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 all proceedings in courts shall be kept and had in conformity to this regulation.

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 Nothing contained in s. 138.01 shall vitiate or affect any account, charge or entry originally made or any note, bond or other instrument expressed in any other money of account; but the same shall be reduced to dollars or parts of a dollar as hereinbefore directed in any suit thereupon.

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

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 s. 138.05, in which case such rate shall be clearly expressed in writing.

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

138.041 Federal rate parity. In order to prevent discrimination against state-chartered financial institutions with respect to interest rates, state-chartered banks, credit unions and mutual 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 mutual 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 mutual savings banks.

History: 1979 c. 168.

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 instalments 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 instalments 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 instalment 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 instalments 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 instalment periods commencing with the instalment date nearest the date of prepayment bears to the sum of the balances scheduled to be outstanding for all instalment 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.

(6) This section does not apply to transactions governed by chs. 421 to 427 or to discounts described in s. 422.201 (8) or (10) (e).

(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.

History: 1971 c. 239; 1975 c. 407; 1977 c. 401, 444; 1979 c. 10 s. 24; 1979 c. 168.

Cross Reference: See 551.33 (7) regarding licensed broker-dealers.

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

A check credit agreement which provided 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 Wis. Nat. Bank v. Oby, 52 W (2d) 1, 188 NW (2d) 454.

Roofing and siding contract with cash price of $2,660 or 60 payments of $61.72 is time-price differential transaction. Mortgage Associates, Inc. v. Siverhus, 63 W (2d) 650, 218 NW (2d) 266.

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

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

While a retail seller is not prohibited by 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 which 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 (2). 65 Atty. Gen. 67.

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

Bona fide commitment fees are not interest under this section. OAG 9-80.

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

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 instalments 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 instalment periods commencing with the instalment date nearest the date of prepayment bears to the sum of the balances scheduled to be outstanding for all instalment 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 instalments under sub. (2), the parties may agree that any instalment 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 mutual 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 1/4% per year.

(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.

History: 1979 c. 168

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.

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

History: 1975 c. 387.

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

(a) The commissioner of savings and loan, if the lender is a savings and loan association;

(b) The commissioner 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 commissioner of banking for all other lenders.

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

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

History: 1975 c. 387

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

138.057 Penalties. Any lender who intentionally violates s. 138.053 or 138.055 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.

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 or 138.051 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 or 138.051 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 or 138.051 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 his personal representative recover in an action against the lender or his personal representative an amount equal to all interest and charges paid upon such loan or forbearance but not less than $50 plus reasonable attorney's fees incurred in such action.

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

History: 1971 c. 308; 1979 c. 168 s. 21; 1979 c. 323, 355.

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

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

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

138.09 Precomputed loan law. (1) Before any person may do business under this section or charge the interest authorized by sub. (7), such person shall first obtain a license from the commissioner of banking. Applications for such license shall be in writing and upon forms provided for this purpose by the commissioner. Every such applicant at the time of making such application shall pay to the commissioner a fee of $100 for investigating the application and the sum of $200 as an annual license fee for the period terminating on the last day of the current calendar year. If the cost of the investigation exceeds $100, the applicant shall upon demand of the commissioner pay to the commissioner the amount by which the cost of the investigation exceeds the $100 fee.

(2) The commissioner may also require the applicant to file with him, 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 commissioner, 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 commissioner shall investigate the relevant facts, and if he 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 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 commissioner shall thereupon issue a license to said applicant to make loans in accordance with the provisions of this section. If the commissioner shall not so find, he shall deny such application.

(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 December 10, pay to the commissioner 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 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 commissioner, who 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) A licensee may conduct, and permit others to conduct, at the location specified in its license, any one or more of the following businesses: A business which is engaged in making loans under s. 138.05, a loan, finance or discount business under s. 218.01, or an insurance business, or a currency exchange under s. 218.05, or a seller of checks business under ch. 217; but merchandise shall not be sold at such location; and no other business shall be conducted at such location unless written authorization is granted the licensee by the commissioner.

(f) Every licensee shall make an annual report to the commissioner for each calendar year on or before March 15 of the following year. Such report shall cover business transacted by the licensee under the provisions of this section and shall give such reasonable and relevant information as the commissioner may require. Such reports shall be made upon blanks furnished by the commissioner and shall be signed and verified by the oath or affirmation of the licensee if an individual, one of the copartners if a copartnership, or by an officer of the corporation 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 such licensee.

(4) The commissioner 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 it 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 commissioner or his representative for the purpose of such investigation and the commissioner may examine under oath all persons whose testimony he may require relative to said investigation. The commissioner may, upon notice to the licensee and reasonable opportunity to be heard, suspend or revoke such license after such hearing, (a) if the licensee has violated any provision of this chapter and if he determines such violation justifies the suspension or revocation of the license; (b) if any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the commissioner in refusing to issue such license; and (c), if the licensee has failed to pay the annual licensee fee or to maintain in effect the bond, if any, required under sub. (2).

(4a) Any licensee and any other person aggrieved by any order of the commissioner has the right to appeal to the board of review under this section, provided a written notice of appeal is served upon the commissioner and upon the chairman or secretary of the consumer credit review board under s. 220.037 within 10 days from the date of the commissioner's order. Upon service of a written notice of appeal as herein provided the review board shall hold a hearing within a reasonable time thereafter. The review board shall give the parties a written notice of the time and place said hearing will be held. The cost of any investigation or examination or hearing, including witness fees or any other expenses, conducted by the commissioner or the review board shall be paid by the licensee so examined or by the appellant within 30 days after demand therefor by the commissioner, and the state may maintain an action for the recovery of such costs and expenses in any court of competent jurisdiction, except that no cost shall be charged an appellant by the review board unless the board sustains the commissioner.

(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) The licensee shall keep such books and records in his place of business as in the opinion of the commissioner of banking will enable him 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.

(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: 1) 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 2) 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 or after October 31, 1981, which does not exceed the greater of either of the following:

1. With respect to instalment loans or forbearances which are repayable in substantially equal successive instalments 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 instalment 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 instalment loans or forbearances which are repayable in substantially equal successive instalments 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 instalment 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.

(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 within 60 days 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 instalments payable at monthly intervals may provide for a first period between the date of the contract and the first instalment 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 instalment 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 instalment 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 instalments 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 instalment, 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 instalments 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 instalments, the parties may agree to a delinquency charge on any instalment not paid in full on or before the 10th day after its scheduled or deferred due date, in an amount not to exceed 3% of the unpaid amount of the instalment. The delinquency charge may be collected only once on any one instalment 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 instalment, 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 instalment 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 him of the amount of the deferral charge, the period of deferral and that if the instalment 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) 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 subsection. 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 instalments 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 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 instalment date and is not 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 the interest charge permitted in par. (b), 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.

409.404 on loans secured by merchandise other than a motor vehicle; and

3. On motor vehicle loans, the actual filing fee required for filing with the department of transportation under ch. 342.

(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.

(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 his 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 him 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 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, copartnership or corporation and the several officers and employes thereof who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in a county jail for not more than 6 months, or by both such fine and imprisonment.

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

(12) No person, association, copartnership 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.

(13) Licenses issued under s. 138.07, 1969 Wis. stats., or 214.03 prior to March 1, 1973, shall continue in force until expiration without further application or approval, upon payment of the fees under this section less any license and investigation fees already paid by the licensee for such license for the 1973 calendar year.

(14) The changes made in s. 138.07, 1969 Wis. stats., and this section on March 1, 1973, shall not be construed so as to impair or affect

the obligation of any loan contract lawfully made prior to such date.

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

138.10 Pawnbrokers. (1) APPLICATION. This section shall be known as the pawnbrokers' law and shall apply to all persons licensed to conduct the business of pawnbroker by the common council of any city of this state.

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

(3) DEFINITIONS. The following terms in this section shall be construed to have the following meanings:

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

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

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

(f) "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.

(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.

(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.

(6) 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.

(7) PENALTY. Any pawnbroker who shall refuse to comply with sub. (6) shall, upon conviction, be punished by imprisonment in the county jail not more than one year or by fine not exceeding $500.

(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.

History: 1979 c. 32 s. 92 (9)

138.12 Insurance premium finance companies. (1) DEFINITIONS. For purposes of this section:

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

(b) "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.

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

(d) "Commissioner" means the commissioner of banking.

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

(a) Any insurance company or agent defined in s. 628.02, any savings and loan association, sales finance company, motor vehicle instalment 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 commissioner 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 instalment 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 $400 and shall be paid to the commissioner. Licenses may be renewed May 1 of each year upon payment of the fee of $400.

(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 commissioner requires. The commissioner may, at any time, require the applicant fully to disclose the identity of all stockholders, partners, officers and employes, and he may refuse to issue or renew a license in the name of any person if he is not satisfied that any officer, employe, stockholder or partner thereof, who may materially influence the applicant's conduct, meets the standards of this section.

(4) INVESTIGATION. (a) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and shall issue a license if he finds the applicant is qualified in accordance with this section. If the commissioner does not so find, he shall, within 30 days after he has received such application, so notify the applicant and at the request of the applicant, give the applicant a full hearing.

(b) The commissioner shall issue or renew a license when he is satisfied that the person to be licensed:

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, and

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.

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

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 untrustworthy or incompetent to act as a premium finance company,

4. Such company has violated any provision of this section, or

5. Such company has been rebating part of the service charge as allowed and permitted herein to any insurance agent or insurance broker or any employe 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.

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

(c) Any action of the commissioner in refusing to issue or renew a license shall be subject to review under ss. 227.01 to 227.26.

(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 commissioner. The commissioner may make an examination of the books, records and accounts of any licensee as he deems necessary. The expenses incurred in making any such examination shall be assessed against and paid by the licensee so examined. The commissioner may, at any time, require any licensee to bring such records as he directs to the commissioner's office 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 shall constitute compliance with this requirement.

(7) RULES AND REGULATIONS. The commissioner 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 him, the name and place of business of the premium finance company to which instalment 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 instalments required, the amount of each instalment 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 instalment of the premium finance agreement is payable.

(b) The service charge shall be a maximum of $6 per $100 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.

(c) The service charge shall be computed on the principal balance of a premium finance agreement payable in successive monthly instalments substantially equal in amount for a period of one year. On a premium finance agreement providing for instalments 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 he 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 instalments 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 downpayment 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 instalment 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 the delinquent instalment but not to exceed $5 on any instalment 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 equal to the difference between any delinquency or default charge imposed in respect to the instalment in default and $5. A premium finance agreement may also provide for the payment of statutory attorneys' fees and statutory court costs if the agreement is referred for collection to an attorney not a salaried employe 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, 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 his 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; 1975 c. 371 s. 50; 1975 c. 372; 1977 c. 444 ss. 4 to 6, 11

138.20 Discrimination in granting credit or loans prohibited. (1) RULE. No financial organization, as defined under s. 71.07 (2) (d) 1, 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.

(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).