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ASSEMBLY AMENDMENT 3, TO ASSEMBLY SUBSTITUTE AMENDMENT 1, TO 2003 ASSEMBLY BILL 792

February 26, 2004 - Offered by Committee on Financial Institutions.

1 At the locations indicated, amend the substitute amendment as follows:

- 2 **1.** Page 15, line 3: delete "It" and substitute "Except as provided in s. 428.2105, it".
 - **2.** Page 15, line 11: after that line insert:
 - "428.2105 Remedies. (1) Cause of action. Except as provided in sub. (5), and notwithstanding s. 428.210 (4), a customer may bring an action to enforce any requirement or prohibition under this subchapter. Except as provided in sub. (5), and notwithstanding s. 428.210 (4), any requirement or prohibition under this subchapter is enforceable by class action under s. 803.08.
 - (2) REMEDIES. (a) Except as provided under sub. (5), and notwithstanding s. 428.210 (4), a person who violates this subchapter is liable to the person who commences an action under sub. (1) in an amount equal to the total of the following:

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- 1. Twice the amount of interest paid under the applicable covered loan, plus an amount equal to the total of all interest remaining under the loan.
 - 2. The actual damages, including any incidental and consequential damages, sustained by the person commencing the action as a result of the violation.
- (b) If a person prevails in an action under sub. (1), the person shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on the person's behalf in connection with the prosecution of the action, together with a reasonable amount for attorney fees. The award of attorney fees shall be in an amount sufficient to compensate the attorneys representing the person. In determining the amount of the award, the court may consider any of the following:
- 1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite properly to conduct the cause.
 - 2. The customary charges of the bar for similar services.
- 3. The amount involved in the controversy and the benefits resulting to the client or clients from the services.
 - 4. The contingency or the certainty of the compensation.
- 5. The amount of the costs and expenses reasonably advanced by the attorney in the prosecution of the action.
- (c) In addition to the remedies provided under pars. (a) and (b), the following remedies are available in any action under sub. (1):
 - 1. Injunctive relief.
 - 2. Declaratory relief.
- 3. Punitive damages under s. 895.85.

- (3) Unenforceable provisions, etc. Any act that violates this subchapter confers no rights or obligations enforceable by action.
- (4) STATUTE OF LIMITATIONS. An action under sub. (1) shall be commenced at any time during the term of the covered loan or within 6 years after the cause of action accrues, whichever is later.
- (5) Affirmative defense. Notwithstanding s. 428.210 (4), a lender is not liable in an action under sub. (1) if any of the following apply:
- (a) Within 30 days after making the applicable covered loan and before receiving any notice from the customer of the violation on which the action under sub.

 (1) is based, the lender makes appropriate restitution to the customer and appropriate adjustments to the loan.
- (b) The violation on which the action under sub. (1) is based was unintentional and took place notwithstanding reasonable procedures adopted by the lender to avoid the violations and, within 60 days after making the applicable covered loan and before receiving any notice from the customer of the violation, the lender makes appropriate restitution to the customer and appropriate adjustments to the loan.
- (6) RULE OF CONSTRUCTION. This section shall be liberally construed to the end that any aggrieved party is put in at least as good a position as if the person committing the violation had fully complied with this subchapter. The remedies provided under this section are in addition to any other remedies provided by law.".