

# Wisconsin Consumer Protection Roundtable

Hosted by Consumer Federation of America, Consumer Law Litigation  
Clinic at UW-Madison, and WISPIRG

September 22, 2005

University of Wisconsin-Madison Law School, Lubar Commons

## Agenda

**10:00 A.M. Introductions and Welcome**

Steve Meili, Consumer Law Litigation Clinic  
Jennifer Giegerich, WISPIRG

**10:10 A.M. Everything You Need To Know About Payday Lending**

Jean Ann Fox, Consumer Federation of America

**10:50 A.M. Payday Lending in Wisconsin**

Carrie Templeton, Wisconsin Department of Financial Services

**11:05 A.M. Legislative Battles in Wisconsin**

Steve Meili

**11:30 A.M. Local Government Actions**

Jim Walrath, Federal Defender Services of Wisconsin, Inc.

**Noon: Lunch: Roundtable on Impact of Payday Lending in Communities**

**1:00 P.M. Legislative Options**

Steve Meili  
Jennifer Giegerich

**1:45 P.M. Enforcement/Litigation Options**

Jim Walrath

**2:15 P.M. Alternatives to High Priced Payday Loans**

Jim Drogue, Wisconsin Credit Union League  
Ken Eiden, Prospera Credit Union  
Jean Ann Fox

**3:00 P.M. Next Steps: Coalition and Agenda Building**

**3:30 P.M. Adjourn**

# WISPIRG

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Wisconsin Public Interest Research Group  
210 N. Bassett St., Suite 200  
Madison, WI 53703

September 1, 2005

Dear Consumer Advocate,

Payday lending is a serious problem here in Wisconsin. As the Wisconsin State Journal recently reported, the volume of payday loans in Wisconsin increased from \$11 million in 1996 to more than \$506 million last year. Currently, Wisconsin is one of only two states that does not cap interest rates for payday loans and as a result, consumers can pay over 500% interest over the lifetime of these loans. Most often payday lenders target the most economically vulnerable in our society.

The Consumer Federation of America, the Consumer Law Litigation Clinic at UW-Madison, and WISPIRG would like to invite you to a Consumer Conference on payday lending on September 22, 2005 from 10 A.M. to 3:30 P.M. at the University of Wisconsin-Madison Law School's Lubar Commons. The purpose of the conference is to discuss the issues facing Wisconsin consumers and what we as consumer allies can do to address this problem.

There is no cost to attend the conference and lunch will be provided. Please RSVP if you can attend so that we can order enough food. You can contact me by email at [Jennifer@wispig.org](mailto:Jennifer@wispig.org) or by phone at (608) 251-1918.

We look forward to a great discussion,

Jennifer Giegerich  
State Director

**Payday Loans: Everything  
You Need to Know, or More**

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Wisconsin Payday Loan Forum  
Madison, WI  
September 22, 2005

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**Jean Ann Fox, CFA**

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- [jafox@erols.com](mailto:jafox@erols.com)
  - 757-867-7523
  - [www.consumerfed.org](http://www.consumerfed.org)
  - Consumer Federation of America is a non-profit association of 300 consumer groups, established in 1968 to advance the consumer interest through research, education and advocacy.
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**Payday Loans: Quick Cash for Cold  
Checks or Debits**

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- Borrower writes a check for loan amount and fees/authorizes debit
  - Lender gives cash loan and holds check/debit authorization until payday
  - On due date, borrower redeems the check with cash, lets lender deposit check, or pays the finance charge to roll over loan
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### Payday Loan Market

- Industry claims 100 million loans, \$6 billion paid to borrow about \$40 billion 2004, 22,000 retail payday loan outlets, growing 15% a year
- Payday loan stores, pawn shops, check cashers, other storefronts
- Payday loans via Internet, telephone
- Industry: Consolidating/Cashing In

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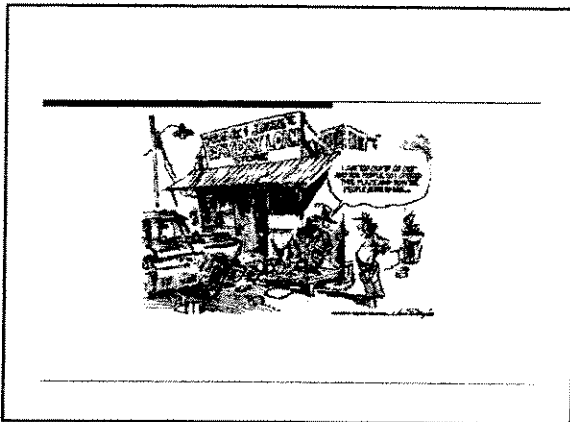
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### What makes payday lending predatory?

- Extremely expensive
- Little or no underwriting
- Risks a valuable asset
- Fosters coercive collection tactics
- Unaffordable repayment terms
- Ruses to evade consumer protections
- Lack of recourse for consumers, mandatory arbitration clauses

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### High Cost and Short Terms

- Payday loans cost from \$15 to \$30 to borrow \$100. Average APR 470%
- Loans are for \$100 to \$1,000, typically around \$350 plus finance charge
- Loan term averages 14 to 15 days, due in full on next payday
- NSF fees for returned checks extra

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### Low Risk to Lenders

- ACE report to SEC 3.97% loan loss as % of matured loan volume
- AA IPO 1.5% loaned in 2003 not recovered, not counting NSF fees
- Motley Fool says 2% PDL default rate
- Missouri 5.4% loans charged off
- Colorado annual report 4% write off
- Florida reports 2% default

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### Who Uses Payday Loans?

- |  |   |
|--|---|
| <input type="checkbox"/> Have a job or steady income/benefits      | <input type="checkbox"/> Younger              |
| <input type="checkbox"/> Have a bank account                       | <input type="checkbox"/> Female               |
| <input type="checkbox"/> Have ID                                   | <input type="checkbox"/> Low to middle income |
| <input type="checkbox"/> Clear TeleTrack or other database inquiry | <input type="checkbox"/> Credit constrained   |
|  | <input type="checkbox"/> Low/no savings       |
|  | <input type="checkbox"/> Convenience driven   |

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### Vulnerable Groups of Consumers Targeted

- African American communities are twice or three times more likely to have payday lenders than predominantly white communities
- Military bases are targeted by payday lenders
- Women make up 64% of customers, industry funded study
- Hispanic consumers targeted in Pima County Study

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### Wisconsin DFI Study 2001

- 54% women, 46% men, age 39
- 64% renters, 22% home owners
- Average net income \$18,675, average gross income \$24,673
- 14 day loans, 542% APR, \$246 average loan amount with \$49.73 finance charge
- 53% loans were rolled over
- 22% rolled twice, 17% rolled >5x

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### Repeat Borrowing Life Blood of Payday Loan Industry

- 91% of all payday loans made to repeat borrowers with five or more loans per year (CRL)
- 79% of loans made to long-time customers are same day renewals or new loans before payday (WI Caskey)
- Average Iowa borrower had over 12 loans per year at single lender
- FastBucks: 80% of customers buy back checks before loan is due

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**Check Holding Leads to Coercive Collection Tactics**

- Check bounces, two NSF fees added
- Bad credit rating on check databases
- Default reported to credit bureaus
- Lender sues to collect on "bad" check
- Some threaten criminal prosecution
- Some threaten court martial
- Repeat ACH attempts rack up fees

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**Signing Away Your Rights**

- Mandatory arbitration clauses
- Agree not to file for bankruptcy
- Agree not to join or bring a class action lawsuit
- Voluntary wage assignment
- Agree to leave bank account open until loan repaid

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**Legal Status of Payday Lending**

- 35 states and DC authorize payday lending with safe harbor from usury
- 2 states have no usury caps or substantive payday loan regulations
- 13 states prohibit through usury and small loan laws (counting Arkansas)

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### Ruses and Scams to Evade Laws

- Thinly-veiled retail transactions with a rebate, phone card sales, Internet access with a rebate
- Sham lease arrangements, sale-leaseback, cash "leasing"
- Rent-a-bank payday lending
- Rent a lender from SD or MO
- Credit Services Organization

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### FDIC and Rent-a-Bank Lending

- Issued revised guideline that more than three months of loans in last 12 months unsafe for bank partners. Big hit on publicly traded lenders.
- Issued cease and desist order to County Bank of Rehoboth Beach, DE to improve unsafe and unsound banking practices
- First Fidelity Bank pulled out of NC

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### 2005 Legislative Battles

- Industry bill killed in Texas, Maine, NC
- Bills pending in Michigan, Pennsylvania, South Carolina
- Compromise bills enacted in Illinois and Nevada
- Industry amendments passed in Ohio, North Dakota, Kansas, Rhode Island; stopped in KY
- Advocates' bills defeated in Virginia, Washington, New Mexico, Iowa, Arkansas, Oklahoma, Utah, West Virginia, Missouri

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### Legislative Trends

- Industry bills advance in MI and PA
- "No Limit" states, NV, IL, new laws
- Higher loan limits in WA, OH, IL, RI
- VA and ND clarify that state law applies to Internet loans
- "Military Protections" for GA enacted in VA, WA, TX
- Database added in ND

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### Local Ordinances

- Pima County/Tucson zoning ordinances proposed
- Jacksonville, FL/Duval County ordinance, rate cap for loans to military
- National City, CA proposed local ordinance

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### New Mexico AG Proposed Regs

- Rates above 54% APR pawn unfair
  - Term less than four months unfair
  - Loan for more than 25% monthly income unfair, must underwrite
  - Paying one loan with another unfair
  - High risk of loss of collateral unfair
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### State and Local Enforcement

- DC AG stopped debits to pay loans
  - NC Banking Commissioner case on Advance America, bank pull-out
  - WA AG and DFI case against payday lender threats of criminal action
  - NY, CO, KS, MA cases against unlicensed Internet lenders
  - IN and AR cases on Internet access with a rebate ruse
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### Questions?

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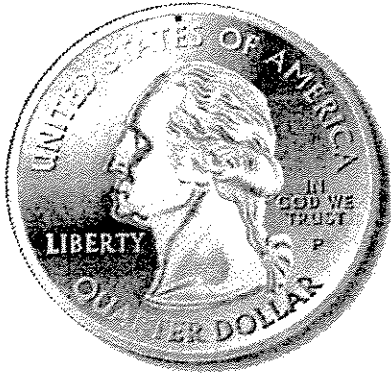












# AmericaSaves®

*You Can Build Wealth*

## **America Saves Campaigns/Wisconsin**

1. **Linda Bruce**, Bruce Family Living Educator  
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**Northland Wisconsin Saves**
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3. **Gayle Rose Martinez**, Extension Educator  
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**Clark County Saves**
4. **Paul Schlachtenhaufen**, Project Coordinator  
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**(Northwoods Saves)**



## Consumer Federation of America

Via FAX

April 1, 2004

The Honorable James Doyle  
Office of the Governor  
115 East State Capitol  
Madison, WI 53702

**Re: A.B 665 Payday Loan Authorization**

Dear Governor Doyle:

Consumer Federation of America and the national and Wisconsin organizations listed below urge you to veto A.B. 665 which does nothing to prohibit predatory payday loans while giving the illusion of protecting consumers. If this worthless bill becomes law, it is unlikely that the Wisconsin legislature will revisit the fight over effective regulation of small lenders.

Payday loans are harmful to hard working families who are enticed to write checks without money in the bank in order to get cash between paydays. Under A.B. 665, these single payment loans for up to \$5,000 must be repaid in full on the borrower's next payday, or government benefits payment date, or else the checks will bounce, triggering a cascade of negative consequences for borrowers.

A.B. 665 creates a debt trap for cash-strapped Wisconsin consumers. According to Wisconsin Department of Financial Institutions data from 2001, the average payday loan customer's take home pay was \$18,675. The bill sets no minimum loan term, permitting loans to be due in as few as two days and no more than thirty-five days. It does not cap rates. The combination of unlimited interest rates, very short terms, no installment payments, and the risk of checks bouncing leads to perpetual debt by a large proportion of borrowers. For example, Iowa regulators report that the average payday loan customer had over twelve loans per year in 2003, contradicting the industry's claim that payday loans are one-time transactions, meant only to tide you over in emergencies. Indeed, an analysis of Wisconsin DFI data conducted by Dr. John Caskey at Swarthmore College found that more than 40% of Wisconsin borrowers had twenty or more loan transactions within a year. A.B. 665 does nothing to effectively restrain payday loan debt traps.



## Consumer Federation of America

### Payday Loan Fact Sheet

- Payday loans are short-term cash loans based on personal checks held for future deposit or electronic access to the borrower's bank account. Borrowers write a personal check for the amount borrowed plus the finance charge and receive cash. Lenders hold checks until the next payday when payment is due. Borrowers can redeem the check for cash, allow the check to be deposited, or pay the finance charge to roll the loan over for another pay period.
- Payday loans range from \$100 to \$1,000, have average terms of about 14 days, cost 470% annual interest rate for a \$100 two-week loan. The finance charge ranges from \$15 to \$30 to borrow \$100 for two weeks or 390% to 780% APR. Shorter loans have even higher APRs.
- Payday loans are made by storefront lenders, check cashers, and pawn shops and are marketed via toll-free telephone numbers and over the Internet. About 22,000 outlets make loans worth \$40 billion a year and generate over \$6 billion in fees from consumers.
- Payday lending, as of mid-2005, is authorized by state laws or regulations in 35 states and the District of Columbia, allowed by two states that do not address check-based loans, and prohibited in the other 13 states by usury or small loan laws or specific restrictions.
- Some lenders operate in states without legal authorization by claiming to broker payday loans for banks located in permissive states. Rent-a-bank payday lending has led to regulatory action by the Comptroller of the Currency and the Office of Thrift Supervision. At last count, only twelve FDIC-insured state-chartered banks partner with payday lenders to aid their evasion of state usury and consumer protection laws. The FDIC issued revised guidelines for banks, limiting loans to three out of the prior twelve months.
- Payday loans are predatory lending and are extremely expensive, trap borrowers in perpetual debt, and lead to coercive collection tactics. Consumers on average have 10 to 13 loans per year at a single lender. The business model is to encourage repeat borrowing.
- Every unpaid loan involves a check that won't clear the bank. Failure to repay leads to bounced check fees from the lender and the consumer's bank, negative credit rating on specialized databases and credit reports, possible loss of a bank account, and difficulty in opening a new bank account if the borrower has a record of "bouncing" checks.
- Some lenders threaten criminal penalties for failing to make good on checks given as security for a loan. Others threaten court martial if military personnel fail to cover payday loan checks. In some states lenders can sue for multiple damages under civil check laws.

## 2003 ASSEMBLY BILL 665

November 13, 2003 - Introduced by Representatives JESKEWITZ, M. LEHMAN, MUSSER, BOYLE, TAYLOR, OWENS, ZIEGELBAUER, HAHN, GRONEMUS, OLSEN, PLOUFF, VAN ROY, GIELOW, BERCEAU, OTT, GUNDERSON and POWERS, cosponsored by Senators SCHULTZ and STEPP. Referred to Committee on Financial Institutions.

1 AN ACT *to create* 138.09 (8) (f) and 138.14 of the statutes; **relating to:** payday  
2 loan providers and granting rule-making authority.

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### *Analysis by the Legislative Reference Bureau*

Currently, state and federal law contain numerous provisions regulating consumer loans (generally, loans of \$25,000 or less made to individuals for personal, family, or household purposes). For example, under current law, the creditor must provide the borrower under the consumer loan with certain information before the loan is consummated. Among other things, the creditor must disclose the total amount financed in the transaction, the amount of the finance charge assessed in the transaction, and the cost of the credit calculated as a yearly rate. The creditor must also provide the borrower with a notice that encourages the borrower to examine the loan documentation and that advises the borrower of certain rights. Generally, current law does not regulate the total finance charges that may be assessed on a consumer transaction, although current law does require certain persons who desire to assess a finance charge in excess of 18% per year to obtain a license from the Division of Banking in the Department of Financial Institutions.

This bill creates additional notice requirements that specifically apply to payday loans made by these licensed lenders. In a typical payday loan transaction, the creditor accepts a personal check from the borrower, pays the borrower the amount of the check less any applicable finance charge, and agrees to wait a short time, such as two weeks, before depositing the check. Under this bill, before disbursing funds pursuant to a payday loan of less than \$15,000 with a term of at least three days but not more than 31 days, the payday loan provider must provide

**ASSEMBLY BILL 665**

1 (f) “Payday loan” means any of the following:

2 1. A transaction between an individual with an account at a financial  
3 establishment and another person, in which the person agrees to accept from the  
4 individual a check that draws less than \$15,000 on the account, to hold the check for  
5 at least 3 days but not more than 31 days before negotiating or presenting the check  
6 for payment, and to pay to the individual, at any time before negotiating or  
7 presenting the check for payment, an amount that is agreed to by the individual.

8 2. A transaction between an individual with an account at a financial  
9 establishment and another person, in which the person agrees to accept the  
10 individual’s authorization to initiate an electronic fund transfer of less than \$15,000  
11 from the account, to wait for at least 3 days but not more than 31 days before  
12 initiating the electronic fund transfer, and to pay to the individual, at any time before  
13 initiating the electronic fund transfer, an amount that is agreed to by the individual.

14 (g) “Payday loan provider” means a person who is required to be licensed under  
15 s. 138.09 and who makes payday loans.

16 **(2) DISCLOSURE REQUIREMENTS.** Before disbursing funds pursuant to a payday  
17 loan, a payday loan provider shall provide all of the following to the applicant:

18 (a) A clear and conspicuous printed or typewritten notice indicating all of the  
19 following:

20 1. That a payday loan is not intended to meet long-term financial needs.

21 2. That an applicant should use a payday loan only to provide funds in a  
22 financial emergency.

23 3. That the applicant will be required to pay additional interest if the loan is  
24 refinanced rather than paid in full when due.

**ASSEMBLY BILL 665**

1 financial institutions shall submit in proposed form the rules governing payday loan  
2 providers under section 138.14 (4) of the statutes, as created by this act, to the  
3 legislative council staff under section 227.15 (1) of the statutes.

4 **SECTION 4. Initial applicability.**

5 (1) The creation of section 138.14 of the statutes first applies to payday loans  
6 made on the effective date of this subsection.

7 **SECTION 5. Effective date.**

8 (1) The creation of section 138.14 of the statutes and SECTION 4 (1) of this act  
9 take effect on the first day of the 12th month beginning after publication.

10

(END)



Research conducted by the Filene Research Institute and others reveals a disheartening fact: More than 12 million households have NO relationship with a credit union, bank, savings institution or other mainstream financial provider.

Another eye-opening fact: Today more than 25 to 30 million Americans cash their payroll or government checks at check-cashing outlets. While most check-cashing customers hold jobs, they tend to live paycheck to paycheck and be "unbanked" (without bank accounts) or "underbanked." They're also more likely to be younger; rent their homes; have a head-of-household who is a member of a racial or ethnic minority group; and be new Americans or have a modest education. And their numbers are growing.

In response to the burgeoning consumer demand, the number of check-cashing outlets, payday lenders and other segments of the Alternative Financial Services (AFS) industry have skyrocketed this past decade. In fact, the opportunity is so promising that Wal-Mart has expanded into the business of check cashing. In 2004, the retail giant began cashing customers' preprinted payroll or government-issued checks within its stores.

Meanwhile, the number of low-wealth households served by traditional financial institutions has decreased. Today, credit unions have an opportunity to reverse this alarming trend!



## REAL FACTS



### Money transfer services:

- Is the fastest growing segment, with anticipated growth of 13.4% annually to 2005.
- Is expected to generate \$5.585 billion in fee revenues by 2005.
- Constitutes the largest segment of the industry, often overlapping services with CCOs.
- Generates money orders totaling \$90 billion (CCOs account for about \$20 billion or 22%).
- Increased dramatically for money sent to Mexico, from \$9.2 billion in 2001 to \$13.2 billion in 2003 (43% increase).

### Payday loan services:

- Is forecasted to grow 5.5% per year in 2005 to 10,000+ outlets.
- Is expected to generate about \$2.18 billion in receipts (fees) in 2005.
- Advances loans of \$100 to \$300 without credit investigation.

## HOW CREDIT UNIONS CAN HELP

As not-for-profit cooperatives, credit unions adhere to a social and economic mission of providing valuable financial self-help services to enhance the lives of all Americans – regardless of their incomes or wealth.

- Hard-working Americans who spoke little English and were not being served by the established banks founded the U.S. credit union movement in 1908.
- Over 86 million Americans enjoy the socio-economic benefits of credit unions.
- Community charters now enable credit unions to aggressively reach out to serve low-wealth households currently using the AFS industry.
- Filene research indicates it is possible for credit unions to mainstream up to 40% of AFS users into a traditional financial services relationship with the credit union by using market-driven products, services and business models.
- According to Filene research and case studies, low-wealth households are loyal and valuable members when they join credit unions.

For the latest information, contact our website at [www.filene.org](http://www.filene.org)

## The Alternative Financial Services Industry

The AFS industry is a for-profit industry projected to top \$9.4 billion in yearly revenues in 2005. Unfortunately for consumers, though, the AFS industry affords few, if any, opportunities to learn and practice savings and credit-building activities.

Check-cashing outlets (CCOs), money transfer service providers and payday lenders have experienced significant growth during the past decade.

### Check-cashing outlets (CCOs):

- Grew from 2,200 in 1986 to 11,000 in 2002.
- Processed over 180 million checks in 2000 (with an aggregate value of \$60+ billion).
- Generated almost \$1.5 billion in fee revenues in 2000.
- Are forecasted to grow 4.2% annually.
- Are a more mature segment of the AFS industry.
- Cash primarily payroll checks averaging \$500 to \$600.

# REAL PEOPLE



Who uses the alternative financial sector? Research indicates it could be just about anyone – even your daughter, son, parent or spouse. Customers are typically hard-working people who:

- Have little or no savings and are living paycheck to paycheck.
- Have less-than-perfect credit or little to no credit history, including late or missed payments, past bankruptcies or judgments.
- Are borrowers with a low credit score.
- May still be eligible for loans, but are generally subject to higher interest rates.
- Are “unbanked” and “underbanked.”
- Are looking for convenience, quick access to their money and good service.
- Are often immigrants or new Americans.

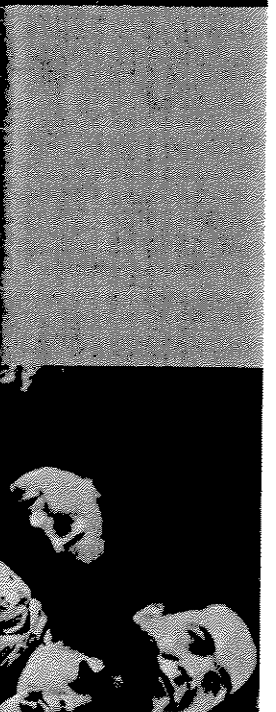
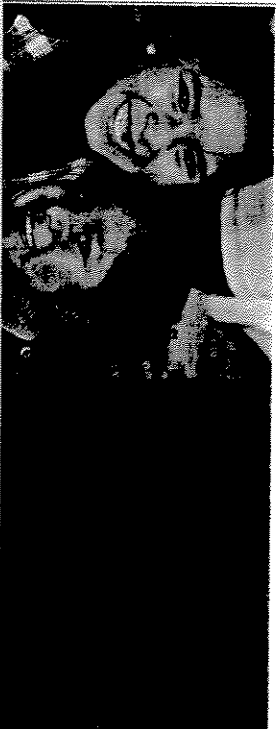
America is a melting pot. For over two centuries people have come from all over the world to the land of opportunity to pursue life-long dreams and economic freedom. Today is no different from yesterday, with immigration continuing to change the face of America:

- The rate of immigration has increased: The 1990s saw an average of more than 1.3 million immigrants (legal and illegal) settling in the U.S. each year; between January 2000 and March 2002, an additional 3.3 million arrived.
- In fewer than 50 years, the U.S. Census Bureau projects that immigration will help propel the U.S. population from 288 million to more than 400 million.
- The foreign-born population of the U.S. was 33.1 million in 2000, or about 11.5%. Of this total, the Census Bureau estimates 8 to 9 million are illegal immigrants.

Many new Americans know little about credit unions. They do not know the advantages of credit union membership or how to establish a relationship with a credit union. Many have never had the opportunity to belong to a credit union. At the same time, the AFS industry is actively reaching out to the new American market, targeting them by speaking their languages in advertisements and at the point of service.

The practices of the AFS industry do not enable hard-working Americans – whether unbanked, underbanked or immigrants – to enjoy the important benefits of savings and credit building.

## Credit unions can help!



# REAL STORIES



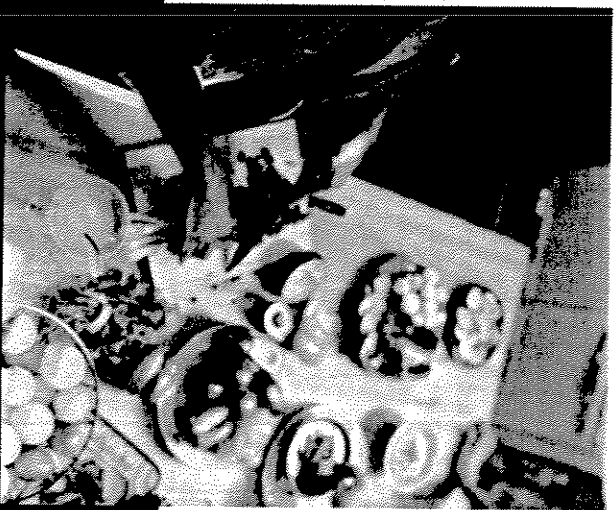
These credit unions implement services, business models and reasonably priced transaction products, such as check cashing or short-term loans, which help the consumer today ... and in the future.

Credit unions can stop the cycle of financial illiteracy. That's because not-for-profit credit unions, organized as self-help cooperatives, have the unique ability to hold the best interests of the consumer above the bottom line. For the past century, credit unions have been in the business of making the American dream come true for millions of consumers.

Today, more than ever, millions of hard-working Americans are looking for a financial partner to help them achieve their dreams. The AFS industry cannot provide opportunities for a low-wealth household to save money or build credit. Credit unions can! To learn more, contact our website at [www.fileone.org](http://www.fileone.org).

Credit unions make a REAL difference in the lives of Americans! Like the French-speaking Canadian immigrants who started America's first credit union in 1908, large and small credit unions across the country are aggressively developing and delivering services to the unbanked and underbanked. These credit unions include:

- Arrowhead Credit Union (San Bernardino, California)
- Bethpage Federal Credit Union (Bethpage, New York)
- Charlotte Metro Credit Union (Charlotte, North Carolina)
- CUNA Credit Union (Madison, Wisconsin)
- Government Employees Credit Union – El Paso (El Paso, Texas)
- Mazuma Credit Union (Kansas City, Missouri)
- Washington State Employees Credit Union (Olympia, Washington)
- Plus, dozens more!



# REAL SOLUTIONS



In an effort to demonstrate to credit unions how to more effectively migrate more low-wealth households into economic empowerment, a project that focuses on Relevant, Effective, Asset-building and Loyalty-producing (REAL) Solutions has been launched. State credit union leagues and other state and regional credit union organizations initiate and coordinate REAL Solutions projects in their areas in collaboration with the Filene Research Institute.

The mission of the REAL Solutions project is to help credit unions successfully attract, engage and serve low-wealth households – in effect, help consumers who are unbanked, have low-to-moderate incomes and are low-asset or immigrant households. Faced with a changing competitive landscape and a large, underserved market, credit unions participating in REAL Solutions use the business models, products, services and training that deliver the types of

transaction services low-wealth households need, want and can afford. REAL Solutions also focuses on how credit unions can move those individuals from transaction services to accumulating savings and assets, thus starting them on the road to economic empowerment.

## Benefits to Participating Credit Unions

While REAL Solutions encourages credit unions to understand and facilitate the path to financial growth for these targeted members, it also meets the various needs of credit unions.

### Business:

- Develop loyal, true income-producing members.
- Grow membership and also enhance a member's financial viability and sustainability.
- Price products to cover costs and provide a modest level of net income for institutional growth.

### Philosophical:

- Effect positive change and enrich the lives of individuals and families in the community.
- Fulfill the credit union philosophical value of reaching those who have not historically had access to financial services.

### Advocacy:

- Serve as a quality example for regulators and legislators on how credit unions make a difference in the lives of Americans.





# REAL SOLUTIONS

## ACCUMULATING REAL ASSETS

Research indicates that consumers typically engage in four sequential steps during the asset accumulation and wealth-building process. The second step, Savings, is the time when most will initiate a more permanent relationship with a credit union. These four steps serve as the basis of the process used for credit unions participating in the REAL Solutions project.

### Consumer Needs Financial Institution Role

**1** Transaction Service  
Provide services offered by the alternative financial institution, such as money orders, check-cashing, domestic and international wire transfers, payroll cards, etc.

**2** Savings  
Encourage savings and safekeeping of funds through basic deposit accounts, tax preparation services, safe accounts (for individuals lacking Social Security numbers or tax identification numbers), etc.

**3** Credit Building  
Special funding, mentoring and business grant credit through alternative credit programs, availability of credit cards for used cars, etc.

**4** Asset Accumulation  
Promote wealth building through home ownership, home improvement loans, small/micro business loans or education, basic investing and more.



# REAL RESULTS



The deliverables for the REAL Solutions project include migrating thousands of low-wealth consumers from unbanked status into mainstream financial relationships with America's credit unions.

The REAL Solutions project assists credit unions in recognizing and leveraging some promising, exciting opportunities for both growth and service. To learn more about the latest information on this project or obtain a REAL Solutions Toolkit, contact the Filene Research Institute, P.O. Box 2998, Madison, WI 53701-2998, or visit [www.filene.org](http://www.filene.org).



## Consumer Federation of America

### Terms of State Payday and Small Loan Laws for Check-Based Loans

State	Min./Max Term	Min/Max Loan	Maximum Fee %/\$	Cost/ \$100	Effective APR <sup>1</sup> 14 day
Alabama	10/31 days Code of Ala. 5-18, A12 et seq.	-\$500	17.5% of loan	\$17.50	455%
Alaska	14/ days Alaska Chapter 116 SLA 04	-\$500	15% + \$5 fee	\$20	520%
Arizona	5 days/ Ariz. Rev. Stat. § 6-1251 et seq. 2000	\$50-\$500	15% of ck	\$17.65	459%
(Arkansas)	6/31 days Ark. Stat. Ann. § 23-52-101 et seq. 1999. Arkansas Supreme Court ruled that fee section is invalid attempt to evade the usury provisions of Arkansas Constitution. (Luebbers v. Money Store, Inc., et al, __ Ark. __ 2001)	-\$400 ck	10% + \$10	\$22.22	579%
CA	-/30 days Cal. Fin. Code § 23000 to 23106	-\$300 ck	15% of ck	\$17.65	459%
CO <sup>2</sup>	-/40 days Colo. Rev. Stat. § 5-3.1-101 et seq. 2000	-\$500	20% 1 <sup>st</sup> \$300 7.5% > \$30	\$20	520%
DE	-59 days Del. Code Ann. Tit. 5, §961, 976, 2227, 2235A	-\$500	No Limit	No Limit	No Limit
FL	7/31 days §560.401. et seq.	-\$500	10% + \$5 fee	\$15	390%
HI	-/32 days Haw. Rev. Stat. § 480F-1 et seq.	-\$600 ck	15% of ck	\$17.65	459%
ID	NA Chapter 46, Title 28, Idaho Code, 28-46-401 et seq.	-\$1,000	No Limit	No Limit	No Limit
IL	13/- 120 days Public Act 094-0013, eff. 12/6/05	-\$400	\$15.50 per \$100	\$15.50	403%
IN	14 days/ <sup>3</sup> IC 24-4.5-7-101 et seq.	\$50/\$500	15% of 1st \$250 13% over \$250-\$400 10% \$400-\$500	\$15	390%

<sup>1</sup> Approximate APR without compounding

<sup>2</sup> Colorado Deferred Deposit Loan Act enacted in 2000 replaced regulations under the UCCC. Applies to agents.

<sup>3</sup> After six small loans, a seven day waiting period must be given or a 36% APR simple interest loan payable in installments must be initiated.



State	Min./Max Term	Min/Max Loan	Maximum Fee %/\$	Cost/ \$100	Effective APR <sup>4</sup> 14 day
IA	-/31 days Iowa Code § 13-533D.1 <i>et seq.</i>	-\$500 ck	\$5+10% ck \$100 \$10/\$100	\$16.67	435%
KS	7-/30 days Kan. Stat. Ann. § 16a-2-404	-\$500 2 loans/lender	\$15 per \$100	\$15	390%
KY	14/60 days Ky. Rev. Stat. Ann. § 368.010 <i>et seq.</i>	-\$500 ck	\$15/\$100 ck For 14 days	\$17.65	459%
LA	-/60 days La. Rev. Stat. Ann. § 9:3578.1 <i>et seq.</i>	-\$350 loan	16.75% ck \$45 max. fee	\$20	520%
MN	-/30 days Minn. Stat. Ann. § 47.60	-\$350 loan	Scale of fees <sup>5</sup>	\$15	390%
MS	-/30 days Miss. Code Ann. § 75-67-501 <i>et seq.</i>	-\$400 ck	18% ck	\$22	572%
MO	14 /31 days. Mo. Rev. Stat. § 408.500 to 408.506;	-\$500 loan	75% loan <sup>6</sup>	\$75	1,980%
MT	-/31 days Mont. Code Ann. § 31-1-701 <i>et seq.</i>	\$50/\$300 loan	25% of loan	\$25	650%
NE	-/31 days Neb. Stat Ann.. § 45-901 <i>et seq.</i>	-\$500 ck	15% per \$100 ck pro rata	\$17.65	459%
NV	-/31 Nev. Rev. Stat. § 604.010 <i>et seq.</i>	% income <sup>7</sup>	No Limit	No Limit	No Limit
NH	7/30 days N. H. Rev. Stat. § 399-A <i>et seq.</i>	-\$500	No Limit	No Limit	No Limit
NM	NA N. M Stat. Ann. §58-15-1 to 58-15-31.	NA	No Limit	No Limit	No Limit
ND	-/60 days <sup>8</sup> N D Cent. Code § 13-08-01 <i>et seq.</i>	/\$600	20% of loan	\$20	520%
OH	-/6 mon. Ohio Rev. Code Ann. § 1315.35 <i>et seq.</i>	-\$800 loan	5% + \$5/\$50 5% + \$3.75 over \$500	\$15	390%

<sup>4</sup> Approximate APR without compounding

<sup>5</sup> Minnesota fees: \$5.50 for loans \$0 to \$50, 10% + \$5 for loans \$50 - \$100, 7% + \$5 loans \$100 - \$250, 6% + \$5 for loans \$250 - \$350

<sup>6</sup> Total accumulated interest capped at 75% of initial loan amount for entire term of loan and up to 6 renewals.

<sup>7</sup> Nevada: 1999 amendments prohibit loans that exceed one-third of the borrower's expected net monthly income

<sup>8</sup> ND limits initial loan and one renewal of not less than 15 days for total duration of 60 days.

State	Min./Max Term	Min/Max Loan	Maximum Fee %/\$	Cost/ \$100	Effective APR <sup>9</sup> 14 day
OK Okla. Stat. Tit. 59 §3101 <i>et seq.</i>	12/45 days	-\$500	15% up to \$300 10% \$300 to \$500	\$15	390%
OR ORS 725.600 and 725.610	-/60 days	25% net mon. income	No Limit	No Limit	No Limit
RI R.I. Gen. Laws 19-14.4-1 to 10	13/-	\$500	15%	\$15	390%
SC S.C. Code Ann. § 34-39 <i>et seq.</i>	-/31 days	-\$300 loan	15% ck	\$17.65	459%
SD S.D. Codified Laws Ann. § 54-4-65, 54-4-66	NA	-\$500	No Limit	No Limit	No Limit
TN Tenn. Code Ann. § 45-17-101 <i>et seq.</i>	-/31 days	-\$500 ck	15% ck	\$17.65	459%
TX <sup>10</sup> 7 Tex. Admin. Code § 1.605 <i>et seq.</i>	7 days/31 days	\$100-\$350	48% APR + \$10 Monthly fee	\$11.87	309%
Utah Utah Code Ann. § 7-23-101 <i>et seq.</i>	NA	-/12 weeks	No Limit	No Limit	No Limit
VA Va. Code Ann. §§ 6.1-444 to 6.1-471.	7days/-	-\$500	15% of loan	\$15	390%
WA Wash. Rev. Code Ann. § 31.45.010 <i>et seq.</i>	-/45 days	-\$700	15% up to \$500 10% \$500 - \$700	\$15	390%
WI Wis. Stat. §138.09	NA	NA	No Limit	No Limit	No Limit
WY Wyo. Stat. § 40-14-362 <i>et seq.</i>	-/30 days	NA	\$30 or 20%	\$30	780%
DC D.C. Code § 26-301 <i>et seq.</i>	-/31 days	\$50/\$1,000	10% + fee <sup>11</sup>	\$16.10	419%

Updated August 17, 2005

[www.consumerfed.org](http://www.consumerfed.org)

<sup>9</sup> Approximate APR without compounding

<sup>10</sup> Texas Finance Commission adopted regulations effective July 9, 2000 to permit payday loans under the Texas Finance Code § 11.304

<sup>11</sup> DC: If included in contract, administrative fee of \$5 on checks up to \$250, \$10 on checks \$250.01 - \$500, \$15 for checks \$500.01 - \$750, \$20 on checks \$750.01 - \$1,000

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# Center on Wisconsin Strategy

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For immediate release  
October 13, 2004

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## **MANY HARDWORKING WISCONSIN FAMILIES HARDLY GETTING BY MORE THAN ONE IN FIVE WORKING FAMILIES IN THE STATE HAVE LOW INCOMES; 44 PERCENT OF MINORITY WORKING FAMILIES FALL INTO LOW-INCOME CATEGORY**

**Madison**—Despite high rates of labor force participation in Wisconsin, many state residents are stuck in jobs that do not provide wages and benefits sufficient to support a family. As a result, tens of thousands of families here are working hard but still struggling to get by, according to a new national report.

The report, *Working Hard, Falling Short: America's Working Families and the Pursuit of Economic Security*, documents state-level efforts to help low-income working families. It was released as part of the Working Poor Families Project, an initiative of the Annie E. Casey Foundation.

The report's Wisconsin findings are highlighted in *Working Hard, Falling Short: Wisconsin's Working Families and the Pursuit of Economic Security*, a briefing paper issued by the Center on Wisconsin Strategy (COWS).

*Working Hard, Falling Short* shows that, while low-income working families in Wisconsin can count on some key state supports, many of these families lack the resources they need to make ends meet. For example:

- More than one in five working Wisconsin families (22.8 percent) faces economic distress, in spite of their commitment to work.
- Nearly 44 percent of minority working families in Wisconsin are low-income – more than twice the share of non-minority working families that are low-income in the state (about 19 percent). Wisconsin ranks in the bottom half of states (30th) on this measure.
- More than 17 percent of Wisconsin workers hold jobs paying below the poverty rate (median wages below \$8.84 an hour or \$18,392 annually in 2002).
- Nearly half of low-income working families in Wisconsin pay more than a third of their income in housing costs.
- Among low-income working families in Wisconsin, about 28 percent have a parent who lacks a high school degree – a higher share than in 24 other states. Yet Wisconsin spends less than \$20 a year in adult education funds on every adult without a high school degree; by contrast, Michigan and Minnesota spend \$193 and \$124, respectively.

“When it comes to supporting low-income families, Wisconsin has some excellent policies in place,” said COWS Research Director Laura Dresser. “But if we truly expect work to bring self-sufficiency, then we have to do more – strengthen investment in our technical college system and other educational institutions, support higher wages, and keep programs like child care subsidies safe from the budget ax.”

(over)

page two

The Working Poor Families Project seeks to help low-income adults succeed in the labor market. To date, the Project has released reports on low-income working families in nine states, including Wisconsin; it will issue six more reports in 2004. For more information about the Project, and to review the state reports as well as the national report *Working Hard, Falling Short*, visit [www.aecf.org/initiatives/jobinitiative/workingpoor.htm](http://www.aecf.org/initiatives/jobinitiative/workingpoor.htm). To see the COWS briefing paper, visit the COWS website at [www.cows.org](http://www.cows.org).

*COWS is a research and policy institute based at the University of Wisconsin-Madison and dedicated to improving living standards and economic performance in Wisconsin and nationally.*

-30-



UNIVERSITY OF  
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***PREDATORY LENDING AND THE MILITARY:  
THE LAW AND GEOGRAPHY OF "PAYDAY" LOANS IN MILITARY TOWNS***

Congressional Summary

**BACKGROUND**

**What are "Payday" loans?** Payday loans are high interest rate, rapidly compounding loans meant to tide over cash-short borrowers until their next paycheck. While borrowers usually intend to quickly repay payday loans, many borrowers have difficulty making payments turning these loans into long term debts. Importantly, *average payday loan interest rates are over 400 percent*. By way of comparison, average interest rates on New York City mafia loans in the 1960s were a relatively inexpensive 250 percent.

**But Aren't 400 Percent Loans Illegal?** They used to be. Throughout the 20<sup>th</sup> century, including during the Great Depression and World War II, state governments limited interest rates to between 18 and 36 percent. Many states including Georgia, North Carolina, and New York are still trying to do so. But, in the past fifteen years loopholes in federal banking law have encouraged an explosion in triple digit interest rate lending to low and moderate income Americans throughout most of the country.

**Are Soldiers, Sailors, Marines, and Airmen Vulnerable to Predatory Lending?** Absolutely. Several demographic factors make military service members attractive to exploitative lenders:

- ▶ Entry level wages make it tough to make ends meet
- ▶ Limited education and financial experience
- ▶ Many families with young children
- ▶ Steady government paychecks with little risk of job loss
- ▶ Stationed in remote locations far from family support networks
- ▶ Service members are easy for debt collectors to track
- ▶ Because military culture frowns on financial problems, exploitative lenders know service members will pay even unfair loans before risking military discipline

**OUR STUDY: DO PAYDAY LENDERS TARGET MILITARY PERSONNEL?**

**Empirical Methods:** Over the course of two years we studied 20 states with a significant military presence, 1,516 counties, 13,253 ZIP codes, nearly 15,000 payday lenders, and 109 military bases. Our observations were controlled by comparing payday lender densities in military areas to statewide averages and also by comparing payday lender locations to bank locations. We designed a composite measurement allowing us to rank the payday lender density of every county and ZIP code within each of the states we studied.

→ → *For the results of our study, please See Reverse* → →

*PREDATORY LENDING AND THE MILITARY:  
THE LAW AND GEOGRAPHY OF "PAYDAY" LOANS IN MILITARY TOWNS*  
– Congressional Summary continued –

**Empirical Study Results:** Our study found a "clustering pattern" where payday lenders disproportionately locate their businesses amongst military populations. Our conclusions include:

- ▶ Most of the major military installations we studied have at least 20 and sometimes as many as 40 payday lenders within just a few miles of the base gates.
- ▶ In every state where data was available the number of payday lender locations in counties and Zip codes adjacent to military bases tended to be greater than justified by population.
- ▶ Bank branches did not follow the same location patterns as payday lenders, suggesting that neither local zoning ordinances, nor ordinary business development patterns, forced payday lenders into military neighborhoods.
- ▶ In a majority of states where data was available, the greatest composite payday lender density was in a military county. In some states the top three, four, or more counties had a military presence.
- ▶ Payday lender targeting of military personnel was found for all military branches including Army, Navy, Marine, and Air Force bases.
- ▶ The only state in our study which did not have payday lenders clustering around military neighborhoods has aggressively enforced its 25 percent interest rate cap.

In sum, *our study provides incontrovertible evidence that, unless government leaders act, payday lenders will continue to actively and aggressively target military families.*

**Public Policy Considerations:**

- ▶ *Voluntary "best practices" standards are inadequate.* In collecting our data we identified literally *thousands* of payday lending locations that were openly acting in violation of state consumer protection laws. Voluntary compliance policies will either be too weak to help, or a large portion of lenders will not voluntarily comply.
- ▶ *Reestablishing traditional American usury law is the best solution.* Both the founding fathers in the 18<sup>th</sup> century and the "greatest generation" in the early 20<sup>th</sup> century understood the need for reasonable limits to credit prices. The dangerous experiment of removing our time-tested interest rate caps has failed. Americans in general, and the armed forces especially, need limits on interest rates to stop exploitative lenders.
- ▶ *A 36% interest rate limit for loans to military personnel is a strong first step.* Senator Dole is currently sponsoring an amendment to S. 1042 which caps interest rates for loans to service members and their families at 36 percent. This step would provide a baseline of protection against abusive credit without preempting stronger state laws. Interest rate limits to soldiers is particularly important in a time of war.

**Further Information:** For further information please see our complete study: Stephen Graves & Christopher L. Peterson, *Predatory Lending and the Military: The Law and Geography of "Payday" Loans in Military Towns*, 66 OHIO ST. LAW JOURNAL \_\_\_\_ (forthcoming Oct. 2005). A draft version of the article is available for download at:

<http://www.law.ufl.edu/faculty/peterson/publications.shtml>



The Annie E. Casey Foundation

**FOR IMMEDIATE RELEASE**

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## **BANKS SHOULD OFFER ALTERNATIVES TO PAYDAY LOANS TO BETTER SERVE LOW AND MIDDLE-INCOME CUSTOMERS, SAYS NEW REPORT**

BALTIMORE — In banking, as in life, doing the right thing can pay off.

Banks and credit unions have the capacity to help their credit-strapped low and middle-income customers by offering lower cost alternatives to high-fee payday loans, a new report concludes. What's more, banks can make money by providing more small-dollar credit products to their customers.

"Payday loans are an extremely high-cost form of short-term credit," says Sheila Bair, a professor at the University of Massachusetts at Amherst, and the report's author. "The high fees are exacerbated by many borrowers using the product 10 to 12 times a year. They are used predominantly by those who can least afford them."

Payday loans are short-term loans of small amounts, generally less than \$500. The loans are secured by the borrower's personal check and post-dated until the borrower's next payday. Typically, the cost ranges from \$15 to \$22 per \$100 for a two-week loan, which works out to an expensive annualized percentage rate (APR) of 391 to 572 percent. Here's how it works: When a customer borrows \$300, and the charge is \$15 per \$100 of loan, the customer writes a check for \$345. The lender agrees to defer deposit of the check until the customer's next payday.

Payday lending has grown explosively in recent years. Last year (2004), 22,000 payday loan stores nationwide extended about \$40 billion in short-term loans. Most borrowers — 52 percent — make between \$25,000 and \$50,000 per year, and 29 percent earn less than \$25,000 a year.

The report, "Low Cost Payday Loans: Opportunities and Obstacles," was made possible through a grant by the Annie E. Casey Foundation in Baltimore. The Casey Foundation is working to improve life outcomes for vulnerable children by increasing their families' ability to provide real economic security. "Even though many low-income parents are working harder and longer, too many continue to find it difficult to get by and get ahead," said Doug Nelson, president of the Foundation. "Finding alternatives to expensive and avoidable financial practices, such as payday loans, is part of our strategy to help working families achieve financial success." Copies of the report are available at: [http://www.aecf.org/publications/data/payday\\_loans.pdf](http://www.aecf.org/publications/data/payday_loans.pdf).

Several factors make it economically viable for banks and credit unions to offer payday alternatives. Banks and credit unions already have the infrastructure, such as physical facilities, loan staff, and collection processes. Unlike payday loan storefronts, banks and credit unions can

- more -

minimize credit losses through the use of direct deposit and automatic deductions for repayment. They can offer small-dollar credit at lower margins because they offer a wide variety of banking products and services. Revolving credit lines offered by banks and credit unions provide convenience, greater privacy and speed for the customer, compared to payday loans, says the report.

The biggest impediment to low cost payday alternatives is the proliferation of fee-based bounce protection programs. "So many banks rely on bounce protection to cover customers' overdrafts for fees ranging from \$17 to \$35 per overdraft that they don't want to cannibalize profits by offering customers other low-cost options," says Bair.

Other barriers preventing banks and credit unions from entering this market include the stigma associated with offering small dollar loans, and the misperception that federal banking regulators are hostile to the idea. "On the contrary, our research shows that regulators view low-cost, properly structured payday loan alternatives as positive and likely warranting credit under the Community Reinvestment Act," says Bair. "We recommend that regulators step up to the plate and publicly encourage payday alternatives."

The report describes several examples of profitable payday loan alternatives. The best model, says Bair, is the North Carolina State Employees' Credit Union (NCSECU), which since 2001 has offered customers a checking account linked to a revolving line of credit. It charges an APR of 12 percent, or \$5.00 for a \$500, 30-day loan. It also requires borrowers to save five percent of any money borrowed and place it in a savings account. After 18 months, this program generated more than \$6 million in cumulative savings.

Another good model is the Citibank Checking Plus program, which is a revolving line of credit linked to a customer's checking account, offered at a 17 percent APR. "This product can be used by low and middle-income families to meet short-term emergency cash needs," Bair says. Other recommendations include:

- The Federal Reserve Board should require banks and credit unions to disclose the cost of fee-based bounce protection to customers who use it on a recurring basis. This would help consumers understand the real cost and strengthen the institutions that offer competing lower cost options.
- Banks and credit unions should combine small dollar products with mandatory savings features to help customers accumulate savings.

###

*The Annie E. Casey Foundation is a private charitable organization dedicated to helping build better futures for disadvantaged children in the United States. It was established in 1948 by Jim Casey, one of the founders of UPS, and his siblings, who named the Foundation in honor of their mother. The primary mission of the Foundation is to foster public policies, human-service reforms, and community supports that more effectively meet the needs of today's vulnerable children and families. In pursuit of this goal, the Foundation makes grants that help states, cities, and neighborhoods fashion more innovative, cost-effective responses to these needs. For more information visit: [www.aecf.org](http://www.aecf.org)*





**Consumer Federation of America**

## **Payday Loan Research and Resource List**

### **National Studies and Reports**

**“Internet Payday Lending: How High-priced Lenders Use the Internet to Mire Borrowers in Debt and Evade State Consumer Protections,”** report by Consumer Federation of America, November 2004

[www.consumerfed.org/Internet\\_Payday\\_Lending113004.pdf](http://www.consumerfed.org/Internet_Payday_Lending113004.pdf)

**“Unsafe and Unsound: Payday Lenders Hide Behind FDIC Bank Charters to Peddle Usury,”** report by Consumer Federation of America, March 2004

[www.consumerfed.org/pdlrentabankreport.pdf](http://www.consumerfed.org/pdlrentabankreport.pdf)

**“Rent-A-Bank Payday Lending: How Banks Help Payday Lenders Evade State Consumer Protections,”** report by Consumer Federation of America and the U. S. Public Interest Research Group, November 2001

[www.consumerfed.org/paydayreport.pdf](http://www.consumerfed.org/paydayreport.pdf)

**“Show Me The Money,”** report by Consumer Federation of America and the U. S. Public Interest Research Group, February 2000

<http://uspirg.org/uspirg.asp?id2=5043&id3=USPIRG&>

**“Safe Harbor for Usury: Recent Developments in Payday Lending,”** Consumer Federation of America, September 1999

[www.consumerfed.org/safeharbor.pdf](http://www.consumerfed.org/safeharbor.pdf)

**“The Growth of Legal Loan Sharking: A Report on the Payday Loan Industry,”** Consumer Federation of America, November 1998

(For a full list of CFA press releases, studies, testimony and letters on payday lending, go to [www.consumerfed.org](http://www.consumerfed.org), click on Financial Issues and select “Payday Loans.”)

**“Predatory Lending and the Military: The Law and Geography of ‘Payday’ Loans in Military Towns,”**

Steven Graves and Christopher Peterson, University of Florida Law School, March 29, 2005

[www.law.ufl.edu/faculty/peterson/publications.shtml](http://www.law.ufl.edu/faculty/peterson/publications.shtml)

**“The Consumer Lending Revolution: Economic Consequences. The Regulatory and Legislative Framework”**

Kathleen Keest, Center for Responsible Lending, December 8, 2004  
[www.responsiblelending.org/pdfs/Legislative\\_Framework\\_1204.pdf](http://www.responsiblelending.org/pdfs/Legislative_Framework_1204.pdf)

**“Be Wary: Dependence on Debt Trap Presents Challenges for Effective State Payday Lending Regulation”**

Yolanda McGill, Center for Responsible Lending, July 2, 2004  
[www.responsiblelending.org/pdfs/pb009-Be\\_Wary\\_Payday-0704.pdf](http://www.responsiblelending.org/pdfs/pb009-Be_Wary_Payday-0704.pdf)

**“Quantifying the Economic Cost of Predatory Payday Lending”**

Keith Ernst, John Farris, and Uriah King, Center for Responsible Lending, Dec. 18, 2003  
<http://predatorylending.org/pdfs/CRLpaydaylendingstudy121803.pdf>

**“In Harm’s Way – At Home: Consumer Scams and the Direct Targeting of America’s Military and Veterans”**

National Consumer Law Center, May 2003 (Copy and paste address in browser.)  
[http://www.consumerlaw.org/initiatives/military/content/report\\_military.pdf](http://www.consumerlaw.org/initiatives/military/content/report_military.pdf)

**NCLC/CFA Model State Payday Loan Law**

[www.nclc.org/initiatives/payday\\_loans/paydayac.shtml](http://www.nclc.org/initiatives/payday_loans/paydayac.shtml)

**NCLC Payday Loans: A Form of Loansharking: The Problem, Legislative Strategies, A Model Act**

[www.nclc.org/initiatives/payday\\_loans/pay\\_menu.shtml](http://www.nclc.org/initiatives/payday_loans/pay_menu.shtml)

**“The Alternative Financial Services Industry”**

Sharon Hermanson and George Gaberlavage, AARP Public Policy Institute, 2001  
[http://research.aarp.org/consume/ib51\\_finance.pdf](http://research.aarp.org/consume/ib51_finance.pdf)

**“Landscapes of Predation, Landscapes of Neglect: A Location Analysis of Payday Lenders and Banks”**

Steven M. Graves, *The Professional Geographer* v. 55 no3 (Aug. 2003) p. 303-17

**“Payday Loans: Shrewd Business or Predatory Lending?”**

Creola Johnson, *Minnesota Law Review*, Vol. 87, No. 1, November, 2002

**“The Economics of Payday Lending”**

John P. Caskey, Filene Research Institute, 2002.

**“Lower Income Americans, Higher Cost Financial Services”**

John P. Caskey, Filene Research Institute, 1997

**“Compendium of articles: Combating the Loan Shark”**

8 *Law and Contemporary Problems* 1 (Winter 1941).

## State and Local Reports and Studies

### Arizona

#### **“Payday Lending in Pima County Arizona”**

Southwest Center for Economic Integrity, December 2003

[www.economicintegrity.org/pdfdocs/SCEI\\_ReportOnPayDayLendingRELEASED1.pdf](http://www.economicintegrity.org/pdfdocs/SCEI_ReportOnPayDayLendingRELEASED1.pdf)

### Arkansas

#### **“Payday Lenders in Arkansas: The Regulated and the Unregulated”**

A study by Arkansas Against Abusive Payday Lending, August 2004

[www.afcu.org/pdf/Check\\_Casher-Payday\\_Lending\\_Study\\_-\\_August\\_2004.pdf](http://www.afcu.org/pdf/Check_Casher-Payday_Lending_Study_-_August_2004.pdf)

### Colorado

State of Colorado, Department of Law 2003 Deferred Deposit Lenders Annual Report.

[www.ago.state.co.us/uccc/annrep/ddlannrpt2004.pdf](http://www.ago.state.co.us/uccc/annrep/ddlannrpt2004.pdf)

### Florida

#### **“Florida Trends in Deferred Presentment Report”**

State of Florida Department of Banking and Finance, December, 2004

[www.veritecs.com/FL\\_Trends\\_Dec\\_2004.pdf](http://www.veritecs.com/FL_Trends_Dec_2004.pdf)

### Illinois

#### **“Unregulated Payday Lending Pulls Vulnerable Consumers Into Spiraling Debt,”**

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Oklahoma Office of Consumer Credit Commissioner, November 2004  
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Jerry Buckland, University of Winnipeg, August 2003

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**CUNA Payday Loan Alternatives Handbook**

CUNA

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Consumer Federation of America  
Update June 1, 2005





## Alternatives to Payday Lending: Moving Away From An Abusive Product

CRL Policy Brief No. 13  
August 23, 2005

Contact: Jabrina Robinson, Policy Counsel  
919-313-8549

### **Working families need access to helpful credit, not debilitating debt**

Payday loans are designed to create a debt trap. The payday loan as we know it is an abusive, defective product that promises to help borrowers, and hurts them instead. The typical payday loan requires full repayment in a very short period of time – usually two weeks. This short repayment term makes it nearly impossible for cash-strapped borrowers to both repay their loan and meet basic needs, such as paying rent and groceries.

The very structure of the payday loan product almost ensures that borrowers will need to take out another payday loan. Ninety-nine percent of payday loans go to repeat borrowers who are unable to meet their impossible terms, and so are trapped in debt at 400% annual interest rates. The average payday borrower pays \$800 to borrow \$325.

### **Alternatives offer real help**

There are many alternatives to payday loans such as: small savings accounts or rainy-day funds; salary advances from employers; credit card advances; working out extended repayment plans with creditors; and loans from friends, relatives, religious institutions, or social service agencies. In addition, many lenders have developed lower-cost alternatives to payday loans that have better repayment terms.

*While the Center for Responsible Lending does not endorse particular alternative payday loan products, the list on the next two pages provides a sampling of the wide array of alternative products being developed by lenders to meet borrowers' needs for short-term, small dollar loan loans. Many of these products come at a cost dramatically below the current payday loan product and have repayment terms that help borrowers handle emergencies rather than perpetuate them. In short, we believe families have a better option than falling into the payday loan debt trap.*

### **Responsible Small Loans**

Alternatives to payday loans should have these features:

- At least a 90-day repayment term, repayable in installments;
- No personal check mechanism or other unfair collateral (such as a car title);
- Reasonable limits on renewals (If borrowers are renewing short-term loans more than four times per year, the loans are not helping them);
- Full consideration of borrower's ability to repay the loan;
- No mandatory arbitration clause.

## Policy Brief: Alternatives to Payday Lending

### **ASI Federal Credit Union (Harahan, LA)**

#### **- Stretch Loan**

\$200 to \$500 line of credit at 15% APR, plus \$4/week fee. Requires 6-month direct deposit history.

#### **- Credit Enhancement Plan**

\$1,000 to \$3,000 line of credit at 15% APR, plus \$4/week fee and \$13.75 one-time fee. Requires 6-month timely repayment history.

#### **- Asset Builder Loan**

\$1,000 to \$3,000 line of credit at 15% APR, plus \$5.75 one-time fee (no weekly fee). Requires 1-year timely repayment history. Includes placing 5% of each advance in a savings account.

#### **- Payday Lender Rebuilder Loan**

Consolidation loan to payoff payday lenders up to \$3,000 at 15% APR for 18-month repayment period. Requires attending financial management classes and signing an agreement not to take out additional payday loans during loan term. \$15 per month must be put into savings account for future use.

### **Austin Bank of Chicago – Ready Cash Now (Chicago, IL)**

\$300 to \$999 loan at 12% APR over 12-month repayment period. Payments automatically deducted from borrower's deposit account.

### **Citibank – Checking Plus**

Revolving, pre-approved credit line of \$500 at 17% APR, if in good standing for 6 months. \$5 annual membership fee. Default automatic monthly deduction of 1/60<sup>th</sup> of balance.

### **Corporate America Family Credit Union - Quick Cash Line of Credit**

\$500 to \$1,500 line of credit, based on credit score, at 29.9% APR. Additional one-time \$25 application fee, which can be advanced into the loan. Requires \$100 share account balance and existing \$75 payroll deduction.

### **District Government Employees FCU (Washington, DC)**

#### **- Kwik Cash/Overdraft Loan**

May draft checks on personal line of credit or acts as overdraft protection with an APR as low as 9%.

#### **- Share/CD Loan**

May borrow funds by pledging shares up to the maximum amount in the account with an APR that equals the dividend rate plus 3%. Interest on share account continues to accrue during loan term.

### **Faith Community United Credit Union – Grace Loan (Cleveland, OH)**

\$100 to \$500 loan for 1-month term at 17% APR. Loan based on income from direct deposit with line of credit option for those without direct deposit.

### **La Salle Bank – CWFP Loan (Chicago, IL)**

\$300 to \$1,000 loan for designated one-time, nonrecurring situations. Maximum loan term of 12 months with 12-month repayment plan at 12% APR.

### **Lower East Side People's Federal Credit Union – Emergency Cash Loans (New York, NY)**

\$100 to \$500 loan at 10% APR. Loan amount based on 50% net pay or \$500, whichever is less. Additional 10% application fee, up to \$25. \$10 of application fee is refundable if attend financial literacy seminar.

### **North Carolina State Employee's Credit Union - Salary Advance Loan (Raleigh, NC)**

Maximum loan of \$500 at 12% APR with 31-day maximum loan term. Loan due in full on member's next payday. Includes placing 5% of each advance in a savings account.

## Policy Brief: Alternatives to Payday Lending

### **North Side Community Federal Credit Union of Chicago – Payday Alternative Loan (Chicago, IL)**

\$500 loan with 6-month repayment plan at 16.5% APR, plus \$10 to \$30 application fee. \$1,000 minimum monthly income required.

### **Northeast Community Federal Credit Union – Grace Loan (San Francisco, CA)**

\$300 loan at 18% APR after the 21<sup>st</sup> of the month. Direct deposit and membership for at least a year required.

### **Shiloh of Alexandria FCU – Grace Loan (Alexandria, VA)**

\$750 loan for 3-month repayment period at 8% APR. Requires direct deposit or payroll deduction, minimum share account balance of \$25, and attendance at credit counseling and budget session. Shiloh of Alexandria FCU is a faith-based credit union chartered to serve the members of Shiloh Baptist Church.

### **South Side Community Federal Credit Union – Payroll Advance (Chicago, IL)**

6-month payroll deduction for \$500 loan at 16% APR.

### **Wells Fargo & Co. of San Francisco - (San Francisco, CA)**

Direct deposit accounts can borrow up to half of the money directly deposited (maximum \$500) a week in advance for a charge of \$2 per \$20 advanced. Loans must be repaid within 35 days.

## **MILITARY PRODUCTS**

### **Army Emergency Relief – Commanders Referral Program (Alexandria, VA)**

Interest-free \$500 emergency loans available per commanding officer's approval.

### **Fort Bragg Federal Credit Union (Fort Bragg, NC)**

Installment loans as small as \$300 at 14% APR. Requires minimum \$20/month payment towards principal and interest.

### **Global Credit Union – mYday subsidiary (Spokane, WA)**

Up to a \$700 loan for \$5 flat fee.

### **Navy Federal Credit Union – Navchek Line of Credit (Vienna, VA)**

\$500 to \$15,000 credit limit at 12.5% APR. Requires monthly payment of 2% of the principal balance or \$20, whichever is greater.

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For additional information, the following studies provide more in-depth research into alternatives to payday lending products: Sheila Bair, "Low-Cost, Payday Loans: Opportunities and Obstacles," June 2005; Woodstock Institute, "Affordable Alternatives to Payday Loans," Reinvestment Alert No. 16 (March 2001); Martha Shirk, "Paycheck Poverty: In Search of Alternatives to Payday Lending," AdvoCasey (Winter 2005).

### **About the Center for Responsible Lending**

The Center for Responsible Lending (CRL) is a national nonprofit, nonpartisan research and policy organization dedicated to protecting home ownership and family wealth by working to eliminate abusive financial practices. CRL is affiliated with Self-Help, one of the nation's largest community development financial institutions.

For additional information, please visit our website at [www.responsiblelending.org](http://www.responsiblelending.org).

# AVOID THE DEBT TRAP

## Consider these alternatives:

**Contact credit counseling.** A counselor can help you get out of debt and avoid a payday loan. See numbers below.

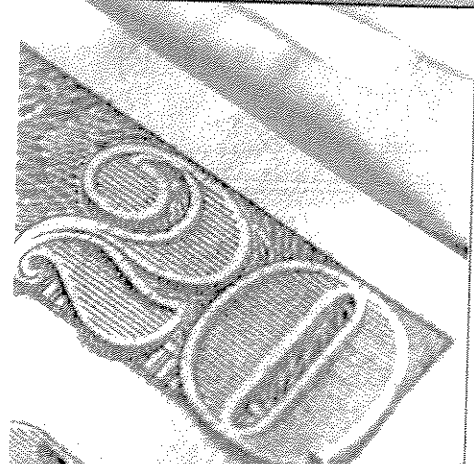
**Shop around.** Banks, credit unions and finance companies offer alternatives to payday loans, such as credit union cash advances at 1/30th the cost, credit card advances at 1/20th the cost, and small consumer finance loans at 1/10th the cost.

**Ask your bank about overdraft protection** tied to a credit card or savings account, but avoid so-called bounce protection programs that can end up costing 1000% interest in fees.

**Make arrangements with creditors.** Utility companies, credit card companies and landlords often allow extra time to pay.

**Borrow from friends or relatives or seek assistance** from religious institutions or social service agencies to save paying repeat fees for no new money.

**If worse comes to worst, compare the cost of late fees.** A one-time late fee is much cheaper than repeat fees to a payday lender.



**TAKE IT FROM  
SOMEONE WHO  
HAS BEEN THERE.**

**“At the time it seems like the way out, but this is not a quick fix. It’s like a ton of bricks.”**

Sandra H., Wilmington resident who was paying over \$600 per month in payday fees. Her car was repossessed and she was evicted from her apartment.

### **IF YOU’VE HAD TROUBLE WITH PAYDAY LOANS:**

Free advice is available.

Contact a nationally accredited consumer credit counseling agency in your area.

1-800-388-2227 • [www.debtadvice.org](http://www.debtadvice.org)

Help stop predatory lenders. Tell your story.

Call the Coalition for Responsible Lending: 1-800-747-3207

[CRL@responsiblelending.org](mailto:CRL@responsiblelending.org) • [www.responsiblelending.org](http://www.responsiblelending.org)

**COALITION FOR RESPONSIBLE LENDING**

*Protecting Home Ownership & Family Wealth*

**Thousands of North Carolinians have fallen into the debt trap. Don’t let scare tactics, like the threat of prosecution, pressure you into paying more. You took out a loan, you didn’t write a “bad check.”**

LOOKING FOR EZ MONEY? EARLY PAYDAY?

# CASH ADVANCE?

BEWARE – IT'S A DEBT TRAP!

Compare apples to apples

LET'S SAY YOU NEED A \$300 LOAN

If you borrow from a payday lender,  
you pay at least

**\$45** every 2 weeks!

That's **390% APR!**

After 20 weeks, you've paid

**\$450**

With many bank or credit union loans,  
or even credit card advances you pay

**\$3** every 2 weeks or less!

That's **26% APR!**

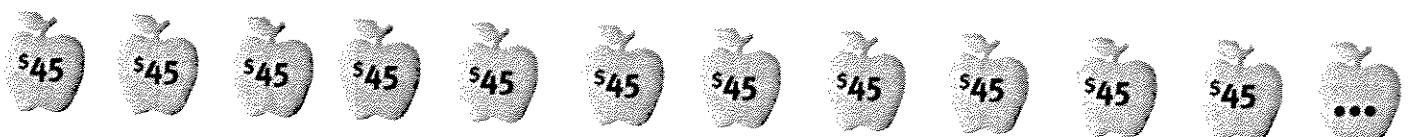
After 20 weeks, you've paid

**\$30**

...AND YOU STILL OWE THE ORIGINAL \$300 LOAN!

No partial payments are allowed on most  
payday loans. You pay it off or pay the fee. That's the trap.

The average North Carolina payday borrower stays in payday  
loans for 28 weeks of the year. That's a lot of apples!



**Wisconsin Consumer Protection Roundtable**  
Hosted by Consumer Federation of America, Consumer Law Litigation  
Clinic at UW-Madison, and WISPIRG  
September 22, 2005  
University of Wisconsin-Madison Law School, Lubar Commons

**Agenda**

**10:00 A.M. Introductions and Welcome**

Steve Meili, Consumer Law Litigation Clinic  
Jennifer Giegerich, WISPIRG

**10:10 A.M. Everything You Need To Know About Payday Lending**

Jean Ann Fox, Consumer Federation of America

**10:50 A.M. Payday Lending in Wisconsin**

Carrie Templeton, Wisconsin Department of Financial Services

**11:05 A.M. Legislative Battles in Wisconsin**

Steve Meili

**11:30 A.M. Local Government Actions**

Jim Walrath, Legal Aid Society Volunteer.

**Noon: Lunch: Roundtable on Impact of Payday Lending in Communities**

**1:00 P.M. Legislative Options**

Steve Meili  
Jennifer Giegerich

**1:45 P.M. Enforcement/Litigation Options**

Jim Walrath

**2:15 P.M. Alternatives to High Priced Payday Loans**

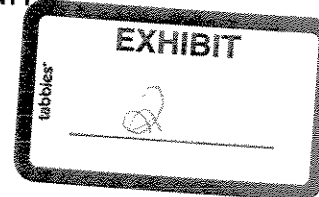
Jim Drogue, Wisconsin Credit Union League  
Ken Eiden, Prospera Credit Union  
Jean Ann Fox

**3:00 P.M. Next Steps: Coalition and Agenda Building**

**3:30 P.M. Adjourn**



Loan Company Applications and Regulations  
(Payday Loans, Check Loans or Payroll Advance Loans)



Tab #	Subject
1	Frequently Asked Questions
2	Fees
3	Application
4	License Application Instructions
5	Application – Add On Office
6	Loan Company Office Application Instructions
7	Bond
8	Consumer Loan Agreement
9	Annual Report
10	Press Release – Predatory Lending Bill
11	Press Release – Payday Loans
12	State Statutes and Rules – 138.052, 138.056 and 138.09
13	WCA Chapter 421
14	WCA Chapter 422
15	WCA Chapter 423
16	WCA Chapter 424
17	WCA Chapter 425
18	WCA Chapter 426
19	WCA Chapter 427
20	Chapter 766 – Property Rights of Married Persons; Marital Property
21	Chapter 428 – First Lien Real Estate and Other Mortgage Loans
22	
23	
24	
25	





DFI  
(608) 261.951

## Loan Companies

### How do I obtain a license?

Submit a completed, signed application to this Department along with the appropriate fees and the other information requested on the "Loan Company License Application Instructions" included with the application.

### Where should I send the completed application?

#### Mailing Address:

PO Box 7876  
Madison, WI 53707-7876

#### Courier Address:

345 W. Washington Ave.  
4th Floor  
Madison, WI 53703

### What is the licensing year?

The licensing year is from January 1 to December 31.

### Do I need an office within the state of Wisconsin to qualify for a license?

No, however, all loans must be consummated at the licensed location. If loans are transacted by mail, the proceeds check must be mailed to the customer from the licensed location.

### What reports need to be filed by a licensed loan company?

The registration statement is due by March 15 of each year. The report form is provided by this Department. Companies that originate consumer transactions may need to file a registration statement. The report is due in our Department by February 28 of each year.

### What is the maximum interest rate that can be assessed on a consumer credit transaction?

There is no maximum interest rate.

**What other state statutes and rules, besides Section 138.09, should be reviewed?**

Chapters 421-427, Wisconsin Statutes (Wisconsin Consumer Act); Chapter Bkg 80 of the Wisconsin Administrative Code; Chapter 766, Wisconsin Statutes (Marital Property Act); Section 138.052, Wisconsin Statutes; Section 138.056, Wisconsin Statutes; and Chapter 428, Wisconsin Statutes.

**Is there a source for these statutes on the Internet?**

Yes, go to [www.legis.state.wi.us](http://www.legis.state.wi.us) and select the Statutes and Administrative Code.



Home &gt; Licensed Financial Services

## Licensed Financial Services Fees

License	Fee
Loan company	\$500 <small>(note 1)</small>
Insurance premium finance company	\$500 <small>(note 1)</small>
Seller of checks	\$500 <small>(note 2)</small>
Sales finance company	\$50 on gross volume of \$100,000 or less, plus \$15 on each \$100,000 or part of \$100,000 over \$100,000
Motor Vehicle Dealer	\$20 if all vehicles sold on cash basis. \$100 if dealer finances vehicles. <small>(note 4)</small>
Adjustment service company	\$200 <small>(note 3)</small>
Collection agency	\$200 <small>(note 5)</small>
Collector or solicitor	\$15
Community currency exchange	\$300 <small>(note 1)</small>

**Note 1:** Plus a \$300 non-refundable investigation fee.

**Note 2:** Plus \$5 for each location in the state where checks are sold to a maximum of \$1,500. Plus a \$300 non-refundable investigation fee.

**Note 3:** Plus a \$200 non-refundable investigation fee.

**Note 4:** Renewal is due every other year. If greater than \$100,000 (within a year) of the contracts or leases are retained by the dealership, then dealer falls under the rules of a sales finance company.

**Note 5:** Plus a \$1,000 non-refundable investigation fee.



Section 138.09, Wis. Stats.

STATE OF WISCONSIN  
Department of Financial Institutions

Division of Banking

Courier Address:  
345 W. Washington Ave.  
4<sup>th</sup> Floor  
Madison, WI 53703



Mailing Address:  
PO Box 7876  
Madison, WI 53707-7876

www.wdfi.org

LOAN COMPANY APPLICATION

Telephone: (608) 261-7578  
Fax: (608) 267-6889  
TTY: (608) 266- 8818

Please refer to the accompanying instructions while completing this application.

APPLICANT INFORMATION

Print or type the information requested in the spaces provided.

1. **Name of applicant** If your company uses a trade name or DBA (doing business as) name, include that as well.

--

2. **Address and phone number of applicant's headquarters office**

Street:			Telephone Number:
			( )
City:	State:	Zip:	FAX Number:
			( )

3. **Mailing address of applicant's headquarters office (if different than above)**

Street:		PO Box:
City:	State:	Zip:





**GENERAL INFORMATION**

6. Name, title, address, phone number and e-mail address of person to whom questions regarding this application should be addressed:

7. List state(s) in which the applicant currently holds a license to conduct business as a lender. For each state, identify the license number and type of license issued by that state. Attach additional pages as necessary.

8. Indicate the type of organization with an "X."

Corporation

Partnership

Limited Liability Company

Sole Proprietorship

Limited Partnership

Other (Please Specify)

9. Provide the date and state of Incorporation/Organization.

Date:

State:

10. Provide the applicant's Federal Employer Identification Number:

If the applicant is an individual, provide Social Security Number (s):

**PERSONNEL INFORMATION**

11. Provide information relevant to the applicant. Attach additional pages, if necessary.

Corporation: List all key officers and the percentage of common stock owned. In addition, list all other stockholders who own 10% or more of the outstanding shares. "Key Officers" include the chief executive officer, chief operating officer, president, executive or senior vice president, secretary and treasurer. If the corporation does not have an officer who holds one of the above positions, please indicate that fact below.

Limited Liability Company (LLC): List all key members and each member's interest. In addition, list all other members whose interest in the LLC is 10% or more.

Limited Partnership: List all general partners and each partner's interest. In addition, list all limited partners whose interest in the limited partnership is 10% or more.

Partnership: List all partners and indicate percentage of ownership.

Sole Proprietorship: List proprietor.

Name and Title	Residence Address	% Ownership

**EDUCATION AND EXPERIENCE**

12. For each key officer, member, partner or owner, provide a summary of any education and employment experience related to the loan company industry or a loan company business. Attach additional pages as necessary. "Key Officers" include the chief executive officer, chief operating officer, president, executive or senior vice president, secretary and treasurer.

Name and Title	Summary

**APPLICANT BACKGROUND INFORMATION QUESTIONNAIRE**

13. This questionnaire must be completed by a key officer, member or partner of the Applicant. Mark an "X" in the appropriate box. If you answer "Yes" to any question, give all details on a separate sheet. If any event or action arises after completing these questions and before action is taken by the department on this application that would cause the applicant to answer "Yes" to any question, the applicant must immediately provide all details in writing to the department.

Yes    No

    Has the applicant ever been the subject of disciplinary action including, but not limited to, civil forfeitures, cease and desist orders, injunctions, license suspensions, denials, revocations, warnings, reprimands, enforcement actions, probation and limitations by any regulatory agency in this state or any other state? Provide details about the disciplinary action, including but not limited to date, regulatory agency and type of discipline.

    Is disciplinary action pending against the applicant in this state or any other state? Provide details, including but not limited to action, regulatory agency and state.

    Has the applicant ever surrendered, resigned, cancelled or been denied a professional license or other credential in this state or any other state? Provide details, including but not limited to date, credential and state.

    Has the applicant been the subject of derogatory credit (bankruptcy, judgment, tax lien, collections, etc.) within the past 7 years? Provide details, including but not limited to date, circumstances and court or agency.

    Has the applicant been denied credit within the past 7 years? Provide details, including but not limited to entity denying credit and date.

    Has the applicant been the subject of any suit, claim, or other civil action in this state or any other state within the last five years that was settled, or included a ruling or decision not in the applicant's favor? Provide a description of the suit, claim, or other civil action, agency or court, date filed, and outcome.

    Is a suit, claim or other civil action pending in this state or any other state against the applicant? Provide details, including but not limited to a description of the suit, claim, or other civil action, agency or court, date filed, and current status.

I, , the undersigned, being a key officer, member or partner  
 (Print Name)

of  hereby certify that each statement and  
 (Name of Applicant)

representation in the Applicant Background Information Questionnaire is true and correct to the best of my knowledge.

(Signature)

(Title)

(Date)

## INDIVIDUAL BACKGROUND INFORMATION QUESTIONNAIRE

14. This questionnaire must be completed by each key officer, member, partner or owner of the Applicant. "Key Officers" include the chief executive officer, chief operating officer, president, executive or senior vice president, secretary and treasurer. Mark an "X" in the appropriate box. If you answer "Yes" to any question, give all details on a separate sheet. Copies of this form may be made. If any event or action arises after completing these questions and before action is taken by the department on this application that would cause the individual to answer "Yes" to any question, the individual must immediately provide all details in writing to the department.

Yes      No

Have you ever been convicted of any misdemeanor or felony (other than minor traffic offenses) in this state or any other state? Provide details about the misdemeanor or felony, including but not limited to conviction, conviction date, penalty and court.

Are there any felony or misdemeanor charges (other than minor traffic offenses) pending against you in this state or any other state? Provide details about the pending charges, including but not limited to charge, date and court.

Have you ever been the subject of disciplinary action including, but not limited to, civil forfeitures, cease and desist orders, injunctions, license suspensions, denials, revocations, warnings, reprimands, enforcement actions, probation and limitations by any regulatory agency in this state or any other state? Provide details about the disciplinary action, including but not limited to date, regulatory agency and type of discipline.

Is disciplinary action pending against you in this state or any other state? Provide details, including but not limited to action, regulatory agency and state.

Have you ever surrendered, resigned, cancelled or been denied a professional license or other credential in this or any other state? Provide details, including but not limited to date, credential and state.

Has your employment involuntarily been suspended or terminated in this state or any other state? Provide details about the suspension or termination, including but not limited to name and location of employer, reason and date.

Have you been the subject of derogatory credit (bankruptcy, judgment, tax lien, collections, etc.) within the past 7 years? Provide details, including but not limited to date, circumstances and court or agency.

Have you been denied credit within the past 7 years? Provide details, including but not limited to entity denying credit and date.

Have you been the subject of any suit, claim, or other civil action in this state or any other state within the last five years that was settled, or included a ruling or decision not in your favor? Provide a description of the suit, claim, or other civil action, agency or court, date filed, and outcome.

Initials of individual signing this questionnaire: \_\_\_\_\_

Yes No

Is a suit, claim or other civil action pending in this state or any other state against you? Provide details, including but not limited to a description of the suit, claim, or other civil action, agency or court, date filed, and current status.

Have you been the key officer, member, partner or owner of any company that failed in business or filed bankruptcy while you were a key officer, member, partner or owner? Provide details, including company name(s), your position with the company, dates, and circumstances.

Have you been the key officer, member, partner or owner of any company that was the subject of disciplinary action including, but not limited to, civil forfeitures, cease and desist orders, injunctions, license suspensions, denials, revocations, warnings, reprimands, enforcement actions, probation and limitations by any regulatory agency in this state or any other state while you were a key officer, member, partner or owner? Provide details about the disciplinary action, including but not limited to company name, date, regulatory agency and type of discipline.

I,

(Print Name)

, the undersigned, being a key officer, member, partner or

owner of

(Name of Applicant)

hereby certify that each statement and

representation in the Individual Background Information Questionnaire is true and correct to the best of my knowledge.

(Signature)

(Title)

(Date)

**AUTHORIZATION FOR BACKGROUND INVESTIGATION**

15. A separate "Authorization For Background Investigation" form must be completed and signed by each key officer, member, partner or owner. "Key Officers" include the chief executive officer, chief operating officer, president, executive or senior vice president, secretary and treasurer. Copies of the form may be made.

By signing this Authorization, you are agreeing to allow the Department of Financial Institutions to conduct a criminal background investigation.

<b>Applicant Company:</b>
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<b>Full Name:</b>
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<b>Social Security Number:</b>	<b>Birth Date:</b>	<b>Sex:</b> Male <input type="checkbox"/> Female <input type="checkbox"/>
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<b>Home Address:</b>		
Street:		
City:	State:	Zip Code:

<b>Signature:</b>	<b>Date:</b>
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**ATTACHMENTS**

16. Attach the following to your application. Refer to the instructions for additional details.

- A) Surety Bond
- B) Financial Statement
- C) Fees
- D) Certificate of Good Standing (if applicable)

**AFFIDAVIT**

17. I, \_\_\_\_\_, the undersigned, being the duly authorized representative of  
(Print Name)

\_\_\_\_\_ hereby certify that each statement and  
(Name of Applicant)

representation in this application is true and correct to the best of my knowledge.

\_\_\_\_\_  
(Signature) (Title) (Date)

\_\_\_\_\_  
(Name of Witness) (Signature of Witness)

This form is required under Section 138.09, Wisconsin Statutes. Refusal to provide this information may result in the denial of a license. Personally identifiable information on this form may be matched against tax information, outstanding child and family support data and law enforcement agencies. Failure to complete this application completely and accurately may result in denial or revocation of license, and any other penalties as provided by law.

This document can be made available in alternate formats upon request to qualifying individuals with disabilities.





loan company license, complete this area to disclose "None."

8. Indicate with an "X" the type of organization of the applicant. If you checked "Other," identify the type of organization.

9. If the applicant is a corporation, limited liability company, or limited partnership, complete the application to indicate the date and state of incorporation or organization.

10. If the applicant is not an individual, provide the applicant's Federal Employer Identification Number (FEIN).

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

Note: Pursuant to Section 138.09 (1m)(b), Wis. Stats., this Department is required to obtain this information from all applicants. The information will be shared with other state agencies for the purpose of matching against tax information and outstanding child and family support data.

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### PERSONNEL INFORMATION

11. Print or type the information requested in the space provided and/or attach additional pages as necessary.

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### EDUCATION AND EXPERIENCE

12. Print or type the name and title of each key officer, member, partner or owner. For each person, provide a summary indicating any educational or employment experience related to the loan company industry or a loan company business. The summary should include the dates of experience, position held, name of company, and description of duties. Attach additional pages as necessary.

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### APPLICANT BACKGROUND INFORMATION QUESTIONNAIRE

13. Mark an "X" in the appropriate box. This questionnaire must be completed for the applicant listed on line 1 of the application. If the answer to any question is **yes**, use a separate sheet to explain the circumstances fully. Do not complete this questionnaire if you are a sole proprietor or general partnership.

Note: A key officer, member or partner must complete and sign this portion of the application.

Note: This Department may independently conduct checks into background, experience and related matters in conjunction with the filing of this application and representations therein. Failure to complete this application completely and accurately may result in denial or revocation of the license, and any other penalties as provided by law.

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### INDIVIDUAL BACKGROUND INFORMATION QUESTIONNAIRE

14. A separate "Individual Background Information Questionnaire" must be completed and signed by each key officer, member, partner or owner. Copies of the form may be made.

Mark an "X" in the appropriate box. If the answer to any question is **yes**, use a separate sheet to explain the circumstances fully.

Note: This Department may independently conduct checks into background, experience and related matters in conjunction with the filing of this application and representations therein. Failure to complete this application completely and accurately may result in denial or revocation of the license, and any other penalties as provided by law.

## AUTHORIZATION FOR BACKGROUND INVESTIGATION

15. A separate "Authorization for Background Investigation" form must be completed and signed by each key officer, member, partner or owner. Copies of the form may be made.

## ATTACHMENTS

16. The following items must be submitted with your completed "Loan Company Application" form.

- A) Surety Bond
- B) Financial Statement
- C) Fees
- D) Certificate of Good Standing (if applicable)

### A) Surety Bond

The applicant must provide a surety bond in the amount of \$5,000 per proposed licensed location, or \$50,000, whichever is less.

The bond must be written on the form provided by this Department. The bond form is attached to the application packet or may be downloaded from our website at [www.wdfl.org](http://www.wdfl.org).

The surety bond must be completed to indicate the exact name of the Applicant (refer to #1 of the application.)

Because the bond covers the applicant at all licensed locations, the bond may not reference a street address.

The original surety bond and the original power of attorney must be submitted to this Department.

The bond must be signed and witnessed or sealed.

### B) Financial Statement

Submit a balance sheet and income statement certified by a senior officer or financially responsible party and dated no more than 90 days prior to the date of this application. If your company is audited annually by an independent public accountant at the end of each fiscal year, also submit financial statements certified by said accountant for your latest fiscal year.

If the applicant is a sole proprietorship, provide a personal financial statement dated no more than 90 days prior to the date of this application.

If the applicant is a partnership, each partner must submit a financial statement dated no more than 90 days prior to the date of this application.

The financial statements must be prepared according to Generally Accepted Accounting Principles using accrual basis accounting.

The balance sheet must show a minimum net worth of \$50,000 and positive net working capital for the application to be considered.

If your company is presently involved in any lawsuit as a defendant that may materially affect the company's financial position, provide details including the name of the plaintiff(s), amount(s) sued for, basis for the litigation, and its current status.

When evaluating a financial statement, this Department typically discounts intangible assets, leasehold improvements, and loans/receivables from officers. This Department may also discount goodwill and loans/receivables from related parties.

Note: This Department takes all details provided into consideration when evaluating a financial statement. You should, therefore, provide the following information if it will assist us in determining the accurate financial position of the applicant.

- If the balance sheet includes an "Other Assets" category, provide a detailed list of these assets and their values.
- If cash accounts for a significant portion (over 20%) of the total assets, submit documentation of the cash balance listed.
- If your company's equity is at or near the minimum amounts required by this Department, explain how your company will maintain a net worth of \$50,000 once it begins to operate.

**C) Fees**

The fee is \$800 for each location where business as a loan company will be conducted. The \$800 fee consists of a \$500 license fee and a \$300 nonrefundable investigation fee.

- Make checks payable to the Department of Financial Institutions.

Calculate the fee due as follows:	
a) # of locations to be licensed	# _____
b) Multiply by \$800	X \$800
c) Total Fee Due	\$ _____

**D) Certificate of Good Standing (if applicable)**

If the applicant is organized or incorporated in a state other than Wisconsin, provide this Department with a certificate of status/certificate of good standing from the state where the applicant is organized or incorporated. The status/certificate should be dated within the previous 90 days and reflect the correct name and the date of organization or incorporation.

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**AFFIDAVIT**

17. A duly authorized representative for the applicant should complete and sign the affidavit.

Have a witness certify the signature of the person signing the affidavit.

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**FOR YOUR INFORMATION  
Wisconsin Consumer Act**

Enclosed is a Wisconsin Consumer Act registration form. It may also be downloaded from our web site at [www.wdfi.org](http://www.wdfi.org).

Under Section 426.201, Wis. Stats., a business that makes consumer credit transactions is required to register with the Wisconsin Consumer Act Section of the Department of Financial Institutions.

**A registration must be filed, and a \$25.00 fee submitted, within 30 days of commencing business in Wisconsin.**

The provisions of the consumer loan agreement used by your company must comply with the Wisconsin Consumer Act and Section 138.09 of the Wisconsin Statutes. Sections 421 through 427 of the Wisconsin Statutes are known as the Wisconsin Consumer Act (WCA). Although you are not required to submit your loan agreement in connection with your loan company application, you may forward an original form plus three copies to us and this Department will review it for compliance with the WCA.

Once the initial WCA registration has been filed with the \$25.00 fee, the service of reviewing your forms is free.

For more information regarding Wisconsin Consumer Act Registration contact:

Department of Financial Institutions  
Division of Corporate and Consumer Services  
(608) 264-7969

## RETURN APPLICATION MATERIALS TO:

Department of Financial Institutions  
Division of Banking


### *Mailing Address:*

PO Box 7876  
Madison, Wisconsin 53707-7876

### *Street Address:*

345 West Washington Avenue, 4<sup>th</sup> Floor  
Madison, Wisconsin 53703

## HOW TO OBTAIN HELP AND ADDITIONAL FORMS:

 **INTERNET** - Access the Department of Financial Institutions Internet Web Site at: [www.wdfi.org](http://www.wdfi.org) to do the following:

- Download Applications, Instructions and Forms
- See Answers to Frequently Asked Questions
- See List of Loan Companies licensed under Section 138.09, Wisconsin Statutes

### **TELEPHONE**

Licensed Financial Services Section (608) 267-1708

or:

Department of Financial Institutions  
Division of Banking (608) 261-7578

TTY Phone Number (608) 266-8818

### **FAX**

Division of Banking  
(608) 267-6889



STATE OF WISCONSIN  
Department of Financial Institutions

Division of Banking

Section 138.09, Wis. Stats.

**Courier Address:**  
345 W. Washington Ave.  
4<sup>th</sup> Floor  
Madison, WI 53703

[www.wdfi.org](http://www.wdfi.org)



**Mailing Address:**  
PO Box 7876  
Madison, WI 53707-7876

Telephone: (608) 261-7578  
Fax: (608) 267-6889  
TTY: (608) 266-8818

**LOAN COMPANY OFFICE  
APPLICATION**

Please refer to the accompanying instructions while completing this application.

**LOAN COMPANY OFFICE**

Provide the following information for **each** proposed loan company office location. Copies of this form may be made to accommodate additional office locations.

1. Name of Applicant

Street Address

City

State

Zip Code

Telephone

(    )

2. List other types of business conducted at this location and identify who is conducting the business:

3. Proposed date of business opening:

**ATTACHMENTS**

- 4. Attach the following to your application. Refer to the instructions for additional details.
  - A) **Surety Bond Rider (if applicable)**
  - B) **Fees**

**AFFIDAVIT**

5. I, \_\_\_\_\_, the undersigned, being the duly authorized representative of  
(Print Name)  
\_\_\_\_\_, hereby certify that each statement and  
(Name of Applicant)  
representation in this application is true and correct to the best of my knowledge.

\_\_\_\_\_  
(Signature) (Title) (Date)

\_\_\_\_\_  
(Name of Witness) (Signature of Witness)

This form is required under Section 138.09, Wisconsin Statutes. Refusal to provide this information may result in the denial of a license. Failure to complete this application completely and accurately may result in denial or revocation of license, and any other penalties as provided by law.

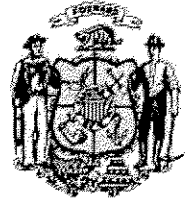
This document can be made available in alternate formats upon request to qualifying individuals with disabilities.







STATE OF WISCONSIN  
Department of Financial Institutions  
Division of Banking



## LOAN COMPANY OFFICE APPLICATION INSTRUCTIONS

**Purpose:** A completed Loan Company Office Application should be submitted to the Department of Financial Institutions – Division of Banking (“DFI”) for consideration of licensure of additional office(s).

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

### 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.

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

2. List the other types of business conducted at the proposed 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 may be accessed from our website at [www.wdfi.org](http://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 and identify who is conducting the business and/or activities.

3. Indicate the proposed date of business opening.

### ATTACHMENTS

4. The following items must be submitted with your completed “Loan Company Office Application” form.

- A) Surety Bond Rider
- B) Fees

#### A) Surety Bond Rider

Requirements vary depending on your company’s current bond. Identify the status of your company’s current bond from the options listed below and submit the items indicated.

- If your company already has a \$50,000 bond in place, there is no additional bonding requirement for this application.
- If your company has a bond in place in an amount less than \$50,000, provide a rider to the bond increasing the amount by \$5,000 for each additional office location to be licensed, or to \$50,000, whichever is less.

The rider must be completed to indicate the **exact** name of the Applicant (refer to #1 of the application.)

Because the bond covers the applicant at all licensed locations, the rider may not reference a street address.

The original rider must be signed and submitted to this Department.

#### **B) Fees**

The fee is \$800 for each location where business as a loan company will be conducted. The \$800 fee consists of a \$500 license fee and a \$300 nonrefundable investigation fee. The full \$500 annual license fee is due for each office regardless of when in the year a license is issued. **Make checks payable to the Department of Financial Institutions.**

---

#### **AFFIDAVIT**

5. A duly authorized representative for the applicant should complete and sign the affidavit.

Have a witness certify the signature of the person signing the affidavit.

---

#### **RETURN APPLICATION MATERIALS TO:**


Department of Financial Institutions  
Division of Banking

*Mailing Address:*  
PO Box 7876  
Madison, Wisconsin 53707-7876

*Street Address:*  
345 West Washington Avenue, 4<sup>th</sup> Floor  
Madison, Wisconsin 53703

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#### **HOW TO OBTAIN HELP AND ADDITIONAL FORMS:**

 **INTERNET** - Access the Department of Financial Institutions Internet Web Site at: **www.wdfi.org** to do the following:

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- See Answers to Frequently Asked Questions
- See List of Loan Companies licensed under Section 138.09, Wisconsin Statutes

 **TELEPHONE**

Licensed Financial Services Section  
(608) 267-1708

or:

Department of Financial Institutions  
Division of Banking  
(608) 261-7578

TTY Phone Number  
(608) 266-8818

 **FAX**

Division of Banking  
(608) 267-6889



STATE OF WISCONSIN



LOAN COMPANY BOND

KNOW ALL, that \_\_\_\_\_, at all locations licensed under  
(Name of Loan Company)

Section 138.09, Wisconsin Statutes, as principal, and \_\_\_\_\_ as  
surety, are held and firmly bound unto the STATE OF WISCONSIN, through the Department of Financial Institutions, in  
the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) for the payment of  
which, well and truly to be made, we jointly and severally, bind ourselves, our heirs, executors, administrators, assigns and  
successors firmly by these presents this \_\_\_\_\_ day of \_\_\_\_\_.

Effective date of this bond is \_\_\_\_\_.  
**This bond is continuous until cancelled, as provided below.**

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT, if above bounden loan company shall be  
licensed pursuant to the provisions of Section 138.09 of the Wisconsin Statutes and shall comply with the provisions of  
Section 138.09, Wis. Stats., or any subsequent amendment(s) thereof and all lawful orders, rules and regulations in effect or  
which may be issued thereunder, and shall pay any and all moneys that may become due or owing to any person(s) under and  
by virtue of the provisions of said Section 138.09, Wis. Stats., and shall pay any examination costs incurred by the  
Department of Financial Institutions for Wisconsin under Section 138.09, Wis. Stats., which costs shall be considered a  
preferred claim, then this obligation to be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, AND THIS BOND IS EXECUTED UPON THE FOLLOWING EXPRESS  
CONDITIONS:

1. That this bond is effective continuously until cancelled by giving sixty (60) days written notice via certified mail to the Department of Financial Institutions for Wisconsin that the liability of said surety for any future act or omission of said principal shall cease at the expiration of said sixty (60) days after receipt of notice of cancellation is received by the Department of Financial Institutions for Wisconsin, the said surety remaining liable for any or all acts of commission or omission covered by this bond, which have or may have occurred up to and including said cancellation date.
2. That claimants hereunder shall give written notice of their claims to surety within twelve (12) months from the date of cancellation.
3. That the amount of this bond may be decreased only if the surety sends written notice of such decrease by certified mail (return receipt requested) to the Department of Financial Institutions, P.O. Box 7876, Madison, Wisconsin 53707-7876, at least 30 days prior to the effective date of the decrease.
4. That within six (6) months after the receipt of a claim, the surety shall, by registered mail, deny liability on the claim, unless said claim has been paid in full or settled.

5. That within ten (10) days after any written demand for payment or satisfaction of any claim arising under this bond is made upon surety, said surety shall mail to the Department of Financial Institutions for Wisconsin, a statement which shall include the name and address of the claimant and the amount of claim. Upon denial of liability or disposition of any claim the surety shall also notify the Department of Financial Institutions for Wisconsin as to the manner of disposition thereof and the amount, if any, paid to the claimant.
6. That regardless of the number of claimants or the amounts of the claims, the aggregate liability of the surety on this bond in the event of a default on the part of the principal shall be limited to the above stated sum.
7. If the claims for which the surety acknowledges liability exceed the above stated sum, the surety may discharge itself from all further liability hereunder by paying said sum to the Department of Financial Institutions for Wisconsin for the benefit of the claimants.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the day above written.

Signed in the presence of:

\_\_\_\_\_  
(Print name of loan company)

\_\_\_\_\_  
(Witness to Principal signature)

By: \_\_\_\_\_ (Seal)  
(Owner, partner or officer)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Witness of Surety signature)

\_\_\_\_\_  
(Attorney-In-Fact) (Seal)

**IMPORTANT NOTE TO BONDING COMPANY**  
PLEASE FURNISH THE FOLLOWING INFORMATION:

1. A Power of Attorney/Certificate of Authority or Attorney-in-Fact, attached to the bond.
2. The name and address of the claims agent with whom claims against this bond are to be filed:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Mailing Address)



(Only use with Payday Loans)

### CONSUMER LOAN AGREEMENT

Date \_\_\_\_\_

Account # \_\_\_\_\_

(Lender Name)  
(Lender Address)  
(Lender City, State Zip)  
(Lender Phone Number)

(Customer Name)  
(Customer Address)  
(Customer City, State Zip)  
(Customer Phone Number)

In this Consumer Loan Agreement (hereinafter referred to as the "Agreement") the words "you," and "your" mean each and all customers who have signed it. The words "we," "us," and "our" mean (Lender Name).

#### YOUR PROMISE TO PAY

You promise to pay us the Total of Payments shown below and other charges identified in this Agreement. On the date stated in your Payment Schedule you will pay us, at the address indicated above, or at such address as we direct you in writing, the amounts stated. Any unpaid balance of the Amount Financed after the final installment due date will bear interest at the same Annual Percentage Rate as was assessed before maturity.

#### FEDERAL TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
%	\$	\$	\$

Your Payment Schedule will be:

One Payment in the Amount of \$ \_\_\_\_\_ is due on: \_\_\_\_\_ (date)

**Security Interest:** Your check is security for this Agreement.

**Prepayment:** If you pay off early, you may be entitled to a refund of part of the finance charge.

**Late Payment:** If you fail to make all or any part of a scheduled installment on or before the 10<sup>th</sup> day after its scheduled or deferred due date, you may be charged \$10.00 or 5% of the unpaid amount of the installment, whichever is less. If interest is assessed after maturity, no late payment fee will be charged on the final installment.

See the contract provisions on the reverse side for any additional information about nonpayment, default and prepayment refunds.

**Itemization of Amount Financed:** Amount given to you \$ \_\_\_\_\_, Amount paid on your account \$ \_\_\_\_\_.

You warrant and represent that you are not a debtor under any proceeding in bankruptcy, insolvency or reorganization and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code.

**For Wisconsin Residents Only:** You are  married  unmarried  legally separated. If you are married and your spouse is not signing below, the name of your spouse is \_\_\_\_\_ and your spouse resides at  the address shown above  or at \_\_\_\_\_

#### NOTICE TO CUSTOMER

- A) DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.
- B) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
- C) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
- D) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

x \_\_\_\_\_  
Customer Signature Date

x \_\_\_\_\_  
Customer Signature Date

SEE REVERSE SIDE FOR ADDITIONAL PROVISIONS



## ADDITIONAL PROVISIONS

**METHOD OF PAYMENT:** Your personal check in the amount of the Total of Payments stated in the federal Truth in Lending Disclosures will be held by us as security on this Agreement. You agree that we may deposit this check on the payment date if you have not paid us in cash, cashiers check, money order or other immediately available funds in the amount of the Total of Payments before close of business on the payment date. If full payment is made prior to the deposit of your personal check, we will return the check to you at the time we receive full payment.

**RETURNED CHECK CHARGES:** Pursuant to section 422.202(1)(d) of the Wisconsin Statutes, you agree to pay a fee of \$15 for each check presented for payment that is returned unsatisfied because drawer does not have sufficient funds in drawer's account, drawer does not have an account with the drawee bank or drawer does not have sufficient credit with the drawee bank.

**PREPAYMENT:** You may prepay this agreement in full or in part at any time without penalty, except you may be assessed a minimum finance charge of \$5 when the amount financed is \$75 or less and \$7.50 when the amount financed is greater than \$75. Earned finance charges are determined by applying the annual percentage rate to the unpaid balance of the amount financed for the actual time those balances were unpaid.

**DEFAULT:** A customer shall be in default under this Agreement when the payment remains unpaid for more than 40 days after its scheduled or deferred due date, or if the customer fails to comply with any of the terms of this Agreement if the failure materially impairs the condition, value or protection of or the Lender's right to the collateral or materially impairs the customer's ability to pay the obligation due under this Agreement.

**LENDER'S RIGHTS IN THE EVENT OF DEFAULT:** In the event of default, and if you have the right to cure the default pursuant to sec. 425.105, Wis. Stats., you fail to cure the default within 15 days after you are given notice of the default, the lender may declare the whole outstanding balance due under this agreement payable at once and proceed to collect it, including commencing legal action.

**TIME:** It is essential that you make your payment on time.

**WAIVER:** You agree to be liable for the repayment of this Agreement even if we do not give you notices such as presentment, protest, demand, and notice of dishonor. We shall not waive any of our rights under this Agreement by making an accommodation for you or someone else. No waiver, consent or approval by us or changes or amendment of this Agreement shall be effective unless it is in writing and you and we have signed it.

**CREDIT REPORTING:** We may report your performance under this Agreement to credit reporting agencies. You agree and hereby authorize us to obtain credit reports on you at any time any portion of the Total of Payments remains owed to us. You specifically acknowledge and agree that we may disclose any default by you under this Agreement, along with any other relevant information, to credit reporting agencies.

**JOINT AND SEVERAL:** If this Agreement is signed by more than one customer, you each agree to be liable to us jointly, and each of you will also be liable to us individually for the loan and other obligations under this Agreement. We may require that either of you pay the amounts due without asking the other to pay. We may file suit against any one or more of you without giving up any of our rights against the others. This Agreement is also binding upon the heirs and personal representatives in probate of all signers and upon anyone to whom any signor assigns his assets or who succeeds to him or her in any other way.

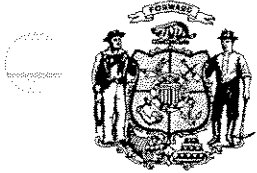
**GOVERNING LAW:** This Agreement shall be construed, applied and governed by the laws of State of Wisconsin. Unless otherwise required by the Wisconsin Consumer Act, the unenforceability or invalidity of any portion of this Agreement shall not render unenforceable or invalid any other portions.

**ASSIGNMENT:** We may assign or transfer this Agreement or any of our rights hereunder. Your obligations under this Agreement cannot be assigned to a third party without our prior written consent.



LOAN COMPANY ANNUAL REPORT

Due Date:
March 15, 2005



State of Wisconsin
Department of Financial Institutions
Division of Banking
PO Box 7876 Madison, WI 53707-7876
Telephone: (608) 261-7578
345 W. Washington, 4th Floor Madison, WI 53703
FAX: (608) 267-6889

TTY: (608) 266-8818

www.wdfl.org

FOR YEAR ENDING DECEMBER 31, 2004

SCHEDULE A: GENERAL INFORMATION

- 1. Name of Licensee:
2. Name, title, address, phone and FAX number of person to whom questions concerning this report should be addressed:
E-mail address:
3. Are office quarters of any licensed location shared with any other business?
4. Please provide the following information:

Corporation: List all key officers and the percentage of common stock owned. In addition, list all other stockholders who own 10% or more of the outstanding shares.

Limited Liability Company: List all key members and each member's interest. In addition, list all other members whose interest in the LLC is 10% or more.

Limited Partnership: List all general partners and each partner's interest. In addition, list all limited partners whose interest in the limited partnership is 10% or more.

Partnership: List all partners and the percentage of ownership.

Sole Proprietorship: List name of proprietor.

Table with 3 columns: OFFICER, MEMBER, PARTNER, OWNER; TITLE OR POSITION; % OWNERSHIP. Includes rows for OTHER SHAREHOLDERS/OWNERS.

**SCHEDULE A: GENERAL INFORMATION (CONTINUED)**

5.

The following questions must be answered by marking an "X" in the appropriate box. If you answer "Yes" to any question, give all details on a separate sheet. "Key Officers" include the chief executive officer, chief operating officer, president, executive or senior vice president, secretary and treasurer. If your company has not previously filed an annual report with the Division of Banking, the questions should be answered for the time period since your license application was submitted.

Yes No

Since filing your previous annual report, has any key officer, member, partner or owner been convicted of any misdemeanor or felony (other than minor traffic offenses) in this state or any other state? Provide details about the misdemeanor or felony, including but not limited to conviction, conviction date, penalty and court.

Are there any felony or misdemeanor charges (other than minor traffic offenses) pending against any key officer, member, partner or owner in this state or any other state? Provide details about the pending charges, including but not limited to charge, date and court.

Since filing your previous annual report, has the licensee or any key officer, member, partner or owner been the subject of disciplinary action including, but not limited to, civil forfeitures, cease and desist orders, injunctions, license suspensions, denials, revocations, warnings, reprimands, enforcement actions, probation and limitations by any regulatory agency in this state or any other state? Provide details about the disciplinary action, including but not limited to date, regulatory agency and type of discipline.

Is disciplinary action pending against the licensee or any key officer, member, partner or owner in this state or any other state? Provide details, including but not limited to action, regulatory agency and state.

Since filing your previous annual report, has the licensee or any key officer, member, partner or owner surrendered, resigned, cancelled or been denied a professional license or other credential in this state or any other state? Provide details, including but not limited to date, credential and state.

Since filing your previous annual report, has the licensee or any key officer, member, partner or owner been the subject of derogatory credit (bankruptcy, judgment, tax lien, collections, etc.)? Provide details, including but not limited to date, circumstances and court or agency.

Since filing your previous annual report, has the licensee or any key officer, member, partner or owner been the subject of any suit, claim, or other civil action in this state or any other state that was settled, or included a ruling or decision not in the licensee's or individual's favor? Provide a description of the suit, claim, or other civil action, agency or court, date filed, and outcome.

Is a suit, claim or other civil action pending against the licensee or any key officer, member, partner or owner in this state or any other state? Provide details, including but not limited to agency or court and date.

## SCHEDULE B: WISCONSIN LENDING ACTIVITY

This schedule applies only to direct loans and indirect sales contracts made with **Wisconsin customers**. Loan and contract balances should be reported **net of unearned finance charges**.

	<u>NUMBER</u>	<u>NET BALANCE</u>
1. Outstanding loan and contract balances as of 12/31/04:		
a) Consumer Loans		
Standard Consumer Loans .....	# _____	\$ _____
Payday Loans .....	# _____	\$ _____
Pawn Loans .....	# _____	\$ _____
Total Consumer Loans .....	# _____	\$ _____
Estimated percent of total consumer loans with an APR > 18% .....	_____ %	
b) Sales Contracts .....	# _____	\$ _____
c) Other Loans (1 <sup>st</sup> mortgages, commercial, or loans > \$25,000).....	# _____	\$ _____
2. Loans and contracts contractually delinquent 90 days or more as of 12/31/04:		
a) Consumer Loans		
Standard Consumer Loans .....	# _____	\$ _____
Payday Loans .....	# _____	\$ _____
Pawn Loans .....	# _____	\$ _____
Total Consumer Loans .....	# _____	\$ _____
Percentage of total consumer loans charged off to bad debt during the year ..	_____ %	
b) Sales Contracts .....	# _____	\$ _____
c) Other Loans (1 <sup>st</sup> mortgages, commercial, or loans > \$25,000).....	# _____	\$ _____
3. Loans and contracts originated or purchased between 1/1/04 and 12/31/04:		
a) Consumer Loans		
Standard Consumer Loans .....	# _____	\$ _____
Payday Loans .....	# _____	\$ _____
Pawn Loans .....	# _____	\$ _____
Total Consumer Loans .....	# _____	\$ _____
Estimated percent of total consumer loans with an APR > 18% .....	_____ %	
b) Sales Contracts .....	# _____	\$ _____
c) Other Loans (1 <sup>st</sup> mortgages, commercial, or loans > \$25,000).....	# _____	\$ _____

**SCHEDULE B: WISCONSIN LENDING ACTIVITY (CONTINUED)**

4. Number of **consumer loans** originated between 1/1/04 and 12/31/04 where the following products were sold. If none, please indicate "None."

- a) Credit life insurance .....# \_\_\_\_\_
- b) Credit accident and health insurance .....# \_\_\_\_\_
- c) Credit unemployment insurance.....# \_\_\_\_\_
- d) Property insurance.....# \_\_\_\_\_
- e) Automobile insurance .....# \_\_\_\_\_
- f) Life (non-credit) insurance.....# \_\_\_\_\_
- g) Auto club or thrift club.....# \_\_\_\_\_
- h) Other (specify) \_\_\_\_\_# \_\_\_\_\_
- \_\_\_\_\_# \_\_\_\_\_
- \_\_\_\_\_# \_\_\_\_\_
- \_\_\_\_\_# \_\_\_\_\_

5. Excluding lending and the items listed in item 4, list any other activities conducted, services provided, or products sold at any licensed location. If none, please indicate "None."

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. COMPLETE ONLY IF PAYDAY LOANS ARE OFFERED

- a) Do you permit borrowers to "rollover" the loan by paying only the finance charge and refinancing the loan balance in a new loan? \_\_\_\_\_  
 If yes, how many times in a row can a borrower "rollover" and refinance a loan before you require the borrower to pay the loan in full? Note: If a borrower is permitted to "rollover" four times before paying the loan in full, four new loans would be made to that borrower **after** the initial transaction. \_\_\_\_\_
- b) Do you permit borrowers to payoff a loan and take out a new loan on the same day? \_\_\_\_\_

**SCHEDULE C: STATEMENT OF ASSETS, LIABILITIES AND EQUITY**  
**FOR THE LICENSED LEGAL ENTITY**  
**AS OF DECEMBER 31, 2004**

**ASSETS**

Cash and Cash Equivalents ..... \$ \_\_\_\_\_

    Finance Receivables – Consumer Loans \*.....\$ \_\_\_\_\_

    Finance Receivables – Sales Contracts.....\$ \_\_\_\_\_

    Finance Receivables – Other Loans.....\$ \_\_\_\_\_

    Less: Loan Loss Reserve .....(\$ \_\_\_\_\_)

    Less: Unearned Income.....(\$ \_\_\_\_\_)

Net Finance Receivables.....\$ \_\_\_\_\_

Net Leasehold Improvements .....\$ \_\_\_\_\_

Net Fixed Assets .....\$ \_\_\_\_\_

Notes Receivable From Related Parties (Identify Related Parties).....\$ \_\_\_\_\_

Intangible Assets.....\$ \_\_\_\_\_

Other Assets (Specify and Include Itemization) .....\$ \_\_\_\_\_

    Total Assets .....\$ \_\_\_\_\_

**LIABILITIES AND EQUITY**

Notes Payable to Related Parties .....\$ \_\_\_\_\_

Other Notes Payable .....\$ \_\_\_\_\_

Other Liabilities (Specify and Include Itemization).....\$ \_\_\_\_\_

    Total Liabilities.....\$ \_\_\_\_\_

Capital Stock (if Corporation).....\$ \_\_\_\_\_

Additional Paid in Capital.....\$ \_\_\_\_\_

Retained Earnings.....\$ \_\_\_\_\_

Less Treasury Stock.....(\$ \_\_\_\_\_)

Net Income/Loss .....\$ \_\_\_\_\_

    Total Equity .....\$ \_\_\_\_\_

    Total Liabilities and Equity .....\$ \_\_\_\_\_

\* Consumer Loans include loans subject to Section 138.09, Wis. Stats.

**SCHEDULE D: STATEMENT OF INCOME AND EXPENSE**  
**FOR THE LICENSED LEGAL ENTITY**  
**FOR THE YEAR ENDING DECEMBER 31, 2004**

**INCOME**

Finance Income..... \$ \_\_\_\_\_  
Collection on Accounts Previously Charged Off..... \$ \_\_\_\_\_  
Other Income (Specify and Include Itemization)..... \$ \_\_\_\_\_  
Total Income..... \$ \_\_\_\_\_

**EXPENSE**

Interest Expense..... \$ \_\_\_\_\_  
Bad Debt Expense..... \$ \_\_\_\_\_  
Other Operating Expenses..... \$ \_\_\_\_\_  
Income Tax Expense..... \$ \_\_\_\_\_  
Total Expenses..... \$ \_\_\_\_\_

**NET INCOME (LOSS)**..... \$ \_\_\_\_\_

**AFFIDAVIT**

I, \_\_\_\_\_, the undersigned, being the duly authorized representative of  
(Print Name of Key Officer/Member/Partner/Owner)

\_\_\_\_\_ hereby certify that each statement and representation in this  
(Name of Licensee)  
annual report is true and correct to the best of my knowledge.

\_\_\_\_\_  
(Signature of Key Officer/Member/Partner/Owner) (Title) (Date)

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Notary Public)  
My Commission Expires: \_\_\_\_\_

**Notice:** Completion of this form is required under Section 138.09, Wisconsin Statutes. Failure to comply may result in further action by our Department. Personal information you provide may be used for secondary purposes.

This document can be made available in alternate formats upon request to qualifying individuals with disabilities.







Home > Newsroom > Press Releases

Legislative Issues

Press Releases

Administrative Orders  
Issued

Weekly Securities Filings

 Index

## Press Releases

### For Immediate Release

April 16, 2004

Contact: Cheryl Weiss  
(608) 264-7875

## Predatory Lending Bill Signed into Law

### *Governor Doyle signs bill increasing restrictions on lenders who make high cost mortgage loans*

(Madison) - Governor Doyle drew applause from industry representatives and consumer advocates when he signed Assembly Bill 792, the predatory lending bill. The Secretary of the Department of Financial Institutions, Lorrie Keating Heinemann, congratulated the Governor saying, "Assembly Bill 792 is a great example of meaningful legislation combating an issue that negatively impacts our communities," and added, "I am so pleased that all the interested parties worked with the legislators to deliver this bill to Governor Doyle."

Among other provisions, Assembly Bill 792:

- Increases the number of loans that fall under the new restrictions by expanding the definition of a "high cost mortgage loan";
- Requires a lender to consider a borrower's ability to repay the high cost loan, not merely the equity in their home;
- Limits prepayment penalties to within the first 36 months of the loan and requires the option of a loan without a prepayment penalty;
- Prohibits balloon payments, the financing of single premium credit insurance, the refinancing of zero interest loans, loan flipping and the enforcement of security interests on household goods;
- Provides parity for state-chartered, federally insured depository institutions.

"Homeowners are the cornerstone of our economy and these new

restrictions help prevent them from being taken advantage of," Keating Heinemann added.

Governor Doyle also vetoed Assembly Bill 665, which made some changes to the regulations of the payday lending industry. Secretary Keating Heinemann stated, "We did not feel that AB 665 would be an effective piece of legislation" and added, "many states have found a way to protect consumers from getting trapped into long-term payday debt while maintaining a profitable payday lending sector. We can achieve that type of compromise in Wisconsin."

Wisconsin is one of only a few states that do not have stricter regulations on the payday lending industry. For example, Assembly Bill 665 included a maximum loan amount of \$5,000 whereas the average maximum amount across other states with payday lending laws is around \$500. The bill included a limit on loan rollovers but not an enforcement mechanism for that limit or a limit on the number of loans a borrower may have out at one time.

Also enacted were:

- Assembly Bill 793, which exempts all intangible property, such as bank accounts, of a nonresident decedent from Wisconsin's estate tax.
- Assembly Bill 890, which allows members of a nonprofit corporations to meet and vote by electronic communications.
- Assembly Bill 279, which sets competency exam and continuing education requirements for loan originators.
- Senate Bill 320, which puts in place safeguards in annuity transactions involving senior citizens.
- Senate Bill 326, which bans the deceptive or misleading use of logos from a state bank, savings and loan or credit union in marketing materials.
- Senate Bill 381, which allows state banking regulators to accept federal regulatory examinations of state savings banks, as allowed in current law for other state-chartered institutions.
- Senate Bill 492, which the "Uniform Prudent Investor Act" in Wisconsin giving personal representatives, trustees, conservators and guardians of estates more investment flexibility.



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approval thereto. Notwithstanding s. 625.22 (1), the commissioner, within 30 days after the filing of any such form, may disapprove such form or rate schedule if the benefits provided are unreasonable in relation to the premiums to be charged, or if the form contains a provision which is unjust, unfair, inequitable, misleading, deceptive or encourages misrepresentation of the policy, or is contrary to chs. 600 to 646 or any rule adopted thereunder.

The benefits provided by any such policy shall be presumed reasonable in relation to the premium to be charged if the ratio of losses incurred to premiums earned is, or may reasonably be expected to be, 50% for credit life insurance and 60% for credit accident and sickness insurance, or such lower loss ratios as designated by the commissioner to afford reasonable allowance for expenses for a particular plan of coverage. If the ratio of losses incurred to premiums earned is less than or can reasonably be expected to be less than the prescribed standards, the benefits provided shall be presumed unreasonable in relation to the premiums charged. Determination of the reasonable relation of benefits to premiums shall be made by the commissioner for each policy form filed for such approval. Premium rate standards for other benefit plans shall be actuarially consistent with the prescribed rate standards. The commissioner may limit the use of any such form for those creditors or customers whose experience was the basis for approval and such other creditors or customers likely to experience similar mortality or morbidity.

(2) Not later than 6 months after March 1, 1973, the commissioner of insurance, by rule, shall adopt premium rates for credit life and credit accident and sickness insurance based upon the loss ratio standards set forth in sub. (1), which rates shall be acceptable without further justification. No charge may be made for credit life or credit accident and sickness insurance which exceeds such premium rates except as provided in this subsection. The commissioner of insurance from time to time shall raise or lower the acceptable premium charges permitted for such insurance for any particular creditor, class of creditor or class of transaction whenever the commissioner determines that the actual loss experience for that particular creditor, class of creditor or class of transactions produces a ratio of losses to premiums which differs substantially, based on credible data for a relevant period of time, from the loss ratio standards established by sub. (1).

(3) No individual policy of credit accident and sickness insurance or group policy of credit accident and sickness insurance may be delivered or issued for delivery in this state if the benefits are payable after a waiting period of less than 14 days, regardless of whether the payment of benefits is retroactive to the first day of disability.

(4) If a group credit life insurance policy or group credit accident and sickness insurance policy is delivered to a policyholder which is not a Wisconsin corporation or other resident and does not have its principal office in Wisconsin, the forms to be filed by the insurer with the commissioner of insurance are the group certificates and notices of proposed insurance. The commissioner of insurance shall approve them if:

(a) They provide the information that would be required if the group policy were delivered in this state;

(b) The applicable premium rates or charges do not exceed those established by chs. 421 to 427 or by rules adopted thereunder; and

(c) They do not contain provisions which are unjust, unfair, inequitable or deceptive, or encourage misrepresentation of the coverages, or are contrary to chs. 600 to 646, or of any rule adopted thereunder.

History: 1971 c. 239; 1973 c. 3; 1977 c. 339 s. 43; 1979 c. 89; 1991 a. 316; 1993 a. 325.

### SUBCHAPTER III

### PROPERTY INSURANCE

**424.301 Restrictions on property insurance.** (1) A creditor may not contract for a separate charge or receive a separate charge for insurance against loss of or damage to property in which the creditor holds a security interest or to property leased under a motor vehicle consumer lease unless all of the following conditions are met:

(a) The insurance covers a substantial risk of loss or damage to property which is allowable collateral under s. 422.417 for the credit transaction.

(b) The amount of the insurance does not exceed any of the following:

1. The actual cash value or stated value of any motor vehicle or mobile home in which the creditor holds a security interest.

2. The cash value or replacement value of any property in which the creditor holds a purchase money security interest.

3. The stated amount of the customer's credit line if the purchase money security interest secures transactions pursuant to an open-end credit plan.

5. In any other transaction, the total payments or, if the transaction is for a term of 49 months or more, the amount financed.

(c) The term of the insurance is reasonable in relation to the terms of credit.

(1m) The limitations of subs. (1) and (2) and s. 422.202 (1) (b) do not apply to property insurance on some or all of the property in which the creditor holds a security interest if the creditor does not require any insurance on the property and if the creditor is not designated a loss payee in the policy. Subsection (3) does not apply to a credit transaction solely to finance the purchase of such property insurance.

(2) The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

(3) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed exclusive of charges for the insurance is \$800 or more, and the value of the property is \$800 or more.

(4) (a) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to the customer's property in which the creditor does not hold a security interest if any of the following apply:

1. The creditor sells the customer insurance described in sub. (1) covering some or all of the same property, except as provided in sub. (1m).

2. The amount of the insurance exceeds the amount by which the value of the property exceeds the amount of insurance against loss or damage to the property which the customer has in force at the time the consumer credit transaction is consummated.

(b) If the customer purchases property insurance in addition to that already in force, the value of the customer's property shall be verified by the customer's written statement or an appraisal or a bill of sale.

(5) A violation of this section is subject to s. 425.303.

History: 1971 c. 239; 1973 c. 3; 1985 a. 256; 1995 a. 329; 1997 a. 302.

**Legislative Council Note, 1973:** [As to sub. (1) (a)] Clarifies the scope of allowable property insurance. This paragraph sets forth one of the conditions necessary for property insurance. However, as it reads prior to amendment, no insurance could be taken on any household furnishings, regardless of whether the transaction involved a security interest in them. The effect of the amendment is to allow insurance on any permitted collateral, regardless of its nature. Therefore, if a creditor has a security interest in household furnishings, he will be able to protect his interest by the use of insurance against loss or damage. [Bill 432-A]

**424.302 Insurance on creditor's interest only.** If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the customer is on the debtor only to the extent of any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor.

History: 1971 c. 239.

424.303 INSURANCE

**424.303 Cancellation by creditor.** (1) A creditor shall not request cancellation of a policy of property or liability insurance except after the customer's default (s. 425.103), or in accordance with a written agreement by the customer at any time other than when the original transaction is entered into. In either case the cancellation does not take effect until written notice is delivered to the customer or mailed to the customer at an address as stated by the customer. The notice shall state that the policy may be canceled on a date not less than 30 days after the notice is delivered, or, if the notice is mailed, not less than 33 days after it is mailed.

(2) Following cancellation, the customer shall be entitled to a rebate or credit for any prepaid charges which represent the premium for a period following cancellation.

(3) This section shall not apply to a contract issued by an insurance premium finance company licensed under s. 138.12.  
History: 1971 c. 239; 1973 c. 3; 1991 a. 316.

**424.304 Cancellation by customer.** (1) Following the sale of any insurance product under s. 422.202 (1) (b), the customer has the right to cancel the insurance until 30 days after the policy is mailed or otherwise delivered to the customer. The creditor shall provide the customer a notice in duplicate in the form set forth in subs. (2) and (3).

(2) The notice required by sub. (1) shall be in substantially the following form:

CUSTOMER'S RIGHT TO SUBSTITUTE PROPERTY OR LIABILITY INSURANCE

You may cancel the property or liability insurance which you purchased through .... (name and address of lender) to insure the collateral securing your loan dated .... (date). To cancel, you must mail or deliver a written notice, together with the original policy for the property or liability insurance, to us before midnight of the 30th day after the date our policy was mailed or otherwise delivered to you. In addition, you must include a copy of a policy or endorsement for substitute insurance from another insurance company, such as the company insuring your home, that provides the same coverage and that names our company as loss payee. If you cancel and you do not provide evidence of substitute insurance to us with your notice or within 7 days after sending a cancellation notice to us, we may purchase other insurance to cover our risk and charge you for it.

If you wish, you may use this page as your written notice by writing "I hereby cancel this insurance" and adding your name, address and the date. This page, the original policy and a copy of the substitute policy or endorsement showing our company as loss payee must be sent or delivered to us before midnight on the 30th day after the date our policy was mailed or otherwise delivered to you. Keep the copy of this page for your records.

If you cancel this insurance, you may elect to receive either a check for the insurance premiums or a credit against your loan balance in the amount of the insurance premiums and the amount of applicable finance charge. Check which of the following you elect:

1. .... I want you to send me a check in the amount of \$.... (amount of insurance premiums) for the insurance premiums.

2. .... I want you to credit my loan balance in the amount of \$.... (amount of insurance premiums) which is the amount of the insurance premiums, plus the amount of applicable finance charge.

(3) A creditor may elect to provide only a credit to a customer who cancels insurance under this section. If a creditor so elects, the creditor shall delete the last paragraph of the notice under sub. (2) and shall substitute the following: "If you cancel this insurance, we will credit your loan balance in the amount of \$.... (amount of insurance premiums), which is the amount of the insurance premiums, plus the amount of applicable finance charge."

(4) Any customer who cancels and substitutes insurance within the 30-day period under sub. (1) is entitled to a credit or

payment under s. 424.402. Any insurance policy covered by the notice shall be void as of the date of purchase, unless a loss has occurred, upon mailing or delivery of the notice of cancellation by the customer and all rights under the policy shall terminate. The creditor shall promptly provide the customer with a credit or payment, as applicable, even if the original policy does not accompany the notice of cancellation.

(5) A violation of this section is subject to s. 425.303.  
History: 1985 a. 256.

SUBCHAPTER IV

OTHER INSURANCE PRODUCTS

**424.401 Cancellation by customer.** (1) Following the sale of any insurance product under s. 422.202 (2s) (a) 2., including insurance described in s. 424.301 (1m), or, if for a term of more than one year, any future service or motor club service contracts under s. 422.202 (2s) (a) 3., the customer has the right to cancel the products or contracts until 30 days after the insurance policy, future service contract or motor club service contract is mailed or otherwise delivered to the customer. The creditor shall provide the customer a notice in duplicate in the form set forth in subs. (2) and (3).

(2) The notice required by sub. (1) shall be in substantially the following form:

CUSTOMER'S RIGHT TO CANCEL OPTIONAL .... (INSURANCE, FUTURE SERVICE CONTRACT OR MOTOR CLUB SERVICE CONTRACT)

You may cancel the optional .... (insurance, future service contract or motor club service contract) which you purchased and financed through .... (name and address of lender) on .... (date). To cancel, you must mail or deliver a written notice to us before midnight of the 30th day after the date this .... (insurance policy or service contract) was mailed or otherwise delivered to you.

If you wish, you may use this page as your written notice by writing "I hereby cancel this .... (insurance or service contract)" and adding your name, address and the date. This page and the original .... (policy or contract) must be sent or delivered to us before midnight on the 30th day after the date the .... (insurance policy or service contract) was mailed or otherwise delivered to you. Keep the copy of this page for your records.

If you cancel this .... (insurance or service contract), you may elect to receive either a check for the .... (insurance premiums or service contract charges), or a credit against your loan balance in the amount of the .... (insurance premiums or service contract charges) plus the amount of applicable finance charge. Check which of the following you elect:

1. .... I want you to send me a check in the amount of \$.... (amount of insurance premiums or service contract charges) for the .... (insurance premiums or service contract charges).

2. .... I want you to credit my loan balance in the amount of \$.... (amount of insurance premiums or service contract charges), which is the amount of the .... (insurance premiums or service contract charges), plus the amount of applicable finance charge.

(3) A creditor may elect to provide only a credit to a customer who cancels insurance or a service contract under this section. If a creditor so elects, the creditor shall delete the last paragraph of the notice under sub. (2) and shall substitute the following: "If you cancel this .... (insurance or service contract), we will credit your loan balance in the amount of \$.... (amount of insurance premiums or service contract charges), which is the amount of \$.... (insurance premiums or service contract charges), plus the amount of applicable finance charge."

(4) Any person who cancels insurance or a service contract within the 30-day period under sub. (1) is entitled to a credit or payment under s. 424.402. Any insurance policy or service contract covered by the notice is void as of the date of purchase upon mailing or delivery of the notice of cancellation by the customer

and all rights under the policy or contract shall terminate. The creditor shall promptly provide the customer with a refund or credit, as applicable, even if the original policy or contract does not accompany the notice of cancellation.

(5) A violation of this section is subject to s. 425.303.

History: 1985 a. 256.

**424.402 Insurance cancellation credit or payment.**

(1) Any customer who cancels insurance or a service contract under s. 424.304 or 424.401 shall receive one of the following:

(a) A credit against the balance of the customer's obligation or account in the amount of the insurance premiums or service contract charges plus that portion of the finance charge attributable to the insurance premiums or service contract charges.

(b) A payment in the amount of the full amount of the insurance premiums or service contract charges, which amount shall continue to be part of the customer's obligation, if the creditor offers and the customer elects this option.

(2) With respect to the application of a credit under sub. (1) (a) to a customer's obligation for a consumer credit transaction other than one pursuant to an open-end credit plan, a merchant shall do one of the following:

(a) If the obligation is for a consumer credit transaction other than a precomputed consumer loan, apply the credit in one of the following ways:

1. First against the final installment due on the customer's obligation and then to the preceding installments in the reverse order in which they are due.

2. Against the balance of the customer's obligation and proportionately reduce the amount of each remaining installment.

(b) If the obligation is for a precomputed consumer loan, apply the credit against the balance of the customer's obligation, compute and apply a refund of the finance charge, less the portion included in the credit, in the manner described in s. 422.209 (2) as of the date of the loan or the nearest scheduled installment due date, and thereafter charge interest at a rate not to exceed the annual percentage rate of finance charge which was disclosed to the customer when the loan was made.

(3) If a credit under sub. (1) (a) is applied to a precomputed consumer loan, the finance charge resulting after application of the credit shall be the finance charge for the precomputed consumer loan, but the cancellation shall not otherwise alter the customer's obligation for the precomputed consumer loan.

(4) A contract between an insurer and a creditor may not provide for a refund to the creditor upon cancellation by a customer under s. 424.304 or 424.401 in an amount less than the amount of the insurance premiums that the creditor must credit to the customer's account or pay to the customer under sub. (1).

(5) A violation of this section is subject to s. 425.303.

History: 1985 a. 256.

SUBCHAPTER V

INSURANCE PRACTICES

**424.501 False, misleading or deceptive insurance solicitation.**

(1) A creditor may not solicit or offer for sale any insurance product in connection with a consumer credit transaction in any manner that is false, misleading or deceptive or that omits to state material information with respect to the insurance or the consumer credit transaction that is necessary to make the solicitation or offer not false, misleading or deceptive.

(2) It is not a violation of sub. (1) to use printed materials or forms that have been approved for use by the office of the commissioner of insurance.

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

History: 1985 a. 256.

**424.502 Insurance commissions; limitations.** A creditor or insurer may not pay to an employee of the creditor who participates in the processing of consumer credit transactions any commission or bonus that exceeds an amount equal to 25% of the employee's annual earnings for the sale of insurance in connection with those consumer credit transactions. Insurance does not include a warranty plan for which the commissioner of insurance has issued a limited certificate of authority pursuant to rule promulgated under s. 600.01 (1) (b) 5.

History: 1985 a. 256.

SUBCHAPTER VI

ADMINISTRATION

**424.601 Cooperation between administrator and commissioner of insurance.**

The administrator and the commissioner of insurance shall consult and assist one another in maintaining compliance with this chapter. They may jointly or severally pursue investigations, prosecute suits and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the administrator is informed of a violation or suspected violation by an insurer of this chapter, or of chs. 600 to 646, rules and regulations of this state, the administrator shall advise the commissioner of insurance of the circumstances, and the commissioner of insurance may act under the laws of this state.

History: 1971 c. 239; 1973 c. 3; 1977 c. 339 s. 43; 1979 c. 89; 1985 a. 256 s. 14; Stats. 1985 s. 424.601.

**424.602 Administrative action of commissioner of insurance.**

To the extent that the commissioner of insurance's responsibility under this chapter requires, the commissioner shall issue rules with respect to insurers and with respect to refunds (s. 424.205), forms, schedules of premium rates and charges (s. 424.209), and the commissioner's approval or disapproval thereof and, in case of violation, may make an order for compliance.

History: 1971 c. 239; 1985 a. 256 s. 16; Stats. 1985 s. 424.602; 1991 a. 316.





## CHAPTER 424

### CONSUMER TRANSACTIONS — INSURANCE

	SUBCHAPTER I GENERAL PROVISIONS	424.302 Insurance on creditor's interest only.
424.101	Short title.	424.303 Cancellation by creditor.
424.102	Scope.	424.304 Cancellation by customer.
424.103	Application of general definitions.	
	SUBCHAPTER II CONSUMER CREDIT INSURANCE	SUBCHAPTER IV OTHER INSURANCE PRODUCTS
424.201	Definition "consumer credit insurance".	424.401 Cancellation by customer.
424.202	Charge for insurance.	424.402 Insurance cancellation credit or payment.
424.203	Conditions applying to insurance to be provided by creditor.	SUBCHAPTER V INSURANCE PRACTICES
424.204	Maximum charge by creditor for insurance.	424.501 False, misleading or deceptive insurance solicitation.
424.205	Refund or credit required.	424.502 Insurance commissions; limitations.
424.206	Deferral, refinancing and consolidation agreements.	SUBCHAPTER VI ADMINISTRATION
424.207	Term of insurance.	424.601 Cooperation between administrator and commissioner of insurance.
424.208	Amount of insurance.	424.602 Administrative action of commissioner of insurance.
424.209	Filing and approval of rates and forms.	
	SUBCHAPTER III PROPERTY INSURANCE	
424.301	Restrictions on property insurance.	

Cross-reference: See definitions in s. 421.301.

#### SUBCHAPTER I GENERAL PROVISIONS

**424.101 Short title.** This chapter shall be known and may be cited as Wisconsin consumer act—insurance.

History: 1971 c. 239.

**424.102 Scope.** This chapter applies to agreements between a creditor and a debtor under which insurance is provided or is to be provided in relation to consumer credit transactions.

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

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

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

**424.103 Application of general definitions.** The definitions in s. 421.301 shall apply to this chapter.

History: 1973 c. 3; 1981 c. 390 s. 252.

#### SUBCHAPTER II CONSUMER CREDIT INSURANCE

**424.201 Definition "consumer credit insurance".** "Consumer credit insurance" means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include:

(1) Insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring customers of the creditor;

(2) Insurance indemnifying the creditor against loss due to the customer's default; or

(3) With respect to a motor vehicle consumer lease, a lessor's waiver of its contractual right to hold the lessee liable for any or all of the gap amount, as defined in s. 429.104 (12), if the waiver is granted without a separate charge.

History: 1971 c. 239; 1973 c. 3; 1985 a. 256; 1995 a. 329.

**424.202 Charge for insurance.** (1) Except as otherwise provided in this chapter and subject to the provisions on additional charges (s. 422.202), and maximum charges (s. 422.201) a creditor may agree to provide insurance, and may contract for and receive a charge for insurance separate from and in addition to

other charges. A creditor need not make a separate charge for insurance provided or required by the creditor.

(2) This chapter does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

History: 1971 c. 239; 1991 a. 316.

**424.203 Conditions applying to insurance to be provided by creditor.** (1) When the parties agree that consumer credit insurance shall be provided, at the time the indebtedness is incurred there shall be delivered to the customer the individual policy, a group certificate of insurance, a copy of the application for such insurance or a notice of proposed insurance.

(2) The evidence of insurance provided pursuant to sub. (1) shall set forth the name and home office address of the insurer, the name or names of the customers, the premium or amount of payment by the customer, if any, separately for credit life insurance and credit accident and sickness insurance, the amount, term and a brief description of the coverage provided, including all exclusions and exceptions.

(3) Within 30 days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the customer if it is not delivered at the time the indebtedness is incurred.

(4) Within 10 days from the date the indebtedness is incurred, the customer shall be permitted to return the policy, certificate of insurance or the notice of proposed insurance to the creditor and to receive a refund of any premium paid for the insurance if the customer is not satisfied with the insurance for any reason. Such insurance shall then be void and the parties will be in the same position as if no certificate, policy or notice of proposed insurance had been issued. Conspicuous notice of the right to return the policy, certificate of insurance or notice of proposed insurance shall be furnished with or in the policy, certificate or notice of proposed insurance.

(5) A violation of this section is subject to s. 425.303.

History: 1971 c. 239; 1973 c. 3 ss. 59, 69; 1991 a. 316.

**424.204 Maximum charge by creditor for insurance.**

(1) Except as provided in sub. (2), if a creditor contracts for or receives a charge for insurance, the amount charged for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the customer is determined, conforming to any rate filings required by law and made by the insurer with the commissioner of insurance.

## CHAPTER 425

### CONSUMER TRANSACTIONS — REMEDIES AND PENALTIES

#### SUBCHAPTER I CREDITORS' REMEDIES

- 425.101 Short title.
- 425.102 Scope.
- 425.103 Accrual of cause of action; "default".
- 425.104 Notice of customer's right to cure default.
- 425.105 Cure of default.
- 425.106 Exempt property.
- 425.107 Unconscionability.
- 425.108 Extortionate extensions of credit.
- 425.109 Pleadings.
- 425.110 No discharge from employment for garnishment.
- 425.111 Levy before judgment.
- 425.112 Stay of execution.
- 425.113 Body attachments.

- #### SUBCHAPTER II ENFORCEMENT OF SECURITY INTERESTS IN COLLATERAL
- 425.201 Scope.
  - 425.202 Definition: "collateral".
  - 425.203 Enforcement of merchant's rights in collateral and leased goods.
  - 425.204 Voluntary surrender of collateral.
  - 425.205 Action to recover collateral.

- 425.206 Nonjudicial enforcement limited.
- 425.207 Restraining order to protect collateral or leased goods; abandoned property.
- 425.208 Customer's right to redeem.
- 425.209 Restrictions on deficiency judgments.
- 425.210 Computation of deficiency.

#### SUBCHAPTER III CUSTOMER'S REMEDIES

- 425.301 Remedies to be liberally administered.
- 425.302 Remedy and penalty for certain violations.
- 425.303 Remedy and penalty for certain violations.
- 425.304 Remedy and penalty for certain violations.
- 425.305 Transactions which are void.
- 425.306 Unenforceable obligations.
- 425.307 Limitation of action.
- 425.308 Reasonable attorney fees.
- 425.309 Class actions.
- 425.310 Liability of corporate officers.
- 425.311 Evidence of violation.

#### SUBCHAPTER IV CRIMINAL PENALTIES

- 425.401 Willful violations: misdemeanor.

Cross-reference: See definitions in s. 421.301.

#### SUBCHAPTER I

#### CREDITORS' REMEDIES

**425.101 Short title.** This chapter shall be known and may be cited as the Wisconsin consumer act—remedies and penalties.

History: 1971 c. 239.

**425.102 Scope.** This subchapter applies to actions or other proceedings brought by a creditor to enforce rights arising from consumer credit transactions and to extortionate extensions of credit under s. 425.108.

History: 1971 c. 239.

Wisconsin consumer act—a critical analysis. Heiser, 57 MLR 389.  
Wisconsin consumer act—a freak out? Barrett, Jones, 57 MLR 483.

**425.103 Accrual of cause of action; "default".** (1) Notwithstanding any term or agreement to the contrary, no cause of action with respect to the obligation of a customer in a consumer credit transaction shall accrue in favor of a creditor except by reason of a default, as defined in sub. (2).

(2) "Default", with respect to a consumer credit transaction, means without justification under any law:

(a) With respect to a transaction other than one pursuant to an open-end plan; if the interval between scheduled payments is 2 months or less, to have outstanding an amount exceeding one full payment which has remained unpaid for more than 10 days after the scheduled or deferred due dates, or the failure to pay the first payment or the last payment, within 40 days of its scheduled or deferred due date; if the interval between scheduled payments is more than 2 months, to have all or any part of one scheduled payment unpaid for more than 60 days after its scheduled or deferred due date; or, if the transaction is scheduled to be repaid in a single payment, to have all or any part of the payment unpaid for more than 40 days after its scheduled or deferred due date. For purposes of this paragraph the amount outstanding shall not include any delinquency or deferral charges and shall be computed by applying each payment first to the installment most delinquent and then to subsequent installments in the order they come due;

(b) With respect to an open-end plan, failure to pay when due on 2 occasions within any 12-month period; or

(c) To observe any other covenant of the transaction, breach of which materially impairs the condition, value or protection of or the merchant's right in any collateral securing the transaction or goods subject to a consumer lease, or materially impairs the customer's ability to pay amounts due under the transaction.

(3) A cause of action with respect to the obligation of a customer in a consumer credit transaction shall be subject to this subchapter, including the provisions relating to cure of default (ss. 425.104 and 425.105).

(4) A cause of action arising from a transaction which resulted in the creation of a security interest in personal property shall also be subject to the limitations provided in subch. II.

History: 1971 c. 239; 1973 c. 3; 1975 c. 407; 1979 c. 10; 1995 a. 225; 1997 a. 302.

When a lender was promptly informed that a borrower had a valid disability insurance claim that would cover payments, it was an unconscionable practice to include an unpaid monthly charge that would be covered by the disability insurance in computing the unpaid balance for purposes of establishing default. *Bank One Milwaukee, N.A. v. Harris*, 209 Wis. 2d 412, 563 N.W.2d 543 (Ct. App. 1997), 96-0903.

Creditor's remedies under the Wisconsin consumer act. 1973 WBB No. 6.

**425.104 Notice of customer's right to cure default.**

(1) A merchant who believes that a customer is in default may give the customer written notice of the alleged default and, if applicable, of the customer's right to cure any such default (s. 425.105).

(2) Any notice given under this section shall contain the name, address and telephone number of the creditor, a brief identification of the consumer credit transaction, a statement of the nature of the alleged default and a clear statement of the total payment, including an itemization of any delinquency charges, or other performance necessary to cure the alleged default, the exact date by which the amount must be paid or performance tendered and the name, address and telephone number of the person to whom any payment must be made, if other than the creditor.

History: 1971 c. 239.

Notice need not be given if the obligation is entirely past due and fully owed, making it impossible for the customer to restore the loan to current status. *Rosendale State Bank v. Schultz*, 123 Wis. 2d 195, 365 N.W.2d 911 (Ct. App. 1985).

**425.105 Cure of default.** (1) A merchant may not accelerate the maturity of a consumer credit transaction, commence any action except as provided in s. 425.205 (6), or demand or take possession of collateral or goods subject to a consumer lease other than by accepting a voluntary surrender thereof (s. 425.204), unless the merchant believes the customer to be in default (s. 425.103), and then only upon the expiration of 15 days after a

425.105 REMEDIES AND PENALTIES

notice is given pursuant to s. 425.104 if the customer has the right to cure under this section.

(2) Except as provided in sub. (3), for 15 days after such notice is given, a customer may cure a default under a consumer credit transaction by tendering the amount of all unpaid installments due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges, and by tendering performance necessary to cure any default other than nonpayment of amounts due. The act of curing a default restores to the customer the customer's rights under the agreement as though no default had occurred.

(3) A right to cure shall not exist if the following occurred twice during the preceding 12 months:

(a) The customer was in default on the same transaction or open-end credit plan;

(b) The creditor gave the customer notice of the right to cure such previous default in accordance with s. 425.104; and

(c) The customer cured the previous default.

(4) With respect to consumer credit transactions in which the creditor has a security interest in, and possession of, instruments or documents, as each is defined in s. 409.102 (1), which threaten to decline speedily in value, this section does not restrict the creditor's rights to dispose of such property pursuant to subch. VI of ch. 409 and the terms of the creditor's security agreement.

History: 1971 c. 239; 1975 c. 407, 421; 1991 a. 316; 2001 a. 10.

**425.106 Exempt property.** (1) Except to the extent that the merchant has a valid security interest which is permitted by chs. 421 to 427 and 429 or has a lien under ch. 779 in such property, or where the transaction is for medical or legal services and there has been no finance charge actually imposed, the following property of the customer shall be exempt from levy, execution, sale, and other similar process in satisfaction of a judgment for an obligation arising from a consumer credit transaction:

(a) Unpaid earnings to the extent provided in s. 812.34.

(b) Clothing of the customer or his or her dependents, and the following: dining table and chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch and chairs, cooking utensils and kitchenware and 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 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);

(c) Real property used as the principal residence of the customer or the customer's dependents, to the extent that the fair market value of such property, less all amounts secured by mortgages and liens outstanding against it, is \$15,000 or less; and

(d) Earnings or other assets of the customer which are required to be paid by the customer as restitution under s. 973.20.

(2) With respect to process against marital property in satisfaction of a judgment for an obligation described under s. 766.55 (2) (b) arising from a consumer credit transaction, each spouse is entitled to and may claim the exemptions under sub. (1). Each spouse is entitled to one exemption under sub. (1) (c). That exemption is limited to the specified maximum dollar amount, which may be combined with the other spouse's exemption in the same property or applied to different property included under the same exemption.

(3) Nothing in this section shall be construed to displace other provisions of law which afford additional or greater protection to the customer.

(4) An order or process in violation of this section is void.

History: 1971 c. 239; 1973 c. 2, 3; 1979 c. 32 s. 92 (9); 1979 c. 89, 177, 221; 1983 a. 36; 1985 a. 37, 256; 1987 a. 398; 1991 a. 316; 1993 a. 80; 1995 a. 329.

NOTE: As to sub. (2), see notes in 1985 Wis. Act 37, marital property trailer bill.

A proposal for monitoring the impact of increased wage garnishment exemptions under the Wisconsin consumer act. 1974 WLR 466.

**425.107 Unconscionability.** (1) With respect to a consumer credit transaction, if the court as a matter of law finds that any aspect of the transaction, any conduct directed against the customer by a party to the transaction, or any result of the transaction is unconscionable, the court shall, in addition to the remedy and penalty authorized in sub. (5), either refuse to enforce the transaction against the customer, or so limit the application of any unconscionable aspect or conduct to avoid any unconscionable result.

(2) Specific practices forbidden by the administrator in rules promulgated pursuant to s. 426.108 shall be presumed to be unconscionable.

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

(a) That the practice unfairly takes advantage of the lack of knowledge, ability, experience or capacity of customers;

(b) That those engaging in the practice know of the inability of customers to receive benefits properly anticipated from the goods or services involved;

(c) That there exists a gross disparity between the price of goods or services and their value as measured by the price at which similar goods or services are readily obtainable by other customers, or by other tests of true value;

(d) That the practice may enable merchants to take advantage of the inability of customers reasonably to protect their interests by reason of physical or mental infirmities, illiteracy or inability to understand the language of the agreement, ignorance or lack of education or similar factors;

(e) That the terms of the transaction require customers to waive legal rights;

(f) That the terms of the transaction require customers to unreasonably jeopardize money or property beyond the money or property immediately at issue in the transaction;

(g) That the natural effect of the practice would reasonably cause or aid in causing customers to misunderstand the true nature of the transaction or their rights and duties thereunder;

(h) That the writing purporting to evidence the obligation of the customer in the transaction contains terms or provisions or authorizes practices prohibited by law; and

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

(4) Any charge or practice expressly permitted by chs. 421 to 427 and 429 is not in itself unconscionable but even though a practice or charge is authorized by chs. 421 to 427 and 429, the totality of a creditor's conduct may show that such practice or charge is part of an unconscionable course of conduct.

(5) In addition to the protections afforded in sub. (1), the customer shall be entitled upon a finding of unconscionability to recover from the creditor or the person responsible for the unconscionable conduct a remedy and penalty in accordance with s. 425.303.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.

When a lender was promptly informed that a borrower had a valid disability insurance claim that would cover payments, it was an unconscionable practice to include an unpaid monthly charge that would be covered by the disability insurance in computing the unpaid balance for purposes of establishing default. *Bank One Milwaukee, N.A. v. Harris*, 209 Wis. 2d 412, 563 N.W.2d 543 (Ct. App. 1997), 96-0903.

**425.108 Extortionate extensions of credit.** (1) If it is the understanding of the creditor and the customer during any time that an extension of credit is outstanding, that delay in making repayment could result in the use of violence to cause harm to the person or property of any person, the extension of credit shall be unenforceable in accordance with s. 425.305 and the customer shall additionally recover triple the penalty provided in s. 425.304 (1).

(2) If it is shown that an extension of credit was made at an annual rate exceeding that permitted by or referred to in s. 422.201 on maximum charges and that the creditor had a reputation for the use or threat of use of violence to cause harm to the person or property of any person to collect extensions of credit or to punish the nonrepayment thereof, it shall be presumed that the extension of credit was a violation under chs. 421 to 427 under sub. (1).

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

**425.109 Pleadings.** (1) A complaint by a creditor to enforce any cause of action arising from a consumer credit transaction shall include all of the following:

- (a) An identification of the consumer credit transaction.
- (b) A description of the collateral or leased goods, if any, which the creditor seeks to recover or has recovered.
- (c) A specification of the facts constituting the alleged default by the customer.
- (d) The actual or estimated amount of U.S. dollars or of a named foreign currency that the creditor alleges he or she is entitled to recover and the figures necessary for computation of the amount, including any amount received from the sale of any collateral.

(e) Except in an action to recover goods subject to a consumer lease, a statement that the customer has the right to redeem any collateral as provided in s. 425.208 (1) (intro.) and the actual or estimated amount of U.S. dollars or of a named foreign currency required for redemption, itemized in accordance with s. 425.208 (1) (a) to (d).

(f) Except in an action to recover goods subject to a consumer lease, the estimated amount of U.S. dollars or of a named foreign currency of any deficiency claim which may be available to the creditor following the disposition of any collateral recovered subject to the limitations of s. 425.209 or which the creditor seeks to recover and which the creditor intends to assert subject to the limitations of s. 425.210 if the customer fails to redeem the collateral.

(g) If the customer still has the right to cure a default under s. 425.105 pursuant to a notice given under s. 425.104, the total payment or other performance necessary to cure the alleged default and the exact date by which it must be made.

(h) An accurate copy of the writings, if any, evidencing the transaction, except that with respect to claims arising under open-end credit plans, a statement that the creditor will submit accurate copies of the writings evidencing the customer's obligation to the court and the customer upon receipt of the customer's written request therefor on or before the return date or the date on which the customer's answer is due.

(2) Upon the written request of the customer, the creditor shall submit accurate copies to the court and the customer of writings evidencing any transaction pursuant to an open-end credit plan upon which the creditor's claim is made and judgment may not be entered for the creditor unless the creditor does so.

(3) A judgment may not be entered upon a complaint which fails to comply with this section.

History: 1971 c. 239; 1983 a. 389; 1991 a. 236.

A stated amount owed as of a specific date with a per diem interest figure is not a sufficient statement of "the figures necessary for computation of the amount" as required by sub. (1) (d). A complaint is not sufficient under this section because it meets the general rules of notice pleading. *Household Finance Corp. v. Kohl*, 173 Wis. 2d 798, 496 N.W.2d 708 (Ct. App. 1993). See also *Bank One v. Ofojebe*, 2005 WI App 151, \_\_\_ Wis. 2d \_\_\_, \_\_\_ N.W.2d \_\_\_, 04-0902.

**425.110 No discharge from employment for garnishment.** (1) No employer shall discharge an employee because a merchant has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit transaction.

(2) If an employer violates this section, an employee shall recover back wages and be reinstated, if the employee files an action for such relief within 90 days of the employee's discharge.

History: 1971 c. 239.

**425.111 Levy before judgment.** (1) Prior to entry of judgment in an action subject to this subchapter, no process, other than a restraining order to protect collateral (s. 425.207), shall issue with respect to amounts that are owing or are claimed to be owing or may be owing to the customer by any 3rd person, whether by way of attachment, garnishment or other process.

(2) With respect to property of the customer other than that described in sub. (1), process may issue in accordance with ch. 811 to establish a lien, except that such process shall not be effective to take, or to divest the customer of possession of, the property until final judgment is entered.

(3) If the court finds that the creditor probably will recover on the action, and that the customer is acting, or is about to act, with respect to property of the customer upon which a lien has been established under sub. (2), in a manner which substantially impairs the creditor's prospects for satisfying the judgment against such property (s. 811.03), the court may issue an order restraining the customer from so acting with respect to that property until final judgment is entered.

History: 1971 c. 239; 1973 c. 2; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975).  
**Legislative Council Note, 1973:** Clarifies applicability of this subsection. Section 425.111 (1) refers to property of the customer subject to garnishment, and prescribes limitations on creditors' actions in relation to it. Sub. (2) refers to other property of the customer; however, the language struck by this amendment appears to make sub. (2) refer back to the same property dealt with by sub. (1), so it is deleted. [Bill 355-A]

**425.112 Stay of execution.** At the time of or at any time after the entry of a judgment in favor of a creditor against a customer in an action arising from a consumer transaction, the court, for cause and upon motion of a party or on its own motion, may stay enforcement of the judgment by order upon just and equitable conditions, and continue, modify or revoke the order as the interests of justice may require.

History: 1971 c. 239.

**425.113 Body attachments.** (1) No merchant shall cause or permit a warrant against the person of a customer to issue under ch. 816 with respect to a claim arising from a consumer credit transaction. Any process issued in violation of this section is void.

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

History: 1971 c. 239; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975).

**Cross Reference:** See also s. DFI-Bkg 80.66, Wis. adm. code.

If s. 425.113 were to be interpreted to remove a court's power to issue a body attachment for one who chooses to ignore its orders, the interpretation would cause the statute to be unconstitutional as a violation of the principle of separation of powers. *Smith v. Burns*, 65 Wis. 2d 638, 223 N.W.2d 562 (1974).

## SUBCHAPTER II

### ENFORCEMENT OF SECURITY INTERESTS IN COLLATERAL

**425.201 Scope.** This subchapter applies to the enforcement by a creditor of security interests in collateral.

History: 1971 c. 239.

**425.202 Definition: "collateral."** For purposes of this chapter, "collateral" means goods subject to a security interest in favor of a merchant which secures a customer's obligations under a consumer credit transaction.

History: 1971 c. 239; 1975 c. 407.

**425.203 Enforcement of merchant's rights in collateral and leased goods.** (1) At any time after default (s. 425.103) and the expiration of the period for cure of default (s. 425.105), if applicable, a merchant may commence an action to recover collateral or goods subject to a consumer lease pursuant to s. 425.205, or reduce the claim to a judgment by any available judicial procedure.

(2) In any action for a judgment under sub. (1) other than an action pursuant to s. 425.205, the judgment may provide for the right to possession of the collateral or leased goods by the merchant and for a deficiency, if the merchant would not be precluded from a deficiency judgment under s. 425.209 had the merchant

425.203 REMEDIES AND PENALTIES

initially proceeded against the collateral and if the judgment includes a finding that the merchant has the right to possession of any collateral securing the consumer credit transaction or goods subject to a consumer lease. Upon determining such judgment under this subsection the merchant shall have the right to:

- (a) Have execution issue to require the sheriff in the county where the collateral or leased goods may be to take the same from the defendant and deliver it to the plaintiff; or
- (b) Immediately exercise the right to nonjudicial recovery of the collateral or leased goods, subject to s. 425.206.
- (3) Following recovery of collateral pursuant to a judgment under sub. (2), the merchant may either retain the collateral in full satisfaction of the customer's obligation pursuant to ss. 409.620 to 409.624, in which event the merchant shall satisfy the judgment obtained pursuant to sub. (2); or shall dispose of the collateral pursuant to subch. VI of ch. 409, in which event:

(a) The merchant shall apply to the court which entered the judgment pursuant to sub. (2) to confirm the sale or other disposition of the collateral upon 8 days' notice to all parties named in such action, either personally or by certified or registered mail directed to the last-known address of the parties. Such notice shall state, in addition to any other matter required by law, the time and place of the hearing, the amount of the judgment, the proceeds received upon disposition of the collateral, the fair market value of the collateral claimed by the merchant if such standard is applicable under s. 425.210, the reasonable expenses incurred in disposition of collateral, the net amount proposed to be credited against the judgment, and any deficiency remaining. In addition, the notice directed to the customer shall conspicuously advise the customer of the right to appear at such hearing and to contest any matter set forth in the notice.

(b) At such a hearing on confirmation, the court shall determine on the basis of the evidence presented by the parties, by affidavit or otherwise, the commercial reasonableness of the merchant's disposition of the collateral, the reasonable expenses incurred by the merchant in disposition of the collateral, the compliance with s. 425.210 if applicable, the resulting amount to be credited against the judgment and the remaining deficiency. Following such hearing and determinations, the court shall enter an appropriate order to satisfy the judgment and provide such other relief as may be appropriate. Where the underlying transaction is a consumer credit sale of goods or services or a consumer loan in which the lender is subject to defenses arising from s. 422.408, this hearing shall be considered a proceeding for a deficiency judgment pursuant to s. 425.209 (1).

(4) Following recovery of goods subject to a consumer lease pursuant to a judgment under sub. (2), no deficiency shall be allowable unless the merchant disposes of the leased goods and applies the proceeds to the customer's obligation, in which event:

(a) The merchant shall apply to the court which entered the judgment pursuant to sub. (2) to confirm the sale or other disposition of the leased goods upon 8 days' notice to all parties named in the action, either personally or by certified or registered mail directed to the last-known address of the parties. Such notice shall state, in addition to any other matter required by law, the time and place of the hearing, the amount of the judgment, the proceeds received upon disposition of the leased goods, the reasonable expenses incurred in disposition of the leased goods, the net amount proposed to be credited against the judgment, and any deficiency remaining. In addition, the notice directed to the customer shall conspicuously advise the customer of the right to appear at such hearing and to contest any matter set forth in the notice.

(b) At such a hearing on confirmation, the court shall determine on the basis of evidence presented by the parties, by affidavit or otherwise, the commercial reasonableness of the merchant's disposition of the leased goods, the reasonable expenses incurred by the merchant in disposition of the leased goods, and the resulting amount to be credited against the judgment entered pursuant

to sub. (2). Following such hearing and determinations, the court shall enter an appropriate order to satisfy the judgment and provide such other relief as may be appropriate.

History: 1971 c. 239; 1975 c. 407, 421; 2001 a. 10.

**425.204 Voluntary surrender of collateral.** (1) Notwithstanding a waiver by the creditor of the security interest in collateral under s. 425.203 (2) or any other law, the customer shall have the right at any time to voluntarily surrender all of the customer's rights and interests in the collateral to the merchant.

(2) The rights and obligations of the merchant and customer with respect to collateral voluntarily surrendered as defined in this section shall be governed by subch. VI of ch. 409, and are not subject to this subchapter.

(3) The surrender of collateral by a customer is not a voluntary surrender if it is made pursuant to a request or demand by the merchant for the surrender of the collateral, or if it is made pursuant to a threat, statement or notice by the merchant that the merchant intends to take possession of the collateral.

History: 1971 c. 239; 1991 a. 316; 2001 a. 10.

Cross Reference: See also s. DFI-Bkg 80.67, Wis. adm. code.

Under the facts of the case, the customer did not "voluntarily surrender" collateral under sub. (3). *Wachal v. Ketterhagen Motor Sales, Inc.* 81 Wis. 2d 605, 260 N.W.2d 770 (1978).

**425.205 Action to recover collateral.** (1) Except as provided in s. 425.206, a creditor seeking to obtain possession of collateral or goods subject to a consumer lease shall commence an action for replevin of the collateral or leased goods. Those actions shall be conducted in accordance with ch. 799, notwithstanding s. 799.01 (1) (c) and the value of the collateral or leased goods sought to be recovered, except that:

(a) Notwithstanding ss. 799.05 (2) and 799.06 (2), process shall be issued by the clerk of court, and such action shall be commenced upon the request of an officer or employee of a merchant on the merchant's behalf;

(b) The summons shall be in the form prescribed in sub. (2), and a complaint in the form described in sub. (3) shall be served with the summons;

(c) When service is made pursuant to s. 799.12 (3) certified mail with return receipt requested shall be employed;

(d) On the return date of the summons or any adjournment date thereof the customer shall have the right to a hearing on the issue of default or other matter which questions the validity of the merchant's claim to the collateral or leased goods, and the customer may answer, move to dismiss under s. 802.06 (2) or otherwise plead to the complaint orally, but if the customer fails to appear on the return day, judgment may be entered by the clerk or judge in accordance with the demands of the verified complaint, or upon an affidavit of the facts, or sworn testimony or other evidence to the clerk or judge; and

(e) Judgment in such action shall determine only the right to possession of the collateral or leased goods, but such judgment shall not bar any subsequent action for damages or deficiency to the extent permitted by this subchapter.

(2) The summons in such actions shall be in the following form:

State of Wisconsin  
Circuit Court  
... County  
A. B. Plaintiff  
v.  
C. D. Defendant

SUMMONS (Small Claim)

THE STATE OF WISCONSIN  
To said Defendant:

The Plaintiff named above has commenced an action to recover possession of the following property:

[Description of Collateral or Leased Goods]

This claim arises under a consumer credit transaction under which you are alleged to be in default, as described in the attached complaint.

IF YOU ARE NOT IN DEFAULT OR HAVE AN OBJECTION TO THE PLAINTIFF'S TAKING THE PROPERTY LISTED ABOVE, YOU MAY ARRANGE FOR A HEARING ON THESE ISSUES BY APPEARING IN THE CIRCUIT COURT OF .... COUNTY, IN THE COURTHOUSE LOCATED IN ....., (municipality), BEFORE JUDGE .... OR ANY OTHER JUDGE TO WHOM THE ACTION MAY BE ASSIGNED, ON .... (date), AT .... (time). IF YOU DO NOT APPEAR AT THAT TIME, JUDGMENT WILL BE RENDERED AGAINST YOU FOR DELIVERY OF THE PROPERTY TO THE PLAINTIFF. DATED ....., .... (year)

E.F.  
Clerk of Circuit Court  
[or]  
Plaintiff's Attorney

Plaintiff's P. O. Address

....

....

Plaintiff's Attorney (if any)

....

....

Defendant's P. O. Address

....

....

(3) The complaint in such action shall conform with the requirements of s. 425.109.

(4) Upon the written request of the customer, the merchant shall produce an accurate copy of writings evidencing any transactions pursuant to an open-end credit plan upon which the merchant's claim is made, and judgment shall not be entered for the merchant until the merchant does so.

(5) Upon entry of judgment for the plaintiff, the plaintiff shall have the right to:

(a) Have execution issue to require the sheriff of the county where the collateral or leased goods may be to take the same from the defendant and deliver it to the plaintiff; or

(b) Immediately exercise the right to nonjudicial recovery of the collateral or leased goods, subject to s. 425.206.

(6) Action pursuant to this section may be commenced at any time after the customer is in default, but the return day of process may not be set prior to the expiration of the period for cure of the default by the customer (s. 425.105), if applicable.

**History:** 1971 c. 239; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 407, 421; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (16); 1981 c. 317; 1981 c. 391 s. 210; 1983 a. 389; 1989 a. 31; 1993 a. 246; 1997 a. 250.

**425.206 Nonjudicial enforcement limited.** (1) Notwithstanding any other provision of law, no merchant may take possession of collateral or goods subject to a consumer lease in this state by means other than legal process in accordance with this subchapter except when:

(a) The customer has surrendered the collateral or leased goods;

(b) Judgment for the merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205, or for possession of the collateral or leased goods under s. 425.203 (2); or

(c) The merchant has taken possession of collateral or leased goods pursuant to s. 425.207 (2).

(2) In taking possession of collateral or leased goods, no merchant may do any of the following:

(a) Commit a breach of the peace.

(b) Enter a dwelling used by the customer as a residence except at the voluntary request of a customer.

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

**History:** 1971 c. 239; 1975 c. 94 s. 3; 1975 c. 407; 1979 c. 10; 1995 a. 225; 1997 a. 302.

Under the facts of the case, the customer did not "voluntarily surrender" collateral sub. (1) (a). *Wachal v. Ketterhagen Motor Sales, Inc.* 81 Wis. 2d 605, 260 N.W.2d 770 (1978).

Notwithstanding s. 421.201 (5), this section governed repossessions outside the state when the contract provided for enforcement under the "internal law" of Wisconsin. *First Wisconsin National Bank of Madison v. Nicolaou*, 85 Wis. 2d 593, 270 N.W.2d 582 (Ct. App. 1978).

A "breach of the peace" under sub. (2) has the same meaning as in s. 409.503. Repossession in disregard of the debtor's oral protest is a breach of the peace. Punitive damages may be appropriate as the result of the breach of the peace. *Hollibush v. Ford Motor Company*, 179 Wis. 2d 799, 508 N.W.2d 449 (Ct. App. 1993).

Repossession under an invalid judgment violates this section. *Kett v. Community Credit Plan, Inc.* 228 Wis. 2d 1, 596 N.W.2d 786 (1999), 97-3620.

The abolition of self-help repossession; the poor pay even more. *White*, 1973 WLR 503.

The impact of denying self-help repossession of automobiles: a case study of the Wisconsin consumer act. *Whitford, Laufer*, 1975 WLR 607.

**425.207 Restraining order to protect collateral or leased goods; abandoned property.** (1) If the court finds that the merchant probably will recover possession of the collateral or goods subject to a consumer lease, and the customer is acting, or is about to act, with respect to the collateral or leased goods in a manner which substantially impairs the merchant's prospect for realization of the merchant's security interest or the merchant's interest in the leased goods, the court may issue an order pursuant to s. 813.02 restraining the customer from so acting with respect to the collateral or leased goods, and need not require a bond by the merchant, notwithstanding s. 813.06.

(2) A merchant who reasonably believes that a customer has abandoned collateral or goods subject to a consumer lease may take possession of such collateral or leased goods and preserve it. However, the customer may recover such collateral or leased goods upon request unless at the time of request the customer has surrendered the collateral or leased goods, or judgment for the merchant has been entered in a proceeding for recovery of collateral or leased goods under s. 425.205 or in a judgment described in s. 425.203 (2). A merchant taking possession of collateral or leased goods pursuant to this section shall promptly send notification to the customer's last-known address of such action and of the customer's right to recover such collateral or leased goods under this section. If the collateral or leased goods are recovered by the customer pursuant to this section, it shall be returned to the customer at the location where the merchant took possession of such collateral or leased goods pursuant to this section or, at the option of the merchant, at such other location designated by the customer; and any expense incurred by the merchant in taking possession of, holding and returning the collateral or leased goods to the customer shall be borne by the merchant. If after taking possession of collateral or leased goods pursuant to this subsection, the merchant perfects the right to possession through a surrender by the customer or a judgment under s. 425.203 (2) or 425.205, the customer is liable for the expenses set forth in s. 409.615 (1). In determining such expenses, leased goods shall be considered collateral under s. 409.615 (1). However, a customer is not liable for expenses of holding the collateral or leased goods from the time the merchant takes possession until the merchant perfects the right to possession in the manner provided in this subsection.

**History:** 1971 c. 239; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 407, 421, 422; 1979 c. 10; 1981 c. 314 s. 146; 1997 a. 302; 2001 a. 10.

**425.208 Customer's right to redeem.** (1) For a period of 15 days following exercise by the creditor of nonjudicial enforcement rights (s. 425.206) or issuance of process (s. 425.205) with regard to the collateral, the customer shall be entitled to redeem the goods by tendering:

(a) The total of all unpaid amounts, including any unpaid delinquency or deferral charges due at the time of tender, without acceleration; plus

(b) Performance necessary to cure any default other than non-payment of amounts due; plus



425.208 REMEDIES AND PENALTIES

(c) Any court costs, filing and service fees, and bond premium charges incurred by the creditor; plus

(cm) If a writing evidencing the consumer credit transaction so provides, expenses the creditor is entitled to recover under s. 422.413 (2g) (a) and (b); plus

(d) Whichever of the following is less:

1. A performance deposit, in the amount of 3 scheduled installments, or minimum payments in the case of an open-end credit plan.

2. One-third of the total obligation remaining unpaid with respect to the consumer credit transaction.

(2) Tender of the payment and performance pursuant to sub. (1) restores to the customer the customer's rights under the agreement as though all payments and performance had been made as scheduled.

(3) Upon such redemption, any process under which the collateral has been held shall be vacated, any pending action shall be dismissed, and the collateral shall be returned to the customer.

(4) The performance deposit shall be held by the merchant to secure, and may be applied at any time to, the remaining obligations of the customer under the consumer transaction.

(5) The existence of the deposit does not cure any subsequent default of the customer, and the deposit need not be credited to the customer's account until the remaining unpaid balance of the transaction becomes equal to the deposit. In the event of a subsequent default, prepayment, or other occurrence (except deferral) which requires the computation under chs. 421 to 427 of the outstanding obligation of the customer, the deposit shall be credited to the amount paid for the purposes of such computation.

(6) The creditor shall not dispose of the collateral or enter into a contract for the disposition of the collateral, until the expiration of the period for redemption provided in this section, unless the collateral is perishable or threatens to decline speedily in value. Upon the expiration of such period any disposition of the collateral shall be subject to subch. VI of ch. 409, except that the customer may be liable for a deficiency only to the extent provided in ss. 425.209 and 425.210.

*History:* 1971 c. 239; 1979 c. 10, 89; 1983 a. 389; 1991 a. 316; 1997 a. 302; 1999 a. 85; 2001 a. 10.

**425.209 Restrictions on deficiency judgments.**

(1) This section applies to a deficiency on a consumer credit sale of goods or services and on a consumer loan in which the lender is subject to defenses arising from sales (s. 422.408); a customer is not liable for a deficiency unless the merchant has disposed of the goods in good faith and in a commercially reasonable manner.

(2) If the merchant repossesses or accepts voluntary surrender of goods which were the subject of the sale and in which the merchant has a security interest, the customer is not personally liable to the merchant for the unpaid balance of the debt arising from the sale of a commercial unit of the goods of which the amount owing at the time of default was \$1,000 or less, and the merchant is not obligated to resell the collateral unless the customer has paid 60% or more of the cash price and has not signed after default a statement renouncing the customer's rights in the collateral.

(3) If the merchant repossesses or accepts voluntary surrender of goods which were not the subject of the sale but in which the merchant has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the amount owing at the time of default was \$1,000 or less, the customer is not personally liable to the merchant for the unpaid balance of the debt arising from the sale, and the merchant's duty to dispose of the collateral is governed by the provisions on disposition of collateral under chs. 401 to 411.

(4) If the lender takes possession or accepts voluntary surrender of goods in which the lender has a security interest to secure a debt arising from a consumer loan in which the lender is subject to defenses arising from sales (s. 422.408) and the amount owing

at the time of default of the loan paid to or for the benefit of the customer were \$1,000 or less, the customer is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral under chs. 401 to 411.

(5) The customer may be liable in damages to the merchant if the customer has wrongfully damaged the collateral or if, after judgment for the creditor has been entered in a proceeding for recovery of collateral under s. 425.205, the customer has wrongfully failed to make the collateral available to the merchant.

(6) If the merchant elects to bring an action against the customer for a debt arising from a consumer credit sale of goods or services or from a consumer loan in which the lender is subject to defenses arising from sales (s. 422.408), when under this section the merchant would not be entitled to a deficiency judgment if the merchant took possession of the collateral, and obtains judgment:

(a) The merchant may not take possession of the collateral; and

(b) The collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

*History:* 1971 c. 239; 1973 c. 2, 3; 1991 a. 148, 304, 315, 316.

*Cross Reference:* See also ss. DFI-Bkg 80.70 and 80.71, Wis. adm. code.

Proof of disposal of goods in accordance with sub. (1) must be made by a merchant to obtain a deficiency judgment. Failure to do so need not be asserted as an affirmative defense. *Shoeder's Auto Center, Inc. v. Teschner*, 166 Wis. 2d 198, 479 N.W.2d 203 (Ct. App. 1991).

**425.210 Computation of deficiency.** If the creditor is entitled to a deficiency judgment pursuant to s. 425.209 (1), the creditor shall be entitled to recover from the customer the deficiency, if any, remaining after deducting the fair market value of the collateral from the unpaid balance.

*History:* 1971 c. 239.

SUBCHAPTER III

CUSTOMER'S REMEDIES

**425.301 Remedies to be liberally administered.**

(1) The remedies provided by this subchapter shall be liberally administered to the end that the customer as the aggrieved party shall be put in at least as good a position as if the creditor had fully complied with chs. 421 to 427. Recoveries under chs. 421 to 427 shall not in themselves preclude the award of punitive damages in appropriate cases.

(2) Any right or obligation declared by chs. 421 to 427 is enforceable by action unless the provision declaring it specifies a different and limited effect.

(3) Notwithstanding any other section of chs. 421 to 427, a customer shall not be entitled to recover specific penalties provided in s. 425.302 (1) (a), 425.303 (1), 425.304 (1) or 425.305 (1) if the person violating chs. 421 to 427 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 any such error.

(4) The liability of a merchant under chs. 421 to 427 is in lieu of and not in addition to any liability under the federal consumer credit protection act and ss. 138.09 or 218.0101 to 218.0163. An action by a person alleging a violation under chs. 421 to 427 may not be maintained if a final judgment has been rendered for or against that person with respect to the same violation under the federal consumer credit protection act or ss. 138.09 or 218.0101 to 218.0163. If a final judgment is entered against any merchant under chs. 421 to 427 and the federal consumer credit protection act or ss. 138.09 or 218.0101 to 218.0163 for the same violation, the merchant has a cause of action for appropriate relief to the extent necessary to avoid double liability.

(5) If there are multiple obligors in the same consumer credit transaction or consumer lease, there may be no more than one recovery of civil penalties for each violation of chs. 421 to 427.

**History:** 1971 c. 239; 1975 c. 407; 1979 c. 89; 1985 a. 256; 1999 a. 31.  
An error of law is not a bona fide error under sub. (3). *First Wisconsin National Bank v. Nicolaou*, 113 Wis. 2d 524, 335 N.W.2d 390 (1983).

**425.302 Remedy and penalty for certain violations.**

(1) A person who commits a violation to which this section applies 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.

(2) This section also applies to all violations for which no other remedy is specifically provided.

**History:** 1971 c. 239.

**425.303 Remedy and penalty for certain violations.** A person who commits a violation to which this section applies is liable to the customer in an amount equal to:

- (1) One hundred dollars; and
- (2) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

**History:** 1971 c. 239.

**425.304 Remedy and penalty for certain violations.** A person who commits a violation to which this section applies is liable to the customer in an amount equal to the greater of:

- (1) Twice the amount of the finance charge in connection with the transaction, except that the liability under this subsection shall not be less than \$100 nor greater than \$1,000; or
- (2) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

**History:** 1971 c. 239.

**425.305 Transactions which are void.** (1) In a transaction to which this section applies, the customer shall be entitled to retain the goods, services or money received pursuant to the transaction without obligation to pay any amount.

(2) In addition, the customer shall be entitled to recover any sums paid to the merchant pursuant to the transaction.

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

**425.306 Unenforceable obligations.** (1) Any charge, practice, term, clause, provision, security interest or other action or conduct in violation of chs. 421 to 427, to the extent that the same is in violation of chs. 421 to 427, shall confer no rights or obligations enforceable by action.

(2) This section shall not affect the enforcement of any provision that is not prohibited by chs. 421 to 427.

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

**425.307 Limitation of action.** (1) Any action brought by a customer to enforce rights pursuant to chs. 421 to 427 shall be commenced within one year after the date of the last violation of chs. 421 to 427, 2 years after consummation of the agreement or one year after last payment, whichever is later, except with respect to transactions pursuant to open-end credit plans which shall be commenced within 2 years after the date of the last violation; but no action may be commenced more than 6 years after the date of the last violation.

(2) Rights under chs. 421 to 427 may be asserted as a defense, setoff or counterclaim to an action against the customer without regard to this time limitation.

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

**425.308 Reasonable attorney fees.** (1) If the customer prevails in an action arising from a consumer transaction, the customer shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on the customer's behalf in connection with the prosecution or defense of such action, together with a reasonable amount for attorney fees.

(2) The award of attorney fees shall be in an amount sufficient to compensate attorneys representing customers in actions arising from consumer transactions. In determining the amount of the fee, the court may consider:

(a) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause;

(b) The customary charges of the bar for similar services;

(c) The amount involved in the controversy and the benefits resulting to the client or clients from the services;

(d) The contingency or the certainty of the compensation;

(e) The character of the employment, whether casual or for an established and constant client; and

(f) The amount of the costs and expenses reasonably advanced by the attorney in the prosecution or defense of the action.

**History:** 1971 c. 239; 1991 a. 316; 1993 a. 490.

Attorney fees awarded under this section often far exceed the amount of recovery. *First Wisconsin National Bank v. Nicolaou*, 113 Wis. 2d 524, 335 N.W.2d 390 (1983).

Awards of attorney fees and costs are limited to instances in which a customer has shown that a creditor has not "fully complied with chs. 421 to 427." *Suburban State Bank v. Squires*, 145 Wis. 2d 445, 427 N.W.2d 393 (Ct. App. 1988).

A prevailing party is one who succeeds on any significant issue and is entitled to recover fees relating to successfully litigated issues. *Footville State Bank v. Harvell*, 146 Wis. 2d 524, 432 N.W.2d 122 (Ct. App. 1988).

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.

**425.309 Class actions.** Class actions are governed by s. 426.110.

**History:** 1971 c. 239.

**425.310 Liability of corporate officers.** Damages or penalties awarded to a customer or the administrator for a violation of chs. 421 to 427 which cannot be collected from a corporation by reason of its insolvency or dissolution shall be recoverable against the principal agents of the corporation including, but not limited to, officers, managers and assistant managers who knew of, should have known of or willfully participated in such a violation, if a meaningful part of the corporation's activities were in violation of chs. 421 to 427.

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

**425.311 Evidence of violation.** Sections 402.202 and 411.202 and any other statute restricting admissibility of parol evidence shall be inoperative to exclude or limit the admissibility of evidence of an act or practice in violation of chs. 421 to 427.

**History:** 1971 c. 239; 1979 c. 89; 1991 a. 148.

SUBCHAPTER IV

CRIMINAL PENALTIES

**425.401 Willful violations: misdemeanor.** A person who willfully and knowingly engages in any conduct or practice in violation of chs. 421 to 427 may be fined not more than \$2,000.

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





## CHAPTER 426

### CONSUMER TRANSACTIONS — ADMINISTRATION

#### SUBCHAPTER I

##### POWERS AND FUNCTIONS OF ADMINISTRATOR

- 426.101 Short title.
- 426.102 Applicability.
- 426.103 Administrator.
- 426.104 Powers of administrator; duty to report.
- 426.105 Administrative powers with respect to supervised financial organizations.
- 426.106 Investigatory powers.
- 426.107 Application of chapter 227.
- 426.108 Unconscionable conduct.
- 426.109 Temporary relief; injunctions.

- 426.110 Class actions; injunctions; declaratory relief.
- 426.111 Debtors' remedies not affected.

#### SUBCHAPTER II REGISTRATION AND FEES

- 426.201 Registration.
- 426.202 Fees.
- 426.203 Penalties.

#### SUBCHAPTER III VIOLATIONS AND ENFORCEMENT

- 426.301 Violations and enforcement.

Cross-reference: See definitions in s. 421.301.

#### SUBCHAPTER I

##### POWERS AND FUNCTIONS OF ADMINISTRATOR

**426.101 Short title.** This chapter shall be known and may be cited as Wisconsin consumer act—administration.

**History:** 1971 c. 239.

**426.102 Applicability.** This chapter applies to persons who do any of the following in this state:

(1) Make or solicit consumer approval transactions (s. 423.201) or consumer credit transactions or modifications thereof.

(2) Directly collect payments from or enforce rights against customers arising from consumer approval transactions or consumer credit transactions, wherever made.

(3) Act as a credit services organization, as defined in s. 422.501 (2).

**History:** 1971 c. 239; 1991 a. 244.

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

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

**426.103 Administrator.** “Administrator” means the secretary of financial institutions.

**History:** 1971 c. 239; 1995 a. 27, 216.

**426.104 Powers of administrator; duty to report.** (1) In addition to other powers granted by chs. 421 to 427 and 429, the administrator within the limitations provided by law shall:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with chs. 421 to 427 and 429, commence administrative proceedings on his or her own initiative and commence civil actions solely through the department of justice;

(b) Counsel persons and groups on their rights and duties under chs. 421 to 427 and 429;

(c) Make studies appropriate to effectuate the purposes and policies of chs. 421 to 427 and 429 and make the results available to the public;

(d) Hold such public or private hearings as the administrator deems necessary or proper to effectuate the purposes and policies of chs. 421 to 427 and 429;

(e) Adopt, amend and repeal rules to carry out the purposes and policies of chs. 421 to 427 and 429, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(2) The administrator shall report annually on practices in consumer transactions, on the use of consumer credit in the state, on problems attending the collection of debts, on the problems of persons of limited means in consumer transactions, and on the operation of chs. 421 to 427 and 429. For the purpose of making the report, the administrator may conduct research and make

appropriate studies. The report shall be given to the division of banking for inclusion in the report of the division of banking under s. 220.14 and shall include:

(a) A description of the examination and investigation procedures and policies of the administrator's office;

(b) A statement of policies followed in deciding whether to investigate or examine the offices of persons subject to chs. 421 to 427 and 429;

(c) A statement of policies followed in deciding whether to bring any action authorized under chs. 421 to 427 and 429;

(d) Such recommendations for modifications or additions to chs. 421 to 427 and 429 as in the experience and judgment of the administrator are necessary; and

(e) Such other statements as are necessary or proper to achieve the purposes or policies of this section or to effectuate the purposes or policies of chs. 421 to 427 and 429.

(3) The administrator shall make available upon request a list of all persons against whom complaints have been filed and the results of all investigations completed or not being actively pursued along with a brief description of the facts of each case and the action taken in each.

(4) (a) No provision of chs. 421 to 427 and 429 or of any statute to which chs. 421 to 427 and 429 refer which imposes any penalty shall apply to any act done or omitted to be done in conformity with any rule or order of the administrator or any written opinion, interpretation or statement of the administrator, notwithstanding that such rule, order, opinion, interpretation or statement may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(ab) 1. Upon the request of any person, the administrator shall review any act, practice, procedure or form that has been submitted to the administrator in writing to determine whether the act, practice, procedure or form is consistent with chs. 421 to 427 and 429.

2. The administrator may charge the person making a request under subd. 1. for necessary expenses incurred in conducting the review, except the administrator may not charge any of the following persons:

a. A person registered under s. 426.201.

b. A trade organization, if a majority of the members of the trade organization are registered under s. 426.201.

3. Any charge assessed under subd. 2. shall be paid within 30 days after the date on which the administrator assesses the charge.

(b) Any act, practice or procedure which has been submitted to the administrator in writing and either approved in writing by the administrator or not disapproved by the administrator within 60 days after its submission to the administrator shall not be deemed to be a violation of chs. 421 to 427 and 429 or any other statute to which chs. 421 to 427 and 429 refer notwithstanding that the approval of the administrator or nondisapproval by the admin-

426.104 ADMINISTRATION

istrator may be subsequently amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

**History:** 1971 c. 239; 1977 c. 196 s. 131; 1979 c. 89; 1983 a. 524; 1985 a. 256; 1991 a. 316; 1995 a. 27, 216, 329; 1997 a. 35.

Power and duties of the administrator under the Wisconsin consumer act. Miltenberg, 1973 WBB No. 1.

**426.105 Administrative powers with respect to supervised financial organizations.** (1) All powers and duties of the administrator under chs. 421 to 427 and 429 shall be exercised by the administrator with respect to a supervised financial organization.

(2) If the administrator receives a complaint or other information concerning noncompliance with chs. 421 to 427 and 429 by a supervised financial organization, the administrator shall inform the official or agency having supervisory authority over the organization concerned. The administrator may request information about supervised financial organizations from the officials or agencies supervising them.

(3) The administrator and any official or agency of this state having supervisory authority over a supervised financial organization shall consult and assist one another in maintaining compliance with chs. 421 to 427 and 429. They may jointly pursue investigations, prosecute suits and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action.

**History:** 1971 c. 239; 1979 c. 89; 1995 a. 329.

**426.106 Investigatory powers.** (1) At any time that the administrator has reason to believe that a person has engaged in or is about to engage in an act which is subject to action by the administrator, the administrator may make an investigation and, with respect thereto, may administer oaths or affirmations, and, upon the administrator's own motion or upon request of any party, may 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, and the administrator shall have the right of access to and of examination of such books, documents or other tangible things. In any civil action brought on behalf of the administrator following such an investigation, the administrator may recover the administrator's costs of making the investigation if the administrator prevails in the action.

(2) If 5 or more persons file a verified complaint with the administrator alleging that a person has engaged in an act which is subject to action by the administrator, the administrator shall immediately commence an investigation pursuant to sub. (1).

(3) If the person's records are located outside this state, the person at the person's option shall either make them available to the administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to any court of record for an order compelling compliance.

**History:** 1971 c. 239; 1991 a. 316.

**Cross Reference:** See also ss. DFI-Bkg 80.80 and 80.82, Wis. adm. code.

**426.107 Application of chapter 227.** Except as otherwise provided, ch. 227 applies to and governs all administrative action taken by the administrator pursuant to chs. 421 to 427 and 429. Notwithstanding s. 227.52, the decisions of the administrator are subject to judicial review as provided in ch. 227.

**History:** 1971 c. 239; 1979 c. 89; 1985 a. 182 s. 57; 1995 a. 329.

**426.108 Unconscionable conduct.** The administrator shall promulgate rules declaring specific conduct in consumer credit transactions and the collection of debts arising from consumer credit transactions to be unconscionable and prohibiting the use of those unconscionable acts. In promulgating rules under this section, the administrator shall consider, among other things, all of the following:

(1) That the practice unfairly takes advantage of the lack of knowledge, ability, experience, or capacity of customers.

(2) That those engaging in the practice know of the inability of customers to receive benefits properly anticipated from the goods or services involved.

(3) That there exists a gross disparity between the price of goods or services and their value as measured by the price at which similar goods or services are readily obtainable by other customers, or by other tests of true value.

(4) That the practice may enable merchants to take advantage of the inability of customers reasonably to protect their interests by reason of physical or mental infirmities, illiteracy or inability to understand the language of the agreement, ignorance or lack of education or similar factors.

(5) That the terms of the transaction require customers to waive legal rights.

(6) That the terms of the transaction require customers to unreasonably jeopardize money or property beyond the money or property immediately at issue in the transaction.

(7) That the natural effect of the practice is to cause or aid in causing customers to misunderstand the true nature of the transaction or their rights and duties under the transaction.

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

(9) Definitions of unconscionability in statutes, rules, rulings and decisions of legislative, administrative or judicial bodies.

**History:** 1971 c. 239; 1999 a. 85.

**Cross Reference:** See also ss. DFI-Bkg 80.85, 80.86, 80.87, and 80.88, Wis. adm. code.

**426.109 Temporary relief; injunctions.** (1) The administrator or any customer may bring a civil action to restrain by temporary or permanent injunction a person from violating chs. 421 to 427 and 429 or the rules promulgated pursuant thereto, or to so restrain a merchant or a person acting on behalf of a merchant from engaging in false, misleading, deceptive, or unconscionable conduct in consumer credit transactions. It shall not be a defense to an action brought under this section that there exists an adequate remedy at law.

(2) The administrator or customer may seek a temporary restraining order without written or oral notice to the adverse party or his or her attorney. If the court finds that there is reasonable cause to believe that the respondent is engaged in the conduct sought to be restrained and that such conduct violates chs. 421 to 427 and 429 or rules promulgated under chs. 421 to 427 and 429, it may grant a temporary restraining order or any temporary relief it deems appropriate. A temporary restraining order granted without notice shall expire by its terms within a stated time after entry, not to exceed 30 days, as the court fixes, unless within this time it is extended by the court, or unless the party against whom the order is directed consents that it may be extended for a longer period. When a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for a hearing at the earliest possible time. Upon notice to the party who obtained the temporary restraining order without notice, the adverse party may appear and move its dissolution or modification, and in this event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

**History:** 1971 c. 239; 1979 c. 89; 1995 a. 329.

**426.110 Class actions; injunctions; declaratory relief.**

(1) Either the administrator, or any customer affected by a viola-

tion of chs. 421 to 427 and 429 or of the rules promulgated pursuant thereto or by a violation of the federal consumer credit protection act, or by conduct of a kind described in sub. (2), may bring a civil action on behalf of himself or herself and all persons similarly situated, for actual damages by reason of such conduct or violation, together with penalties as provided in sub. (14), reasonable attorney fees and other relief to which such persons are entitled under chs. 421 to 427 and 429. The customer filing the action must give prompt notice thereof to the administrator, who shall be permitted, upon application within 30 days, to join as a party plaintiff. For purposes of apportionment of cost, the administrator need not be a party to the action.

(2) Actions may be maintained under this section against any person who in making, soliciting or enforcing consumer credit transactions engages in any of the following kinds of conduct:

(a) Making or enforcing unconscionable terms or provisions of consumer credit transactions;

(b) False, misleading, deceptive, or unconscionable conduct in inducing customers to enter into consumer credit transactions; or

(c) False, misleading, deceptive, or unconscionable conduct in enforcing debts or security interests arising from consumer credit transactions.

(3) Notwithstanding this chapter, no class action may be maintained for conduct proscribed in sub. (2) or for a violation of s. 423.301, 424.501, 425.107, 426.108 or 427.104 (1) (h) unless the conduct has been found to constitute a violation of chs. 421 to 427 and 429 at least 30 days prior to the occurrence of the conduct involved in the class action by an appellate court of this state or by a rule promulgated by the administrator as provided in ss. 426.104 (1) (e) and 426.108 specifying with particularity the act or practice in question.

(4) (a) At least 30 days or more prior to the commencement of a class action for damages pursuant to the provisions of this section, any party must:

1. Notify the person against whom an alleged cause of action is asserted of the particular alleged claim or violation; and

2. Demand that such person correct, or otherwise remedy the basis for the alleged claim.

(b) Such notice shall be in writing and shall be sent by certified or registered mail, return receipt requested, to such person at the place where the transaction occurred, such person's principal place of business within this state, or, if neither will effect actual notice, the department of financial institutions.

(c) Except as provided in par. (e), no action for damages may be maintained under this section if an appropriate remedy, which shall include actual damages and may include penalties, is given, or agreed to be given within a reasonable time, to such party within 30 days after receipt of such notice.

(d) Except as provided in par. (e), no action for damages may be maintained under this section upon a showing by a person against whom the alleged claim or violation is asserted that all of the following exist:

1. All customers similarly situated have been identified, or a reasonable effort to identify such other consumers has been made;

2. All customers so identified have been notified that upon their request such person shall make the appropriate remedy;

3. The remedy requested by such customers has been or in a reasonable time will be given; and

4. Such person has ceased from engaging, or if immediate cessation is impossible under the circumstances, such person will, within a reasonable time, cease to engage in any acts on which the alleged claim is based.

(e) An action for injunctive relief may be commenced without compliance with par. (a). Not less than 30 days after the commencement of an action for injunctive relief, and after compliance with par. (a) the customer may amend his or her complaint without leave of court to include a request for damages. The appropriate

provisions of par. (c) or (d) shall be applicable if the complaint for injunctive relief is amended to request damages.

(5) The court shall permit the suit to be maintained on behalf of all members of the represented class only if:

(a) The class is so numerous that joinder of all members, if permissible, would be impracticable;

(b) There are questions of law and fact common to the class;

(c) The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class. This paragraph shall not apply if the administrator is a representative plaintiff;

(d) The representative parties will fairly and adequately protect the interests of the class.

(6) An action may be maintained as a class action if the prerequisites of sub. (5) are satisfied, and in addition:

(a) The prosecution of separate actions by or against individual members of the class would create a risk of:

1. Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

2. Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(b) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(c) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

1. The interest of members of the class in individually controlling the prosecution or defense of separate actions;

2. The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

3. The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

4. The difficulties likely to be encountered in the management of a class action.

(7) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and may be altered or amended before the decision on the merits. If the court determines that the action may not be maintained as a class action, it shall allow the action to proceed on behalf of the parties appearing in the action.

(8) In any class action maintained under sub. (6) (c), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that:

(a) The court will exclude a class member from the class if the member so requests by a specified date;

(b) The judgment, whether favorable or not, will include all members who do not request exclusion; and

(c) Any member who does not request exclusion may, if the member desires, enter an appearance through the member's counsel.

(9) The judgment in an action maintained as a class action under sub. (6) (a) or (b), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under sub. (6) (c), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in sub. (8) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

426.110 ADMINISTRATION

(10) When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class, and this section shall then be construed and applied accordingly.

(11) If the judgment is for a class of plaintiffs, the court shall render judgment in favor of the administrator and against the defendants for all costs of notice incurred by the administrator in such action.

(12) In the conduct of actions to which this section applies, the court may make appropriate orders, which may be altered or amended as may be desirable from time to time, for any of the following purposes:

(a) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument.

(b) Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action.

(c) Imposing conditions on the representative parties or on intervenors.

(d) Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly.

(e) Dealing with procedural matters similar to those under pars. (a) to (d).

(13) A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(14) A merchant shall not be liable in a class action for specific penalties under s. 425.302 (1) (a), 425.303 (1), 425.304 (1), 425.305 (1) or 429.301 (1) for which it would be liable in individual actions by reason of violations of chs. 421 to 427 and 429 or of conduct prescribed in sub. (2) unless it is shown by a preponderance of the evidence that the violation was a willful and knowing violation of chs. 421 to 427 and 429. No recovery in an action under this subsection may exceed \$100,000.

(15) A plaintiff who prevails shall be awarded a reasonable attorney's fee. Notwithstanding s. 425.308 (2), reasonable attorney's fees in a class action shall be determined by the value of the time reasonably expended by the attorney rather than by the amount of the recovery on behalf of the class. A legal aid society or legal services program which represents a class shall be awarded a reasonable service fee in lieu of reasonable attorney's fees, equal in amount to the amount of the attorney's fees as measured by this subsection.

(16) The administrator, whether or not a party to an action, shall bear the costs of notice except that the administrator may recover such costs from the defendant as provided in sub. (11).

**History:** 1971 c. 239; 1975 c. 467; 1979 c. 89; 1985 a. 256; 1991 a. 316; 1995 a. 27, 225, 329; 1999 a. 85.

Sub. (4) (c) is procedural and not substantive as it does not grant or deny the substantive right to sue. *Mace v. Van Ru Credit Corp.* 109 F.3d 338 (1997).

**426.111 Debtors' remedies not affected.** The grant of powers to the administrator in this chapter does not affect remedies available to customers under chs. 421 to 427 and 429 or under other principles of law or equity.

**History:** 1971 c. 239; 1979 c. 89; 1995 a. 329.

SUBCHAPTER II

REGISTRATION AND FEES

**426.201 Registration.** (1) The registration requirements of this section apply to persons who do any of the following in this state:

(a) Make or solicit consumer credit transactions, except a person who engages in consumer credit transactions solely through honoring credit cards issued by 3rd parties not related to such person.

(b) Directly collect payments from or enforce rights against customers arising from such transactions, wherever made.

(2) Each person subject to the registration requirements under sub. (1) shall file a registration statement with the administrator within 30 days after commencing business in this state. The registration statement shall include all of the following information:

(a) The name of the person.

(b) The name under which the person transacts business if different from par. (a).

(c) The address of the person's principal office, which may be outside this state.

(d) The addresses of all of the person's offices or retail stores, if any, in this state.

(e) If consumer transactions or other business subject to this chapter are made otherwise than at an office or retail store in this state, a brief description of the manner in which they are made.

(f) The address of the person's designated agent upon whom service of process may be made in this state.

(fm) The year-end balance of all consumer credit transactions held by the person. In this paragraph, "year-end balance" has the meaning given under s. 426.202 (1m) (a).

(g) Such other similar information as the administrator may require to effectuate the purposes and policies of chs. 421 to 427 and 429.

(2m) (a) Except as provided in par. (b), each person subject to the registration requirements under sub. (1) shall file a registration statement containing the information under sub. (2) (a) to (g) no later than February 28 of each year following the year of the person's initial registration under sub. (2).

(b) 1. In this paragraph, "year-end balance" has the meaning given in s. 426.202 (1m) (a).

2. Paragraph (a) does not apply if the person's year-end balance is not more than \$250,000.

(3) The administrator shall adopt rules governing the filing of changes, additions, or modifications of the registration statement required by this section, and shall adopt rules pertaining to form, verification, fees, and similar matters pertaining to the registration.

(4) The following persons shall not be subject to this section solely by reason of their debt collection activities unless they are licensed debt collectors under s. 218.04:

(a) Attorneys authorized to practice law in this state or professional service corporations composed of licensed attorneys formed pursuant to ss. 180.1901 to 180.1921;

(b) Duly licensed real estate brokers and real estate salespersons; and

(c) Duly licensed insurance companies subject to the supervision of the office of the commissioner of insurance.

(5) No person is subject to this section solely by reason of offering the discount described in s. 422.201 (8).

History: 1971 c. 239; 1975 c. 407; 1979 c. 10 s. 24; 1979 c. 89; 1979 c. 162 s. 38 (3); 1979 c. 168 s. 21; 1979 c. 341 s. 12 (2); 1989 a. 303; 1995 a. 27, 328, 329; 2001 a. 16.

**426.202 Fees. (1m) AMOUNT OF REGISTRATION FEE. (a) Definitions.** In this subsection:

2. "Reporting period" means, for any registration statement, the last full calendar year preceding the date on which the registration statement is due.

3. "Year-end balance" means, for any reporting period, the outstanding balance of all consumer credit transactions that a person has entered into or has obtained by assignment, and that originated in this state, as of December 31 preceding the annual registration filing date under s. 426.201 (2m) (a).

(b) *Registration fee requirement.* Any person required to register under s. 426.201 shall pay a registration fee to the administrator when the person files the registration statement required under s. 426.201.

(c) *Amount of registration fee.* The amount of the registration fee shall be determined in accordance with rates set by the administrator. In setting these rates, the administrator shall consider the costs of administering chs. 421 to 427 and 429, including the costs of enforcement, education and seeking voluntary compliance with chs. 421 to 427 and 429. The registration fee for a person shall be based on the person's year-end balance for the reporting period.

(4) **SUBMISSION OF DATA FOR CALCULATING THE AMOUNT OF FEE.** A person required to register under s. 426.201 shall submit such financial and other data as the administrator may require which will support the computation of the amount of the fee.

(5) **RECOVERY OF FEES.** The administrator shall bring an action in any court of record to recover any fees that the administrator determines are due and owing under this section.

History: 1971 c. 239; 1973 c. 116 s. 6; 1975 c. 407; 1979 c. 168 s. 21; 1991 a. 316; 1995 a. 27, 329; 2001 a. 16.

**426.203 Penalties.** Whoever fails to comply with the registration requirements under s. 426.201 or fails to pay a fee required under s. 426.202 may be required to forfeit not more than \$50. Each day that this failure continues constitutes a separate offense. Forfeitures received by the administrator under this section shall be credited to the appropriation account under s. 20.144 (1) (h) and may be expended from the account only for consumer or merchant education programs.

History: 1995 a. 27.

### SUBCHAPTER III

### VIOLATIONS AND ENFORCEMENT

**426.301 Violations and enforcement. (1)** The administrator may recover in a civil action from a person who violates chs. 421 to 427 and 429 or any rule made pursuant to any authority granted in chs. 421 to 427 and 429, a civil penalty of not less than \$100 and not more than \$1,000 for each violation.

(2) In addition to the amount to which the administrator shall be entitled under sub. (1), the administrator may recover in a civil action from a person who knowingly or willfully violates chs. 421 to 427 and 429 or any rule made pursuant to any authority granted in chs. 421 to 427 and 429, a civil penalty of not less than \$1,000 and not more than \$10,000 for each violation.

History: 1971 c. 239; 1979 c. 89; 1995 a. 329.



## CHAPTER 427

### CONSUMER TRANSACTIONS — DEBT COLLECTION

427.101 Short title.  
427.102 Scope.  
427.103 Definitions: "claim"; "debt collection"; "debt collector".

427.104 Prohibited practices.  
427.105 Remedies.

Cross-reference: See definitions in s. 421.301.

**427.101 Short title.** This chapter shall be known and may be cited as Wisconsin consumer act—debt collection.

History: 1971 c. 239.

**427.102 Scope.** This chapter applies to conduct and practices in connection with the collection of obligations arising from consumer transactions, including transactions that are primarily for an agricultural purpose.

History: 1971 c. 239; 1997 a. 302.

Wisconsin consumer act—a critical analysis. Heiser, 57 MLR 389.  
Wisconsin consumer act—a freak out? Barrett, Jones, 57 MLR 483.

**427.103 Definitions: "claim"; "debt collection"; "debt collector".** (1) "Claim" means any obligation or alleged obligation arising from a consumer transaction, including a transaction that is primarily for an agricultural purpose.

(2) "Debt collection" means any action, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due a merchant by a customer.

(3) "Debt collector" means any person engaging, directly or indirectly, in debt collection, and includes any person who sells, or offers to sell, forms represented to be a collection system, device or scheme, intended or calculated to be used to collect claims. The term does not include a printing company engaging in the printing and sale of forms.

History: 1971 c. 239; 1997 a. 302.

**427.104 Prohibited practices.** (1) In attempting to collect an alleged debt arising from a consumer credit transaction or other consumer transaction, including a transaction primarily for an agricultural purpose, where there is an agreement to defer payment, a debt collector may not:

(a) Use or threaten force or violence to cause physical harm to the customer or the customer's dependents or property;

(b) Threaten criminal prosecution;

(c) Disclose or threaten to disclose information adversely affecting the customer's reputation for credit worthiness with knowledge or reason to know that the information is false;

(d) Initiate or threaten to initiate communication with the customer's employer prior to obtaining final judgment against the customer, except as permitted by statute including specifically s. 422.404, but this paragraph does not prohibit a debt collector from communicating with the customer's employer solely to verify employment status or earnings or where an employer has an established debt counseling service or procedure;

(e) Disclose or threaten to disclose to a person other than the customer or the customer's spouse information affecting the customer's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information, but this paragraph does not prohibit the disclosure to another person of information permitted to be disclosed to that person by statute;

(f) Disclose or threaten to disclose information concerning the existence of a debt known to be reasonably disputed by the customer without disclosing the fact that the customer disputes the debt;

(g) Communicate with the customer or a person related to the customer with such frequency or at such unusual hours or in such a manner as can reasonably be expected to threaten or harass the customer;

(h) Engage in other conduct which can reasonably be expected to threaten or harass the customer or a person related to the customer;

(i) Use obscene or threatening language in communicating with the customer or a person related to the customer;

(j) Claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist;

(k) Use a communication which simulates legal or judicial process or which gives the appearance of being authorized, issued or approved by a government, governmental agency or attorney-at-law when it is not;

(L) Threaten action against the customer unless like action is taken in regular course or is intended with respect to the particular debt; or

(m) Engage in conduct in violation of a rule adopted by the administrator after like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against false, misleading, deceptive or unconscionable agreements or conduct (ss. 426.109 and 426.110).

(2) If a debt collector is not otherwise in violation of sub. (1) (j) with respect to a consumer credit transaction with a debtor, it is not a violation of this section to send a billing statement or other notice of account to, or to collect the amount due on the account from, the spouse of that debtor, if notice to the debtor's spouse is provided under s. 766.56.

History: 1971 c. 239; 1975 c. 407; 1983 a. 186; 1991 a. 316; 1997 a. 302.

Sixty-nine calls to debtor over a 19-month period was not harassment. Associates Financial Services Co. v. Hornik, 114 Wis. 2d 163, 336 N.W.2d 395 (Ct. App. 1983).

A circuit court is competent to hear state consumer act claims based upon a creditor's violation of federal bankruptcy debt collection prohibitions. Gonzales v. AM Community Credit Union, 150 Wis. 2d 773, 442 N.W.2d 536 (Ct. App. 1989).

A replevin action is an attempt to collect a debt under this section. Kett v. Community Credit Plan, Inc. 228 Wis. 2d 1, 596 N.W.2d 786 (Ct. App. 1998), 97-3620.

Sub. (1) (f) requires a bank that discloses a disputed debt to a credit bureau to disclose the disputed status of the debt each time that the debt is reported and not just the first time. Turner v. Gene Dencker Buick-Pontiac, Inc. 2001 WI App 28, 240 Wis. 2d 385, 623 N.W.2d 151, 99-3174.

The defendant violated sub. (1) (j) when it attempted to collect debts under a false name. Hartman v. Meridian Financial Services, Inc. 191 F. Supp. 2d 1031 (2002).

Police agencies and district attorneys are not prohibited by sub. (1) (b) from sending letters threatening criminal prosecution to persons who have issued worthless checks. 63 Atty. Gen. 340.

**427.105 Remedies.** (1) A person injured by violation of this chapter may recover actual damages and the penalty provided in s. 425.304; but notwithstanding any other law actual damages shall include damages caused by emotional distress or mental anguish with or without accompanying physical injury proximately caused by a violation of this chapter.

(2) If a customer establishes that the customer was induced to surrender collateral (s. 425.202) by conduct of the merchant which violates this chapter, the customer shall be entitled to a determination of the right to possession of the collateral pursuant to s. 425.205 (1) (e) in any action brought under this subchapter, and if the customer prevails on such issue, in addition to any other damages under this subchapter, the customer shall be entitled to



427.105 DEBT COLLECTION

recover possession of the collateral if still in the merchant's possession, together with actual damages for the customer's loss of use of the collateral.

**History:** 1971 c. 239; 1991 a. 316.

Sub. (1) does not restrict recovery to persons who are customers under s. 421.301 (17). *Zehetner v. Chrysler Financial Company, LLC*, 2004 WI App 80, 272 Wis. 2d 628, 679 N.W.2d 919, 03-1473.



## CHAPTER 766

### PROPERTY RIGHTS OF MARRIED PERSONS; MARITAL PROPERTY

766.001	Liberal construction; intent.	766.587	Statutory individual property classification agreement.
766.01	Definitions.	766.588	Statutory terminable marital property classification agreement.
766.03	Applicability.	766.589	Statutory terminable individual property classification agreement.
766.15	Responsibility between spouses.	766.59	Unilateral statement; income from nonmarital property.
766.17	Variation by marital property agreement.	766.60	Optional forms of holding property; survivorship ownership.
766.31	Classification of property of spouses.	766.605	Classification of homestead.
766.51	Management and control of property of spouses.	766.61	Classification of life insurance policies and proceeds.
766.53	Gifts of marital property to 3rd persons.	766.62	Classification of deferred employment benefits.
766.55	Obligations of spouses.	766.63	Mixed property.
766.555	Obligations of spouses under open-end plans.	766.70	Remedies.
766.56	Credit transactions with married persons.	766.73	Invalid marriages.
766.565	Relationship to consumer act.	766.75	Treatment of certain property at dissolution.
766.57	Protection of bona fide purchasers dealing with spouses.	766.95	Rules of construction.
766.575	Protection of trustees dealing with spouses.	766.96	Uniformity of application and construction.
766.58	Marital property agreements.	766.97	Equal rights; common law disabilities.
766.585	Marital property agreements before determination date.		

NOTE: Chapter 766 was created by 1983 Wis. Act 186 and affected by 1985 Wis. Act 37. Act 37 contains a prefatory note and notes following most of the sections affected by the act. These notes are not included. The explanatory notes in Act 37 were prepared by the legislative council and revised by its staff after the legislature adopted a conference substitute amendment to the original bill. Legislative council information memorandum 85-7, part I, contains original and supplemental explanatory notes to the marital property implementation law, 1985 Wis. Act 37. Part II of the memorandum contains supplemental explanatory notes to the tax provisions of the marital property implementation law, 1985 Wis. Acts 29 and 37.

NOTE: See also 1987 Wis. Act 393, which contains a long prefatory note and notes following the sections affected.

**766.001 Liberal construction; intent.** (1) This chapter is remedial in nature and shall be liberally construed, consistent with s. 766.96.

(2) It is the intent of the legislature that marital property is a form of community property.

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

Chapter 766, the Marital Property Act, does not supplant divorce property division provisions. In re Marriage of Kuhlman v. Kuhlman, 146 Wis. 2d 588, 432 N.W.2d 295 (Ct. App. 1988).

Anthology of articles and comments on the marital property act. 68 MLR No. 3 (1985).

A brief overview: The new Wisconsin marital property act. Weisberger and Wilcox. WBB July, 1984.

The marital property law. WBB July, 1984.

The trailer bill: A survey of the 1985 amendments to the Wisconsin marital property act. Furh, WBB December, 1985.

Estate planning under Wisconsin's marital property act. Erlanger, Hughes and Weisberger, WBB February, 1986.

**766.01 Definitions.** In this chapter:

(1) "Acquiring" property includes reducing indebtedness on encumbered property and obtaining a lien on or security interest in property.

(2) "Appreciation" means a realized or unrealized increase in the value of property.

(2m) (a) Except as provided in pars. (b) and (c), "credit" means the right granted by a creditor to defer payment of a debt, incur debt and defer its payment or purchase property or services and defer payment for the property or services.

(b) If used in connection with a transaction governed under chs. 421 to 427, "credit" has the meaning specified in s. 421.301 (14).

(c) Paragraph (a) does not apply to s. 766.56 (2) (c) and (d).

(2r) (a) Except as provided in pars. (b) and (c), "creditor" means a person that regularly extends credit.

(b) If used in connection with a transaction governed under chs. 421 to 427, "creditor" has the meaning specified in s. 421.301 (16).

(c) Paragraph (a) does not apply to s. 766.55 (3) to (4m), 766.56 (2) (c) and (d) or 766.61 (4).

(3) "Decree" means a judgment or other order of a court.

(3m) "Deferred employment benefit" means a benefit from a deferred employment benefit plan.

(4) (a) "Deferred employment benefit plan" means a plan, fund, program or other arrangement under which compensation or benefits from employment are expressly, or as a result of surrounding circumstances, deferred to a later date or the happening of a future event. "Deferred employment benefit plan" includes but is not limited to a pension, profit sharing or stock-bonus plan, an employee stock-ownership or stock-purchase plan, a savings or thrift plan, an annuity plan, a qualified bond-purchase plan, a self-employed retirement plan, a simplified employee pension and a deferred compensation agreement or plan.

(b) "Deferred employment benefit plan" does not include life, health, accident or other insurance or a plan, fund, program or other arrangement providing benefits similar to insurance benefits, except to the extent that benefits under the plan:

1. Have a present value that is immediately realizable in cash at the option of the employee;

2. Constitute an unearned premium for the coverage;

3. Represent a right to compensation for loss of income during disability; or

4. Represent a right to payment of expenses incurred before time of valuation.

(5) "Determination date" means the last to occur of the following:

(a) Marriage.

(b) 12:01 a.m. on the date that both spouses are domiciled in this state.

(c) 12:01 a.m. on January 1, 1986.

(6) "Disposition at death" means transfer of property by will, intestate succession, nontestamentary transfer or other means that takes effect at the transferor's death.

(7) "Dissolution" means termination of a marriage by a decree of dissolution, divorce, annulment or declaration of invalidity or entry of a decree of legal separation or separate maintenance. The term does not include a decree resulting from an action available under ch. 767 which is not an annulment, a divorce or a legal separation.

(8) "During marriage" means a period in which both spouses are domiciled in this state that begins at the determination date and ends at dissolution or at the death of a spouse.

(9) (a) Except as provided in pars. (b) to (d), property is "held" by a person only if a document of title to the property is registered, recorded or filed in a public office in the name of the person or a writing that customarily operates as a document of title to the type of property is issued for the property in the person's name.

## 766.01 MARITAL PROPERTY

(b) An account is "held" by the person who, by the terms of the account, has a present right, subject to request, to payment from the account other than as an agent. Accounts that are so "held" include accounts under s. 705.01 (1) and brokerage accounts.

(c) An uncertificated security, as defined under s. 408.102 (1) (r), is "held" by the person identified as the registered owner of the security upon books maintained for that purpose by or on behalf of the issuer. If the registered owner of an uncertificated security is identified as a brokerage account, the security is "held" as provided under par. (b).

(d) The property rights, as specified and described in ss. 178.21 and 178.22, of a partner in a general partnership are "held" by the partner.

(10) "Income" means wages, salaries, commissions, bonuses, gratuities, payments in kind, deferred employment benefits, proceeds, other than death benefits, of any health, accident or disability insurance policy or of any plan, fund, program or other arrangement providing benefits similar to those forms of insurance, other economic benefits having value attributable to the effort of a spouse, dividends, dividends on life insurance and annuity contracts to the extent that the aggregate of the dividends exceeds the aggregate premiums paid, interest, income distributed from trusts and estates, and net rents and other net returns attributable to investment, rental, licensing or other use of property, unless attributable to a return of capital or to appreciation.

(11) "Management and control" means the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, institute or defend a civil action regarding or otherwise deal with property as if it were property of an unmarried person.

(12) "Marital property agreement" means an agreement that complies with s. 766.58, 766.585, 766.587, 766.588 or 766.589. The term does not include the financial disclosure form under s. 766.588 (9) or 766.589 (10).

(13) A person has "notice" of a fact if the person has knowledge of it, receives a notification of it, or has reason to know that it exists from the facts and circumstances known to the person.

(15) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property.

(16) "Written consent" means a document signed by a person against whose interests it is sought to be enforced.

History: 1983 a. 186; 1985 a. 37; 1987 a. 393; 1991 a. 301; 1997 a. 297.

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

From Common Law Property to Community Property: Wisconsin's Marital Property Act Four Years Later. Erlanger and Weisberger. 1990 WLR 769.

**766.03 Applicability.** (1) Except as provided in sub. (4) and ss. 766.58 (5), (11) and (12) and 766.585, this chapter first applies to spouses upon their determination date.

(2) After this chapter first applies to spouses, it continues to apply to spouses during marriage. Section 766.75 applies after a dissolution. If at the time of the death of a spouse both spouses are domiciled in this state, the provisions of this chapter which have application after the death of a spouse apply.

(3) The cessation of the application of this chapter because a spouse is no longer domiciled in this state does not by itself affect any property, right, interest or remedy acquired under this chapter by either spouse or by a 3rd party or the satisfaction of any obligation incurred by a spouse under this chapter.

(4) Section 766.97 applies to a spouse in this state whether or not that person is domiciled in this state.

(5) Any property, right, interest or remedy of a spouse or 3rd party acquired or property that is available to satisfy an obligation incurred on or after January 1, 1986, and before May 3, 1988, shall not be adversely affected by 1987 Wisconsin Act 393, sections 10, 11, 15, 16, 27, 29 and 32.

(6) This chapter does not affect the property available to satisfy an obligation incurred by a spouse that is attributable to an obligation arising when one or both spouses are not domiciled in

this state or to an act or omission occurring when one or both spouses are not domiciled in this state.

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

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

**766.15 Responsibility between spouses.** (1) Each spouse shall act in good faith with respect to the other spouse in matters involving marital property or other property of the other spouse. This obligation may not be varied by a marital property agreement.

(2) Management and control by a spouse of that spouse's property that is not marital property in a manner that limits, diminishes or fails to produce income from that property does not violate sub. (1).

History: 1983 a. 186.

Intentional misrepresentation is a breach of the duty of good faith for which the exclusive pre-divorce remedy is s. 766.70 (1). *Gardner v. Gardner*, 175 Wis. 2d 420, 499 N.W.2d 266 (Ct. App. 1993).

**766.17 Variation by marital property agreement.** (1) Except as provided in ss. 766.15, 766.55 (4m), 766.57 (3) and 766.58 (2), a marital property agreement may vary the effect of this chapter.

(2) Section 859.18 (6) governs the effect of a marital property agreement upon property available for satisfaction of obligations after the death of a spouse.

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

**766.31 Classification of property of spouses.** (1) All property of spouses is marital property except that which is classified otherwise by this chapter and that which is described in sub. (8).

(2) All property of spouses is presumed to be marital property.

(3) Each spouse has a present undivided one-half interest in each item of marital property, but 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.

(4) Except as provided under subs. (7) (a), (7p) and (10), income earned or accrued by a spouse or attributable to property of a spouse during marriage and after the determination date is marital property.

(5) The transfer of property to a trust does not by itself change the classification of the property.

(6) Property owned at a marriage which occurs after 12:01 a.m. on January 1, 1986, is individual property of the owning spouse if, at the marriage, both spouses are domiciled in this state.

(7) Property acquired by a spouse during marriage and after the determination date is individual property if acquired by any of the following means:

(a) By gift during lifetime or by a disposition at death by a 3rd person to that spouse and not to both spouses. A distribution of principal or income from a trust created by a 3rd person to one spouse is the individual property of that spouse unless the trust provides otherwise.

(b) In exchange for or with the proceeds of other individual property of the spouse.

(c) From appreciation of the spouse's individual property except to the extent that the appreciation is classified as marital property under s. 766.63.

(d) By a decree, marital property agreement or reclassification under sub. (10) designating it as the individual property of the spouse.

(e) As a recovery for damage to property under s. 766.70, except as specifically provided otherwise in a decree or marital property agreement.

(f) As a recovery for personal injury except for the amount of that recovery attributable to expenses paid or otherwise satisfied

from marital property and except for the amount attributable to loss of income during marriage.

(7p) Income attributable to all or specified property other than marital property, with respect to which a spouse has executed under s. 766.59 a statement unilaterally designating that income as his or her individual property, is individual property.

(8) Except as provided otherwise in this chapter, the enactment of this chapter does not alter the classification and ownership rights of property acquired before the determination date or the classification and ownership rights of property acquired after the determination date in exchange for or with the proceeds of property acquired before the determination date.

(9) Except as provided otherwise in this chapter and except to the extent that it would affect the spouse's ownership rights in the property existing before the determination date, during marriage the interest of a spouse in property owned immediately before the determination date is treated as if it were individual property.

(10) Spouses may reclassify their property by gift, conveyance, as defined in s. 706.01 (4), signed by both spouses, marital property agreement, written consent under s. 766.61 (3) (c) or unilateral statement under s. 766.59 and, if the property is a security, as defined in s. 705.21 (11), by an instrument, signed by both spouses, which conveys an interest in the security. If a spouse gives property to the other spouse and intends at the time the gift is made that the property be the individual property of the donee spouse, the income from the property is the individual property of the donee spouse unless a contrary intent of the donor spouse regarding the classification of income is established.

History: 1983 a. 186; 1985 a. 37; 1987 a. 393; 1991 a. 301; 1993 a. 160.

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

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).

The marital property law does not reduce a non-negligent mother's wrongful death recovery for the father's contributory negligence in their child's death. Smith v. State Farm Fire & Casualty Co. 192 Wis. 2d 322, 531 N.W.2d 376 (Ct. App. 1995).

A quitclaim deed of a married couple's homestead from one spouse to the other is not valid to alienate the grantor's interest in the property in any way that would eliminate either spouse's contractual obligations under a mortgage containing a valid dragnet clause. Schmidt v. Waukesha State Bank, 204 Wis. 2d 426, 555 N.W.2d 655 (Ct. App. 1996), 95-1850.

The termination under sub. (3) of a marital property interest in pension benefits did not prevent the application of the equitable principle 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.

Irreconcilable differences: Income from separate property under divorce law and under Wisconsin's marital property act. Bascom. 70 MLR 41 (1986).

The effects of the Wisconsin marital property act on trusts: Whose property is it? Kusky, WBB March, 1985.

### 766.51 Management and control of property of spouses. (1) A spouse acting alone may manage and control:

(a) That spouse's property that is not marital property.

(am) Except as provided in subs. (2) and (3), marital property held in that spouse's name alone or not held in the name of either spouse.

(b) Marital property held in the names of both spouses in the alternative, including marital property held in a form designating the holder by the words "(name of one spouse) or (name of other spouse)".

(d) A policy of insurance if that spouse is designated as the owner on the records of the policy issuer.

(e) Any right of an employee under a deferred employment benefit plan that accrues as a result of that spouse's employment.

(f) A claim for relief vested in that spouse by other law.

(1m) (a) Notwithstanding any provision in this section except par. (b), for the purpose of obtaining an extension of credit for an obligation described under s. 766.55 (2) (b), a spouse acting alone may manage and control all of the marital property.

(b) Unless the spouse acting alone may otherwise under this section manage and control the property, the right to manage and control marital property under this subsection does not include the right to manage and control marital property described in s.

766.70 (3) (a) to (d) or the right to assign, create a security interest in, mortgage or otherwise encumber marital property.

(2) Spouses may manage and control marital property held in the names of both spouses other than in the alternative only if they act together.

(3) The right to manage and control marital property transferred to a trust is determined by the terms of the trust.

(4) The right to manage and control marital property permits gifts of that property, subject to remedies under this chapter.

(5) The right to manage and control marital property does not determine the classification of property of the spouses and does not rebut the presumption under s. 766.31 (2).

(6) The enactment of this chapter does not affect the right to manage and control any property of either or both spouses acquired before the determination date.

(7) A court may appoint a conservator or guardian under ch. 880 to exercise a disabled spouse's right to manage and control marital property.

(8) This section does not affect s. 706.02 (1) (f).

(9) If an executory contract for the sale of property is entered into by a person having the right of management and control of the property, the rights of all persons then having or thereafter acquiring an interest in the property under this chapter are subject to the terms of the executory contract. This subsection applies to contracts entered into before or after the determination date.

(10) At the death of a spouse if property described under s. 766.70 (3) (a), (b) or (d) is held by either spouse, but not in the names of both spouses, such property may be subject to the management and control of the holding spouse as provided under s. 857.015.

History: 1983 a. 186; 1985 a. 37; 1987 a. 393.

**766.53 Gifts of marital property to 3rd persons.** A spouse acting alone may give to a 3rd person marital property that the spouse has the right to manage and control only if the value of the marital property given to the 3rd person does not aggregate more than either \$1,000 in a calendar year, or a larger amount if, when made, the gift is reasonable in amount considering the economic position of the spouses. Any other gift of marital property to a 3rd person is subject to s. 766.70 (6) unless both spouses act together in making the gift. Under this section and for the purpose of s. 766.70 (6) (a), in the case of a gift of marital property by a spouse to a 3rd person in which the donor spouse has retained an interest, the gift shall be valued at the full value of the entire transfer of marital property, regardless of any retained interest or interest donated to the other spouse. For purposes of this section only, a gift of a life insurance policy by a spouse to a 3rd person shall be valued at the amount payable under the policy if the insured died at the time the gift was made.

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

**766.55 Obligations of spouses.** (1) An obligation incurred by a spouse during marriage, including one attributable to an act or omission during marriage, is presumed to be incurred in the interest of the marriage or the family. A statement separately signed by the obligated or incurring spouse at or before the time the obligation is incurred stating that the obligation is or will be incurred in the interest of the marriage or the family is conclusive evidence that the obligation to which the statement refers is an obligation in the interest of the marriage or family, except that the existence of that statement does not affect any interspousal right or remedy.

(2) After the determination date all of the following apply:

(a) A spouse's obligation to satisfy a duty of support owed to the other spouse or to a child of the marriage may be satisfied only from all marital property and all other property of the obligated spouse.

(b) An obligation incurred by a spouse in the interest of the marriage or the family may be satisfied only from all marital property and all other property of the incurring spouse.

## 766.55 MARITAL PROPERTY

(c) 1. An obligation incurred by a spouse before or during marriage that is attributable to an obligation arising before marriage or to an act or omission occurring before marriage may be satisfied only from property of that spouse that is not marital property and from that part of marital property which would have been the property of that spouse but for the marriage.

2. An obligation incurred by a spouse before, on or after January 1, 1986, that is attributable to an obligation arising before January 1, 1986, or to an act or omission occurring before January 1, 1986, may be satisfied only from property of that spouse that is not marital property and from that part of marital property which would have been the property of that spouse but for the enactment of this chapter.

(cm) An obligation incurred by a spouse during marriage, resulting from a tort committed by the spouse during marriage, may be satisfied from the property of that spouse that is not marital property and from that spouse's interest in marital property.

(d) Any other obligation incurred by a spouse during marriage, including one attributable to an act or omission during marriage, may be satisfied only from property of that spouse that is not marital property and from that spouse's interest in marital property, in that order.

(2m) Unless the dissolution decree or any amendment to the decree so provides, no income of a nonincurring spouse is available for satisfaction of an obligation under sub. (2) (b) after entry of the decree. Marital property assigned to each spouse under that decree is available for satisfaction of such an obligation to the extent of the value of the marital property at the date of the decree. If a dissolution decree provides that the nonincurring spouse is responsible for satisfaction of the obligation, the obligation may be satisfied as if both spouses had incurred the obligation.

(3) This chapter does not alter the relationship between spouses and their creditors with respect to any property or obligation in existence on the determination date. An obligation of a guarantor, surety or indemnitor arising after the determination date under a guaranty or contract of indemnity or surety executed before the determination date is an obligation in existence on the determination date.

(4) Any written consent signed by a creditor which diminishes the rights of the creditor provided in this section is binding on the creditor.

(4m) Except as provided under s. 766.56 (2) (c), no provision of a marital property agreement or of a decree under s. 766.70 adversely affects the interest of a creditor unless the creditor had actual knowledge of that provision when the obligation to that creditor was incurred or, in the case of an open-end plan, as defined under s. 766.555 (1) (a), when the plan was entered into. If a creditor obtains actual knowledge of a provision of a marital property agreement or decree after an obligation is incurred or an open-end plan is entered into, the provision does not adversely affect the interest of the creditor with respect to that obligation or plan, including any renewal, extension, modification or use of the obligation or plan. The effect of this subsection may not be varied by a marital property agreement or a decree. This subsection does not affect the application of ch. 706.

(5) This chapter does not affect the exemption of any property of spouses from availability for satisfaction of an obligation, provided by other law.

(6) Subsections (2) and (2m) and s. 859.18 do not affect the satisfaction of an obligation of a spouse from collateral or other security for that obligation.

(7) Property available under this chapter to satisfy an obligation of a spouse is available regardless of whether the property is located in this state or whether this chapter no longer applies because one or both spouses are no longer domiciled in this state.

(8) After the death of a spouse, property is available for satisfaction of obligations as provided in s. 859.18.

History: 1983 a. 186; 1985 a. 37; 1987 a. 393.

Sub. (2) (c) bars the use of marital property income to satisfy pre-marital obligations, including modifications of support or maintenance under ch. 767. In re Marriage of Burger v. Burger, 144 Wis. 2d 514, 424 N.W.2d 691 (1988).

While sub. (2) (c) 2. precludes the state from satisfying a liable family member's pre-marital or pre-Act debt from a non-liable member's income, it does not preclude the department from considering the non-liable member's income in determining the liable member's ability to pay under ch. 46. In Interest of A.L.W. 153 Wis. 2d 412, 451 N.W.2d 416 (1990).

Under sub. (2) (cm) neither an innocent spouse nor an innocent spouse's insurer is liable for the tort obligations of a tortfeasor spouse. Both v. American Family Ins. Co., 159 Wis. 2d 378, 464 N.W.2d 109 (Ct. App. 1990).

The presumption that a debt is incurred in the interest of marriage does not apply to an obligation for support under sub. (2) (a), and thus sub. (2m) does not apply to obligations for spousal support. St. Marys Medical Center v. Brody, 186 Wis. 2d 100, 519 N.W.2d 713 (Ct. App. 1994).

The obligation of support is imposed under s. 765.001 and is not relieved simply because s. 766.55 (2) (a) may not apply. Sinai Samaritan Medical Center, Inc. v. McCabe, 197 Wis. 2d 709, 541 N.W.2d 190 (Ct. App. 1995), 95-0012.

The definition of "creditor" under s. 766.01 (2r) does not apply to sub. (4m). A judgment creditor is a creditor for purposes of sub. (4m) and must have notice of the marital property agreement at the time the misconduct resulting in the judgment occurred in order for the agreement to be effective against the creditor. The Journal Sentinel, Inc. v. Schultz, 2001 WI App 260, 248 Wis. 2d 791, 638 N.W.2d 76, 00-2595.

A creditor's right to reach property subject to division in a divorce is not determined by s. 767.255, but is driven solely by the classification into which the obligation falls under this section. A restitution order imposed by a criminal judgment for conversion was an obligation resulting from a tort committed by the incurring spouse under sub. (2) (cm). Whether an obligation resulted from a tort requires examination of the spouse's conduct that gave rise to the claim made. An individual's conduct may constitute a tort without a civil judgment so concluding. Sokaogon Gaming Enterprise v. Curda-Derickson, 2003 WI App 167, 266 Wis. 2d 453, 668 N.W.2d 736, 02-0924.

Necessaries and family purpose debts. Rubenzer. Wis. Law. Oct. 1996.

### 766.555 Obligations of spouses under open-end plans. (1) In this section:

(a) "Open-end plan" means credit extended on an account pursuant to a plan under which the creditor may permit a spouse 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.

(b) "Open-end plan" includes only those open-end plans entered into by a person whose spouse is not a party to the account.

(2) (a) This subsection applies to spouses for whom the determination date is 12:01 a.m. on January 1, 1986.

(b) Unless additional property is available under par. (c), an obligation incurred by a spouse on or after January 1, 1986, under an open-end plan entered into by that spouse before January 1, 1986, may be satisfied only from property of that spouse that is not marital property and from that part of marital property that would have been the property of that spouse but for the enactment of this chapter.

(c) 1. An obligation described under s. 766.55 (2) (b) incurred by a spouse on or after January 1, 1986, under an open-end plan entered into by that spouse before January 1, 1986, may be satisfied only from property of that spouse that is available under par. (b) and, if the creditor gives written notice complying with this paragraph to both spouses prior to the date the obligation is incurred, from all marital property.

2. The notice under subd. 1. shall describe the nature of the open-end plan and state that an obligation described under s. 766.55 (2) (b) that is incurred under the open-end plan may be satisfied from all marital property of the spouses, including the income of both spouses, and from the property of the incurring spouse that is not marital property.

3. The notice under subd. 1. is considered given on the date it is mailed by the creditor.

4. The notice under subd. 1. may be enclosed in an envelope addressed to the incurring spouse at the last-known address of that spouse appearing on the records of the creditor if a statement appears on the face of the envelope alerting both spouses that the envelope contains important information for both spouses.

(3) (a) This subsection applies to persons for whom the determination date is after 12:01 a.m., January 1, 1986.

(b) Except as provided under par. (c), an obligation incurred by a spouse after the determination date for that spouse, under an open-end plan entered into by that spouse before that determination date, may be satisfied only from all property of that spouse that is not marital property and from that part of marital property which would have been the property of that spouse but for the enactment of this chapter.

(c) An obligation described under s. 766.55 (2) (b) incurred by a spouse after the determination date for that spouse under an open-end plan entered into by that spouse before that determination date may be satisfied from all marital property and all other property of the incurring spouse.

History: 1985 a. 37.

#### 766.56 Credit transactions with married persons.

(1) If a spouse applies for credit that will result in an obligation described under s. 766.55 (2) (b), the creditor, in evaluating the spouse's creditworthiness, shall consider all marital property available under s. 766.55 (2) (b) to satisfy the obligation in the same manner that the creditor, in evaluating the creditworthiness of an unmarried credit applicant, considers the property of an unmarried credit applicant available to satisfy the obligation.

(2) (a) The recording, under s. 59.43 (1) (r), of a marital property agreement or a unilateral statement or revocation under s. 766.59 does not constitute actual or constructive notice to 3rd parties. This paragraph does not affect the application of ch. 706.

(b) A creditor shall include in every written application for an extension of credit that is governed by chs. 421 to 427 a notice that no provision of a marital property agreement, a unilateral statement under s. 766.59 or a court decree under s. 766.70 adversely affects the interest of the creditor unless the creditor, prior to the time the credit is granted, is furnished a copy of the agreement, statement or decree or has actual knowledge of the adverse provision when the obligation to the creditor is incurred. The notice requirement under this paragraph does not apply to renewals, extensions or modifications or the use of an open-end credit plan.

(c) If the applicant spouse in any credit transaction discloses the existence of a currently effective marital property agreement or a decree issued under s. 766.70 and provides a copy of it to the creditor prior to the time credit is granted or, in the case of an open-end plan, as defined under s. 766.555 (1) (a), prior to the time the open-end plan is entered into, the creditor is bound by any property classification, characterization of an obligation, or management and control right contained in the agreement or decree. If a spouse discloses the existence of an agreement or decree after credit is granted or an open-end plan is entered into, the creditor is not bound under this paragraph by the agreement or decree with respect to that obligation or open-end plan, including any renewals, extensions, modifications or use of the obligation or open-end plan.

(d) When a person applies for credit, the creditor may inquire as to whether the person is married, unmarried or separated, under a decree of legal separation.

(3) (a) In this subsection, "extends credit" means that an open-end credit plan, as defined under s. 421.301 (27), is established after the determination date, or that credit other than open-end credit is extended after the determination date. The term does not include renewals, extensions, modifications or the use of an open-end credit plan. This subsection does not apply to an open-end credit plan described under s. 766.555 (2) or (3).

(b) Except as provided in par. (c), if a creditor extends credit to a spouse in a credit transaction governed by chs. 421 to 427 and the extension of credit may result in an obligation described under s. 766.55 (2) (b), the creditor shall give the nonapplicant spouse written notice of the extension of credit before any payment is due. The notice requirement may be satisfied by providing a copy of the instrument, document, agreement or contract evidencing the obligation to pay or any required credit disclosure which is given to the applicant spouse, or by providing a separate writing briefly describing the nature of the credit extended. Notice is considered

given on the date it is mailed to the address of the nonapplicant spouse provided to the creditor by the applicant spouse. If the applicant spouse informs the creditor that the spouses reside at the same address, the notice may be enclosed in an envelope addressed to the nonapplicant spouse or both spouses.

(c) Notice is considered given under par. (b) if the nonapplicant spouse has actual knowledge that the credit is extended or waives the notice requirement in a signed writing.

(4) (a) Any financial organization or any other credit-granting commercial institution that violates sub. (1) is subject to the penalties under s. 138.20.

(b) Except as provided in par. (c), a creditor that fails to give notice under sub. (2) (b) is liable to each applicant spouse in the amount of \$25. Except as provided in par. (c), a creditor that fails to give notice under sub. (3) is liable to the nonapplicant spouse in the amount of \$25.

(c) A creditor is not subject to a penalty under par. (b) if the creditor shows by a preponderance of the evidence that failure to give notice was unintentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such error.

History: 1983 a. 186; 1985 a. 37 ss. 100 to 108, 187; 1995 a. 201.

A creditor's failure to provide the non-applicant spouse notice under sub. (3) (b) does not prevent the obligation from being classified as marital and does not affect the creditor's right to recovery. The non-applicant's only remedy is under sub. (4) (b). *Park Bank-West v. Mueller*, 151 Wis. 2d 476, 444 N.W.2d 754 (Ct. App. 1989).

**766.565 Relationship to consumer act.** (1) In this section, "open-end credit plan" has the meaning given under s. 421.301 (27). The term includes only those plans governed by chs. 421 to 427.

(2) Except as provided under sub. (6), this section does not impose any additional or separate notice requirements on a creditor.

(3) The spouse of a person who incurs an obligation described under s. 766.55 (2) (b) and governed by chs. 421 to 427 may exercise rights and remedies available to the incurring spouse under chs. 421 to 427.

(4) Section 422.305 does not apply to the spouse of a person who incurs an obligation described under s. 766.55 (2) (b) unless that spouse also signs the writing evidencing the credit transaction or a separate guarantee or similar instrument and unless the other requirements of s. 422.305 are met.

(5) The spouse of a person who establishes an open-end credit plan that may result in an obligation described under s. 766.55 (2) (b) may terminate the plan by giving written notice of termination to the creditor. A writing evidencing an open-end credit plan may include a provision that authorizes the creditor to declare the account balance due and payable upon receipt of notice of termination, notwithstanding s. 425.103 or 425.105. Notice of termination does not affect the liability of the incurring spouse or the availability of the incurring spouse's interest in marital property or other property of that spouse to satisfy obligations incurred under the open-end credit plan, both before and after the notice of termination. Subject to the limits under s. 422.4155 (1), the terminating spouse's interest in marital property continues to be available under s. 766.55 (2) (b) to satisfy obligations incurred in the interest of the marriage or family both before and after notice of the termination. A creditor may consider in its evaluation of subsequent applications for credit the fact that a prior open-end credit plan offered by the creditor and entered into by the applicant spouse has been terminated under this subsection.

(6) Written notice to a spouse under s. 422.415 (2) (a) or (c) concerning an increase in the rate of finance charge is not effective with respect to the interest of the nonincurring spouse in marital property unless notice is given to both spouses. Notice is considered given on the date it is mailed by the creditor. The notice may be enclosed in an envelope addressed to the incurring spouse at the last-known address of that spouse appearing on the records of the creditor if a statement appears on the face of the envelope alerting



## 766.565 MARITAL PROPERTY

the spouses that the envelope contains important information for both spouses.

(7) With respect to consumer credit transactions, the division of banking may promulgate rules to interpret this chapter and chs. 421 to 427, consistent with the purposes and policies of this chapter and chs. 421 to 427.

History: 1985 a. 37; 1995 a. 27.

**766.57 Protection of bona fide purchasers dealing with spouses.** (1) In this section:

(a) "Bona fide purchaser" means a purchaser of property for value who was not knowingly a party to fraud or illegality affecting the interest of the spouses or other parties to the transaction, does not have notice of an adverse claim by a spouse and acted in the transaction in good faith.

(b) "Purchase" means to acquire property by sale, lease, discount, negotiation, mortgage, pledge or lien, or otherwise to deal with property in a voluntary transaction other than a gift.

(c) A purchaser gives "value" for property acquired in return for a binding commitment to extend credit, as security for or in total or partial satisfaction of a preexisting claim, by accepting delivery pursuant to a preexisting contract for purchase, or, generally, in return for any consideration sufficient to support a simple contract.

(2) Notice of the existence of a marital property agreement, a marriage or the termination of a marriage does not affect the status of a purchaser as a bona fide purchaser.

(3) Marital property purchased by a bona fide purchaser from a spouse having the right to manage and control the property under s. 766.51 is acquired free of any claim of the other spouse and of any claim asserted through or under the other spouse. The effect of this subsection may not be varied by a marital property agreement.

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

**766.575 Protection of trustees dealing with spouses.** (1) In this section:

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

(b) "Governing instrument" means the contract or other instrument pursuant to which a trustee has possession or control of property. The term includes, in the case of trustees whose rights, duties and responsibilities are fixed by court order or statute or both, the court order and the applicable statutory provisions as modified by any court order, as they would apply if this chapter had not been enacted.

(c) "Notice of claim" means a written notice, by or on behalf of a spouse, former spouse, surviving spouse or person claiming under a deceased spouse's disposition at death, that the person claims to be entitled to property in the trustee's possession or control, specifying the portion of property to which the claim relates.

(d) "Property" includes, in addition to the meaning given under s. 766.01 (15), any proceeds of property, any income earned on property or derived from property and any income or proceeds derived from proceeds or income previously received and reinvested.

(e) "Trustee" has the meaning given under s. 701.01 (8).

(2) Except as provided in sub. (3), in a court order or in the terms of a trust, the classification of property in the possession or control of a trustee shall not affect the trustee's right and duty to administer, manage and distribute the property in accordance with the terms of the governing instrument and the trustee may rely on and act in accordance with those terms.

(3) (a) If at least 5 business days before distributing property in accordance with the terms of a governing instrument a trustee has received at its principal business office a notice of claim, the trustee shall notify the persons to whom the property would otherwise be distributed, whether as a matter of right or in the exercise of any discretion granted under the governing instrument, of the receipt of the notice of claim and shall suspend the distribution of

the portion of property to which the claim relates for 14 business days.

(b) If within 14 business days after receiving the notice of claim the trustee receives, as purporting to support the claim, a decree, marital property agreement or proof that a legal action has been commenced, including a copy of an election filed pursuant to s. 861.08 (1), to establish the validity of the claim, the trustee shall suspend distribution of the portion of the property to which the claim relates pending resolution of the validity of the claim.

(c) If documentation purporting to support the claim is not submitted as described in par. (b), the trustee may proceed to distribute the property as if the notice of claim had not been received.

(4) A trustee is not liable to any person for any claim for damages as a result of distribution of property in accordance with the terms of the governing instrument prior to its receipt of a notice of claim under sub. (3) or for any damages claimed as a result of suspension of distribution under this section. A person who files a notice of claim under sub. (3) is not entitled to recover fees or expenses charged against such property by the trustee prior to or in connection with the establishment of the validity of his or her claim. A trustee shall pay interest or earnings which accrue during the suspension of any action under sub. (3).

History: 1987 a. 393; 1997 a. 188.

**766.58 Marital property agreements.** (1) A marital property agreement shall be a document signed by both spouses. Only the spouses may be parties to a marital property agreement. A marital property agreement is enforceable without consideration.

(2) A marital property agreement may not adversely affect the right of a child to support.

(3) Except as provided in ss. 766.15, 766.55 (4m), 766.57 (3) and 859.18 (6), and in sub. (2), in a marital property agreement spouses may agree with respect to any of the following:

(a) Rights in and obligations with respect to any of either or both spouses' property whenever and wherever acquired or located.

(b) Management and control of any of either or both spouses' property.

(c) Disposition of any of either or both spouses' property upon dissolution or death or upon the occurrence or nonoccurrence of any other event.

(d) Modification or elimination of spousal support, except as provided in sub. (9).

(e) Making a will, trust or other arrangement to carry out the marital property agreement.

(f) Providing that upon the death of either spouse any of either or both spouses' property, including after-acquired property, passes without probate to a designated person, trust or other entity by nontestamentary disposition. Any such provision in a marital property agreement is revoked upon dissolution of the marriage as provided in s. 767.266 (1). If a marital property agreement provides for the nontestamentary disposition of property, without probate, at the death of the 2nd spouse, at any time after the death of the first spouse the surviving spouse may amend the marital property agreement with regard to property to be disposed of at his or her death unless the marital property agreement expressly provides otherwise and except to the extent property is held in a trust expressly established under the marital property agreement.

(g) Choice of law governing construction of the marital property agreement.

(h) Any other matter affecting either or both spouses' property not in violation of public policy or a statute imposing a criminal penalty.

(3m) Chapter 854 applies to transfers at death under a marital property agreement.

(4) A marital property agreement may be amended or revoked only by a later marital property agreement.