

TITLE XIV.
Regulation of Trade.

CHAPTER 115.

MONEY AND RATES OF INTEREST.

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115.01 What is. The money of account of this state shall be the dollar, cent and mill; and all accounts in public offices, and other public accounts, and all proceedings in courts shall be kept and had in conformity to this regulation.

115.02 Contracts not affected. Nothing contained in the preceding section shall vitiate or affect any account, charge or entry originally made or any note, bond or other instrument expressed in any other money of account; but the same shall be reduced to dollars or parts of a dollar as hereinbefore directed in any suit thereupon.

115.03 Judgments, how computed. In all judgments or decrees rendered by any court of justice for any debt, damages or costs and in all executions issued thereon the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions; and no judgment or other proceeding shall be considered erroneous for such omissions.

115.04 Interest rates. 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 after that rate for a greater or less sum or for a longer or a shorter time; but it shall be competent for parties to contract for the payment and receipt of a rate of interest not exceeding \$10 on \$100 as aforesaid, in which case such rate exceeding \$5 on \$100 shall be clearly expressed in writing. [1945 c. 84]

Note: The seller is entitled to recover interest in accordance with invoices reciting, "Terms net cash ten days. No discount," where the recovery is on quantum valebant, and the buyer made payments on account, without objection to terms. *National C. P. Federation v. J. S. Hoffman Co.*, 213 W 84, 250 NW 775.

Permitting the city to recover interest on the tuition from the date the district refused to pay the claim, rather than from the date the action was commenced, was proper, since the refusal of the district to pay was the denial of a liquidated claim. [*State v. Milwaukee*, 158 W 564, applied; *Whereatt v. Ellis*, 68 W 61, distinguished.] *Wauwatosa v. Union Free H. S. Dist.*, 214 W 35, 252 NW 351.

The county, recovering the cost of replacement of tiling defectively installed, was entitled to interest from the time of demand on the contractor for replacement, as against the contention that the claim was for unliquidated damages. *Milwaukee County v. H. Neidner & Co.*, 220 W 185, 263 NW 468, 265 NW 226, 266 NW 238.

115.05 Maximum rate. No person, company or corporation shall, directly or indirectly, 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 at the rate of ten dollars upon one hundred dollars for one year; and 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.

115.06 Contracts for excessive rate. All bonds, bills, notes, assurances, conveyances and all other contracts or securities whatever, whereby there is reserved or secured a rate of interest exceeding ten dollars on one hundred dollars for one year, shall be valid

In general, judgments bear interest at the statutory rate under 115.04 from the date of their entry. [Sec. 272.05 (3)] In re *Oconto County State Bank*, 241 W 369, 6 NW (2d) 353.

115.04 and 115.05 do not require that the interest rate be stated in a loan agreement in percentage, and it may be stated either in dollars or in percentage; but in whichever form stated, the interest rate should be stated separately and not included in the monthly instalments due on the principal. *Randall v. Home Loan & Investment Co.* 244 W 623, 12 NW (2d) 915.

In stating the rate of interest in writing as required by 115.04 in case of loans made under 115.07 (3) it is not necessary that the contract contain a break-down showing the total amount of interest and charges which a borrower is required to pay or the amount of interest or charges included in each instalment, unless it is necessary to do so to clearly express the rate. 34 Atty. Gen. 15.

and effectual to secure the repayment of the principal sum loaned; but no interest shall be recovered on such securities or on any money or other thing loaned by such contract except upon bottomry and respondentia bonds and contracts; and no corporation shall interpose the defense of usury.

115.07 Usury agents; chattels and wages assignments; evidence. (1) Every person who, for any such loan or forbearance, shall have paid or delivered any greater sum or value than is above allowed to be received, may, by himself or his personal representative, recover in an action against the person who shall have taken or received the same, or his personal representatives, treble the amount of the money so paid or value delivered above the rate aforesaid if such action shall be brought within one year after such payment or delivery.

(2) And any person who, as principal or as agent for another, shall ask, demand, receive, take, accept or charge more than ten per centum per annum upon the sum of money actually loaned for the forbearance, use or loan thereof, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars, or by imprisonment not more than six months, or by both such fine and imprisonment.

(3) And when the payment of the money loaned shall be secured, or purport to be secured, or claimed by the payee of said loan to be secured, by chattel mortgage, bill of sale, pledge, receipt or other evidence of debt upon chattel goods or property, or by assignment of wages, or by power of attorney to execute any such instrument on behalf of the borrower, whether any such instrument or the power given to execute the same, shall be valid or not, or whether any such instrument or power shall be fully executed or executed partly in blank, any person who, as principal or as agent for another, shall ask, demand, or receive, take, accept or charge, in addition to the interest aforesaid, more than an amount equal to seven per centum per annum of the original sum actually loaned for the time of such loan, on sums of a hundred dollars or less, nor more than four per cent per annum of the original sum actually loaned for time of such loan, on sums over one hundred dollars, disregarding part payments and the dates thereof, but not to be computed for a period exceeding one year in any event, in full for all examinations, views, fees, appraisals, commissions, renewals and charges of any kind or description whatsoever in the procuring, making and transacting of the business connected with such loan, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars, or by imprisonment not more than six months, or by both such fine and imprisonment for the first offense, and by a fine of not less than five hundred dollars, nor more than one thousand dollars, or by imprisonment not more than one year, or by both such fine and imprisonment for the second offense; and for the third offense the license of such association, copartnership, corporation, doing business under the aforesaid sections, shall be revoked.

(3a) Before any person, or any association, copartnership, or corporation, heretofore or hereafter created, shall do business under the provisions of section 115.07 of the statutes, such person, association, copartnership, or corporation shall first obtain a permit from the banking commission, which is hereby invested with the supervision of said organizations.

(4) And it shall be prima facie proof of the commission of the offenses aforesaid by any person as principal, who is charged with having committed such offense through another person as his agent, that such other person has asked, demanded, received, taken, accepted, or charged interest or commissions, as the case may be, in an amount exceeding the rates aforesaid, and was authorized on behalf of such principal to loan, and did in fact loan unto the borrower at the time and place referred to in the indictment, information or complaint, the money of such principal.

(4a) The books of account of such person, association, copartnership, or corporation, doing business under the aforesaid section, shall at all times be open to the inspection and examination by the banking commission. [1937 c. 284 s. 3]

Note: The exaction and acceptance of usurious payments must be proved by a clear and satisfactory preponderance of the evidence in an action by a borrower to recover the statutory penalty for usurious payments, since the facts essential to recovery also constitute a crime. *Bauer v. Franklin S. Bank*, 216 W 507, 257 NW 456.

In an action for treble damages for usurious interest paid, where a mortgage note, payable in monthly instalments, and providing for interest at a rate of less than 10 per cent per year, also provided for a penalty of one per cent per month on delinquent monthly instalments, it will be considered that the one per cent provision

was inserted for the purpose of compelling payment at maturity, in the absence of any showing to the contrary. *Randall v. Home Loan & Investment Co.* 244 W 623, 12 NW (2d) 915.

Pawnbrokerage business is regulated by 115.07 and 348.478. 25 Atty. Gen. 336.

Charges permitted by (3) in addition to lawful interest may be made but once and may not be made upon renewal of loan. Insurance requirements which are unusual or unreasonable or where lender receives profit out of insurance transaction will not be permitted. In addition to charges other than interest permitted by (3) only statutory costs actually taxed and allowed upon

entry of judgment may be contracted for or received. 29 Atty. Gen. 10.
(3), (3a), (4) and (4a) of 115.07 are not repealed by (3) of 115.09 and are in force and effect. 29 Atty. Gen. 360.

Provision of municipal code of city of Milwaukee regulating pawnbrokers and permitting same to charge higher rate of interest than that permitted under state usury laws, is invalid in so far as such municipal ordinance conflicts with state laws regulating rates of interest. 30 Atty. Gen. 423.

By weight of authority national bank may not be subjected to civil penalties for

violation of state usury law, remedy provided by national banking act being exclusive. Conviction of national bank for violation of state usury law has been sustained, although in absence of decision by supreme court of this state or of United States, question would be open here. 32 Atty. Gen. 90.

In view of doubt as to proper interpretation of (3), (3a) and (4a), question of whether state banks are entitled to permit under (3a) is one for courts, and no opinion is expressed thereon. 32 Atty. Gen. 216.

Many questions arising under this section are answered in 34 Atty. Gen. 15.

115.08 Condition of relief. Whenever any person shall apply to any court in this state to be relieved in case of a usurious contract or security, or when any person shall set up the plea of usury in any action instituted against him, such person to be entitled to such relief or the benefit of such plea shall prove a tender of the principal sum of money or thing loaned to the party entitled to receive the same.

Note: Borrowers claiming usury in a loan transaction, but making no attempt to satisfy 115.08 and making no contention that the notes signed were void by the law of any other state, were not entitled to relief. *Union Trust Co. of Maryland v. Rodeman*, 220 W 453, 264 NW 508.

A person who makes an attack or defense

on the ground of usury must prove a tender of the money loaned, at least in a case involving an amount not affected by the small loan statutes (115.08 not having been impliedly repealed by ch. 408, Laws of 1929, creating 115.09, regulating certain loans not exceeding \$1,000.) *McLoughlin v. Mainar*, 237 W 492, 297 NW 370.

115.09 Loan associations regulated. (1) It shall be lawful to loan money directly to any person, persons, copartnership, or corporation in sums not to exceed one thousand dollars, repayable in equal weekly, semimonthly or monthly instalments and in lieu of interest, to deduct therefrom at the time of making such loan a sum not to exceed ten dollars upon each one hundred dollars for each year including all fees and charges, or a discount in the same proportion on fractional parts or multiples thereof; provided, that in the event of prepayment of said loan by the borrower the lender shall refund to the borrower the unearned portion of said discount.

(2) Before any person or association, copartnership or corporation heretofore or hereafter created shall do business under the provisions of subsection (1), such person, association, copartnership or corporation shall first obtain a license from the banking commission. Applications for such license shall be in writing and upon forms provided for this purpose by the banking commission. Every such applicant at the time of making such application shall pay to the banking commission the sum of fifty dollars as an annual license fee, provided that if the license is issued for a period less than twelve months the license fee shall be prorated according to the number of months that said license shall run.

(3) The applicant shall also at the time file with the banking commission a bond in which the applicant shall be the obligor, in the sum of one thousand dollars, with one or more corporate sureties licensed to do business in Wisconsin, whose liability as such sureties shall not exceed the sum of one thousand dollars in the aggregate, to be approved by the banking commission, and said bond shall run to the state of Wisconsin for the use of the state and of any person or persons who may have a cause of action against the said obligor of said bond under the provisions of this section. Such bonds shall be conditioned that said obligor will conform to and abide by each and every provision of this section, and will pay to the state or to any person or persons any and all moneys that may become due or owing to the state or to such person or persons from said obligor under and by virtue of the provisions of this chapter.

(4) Upon the filing of such application and the payment of said fee, the banking commission, after considering the character of the applicant and the public convenience and welfare, may in its discretion issue a license to said applicant to make loans in accordance with the provisions of this section for a period which shall expire with the first day of July next following the date of its issuance. Licenses may be renewed annually upon payment of the annual fee and the filing and approval of bond or renewal thereof. Such license shall not be assignable and shall permit operation under it in but one office or place of business. Every licensee shall make an annual report to the banking commission for each calendar year on or before the fifteenth of February of the following year. Such report shall cover business transacted by said licensee under the provisions of this section and shall cover the following subjects:

- (a) Amount of capital employed.
- (b) Number of loans made.
- (c) Average size of loan.
- (d) Gross interest received.
- (e) Gross expenditures.
- (f) Purposes for which loans were made.
- (g) Average life of loan.

Said reports shall be made upon blanks furnished by the commissioner of banking. Such report shall be signed and verified by the oath or affirmation of the licensee if an individual, one of the copartners if a copartnership, or by an officer of the corporation if a corporation. Any licensee operating under the provisions of this section shall keep the records affecting loans made pursuant to the provisions of this section separate and distinct from the records of any other business of said licensee.

(5) The banking commission for the purpose of discovering violations of this chapter may cause an investigation to be made of the business of the licensee transacted under the provisions of subsection (1) of this section, and shall cause an investigation to be made of convictions reported to it by any district attorney for violation by a licensee of any of the provisions of this chapter. The cost of such investigation and actual expenses of any examination made in connection therewith shall be paid by said licensee. The place of business, books of account, papers, records, safes and vaults of said licensee shall be open to inspection and examination by the banking commission or its representative for the purpose of such investigation and said commission shall have authority to examine under oath all persons whose testimony it may require relative to said investigation. The banking commission may, upon notice to the licensee and reasonable opportunity to be heard, revoke such license if the licensee has violated any provision of this chapter and if it shall determine such violation justifies the revocation of said license.

(6) The licensee shall keep such books and records in his place of business as in the opinion of the banking commission will enable it 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 two years after the making of any loan recorded therein.

(7) No licensee or other person, copartnership or corporation shall print, publish or distribute, or cause to be printed, published or distributed in any manner whatsoever any written or printed statement with regard to the rates, terms or conditions for the lending of money, credit, goods or things in action in amounts of one thousand dollars, or less, which is false or calculated to deceive.

(8) Every licensee shall:

(a) Deliver to the borrower at the time a loan is made, a statement in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the rate of interest charged.

(b) Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made.

(c) Permit payments of the loan in whole or in part prior to its maturity with interest on such payment to the date thereof.

(d) Upon repayment of the loan in full mark indelibly every paper signed by the borrower with the word "Paid" or "Canceled" and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given by the borrower as security.

(9) No person, copartnership or corporation, except as authorized by this section and chapter 214 of the statutes, shall directly or indirectly charge, contract for or receive any interest or consideration greater than ten per centum per annum 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 pledgor 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. No loan for which a greater rate of interest or charge than is allowed by this section has been contracted for or received, wherever made, shall be enforced in this state, and every person in anywise participating therein in this state shall be subject to the provisions of this section.

(10) Any person, copartnership or corporation and the several officers and employes thereof who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in a county jail for not more than six months, or by both such fine and imprisonment.

(11) The banking commission shall have power to employ necessary examiners or clerks from time to time and fix their compensation.

(12) This section shall not apply to any person, copartnership or corporation doing business under chapter 214 of the statutes, or under any law of this state or of the United States relating to banks, trust companies, credit unions, building and loan associations, or licensed pawnbrokers.

(13) If any subsection, sentence, clause or phrase of this section is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this section. Any section of the Wisconsin statutes inconsistent with the provisions of this section is hereby repealed. [1937 c. 284 s. 3; 1939 c. 476]

Note: The state's classification of money-lenders and its dealing differently with the different classes, as in 115.01 to 115.08, relating generally to money and loans and usurious rates of interest, and 115.09 and 214.01 et. seq., regulating small loans, are approved where the classification is reasonable and based on some purpose germane to the statute creating the classification, and where all in the same class are treated uniformly. *McLoughlin v. Malnar*, 237 W 492, 297 NW 370.

Discount company may charge additional fees for delinquency, but such fees are limited to interest not in excess of ten per centum per annum. 22 Atty. Gen. 836.

Questions as to charges permitted on loans under this section answered. 29 Atty. Gen. 10.

(3) (3a) and (4a) of 115.07, 115.09 and ch. 214 constitute distinct legislative schemes for regulation of loan transactions, and one person may hold licenses under either or all of these three provisions. 29 Atty. Gen. 360.

This section does not apply to banks and banking commission has no authority to issue license thereunder to state bank. 32 Atty. Gen. 216.

Many questions arising under this section are answered in 34 Atty. Gen. 15.