

1993 Assembly Bill 883

Date of enactment: **April 19, 1994**

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1993 WISCONSIN ACT 368

AN ACT *to renumber and amend* 138.09 (6) and 422.413 (2g) (c); *to amend* 138.09 (3) (c), 422.411 (1), 422.413 (2r) (c) and 422.413 (2r) (e); and *to create* 138.09 (6) (b), 422.411 (2m) and 422.413 (2g) (c) 2 of the statutes, **relating to:** collateral repair expenses in consumer credit transactions, to licensed lenders and granting rule-making authority.

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

SECTION 1. 138.09 (3) (c) of the statutes is amended to read:

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

SECTION 2. 138.09 (6) of the statutes is renumbered 138.09 (6) (a) and amended to read:

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

SECTION 3. 138.09 (6) (b) of the statutes is created to read:

138.09 (6) (b) A licensee may keep the books and records specified in par. (a) at a single location inside or outside of this state if the books and records are kept at

a location licensed under this section. The licensee shall organize the books and records by the place of business where the records originated and shall keep the books and records separate from other records for business conducted at that location. Actual costs incurred by the commissioner to examine books and records maintained outside of this state shall be paid by the licensee.

SECTION 4. 422.411 (1) of the statutes is amended to read:

422.411 (1) Except as provided in ~~sub.~~ subs. (2) and (2m), with respect to a consumer credit transaction no term of a writing may provide for the payment by the customer of attorney's fees. Notwithstanding subs. (2) and (2m), a consumer credit transaction may not provide for the payment by the customer of attorney fees if the transaction is for an agricultural purpose.

SECTION 5. 422.411 (2m) of the statutes is created to read:

422.411 (2m) A lender licensed under s. 138.09 may contract for the customer's payment of reasonable attorney fees actually incurred by the licensed lender to foreclose a mortgage or equivalent security interest in residential real property, but the customer is liable for attorney fees only if all of the following conditions are satisfied:

(a) The fees are payable to a licensed attorney who is not an employe of the licensed lender.

(b) The fees do not exceed 5% of the amount of the judgment entered against the customer, or \$100 in the event a judgment is not entered and the dispute is settled before judgment.

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SECTION 6. 422.413 (2g) (c) of the statutes is renumbered 422.413 (2g) (c) 1., and 422.413 (2g) (c) 1. (intro.), as renumbered, is amended to read:

422.413 (2g) (c) 1. (intro.) If the collateral is not redeemed by the customer under s. 425.208, the greater of expenses determined under subd. 2 or of all of the following expenses of preparing the collateral for sale if paid to persons not related to the creditor:

SECTION 7. 422.413 (2g) (c) 2. of the statutes is created to read:

422.413 (2g) (c) 2. Expenses for any repair to the collateral which increase the selling price of the collateral, not to exceed the amount by which the selling price is increased because of the repairs, if paid to persons not related to the creditor. The selling price of the collateral before repairs shall be established by any reasonable method, at no cost to the customer.

SECTION 8. 422.413 (2r) (c) of the statutes is amended to read:

422.413 (2r) (c) Any expenses described in sub. (2g) (c) 1, subject to the restrictions set forth in sub. (2g) (c) 1. (intro.), in the order, and subject to the limitations on amounts, set forth in sub. (2g) (c) 1. ~~to 3. a. to c., or in sub. (2g) (c) 2., subject to the limitation described in that subdivision.~~

SECTION 9. 422.413 (2r) (e) of the statutes is amended to read:

422.413 (2r) (e) Any expenses described in sub. (2g) (c) 1 in excess of the limitations on amounts set forth in sub. (2g) (c) 1. ~~to 3. a. to c.~~, in the order set forth in sub. (2g) (c) 1. ~~to 3. a. to c.~~

SECTION 10. Initial applicability. The treatment of section 422.411 (1) and (2m) of the statutes first applies to loans entered into on the effective date of this SECTION.