



2003 ASSEMBLY BILL 982

March 11, 2004 - Introduced by Representatives BERCEAU, YOUNG, POCAN, HINES and J. LEHMAN, cosponsored by Senator RISSER. Referred to Committee on Rules.

1 **AN ACT** *to renumber and amend* 138.052 (9), 411.103 (1) (e), 421.202 (6) and
2 429.104 (9); *to amend* 138.09 (3) (e) 1. a. and 428.101 (3); and *to create* 138.052
3 (9) (b), 411.103 (1) (e) 1., 411.103 (1) (e) 2., 421.202 (6) (b), 428.101 (4), 429.104
4 (9) (a) 1., 429.104 (9) (a) 2. and 429.104 (9) (b) of the statutes; **relating to:**
5 transactions excluded from and penalties under the Wisconsin Consumer Act
6 and authority of licensed lenders and consumer leases under the Uniform
7 Commercial Code.

Analysis by the Legislative Reference Bureau

Scope of Wisconsin Consumer Act

Under current law, a transaction that is in an amount of \$25,000 or less and that is entered into for personal, family, or household purposes is generally subject to the Wisconsin Consumer Act (consumer act). The consumer act provides obligations, remedies, and penalties that current law generally does not require for other transactions. In addition to other exceptions, the consumer act does not apply to certain transactions relating to a first lien residential mortgage that originally had a principal amount in excess of \$25,000. Thus, if the original principal amount of a mortgage was greater than \$25,000, a refinancing of the mortgage would not be subject to the consumer act, even if the mortgage has a current balance of \$25,000 or less.

ASSEMBLY BILL 982

This bill expands current law by increasing the coverage of the consumer act to include a personal, family, or household transaction that is in an amount of \$75,000 or less. In addition, this bill narrows the mortgage refinancing exception to the consumer act to exclude certain transactions relating to a first lien residential mortgage with an original principal amount in excess of \$75,000.

Uniform Commercial Code and licensed lenders

Wisconsin's version of the Uniform Commercial Code treats the parties to a commercial lease differently from the parties to a consumer lease that is in the amount of \$25,000 or less. For example, a lessee under a consumer lease may recover attorney fees if a court holds that a portion of the lease resulted from the unconscionable conduct of the lessor. This bill expands the applicability of these Uniform Commercial Code provisions to cover a consumer lease that is in the amount of \$75,000 or less. This bill also makes conforming changes to the licensed lender law to maintain existing consistency with the consumer act.

Penalties under the Wisconsin Consumer Act

Generally, the consumer act currently provides three different penalties for specified violations. The lowest penalty is \$25 plus actual damages. This bill deletes this penalty. The next lowest penalty is \$100 plus actual damages. This bill increases this penalty to \$500 plus actual damages and applies this penalty to all violations that are currently subject to the lowest penalty. The highest penalty is twice the amount of the finance charge in the applicable transaction (with a minimum of \$100 and a maximum of \$1,000) or actual damages. This bill increases this penalty to twice the amount of the finance charge in the applicable transaction (with a minimum of \$500 and a maximum of \$5,000) or actual damages.

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

1 **SECTION 1.** 138.052 (9) of the statutes is renumbered 138.052 (9) (a) and
2 amended to read:

3 138.052 **(9)** (a) Chapters 421 to 428 do not apply to the refinancing,
4 modification, extension, renewal or assumption of a loan which had an original
5 principal balance in excess of \$25,000 if the unpaid principal balance of the loan has
6 been reduced to \$25,000 or less and the refinancing, modification, extension, renewal
7 or assumption takes place before the effective date of this paragraph [revisor
8 inserts date].

9 **SECTION 2.** 138.052 (9) (b) of the statutes is created to read:

ASSEMBLY BILL 982

1 138.052 (9) (b) Chapters 421 to 428 do not apply to the refinancing,
2 modification, extension, renewal or assumption of a loan which had an original
3 principal balance in excess of \$75,000 if the unpaid principal balance of the loan has
4 been reduced to \$75,000 or less and the refinancing, modification, extension, renewal
5 or assumption takes place on or after the effective date of this paragraph [revisor
6 inserts date].

7 **SECTION 3.** 138.09 (3) (e) 1. a. of the statutes is amended to read:

8 138.09 (3) (e) 1. a. A business engaged in making loans for business or
9 agricultural purposes ~~or, loans before the effective date of this subdivision 1. a.~~
10 [revisor inserts date], exceeding \$25,000 in principal amount, or loans on or after the
11 effective date of this subd. 1. a. [revisor inserts date], exceeding \$75,000 in
12 principal amount, except that all such loans having terms of 49 months or more are
13 subject to sub. (7) (gm) 2. or 4.

14 **SECTION 4.** 411.103 (1) (e) of the statutes is renumbered 411.103 (1) (e) (intro.)
15 and amended to read:

16 411.103 (1) (e) (intro.) “Consumer lease” means a lease that a lessor regularly
17 engaged in the business of leasing or selling makes to a lessee who is an individual
18 and who takes under the lease primarily for a personal, family, or household purpose,
19 if the total payments to be made under the lease contract, excluding payments for
20 options to renew or buy, do not exceed ~~\$25,000.~~ the following:

21 **SECTION 5.** 411.103 (1) (e) 1. of the statutes is created to read:

22 411.103 (1) (e) 1. For a lease entered into before the effective date of this
23 subdivision [revisor inserts date], \$25,000.

24 **SECTION 6.** 411.103 (1) (e) 2. of the statutes is created to read:

ASSEMBLY BILL 982**SECTION 6**

1 411.103 (1) (e) 2. For a lease entered into on or after the effective date of this
2 subdivision [revisor inserts date], \$75,000.

3 **SECTION 7.** 421.202 (6) of the statutes is renumbered 421.202 (6) (a) and
4 amended to read:

5 421.202 (6) (a) Consumer credit transactions in which the amount financed
6 exceeds \$25,000, motor vehicle consumer leases in which the total lease obligation
7 exceeds \$25,000 or other consumer transactions in which the cash price exceeds
8 \$25,000, if the consumer credit transaction, motor vehicle consumer lease or other
9 consumer transaction was entered into before the effective date of this paragraph
10 [revisor inserts date];

11 **SECTION 8.** 421.202 (6) (b) of the statutes is created to read:

12 421.202 (6) (b) Consumer credit transactions in which the amount financed
13 exceeds \$75,000, motor vehicle consumer leases in which the total lease obligation
14 exceeds \$75,000 or other consumer transactions in which the cash price exceeds
15 \$75,000, if the consumer credit transaction, motor vehicle consumer lease or other
16 consumer transaction was entered into on or after the effective date of this paragraph
17 [revisor inserts date];

18 **SECTION 9.** 428.101 (3) of the statutes is amended to read:

19 428.101 (3) Loans made on or after November 1, 1981, and before the effective
20 date of this subsection [revisor inserts date], by a creditor to a customer and which
21 are secured by a first lien real estate mortgage or equivalent security interest if the
22 amount financed is \$25,000 or less.

23 **SECTION 10.** 428.101 (4) of the statutes is created to read:

24 428.101 (4) Loans made on or after the effective date of this subsection
25 [revisor inserts date], by a creditor to a customer and which are secured by a first lien

ASSEMBLY BILL 982

1 real estate mortgage or equivalent security interest if the amount financed is
2 \$75,000 or less.

3 **SECTION 11.** 429.104 (9) of the statutes is renumbered 429.104 (9) (a) (intro.)
4 and amended to read:

5 429.104 (9) (a) (intro.) “Consumer lease” or “lease” means a lease entered into
6 in this state that transfers the right of possession and use by a natural person of a
7 motor vehicle primarily for a personal, family, household or agricultural purpose, for
8 a period of time exceeding 4 months, if the total lease obligation, excluding any option
9 to purchase or otherwise become owner of the motor vehicle at the expiration of the
10 consumer lease, does not exceed \$25,000. ~~The term does not include a credit sale, as~~
11 ~~defined under 12 CFR 226.2 (a) (16).~~ the following:

12 **SECTION 12.** 429.104 (9) (a) 1. of the statutes is created to read:

13 429.104 (9) (a) 1. For a lease entered into before the effective date of this
14 subdivision [revisor inserts date], \$25,000.

15 **SECTION 13.** 429.104 (9) (a) 2. of the statutes is created to read:

16 429.104 (9) (a) 2. For a lease entered into on or after the effective date of this
17 subdivision [revisor inserts date], \$75,000.

18 **SECTION 14.** 429.104 (9) (b) of the statutes is created to read:

19 429.104 (9) (b) “Consumer lease” or “lease” does not include a credit sale, as
20 defined under 12 CFR 226.2 (a) (16).

21 **SECTION 15. Initial applicability.**

22 (1) The treatment of sections 138.09 (3) (e) 1. a., 428.101 (3) and (4), and 429.104
23 (9) of the statutes, the renumbering and amendment of sections 138.052 (9), 411.103
24 (1) (e), and 421.202 (6) of the statutes, and the creation of sections 138.052 (9) (b),

ASSEMBLY BILL 982

SECTION 15

1 411.103 (1) (e) 1. and 2., and 421.202 (6) (b) of the statutes first apply to transactions
2 entered into on the effective date of this subsection.

3 **SECTION 16. Effective date.**

4 (1) This act takes effect on the first day of the 2nd month beginning after
5 publication.

6 (END)