

No. 534, S.]

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CHAPTER 431

AN ACT to repeal 115.07 (1) and (2); to amend 115.04, 115.07 (3) (e) and 115.09 (9) (a); and to repeal and recreate 115.05 and 115.06 of the statutes, relating to the rate of interest which may be received on loans, and providing a penalty.

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

SECTION 1. 115.04 of the statutes is amended to read:

115.04 LEGAL RATE. The rate of interest upon the loan or forbearance of any money, goods or things in action shall be \$5 upon the \$100 for one year and according to that rate for a greater or less sum or for a longer or a shorter time; but parties may contract for the payment and receipt of a rate of interest not exceeding * * * *the rate allowed in s. 115.05*, in which case such rate * * * shall be clearly expressed in writing.

SECTION 2. 115.05 and 115.06 of the statutes are repealed and recreated to read:

115.05 MAXIMUM RATE; PREPAYMENT, DISCLOSURE; CORPORATIONS. (1) Except as authorized by other statutes, no person shall, directly or indirectly, contract for, take or receive in money, goods or things in action, or in any other way, any greater sum or any greater value, for the loan or forbearance of money, goods or things in action, than (a) at the rate of \$10 upon \$100 for one year, computed upon that portion of the declining principal balance of any loan or forbearance which exceeds \$5,000, (b) at the rate of \$12 upon \$100 for one year computed upon that portion of the declining principal balance of any loan or forbearance which is \$5,000 or less, and (c) with respect to loans or forbearances which are

repayable in substantially equal, successive instalments at approximately equal intervals of time and the face amounts of which include predetermined interest charges, at the rate of \$6 upon \$100 for one year computed upon that portion of the original principal amount of any such loan or forbearance, not including interest charges, which is \$5,000 or less for the time of such loan or forbearance, disregarding part payments and the dates thereof, and at the rate of \$10 upon \$100 for one year computed upon that portion of the declining principal balance thereof which is in excess of \$5,000. The aggregate principal amount of loans and forbearances to the same borrower by the same lender on which the interest rate exceeds the rate allowed in (a) shall not exceed \$5,000. In the computation of interest upon any bond, note, or other instrument or agreement, interest shall not be compounded, nor shall the interest thereon be construed to bear interest, unless an agreement to that effect is clearly expressed in writing, and signed by the party to be charged therewith.

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

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

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

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

(1) (b).

(4) Any person making a loan for which interest is agreed to be paid at a rate exceeding the rate allowed in sub. (1) (a) shall, at or prior to making such loan, deliver to the borrower a statement, which may be incorporated in a copy of the evidence of indebtedness, setting forth all of the terms of the transaction in clear and distinct language, including

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

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

(5) This section shall not apply to loans to corporations except loans made by permittees under s. 115.07.

115.06 EFFECT OF USURY AND PENALTIES. (1) All instruments, contracts or securities providing a rate of interest exceeding the rate allowed in s. 115.05 shall be valid and effectual to secure the repayment of the principal amount loaned in excess of \$2,000; but no interest may be recovered thereon except upon bottomry and respondentia bonds and contracts.

(2) Any lender or agent of a lender who violates any provisions of s. 115.05 may be fined not less than \$25 nor more than \$500, or imprisoned not more than 6 months, or both.

(3) Any borrower who paid interest on a loan or forbearance at a rate greater than the rate allowed in s. 115.05 may by himself or his personal representative recover in an action against the lender or his personal representative the amount of interest, principal and charges paid on such loan or forbearance but not more than \$2,000 of principal, if such action is brought within 2 years after such excessive interest has been paid.

(4) Any borrower to whom a lender or agent of a lender fails to provide the statement required in s. 115.05 (4) with respect to a loan or forbearance may by himself or his personal representative recover in an action against the lender or his personal representative an amount equal to all interest and charges paid upon such loan or forbearance but not less than \$50 plus reasonable attorney's fees incurred in such action.

(5) Notwithstanding the provisions of subs. (1) to (4), if any violation of s. 115.05 is the result of an unintentional mistake which the lender or agent of the lender corrects upon demand, such unintentional violation shall not affect the enforceability of any provision of the loan contract as so corrected nor shall such violation subject the lender or the agent of the lender to any penalty or forfeiture specified in this section.

SECTION 3. 115.07 (1) and (2) of the statutes are repealed.

SECTION 4. 115.07 (3) (e) of the statutes is amended to read:

115.07 (3) (e) The amount of interest may be predetermined at the time the loan is made on the basis of the agreed rate of interest and the principal balances agreed to be outstanding and stated in the note or loan contract as an addition to the principal; provided that if any agreed balance of principal or principal and interest combined or any instalment of principal or principal and interest combined is prepaid * * * *in full* by cash, renewal or refinancing, the unearned interest * * * shall be refunded as provided in s. 115.05 (2).

SECTION 5. 115.09 (9) (a) of the statutes is amended to read:

115.09 (9) (a) No person * * *, except as authorized by * * * statutes * * *, shall directly or indirectly charge, contract for or receive any interest or consideration greater than * * * *allowed in s. 115.05* upon the loan, use or forbearance of money, goods or things in action, or upon the loan, use or sale of credit. The foregoing prohibition shall apply to any person who as security for any such loan, use or forbearance of money, goods or things in action, or for any such loan, use or sale of credit, makes a pretended purchase of property from any person and permits the owner or pledger to retain the possession thereof, or who by any device or pretense of charging for his services or otherwise seeks to obtain a greater compensation than is authorized by this section.

Approved August 29, 1961.