CHAPTER 138

MONEY AND RATES OF INTEREST

138.01 Money. 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, except as provided in ss. 806.30 to 806.44, all proceedings in courts shall be kept and had in conformity to this regulation.

History: 1991 a. 236.

138.02 Contracts not affected. Nothing contained in s. 138.01 shall vitiate or affect any account, charge or entry originally made or any note, bond or other instrument expressed in any other money of account; but, except as provided in ss. 806.30 to 806.44, the same shall be reduced to dollars or parts of a dollar as hereinbefore directed in any suit thereupon.

History: 1991 a. 236.

138.03 Judgments, how computed. Except as provided in ss. 806.30 to 806.44, 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. In actions or proceedings under ss. 806.30 to 806.44, the court, in the interest of justice, may direct that all evidence submitted to the jury and the jury verdict be in U.S. dollars at a rate of exchange established by the court. The court shall convert the jury verdict to the foreign money at that rate of exchange.

History: 1991 a. 236.

138.04 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 ss. 138.041 to 138.056, 138.09 to 138.12, 218.0101 to 218.0163, or 422.201, in which case such rate shall be clearly expressed in writing.

History: 1981 c. 45 s. 51; 1999 a. 31.

A creditor is entitled to interest on a liquidated claim from the time payment was due by the terms of the contract and, if no time is specified, then from the time demand was made or from commencement of the action. Estreen v. Bluhm, 79 Wis. 2d 142, 255 N.W.2d 473 (1977).

A merchant who first informed the customer of the 24% interest to be charged on an open account in statements of the account provided after the account was opened violated s. 422.302 (2). The merchant was only entitled to interest under this section. Severson Agri−Service, Inc. v. Lander, 172 Wis. 2d 269, 493 N.W.2d 230 (Ct. App. 1992).

The writing expressing the interest to be charged need not be subscribed by the party charged. Advance Concrete Forms v. Mc Cann Const. 916 F.2d 412 (1990).

Prejudgment interest in Wisconsin personal injury cases. Brennan. WBB Aug. 1983.

138.041 Federal rate parity. (1) In order to prevent discrimination against state−chartered financial institutions with respect to interest rates, state−chartered banks, credit unions and savings banks may take, receive, reserve and charge on any loan or forbearance made on or after April 6, 1980 and before November 1, 1981, and on any renewal, refinancing, extension or modification made on or after April 6, 1980 and before November 1, 1981, of any loan or forbearance, interest at a federal rate prescribed for federally chartered banks, credit unions and savings banks, respectively, notwithstanding any other statutes. The federal rate described in this section does not include any rate permitted under a federal law which refers to a rate limit established by a state law which does not apply to state−chartered banks, credit unions or savings banks.

(2) In order to prevent discrimination against state−chartered financial institutions with respect to interest rates, state−chartered banks, credit unions, savings and loan associations and savings banks may take, receive, reserve and charge on any loan or forbearance made on or after November 1, 1981 and before November 1, 1984, or after October 31, 1987, and on any renewal, refinancing, extension or modification made on or after November 1, 1981 and before November 1, 1984, or after October 31, 1987, of any loan or forbearance, interest at a federal rate prescribed for federally chartered banks, credit unions, savings and loan associations and savings banks, respectively, notwithstanding any other statutes. The federal rate described in this section does not include any rate permitted under a federal law which refers to a rate limit established by a state law which does not apply to state−chartered banks, credit unions, savings and loan associations or savings banks.

History: 1979 c. 168; 1981 c. 45; 1991 a. 221.

138.05 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 $12 upon $100 for one year computed upon the declining principal balance of the loan or forbearance;

(b) With respect to loans or forbearances repayable in substantially equal weekly or monthly installments 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, for the time of such loan or forbearance, disregarding part payments and the dates thereof; and

(c) With respect to loans or forbearances repayable in installments other than of the type described in par. (b), the amount of interest may be predetermined at the rate set forth in par. (a) 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 installment of principal or principal and interest combined is prepaid in full by cash or renewal the unearned interest shall be refunded as provided in sub. (2) (b). 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 installments 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 installment periods commencing with the installment date nearest the date of prepayment bears to the sum of the balances scheduled to be outstanding for all installment 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) (a).

(4) Any person making a loan for which interest is agreed to be paid at a rate exceeding the rate of $10 upon $100 for one year computed upon the declining principal of the loan 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 or limited liability companies.

(6) This section does not apply to transactions governed by chs. 421 to 427 and 429 or to discounts described in s. 422.201 (8).

(7) This section does not apply to any loan or forbearance in the amount of $150,000 or more made after May 26, 1978 unless secured by an encumbrance on a one− to four−family dwelling which the borrower uses as his or her principal place of residence. For the purposes of this section, a loan is deemed a loan which is in the amount of $150,000 or more if:

(a) The outstanding principal indebtedness under the loan initially exceeds $150,000; or

(b) The parties to the loan agree that the principal indebtedness may exceed $150,000 at some time during the term of the loan and, when the agreement was made, the principal indebtedness was reasonably expected to exceed $150,000 notwithstanding the fact that less than $150,000 in the aggregate was initially or later advanced.

(8) (a) This section does not apply to any loan or forbearance which is made on or after April 6, 1980 and prior to November 1, 1981, or to any refinancing, renewal, extension, modification or prepayment on or after April 6, 1980 and prior to November 1, 1981, of any loan or forbearance, unless it is made by a federally chartered or state−chartered savings and loan association, except this section does apply to forbearances occurring primarily for personal, family or household purposes for which the only charge is a penalty or late charge for nonpayment when due.

(b) This section does not apply to loans made within 2 years after November 1, 1981, if made pursuant to loan commitments made on or after April 6, 1980 and prior to November 1, 1981, unless made by a federally chartered or state−chartered savings and loan association.

(c) This section does not apply to any loan or forbearance which is made on or after November 1, 1981, or to any refinancing, renewal, extension, modification or prepayment on or after November 1, 1981, of any loan or forbearance, except this section does apply to forbearances occurring primarily for personal, family or household purposes for which the only charge is a penalty or late charge for nonpayment when due.

History: 1971 c. 239; 1975 c. 407; 1977 c. 401, 444; 1979 c. 10 s. 24; 1979 c. 168; 1981 c. 45; 1993 a. 112; 1995 a. 328, 329; 1997 a. 35.

Cross−reference: See s. 551.33 (7) regarding licensed broker−dealers.

Cross−reference: See s. 422.201 regarding finance charges on consumer credit transactions.

A revolving charge plan is usurious if the interest charged exceeds 12% per year. State v. J. C. Penney Co. 48 Wis. 2d 125, 179 N.W.2d 641 (1970).

A check credit agreement providing that interest was to be computed each month and become part of the balance for the next computation did not violate the statute, although the rate was one per cent per month. First Wisconsin National Bank v. Oby, 52 Wis. 2d 1, 188 N.W.2d 454 (1971).

A roofing and siding contract with a cash price of $2,660 or 60 payments of $61.72 is time−price differential transaction. Mortgage Associates, Inc. v. Siverhus, 63 Wis. 2d 650, 218 N.W.2d 266 (1974).

An individual guarantor of a corporate indebtedness cannot interpose the defense of usury if the defense is not available to the corporation as the principal obligor. Sundseth v. Roadmaster Body Corp. 74 Wis. 2d 61, 245 N.W.2d 919 (1976).

This section did not apply to a loan to a limited partnership whose 2 general partners were an individual and a corporation. Wild, Inc. v. Citizens Mortgage Inv. Trust, 95 Wis. 2d 430, 290 N.W.2d 567 (Ct. App. 1980).

The sale of an interest−bearing note at a discount is not usurious unless it is found to be a cloak or cover for what is in reality a usurious loan. Val Zimmermann Corp. v. Leffingwell, 107 Wis. 2d 86, 318 N.W.2d 781 (1982).

This section applies to a loan to a corporation and an individual as coborrowers. Williams v. Security Savings & Loan Ass'n. 120 Wis. 2d 480, 355 N.W.2d 370 (Ct. App. 1984).

While a retail seller is not prohibited by a. 138.05 (3), Stats. 1969, from including in a note a provision requiring the payment of 25% of the unpaid balance as a fee for collection of the account, such a provision is enforceable only to the extent that it reasonably relates to the actual collection expenses incurred. 59 Atty. Gen. 76.

Loan fees that relate to the amount borrowed rather than to identifiable expenses incurred as a result of the particular transaction must be considered as interest for purposes of ch. 138. These loan fees are to be amortized over the contract term of the loan to determine the actual rate. A subsequent voluntary prepayment will not render an otherwise legal rate usurious, subject to sub. (2). 65 Atty. Gen. 67.

Charges imposed on the seller of property as a condition of granting a loan to the buyer are includable as interest under this section to the extent that the charges are passed on to the buyer. 68 Atty. Gen. 398.

Bona fide commitment fees are not interest under this section. 69 Atty. Gen. 28.

The Penney decision and revolving charge accounts. 54 MLR 223.

A description of the modification of Wisconsin's usury laws. Brown and Patrick, 65 MLR 309 (1982).

Usury and the time−price exception; revolving charge accounts; enjoining usury as a public nuisance. 1971 WLR 298.

Usury and the time−price differential. 1975 WLR 246.

138.051 Residential mortgage loans.

(1) In this section:

(a) "Contract rate" means the initial rate contracted to be paid on the principal of a loan from time to time.

(b) "Loan" means a loan, other than a loan made by a federally chartered or state−chartered savings and loan association, secured by a first lien real estate mortgage on, or an equivalent security interest in, a one− to 4−family dwelling which the borrower uses as his or her principal place of residence and which is:

1. Made on or after April 6, 1980 and prior to November 1, 1981;

2. Refinanced, renewed, extended or modified on or after April 6, 1980 and prior to November 1, 1981; or

3. Made within 2 years after November 1, 1981, pursuant to a loan commitment made on or after April 6, 1980 and prior to November 1, 1981.

(2) A loan may be prepaid by the borrower at any time in whole or in part without premium or penalty. Upon prepayment of a loan in full by cash, renewal or refinancing, the borrower is entitled to a refund of unearned interest charged determined as follows:

(a) On a loan which is repayable in substantially equal, successive installments 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 installment periods commencing with the installment date nearest the date of prepayment bears to the sum of the balances scheduled to be outstanding for all installment periods of the loan.

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

(3) For purposes of computing a refund under sub. (2), interest does not include:

(a) Identifiable and separately itemized charges for services incident to the loan if they are bona fide and paid to 3rd parties unrelated to the lender;

(b) Fees, discounts or other sums actually imposed by government national mortgage association, federal national mortgage association, federal home loan mortgage corporation or any other governmentally sponsored or private secondary mortgage market purchaser of a loan from the original lender; and

(c) A loan administration fee charged by a lender, not to exceed 2% of the principal amount of any construction loan and one percent of the principal amount of any other loan.

(4) For the purpose of calculating the rate of interest on a loan scheduled to be paid in installments under sub. (2), the parties may agree that any installment paid within 30 days prior to or after the scheduled due date will be considered to have been paid on the due date.

(5) A bank, credit union or savings bank which originates a loan and which requires an escrow to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow of not less than 5.25% per year. This subsection applies to any refinancing, renewal, extension or modification of the loan on or after November 1, 1981.

(6) Delinquency charges on a loan shall not exceed an amount determined by application of the contract rate to the unpaid amount, including interest accrued and unpaid, until paid or maturity of the obligation, whether by acceleration or otherwise, whichever first occurs. Interest imposed after maturity may not exceed the contract rate applied to the amount due on the date of maturity.

(7) This section does not apply to a loan insured, or committed to be insured, or secured by mortgage or trust deed insured by the U.S. secretary of housing and urban development, insured, guaranteed or committed to be insured or guaranteed under 38 USC 1801 to 1827 or insured or committed to be insured under 7 USC 1921 to 1995.

(8) The contract rate is not subject to rate limitations imposed under this chapter or ss. 218.0101 to 218.0163 or under s. 422.201.

History: 1979 c. 168; 1981 c. 45; 1991 a. 221; 1999 a. 31.

138.052 Residential mortgage loans.

(1) In this section:

(a) "Contract rate" means the rate contracted to be paid from time to time on the principal of a loan.

(b) "Loan" means a loan secured by a first lien real estate mortgage on, or an equivalent security interest in, a one− to 4−family dwelling which the borrower uses as his or her principal place of residence and which is made, refinanced, renewed, extended or modified on or after November 1, 1981, but does not include a mobile home transaction as defined in s. 138.056 (1) (c).

(c) "Loan administration" means a lender's processing of a loan and includes review, underwriting and evaluation of the loan application, document processing and preparation and administration of the loan closing, but does not include appraisals, inspections, surveys, credit reports or other activities incidental to loan origination and normally taking place outside the office of the lender or performed by 3rd persons.

(d) "Person related to" has the meaning given under s. 421.301 (32) and (33).

(2) (a) 1. A loan may be prepaid by the borrower at any time in whole or in part.

2. Except as provided in s. 428.207, the parties may agree that if a prepayment is made within 5 years of the date of the loan, then the lender shall receive an amount not exceeding 60 days' interest at the contract rate on the amount by which the aggregate principal prepayments for a 12−month period exceeds 20% of the original amount of the loan.

3. If a prepayment is made 5 or more years from the date the loan is made, no premium or penalty may be received by the lender. This subdivision applies notwithstanding any refinancing, renewal, extension or modification of the loan.

(b) Upon prepayment of a loan in full by cash, renewal or refinancing, the borrower is entitled to a refund of unearned interest paid. Unearned interest is that portion of any prepaid charge, excluding amounts permitted under sub. (3), multiplied by the number of unexpired payment periods as of the date of prepayment and divided by the total number of payment periods, plus, at the option of the lender, either:

1. The portion of interest which is allocable to all unexpired payment periods as scheduled. Except as otherwise agreed by the parties under sub. (4), a payment period is unexpired if prepayment is made within 15 days after the payment's due date. The unearned interest is the interest which, assuming all payments are made as scheduled, would be earned for each unexpired payment period by applying to unpaid balances of principal, according to the actuarial method, the contract rate on the date of prepayment. The creditor may decrease the annual interest rate to the next multiple of 0.25%.

2. The total interest charge less all prepaid interest charges and the amount determined by applying the contract rate, according to the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

(3) For purposes of computing a refund under sub. (2) (b), interest does not include any of the following:

(a) Identifiable and separately itemized charges for services incident to the loan if they are bona fide and paid to 3rd parties.

(b) Fees, discounts or other sums actually imposed by the government national mortgage association, the federal national mortgage association, the federal home loan mortgage corporation or other governmentally sponsored secondary mortgage market purchaser of the loan or any private secondary mortgage market purchaser of the loan who is not a person related to the original lender.

(c) A loan administration fee charged by a lender, including fees paid to 3rd parties for loan administration services, not exceeding 2% of the principal amount of any construction loan and 2% of the principal amount of any other loan.

(d) The amount of any prepayment charge authorized under sub. (2) (a) 2. and received.

(e) Loan commitment fees.

(f) Amounts paid to the lender by any person other than the borrower.

(4) For the purpose of calculating the rate of interest under sub. (2) (b), the parties may agree that any installment paid within 30 days prior to or after the scheduled due date is paid on the due date.

(5) (a) Except as provided in pars. (am) and (b), a bank, credit union, savings bank, savings and loan association or mortgage banker which originates a loan after January 31, 1983, and before January 1, 1994, and which requires an escrow to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow of not less than 5.25% per year, unless the escrow funds are held by a 3rd party in a noninterest−bearing account.

(am) 1. Except as provided in par. (b) and unless the escrow funds are held by a 3rd party in a noninterest−bearing account, a bank, credit union, savings bank, savings and loan association or mortgage banker which originates a loan on or after January 1, 1994, or a loan subject to subd. 3. and which requires an escrow to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow at the variable interest rate established under subd. 2.

2. a. Annually, the division of banking for banks, savings and loan associations, and savings banks, and the office of credit unions for credit unions, shall determine the interest rate that is the average of the interest rates paid, rounded to the nearest one−hundredth of a percent, on regular passbook deposit accounts by institutions under the division's or office's jurisdiction at the close of the last quarterly reporting period that ended at least 30 days before the determination is made.

b. Within 5 days after the date on which the determination is made, the division of banking shall calculate the average, rounded to the nearest one−hundredth of a percent, of the rates determined by the division of banking and the office of credit unions and report that interest rate to the revisor of statutes within 5 days after the date on which the determination is made.

c. The revisor of statutes shall publish the average rate in the next publication of the Wisconsin administrative register. The published interest rate shall take effect on the first day of the first month following its publication and shall be the interest rate used to calculate interest on escrow accounts that are subject to this subdivision until the next year's interest rate is published under this subd. 2. c.

3. The interest rate published under subd. 2. c. also applies to loans originated after January 31, 1983, and before January 1, 1994, if an interest rate is not specified in the loan agreement.

(b) The parties may agree to waive payment of all or part of the interest required under par. (a) or (am) if more than 75% of the lender's interest in the loan is sold to a 3rd party who is not a person related to the lender and the escrow funds are held by the 3rd party.

(5m) (a) In this subsection, "escrow agent" means a person who receives escrow payments on behalf of itself or another person.

(b) 1. Except as provided in par. (e), if an escrow is required to assure the payment of property taxes, a bank, credit union, savings bank, savings and loan association or mortgage banker which originates a loan on or after July 1, 1988, shall, before the loan closing, provide the borrower with a written notice clearly stating that the borrower may require the escrow agent to make payments in any manner specified in subd. 3. from the amount escrowed to pay property taxes and the responsibilities of the borrower and escrow agent as provided in subds. 4. and 5.

2. Except as provided in par. (e), if an escrow is required to assure the payment of property taxes for a loan originated before July 1, 1988, the escrow agent shall send, by November 15, 1988, written notice to the borrower clearly stating that the borrower may require the escrow agent to make payments in any manner specified in subd. 3. from the amount escrowed to pay property taxes and the responsibilities of the borrower and escrow agent as provided in subds. 4. and 5.

3. Except as provided in par. (e), a borrower may require an escrow agent who receives escrow payments to assure the payment of the borrower's property taxes to do any of the following, if the borrower notifies the escrow agent as provided in subd. 4. and if the borrower is current in his or her loan payments:

a. Except as provided in subd. 3m., by December 20, send to the borrower a check in the amount of the funds held in escrow for the payment of property taxes, made payable to the borrower and the town, city or village treasurer authorized to collect the tax.

b. Pay the property taxes by December 31, if the escrow agent has received a tax statement for that property by December 20.

c. Pay the property taxes when due.

3m. In its sole discretion, an escrow agent may send a check under subd. 3. a. that is made payable only to the borrower.

4. To require the escrow agent to make payments in any of the manners specified in subd. 3., the borrower shall send, by November 1, written notice to the escrow agent specifying the manner, from the 3 choices under subd. 3., that the borrower wants the escrow agent to make payments. Except as provided in subd. 5. b., once notified, the escrow agent shall annually make payments in that manner unless the borrower is not current in his or her loan payments or unless otherwise notified in writing by the borrower by November 1.

5. a. If the borrower chooses to receive payments as provided in subd. 3. a. or receives payment under subd. 3m., the borrower shall annually, by March 31, send to the person to whom the borrower makes his or her loan payments a copy of the receipt for paid property taxes.

b. If the borrower fails to comply with subd. 5. a., the borrower loses the option of receiving payments that year in the manner specified in subd. 3. a. During the next year, the borrower may again receive payments under subd. 3. a. if the borrower renotifies the escrow agent by sending written notice to the escrow agent by November 1 of the next year and if the borrower is current in his or her loan payments.

6. If the borrower sends the check received under subd. 3. a. to the town, city or village treasurer after the county has assumed responsibility for collecting property taxes, the town, city or village treasurer shall accept the check and pay over to the county treasurer the amount of the check. If the amount of the check sent by the borrower to the town, city or village treasurer exceeds the amount of property taxes owed by the borrower, the town, city or village treasurer shall refund the excess amount to the borrower and, if the county has assumed responsibility for collecting property taxes, pay over to the county treasurer the remaining amount of the check.

(c) A borrower may establish an escrow account required for the payment of taxes and insurance in a financial institution, as defined in s. 710.05 (1) (c), of the borrower's choice if the escrow agent fails to comply with par. (b) 3., unless the lender or person to whom the loan is sold or released demonstrates that the financial institution is incapable of servicing the escrow account.

(d) If a borrower establishes an escrow account under par. (c), the borrower shall annually, by March 31, send to the person to whom the borrower makes his or her loan payments verification of the amounts which the borrower deposited in the escrow account during the previous 12 months and copies of receipts for taxes and insurance paid during the previous 12 months.

(e) Paragraphs (b) to (d) do not apply to an escrow required in connection with a loan to assure the payment of property taxes, whether the loan is originated before, on or after May 3, 1988, if it is the practice of the escrow agent to, by December 20, pay to the borrower the amount held in escrow for the payment of property taxes or to send the borrower a check in the amount of the funds held in escrow for the payment of property taxes, made payable to the borrower and the treasurer authorized to collect the tax. If the escrow agent in any year chooses not to make the payment by December 20 for any reason other than because the borrower is not current in his or her loan payments, the escrow agent shall send, by October 15 of that year, written notice to the borrower clearly stating that the borrower may require the escrow agent to make payments in any manner specified in par. (b) 3. from the amount escrowed to pay property taxes and the responsibilities of the borrower and escrow agent as provided in par. (b) 4. and 5.

(6) The parties may agree to imposition of a late payment charge not exceeding 5% of the unpaid amount of any installment not paid on or before the 15th day after its due date. For purposes of this subsection, payments are applied first to current install-

ments and then to delinquent installments. A delinquency charge may be imposed only once on any installment.

(7) Interest imposed on the amount due after acceleration or maturity of a loan may not exceed the contract rate.

(7e) A bank, credit union, savings bank, savings and loan association, mortgage banker or any other lender which receives an application for a loan after November 1, 1988, shall do all of the following:

(a) If an application receives adverse action, provide a written statement of the reasons for the action when the action is communicated to the applicant, except that delivery of a notice of adverse action conforming to the requirements of 15 USC 1601 to 1693r and the regulations adopted under that law satisfies the requirements of this paragraph.

(b) Before accepting an application or fee in connection with a loan, deliver to the potential loan applicant a written disclosure which clearly states all of the following:

1. Whether an application fee or other charge paid by an applicant in connection with a loan application is refundable in whole or in part if the application is denied or the loan is not closed.

2. Whether the terms of the agreement to make the loan, including but not limited to the interest rate and any fees charged in connection with the loan, are fixed through the date of the loan closing.

3. If the lender may change the terms of the agreement to make the loan if the loan is not closed on or before the date agreed upon, the specific terms which the lender may change.

(7m) (a) A lender shall notify the borrower as provided in par. (b) if on or after May 3, 1988, the payment, collection or other loan or escrow services related to the loan are sold or released.

(b) The notice required under par. (a) shall be in writing and shall include the name, address and telephone number of the party to whom servicing of the loan is sold or released. The lender shall deliver the notice to the borrower by mail or personal service within 15 working days after servicing of the loan is sold or released.

(7s) A person who receives loan or escrow payments on behalf of itself or another person shall do all of the following:

(a) Respond to a borrower's inquiry within 15 days after receiving the inquiry.

(b) Consider that a loan payment by check, or other negotiable or transferable instrument, is made on the date on which the check or instrument is physically received, except that the person may charge back an uncollected loan payment.

(8) This section does not apply to a loan insured, or committed to be insured, or secured by mortgage or trust deed insured by the U.S. secretary of housing and urban development, insured, guaranteed or committed to be insured or guaranteed under 38 USC 1801 to 1827 or insured or committed to be insured under 7 USC 1921 to 1995.

(9) Chapters 421 to 427 and subch. I of ch. 428 do not apply to the refinancing, modification, extension, renewal or assumption of a loan which had an original principal balance in excess of $25,000 if the unpaid principal balance of the loan has been reduced to $25,000 or less.

(10) This section does not apply to any of the following:

(a) A loan to a corporation or a limited liability company.

(b) A loan that is primarily for a business purpose or for an agricultural purpose, as defined in s. 421.301 (4).

(11) The contract rate is not subject to rate limitations imposed under this chapter or ss. 218.0101 to 218.0163 or under s. 422.201.

(12) (a) Any lender violating sub. (2) (b), (5), (5m) (b) 1., (6), (7), (7e), (7m) or (7s), or an escrow agent, as defined in sub. (5m) (a), violating sub. (5m) (b) 2., is liable to the borrower for $500 plus actual damages, costs and reasonable attorney fees.

(b) Paragraph (a) does not apply to an unintentional mistake corrected by the lender on demand.

History: 1981 c. 45, 100, 314; 1987 a. 359, 360, 403; 1989 a. 31, 56; 1991 a. 90, 92; 1993 a. 68, 112; 1995 a. 27, 336; 1999 a. 9, 31; 2003 a. 33, 257.

Federal law preemption of this section as applied to federally chartered savings institutions regulated by the federal home loan bank board is discussed. Wisconsin League of Financial Inst. v. Galecki, 707 F Supp. 401 (W.D. Wis. 1989).

138.053 Regulation of interest adjustment provisions.

(1) REQUIRED CONTRACT PROVISIONS. No contract between a borrower and a lender secured by a first lien real estate mortgage on, or an equivalent security interest in, an owner−occupied residential property containing not more than 4 dwelling units may authorize the lender to increase the borrower's contractual rate of interest unless the contract provides that:

(a) No increase may occur until 3 years after the date of the contract;

(b) No increase may occur unless the borrower is given at least 4 months' written notice of the lender's intent to increase the rate of interest, during which notice period the borrower may repay his or her obligation without penalty;

(c) The amount of the initial interest rate increase may not exceed $1 per $100 for one year computed upon the declining principal balance;

(d) The amount of any subsequent interest rate increase may not exceed $1 per $200 for one year computed upon the declining principal balance;

(e) The interest rate may not be increased more than one time in any 12−month period; and

(f) The loan may be prepaid without penalty at any time at which the interest rate in effect exceeds the originally stated interest rate by more than $2 per $100 for one year computed upon the declining principal balance.

(2) DISCLOSURES REQUIRED. No lender may make a loan secured by a first lien real estate mortgage on, or an equivalent security interest in, an owner−occupied residential property containing not more than 4 dwelling units providing for prospective changes in the rate of interest unless it has clearly and conspicuously disclosed to the borrower in writing:

(a) That the interest rate is prospectively subject to change;

(b) That notice of any interest adjustment must be given 4 months prior to any increase; and

(c) Any prepayment rights of the borrower upon receiving notice of such change.

(3) NOTICE OF INTEREST ADJUSTMENT. Notices provided under sub. (2) shall be mailed to the borrower at his or her last−known post−office address and shall clearly and concisely disclose:

(a) The effective date of the interest rate increase;

(b) The increased interest rate and the extent to which the increased rate will exceed the interest rate in effect immediately before the increase;

(c) The amount of the borrower's contractual monthly principal and interest payment before and after the effective date of the increase;

(d) Any right of the borrower to voluntarily increase his or her contractual principal and interest payment;

(e) Whether as a result of the increase a lump sum payment may be necessary at the end of the loan term;

(f) Whether an additional number of monthly payments may be required; and

(g) The borrower's right to prepay within 4 months without a prepayment charge.

(4) APPLICABILITY. (a) This section does not apply to variable rate contracts, nor to loans or forbearances to corporations or limited liability companies.

(b) This section applies only to transactions initially entered into on or after June 12, 1976 and before November 1, 1981.

History: 1975 c. 387; 1981 c. 45; 1993 a. 112.

"Due on sale" provision of note and mortgage was enforceable. Mutual Fed. S. & L. Asso. v. Wisconsin Wire Wks. 71 Wis. 2d 531, 239 N.W.2d 20.

138.055 Variable rate contracts. (1) REQUIRED CONTRACT PROVISIONS. No contract between a borrower and a lender secured by a first lien real estate mortgage on, or an equivalent security interest in, an owner−occupied residential property containing not more than 4 dwelling units may contain a variable interest rate clause unless the contract provides that:

(a) When an increase in the interest rate is permitted by a movement upward of a prescribed index, a decrease in the interest rate is also required by a downward movement of the prescribed index subject to pars. (b) to (f);

(b) The rate of interest shall not change more than once during any 6−month period;

(c) Any singular change in the interest rate shall not exceed the rate of $1 per $200 for one year computed upon the declining principal balance and the total variance in such rate shall at no time exceed a rate equal to $2.50 per $100 for one year computed on the declining principal balance greater or lesser than the rate originally in effect;

(d) Decreases required by the downward movement of the prescribed index shall be mandatory. Increases permitted by the upward movement of the prescribed index shall be optional with the lender. Changes in the interest rate shall only be made when the prescribed index changes a minimum of one−tenth of one percent;

(e) The fact that a lender may not have invoked an increase, in whole or in part, shall not be deemed a waiver of the lender's right to invoke an increase at any time thereafter within the limits imposed by this section;

(f) The rate shall not change during the first semiannual period of the loan; and

(g) The borrower may prepay the loan in whole or in part within 90 days of notification of any increase in the rate of interest without a prepayment charge.

(2) DISCLOSURES REQUIRED. No lender may make a loan secured by a first lien real estate mortgage on, or an equivalent security interest in, an owner−occupied residential property containing not more than 4 dwelling units containing a variable interest rate provision unless it has clearly and conspicuously disclosed to the borrower in writing prior to execution of the loan documents:

(a) That the loan contract contains a variable interest rate;

(b) The index used in applying any variable interest rate changes contemplated in the note and its current base; and

(c) Any prepayment rights of the borrower upon receiving notice of any such change.

(3) NOTICE OF INTEREST ADJUSTMENT. When a change in the interest rate is required or permitted by a movement in the prescribed index, the lender shall give notice to the borrower by mail, addressed to the borrower's last−known post−office address, not less than 30 days prior to any change in interest rate, which notice shall clearly and concisely disclose:

(a) The effective date of the interest rate change;

(b) The interest rate change, and if an increase, the extent to which the increased rate will exceed the rate in effect immediately before the increase;

(c) The changes in the index which caused the interest rate change;

(d) The amount of the borrower's contractual monthly principal and interest payments before and after the effective date of the change in the interest rate;

(e) Whether as a result of an increase in the interest rate a lump sum payment may be necessary at the end of the loan term; and

(f) The borrower's right to prepay the loan within 90 days after said notice without a prepayment charge if the notice required an increase in interest rate.

(4) INDEX. In determining any variable interest rate changes permitted under this section, a lender shall use either the index published by the federal home loan bank of Chicago based on the cost of all funds to Wisconsin member institutions or an index approved by:

(b) The office of credit unions, if the lender is a credit union;

(c) The commissioner of insurance, if the lender is an insurance company; or

(d) The division of banking for all other lenders.

(5) APPLICABILITY. (a) This section does not apply to loans or forbearances to corporations or limited liability companies.

(b) This section applies only to transactions initially entered into on or after June 12, 1976 and before November 1, 1981.

History: 1975 c. 387; 1981 c. 45; 1991 a. 221; 1993 a. 112; 1995 a. 27; 1999 a. 9; 2003 a. 33.

Variable rate mortgages: The transition phase. 61 MLR 140.

138.056 Variable rate loans. (1) DEFINITIONS. In this section:

(a) "Approved index" means any of the following:

1. The national average mortgage contract rate for major lenders on the purchase of previously occupied homes, as computed by the federal home loan bank board.

2. The monthly average of weekly auction rates on U.S. treasury bills with a maturity of 3 months or 6 months made available by the federal reserve board.

3. The monthly average yield on U.S. treasury securities adjusted to a constant maturity of 1, 2, 3 or 5 years, made available by the federal reserve board.

4. An index readily verifiable by borrowers and beyond the control of an individual lender and approved by:

b. The office of credit unions, if the lender is a credit union;

c. The commissioner of insurance, if the lender is an insurance company; or

d. The division of banking for all other lenders.

(b) "Dwelling" includes a cooperative housing unit and a mobile home.

(bm) "Mobile home" means a vehicle designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used, or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction. "Mobile home" includes the mobile home structure, including the plumbing, heating and electrical systems and all appliances and all other equipment carrying a manufacturer's warranty.

(c) "Mobile home transaction" means a consumer credit sale, as defined in s. 421.301 (9), of or a consumer loan, as defined in s. 421.301 (12), secured by a first lien or equivalent security interest in a mobile home.

(d) "Variable rate loan" means a mobile home transaction or a loan as defined in s. 138.052 (1) (b), the terms of which permits the interest rate to be increased or decreased.

(2) REQUIRED TERMS. A variable rate loan contract shall:

(a) Provide for a term of not more than 40 years.

(b) Use an approved index if it provides for adjustments to the interest rate corresponding to an index. The initial index value shall be the most recently available value of the index prior to the date of closing of the loan. The interest rate at adjustment shall reflect the difference, in reference to the interest rate of the variable rate loan at the date of closing, between the initial index value and the index value most recently available as of the date notice of the interest rate adjustment is mailed under sub. (4) except the lender may decrease the interest rate or decline to increase the interest rate at any time. The interest rate shall be decreased to reflect any downward movement of the index except to the extent the decrease offsets increases in the index not implemented as

interest rate increases. An increase in the index permitting the lender to increase the interest rate but declined by the lender for any rate adjustment interval may be carried over and applied in succeeding interest rate adjustment intervals to the extent the increase is not offset by subsequent decreases in the index. The variable rate loan contract may provide for minimum interest rate change increments which shall apply to both increases and decreases. The variable rate loan contract may limit interest rate decreases only if interest rate increases are restricted at least to the same extent.

(c) Provide for no more than a one percent increase in the interest rate not more than once each 6 months and permit decreases in the interest rate to be made at any time, if it does not provide for adjustments to the interest rate corresponding to an approved index. If an increase is waived, the lender may at any time increase the interest rate to a rate equal to the interest rate if all increases were made at the first opportunity.

(3) FEES PROHIBITED. No costs or fees may be charged in connection with adjustment to the interest rate of a variable rate loan or an adjustment to the payment, principal balance or term implementing an interest rate adjustment.

(3m) PREPAYMENT PENALTIES. (a) Notwithstanding s. 138.052 (2) (a), and except as provided in s. 428.207, a lender may not include a prepayment penalty in a variable rate loan using an approved index unless all of the following are satisfied:

1. The lender also makes variable rate loans without prepayment penalties and the lender provides the borrower with a written statement that the lender also makes variable rate loans without prepayment penalties.

2. At the time of the offer of the variable rate loan, and the borrower acknowledges, in writing, receipt of the statement specified in subd. 1.

3. The penalty is limited to prepayment that is made within 3 years of the date of the loan.

4. The prepayment is not made in connection with the sale of a dwelling or mobile home securing the loan.

(b) This subsection applies to variable rate loans made, refinanced, renewed, extended, or modified on or after March 25, 2006.

(4) NOTICE OF INTEREST PAYMENT CHANGES. (a) If a change in the interest rate occurs, the lender shall give the borrower notice of the change:

1. At least 15 days before the change if an increase in periodic payments other than the final payment is required.

2. Not later than 30 days after any other change.

(b) The notice shall be mailed to the borrower's last−known address and shall contain all of the following information:

1. The effective date of the interest rate change.

2. The amount of the interest rate change.

3. The changes in any index which cause the interest rate change.

4. The amount of the contractual monthly principal and interest payments required as a result of the change.

5. The prepayment rights of the borrower.

(c) This subsection does not apply to a loan secured by an equivalent security interest as determined as of the date that the loan is made.

(5) NEGATIVE AMORTIZATION. The principal balance of a variable rate loan may be increased to implement an interest rate adjustment only if within 10 years after the loan is made, and at least every 5 years thereafter, the payment amount is adjusted to a level at least sufficient to amortize the loan at the then existing interest rate and principal balance over the remaining term of the loan. The payment amount shall be maintained at least at that level until subsequently adjusted under this subsection, except that the payment amount shall be decreased to reflect any decrease in the interest rate.

(6) DISCLOSURE. Before making a variable rate loan, the lender shall disclose all of the following information to at least one of the borrowers:

(a) That the loan contract contains a variable interest rate provision.

(b) An identification of any approved index used in the loan contract and the current base of the approved index.

(c) The borrower's prepayment rights on receiving notice of a change in the interest rate.

(d) That a notice of any interest rate increase must be given to the borrower.

(7) PRIORITY. Any interest accrued or added to the principal of a variable rate loan to implement an interest rate adjustment retains the priority of the original mortgage or equivalent security interest.

(8) APPLICABILITY. This section does not apply to any of the following:

(a) A loan or forbearance to a corporation or a limited liability company.

(b) A loan that is primarily for a business purpose or for an agricultural purpose, as defined in s. 421.301 (4).

(c) A reverse mortgage loan, as defined in s. 138.058 (1) (b).

(d) A transaction initially entered into before November 1, 1981.

History: 1981 c. 45; 1983 a. 232; 1985 a. 325; 1991 a. 221; 1993 a. 88, 112; 1995 a. 27, 336; 1999 a. 9, 53; 2003 a. 33, 257; 2005 a. 128, 215.

Cross Reference: See also ss. DFI−SB 13.02 and DFI−SL 13.04, Wis. adm. code.

138.057 Penalties. Any lender who intentionally violates s. 138.053, 138.055 or 138.056 is liable to the borrower for all excess interest collected, plus interest thereon at the rate of 5% per year. In addition, the borrower may recover actual damages, including incidental and consequential damages, sustained by reason of the violation.

History: 1975 c. 387; 1977 c. 26; 1981 c. 45 s. 51.

138.058 Reverse mortgage loans. (1) DEFINITIONS. In this section:

(a) "Qualified lender" means a lender approved by the federal department of housing and urban development to enter into a loan insured by the federal government under 12 USC 1715z−20.

(b) "Reverse mortgage loan" means a loan, or an agreement to lend, which is secured by a first mortgage on the borrower's principal residence, is insured by the federal government under 12 USC 1715z−20 and requires repayment as specified in the loan agreement under any of the following conditions:

1. All the borrowers have died.

2. All the borrowers have sold the residence or conveyed title to the residence.

3. All the borrowers have moved permanently from the residence.

4. Any other condition specified in 12 USC 1715z−20.

(2) REVERSE MORTGAGES PERMITTED. A qualified lender may enter into reverse mortgage loans.

(3) TREATMENT OF REVERSE MORTGAGE LOAN PROCEEDS BY PUBLIC BENEFIT PROGRAMS. (a) Reverse mortgage loan payments made to a borrower shall be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means−tested programs of aid to individuals.

(b) Undisbursed funds shall be treated as equity in a borrower's residence and not as proceeds from a loan for the purpose of determining eligibility and benefits under means−tested programs of aid to individuals.

(c) This subsection applies to any law relating to payments, allowances, benefits or services provided on a means−tested basis by this state, including supplemental security income, low−income energy assistance, property tax deferral, medical assistance and general assistance.

History: 1993 a. 88.

138.06 Effect of usury and penalties. (1) All instruments, contracts or securities providing a rate of interest exceeding the rate allowed in s. 138.05, 138.051 or 138.052 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 s. 138.05, 138.051 or 138.052 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. 138.05, 138.051 or 138.052 may personally or by personal representative recover in an action against the lender or personal representative the amount of interest, principal and charges paid on such loan or forbearance but not more than $2,000 of principal, if the action is brought within the time provided by s. 893.62.

(4) Any borrower to whom a lender or agent of a lender fails to provide the statement required in s. 138.05 (4) with respect to a loan or forbearance may by himself or herself or his or her personal representative recover in an action against the lender or the lender's personal representative an amount equal to all interest and charges paid upon such loan or forbearance but not less than $50 plus reasonable attorney fees incurred in such action.

(5) Notwithstanding subs. (1) to (4), if any violation of s. 138.05, 138.051 or 138.052 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.

(6) In connection with a sale of goods or services on credit or any forbearance arising therefrom prior to October 9, 1970, there shall be no allowance of penalties under this section for violation of s. 138.05, except as to those transactions on which an action has been reduced to a final judgment as of May 12, 1972.

(7) Notwithstanding sub. (6), a seller shall, with respect to a transaction described in sub. (6), refund or credit the amount of interest, to the extent it exceeds the rate permitted by s. 138.05 (1) (a), which was charged in violation of s. 138.05 and paid by a buyer since October 8, 1968, upon individual written demand therefor made on or before March 1, 1973, and signed by such buyer. A seller who fails within a reasonable time after such demand to make such refund or credit of excess interest shall be liable in an individual action in an amount equal to 3 times the amount thereof, together with reasonable attorney fees.

(8) This section does not apply to a loan or forbearance made on or after November 1, 1981.

History: 1971 c. 308; 1979 c. 168 s. 21; 1979 c. 323, 355; 1981 c. 45 ss. 4, 51; 1993 a. 482, 490.

Sub. (7) is constitutional. Wiener v. J. C. Penney Co. 65 Wis. 2d 139, 222 N.W.2d 149 (1974).

Class actions for the recovery of usurious interest charged by revolving credit plans are not precluded by (3). Mussallem v. Diners' Club, Inc. 69 Wis. 2d 437, 230 N.W.2d 717 (1975).

Sub. (6) is constitutional. 60 Atty. Gen. 198.

138.09 Licensed lenders. (1d) In this section, "division" means the division of banking.

(1m) (a) Before any person may do business under this section or charge the interest authorized by sub. (7) and before any creditor other than a bank, savings bank, savings and loan association or credit union may assess a finance charge on a consumer loan in excess of 18% per year, that person shall first obtain a license from the division. Applications for a license shall be in writing and upon forms provided for this purpose by the division. An applicant at the time of making an application shall pay to the division a nonrefundable $300 fee for investigating the application and a $500 annual license fee for the period terminating on the last day of the current calendar year. If the cost of the investigation exceeds $300, the applicant shall upon demand of the division pay to the division the amount by which the cost of the investigation exceeds the nonrefundable fee.

(b) 1. Except as provided in par. (c), an application under par. (a) for a license shall contain the following:

a. If the applicant is an individual, the applicant's social security number.

b. If the applicant is not an individual, the applicant's federal employer identification number.

2. The division may not disclose any information received under subd. 1. to any person except as follows:

a. The division may disclose information under subd. 1. to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

b. The division may disclose information under subd. 1. a. to the department of workforce development in accordance with a memorandum of understanding under s. 49.857.

(c) 1. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a license, shall submit a statement made or subscribed under oath or affirmation to the division that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development.

2. Notwithstanding sub. (3) (b), any license issued or renewed in reliance upon a false statement submitted by an applicant under subd. 1. is invalid.

(2) The division may also require the applicant to file with the division, and to maintain in force, a bond in which the applicant shall be the obligor, in a sum not to exceed $5,000 with one or more corporate sureties licensed to do business in Wisconsin, whose liability as such sureties shall not exceed the sum of $5,000 in the aggregate, to be approved by the division, and such 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 obligor of the bond under the provisions of this section. Such bonds shall be conditioned that the 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 the obligor under and by virtue of the provisions of this chapter.

(3) (a) Upon the filing of such application and the payment of such fee, the division shall investigate the relevant facts. Except as provided in par. (am), if the division shall find that the character and general fitness and the financial responsibility of the applicant, and the members thereof if the applicant is a partnership, limited liability company or association, and the officers and directors thereof if the applicant is a corporation, warrant the belief that the business will be operated in compliance with this section the division shall thereupon issue a license to said applicant to make loans in accordance with the provisions of this section. If the division shall not so find, the division shall deny such application.

(am) The division may not issue a license under this section to an applicant if any of the following applies:

1. The applicant fails to provide any information required under sub. (1m) (b).

2. The department of revenue certifies under s. 73.0301 that the applicant is liable for delinquent taxes.

3. The applicant fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings.

4. The applicant is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857.

(b) Every license shall remain in force and effect until suspended or revoked in accordance with this section or surrendered by the licensee, and every licensee shall, on or before each Decem-

ber 10, pay to the division the annual license fee for the next succeeding calendar year.

(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 division in writing or by rule or at an auction sale conducted or clerked by a licensee.

(d) A separate license shall be required for each place of business maintained by the licensee. Whenever a licensee shall change the address of its place of business to another location within the same city, village or town the licensee shall at once give written notice thereof to the division, which shall replace the original license with an amended license showing the new address, provided the location meets with the requirements of par. (e). No change in the place of business of a licensee to a different city, village or town shall be permitted under the same license.

(e) 1. Except as provided in subd. 2., a licensee may conduct, and permit others to conduct, at the location specified in its license, any one or more of the following businesses not subject to this section:

a. A business engaged in making loans for business or agricultural purposes or exceeding $25,000 in principal amount, except that all such loans having terms of 49 months or more are subject to sub. (7) (gm) 2. or 4.

b. A business engaged in making first lien real estate mortgage loans under ss. 138.051 to 138.06.

c. A loan, finance or discount business under ss. 218.0101 to 218.0163.

d. An insurance business.

e. A currency exchange under s. 218.05.

f. A seller of checks business under ch. 217.

2. A licensee may not sell merchandise or conduct other business at the location specified in the license unless written authorization is granted to the licensee by the division.

(f) Every licensee shall make an annual report to the division for each calendar year on or before March 15 of the following year. The report shall cover business transacted by the licensee under the provisions of this section and shall give all reasonable and relevant information that the division may require. The reports shall be made upon forms furnished by the division and shall be signed and verified by the oath or affirmation of the licensee if an individual, one of the partners if a partnership, a member or manager if a limited liability company or an officer of the corporation or association if a corporation or association. Any licensee operating under this section shall keep the records affecting loans made pursuant to this section separate and distinct from the records of any other business of the licensee.

(4) (a) The division for the purpose of discovering violations of this chapter may cause an investigation to be made of the business of the licensee transacted under this section, and shall cause an investigation to be made of convictions reported to the division by any district attorney for violation by a licensee of this chapter. The place of business, books of account, papers, records, safes and vaults of said licensee shall be open to inspection and examination by the division for the purpose of such investigation and the division may examine under oath all persons whose testimony the division may require relative to said investigation. The division may, upon notice to the licensee and reasonable opportunity to be heard, suspend or revoke such license after such hearing if any of the following applies:

1. The licensee has violated any provision of this chapter and if the division determines such violation justifies the suspension or revocation of the license.

2. Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the division in refusing to issue such license.

3. The licensee has failed to pay the annual licensee fee or to maintain in effect the bond, if any, required under sub. (2).

(b) The division shall restrict or suspend a license under this section if, in the case of a licensee who is an individual, the licensee fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. A licensee whose license is restricted or suspended under this paragraph is entitled to a notice and hearing only as provided in a memorandum of understanding entered into under s. 49.857 and is not entitled to a hearing under par. (a).

(c) The division shall revoke a license under this section if the department of revenue certifies that the licensee is liable for delinquent taxes under s. 73.0301. A licensee whose license is revoked under this paragraph for delinquent taxes is entitled to a hearing under s. 73.0301 (5) (a) but is not entitled to a hearing under par. (a).

(d) The cost of any investigation, examination, or hearing, including witness fees or any other expenses, conducted by the division under this section shall be paid by the licensee so examined within 30 days after demand therefor by the division, and the state may maintain an action for the recovery of such costs and expenses.

(5) No licensee shall advertise, print, display, publish, distribute or broadcast or cause to be printed, displayed, published, distributed or broadcast in any manner any statement with regard to the rates, terms or conditions for the lending of money, credit, goods or things in action which is false or calculated to deceive. With respect to matters specifically governed by s. 423.301, compliance with such section satisfies the requirements of this section.

(6) (a) Except as provided in par. (b), the licensee shall keep such books and records in the licensee's place of business as in the opinion of the division will enable the division 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.

(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 division to examine books and records maintained outside of this state shall be paid by the licensee.

(7) (a) In this section:

1. "Precomputed loan" means a loan in which the debt is expressed as a sum comprising the principal and the amount of interest computed in advance.

2. "Principal" means the total of:

a. The amount paid to, received by or paid or payable for the account of the borrower; and

b. To the extent that payment is deferred: the amount actually paid or to be paid by the licensee for registration, certificate of title or license fees if not included in subd. 2. a.; and additional charges permitted under this section.

(b) A licensee may charge, contract for or receive a rate of interest for a loan or forbearance made prior to April 6, 1980, which does not exceed the greater of either of the following:

1. With respect to installment loans or forbearances which are repayable in substantially equal successive installments at approximately equal intervals, and where the principal does not exceed $3,000 excluding any interest authorized under this section, and where the scheduled maturity of the loan contract is not more than 36 months and 15 days from the date of making, interest may be deducted in advance at a rate not in excess of $9.50 per $100 per year on that part of the loan not exceeding $1,000 and $8 per $100 per year on any remainder. Interest shall be computed at the time the loan is made on the face amount of the contract for the full term of the contract, notwithstanding the requirement for installment repayments. The face amount of the loan contract or note may exceed $3,000 by the amount of interest deducted in advance. On contracts which are one year or any number of whole years, the charge shall be computed proportionately on even calendar months.

2. With respect to any loan of any amount, at a rate not to exceed 18% per year computed on the declining unpaid principal balances of the loan from time to time outstanding, calculated according to the actuarial method, but this does not limit or restrict the manner of contracting for the interest, whether by way of add−on, discount or otherwise, so long as the rate of interest does not exceed that permitted by this paragraph.

(bm) A licensee may charge, contract for or receive a rate of interest for a loan or forbearance made on or after April 6, 1980 and prior to November 1, 1981, which does not exceed the greater of either of the following:

1. With respect to installment loans or forbearances which are repayable in substantially equal successive installments at approximately equal intervals, and where the principal does not exceed $3,000 excluding any interest authorized under this section, and where the scheduled maturity of the loan contract is not more than 36 months and 15 days from the date of making, interest may be deducted in advance at a rate not in excess of $9.50 per $100 per year on that part of the loan not exceeding $2,000 and $8 per $100 per year on any remainder. Interest shall be computed at the time the loan is made on the face amount of the contract for the full term of the contract, notwithstanding the requirement for installment repayments. The face amount of the loan contract or note may exceed $3,000 by the amount of interest deducted in advance. On contracts which are one year or any number of whole years, the charge shall be computed proportionately on even calendar months.

2. With respect to any loan of any amount, at a rate not to exceed 19% per year computed on the declining unpaid principal balances of the loan from time to time outstanding, calculated according to the actuarial method, but this does not limit or restrict the manner of contracting for the interest, whether by way of add−on, discount or otherwise, so long as the rate of interest does not exceed that permitted by this paragraph.

(bn) 1. A licensee may charge, contract for or receive a rate of interest, calculated according to the actuarial method, which may not exceed the greater of the following for a loan or forbearance of less than $3,000 entered into on or after November 1, 1981 and before November 1, 1984:

a. Twenty−three percent per year.

b. A rate of 6% in excess of the interest rate applicable to 2−year U.S. treasury notes as determined under subd. 3. a.

c. A rate of 6% in excess of the interest rate applicable to 6−month U.S. treasury bills as determined under subd. 3. b.

2. A licensee may charge, contract for or receive a rate of interest, calculated according to the actuarial method, which may not exceed the greater of the following for a loan or forbearance of $3,000 or more entered into on or after November 1, 1981 and before November 1, 1984:

a. Twenty−one percent per year.

b. A rate of 6% in excess of the interest rate applicable to 2−year U.S. treasury notes as determined under subd. 3. a.

c. A rate of 6% in excess of the interest rate applicable to 6−month U.S. treasury bills as determined under subd. 3. b.

3. a. For purposes of subds. 1. b. and 2. b., the interest rate applicable to 2−year U.S. treasury notes for any calendar year quarter is the average annual interest rate determined by the last auction of the notes in the preceding calendar year quarter, increased to the next multiple of 0.5% if the average annual interest rate includes a fractional amount.

b. For purposes of subds. 1. c. and 2. c., the interest rate applicable to 6−month U.S. treasury bills for any month is the average annual discount interest rate determined by the last auction of the bills in the preceding month, increased to the next multiple of 0.5% if the average annual discount interest rate includes a fractional amount.

4. Information regarding the amount of the maximum finance charge under subds. 1. and 2. for any month or calendar year quarter shall be available at the office of the division.

5. This paragraph does not restrict the manner of contracting for interest, whether by add−on, discount or otherwise, if the interest rate does not exceed the rate under this paragraph.

(bp) A loan, whether precomputed or based upon the actuarial method, made after October 31, 1984, is not subject to any maximum interest rate limit.

(c) 1. Where the interest is precomputed, the interest may be calculated on the assumption that all scheduled payments will be made when due and the effect of prepayment is governed by the provision on rebate upon prepayment. If a loan is prepaid out of the proceeds of a new loan made under this section, the principal of such new loan may include any unpaid charges on the prior loan which have accrued before the making of the new loan, unless the prior loan was precomputed in which event the principal of the new loan may include the balance remaining after making the required rebate plus any accrued charges.

2. For the purpose of computing interest under this section, whether at the maximum rate or less, a day shall be considered one−thirtieth of a month when such computation is made for a fraction of a month. Loan contracts providing for installments payable at monthly intervals may provide for a first period between the date of the contract and the first installment due date of not more than 45 days and not less than 15 days. Where the first period is greater or lesser than one month, interest may be charged only for each day in the first period, at a rate not to exceed one−thirtieth of the interest which would be applicable to a first installment period of one month, but such first period may be considered a monthly interval for purposes of determining rebates. Where the first period is greater than one month, any additional interest charge shall be earned and may be added to and collected at the time of the first installment payment.

3. In lieu of deducting the interest and charging the delinquency and deferral charges authorized in this section, a licensee may contract for and receive a rate of charge not exceeding that rate which, computed on scheduled unpaid balances of the proceeds of the loan contract, would produce an amount of charge equal to the total of the interest which may be deducted from such loan contract under this section, and such rate of charge may be computed on actual unpaid principal balances from time to time outstanding until the loan is fully paid. When such rate of charge is made in lieu of other charges, the provisions relating to refunds and delinquency charges shall not apply to such loans.

4. If 2 installments or parts thereof of a precomputed loan are not paid on or before the 10th day after their scheduled or deferred due dates, a licensee may elect to convert the loan from a precomputed loan to one in which the interest is computed on unpaid balances actually outstanding. In this event the licensee shall make a rebate pursuant to the provisions on rebate upon prepayment as of the due date of an unpaid installment, and thereafter may charge interest from the due date as provided in subd. 3. or by par. (b) 2.

and no further delinquency or deferral charges shall be made. The rate of interest may equal but not exceed the annual percentage rate of finance charge which was disclosed to the borrower when the loan was made. The rate of interest shall be computed on actual unpaid balances of the contract as reduced by the rebate for the time that such balances are actually outstanding from the due date as of which the rebate was made until the contract is fully paid.

(d) 1. No loan of $3,000 or less, excluding interest, scheduled to be repaid in substantially equal installments at equal periodic intervals shall provide for a scheduled repayment of principal more than 36 months and 15 days from the date of the contract if the principal exceeds $700, nor more than 24 months and 15 days from the date of the contract if the principal is $700 or less.

2. A licensee may make loans under a continuing loan agreement which provides for future or additional advances under the same instrument if at the time of each new advance of money, any existing unpaid balance is reduced by any required rebate and the resulting amount plus the additional money advanced plus interest, official fees and premiums or identifiable charges for insurance, if any, are combined, and for the purpose of the limitations of subd. 1. only, the date of the loan contract shall be deemed the date of said advance.

(e) 1. With respect to a precomputed loan which is scheduled to be repaid in substantially equal installments, the parties may agree to a delinquency charge on any installment not paid in full on or before the 10th day after its scheduled or deferred due date, in an amount not to exceed 5% of the unpaid amount of the installment. The delinquency charge may be collected only once on any one installment but may be collected when due or at any time thereafter.

2. With respect to other loans the delinquency charge shall not exceed the rate allowed under par. (b), computed upon the unpaid principal balance exclusive of interest on the loan.

3. Notwithstanding subds. 1. and 2., delinquency charges on precomputed consumer loans shall be governed by s. 422.203.

(f) 1. Subject to subds. 2. and 3., with respect to a precomputed loan, the parties before or after default may agree in writing to a deferral of all or part of any unpaid installment, and the licensee may make and collect a charge computed in the same manner as the deferral charge computed in accordance with s. 422.204 (1) to (5) whether or not the loan under this section is a consumer loan.

2. In addition to the deferral charge, the licensee may make appropriate additional charges. The amount of such charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

3. The parties may agree in writing at any time, including at the time of a precomputed loan that if an installment is not paid within 30 days after its due date, the licensee may grant a deferral and make charges under this section, if a notice is sent to the customer advising the customer of the amount of the deferral charge, the period of deferral and that if the installment is prepaid before maturity that a proportionate refund of the deferral charge will be given. No deferral charge may be made for a period after the date that such a lender elects to accelerate the maturity of the agreement.

4. Notwithstanding subds. 1., 2. and 3., deferral charges on precomputed consumer loans shall be governed by s. 422.204.

(g) Except as provided in par. (gm), upon prepayment in full by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest as provided in this paragraph. If the combined rebate of interest and credit insurance premiums otherwise required is less than $1, no rebate need be made. The refunds shall be determined as follows:

1. On a loan where the interest is precomputed and which is repayable in substantially equal successive installments at approximately equal intervals, whether or not the precomputed loan is a consumer loan, the amount of rebate shall be computed under s. 422.209 (2) (a) except for any additional interest charge covered under subd. 3.

2. For any other loan, the amount of the rebate of interest shall not be less than the difference between the interest charged and the interest earned at the agreed rate computed upon the unpaid principal balances, exclusive of interest, of the transaction prior to payment in full.

3. If the first payment period is greater than one month and additional interest is charged as permitted under par. (c) 2., the additional interest charged for the extension of the first payment period is considered wholly earned on the first installment date and is not considered in computing rebates.

(gm) 1. Upon prepayment in full of a loan entered into on or after November 1, 1981 and before November 1, 1984, and which has a term of less than 49 months, by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest as provided in this paragraph. If the combined rebate of interest and credit insurance premiums otherwise required is less than $1, no rebate need be made. The refunds shall be determined as follows:

a. On a loan where the interest is precomputed and which is repayable in substantially equal successive installments at approximately equal intervals, the amount of rebate shall be computed under s. 422.209 (2) (a) except for any additional interest charge under par. (c) 2.

b. For any other loan, the amount of the rebate of interest may not be less than the difference between the interest charged and the interest earned at the agreed rate, computed upon the unpaid principal balance.

c. If the first payment period is greater than one month and additional interest is charged under par. (c) 2., the additional interest is earned on the first installment date and may not be considered in computing rebates.

2. Upon prepayment in full of a loan for personal, family, household or agricultural purposes, of $25,000 or less, entered into on or after November 1, 1981 and before August 1, 1987, and which has a term of 49 months or more and upon prepayment in full of any loan entered into on or after May 10, 1984 and before August 1, 1987, and which has a term of more than 49 months, by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest under s. 422.209 (2) (b). If the combined rebate of interest and credit insurance premiums otherwise required is less than $1, no rebate need be made. If the first payment period is greater than one month and additional interest is charged under par. (c) 2., the additional interest is earned on the first installment date and may not be considered in computing rebates.

3. Upon prepayment in full of a loan of less than $5,000 which is entered into on or after August 1, 1987, and which has a term of less than 37 months, by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest as provided in this subdivision. If the combined rebate of interest and credit insurance premiums otherwise required is less than $1, no rebate need be made. The refunds shall be determined as follows:

a. On a loan where the interest is precomputed and which is repayable in substantially equal successive installments at approximately equal intervals, the amount of rebate shall be computed under s. 422.209 (2) (a) except for any additional interest charge under par. (c) 2.

b. For any other loan, the amount of the rebate of interest may not be less than the difference between the interest charged and the interest earned at the agreed rate, computed upon the unpaid principal balance.

c. If the first payment period is greater than one month and additional interest is charged under par. (c) 2., the additional interest is earned on the first installment date and may not be considered in computing rebates.

4. Upon prepayment in full of a loan of $5,000 or more or a loan of less than $5,000 if for a term of 37 months or more, entered into on or after August 1, 1987, by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest computed under s. 422.209 (2) (b) 1. or 2. The licensee may determine whether the rebate is computed under s. 422.209 (2) (b) 1. or 2. If the combined rebate of interest and credit insurance premiums otherwise required is less than $1, no rebate need be made. If the first payment period is greater than one month and additional interest is charged under par. (c) 2., the additional interest is earned on the first installment date and may not be considered in computing rebates.

(h) A licensee may require property insurance, and may accept, but shall not require, credit life insurance or credit accident and sickness insurance or both, if such insurance is issued in accordance with ch. 424, whether or not the loan is a consumer loan.

(i) In addition to interest, the licensee may charge:

1. The additional charges allowed in s. 422.202 whether or not the loan is a consumer loan;

2. An amount sufficient to cover the fee for filing the termination statement required by s. 409.513 on loans secured by merchandise other than a motor vehicle, a manufactured home, or a boat; and

3. On motor vehicle loans, the actual filing fee required for filing with the department of transportation under ch. 342 or, on boat loans, the filing fee required for filing with the department of natural resources under ch. 30.

(j) No licensee may divide or encourage a borrower to divide any loan for the purpose of obtaining a higher rate of finance charge than would otherwise be permitted under this section.

(jm) 1. Subject to subd. 2., a licensee may charge, in addition to interest, a loan administration fee on a consumer loan, including a refinancing or loan consolidation, if all of the following conditions are met:

a. The loan administration fee does not exceed 2% of the principal in the consumer loan, refinancing or consolidation.

b. The loan administration fee is charged for a consumer loan that is secured primarily by an interest in real property or in a mobile home, as defined in s. 138.056 (1) (bm).

2. Notwithstanding subd. 1., if a licensee charges a loan administration fee on a consumer loan that is prepaid from the proceeds of a new loan made by the same licensee within 6 months after the prior loan, then the licensee shall reduce any loan administration fee on the new loan by the amount of the loan administration fee on the prior loan.

3. A loan administration fee charged under this paragraph may be included in the amount financed in the consumer loan. The loan administration fee is earned by the licensee when charged and need not be refunded under par. (gm) 3. or 4. A licensee who charges a loan administration fee under this paragraph may not also retain a loan administration fee under s. 422.209 (1m) in connection with the same consumer loan transaction.

(k) All consumer loans as defined in s. 421.301 (12) shall be governed by chs. 421 to 427, but to the extent that chs. 421 to 427 are inconsistent with this section, this section shall govern.

(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 note 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, the amount of interest, the proceeds of the loan after deducting such interest, a description of the payment schedule and the default charge. Disclosures made in accordance with the federal consumer credit protection act and regulation Z shall be deemed to comply with such disclosures. The statement shall also indicate that the borrower may prepay the borrower's loan in whole or in part and that if the loan is prepaid in full the borrower will receive a refund of interest as provided by this section. The statement shall also indicate the percentage per year of interest charged in the transaction.

(b) Give to the borrower a plain and complete receipt for all cash 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.

(d) Upon repayment of the loan in full mark indelibly every obligation, other than a security agreement, signed by the borrower with the word "Paid" or "Canceled" and cancel and return any note. When there is no outstanding secured obligation such licensee shall restore any pledge, cancel and return any assignment, cancel and return any security agreement given to the licensee by the borrower and file a termination statement terminating any filed financing statement.

(e) Take no note, promise to pay, security nor any instrument in which blanks are left to be filled in after the loan has been made except that a detailed description or inventory of the security may be filled in, with the written consent of the borrower within 10 days thereafter.

(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. 138.05 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 pledgor to retain the possession thereof, or who by any device or pretense of charging for his or her services or otherwise seeks to obtain a greater compensation than is authorized by this section.

(b) No loan made under this section, for which a greater rate or amount of interest, than is allowed by this section, has been contracted for or received, wherever made, shall be enforced in this state, and every person in any wise participating therein in this state shall be subject to this section. If a licensee makes an excessive charge as the result of an unintentional mistake, but upon demand makes correction of such mistake, the loan shall be enforceable and treated as if no violation occurred at the agreed rate. Nothing in this paragraph shall limit any greater rights or remedies afforded in chs. 421 to 427 to a customer in a consumer credit transaction.

(10) Any person, partnership or corporation and the several officers and employees thereof who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or imprisoned for not more than 6 months or both.

(11) The division may employ necessary examiners or other personnel from time to time and fix their compensation.

(12) No person, association, partnership or corporation doing business under the authority of any law of this state or of the United States relating to banks, savings banks, trust companies, savings or building and loan associations, or credit unions shall be eligible to become a licensee under this section.

History: 1971 c. 60, 125, 239, 307; 1973 c. 2, 243; 1975 c. 407; 1977 c. 29 s. 1654 (7) (b); 1977 c. 444; 1979 c. 110 s. 60 (13); 1979 c. 168; 1981 c. 45 ss. 11 to 16, 51; 1983 a. 36, 192, 385; 1985 a. 127; 1987 a. 27; 1989 a. 31; 1991 a. 39, 221; 1993 a. 112, 184, 368, 482, 490; 1995 a. 27, 225, 272; 1997 a. 27, 191, 237; 1999 a. 9, 31, 32, 53; 2001 a. 10, 107; 2005 a. 158, 215.

Installment sellers are not precluded by s. 138.09, 1973 stats., from charging precomputed interest. First National Bank of Wisconsin Rapids v. Dickinson, 103 Wis. 2d 428, 308 N.W.2d 910 (Ct. App. 1981).

A municipal ordinance that dictates where a state−licensed payday loan operation may locate its business and what hours it may operate has nothing to do with the state's regulation of the loans themselves and its licensing of loan providers and is not preempted by state law The Payday Loan Store of Wisconsin, Inc. v. City of Madison, 333 F. Supp. 2d (2004).

Wisconsin has compelling interest in applying statutory regulations to banking activities on Indian reservations. 80 Atty. Gen. 337.

138.10 Pawnbrokers. (1) DEFINITIONS. In this section:

(a) "Pawnbroker" includes any person who engages in the business of lending money on the deposit or pledge of personal property, other than choses in action, securities, or written evidences of indebtedness; or purchases personal property with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price.

(b) "Pawnbroking" means the business of a pawnbroker as defined in this section.

(c) "Pawn ticket" means the card, book, receipt or other record furnished to the pledgor at the time a loan is granted containing the terms of the contract for a loan.

(d) "Person" includes an individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint−stock company or any group of individuals however organized.

(e) "Pledge" means an article or articles deposited with a pawnbroker as security for a loan in the course of the pawnbroker's business as defined in par. (a).

(f) "Pledgor" means the person who obtains a loan from a pawnbroker and delivers a pledge into the possession of a pawnbroker, unless the person discloses that he or she is or was acting for another in which case a "pledgor" means the disclosed principal.

(2) MAXIMUM LOAN. A pawnbroker's loan may not exceed $150.

(2m) PAWNBROKING BY LICENSED LENDERS. The division of banking may promulgate rules regulating the conduct of pawnbroking by persons licensed under s. 138.09.

(4) MAXIMUM INTEREST OR CHARGES. A pawnbroker shall not charge, contract for or receive interest in excess of 3% per month on any loan or balance thereon and such interest shall not be increased by charging commission, discount, storage or other charge directly or indirectly, nor by compound interest; provided, however, that when the interest herein specified amounts to less than $1 per month, the minimum charge shall be $1 for the first month and 50 cents for each succeeding month during the loan period.

(4m) WHEN LIMIT ON MAXIMUM INTEREST DOES NOT APPLY. Subsection (4) does not apply to a pawnbroker's loan made after October 31, 1984 and before November 1, 1987.

(5) COMPUTATION OF INTEREST OR CHARGES. The interest and charges authorized by this section shall be computed at the rates specified on the actual principal balance of the loan due for the actual time which has elapsed from the date of the loan to the date of payment. For the purpose of calculation of interest and charges permitted under this section, a year shall be 12 calendar months, and a month shall be one calendar month, or any fractional part thereof. A calendar month shall be any period from a certain date in one month to the same date in the next succeeding month.

(8) SALE OF PLEDGE. Upon default in the payment of any loan, a pawnbroker may sell the pledge upon the conditions contained in this section.

(a) A pawnbroker may sell a pledge at private sale for an amount not less than that agreed to by the pledgor, which amount shall be stipulated on the pawn ticket and shall not be less than 125% of the amount of the loan. A pledge which cannot be sold at private sale at the minimum price agreed to by the pledgor must be sold at public auction, which sale shall be conducted in the manner provided by s. 779.48 (1).

(b) No unredeemed pledge may be sold before the expiration of 90 days after the due date of the loan unless otherwise specifically authorized in writing by the pledgor. The authority to sell an unredeemed pledge prior to the expiration of 90 days after the due date of the loan must be given by the pledgor on a date subsequent to the due date of the loan.

(c) An unredeemed pledge must be sold within 12 months of the due date of a loan. No interest or charges permitted under this section may be collected on a loan after the expiration of 12 months of the due date of a loan, whether the loan is renewed or the loan is paid and the pledge redeemed.

(9) NOTICE OF SALE. A pawnbroker shall not sell any pledge unless due notice of such contemplated sale has been forwarded to the pledgor by registered mail to the address given by the pledgor at the time of obtaining the loan or to such new address of the pledgor, as shown on the pawnbroker's record. Notice of the contemplated sale of a pledge shall be mailed to the pledgor not less than 30 days prior to the date of sale. Such notice shall state total amount of principal, interest and charges due on the loan as of the date of the notice.

(10) DISPOSITION OF PROCEEDS. The proceeds from the sale of a pledge shall be applied in the order specified, to the following purposes: Payment of the auctioneer's charges if sold at public auction, or commission for selling not to exceed 5% if sold at private sale; payment of principal of the loan; payment of the interest on the loan permitted under this section, and payment of the charges on the loan permitted under this section; payment of postage for mailing notice to the pledgor of the contemplated sale or notice of the surplus. The surplus, if any, shall be paid to the pledgor or such other person who would have been entitled to redeem the pledge had it not been sold.

(11) NOTICE OF SURPLUS. Notice of any surplus from the sale of a pledge shall be forwarded to the pledgor within 10 days of the date of sale by registered mail to the address given by the pledgor at the time of obtaining the loan or to such new address of the pledgor, of which the pawnbroker has received notice.

(12) REVERSION OF SURPLUS. If a surplus remaining from the sale of a pledge is not paid or claimed within one year from the date of sale, such surplus shall revert to the pawnbroker. The pawnbroker shall not be required to pay any interest on an unpaid surplus.

(13) FORFEITURE. A pawnbroker who charges, contracts for or receives interest or charges greater than permitted under this section shall forfeit both principal and interest, and shall return the pledge upon demand of the pledgor and surrender of the pawn ticket, without tender or payment of principal or interest.

(14) PENALTY. Any pawnbroker who refuses to comply with sub. (13) shall be imprisoned in the county jail for not more than one year or fined not more than $500.

(15) EXCEPTION. This section does not apply to any person that is licensed under s. 138.09.

History: 1979 c. 32 s. 92 (9); 1981 c. 45; 1983 a. 189; 1989 a. 257; 1993 a. 482; 1997 a. 27; 2005 a. 158.

138.12 Insurance premium finance companies.

(1) DEFINITIONS. For purposes of this section:

(a) "Division" means the division of banking.

(b) "Insurance premium finance company" means a person engaged in the business of entering into insurance premium finance agreements.

(c) "Licensee" means an insurance premium finance company holding a license issued by the division under this section.

(d) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract together with a service charge or interest charge as authorized and limited by this chapter.

(2) SCOPE. This section shall not apply to:

(a) Any insurance company or agent defined in s. 628.02, any savings and loan association, savings bank, sales finance company, motor vehicle installment seller, bank, trust company, licensed lender or credit union authorized to do business in this state, but such organizations, if otherwise eligible, are exempt from the licensing under this section, but subs. (9) to (12) and any rules promulgated by the division pertaining to such subsections shall be applicable to all premium finance transactions entered

into by such organizations in this state if an insurance policy or any rights thereunder is made the security or collateral for repayment of the debt.

(b) The inclusion of insurance in connection with an installment sale of a motor vehicle or other goods and services.

(d) Life insurance.

(3) LICENSES. (a) No person except those listed in sub. (2) (a) shall engage in the business of financing insurance premiums in this state without first having obtained a license. Any person who engages in the business of financing insurance premiums in this state without obtaining a license may be fined not more than $200.

(b) The annual license fee is $500 and shall be paid to the division. Licenses may be renewed May 1 of each year upon payment of the annual fee.

(c) The person to whom the license or the renewal thereof is issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the division requires. The division may, at any time, require the applicant fully to disclose the identity of all stockholders, partners, members, managers, officers and employees, and the division may refuse to issue or renew a license in the name of any person if the division is not satisfied that any officer, employee, stockholder, partner, member or manager thereof, who may materially influence the applicant's conduct, meets the standards of this section.

(d) 1. Except as provided in par. (e), an application for a license under this section shall contain the following:

a. If the applicant is an individual, the applicant's social security number.

b. If the applicant is not an individual, the applicant's federal employer identification number.

2. The division may not disclose any information received under subd. 1. to any person except as follows:

a. The division may disclose information under subd. 1. to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

b. The division may disclose information under subd. 1. a. to the department of workforce development in accordance with a memorandum of understanding under s. 49.857.

(e) 1. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a license under this section, shall submit a statement made or subscribed under oath or affirmation to the division that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development.

2. Any license issued or renewed in reliance upon a false statement submitted by an applicant under subd. 1. is invalid.

(4) INVESTIGATION. (a) Upon the filing of an application and the payment of the required fees under par. (am) 1., the division shall make an investigation of each applicant and shall issue a license if the division finds the applicant is qualified in accordance with this section. If the division does not so find, the division shall, within 30 days after the division has received the application, notify the applicant and, at the request of the applicant, give the applicant a full hearing, except as follows:

1. An applicant whose application is denied under par. (b) 5. is entitled to a hearing under s. 73.0301 (5) (a) but is not entitled to a hearing under this paragraph.

2. An applicant whose application is denied under par. (b) 6. is entitled to notice and a hearing only as provided in a memorandum of understanding entered into under s. 49.857 and is not entitled to a hearing under this paragraph.

(am) 1. An applicant shall pay to the division a nonrefundable $300 license investigation fee and a $500 annual license fee for the period ending on the next April 30.

2. If the cost of the investigation exceeds $300, the applicant shall, upon demand of the division, pay the amount by which the cost of the investigation exceeds the nonrefundable fee.

(b) The division shall issue or renew a license when the division is satisfied that the person to be licensed satisfies all of the following, as applicable:

1. Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for.

2. Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for.

3. If a corporation, is a corporation incorporated under the laws of this state or a foreign corporation authorized to transact business in this state.

3L. If a limited liability company, is organized under the laws of this state or a foreign limited liability company authorized to transact business in this state.

4. Has provided the information required under sub. (3) (d) 1.

5. Has not been certified by the department of revenue under s. 73.0301 as being liable for delinquent taxes.

6. If an individual, has not failed to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings and is not delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857.

(5) REVOCATION OR SUSPENSION. (a) The division may revoke or suspend the license of any insurance premium finance company if the division finds any of the following:

1. Any license issued to such company was obtained by fraud.

2. There was any misrepresentation in the application for the license.

3. The holder of such license has otherwise shown himself or herself untrustworthy or incompetent to act as a premium finance company.

4. The company has violated any provision of this section.

5. The company has been rebating part of the service charge as allowed and permitted herein to any insurance agent or insurance broker or any employee of an insurance agent or insurance broker or to any other person as an inducement to the financing of any insurance policy with the premium finance company.

(am) 1. The division shall deny an application for a license renewal if any of the following applies:

a. The applicant has failed to provide the information required under sub. (3) (d) 1.

b. The department of revenue has certified under s. 73.0301 that the applicant is liable for delinquent taxes under s. 73.0301. An applicant whose renewal application is denied under this subd. 1. b. is entitled to a hearing under s. 73.0301 (5) (a) but is not entitled to a hearing under par. (b).

c. In the case of a licensee who is an individual, the applicant fails to comply, after appropriate notice, with a subpoena or warrant that is issued by the department of workforce development or a county child support agency under s. 59.53 (5) and that is related to paternity or child support proceedings or the applicant is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An applicant whose renewal application is denied under this subd. 1. c. is entitled to a notice and hearing under s. 49.857 but is not entitled to a hearing under par. (b).

2. The division shall restrict or suspend the license of any insurance premium finance company if the division finds that, in the case of a licensee who is an individual, the licensee fails to comply, after appropriate notice, with a subpoena or warrant that is issued by the department of workforce development or a county

child support agency under s. 59.53 (5) and that is related to paternity or child support proceedings or the licensee is delinquent in making court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. A licensee whose license is restricted or suspended under this subdivision is entitled to a notice and hearing under s. 49.857 but is not entitled to a hearing under par. (b).

3. The division shall revoke the license of any insurance premium finance company if the department of revenue has certified under s. 73.0301 that the licensee is liable for delinquent taxes under s. 73.0301. A licensee whose license is revoked under this subdivision for delinquent taxes is entitled to a hearing under s. 73.0301 (5) (a) but is not entitled to a hearing under par. (b).

(b) Before the division revokes, suspends or refuses to renew the license of any premium finance company, the division shall give the company an opportunity to be fully heard and to introduce evidence in the company's behalf. In lieu of revoking or suspending the license for any of the causes enumerated in this subsection, after hearing, the division may subject the premium finance company to a penalty of not more than $200 for each offense when in the division's judgment the division finds that the public interest would not be harmed by the continued operation of such company. The amount of any penalty under this paragraph shall be paid by the company to the division for the use of the state. At any hearing under this subsection, the division may administer oaths to witnesses. Anyone testifying falsely, after having been administered the oath, shall be subject to the penalty of perjury.

(c) Any action of the division in refusing to issue or renew a license shall be subject to review under subch. III of ch. 227.

(5m) DISCIPLINARY ORDERS. (a) In this subsection:

1. "General order" means an order of the division other than a special order.

2. "Special order" means an order of the division to or affecting a person.

(b) The division may issue general orders or special orders necessary to prevent or correct actions by an insurance premium finance company that constitute cause under this section for revoking, suspending, or restricting a license.

(6) RECORDS. (a) Every licensee shall maintain records of its premium finance transactions and the records shall be open to an examination and investigation by the division. The division may make an examination of the books, records and accounts of any licensee as the division deems necessary. The division shall determine the cost of an examination and that cost shall be assessed against and paid by the licensee so examined. The division may, at any time, require any licensee to bring such records as the division directs to the division for examination.

(b) Every licensee shall preserve its records of such premium finance transactions, including cards used in a card system, for at least 3 years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form or other form authorized under s. 220.285 shall constitute compliance with this requirement.

(7) RULES AND REGULATIONS. The division may make and enforce such reasonable rules as are necessary to carry out this section, but such rules shall not be contrary to nor inconsistent with this section.

(8) PREMIUM FINANCE AGREEMENTS. (a) A premium finance agreement shall:

1. Be dated, signed by or on behalf of the insured, and the printed portion thereof shall be in at least 8−point type,

2. Contain the name and place of business of the insurance agent or insurance broker negotiating the related insurance contract, the name and residence or the place of business of the insured as specified by the insured, the name and place of business of the premium finance company to which installment or other payments are to be made, a description of the insurance contracts, including term and type of policy, the premiums for which are advanced or to be advanced under the agreement and the amount of the premiums therefor; and

3. Set forth the following items where applicable:

a. The total amount of the premiums,

b. The amount of the down payment,

c. The principal balance (the difference between items a and b),

d. The amount of the service charge,

e. The balance payable by the insured (sum of items c and d),

f. The number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.

(b) The items set forth in par. (a) 3. need not be stated in the sequence or order in which they appear and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(9) SERVICE CHARGES. A premium finance company shall not charge, contract for, receive or collect a service charge other than as permitted by this subsection unless it is a licensed lender regulated under sub. (10).

(a) The service charge shall be computed on the balance of the premiums due, after subtracting the down payment made by the insured in accordance with the premium finance agreement, from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final installment of the premium finance agreement is payable.

(b) The service charge may not exceed the interest rate authorized under s. 422.201 (2) (bm) per year plus an additional charge of $10 per premium finance agreement, but, if the principal balance is $50 or less there shall be no additional charge, and if the principal balance is more than $50 but not more than $100, the additional charge is $6.

(bm) Paragraph (b) applies only to a premium finance agreement in which the related insurance contract is for personal, family or household use entered into before November 1, 1984. The service charge for any other premium finance agreement shall be as agreed by the parties to the agreement.

(c) The service charge shall be computed on the principal balance of a premium finance agreement payable in successive monthly installments substantially equal in amount for a period of one year. On a premium finance agreement providing for installments extending for a period less than or greater than one year, the service charge shall be computed proportionately.

(d) Notwithstanding the provisions of any premium finance agreement, any insured may prepay the obligation in full at any time. In such event, the insured shall receive a refund credit. The amount of such refund credit shall represent at least as great a proportion of the service charge as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of installments in the agreement. Where the amount of the refund credit is less than $1, no refund need be made. If in addition to the service charge an additional charge was imposed, such additional charge need not be refunded nor taken into consideration in computing the refund credit.

(10) CHARGES BY LICENSED LENDERS; REBATES. (a) A lender licensed under s. 138.09 may charge interest as provided in that section for a loan involving a premium finance agreement.

(b) The interest shall be computed on the balance of the premiums due, after subtracting the down payment made by the insured in accordance with the premium finance agreement, from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final installment of the premium finance agreement is payable.

(c) Notwithstanding the provisions of any premium finance agreement, any insured may prepay the obligation in full at any

time. In such event the insured shall receive a rebate as provided under s. 138.09.

(d) Except as provided in sub. (12) to the contrary, s. 138.09 applies to a loan involving a premium finance agreement made by a licensed lender.

(11) DELINQUENCY OR DEFAULT CHARGE. (a) A premium finance agreement may provide for the payment by the insured of a delinquency or default charge of $1 to a maximum of 5% of any delinquent installment which is in default for a period of 5 days or more. If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge of $15. A premium finance agreement may also provide for the payment of statutory attorney fees and statutory court costs if the agreement is referred for collection to an attorney not a salaried employee of the insurance premium finance company.

(b) This subsection does not apply to loans by licensed lenders regulated under s. 138.09.

(12) CANCELLATION. When a premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract listed in the agreement, the following applies:

(a) Not less than 10 days' written notice shall be mailed to the insured of the intent of the insurance premium finance company to cancel the insurance contract unless the default is cured prior to the date stated in the notice. The insurance agent or insurance broker indicated on the premium finance agreement shall also be mailed 10 days' notice of such action.

(b) Pursuant to the power of attorney or other authority referred to above, the insurance premium finance company may cancel on behalf of the insured by mailing to the insurer written notice stating when thereafter the cancellation shall be effective, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself or herself, but without requiring the return of the insurance contract. The insurance premium finance company shall also mail a notice of cancellation to the insured at the insured's last−known address and to the insurance agent or insurance broker indicated on the premium finance agreement. Compliance by the premium finance company with the provisions of the premium finance agreement or par. (a), shall not be a condition of effective cancellation hereunder.

(c) Where statutory, regulatory or contractual restrictions provide that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee or other 3rd party, the insurer shall give the prescribed notice on behalf of itself or the insured to such governmental agency, mortgagee or other 3rd party within a reasonable time after the day it receives the notice of cancellation from the premium finance company. When the above restrictions require the continuation of insurance beyond the effective date of cancellation specified by the premium finance company such insurance shall be limited to the coverage to which such restrictions relate and to the persons they are designed to protect.

(d) Whenever a financed insurance contract is canceled the insurer shall return whatever unearned premiums are due under the insurance contract to the insurance premium finance company for the account of the insured, and such action by the insurer shall be deemed to satisfy the insurer's obligations under the insurance contract which relate to the return of unearned premiums. If the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund such excess to the insured but no such refund shall be required if it amounts to less than $1.

(13) NO FILING NECESSARY. No filing of the premium finance agreement or recording of a premium finance transaction shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors or assigns.

(14) ESTABLISHED INSURANCE PREMIUM FINANCE COMPANIES. Any person or corporation engaged in the business of an insurance premium finance company on May 19, 1970, may continue in operation under this section but shall obtain a license by January 1, 1970.

(15) APPLICABILITY OF CHS. 421 TO 427 TO THIS SECTION. All consumer loans as defined in chs. 421 to 427 made by licensees under this section shall be governed by this section to the extent that chs. 421 to 427 are inconsistent with this section.

History: 1971 c. 40 s. 93; 1971 c. 125 s. 478; 1971 c. 239; Stats. 1971 s. 138.12; 1975 c. 371 s. 50; 1975 c. 372; 1977 c. 444 ss. 4 to 6, 11; 1981 c. 45; 1983 a. 189; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 336; 1991 a. 39, 221; 1993 a. 112, 482; 1995 a. 27; 1997 a. 191, 237; 1999 a. 9, 32, 83; 2005 a. 215, 253.

138.20 Discrimination in granting credit or loans prohibited. (1) RULE. No financial organization, as defined under ss. 71.04 (8) (a) and 71.25 (10) (a), or any other credit granting commercial institution may discriminate in the granting or extension of any form of loan or credit, or of the privilege or capacity to obtain any form of loan or credit, on the basis of the applicant's physical condition, developmental disability as defined in s. 51.01 (5), sex or marital status; provided, however, that no such organization or institution shall be required to grant or extend any form of loan or credit to any person who such organization or institution has evidence demonstrating the applicant's lack of legal capacity to contract therefor or to contract with respect to any mortgage or security interest in collateral related thereto.

(1m) SPOUSAL CREDIT. A violation of s. 766.56 (1) is a violation of sub. (1).

(2) PENALTY. Any person violating this section may be fined not more than $1,000. Each individual who is discriminated against under this section constitutes a separate violation.

History: 1973 c. 88; 1975 c. 275; 1977 c. 418 s. 929 (55); 1983 a. 186; 1985 a. 37; 1987 a. 312 s. 17.

NOTE: As to sub. (1m), see notes in 1985 Wis. Act 37, marital property trailer bill.

Cross Reference: See also chs. DFI−SB 8 and DFI−SL 8, Wis. adm. code.