



2005 ASSEMBLY BILL 1037

February 20, 2006 – Introduced by Representative HUNDERTMARK, cosponsored by Senator STEPP. Referred to Committee on Financial Institutions.

1 **AN ACT** *to renumber and amend* 180.1919 (1) (b); *to amend* 138.056 (4) (a) 1.,
2 138.056 (4) (a) 2., 138.09 (4) (a) (intro.), 138.09 (4) (a) 1., 138.09 (4) (a) 2.,
3 180.1911 (1), 220.02 (3), 220.04 (10), 220.06 (1), 220.285 (1), 220.285 (2), 421.202
4 (intro.), (1), (2), (3), (4), (5), (6), (7) and (8) and 428.101 (3); and *to create* 138.056
5 (4) (c), 138.09 (4) (d), 138.12 (5m), 180.1919 (1) (b) 2., 220.02 (2) (g) and 220.02
6 (2) (h) of the statutes; **relating to:** shareholders of service corporations that
7 carry on the profession of certified public accounting; authority of the Division
8 of Banking over loan companies and insurance premium finance companies;
9 regulation of insurance premium finance companies, mortgage bankers, loan
10 originators, and mortgage brokers; and requirements applicable to consumer
11 loans secured by liens on residential real estate or mobile homes.

Analysis by the Legislative Reference Bureau

Under current law, certain loan companies and insurance premium finance companies are subject to regulation by the Division of Banking (division) in the Department of Financial Institutions. This bill makes the following changes to such regulation:

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1. The bill specifies that each ground for the division to suspend or revoke the license of a loan company is a separate ground. Under current law, all of the grounds must be satisfied for the division to take such action.

2. The bill allows the division to require a loan company to pay the costs incurred by the division in investigating or taking disciplinary action against the loan company.

3. The bill allows the division to issue orders against insurance premium finance companies to prevent or correct certain prohibited actions. Under current law, the division has similar authority regarding other entities regulated by the division.

Also under current law, the division has regulatory authority over financial institutions, as well as certain loan companies, insurance premium finance companies, mortgage bankers, loan originators, and mortgage brokers. However, certain statutes under current law that refer to the division's regulatory authority omit references to insurance premium finance companies, mortgage bankers, loan originators, and mortgage brokers. This bill inserts the omitted references.

Under current law, with certain exceptions, consumer loans for \$25,000 or less are subject to the Wisconsin Consumer Act (WCA). One exception applies to loans secured by first or subsequent liens on residential real property. If a consumer loan for \$25,000 or less is secured by a first lien, the loan is not subject to the WCA, but is subject to certain requirements regarding delinquency charges, notices, debt collection, and accounting. These requirements are referred to below as the "first lien requirements." If a consumer loan for \$25,000 or less is secured by a first or subsequent lien and the loan qualifies as a "high cost" loan, then the loan is not subject to the first lien requirements or the WCA. Instead, different requirements apply regarding payment and prepayment of the loan as well as certain disclosures that the lender must make. These requirements, which apply to loans of any amount, are referred to below as the "high cost requirements."

Thus, under current law, if a consumer loan for \$25,000 or less is subject to either the first lien or high cost requirements, the WCA does not apply to the loan. In addition, if the high cost requirements apply to a loan, the first lien requirements do not apply to the loan.

This bill changes the foregoing applicability requirements. Under this bill, if the first lien requirements apply to a loan for \$25,000 or less, then the WCA does not apply to the loan. However, if the high cost requirements apply to the loan, the loan is secured by a second or subsequent lien on residential real estate, and the loan is for \$25,000 or less, then the WCA also applies to the loan. In addition, a loan subject to the high cost requirements is not automatically exempt from the first lien requirements. Instead, if a loan that is subject to the high cost requirements is for \$25,000 or less, and the loan is secured by a first lien, then the first lien requirements also apply to the loan.

Also under current law, certain variable rate loans are subject to certain requirements, including a requirement for the lender to give the borrower notice if a change in the interest rate occurs. The variable rate loans are defined as certain loans secured by first liens or equivalent security interests. Current law requires

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notice to be given at least 30 days before the change if an increase in periodic payments other than the final payment is required. This bill changes the 30 days to 15 days. For all other changes, current law requires notice to be given no later than 15 days after the change. This bill changes the 15 days to 30 days. In addition, the bill provides that variable loans that are secured by first liens, and not loans that are secured by equivalent security interests, are subject to these notice requirements. Whether a security interest is an equivalent security interest is determined as of the date that the loan is made.

Finally, current law contains conflicts regarding whether a person who is not a certified public accountant may be a shareholder of a service corporation that is organized for carrying on the profession of certified public accounting. One statute specifies that such a service corporation may be organized if more than 50 percent of the shareholders are certified public accountants. Another statute generally requires each shareholder, director, and officer of a service corporation to be licensed, certified, or registered by a state agency in the same field of endeavor. In addition, another statute requires a service corporation to convert to a business corporation if all shareholders cease at any one time to be licensed, certified, or registered in the same field of endeavor. This bill eliminates these conflicts. Under this bill, a service corporation may be organized for carrying on the profession of certified public accounting if more than 50 percent of the shareholders are certified public accountants. If such a service corporation ceases to satisfy this requirement, it must convert to a business corporation.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 138.056 (4) (a) 1. of the statutes is amended to read:
2 138.056 (4) (a) 1. At least ~~30~~ 15 days before the change if an increase in periodic
3 payments other than the final payment is required.
- 4 **SECTION 2.** 138.056 (4) (a) 2. of the statutes is amended to read:
5 138.056 (4) (a) 2. Not later than ~~15~~ 30 days after any other change.
- 6 **SECTION 3.** 138.056 (4) (c) of the statutes is created to read:
7 138.056 (4) (c) This subsection does not apply to a loan secured by an equivalent
8 security interest as determined as of the date that the loan is made.
- 9 **SECTION 4.** 138.09 (4) (a) (intro.) of the statutes is amended to read:

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1 138.09 (4) (a) (intro.) The division for the purpose of discovering violations of
2 this chapter may cause an investigation to be made of the business of the licensee
3 transacted under this section, and shall cause an investigation to be made of
4 convictions reported to the division by any district attorney for violation by a licensee
5 of this chapter. The place of business, books of account, papers, records, safes and
6 vaults of said licensee shall be open to inspection and examination by the division
7 for the purpose of such investigation and the division may examine under oath all
8 persons whose testimony the division may require relative to said investigation. The
9 division may, upon notice to the licensee and reasonable opportunity to be heard,
10 suspend or revoke such license after such hearing if any of the following applies:

11 **SECTION 5.** 138.09 (4) (a) 1. of the statutes is amended to read:

12 138.09 (4) (a) 1. The licensee has violated any provision of this chapter and if
13 the division determines such violation justifies the suspension or revocation of the
14 license;

15 **SECTION 6.** 138.09 (4) (a) 2. of the statutes is amended to read:

16 138.09 (4) (a) 2. Any fact or condition exists which, if it had existed at the time
17 of the original application for such license, would have warranted the division in
18 refusing to issue such license; and,

19 **SECTION 7.** 138.09 (4) (d) of the statutes is created to read:

20 138.09 (4) (d) The cost of any investigation, examination, or hearing, including
21 witness fees or any other expenses, conducted by the division under this section shall
22 be paid by the licensee so examined within 30 days after demand therefor by the
23 division, and the state may maintain an action for the recovery of such costs and
24 expenses.

25 **SECTION 8.** 138.12 (5m) of the statutes is created to read:

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1 138.12 **(5m)** DISCIPLINARY ORDERS. (a) In this subsection:

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

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

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

7 **SECTION 9.** 180.1911 (1) of the statutes is amended to read:

8 180.1911 **(1)** Except as provided in ~~s.~~ ss. 180.1903 (1m) and 180.1913, each
9 shareholder, director and officer of a service corporation must at all times be licensed,
10 certified or registered by a state agency in the same field of endeavor or be a health
11 care professional. An individual who is not so licensed, certified or registered may
12 not have any part in the ownership or control of the service corporation, except that
13 the nonparticipant spouse of a married individual has the rights of ownership
14 provided under ch. 766. A proxy to vote any shares of the service corporation may
15 not be given to a person who is not so licensed, certified or registered.

16 **SECTION 10.** 180.1919 (1) (b) of the statutes is renumbered 180.1919 (1) (b) 1.
17 and amended to read:

18 180.1919 **(1)** (b) 1. If Except as provided in subd. 2., if all shareholders of a
19 service corporation cease at any one time and for any reason to be licensed, certified
20 or registered in the particular field of endeavor for which the service corporation was
21 organized, the service corporation is converted into and shall operate solely as a
22 business corporation under applicable provisions of this chapter, exclusive of ss.
23 180.1901 to 180.1921.

24 **SECTION 11.** 180.1919 (1) (b) 2. of the statutes is created to read:

ASSEMBLY BILL 1037**SECTION 11**

1 180.1919 (1) (b) 2. If not more than 50 percent of the shareholders in a service
2 corporation described in s. 180.1903 (1m) at any one time are not certified public
3 accountants, the service corporation is converted into and shall operate solely as a
4 business corporation under applicable provisions of this chapter, exclusive of ss.
5 180.1901 to 180.1921.

6 **SECTION 12.** 220.02 (2) (g) of the statutes is created to read:

7 220.02 (2) (g) Insurance premium finance companies under s. 138.12.

8 **SECTION 13.** 220.02 (2) (h) of the statutes is created to read:

9 220.02 (2) (h) Mortgage bankers, loan originators, and mortgage brokers under
10 subch. III of ch. 224.

11 **SECTION 14.** 220.02 (3) of the statutes is amended to read:

12 220.02 (3) It is the intent of sub. (2) to give the division jurisdiction to enforce
13 and carry out all laws relating to banks or banking in this state, including those
14 relating to state banks, savings banks, savings and loan associations, and trust
15 company banks, and also all laws relating to small loan companies or other loan
16 companies or agencies, finance companies, insurance premium finance companies,
17 motor vehicle dealers, adjustment service companies, community currency
18 exchanges, mortgage bankers, loan originators, mortgage brokers, and collection
19 agencies and those relating to sellers of checks under ch. 217, whether doing business
20 as corporations, individuals, or otherwise, but to exclude laws relating to credit
21 unions.

22 **SECTION 15.** 220.04 (10) of the statutes is amended to read:

23 220.04 (10) If it appears to the division that a person has engaged or is about
24 to engage in an act or practice constituting a violation of the laws of this state relating
25 to banks and banking, including this chapter, chs. 217, 218 and 221 to 224 and s. ss.

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1 138.09 and 138.12, or a rule promulgated or order issued under those laws, the
2 division may bring an action in the name of the state in the circuit court of the
3 appropriate county to enjoin the acts or practices and to enforce compliance with the
4 laws, rules or orders, or the division may refer the matter to the district attorney of
5 the appropriate county or, if the alleged violation may be enforced by the attorney
6 general under sub. (12) or s. 220.12, 221.1005 or 224.06 (7) or is statewide in nature,
7 to the attorney general. Upon a proper showing, the court may grant a permanent
8 or temporary injunction or restraining order, appoint a receiver for the defendant or
9 the defendant's assets or order rescission of any acts determined to be unlawful. The
10 court may not require the division to post a bond.

11 **SECTION 16.** 220.06 (1) of the statutes is amended to read:

12 220.06 (1) In this section, "licensee" means a person licensed by the division
13 under ch. 138, 217 or 218 or under s. 224.92 or registered by the division under s.
14 224.72.

15 **SECTION 17.** 220.285 (1) of the statutes is amended to read:

16 220.285 (1) Any state bank, trust company bank, licensee under ss. 138.09,
17 138.12, 218.0101 to 218.0163, 218.02, 218.04 or 218.05 or ch. 217, or person
18 registered under s. 224.72 may cause any or all records kept by such bank ~~or~~, licensee,
19 or registered person to be recorded, copied or reproduced by any photostatic,
20 photographic or miniature photographic process or by optical imaging if the process
21 employed correctly, accurately and permanently copies, reproduces or forms a
22 medium for copying, reproducing or recording the original record on a film or other
23 durable material. A bank ~~or~~, licensee, or registered person may thereafter dispose
24 of the original record after first obtaining the written consent of the division. This
25 section, excepting that part of it which requires written consent of the division, is

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1 applicable to national banking associations insofar as it does not contravene federal
2 law.

3 **SECTION 18.** 220.285 (2) of the statutes is amended to read:

4 220.285 (2) Any photographic, photostatic or miniature photographic copy or
5 reproduction or copy reproduced from a film record or any copy of a record generated
6 from optical disk storage of a bank record or record of a licensee or registered person
7 is considered to be an original record for all purposes and shall be treated as an
8 original record in all courts or administrative agencies for the purpose of its
9 admissibility in evidence. A facsimile, exemplification or certified copy of any such
10 photographic copy or reproduction, copy reproduced from a film record or copy
11 generated from optical disk storage of a record shall, for all purposes, be considered
12 a facsimile, exemplification or certified copy of the original record.

13 **SECTION 19.** 421.202 (intro.), (1), (2), (3), (4), (5), (6), (7) and (8) of the statutes
14 are amended to read:

15 **421.202 Exclusions.** (intro.) Chapters 421 to 427 do not apply to any of the
16 following:

17 (1) Extensions of credit to organizations (s. 421.301 (28));

18 (2) Transactions in which all parties are organizations (s. 421.301 (28));

19 (3) Charges for delayed payment and any discount allowed for early payment
20 in transactions under public utility or common carrier tariffs if a subdivision or
21 agency of this state or of the United States regulates such charges or discounts, or
22 if such charges or discounts are made in connection with the furnishing of electric
23 service by an electric cooperative organized and operating on a nonprofit basis under
24 ch. 185;

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1 (4) The ceilings on rates and charges of a licensed pawnbroker if these ceilings
2 are established by statute or ordinance;

3 (5) The sale of insurance by an insurer, except as otherwise provided in ch. 424;

4 (6) Consumer credit transactions in which the amount financed exceeds
5 \$25,000, motor vehicle consumer leases in which the total lease obligation exceeds
6 \$25,000 or other consumer transactions in which the cash price exceeds \$25,000;

7 (7) Transactions ~~subject to ch. 428;~~ secured by a first lien real estate mortgage
8 or equivalent security interest.

9 (8) Transactions in securities accounts or securities transactions by or with a
10 broker-dealer, as defined in s. 551.02 (3), licensed under ch. 551; ~~or.~~

11 **SECTION 20.** 428.101 (3) of the statutes, as affected by 2003 Wisconsin Act 257,
12 is amended to read:

13 428.101 (3) Loans made on or after November 1, 1981, by a creditor to a
14 customer and which are secured by a first lien real estate mortgage or equivalent
15 security interest if the amount financed is \$25,000 or less ~~and if the loan is not subject~~
16 ~~to subch. II.~~

17 **SECTION 21. Initial applicability.**

18 (1) The treatment of section 138.056 (4) (a) 1. and 2. and (c) of the statutes first
19 applies to changes in interest rates that occur on the effective date of this subsection.

20 (2) The treatment of section 138.09 (4) (a) (intro.), 1., and 2. of the statutes first
21 applies to notices made by the division of banking on the effective date of this
22 subsection.

23 (3) The treatment of section 138.09 (4) (d) of the statutes first applies to costs
24 incurred on the effective date of this subsection.

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SECTION 21

1 (4) The treatment of section 138.12 (5m) of the statutes first applies to actions
2 occurring on the effective date of this subsection.

3 (5) The treatment of section 220.04 (10) of the statutes first applies to acts or
4 practices occurring on the effective date of this subsection.

5 (6) The treatment of section 421.202 (7) of the statutes first applies to
6 transactions entered into on the effective date of this subsection.

7 (7) The treatment of section 428.101 (3) of the statutes first applies to
8 transactions made on the effective date of this subsection.

9 (END)