other.

(b) The determination of property division under s. 767.255.

(c) The determination of maintenance payments under s. 767.26.

(7) OTHER MEANS OF CLASSIFICATION. This section is not the exclusive means by which spouses may reclassify their property as marital property.

(8) EFFECT OF TERMINATION. Termination of an agreement under sub. (3) or (4) does not affect the classification of property acquired before termination. Property acquired after termination is classified as provided under this chapter.

(9) STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT FORM. The language of a statutory terminable marital property classification agreement form shall be identical to the language included in the form set forth under this subsection. The format of a statutory terminable marital property classification agreement shall be substantially as follows:

NOTICE TO PERSONS WHO SIGN THIS AGREEMENT:

1. A PROPERTY LAW KNOWN AS THE MARITAL PROPERTY SYSTEM GOVERNS THE PROPERTY RIGHTS OF MARRIED PERSONS IN WISCONSIN. AFTER THE MARITAL PROPERTY SYSTEM APPLIES TO A MARRIED COUPLE, EACH SPOUSE HAS AN UNDIVIDED ONE−HALF OWNERSHIP INTEREST IN PROPERTY, SUCH AS WAGES, DEFERRED EMPLOYMENT BENEFITS, LIFE INSURANCE, INCOME FROM PROPERTY AND CERTAIN APPRECIATION OF PROPERTY, THEREAFTER ACQUIRED DURING MARRIAGE DUE TO THE EFFORTS OF EITHER OR BOTH SPOUSES. PROPERTY WHICH IS BROUGHT TO THE MARRIAGE AND PROPERTY WHICH IS ACQUIRED BY ONE SPOUSE DURING THE MARRIAGE BY GIFT OR INHERITANCE IS NOT MARITAL PROPERTY BUT IS SOLELY OWNED BY THE ACQUIRING SPOUSE. THIS AGREEMENT ALTERS THE LAW GOVERNING YOUR PROPERTY RIGHTS. THE PURPOSE OF THE FOLLOWING INFORMATION IS TO APPRISE YOU, IN VERY GENERAL TERMS, OF SOME OF THE MORE IMPORTANT ASPECTS AND POSSIBLE EFFECTS OF THIS AGREEMENT. THE INFORMATION IS NOT INTENDED TO BE A PRECISE OR COMPLETE

RECITATION OF THE LAW APPLICABLE TO THIS AGREEMENT AND IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

2. BY ENTERING INTO THIS AGREEMENT, YOU HAVE AGREED TO RELINQUISH YOUR RIGHTS TO A SOLE OWNERSHIP INTEREST IN YOUR SOLELY OWNED PROPERTY; HOWEVER, YOU ARE ACQUIRING AUTOMATIC, EQUAL OWNERSHIP RIGHTS, WITH YOUR SPOUSE, TO ALL PROPERTY THAT YOU AND YOUR SPOUSE OWN OR ACQUIRE.

3. THIS AGREEMENT MAY AFFECT:

A. YOUR ACCESS TO CREDIT AND THE PROPERTY AVAILABLE TO SATISFY OBLIGATIONS INCURRED BY YOU OR YOUR SPOUSE.

B. THE ACCUMULATION OF AND THE MANAGEMENT AND CONTROL OF PROPERTY BY YOU DURING YOUR MARRIAGE.

C. THE AMOUNT OF PROPERTY YOU HAVE TO DISPOSE OF AT YOUR DEATH.

D. YOUR TAXES.

E. ANY PREVIOUS MARRIAGE AGREEMENT ENTERED INTO BY YOU AND YOUR SPOUSE.

4. THIS AGREEMENT DOES NOT:

A. AFFECT RIGHTS AT DIVORCE.

B. ALTER THE LEGAL DUTY OF SUPPORT THAT SPOUSES HAVE TO EACH OTHER OR THAT A SPOUSE HAS TO HIS OR HER CHILDREN.

C. BY ITSELF PROVIDE THAT, UPON YOUR DEATH, YOUR MARITAL PROPERTY PASSES TO YOUR SURVIVING SPOUSE. IF THAT IS WHAT YOU INTEND, YOU ARE ENCOURAGED TO SEEK LEGAL ADVICE TO DETERMINE WHAT MUST BE DONE TO ACCOMPLISH THAT RESULT.

5. IN GENERAL, THIS AGREEMENT IS NOT BINDING ON CREDITORS UNLESS THE CREDITOR IS FURNISHED A COPY OF THE AGREEMENT BEFORE CREDIT IS EXTENDED. (It is not necessary to furnish a copy of the financial disclosure form.) IN ADDITION, THIRD PARTIES OTHER THAN CREDITORS MIGHT NOT BE BOUND BY THIS AGREEMENT UNLESS THEY HAVE ACTUAL KNOWLEDGE OF THE TERMS OF THE AGREEMENT.

6. IF YOU WISH TO AFFECT AN INTEREST IN YOUR REAL PROPERTY WITH THIS AGREEMENT, PARTICULARLY IN RELATION TO THIRD PARTIES, ADDITIONAL LEGAL PROCEDURES AND FORMALITIES MAY BE REQUIRED. IF YOU HAVE QUESTIONS REGARDING THE EFFECT OF THIS AGREEMENT ON YOUR REAL PROPERTY, YOU ARE URGED TO SEEK LEGAL ADVICE.

7. IF YOU DO NOT COMPLETE SCHEDULE "A", "FINANCIAL DISCLOSURE", AND THE AGREEMENT BECOMES EFFECTIVE, THE AGREEMENT TERMINATES 3 YEARS AFTER THE DATE THAT YOU BOTH HAVE SIGNED THE AGREEMENT AND YOU MAY NOT, EXECUTE A SUBSEQUENT STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT WITH THE SAME SPOUSE DURING THE SAME MARRIAGE UNLESS YOU COMPLETE THE FINANCIAL DISCLOSURE FORM. IF YOU INTEND THAT THIS AGREEMENT EXTEND BEYOND 3 YEARS, EACH OF YOU, BEFORE SIGNING THE AGREEMENT, MUST DISCLOSE TO THE OTHER YOUR EXISTING PROPERTY AND YOUR EXISTING FINANCIAL OBLIGATIONS, BY COMPLETING SCHEDULE "A", "FINANCIAL DISCLOSURE". IF SCHEDULE "A" HAS BEEN FILLED OUT BUT, IN A LEGAL ACTION AGAINST YOU TO ENFORCE THE AGREEMENT, YOU SHOW THAT THE INFORMATION ON SCHEDULE "A" DID NOT PROVIDE YOU WITH FAIR AND REASONABLE DISCLOSURE UNDER THE CIRCUMSTANCES, THE DURATION OF THE AGREEMENT IS 3 YEARS AFTER BOTH PARTIES SIGNED THE AGREEMENT.

8. ONE SPOUSE MAY TERMINATE THIS AGREEMENT AT ANY TIME BY GIVING SIGNED NOTICE OF TERMINATION TO THE OTHER SPOUSE. THE AGREEMENT TERMINATES 30 DAYS AFTER NOTICE IS GIVEN.

9. TERMINATION OF THIS AGREEMENT DOES NOT BY ITSELF CHANGE THE CLASSIFICATION OF PROPERTY CLASSIFIED BY THE AGREEMENT.

10. THIS AGREEMENT MAY BE AMENDED, REVOKED OR SUPPLEMENTED BY A LATER MARITAL PROPERTY AGREEMENT.

11. BOTH PARTIES MUST SIGN THIS AGREEMENT AND THE SIGNATURES MUST BE AUTHENTICATED BY OR ACKNOWLEDGED BEFORE A NOTARY. THE AGREEMENT BECOMES EFFECTIVE ON THE DATE THAT YOU HAVE BOTH SIGNED IT, THE DATE THAT YOU MARRY, OR THE DATE ON WHICH YOU ARE BOTH DOMICILED IN WISCONSIN, WHICHEVER IS LATER. IF YOU ALTER THE LANGUAGE OF THE AGREEMENT ON THIS FORM THE AGREEMENT WILL NOT CONSTITUTE A STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT (BUT IT MAY QUALIFY AS A GENERAL MARITAL PROPERTY AGREEMENT UNDER SECTION 766.58, WISCONSIN STATUTES).

12. EACH SPOUSE SHOULD RETAIN A COPY OF THIS AGREEMENT, INCLUDING ANY DISCLOSURE OF PROPERTY AND OBLIGATIONS, WHILE THE AGREEMENT IS IN EFFECT AND AFTER IT TERMINATES. RETENTION OF A COPY MAY BE IMPORTANT TO PROTECT INTERESTS ACQUIRED UNDER OR AFFECTED BY THE AGREEMENT.

13. IF AFTER ENTERING INTO THIS AGREEMENT ONE OR BOTH OF YOU ESTABLISH A DOMICILE OUTSIDE THIS STATE, YOU ARE URGED TO SEEK LEGAL ADVICE CONCERNING THE CONTINUED EFFECTIVENESS OF THIS AGREEMENT.

STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT

(Pursuant to Section 766.588, Wisconsin Statutes)

This agreement is entered into by .... and .... (husband and wife) (who intend to marry) (strike one). The parties hereby classify all of the property owned by them when this agreement becomes effective, and property acquired during the term of this agreement, as marital property.

One spouse may terminate this agreement at any time by giving signed notice of termination to the other spouse. Notice of termination by a spouse is given upon personal delivery or when sent by certified mail to the other spouse's last–known address. The agreement terminates 30 days after such notice is given.

The parties (have) (have not) (strike one) completed Schedule "A", "Financial Disclosure", attached to this agreement. If Schedule "A" has not been completed, the duration of this agreement is 3 years after both parties have signed the agreement. If Schedule "A" has been completed, the duration of this agreement is not limited to 3 years after it is signed.

IF THE DURATION OF THIS AGREEMENT IS NOT TO BE LIMITED TO 3 YEARS, MAKE SURE SCHEDULE "A", "FINANCIAL DISCLOSURE", IS COMPLETED AND THAT YOU HAVE REVIEWED THE SCHEDULE BEFORE SIGNING THE AGREEMENT. IF YOU AND YOUR SPOUSE HAVE PREVIOUSLY ENTERED INTO A STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT WITH EACH OTHER WHICH WAS EFFECTIVE DURING YOUR PRESENT MARRIAGE AND YOU AND YOUR SPOUSE DID NOT COMPLETE SCHEDULE "A", YOU MAY NOT EXECUTE THIS AGREEMENT IF YOU DO NOT COMPLETE SCHEDULE "A".

Signature of One Spouse: ....
Date: ....
Print Name Here: ....
Residence Address: ....

(Make Sure Your Signature is Authenticated or Acknowledged Below.)

AUTHENTICATION

Signature .... authenticated this .... day of ...., ... (year)
*....
TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, ... authorized by s. 706.06, Wis. Stats.)

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
.... County)

Personally came before me this .... day of ...., ... (year) the above named .... to me known to be the person who executed the foregoing instrument and acknowledge the same.
*....
Notary Public ...., ... County, Wisconsin.
My Commission is permanent.
(If not, state expiration date: ...., ... (year))
(Signatures may be authenticated or acknowledged. Both are not necessary.)
*Names of persons signing in any capacity should be typed or printed below their signatures.
Signature of Other Spouse: ....
Date: ....
Print Name Here: ....
Residence Address: ....
(Make Sure Your Signature is Authenticated or Acknowledged Below.)

AUTHENTICATION

Signature .... authenticated this .... day of ...., ... (year)
*....
TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, ... authorized by s. 706.06, Wis. Stats.)

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
.... County)

Personally came before me this .... day of ...., ... (year) the above named .... to me known to be the person who executed the foregoing instrument and acknowledge the same.
*....
Notary Public ...., ... County, Wisconsin.
My Commission is permanent.
(If not, state expiration date: ...., ... (year))
(Signatures may be authenticated or acknowledged. Both are not necessary.)
*Names of persons signing in any capacity should be typed or printed below their signatures.

TERMINATION OF STATUTORY TERMINABLE MARITAL PROPERTY CLASSIFICATION AGREEMENT

I UNDERSTAND THAT:

1. THIS TERMINATION TAKES EFFECT 30 DAYS AFTER MY SPOUSE IS NOTIFIED OF THE TERMINATION, AS PROVIDED UNDER SECTION 766.588 (4) OF THE WISCONSIN STATUTES.

2. THIS TERMINATION IS PROSPECTIVE; IT DOES NOT AFFECT THE CLASSIFICATION OF PROPERTY ACQUIRED BEFORE THE TERMINATION BECOMES EFFECTIVE. PROPERTY ACQUIRED AFTER THE TERMINATION BECOMES EFFECTIVE IS CLASSIFIED AS PROVIDED UNDER THE MARITAL PROPERTY LAW.

3. IN GENERAL, THIS TERMINATION IS NOT BINDING ON CREDITORS UNLESS THEY ARE PROVIDED A COPY OF THE TERMINATION BEFORE CREDIT IS EXTENDED.

The undersigned terminates the statutory terminable marital property classification agreement entered into by me and my spouse on .... (date last spouse signed the agreement) under section 766.588 of the Wisconsin Statutes.
Signature: ....
Date: ....
Print Name Here: ....
Residence Address: ....

SCHEDULE "A"
FINANCIAL DISCLOSURE

The following general categories of assets and liabilities are not all inclusive and if other assets or liabilities exist they should be listed. Assets should be listed according to which spouse has title (including assets owned by a spouse or the spouses with one or more third parties) and at their approximate market value.

Husband *Wife* *Both Names*

I. ASSETS
- A. Real estate (gross value)
- B. Stocks, bonds and mutual funds
- C. Accounts at and certificates or other instruments issued by financial institutions
- D. Mortgages, land contracts, promissory notes and cash
- E. Partnership interests
- EL. Limited liability company interests.
- F. Trust interests
- G. Livestock, farm products, crops
- H. Automobiles and other vehicles
- I. Jewelry and personal effects
- J. Household furnishings
- K. Life insurance and annuities:
  1. Face value
  2. Cash surrender value
- L. Retirement benefits (include value):
  1. Pension plans
  2. Profit sharing plans
  3. HR–10 KEOGH plans
  4. IRAs
  5. Deferred compensation plans
- M. Other assets not listed elsewhere

II. OBLIGATIONS (TOTAL OUTSTANDING BALANCE):
- A. Mortgages and liens
- B. Credit cards
- C. Other obligations to financial institutions
- D. Alimony, maintenance and child support (per month)
- E. Other obligations (such as other obligations to individuals, guarantees, contingent liabilities)

III. ANNUAL COMPENSATION FOR SERVICES:
(for example, wages and income from self–employment; also include social security, disability and similar income here)

(IF YOU NEED ADDITIONAL SPACE, ADD ADDITIONAL SHEETS)

History: 1987 a. 393; 1991 a. 301; 1993 a. 112, 160; 1997 a. 250.
NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

766.589 Statutory terminable individual property classification agreement. (1) GENERALLY. (a) For purposes of determining ownership of property classified by an agreement under this section, a spouse owns property if the property is held by that spouse. If property classified by an agreement under this section is not held by either or both spouses, ownership of the property is determined as if the spouses were unmarried when the property was acquired.

(b) Spouses may execute an agreement under this section to classify the marital property of the spouses presently owned and property acquired, reclassified or created in the future that would otherwise be marital property, as the individual property of the owner. At the death of the owning spouse, property classified by an agreement under this section is subject to the rights of the surviving spouse under sub. (7). Except as provided in this section,

s. 766.58 applies to an agreement under this section. The form of the agreement is set forth in sub. (10). Persons intending to marry each other may execute an agreement as if married, but the agreement becomes effective only upon their determination date.

(c) 1. If at the time an agreement under this section is executed property is held as survivorship marital property, the property is classified as the individual property of the owners and is owned as a joint tenancy. If at the time an agreement under this section is executed property is held in a form as provided under s. 766.60 (1) or (2), the property is classified as the individual property of the owners and is owned as a tenancy in common. If while an agreement is in effect spouses acquire property as a joint tenancy exclusively between themselves or as survivorship marital property, the property is classified as the individual property of the owners and is owned as a joint tenancy. If while an agreement is in effect spouses acquire property as tenants in common exclusively between themselves, the spouses' respective ownership interests in the property are classified as the individual property of the owners. If while an agreement is in effect spouses acquire property held in a form as provided under s. 766.60 (1) or (2), the property is classified as the individual property of the owners and is owned as a tenancy in common. An agreement under this section does not affect the incidents under ch. 705 of a joint account, as defined in s. 705.01 (4).

2. For purposes of an agreement under this section, to the extent the incidents of a joint tenancy or tenancy in common conflict with or differ from the incidents of individual property, the incidents of the tenancy in common or joint tenancy, including the incident of survivorship, control.

(2) EXECUTION. An agreement under this section shall be signed by both parties to the agreement. An agreement under this section is executed when the signature of each party to the agreement is authenticated or acknowledged. The agreement executed shall conform to the requirements under sub. (10).

(3) EFFECTIVE DATE AND EFFECTIVE PERIOD. (a) An agreement under this section is effective when executed or upon the determination date, whichever is later.

(b) If the spouses have not completed the financial disclosure form under sub. (10) before or contemporaneously with execution of the agreement, the agreement terminates 3 years after the date that both spouses signed the agreement, unless terminated earlier by one of the spouses under sub. (4).

(c) If the spouses have completed the financial disclosure form under sub. (10), the agreement terminates when the terms of the agreement no longer apply after dissolution or the death of a spouse, unless terminated earlier by one of the spouses under sub. (4).

(3m) LIMITATION ON EXECUTION OF 3-YEAR AGREEMENT. If spouses execute an agreement under this section which becomes effective for any period and, for that agreement, do not complete the financial disclosure form under sub. (10), the spouses may not execute a subsequent agreement under this section for the same marriage unless the financial disclosure form under sub. (10) is completed.

(4) TERMINATION BY ONE SPOUSE; GOOD FAITH DUTY. (a) An agreement under this section terminates 30 days after a notice of termination is given under par. (b) by one spouse to the other spouse. An example of a termination form is set forth in sub. (10).

(b) Notice of termination is given to the other spouse on the date:

1. That signed termination is personally delivered to the other spouse; or

2. That signed termination is sent by certified mail to the address of the other spouse last known to the spouse giving notice of termination.

(c) After notice of termination is given under this subsection and until the agreement terminates, each spouse shall act in good faith with respect to the other spouse in matters involving the property of the spouse who is required to act in good faith which is classified as individual property by the agreement. Management and control by a spouse of that property in a manner that limits, diminishes or fails to produce income from that property does not violate this paragraph.

(d) This subsection does not affect the ability to amend, revoke or supplement an agreement under this section by separate marital property agreement under s. 766.58 (4).

(e) With respect to its effect on 3rd parties, a termination under this section shall be treated as a marital property agreement.

(5) ENFORCEABILITY. (a) If the spouses do not complete the financial disclosure form under sub. (10), the agreement terminates as provided under sub. (3) (b) and the agreement is enforceable without the disclosure of a spouse's property or financial obligations.

(b) If the spouses complete the financial disclosure form under sub. (10), the maximum duration of the agreement is 3 years after both spouses have signed the agreement if the spouse against whom enforcement is sought proves that the information on the disclosure form did not provide fair and reasonable disclosure, under the circumstances, of the other spouse's property or financial obligations. This paragraph applies notwithstanding the fact that a spouse had notice of the other spouse's property or financial obligations.

(c) Section 766.58 (6) (c) does not apply to an agreement under this section.

(6) EFFECT ON SUPPORT AND DIVORCE. An agreement under this section does not affect any of the following:

(a) The duty of support that spouses otherwise have to each other.

(b) The determination of property division under s. 767.255.

(c) The determination of maintenance payments under s. 767.26.

(7) RIGHTS OF SURVIVING SPOUSE. Notwithstanding the fact that an agreement under this section is in effect at, or has terminated before, the time of death of a spouse who is party to the agreement, the surviving spouse may elect under s. 861.02. For the purpose of the election, in addition to the property described in s. 851.055, property acquired during marriage and after the determination date which would have been marital property but for the agreement is deferred marital property.

(8) OTHER MEANS OF CLASSIFICATION. This section is not the exclusive means by which spouses may reclassify their marital property.

(9) EFFECT OF TERMINATION. Termination of an agreement under sub. (3) or (4) does not affect the classification of property acquired before termination. Property acquired after termination is classified as provided under this chapter.

(10) STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT FORM. The language of a statutory terminable individual property classification agreement form shall be identical to the language included in the form set forth under this subsection. The format of a statutory terminable individual property classification agreement shall be substantially as follows:

NOTICE TO PERSONS WHO SIGN THIS AGREEMENT

1. A PROPERTY LAW KNOWN AS THE MARITAL PROPERTY SYSTEM GOVERNS THE PROPERTY RIGHTS OF MARRIED PERSONS IN WISCONSIN. AFTER THE MARITAL PROPERTY SYSTEM APPLIES TO A MARRIED COUPLE, EACH SPOUSE HAS AN UNDIVIDED ONE–HALF OWNERSHIP INTEREST IN PROPERTY, SUCH AS WAGES, DEFERRED EMPLOYMENT BENEFITS, LIFE INSURANCE, INCOME FROM PROPERTY AND CERTAIN APPRECIATION OF PROPERTY, THEREAFTER ACQUIRED DURING MARRIAGE DUE TO THE EFFORTS OF EITHER OR BOTH SPOUSES. THIS AGREEMENT ALTERS THE LAW GOVERNING YOUR PROPERTY RIGHTS. THE PURPOSE OF THE FOLLOWING INFORMATION IS TO APPRISE YOU, IN VERY GENERAL TERMS, OF SOME OF THE MORE IMPORTANT ASPECTS AND POSSIBLE EFFECTS OF THIS AGREEMENT. THE INFORMATION IS NOT INTENDED TO

BE A PRECISE OR COMPLETE RECITATION OF THE LAW APPLICABLE TO THIS AGREEMENT AND IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

2. BY ENTERING INTO THIS AGREEMENT, YOU HAVE AGREED TO RELINQUISH YOUR RIGHTS TO AN AUTOMATIC OWNERSHIP INTEREST IN PROPERTY ACQUIRED AS A RESULT OF SPOUSAL EFFORT DURING MARRIAGE AND THE TERM OF THE AGREEMENT; HOWEVER, YOU ARE ACQUIRING AUTOMATIC OWNERSHIP RIGHTS TO PROPERTY TITLED IN YOUR NAME.

3. THIS AGREEMENT MAY AFFECT:

A. YOUR ACCESS TO CREDIT AND THE PROPERTY AVAILABLE TO SATISFY OBLIGATIONS INCURRED BY YOU OR YOUR SPOUSE.

B. THE ACCUMULATION OF AND THE MANAGEMENT AND CONTROL OF PROPERTY BY YOU DURING YOUR MARRIAGE.

C. THE AMOUNT OF PROPERTY YOU HAVE TO DISPOSE OF AT YOUR DEATH.

D. YOUR TAXES.

E. ANY PREVIOUS MARRIAGE AGREEMENT ENTERED INTO BY YOU AND YOUR SPOUSE.

4. THIS AGREEMENT DOES NOT:

A. AFFECT RIGHTS AT DIVORCE.

B. ALTER THE LEGAL DUTY OF SUPPORT THAT SPOUSES HAVE TO EACH OTHER OR THAT A SPOUSE HAS TO HIS OR HER CHILDREN.

5. NOTWITHSTANDING THIS AGREEMENT, THE PROPERTY CLASSIFIED BY THIS AGREEMENT WHICH IS OWNED BY THE FIRST SPOUSE TO DIE IS SUBJECT TO CERTAIN ELECTIVE RIGHTS OF THE SURVIVING SPOUSE. YOU MAY BAR THESE ELECTIVE RIGHTS BY SEPARATE MARITAL PROPERTY AGREEMENT.

6. IN GENERAL, THIS AGREEMENT IS NOT BINDING ON CREDITORS UNLESS THE CREDITOR IS FURNISHED A COPY OF THE AGREEMENT BEFORE CREDIT IS EXTENDED. (IT IS NOT NECESSARY TO FURNISH A COPY OF THE FINANCIAL DISCLOSURE FORM.) IN ADDITION, THIRD PARTIES OTHER THAN CREDITORS MIGHT NOT BE BOUND BY THIS AGREEMENT UNLESS THEY HAVE ACTUAL KNOWLEDGE OF THE TERMS OF THE AGREEMENT.

7. IF YOU WISH TO AFFECT AN INTEREST IN YOUR REAL PROPERTY WITH THIS AGREEMENT, PARTICULARLY IN RELATION TO THIRD PARTIES, ADDITIONAL LEGAL PROCEDURES AND FORMALITIES MAY BE REQUIRED. IF YOU HAVE QUESTIONS REGARDING THE EFFECT OF THIS AGREEMENT ON YOUR REAL PROPERTY, YOU ARE URGED TO SEEK LEGAL ADVICE.

8. IF YOU DO NOT COMPLETE SCHEDULE "A", "FINANCIAL DISCLOSURE", AND THE AGREEMENT BECOMES EFFECTIVE, THE AGREEMENT TERMINATES 3 YEARS AFTER THE DATE THAT YOU BOTH HAVE SIGNED THE AGREEMENT AND YOU MAY NOT EXECUTE A SUBSEQUENT STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT WITH THE SAME SPOUSE DURING THE SAME MARRIAGE UNLESS YOU COMPLETE THE FINANCIAL DISCLOSURE FORM. IF YOU INTEND THAT THIS AGREEMENT EXTEND BEYOND 3 YEARS, EACH OF YOU, BEFORE SIGNING THE AGREEMENT, MUST DISCLOSE TO THE OTHER YOUR EXISTING PROPERTY AND YOUR EXISTING FINANCIAL OBLIGATIONS, BY COMPLETING SCHEDULE "A", "FINANCIAL DISCLOSURE". IF SCHEDULE "A" HAS BEEN FILLED OUT BUT IN A LEGAL ACTION AGAINST YOU TO ENFORCE THE AGREEMENT YOU SHOW THAT THE INFORMATION ON SCHEDULE "A" DID NOT PROVIDE YOU WITH FAIR AND REASONABLE DISCLOSURE UNDER THE CIRCUMSTANCES, THE DURATION OF THE AGREEMENT IS 3 YEARS AFTER BOTH PARTIES SIGNED THE AGREEMENT.

9. ONE SPOUSE MAY TERMINATE THIS AGREEMENT AT ANY TIME BY GIVING SIGNED NOTICE OF TERMINATION TO THE OTHER SPOUSE. THE AGREEMENT TERMINATES 30 DAYS AFTER NOTICE IS GIVEN. IF SUCH NOTICE OF TERMINATION IS GIVEN BY ONE SPOUSE TO THE OTHER SPOUSE, EACH SPOUSE HAS A DUTY TO THE OTHER SPOUSE TO ACT IN GOOD FAITH IN MATTERS INVOLVING THE PROPERTY OF THE SPOUSE WHO IS REQUIRED TO ACT IN GOOD FAITH WHICH HAS BEEN CLASSIFIED AS INDIVIDUAL PROPERTY BY THIS AGREEMENT. THE GOOD FAITH DUTY CONTINUES UNTIL THE AGREEMENT TERMINATES (30 DAYS AFTER NOTICE IS GIVEN).

10. TERMINATION OF THIS AGREEMENT DOES NOT BY ITSELF CHANGE THE CLASSIFICATION OF PROPERTY CLASSIFIED BY THE AGREEMENT.

11. THIS AGREEMENT MAY BE AMENDED, REVOKED OR SUPPLEMENTED BY A LATER MARITAL PROPERTY AGREEMENT.

12. BOTH PARTIES MUST SIGN THIS AGREEMENT AND THE SIGNATURES MUST BE AUTHENTICATED OR ACKNOWLEDGED BEFORE A NOTARY. THE AGREEMENT BECOMES EFFECTIVE ON THE DATE THAT YOU HAVE BOTH SIGNED IT, THE DATE THAT YOU MARRY, OR THE DATE ON WHICH YOU ARE BOTH DOMICILED IN WISCONSIN, WHICHEVER IS LATER. IF YOU ALTER THE LANGUAGE OF THE AGREEMENT ON THIS FORM, THE AGREEMENT WILL NOT CONSTITUTE A STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT (BUT IT MAY QUALIFY AS A GENERAL MARITAL PROPERTY AGREEMENT UNDER SECTION 766.58, WISCONSIN STATUTES).

13. EACH SPOUSE SHOULD RETAIN A COPY OF THIS AGREEMENT, INCLUDING ANY DISCLOSURE OF PROPERTY AND OBLIGATIONS, WHILE THE AGREEMENT IS IN EFFECT AND AFTER IT TERMINATES. RETENTION OF A COPY MAY BE IMPORTANT TO PROTECT INTERESTS ACQUIRED UNDER OR AFFECTED BY THE AGREEMENT.

14. IF AFTER ENTERING INTO THIS AGREEMENT ONE OR BOTH OF YOU ESTABLISH A DOMICILE OUTSIDE THIS STATE, YOU ARE URGED TO SEEK LEGAL ADVICE CONCERNING THE CONTINUED EFFECTIVENESS OF THIS AGREEMENT.

STATUTORY TERMINABLE INDIVIDUAL
PROPERTY CLASSIFICATION AGREEMENT
(Pursuant to Section 766.589, Wisconsin Statutes)

This agreement is entered into by .... and .... (husband and wife) (who intend to marry) (strike one). The parties hereby classify the marital property owned by them when this agreement becomes effective, and property acquired during the term of this agreement which would otherwise have been marital property, as the individual property of the owning spouse. The parties agree that ownership of such property shall be determined by the name in which the property is held and, if property is not held by either or both spouses, ownership shall be determined as if the parties were unmarried persons when the property was acquired.

Upon the death of either spouse the surviving spouse may, except as otherwise provided in a subsequent marital property agreement, and regardless of whether this agreement has terminated, elect against the property of the decedent spouse as provided in section 766.589 (7) of the Wisconsin Statutes.

One spouse may terminate this agreement at any time by giving signed notice of termination to the other spouse. Notice of termination by a spouse is given upon personal delivery or when sent by certified mail to the other spouse's last–known address. The agreement terminates 30 days after such notice is given.

The parties (have) (have not) (strike one) completed Schedule "A", "Financial Disclosure", attached to this agreement. If Schedule "A" has not been completed, the duration of this agreement is 3 years after both parties have signed the agreement. If Schedule "A" has been completed, the duration of this agreement is not limited to 3 years after it is signed.

IF THE DURATION OF THIS AGREEMENT IS NOT TO BE LIMITED TO 3 YEARS, MAKE SURE THAT SCHEDULE "A", "FINANCIAL DISCLOSURE", IS COMPLETED AND THAT YOU HAVE REVIEWED THE SCHEDULE BEFORE SIGNING THE AGREEMENT. IF YOU AND YOUR SPOUSE HAVE PREVIOUSLY ENTERED INTO A STATUTORY TERMINABLE INDIVIDUAL PROPERTY CLASSIFICATION AGREEMENT WITH EACH OTHER WHICH WAS EFFECTIVE DURING YOUR PRESENT MARRIAGE AND YOU AND YOUR SPOUSE DID NOT COMPLETE SCHEDULE "A", YOU MAY NOT EXECUTE THIS AGREEMENT IF YOU DO NOT COMPLETE SCHEDULE "A".

Signature of One Spouse: ....
Date: ....
Print Name Here: ....
Residence Address: ....
(Make Sure Your Signature is Authenticated or Acknowledged Below.)

AUTHENTICATION

Signature .... authenticated this .... day of ...., ... (year)
*....
TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, ... authorized by s. 706.06, Wis. Stats.)

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
.... County)

Personally came before me this .... day of ...., ... (year) the above named .... to me known to be the person who executed the foregoing instrument and acknowledge the same.
*....
Notary Public ...., ... County, Wisconsin.
My Commission is permanent.
(If not, state expiration date: ...., ... (year))
(Signatures may be authenticated or acknowledged. Both are not necessary.)
*Names of persons signing in any capacity should be typed or printed below their signatures.

Signature of Other Spouse: ....
Date: ....
Print Name Here: ....
Residence Address: ....
(Make Sure Your Signature is Authenticated or Acknowledged Below.)

AUTHENTICATION

Signature .... authenticated this .... day of ...., ... (year)
*....
TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, ... authorized by s. 706.06, Wis. Stats.)

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
.... County)

Personally came before me this .... day of ...., ... (year) the above named .... to me known to be the person who executed the foregoing instrument and acknowledge the same.
*....
Notary Public ...., ... County, Wisconsin.
My Commission is permanent.
(If not, state expiration date: ...., ... (year))
(Signatures may be authenticated or acknowledged. Both are not necessary.)
*Names of persons signing in any capacity should be typed or printed below their signatures.

TERMINATION OF
STATUTORY TERMINABLE INDIVIDUAL
PROPERTY CLASSIFICATION AGREEMENT

I UNDERSTAND THAT:

1. THIS TERMINATION TAKES EFFECT 30 DAYS AFTER MY SPOUSE IS NOTIFIED OF THE TERMINATION, AS PROVIDED UNDER SECTION 766.589 (4) OF THE WISCONSIN STATUTES.

2. THIS TERMINATION IS PROSPECTIVE; IT DOES NOT AFFECT THE CLASSIFICATION OF PROPERTY ACQUIRED BEFORE THE TERMINATION BECOMES EFFECTIVE. PROPERTY ACQUIRED AFTER THE TERMINATION BECOMES EFFECTIVE IS CLASSIFIED AS PROVIDED UNDER THE MARITAL PROPERTY LAW.

3. IN GENERAL, THIS TERMINATION IS NOT BINDING ON CREDITORS UNLESS THEY ARE PROVIDED A COPY OF THE TERMINATION BEFORE CREDIT IS EXTENDED.

The undersigned terminates the statutory terminable individual property classification agreement entered into by me and my spouse on .... (date last spouse signed the agreement) under section 766.589 of the Wisconsin Statutes.
Signature: ....
Date: ....
Print Name Here: ....
Residence Address: ....

SCHEDULE "A"
FINANCIAL DISCLOSURE

The following general categories of assets and liabilities are not all inclusive and if other assets or liabilities exist they should be listed. Assets should be listed according to which spouse has title (including assets owned by a spouse or the spouses with one or more third parties) and at their approximate market value.

	Husband	*Wife*	*Both Names*
I. ASSETS:			
A. Real estate (gross value)			
B. Stocks, bonds and mutual funds			
C. Accounts at and certificates and other instruments issued by financial institutions			
D. Mortgages, land contracts, promissory notes and cash			
E. Partnership interests			
EL. Limited liability company interests			
F. Trust interests			
G. Livestock, farm products, crops			
H. Automobiles and other vehicles			
I. Jewelry and personal effects			
J. Household furnishings			
K. Life insurance and annuities:			
1. Face value			
2. Cash surrender value			
L. Retirement benefits (include value):			
1. Pension plans			
2. Profit sharing plans			
3. HR−10 KEOGH plans			
4. IRAs			
5. Deferred compensation plans			
M. Other assets not listed elsewhere			
II. OBLIGATIONS (TOTAL OUTSTANDING BALANCE):			
A. Mortgages and liens			
B. Credit cards			
C. Other obligations to financial institutions			
D. Alimony, maintenance and child support (per month)			
E. Other obligations (such as other obligations to individuals guarantees, contingent liabilities)			

III. ANNUAL COMPENSATION FOR SERVICES:
(for example, wages and income from self−employment; also include social security, disability and similar income here)
(IF YOU NEED ADDITIONAL SPACE, ADD ADDITIONAL SHEETS.)

History: 1987 a. 393; 1991 a. 301; 1993 a. 112; 1997 a. 188, 250.

766.59 Unilateral statement; income from nonmarital property. (1) A spouse may unilaterally execute a written statement which classifies the income attributable to all or certain of that spouse's property other than marital property as individual property.

(2) (a) The statement is executed when signed by the executing spouse and acknowledged by a notary. If executed before January 1, 1986, the statement is effective on January 1, 1986, or at a later time if provided otherwise in the statement. If executed on or after January 1, 1986, the statement is effective when executed or at a later time if provided otherwise in the statement.

(b) Within 5 days after the statement is signed, the executing spouse shall notify the other spouse of the statement's contents by personally delivering a copy to the other spouse or by sending a copy by certified mail to the other spouse's last−known address. Failure to give notice is a breach of the duty of good faith imposed by s. 766.15.

(c) The executing spouse may record the statement in the county register of deeds office under s. 59.43 (1) (r).

(3) Any income of the property designated in the statement which accrues on or after the date the statement becomes effective and before a revocation under sub. (4) is individual property. However, a statement only affects income accrued during the marriage during which the statement was executed.

(4) A statement may be revoked in writing by the executing spouse. The revoking spouse shall notify the other spouse of the revocation by personally delivering a copy to the other spouse or by sending a copy by certified mail to the other spouse's last−known address. The revoking spouse may record the revocation in the county register of deeds office under s. 59.43 (1) (r).

(5) With respect to its effect on 3rd parties, a statement or a revocation shall be treated as if it were a marital property agreement.

(6) A person intending to marry may execute a statement under this section as if married. A statement executed by a person intending to marry is effective upon the marriage or at a later time if so provided in the statement. Within 5 days after the statement is executed, the person executing the statement shall notify the person whom he or she intends to marry or has married of the statement's contents by personally delivering a copy of the statement to that person or by sending a copy by certified mail to that person's address. Failure to give notice is a breach of the duty of good faith imposed by s. 766.15.

History: 1985 a. 37; 1991 a. 301; 1995 a. 201.

766.60 Optional forms of holding property; survivorship ownership. (1) Spouses may hold marital property in a form that designates the holders of it by the words "(name of one spouse) or (name of other spouse) as marital property".

(2) Spouses may hold marital property in a form that designates the holder of it by the words "(name of one spouse) and (name of other spouse) as marital property".

(3) A spouse may hold individual property in a form that designates the holder of it by the words "(name of spouse) as individual property".

(4) (a) Spouses may hold property in any other form permitted by law, including but not limited to a concurrent form or a form that provides survivorship ownership. Except as provided in par. (b) and except with respect to any remedy a spouse has under this chapter, whether a tenancy in common or joint tenancy was created before or after the determination date, to the extent the incidents of the tenancy in common or joint tenancy conflict with or differ from the incidents of property classification under this chapter, the incidents of the tenancy in common or of the joint tenancy, including the incident of survivorship, control.

(b) 1. Except as provided in subd. 2. or in a marital property agreement under s. 766.58:

a. If a document of title, instrument of transfer or bill of sale expresses an intent to establish a joint tenancy exclusively between spouses after the determination date, the property is survivorship marital property under sub. (5).

b. If a document of title, instrument of transfer or bill of sale expresses an intent to establish a tenancy in common exclusively between spouses after the determination date, the property is marital property.

2. A joint tenancy or tenancy in common exclusively between spouses which is given to the spouses by a 3rd party after the determination date is survivorship marital property or marital property, respectively, unless the donor provides otherwise.

(5) (a) If the words "survivorship marital property" are used instead of the words "marital property" in the form described in sub. (1) or (2), the marital property so held is survivorship marital property. On the death of a spouse, the ownership rights of that spouse in the property vest solely in the surviving spouse by nontestamentary disposition at death. The first deceased spouse may not dispose at death of any interest in survivorship marital property. Holding marital property in a form described in sub. (1) or (2) does not alone establish survivorship ownership between the spouses with respect to the property held.

(b) A real estate mortgage, a security interest under ch. 409 or a lien under s. 71.91 (5) (b) or ch. 49 or 779 on or against the interest of a spouse in survivorship marital property does not defeat the right of survivorship on the death of the spouse. The surviving spouse takes the interest of the deceased spouse subject to the mortgage, security interest or lien.

(c) A judgment lien on the interest of a spouse in survivorship marital property does not defeat the right of survivorship on the death of the spouse. If execution on the judgment lien was issued before the spouse's death the surviving spouse takes the interest of the deceased spouse subject to the lien. If execution on the judgment lien was not issued before the spouse's death, the surviving spouse takes the interest of the deceased spouse free of the judgment lien, unless the judgment lien is on the interests of both spouses in the survivorship marital property and all of the property of the spouses was available under s. 766.55 to satisfy the obligation for which the judgment was rendered.

History: 1983 a. 186; 1985 a. 37; 1987 a. 27 s. 3202 (47) (a); 1987 a. 312 s. 17; 1991 a. 301.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

When land contract sellers who owned the property as survivorship marital property, received the property back from the buyers by quit claim deed in lieu of foreclosure, the sellers' ownership interest could not be changed by the deed to other than survivorship property. Wonka v. Estate of Bierbrauer, 2001 WI App 274, 249 Wis. 2d 23, 637 N.W.2d 92, 01−0184.

766.605 Classification of homestead. A homestead acquired after the determination date which, when acquired, is held exclusively between spouses with no 3rd party is survivorship marital property if no intent to the contrary is expressed on the instrument of transfer or in a marital property agreement. A homestead may be reclassified under s. 766.31 (10).

History: 1983 a. 186; 1987 a. 393; 1991 a. 301.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

766.61 Classification of life insurance policies and proceeds. (1) In this section:

(a) "Owner" means a person appearing on the records of the policy issuer as the person having the ownership interest, or means the insured if no person other than the insured appears on those records as a person having that interest. In the case of group insurance, the term means the holder of each individual certificate of coverage under the group plan and does not include the person

who contracted with the policy issuer on behalf of the group, regardless of whether that person is listed as the owner on the contract.

(b) Except as provided in sub. (3) (e), "ownership interest" means the rights of an owner under a policy.

(c) "Policy" means an insurance policy insuring the life of a spouse and providing for payment of death benefits at the spouse's death and, for purposes of sub. (3) (e), the term includes an insurance policy insuring the life of any individual and providing for payment of death benefits at the death of the insured. This paragraph does not apply to sub. (2).

(d) "Proceeds" means the death benefit from a policy and all other economic benefits from it, whether they accrue or become payable as a result of the death of an insured person or upon the occurrence or nonoccurrence of another event.

(2) (a) In this subsection:

1. "Business day" has the meaning given under s. 421.301 (6).

2. "Notice of claim" means a written notice, by or on behalf of a spouse, former spouse, surviving spouse or a person claiming under a deceased spouse's disposition at death, that the person claims to be entitled to proceeds, payments or an interest in the policy.

3. "Policy" means an insurance policy insuring the life of a spouse or a life insurance policy of which a spouse is the owner.

(b) Except as provided in par. (c):

1. A policy issuer may rely on and act in accordance with the issuer's policy and records. If a policy issuer makes payments or takes actions in accordance with the policy and the issuer's records, the issuer is not liable because of those payments or actions.

2. The classification of a policy or a portion of a policy as marital property has no effect on the policy issuer's duty to perform under the issuer's contract when making payment or taking action in accordance with the policy and the issuer's records.

(c) 1. If at least 5 business days before making payment or taking action in accordance with the issuer's policy and records, a policy issuer has received at its home office a notice of claim, the issuer shall notify the party directing the payment or action of the receipt of the notice of claim and shall not take any action on the policy for 14 business days.

2. If within 14 business days after receiving the notice of claim the issuer receives at its home office, as purporting to support the notice of claim, a decree, marital property agreement, written directive signed by the beneficiary and surviving spouse, consent under sub. (3) (e) or proof that a legal action has been filed, including a copy of an election filed pursuant to s. 861.08 (1), to secure an interest as evidenced in such a document, the issuer shall make payment or take action on the policy after the issuer receives from a court or from the claimant and the person directing action or payment written documentation indicating that the dispute has been resolved.

3. If documentation purporting to support the claim is not submitted as described under subd. 2., the policy issuer shall take action or make payment as if the notice of claim had not been received.

(d) A policy issuer is not liable to any person for any claim for damages as a result of the issuer's suspension of policy action or the taking of any action pursuant to this subsection. A policy issuer shall pay interest which accrues during the suspension of any action under this subsection.

(2m) (a) In determining the marital property component of the ownership interest and proceeds of a policy under sub. (3), the date on which a policy becomes effective is the date of original issuance or coverage of the policy, whichever is earlier, if the policy is thereafter kept in force merely by continuing premium payments, without any further underwriting by the issuer. If additional underwriting is required after original issuance of the policy or if the amount of proceeds increases after original issuance as a result of unscheduled additional premiums paid by the policyholder, the effective date of the policy is the date on which the newly underwritten right to proceeds or the right to increased proceeds begins.

(b) In determining the marital property component of the ownership interest and proceeds of a group policy sponsored by an employer or association under sub. (3), the date on which the policy becomes effective is the date on which individual coverage begins, notwithstanding that the employer or association thereafter changes policy issuers or that the amount of coverage changes under the policy pursuant to the plan or benefit offered by the employer or association. If additional underwriting is required after original issuance of the policy, or if the coverage is provided by a different employer or association, the effective date of the policy is the date on which the newly underwritten or newly provided coverage begins.

(3) Except as provided in subs. (4) to (6):

(a) 1. Except as provided in subd. 2., the ownership interest and proceeds of a policy issued after the determination date which designates the insured as the owner are marital property, regardless of the classification of property used to pay premiums on the policy.

2. If after the issuance of a policy described under subd. 1. the insured or his or her spouse are at any time not domiciled in this state, the ownership interest and proceeds of the policy are mixed property. The marital property component of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the period during marriage that the policy was in effect and the denominator of which is the entire period that the policy was in effect.

(b) The ownership interest and proceeds of a policy issued before the determination date which designates the insured as the owner are mixed property if a premium on the policy is paid from marital property after the determination date, regardless of the classification of property used to pay premiums on that policy after the initial payment of a premium on it from marital property. The marital property component of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the period during marriage that the policy was in effect after the date on which a premium was paid from marital property and the denominator of which is the entire period that the policy was in effect.

(c) 1. Except as provided in subd. 2., the ownership interest and proceeds of a policy which designates the spouse of the insured as the owner are individual property of its owner, regardless of the classification of property used to pay premiums on the policy.

2. If after the issuance of a policy described under subd. 1. the insured or his or her spouse are at any time not domiciled in this state, the ownership interest and proceeds of the policy are individual property and property that is other than individual or marital property. The individual property component of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the entire period during which the policy was in effect less that period during which the insured or his or her spouse were at any time not domiciled in this state and the denominator of which is the entire period that the policy was in effect.

(d) This chapter does not affect the ownership interest and proceeds of a policy that designates a person other than either spouse as the owner, if no premium on the policy is paid from marital property after the determination date. If a premium on the policy is paid from marital property after the determination date, the ownership interest and proceeds of the policy are in part property of the designated owner of the policy and in part marital property of the spouses, regardless of the classification of property used to pay premiums on that policy after the initial payment of a premium on it from marital property. The marital property compo-

nent of the ownership interest and proceeds is the amount which results from multiplying the entire ownership interest and proceeds by a fraction, the numerator of which is the period during marriage that the policy was in effect after the date on which a premium was paid from marital property and the denominator of which is the entire period that the policy was in effect.

(e) A written consent in which a spouse consents to the designation of another person as the beneficiary of the proceeds of a policy or consents to the use of property to pay premiums on a policy is effective, to the extent that the written consent provides, to relinquish or reclassify all or a portion of that spouse's interest in property used to pay premiums on the policy or in the ownership interest or proceeds of the policy without regard to the classification of property used by a spouse or another person to pay premiums on that policy. Unless the written consent expressly provides otherwise, a written consent under this paragraph is revocable in writing and is effective only with respect to the beneficiary named in it. Unless the written consent expressly provides otherwise, a revocation of a written consent is effective no earlier than the date on which it is signed by the revoking spouse and does not operate to reclassify any property which was reclassified or in which the revoking spouse relinquished an interest from the date of the consent to the date of revocation. In this paragraph, "ownership interest" includes the interests of a spouse in a policy who is not an owner under the policy.

(f) Designation of a trust as the beneficiary of the proceeds of a policy with a marital property component does not by itself reclassify that component.

(4) This section does not affect a creditor's interest in the ownership interest or proceeds of a policy assigned to the creditor as security or payable to the creditor.

(5) The interest of a person as owner or beneficiary of a policy acquired under a decree or property settlement agreement incident to a prior marriage or to parenthood is not marital property, regardless of the classification of property used to pay premiums on that policy.

(6) This section does not affect the ownership interest or proceeds of a policy if neither spouse is designated as an owner in the policy or the policy issuer's records and no marital property is used to pay a premium on the policy.

(7) If a noninsured spouse predeceases an insured spouse, the marital property interest of the decedent spouse in a policy which designates the surviving spouse as the owner and insured is limited to a dollar amount equal to one–half of the marital property interest in the interpolated terminal reserve and in the unused portion of the term premium of the policy on the date of death of the deceased spouse. All other rights of the decedent spouse in the ownership interest or proceeds of the policy, other than the marital property interest described in this subsection, terminate at the decedent spouse's death.

(8) This section does not apply to a policy held by a deferred employment benefit plan. Classification of a deferred employment benefit, regardless of the nature of the assets held by the deferred employment benefit plan, is determined under s. 766.62.

History: 1983 a. 186; 1985 a. 37; 1987 a. 393; 1991 a. 301; 1997 a. 188.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

766.62 Classification of deferred employment benefits. (1) (a) Except as provided in par. (b), a deferred employment benefit attributable to employment of a spouse occurring after the determination date is marital property.

(b) A deferred employment benefit attributable to employment of a spouse occurring after the determination date is mixed property if, after the determination date and during the period of employment giving rise to the benefit, the employed spouse or his or her spouse are at any time not domiciled in this state. The marital property component of that mixed property is the amount which results from multiplying the entire benefit by a fraction, the numerator of which is the period of employment giving rise to the benefit that occurred after the determination date and during marriage and the denominator of which is the total period of employment giving rise to the benefit.

(2) A deferred employment benefit attributable to employment of a spouse occurring while the spouse is married and partly before and partly after the determination date is mixed property. The marital property component of that mixed property is the amount which results from multiplying the entire benefit by a fraction, the numerator of which is the period of employment giving rise to the benefit that occurred after the determination date and during marriage and the denominator of which is the total period of employment giving rise to the benefit.

(2m) Unless provided otherwise in a decree or marital property agreement, a mixed property deferred employment benefit shall be valued as of a dissolution or an employee spouse's death.

(3) Ownership or disposition provisions of a deferred employment benefit plan which conflict with sub. (1) or (2) are ineffective between spouses or former spouses or between a surviving spouse and a person claiming under a deceased spouse's disposition at death.

(4) If a deferred employment benefit plan administrator makes payments or takes actions in accordance with the plan and the administrator's records, the administrator is not liable because of those payments or actions.

(5) If the nonemployee spouse predeceases the employee spouse, the marital property interest of the nonemployee spouse in all of the following terminates at the death of the nonemployee spouse:

(a) A deferred employment benefit plan.

(b) Assets in an individual retirement account that are traceable to the rollover of a deferred employment benefit plan.

History: 1983 a. 186; 1985 a. 37 ss. 128, 187; 1987 a. 393; 1991 a. 301; 1993 a. 160.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

The termination under sub. (5) of a marital property interest in pension benefits did not prevent the application of the equitable principal that a murderer should not profit from the crime. The trial court acted properly in imposing a constructive trust on the decedent's marital property interest in the murderer's pension benefits. Estate of Hackl v. Hackl, 231 Wis. 2d 43, 604 N.W.2d 579 (Ct. App. 1999), 99–0499.

766.63 Mixed property. (1) Except as provided otherwise in ss. 766.61 and 766.62, mixing marital property with property other than marital property reclassifies the other property to marital property unless the component of the mixed property which is not marital property can be traced.

(2) Application by one spouse of substantial labor, effort, inventiveness, physical or intellectual skill, creativity or managerial activity to either spouse's property other than marital property creates marital property attributable to that application if both of the following apply:

(a) Reasonable compensation is not received for the application.

(b) Substantial appreciation of the property results from the application.

History: 1983 a. 186; 1985 a. 37; 1991 a. 301.

Marital property presumptions and tracing principals are applied. In Matter of Estate of Lloyd, 170 Wis. 2d 240, 487 N.W.2d 644 (Ct. App. 1992).

If tracing of the marital component of a mixed asset is established under sub. (1) reclassification does not occur. Instead, a claim for reimbursement exists in favor of the marital estate measured by the enhanced value of the asset, not the marital amounts expended. Estate of Kobyiski, 178 Wis. 2d 158, 503 N.W.2d 369 (Ct. App. 1993).

Under sub. (2) a party who applies substantial uncompensated labor to property may not recover if there is no resulting substantial appreciation. Estate of Kobyiski, 178 Wis. 2d 158, 503 N.W.2d 369 (Ct. App. 1993).

Expenditures that result in the mere maintenance of property, including the payment of property taxes, do not result in marital property being created through mixing. Krueger v. Rodenberg, 190 Wis. 2d 367, 527 N.W.2d 381 (Ct. App. 1994).

If a nonmarital asset is mixed with marital property, tracing the nonmarital property to its nonmarital source preserves the traced component's nonmarital status. There is no requirement that the party tracing the nonmarital component also trace the mixing of the marital component. That the marital property was used to satisfy a nonmari-

tal debt against the property does not change the nonmarital character of the traceable property. Bille v. Zuraff, 198 Wis. 2d 867, 543 N.W.2d 568 (Ct. App. 1995), 95–0007.

766.70 Remedies. (1) A spouse has a claim against the other spouse for breach of the duty of good faith imposed by s. 766.15 resulting in damage to the claimant spouse's property. Except as otherwise provided in sub. (6), no spouse may commence an action under this subsection later than 6 years after acquiring actual knowledge of the facts giving rise to the claim.

(2) Upon request of a spouse, a court may order an accounting of the spouses' property and obligations and may determine rights of ownership in, beneficial enjoyment of or access to marital property and the classification of all property of the spouses.

(3) Upon request of a spouse, a court may order the name of the spouse added to marital property or to a document evidencing ownership of marital property held in the name of the other spouse alone except with respect to any of the following:

(a) An interest in a partnership or joint venture held by the other spouse as a general partner or as a participant.

(aL) An interest in a limited liability company held by the other spouse as a member.

(b) An interest in a professional corporation, professional association or similar entity held by the other spouse as a stockholder or member.

(c) An asset of an unincorporated business if the other spouse is the only one of the spouses involved in operating or managing the business.

(d) A corporation, the stock of which is not publicly traded. Under this paragraph, stock of a corporation is publicly traded if both of the following apply:

1. The stock is traded on a national stock exchange or quoted on the national association of securities dealers automated quotations system.

2. The employees, officers and directors of the corporation own, in the aggregate, less than 10% in value of the outstanding shares of the stock in the corporation.

(e) Any other property if the addition would adversely affect the rights of a 3rd person.

(4) (a) If marital property has been or is likely to be substantially injured by the other spouse's gross mismanagement, waste or absence, upon request of a spouse a court may order any of the following:

1. A temporary or permanent limitation or termination of any of the other spouse's management and control rights in marital property.

2. A change in classification of marital property.

3. A division of the obligations of the spouses existing on the date of the request, after considering the classification of the obligation under s. 766.55 and the factors specified under ss. 767.255 and 767.26.

4. That all obligations incurred after the court order are the obligations of the incurring spouse and that the other spouse is not liable for, and his or her property is not available to satisfy, the obligations.

5. That any property acquired by either spouse after the court order is the individual property of the acquiring spouse.

(b) The court may make any order under this subsection subject to any equitable condition.

(c) This subsection does not apply to property described in sub. (3) (a), (b), (d) and (e).

(5) When marital property is used to satisfy an obligation other than an obligation under s. 766.55 (2) (a) or (b), the nonobligated spouse may request the court to order that he or she receive as individual property marital property equal in value to the marital property used to satisfy the obligations of the obligated spouse, subject to the rights of any 3rd party who relied upon the availability of the marital property to satisfy any obligation under s. 766.55 (2) (a) or (b) and subject to equitable considerations. No person may bring an action under this subsection later than one year after the obligation is satisfied.

(6) (a) Except as provided in pars. (b) and (c), if a gift of marital property during marriage by a spouse does not comply with s. 766.53, the other spouse may bring an action to recover the property or a compensatory judgment equal to the amount by which the gift exceeded the limit under s. 766.53. The other spouse may bring the action against the donating spouse, the gift recipient or both. The other spouse must commence the action within the earliest of one year after he or she has notice of the gift, one year after a dissolution or on or before the deadline for filing a claim under s. 859.01 after the death of either spouse. If the recovery occurs during marriage, it is marital property. If the recovery occurs after a dissolution or the death of either spouse, the recovery is limited to 50% of the recovery that would have been available if the recovery had occurred during marriage.

(b) 1. If a transfer of marital property to a 3rd person during marriage by a spouse acting alone becomes a completed gift upon the death of the spouse or if an arrangement during marriage involving marital property by a spouse acting alone is intended to be and becomes a gift to a 3rd person upon the death of the spouse, the surviving spouse may bring an action against the gift recipient to recover one–half of the gift of marital property. The surviving spouse may not commence an action under this paragraph later than one year after the death of the decedent spouse.

2. If the spouse entitled to a remedy under subd. 1. predeceases the donor spouse, no action may be commenced later than one year after the decedent's death. Except as provided in s. 766.61 (7), recovery in such an action is the same as if the donor spouse had predeceased the spouse entitled to recover, but is valued at the date of death of the spouse entitled to recover.

(c) 1. If a spouse acting alone makes a gift of marital property to a 3rd person during marriage in the form of a joint tenancy and the spouse and the 3rd person are joint tenants with respect to that property, the other spouse has a right of reimbursement against the donor spouse or the gift recipient or both with respect to that portion of the gift representing the quotient resulting from dividing the number of joint tenants other than the donor spouse by the total number of joint tenants, including the donor spouse. The other spouse must commence the action within the earliest of one year after he or she has notice of the gift, one year after a dissolution or one year after the death of either spouse.

2. If the gift of marital property under subd. 1. remains in the form of a joint tenancy, at the death of the tenant spouse the surviving spouse has a right of reimbursement against the decedent spouse's estate or the gift recipient or both with respect to one–half of that portion of the joint tenancy representing the quotient resulting from dividing one by the total number of joint tenants immediately before the death of the tenant spouse, valued at the date of death. The surviving spouse may not commence the action later than one year after the death of the decedent spouse. If the spouse entitled to a right of reimbursement under this subdivision predeceases the tenant spouse, the action may not be commenced later than one year after the decedent's death. The portion subject to the right of reimbursement in such an action is the same as if the tenant spouse had predeceased the spouse with the right of reimbursement, but is valued at the date of death of the spouse with the right of reimbursement.

(7) After the date of death within 90 days after the earlier of either the receipt of the inventory listing any life insurance policy or deferred employment benefit plan covered by s. 766.61 or 766.62, or the discovery of the existence of such a policy or plan, the surviving spouse may purchase the decedent's interest in the policy or plan from the decedent's estate at the interest's fair market value at the date of death, if all or part of the policy or plan is included in the decedent spouse's estate.

(8) Except as provided in sub. (6) and ss. 766.55 (4m), 766.56 (2) (c) and 766.57, no decree issued under this section may adversely affect the interest of a 3rd party.

History: 1983 a. 186; 1985 a. 37 ss. 89, 130 to 139; 1987 a. 393; 1989 a. 96; 1991 a. 301; 1993 a. 112.

Intentional misrepresentation is a breach of the duty of good faith for which the exclusive pre–divorce remedy is s. 766.70 (1). Commencement of a divorce bars an action under this section. Gardner v. Gardner, 175 Wis. 2d 420, 499 N.W.2d 266 (Ct. App. 1993).

A divorce action terminates on the death of a spouse. After the death an order prohibiting an act in regard to marital property entered in the divorce may not be enforced under ch. 767. As the parties are legally married at the time of death, the sole remedy for resolving disputes over marital property lies under this section. Socha v. Socha, 204 Wis. 2d 474, 555 N.W.2d 152 (Ct. App. 1996), 95–1641.

A cause of action under this section requires that the complained of conduct arise as a result of the marital relationship and a breach of the good faith duty between spouses. Once a divorce is commenced, the claim must be resolved in divorce court. A cause of action between spouses arising outside the marital relationship, such as a stockbroker–client relationship, does not fall within this section and may be maintained independent of the divorce. Knafelc v. Dain Bosworth, Inc. 224 Wis. 2d 346, 591 N.W.2d 611 (Ct. App. 1999), 98–0067.

766.73 Invalid marriages. If a marriage is invalidated by a decree, a court may apply so much of this chapter to the property of the parties to the invalid marriage as is necessary to avoid an inequitable result. This section does not apply if s. 767.255 applies to the action to invalidate the marriage.

History: 1983 a. 186; 1985 a. 37.

766.75 Treatment of certain property at dissolution. After a dissolution each former spouse owns an undivided one–half interest in the former marital property as a tenant in common, except as provided otherwise in a decree or an agreement entered into by the former spouses after dissolution.

History: 1983 a. 186; 1985 a. 37.

766.95 Rules of construction. Unless displaced by this chapter, the principles of law and equity supplement its provisions.

History: 1983 a. 186.

766.96 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

History: 1983 a. 186.

766.97 Equal rights; common law disabilities. **(1)** Women and men have the same rights and privileges under the law in the exercise of suffrage, freedom of contract, choice of residence, jury service, holding office, holding and conveying property, care and custody of children and in all other respects. The various courts and executive and administrative officers shall construe the statutes so that words importing one gender extend and may be applied to either gender consistent with the manifest intent of the legislature. The courts and executive and administrative officers shall make all necessary rules and provisions to carry out the intent and purpose of this subsection.

(2) Nothing in this chapter revives the common law disabilities on a woman's right to own, manage, inherit, transfer or receive gifts of property in her own name, to enter into contracts in her own name or to institute civil actions in her own name. Except as otherwise provided in this chapter and in other sections of the statutes controlling marital property or property of spouses that is not marital property, either spouse has the right to own and exclusively manage his or her property that is not marital property, enter into contracts with 3rd parties or with his or her spouse, institute and defend civil actions in his or her name and maintain an action against his or her spouse for damages resulting from that spouse's intentional act or negligence.

(3) The common law rights of a spouse to compel the domestic and sexual services of the other spouse are abolished. Nothing in this subsection affects a spouse's common law right to consortium or society and companionship.

History: 1983 a. 186 ss. 47, 48; Stats. 1983 s. 766.97; 1985 a. 37.

STATE OF WISCONSIN
Department of Financial Institutions
Division of Banking

LOAN COMPANY LICENSE APPLICATION INSTRUCTIONS

Purpose: A completed Loan Company Application should be submitted to the Department of Financial Institutions – Division of Banking ("DFI") for consideration of licensure. Upon the filing of such application the division shall investigate the relevant facts, and if the division finds that the character, general fitness and financial responsibility of the applicant, including key officers, members, partners or owners, warrant the belief that the business will be operated in compliance with Section 138.09, Wis. Stats., the division shall issue a license.

The sections and numbers below correspond to the sections and numbers on the application.

APPLICANT INFORMATION

1. Print or type the complete name of the Applicant. The "Applicant" is the corporation, limited liability company, limited partnership, partnership or sole proprietorship that is applying for the license. If your company uses a trade name or DBA (doing business as) name, include that as well.

2. Print or type the street address for the licensee's headquarters. The "headquarters" is the location where all regulatory correspondence should be sent.

3. Print or type the mailing address for the headquarters.

LOAN COMPANY OFFICE

A separate "loan company office" application must be completed for each proposed licensed office location. Copies of the form may be made to accommodate additional locations.

4. Print or type the complete name, street address, and telephone number of each proposed loan company office location in the spaces provided.

5. List the other types of business conducted at each location.

Section 138.09(3)(e)(1), Wis. Stats., indicates the other types of business that a licensee may conduct, and permit others to conduct, at the location specified in its license. A copy of this statute is attached to this application packet or may be accessed from our website at www.wdfi.org.

If you are requesting authorization to share office quarters or to conduct other types of business at the licensed location, provide a detailed explanation of the proposed business and/or activities.

GENERAL INFORMATION

6. Print or type the name of the contact person to whom questions regarding the application should be directed.

7. List the state(s) in which the applicant currently holds a license to conduct business as a lender. For each state, identify the license number and the type of license issued by that state. If the applicant does not currently hold a

CHAPTER 428

FIRST LIEN REAL ESTATE AND OTHER MORTGAGE LOANS

SUBCHAPTER I

FIRST LIEN REAL ESTATE LOANS

428.101 Applicability. This subchapter applies to:

(1) Loans made on or after April 6, 1980 and prior to November 1, 1981, by a creditor other than a savings and loan association to a customer and which are secured by a first lien real estate mortgage or equivalent security interest if the amount financed is $25,000 or less.

(2) Loans made prior to April 6, 1980, by a creditor other than a savings and loan association and loans made before November 1, 1981, by a savings and loan association to a customer and which are secured by a first lien real estate mortgage or equivalent security interest if the annual percentage rate does not exceed 12% per year and the amount financed is $25,000 or less.

(3) Loans made on or after November 1, 1981, by a creditor to a customer and which are secured by a first lien real estate mortgage or equivalent security interest if the amount financed is $25,000 or less and if the loan is not subject to subch. II.

History: 1973 c. 18; 1979 c. 110 s. 60 (13); 1979 c. 168; 1981 c. 45; 2003 a. 257.

A second mortgage constitutes an equivalent security interest under this section when held by a savings and loan association that holds the first mortgage and there are no intervening liens. 63 Atty. Gen. 557.

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

428.102 Definitions. In this subchapter:

(1) "Amount financed" means that term as defined in the federal consumer credit protection act, as defined in s. 421.301 (19).

(2) "Creditor" means a person who regularly engages in, arranges for or procures from 3rd persons, loans within the scope of this subchapter.

(3) "Customer" means a person other than an organization who seeks or acquires credit financing secured by a first lien real estate mortgage, or equivalent security interest, for personal, family, household or agricultural purposes.

(4) "Loan" means the creation of debt by the creditor's payment of or agreement to pay money to the customer or to a 3rd party for the account of the customer, or a forbearance by a lender of a debt arising from a loan.

(5) "Organization" means organization as defined in s. 421.301 (28).

(6) "Person" means person as defined in s. 421.301 (31).

History: 1973 c. 18, 232; 2003 a. 257.

428.103 Limitations. (1) The following limitations shall apply to all loans subject to this subchapter:

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

(b) Any cosigner, other than the spouse of the customer, shall be given a notice substantially the same as that required by s. 422.305, and the cosigner shall be entitled to a copy of any document evidencing the obligation to pay the debt.

(c) With respect to debt collection:

1. No creditor shall engage in conduct of the type prohibited by s. 427.104 (1) (a) to (L).

2. The exemptions specified in s. 425.106 (1) (a) and (b), with respect to earnings and personal clothing and furnishings except as to fixtures, shall apply.

(d) No creditor may take a security interest in the household goods or furnishings, other than fixtures, of a customer.

(e) The creditor shall not contract for or charge its attorney fees to the customer except as follows:

1. Reasonable fees for opinions of title.

2. In foreclosure cases, 5% of the amount adjudged due the creditor; or if the dispute is settled prior to judgment, a reasonable fee based on the time, nature and extent of the work involved, but not to exceed 2−1/2% of the unpaid principal balance of the loan.

(2) A person who commits a violation of this section is liable to the customer in an amount equal to the greater of:

(a) Twice the amount of the interest to be charged on the transaction, except that the liability under this subsection shall not be less than $100 nor greater than $1,000; or

(b) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

History: 1973 c. 18; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); 1983 a. 92; 1991 a. 316; 1993 a. 80, 490; 2003 a. 257.

428.104 Receipts, accounting. (1) Any time a payment is made in cash, or any other time the method of payment does not itself provide evidence of payment, the creditor shall furnish the customer, without request, a written receipt, evidencing such payment. The customer shall be entitled upon request, free of charge, to an annual statement of account showing receipts and disbursements. Upon payment in full of the customer's obligation, the creditor shall release any mortgage by either recording the necessary instrument and forwarding the same to the customer, or by forwarding a satisfaction of such debt to the purchaser of the real property subject to such satisfied mortgage, or the creditor of such purchaser.

(2) A person who commits a violation of this section is liable to the customer in an amount equal to:

(a) Twenty−five dollars; and

(b) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

History: 1973 c. 18.

428.105 Pleadings. A complaint by a creditor to enforce a cause of action shall set forth specifically the facts constituting the alleged default of the customer, the amount to which the creditor is allegedly entitled and a summary of the figures necessary for computation of such amount, and shall be accompanied by an accurate copy of the writing evidencing the transaction.

History: 1973 c. 18.

428.106 Remedies. (1) Violations of this subchapter may be enforced by a customer subject to this section and ss. 425.308 to 425.311.

(2) With respect to a loan subject to this subchapter, if the court as a matter of law finds that any aspect of the transaction, any conduct directed against the customer, by the creditor, or any result of the transaction is unconscionable, the court shall, in addition to the remedies and penalties set forth in this subchapter, and a penalty not to exceed that specified in s. 428.103 (2), refuse to enforce the unconscionable aspect of the transaction or so limit the application of any unconscionable aspect or conduct to avoid any unconscionable result.

(3) Notwithstanding other provisions of this subchapter, a customer shall not be entitled to recover the specific penalties provided in ss. 428.103 (2) (a) and 428.104 (2) (a) if the person violating this subchapter shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such error.

(4) Any action brought by a customer to enforce rights under sub. (1) shall be commenced within one year after the date of the last violation of this subchapter, 2 years after consummation of the agreement or one year after the last payment, whichever is later. But in no event shall an action be commenced more than 6 years after the date of the last violation.

(5) The administrator specified in s. 426.103, solely through the department of justice, may on behalf of any customer institute an action to enforce this subchapter and to recover the damages and penalties provided for this subchapter. In such action the administrator may obtain an order restraining by temporary or permanent injunctions any violation of this subchapter. This subsection shall not be construed to incorporate or grant to the administrator with respect to the enforcement of this subchapter, any of the provisions of ch. 426.

History: 1973 c. 18; 1991 a. 316; 2003 a. 257.

SUBCHAPTER II

RESPONSIBLE HIGH COST MORTGAGE LENDING

Cross Reference: See also ch. DFI−Bkg 46, Wis. adm. code.

428.202 Definitions. In this subchapter:

(1) "Bridge loan" means a loan with a maturity of less than 18 months which requires only payments of interest until the time that the unpaid balance is due.

(1m) "Business day" has the meaning that is specified under 12 CFR 226.2 (a) (6) for purposes of 12 CFR 226.31.

(2) "Covered loan" means a consumer credit mortgage loan transaction other than an open−end credit plan or reverse mortgage in which all of the following apply:

(a) The customer is a natural person.

(b) The debt is incurred by the customer primarily for personal, family, or household purposes.

(c) The loan is secured by a mortgage on, or an equivalent security interest in, residential real property, and the residential real property is or will be occupied by the customer as the customer's principal dwelling.

(d) The terms of the loan provide any of the following:

1. That the loan transaction, at the time that the loan is consummated, is considered a mortgage under 15 USC 1602 (aa) and regulations adopted thereunder, including 12 CFR 226.32.

2. That total points and fees payable by the customer at or before the loan closing exceed 6 percent of the total loan amount. For purposes of this subdivision, "total points and fees" does not include reasonable fees paid to affiliates or nonaffiliates of the lender for bona fide services listed in 12 CFR 226.4 (c) (7).

(3) "Customer" means an individual to whom a covered loan is offered or made. "Customer" does not include a surety, guarantor, cosigner, or endorser.

(4) "Department" means the department of financial institutions.

(5) "Lender" means any person who originates a covered loan and to whom the covered loan is initially payable, except that "lender" does not include an assignee of a covered loan or any person who, for at least 12 consecutive months, has failed to originate any covered loans.

(5m) "Licensed lender" means a person licensed under s. 138.09.

(6) "Loan originator" has the meaning given in s. 224.71 (1r).

(6m) "Local governmental unit" has the meaning given in s. 16.97 (7).

(7) "Mortgage banker" has the meaning given in s. 224.71 (3).

(8) "Mortgage broker" has the meaning given in s. 224.71 (4).

(10) "Servicer" has the meaning given in 12 USC 2605 (i) (2).

History: 2003 a. 257.

428.203 Prohibitions on and requirements of lenders and assignees. (1) BALLOON PAYMENTS. Except as otherwise provided in this subsection, no lender may make a covered loan to a customer that requires, or that permits the lender to require, a payment that is more than twice as large as the average of all earlier scheduled payments. This subsection does not apply to a loan under which the payment schedule is adjusted to account for seasonal or irregular income of the customer or to a bridge loan with a maturity of less than one year that the customer obtains for the purpose of facilitating the acquisition or construction of a dwelling as the customer's principal dwelling.

(2) CALL PROVISION. No lender may make a covered loan to a customer that permits the lender or an assignee of the loan to demand payment of the outstanding balance before the original maturity date, except that a covered loan may permit a lender or assignee to so demand as a result of any of the following:

(a) The customer's failure to make payments required under the loan.

(b) A provision in the loan agreement permitting the lender or assignee to make such a demand after the sale of real property that is pledged as security for the loan.

(c) Fraud or material misrepresentation by the customer in connection with the loan.

(d) Any act or omission by the customer that adversely affects the lender's or assignee's security for the loan or any right of the lender or assignee in such security.

(3) NEGATIVE AMORTIZATION. No lender may make a covered loan to a customer with a payment schedule that causes the principal balance to increase, except that this subsection does not prohibit such a payment schedule as a result of a temporary forbearance or loan restructuring consented to by the customer.

(4) INCREASED INTEREST RATE. No lender may make a covered loan to a customer that imposes or permits the lender or an assignee of the loan to impose an increase in the interest rate as a result of the customer's default.

(5) ADVANCE PAYMENTS. No lender may make a covered loan to a customer that includes a payment schedule that consolidates more than 2 scheduled payments and pays them in advance out of the proceeds of the loan.

(6) REPAYMENT ABILITY. No lender may make covered loans to customers based on the customer's collateral without regard to the customer's ability to repay, including the customer's current or expected income, current obligations, and employment. A

lender is presumed to have violated this subsection if the lender engages in a pattern or practice of making covered loans without verifying and documenting the customer's repayment ability.

(7) REFINANCING OF EXISTING COVERED LOAN. No lender may make a covered loan that refinances an existing covered loan that the lender made to the same customer, unless the refinancing takes place at least one year after the date on which the loan being refinanced was made or the refinancing is in the interest of the customer. No assignee or servicer of a covered loan may make a covered loan that refinances the covered loan, unless the refinancing takes place at least one year after the date on which the loan being refinanced was made or the refinancing is in the interest of the customer. No lender, assignee of a covered loan, or servicer may engage in a pattern or practice of arranging for the refinancing of covered loans by affiliates or unaffiliated creditors, modifying covered loans, or any other acts for the purpose of evading this subsection. This subsection does not apply to bridge loans.

(8) PAYMENTS TO HOME IMPROVEMENT CONTRACTORS. No lender under a covered loan made to a customer may pay proceeds of the loan to a person who is under contract to make improvements to an existing dwelling, unless the payment is made by an instrument that is payable to the customer or jointly to the customer and the person who is under contract or, with the consent of the customer, the payment is made through a 3rd party in accordance with a written agreement signed by the customer, the lender, and the person under contract.

(8g) SINGLE PREMIUM CREDIT INSURANCE PRODUCTS. A lender may not finance, directly or indirectly, through a covered loan, or finance to the same customer within 30 days of making a covered loan, any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance product on a prepaid single premium basis sold in conjunction with a covered loan. This prohibition does not include contracts issued by a government agency or private mortgage insurance company to insure the lender against loss caused by a customer's default and does not apply to individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance premium calculated and paid on a monthly or other periodic basis.

(8m) REFINANCING OF SUBSIDIZED LOW–RATE LOANS. (a) In this subsection, "subsidized low–rate loan" means a loan that carries a current interest rate at least 2 percentage points below the then current yield on treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped–up rate, as applicable, shall be used instead of the current rate to determine whether a loan is a subsidized low–rate loan.

(b) A lender may not knowingly replace or consolidate a zero–interest rate or other subsidized low–rate loan made by a governmental or nonprofit lender with a covered loan within the first 10 years of the zero–interest rate or other subsidized low–rate loan unless the current holder of the loan consents in writing to the refinancing.

(9) UNREGISTERED MORTGAGE BANKERS AND BROKERS. No lender may knowingly contract with any person for the performance of duties in violation of s. 224.72 (1m).

History: 2003 a. 257.

428.204 False statements. No lender, licensed lender, loan originator, mortgage banker, or mortgage broker may knowingly make, propose, or solicit fraudulent, false, or misleading statements on any document relating to a covered loan.

History: 2003 a. 257.

428.206 Recommending default. No lender, licensed lender, loan originator, mortgage banker, or mortgage broker may recommend or encourage an individual to default on an existing loan or other obligation before and in connection with the making of a covered loan that refinances all or any portion of that existing loan or obligation.

History: 2003 a. 257.
Cross Reference: See also ch. DFI–Bkg 46, Wis. adm. code.

428.207 Prepayment. (1) A customer may prepay a covered loan at any time without penalty if the payment is made in the context of a refinancing of the covered loan and if the covered loan is held by the refinancing lender. This subsection does not prohibit the servicer of a covered loan from imposing a prepayment penalty, unless the servicer is also the lender and holds the loan at the time of the refinancing.

(2) Any prepayment penalty under this section is subject to all of the following limitations:

(a) A prepayment penalty is permitted only during the 36 months immediately following the date of consummation of a covered loan.

(b) A lender may not include a prepayment penalty in a covered loan unless the lender offers the customer the option of choosing a loan product without a prepayment penalty. The terms of the offer shall be in writing and initialed by the customer. The offer shall be in a clear and conspicuous format and include the following disclosure:

LOAN PRODUCT CHOICE DISCLOSURE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty.

(c) A prepayment penalty may not exceed 60 days' interest at the contract rate on the amount prepaid on fixed–rate covered loans over $25,000 if the borrower prepays more than 20 percent of the original loan amount within 36 months immediately following the date of consummation of the covered loan.

(d) A prepayment penalty may not be collected on fixed–rate covered loans of $25,000 or less, on adjustable rate loans, or on those fixed–rate covered loans over $25,000 not specified in par. (c).

History: 2003 a. 257.

428.208 Disclosure to customers. At least 3 business days before making a covered loan to a customer, a lender shall ensure that the customer has been given the following notice, in writing and in a clear and conspicuous format:

DISCLOSURE TO BORROWER

A. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home and any money that you have put into it if you do not meet your obligations under this loan. Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your earnings history, your employment status, the loan–to–value ratio of the requested loan, and the type of property that will secure your loan. The loan rate and fees could also vary based on which lender you select.

B. As a consumer you should shop around and compare loan rates and fees. You should also consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed.

C. You are not required to complete this loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts or other debts in connection with this transaction and then subsequently incur significant new debt. If you continue to accumulate debt after this loan is made and then experience financial difficulties, you could lose your home and any equity that you have in it if you do not meet your mortgage loan obligations.

D. Property taxes and homeowner's insurance are your responsibility. Some lenders may require you to escrow money for these payments. However, not all lenders provide escrow services for these payments. You should ask your lender about these services.

E. Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors.

History: 2003 a. 257.

Cross Reference: See also ch. DFI−Bkg 46, Wis. adm. code.

428.209 Exclusive state regulation authority. The state shall have sole authority, except as provided under federal law, to regulate any matter governed by this subchapter or by a rule promulgated under this subchapter. No local governmental unit may attempt to regulate, directly or indirectly, any matter governed by this subchapter or by a rule promulgated under this subchapter, including enacting an ordinance or adopting a resolution or imposing reporting requirements.

History: 2003 a. 257.

428.2095 Property exempt from debt collection. Except to the extent that the lender has a valid security interest permitted under this subchapter or has a lien under ch. 779 in the property, all of the following personal property of the customer is exempt from levy, execution, sale, and other similar process in satisfaction of a judgment for an obligation arising from a covered loan:

(1) Clothing of the customer or his or her dependents.

(2) Dining table and chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch and chairs, cooking utensils, and kitchenware.

(3) Household goods, as defined in 12 CFR 227.13 (d), 12 CFR 535.1 (g), or 16 CFR 444.1 (i), consisting of furniture, appliances, one television, linens, china, crockery, and personal effects including wedding rings, except works of art, electronic entertainment equipment, antiques, and jewelry, to the extent that a nonpossessory security interest in these household goods is prohibited under 12 CFR 227.13 (d), 12 CFR 535.2 (a) (4), or 16 CFR 444.2 (a) (4).

History: 2003 a. 257.

428.210 Administration and penalties. (1) RULES. The department may promulgate rules for the administration of this subchapter. The rules shall include guidelines for determining a customer's ability to repay a covered loan based upon the customer's debt−to−income ratio.

(2) INVESTIGATIONS. (a) At any time that the department has reason to believe that a person has engaged in or is about to engage in an act that violates this subchapter, the department may investigate. In performing an investigation under this paragraph, the department may administer oaths or affirmations, subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence. The department may access and examine such books, documents, or other tangible things. In any civil action brought on behalf of the department based on evidence obtained in such an investigation, the department may recover the costs of performing the investigation if the department prevails in the action.

(b) If 5 or more persons file a verified complaint with the department alleging that a person has violated this subchapter, the department shall immediately commence an investigation pursuant to par. (a).

(c) If the records of a person who is subject to an investigation pursuant to par. (a) are located outside of this state, the person at the person's option shall either make them available to the department at a convenient location within this state or pay the reasonable and necessary expenses for the department to examine them at the place where they are located. The department may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the department's behalf.

(d) At the request of the department of financial institutions and upon reasonable notice to all affected persons, the department of justice may apply to any court of record for an order compelling compliance if a person fails to obey a subpoena or to give testimony pursuant to par. (a).

(3) ENFORCEMENT AND PENALTIES. (a) The department may serve a notice of a hearing that complies with s. 227.44 (1) and (2) on a person if the department reasonably suspects that the person has violated this subchapter. The department may receive complaints alleging violations of this subchapter. A hearing conducted pursuant to a notice under this paragraph shall be conducted in the manner specified for a contested case, as defined in s. 227.01 (3), under ss. 227.44 to 227.50. Except as provided in sub. (4), if the person fails to appear at the hearing or if upon the record made at the hearing the department finds that a violation has been established, the department may issue and serve on the person an order specifying any of the following:

1. That the person must cease and desist from the violation or practice and make restitution for any actual damages suffered by a customer.

2. That the person must forfeit not more than $1,000 per violation or, if the person willfully or knowingly violated this subchapter, not less than $1,000 nor more than $10,000 per violation.

3. That the person must pay to the department the costs of its investigation.

4. That a license, registration, or certification issued by the department to the person is suspended or revoked or will not be renewed.

5. That any individual who is responsible for the violation must be removed from working in any capacity related to the violation or related to activities regulated by the department.

6. Any additional conditions that the department considers reasonable.

(b) An order under par. (a) is effective upon service on the person and may be appealed under s. 220.035.

(c) The department of justice, at the request of the department of financial institutions, may bring an action to enforce an order issued under par. (a).

(4) SAFE HARBOR. It is a defense to any alleged violation of this subchapter if the person alleged to have committed the violation establishes all of the following:

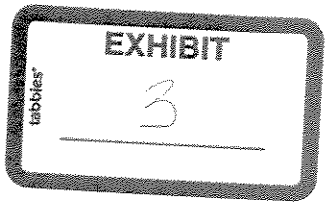
(a) That the person acted in good faith while committing the violation.

(b) That, no later than 60 days after the discovery of the violation and before any investigation or other enforcement action by the department under this section, the person notified the affected customer of the violation and either made appropriate adjustments to the loan to bring the loan into compliance with this subchapter or changed the terms of the loan in a manner beneficial to the customer so that the loan is no longer a covered loan.

History: 2003 a. 257.

428.211 Parity for federally insured depository institutions. This subchapter does not apply to any state chartered bank, trust company, savings and loan association, savings bank, or credit union, or to any subsidiary of a state chartered bank, trust company, savings and loan association, savings bank, or credit union, to the extent that federal law preempts or prohibits the application of the provisions of this subchapter to a federally chartered bank, trust company, savings and loan association, savings bank, or credit union of the same type.

History: 2003 a. 257.



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.

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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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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
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S. Todd Farris
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Milwaukee, WI 53202-3145

Thomas O. Gartner
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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.

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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....

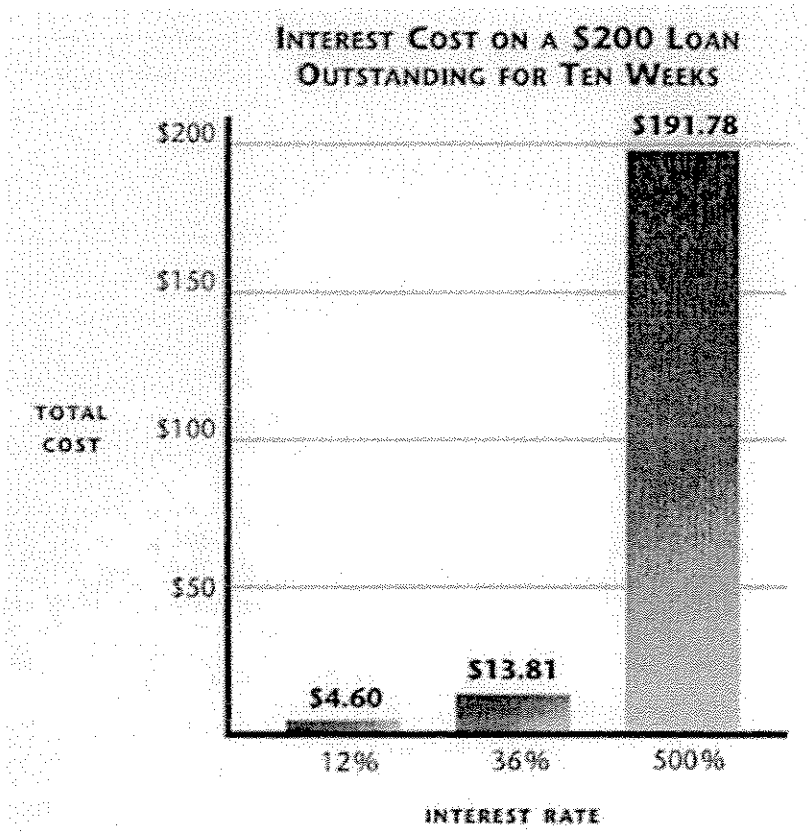
These loans are not an effective solution for your long term monetary needs!

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 installments, 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. Palucios 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), 97−3620.

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.