

1973 Senate Bill 364

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CHAPTER 18 , Laws of 1973

AN ACT to amend 421.202 (5) and (6); and to create 421.202 (7) and (8), 421.203 and chapter 428 of the statutes, relating to exemption of federally and state insured loans and certain real estate and securities transactions from the Wisconsin consumer act.

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

SECTION 1. 421.202 (5) and (6) of the statutes are amended to read:

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

(6) Consumer credit transactions in which the amount financed exceeds \$25,000 or other consumer transactions in which the cash price exceeds \$25,000;

SECTION 2. 421.202 (7) and (8) of the statutes are created to read:

421.202 (7) Transactions subject to ch. 428; or

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

SECTION 3. 421.203 of the statutes is created to read:

421.203 Partial exclusion for governmentally insured or guaranteed transactions.

(1) Consumer credit transactions, not governed by ch. 428, which are made, insured or guaranteed by the federal government or any agency thereof, or the department of veteran's affairs shall be subject to only those provisions set forth in sub. (2).

(2) Chapter 421, ss. 422.203 (2), 422.305, 422.306, 422.404, 422.406 to 422.409, 422.411, 422.417 and 422.418, ch. 425 except ss. 425.103 to 425.105, and chs. 426 and 427.

SECTION 4. Chapter 428 of the statutes is created to read:

CHAPTER 428
FIRST LIEN REAL ESTATE LOANS

428.101 Applicability. This chapter shall apply to loans by a creditor to a customer secured by a first lien real estate mortgage or equivalent security interest on which the annual percentage rate does not exceed 12% per annum and the amount financed is \$25,000 or less.

428.102 Definitions. In this chapter:

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

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

(3) "Customer" means a person other than an organization who seeks or acquires credit financing for real property or improvements thereto, for personal, family, household or agricultural purposes.

(4) "Loan" means the creation of debt by the creditor's payment of or agreement to pay money to the customer or to a third party for the account of the customer.

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

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

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

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

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

(c) With respect to debt collection:

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

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

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

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

1. Reasonable fees for opinions of title.

2. In foreclosure cases, 5% of the amount adjudged due the creditor; or 5% of the unpaid indebtedness, in the case of a foreclosure under ch. 297; or if the dispute is settled prior to judgment, a reasonable fee based on the time, nature and extent of the work involved, but not to exceed 2-1/2% of the unpaid principal balance of the loan.

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

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

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

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

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

(a) Twenty-five dollars; and

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

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

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

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

(3) Notwithstanding other provisions of this chapter, a customer shall not be entitled to recover the specific penalties provided in ss. 428.103 (2) (a) and 428.104 (2) (a) if the person violating this chapter shows by a preponderance of the evidence that

the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such error.

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

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