

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/30/2004**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Dale Schultz (608) 266-0703**

By/Representing: **Jonathan Klein (aide)**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - banking inst.  
Fin. Inst. - int. rates/loans**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Schultz@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Predatory lending

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**Instructions:**

Companion to 03-3260

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 01/30/2004	kgilfoy 02/02/2004		_____			State
/1	agary 02/26/2004	kgilfoy 02/27/2004	jfrantze 02/02/2004	_____	sbasford 02/02/2004		State
/2			jfrantze	_____	lemery	Inorthro	

LINK-24/04

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			02/27/2004 _____		02/27/2004	02/27/2004	

FE Sent For:

At  
Intro.

<END>

**Northrop, Lori**

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**From:** Klein, Jonathan  
**Sent:** Friday, February 27, 2004 2:29 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-4170/2 Topic: Predatory lending

It has been requested by <Klein, Jonathan> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-4170/2 Topic: Predatory lending

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/2			jfrantze	_____	lemery		

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/1		1/2 - 2/27 Kung	jfrantze 02/02/2004	_____	sbasford 02/02/2004		

*Handwritten signatures and dates:*  
2/27 [Signature] 2/27 [Signature]

FE Sent For:

**<END>**

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1?	agary	2/2-11 Kmg	Jb 2/2	Self 2/2			

FE Sent For:

<END>

soon  
turned  
in 1/30

4170/1  
LRB-~~2003~~  
RM:kmg:rs  
ARG ↑

2003 BILL

R M N R

1 AN ACT *to amend* 138.052 (2) (a) 2., 138.052 (9), 138.056 (3) (a), chapter 428  
 2 (title), 428.101 (intro.), 428.101 (3), 428.102 (intro.), 428.102 (2), 428.103 (1)  
 3 (intro.) and 428.106; and *to create* subchapter I (title) of chapter 428 [precedes  
 4 428.101] and subchapter II of chapter 428 [precedes 428.202] of the statutes;  
 5 **relating to:** regulating certain consumer mortgage lenders, granting  
 6 rule-making authority, and providing a penalty.

***Analysis by the Legislative Reference Bureau***

This bill creates a subchapter of the statutes regulating certain consumer mortgage loans, defined as "covered loans." Significant provisions include the following:

***Scope and definitions***

This bill creates several prohibitions and requirements applicable to covered loans and the lenders that make them. The bill generally defines "covered loan" as a consumer transaction that involves real property located in this state, that is secured by the consumer's principal dwelling, and in which either: 1) the annual percentage rate at consummation will exceed, by more than eight percent for first-lien loans or by more than ten percent for subordinate-lien loans, the yield on specified U.S. Treasury securities; or 2) the total points and fees payable by the consumer at or before loan closing will exceed the greater of eight percent of the total

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loan amount or \$400. (The \$400 amount is adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1).

The bill defines “lender” as a person who originates a covered loan and to whom the covered loan is initially payable. “Lender” does not include an assignee of a covered loan or any person who, for at least 12 consecutive months, has failed to originate any covered loans.

***Prohibitions and requirements on lenders and others***

The bill imposes all of the following prohibitions and requirements:

(1) With certain exceptions, no lender may make a covered loan that requires, or that permits the lender to require, a payment that is more than twice as large as the average of all earlier scheduled payments, unless the payment becomes due at least 60 months after the date on which the loan is made.

(2) No lender may make a covered loan that permits the lender or an assignee of the loan to demand payment of the outstanding balance before the original maturity date, except in cases of default, fraud, or material misrepresentation by the consumer or any act or omission by the consumer that adversely affects the lender’s or assignee’s security for the loan or any right of the lender or assignee in that security or in certain cases where the real property that is pledged as security for the loan has been sold.

(3) With certain exceptions, no lender may make a covered loan with a payment schedule that causes the principal balance to increase.

(4) No lender may make a covered loan that imposes or permits the lender or an assignee of the loan to impose an increase in the interest rate as a result of the consumer’s default.

(5) No lender may make a covered loan that includes a payment schedule that consolidates more than two scheduled payments and pays them in advance out of the proceeds of the loan.

(6) No lender may engage in a pattern or practice of making covered loans to consumers who have collateral but who, considering their current and expected income, current obligations, and employment status, would be unable at the time of application to make the scheduled payments under the loans.

(7) With certain exceptions, no lender may make a covered loan that refinances an existing covered loan that the lender made to the same consumer, unless the refinancing takes place at least one year after the date on which the loan being refinanced was made or the refinancing is in the interest of the consumer. In addition, with certain exceptions, no assignee or servicer of a covered loan may make a covered loan that refinances the covered loan, unless the refinancing takes place at least one year after the date on which the loan being refinanced was made or the refinancing is in the interest of the consumer. No lender, assignee of a covered loan, or servicer may engage in a pattern or practice of evading these prohibitions.

(8) No lender may pay proceeds of a covered loan to a person who is under contract to make home improvements, as specified in the bill, unless the payment is made by an instrument that is payable to the consumer or jointly to the consumer and the person who is under contract or, with the consent of the consumer, the

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payment is made through a third party in accordance with a written agreement signed by the consumer, the lender, and the person under contract.

(9) No lender may knowingly contract with any person who is engaged in work as a mortgage banker or mortgage broker but who has not obtained the registration required by law.

(10) No lender, mortgage banker, mortgage broker, loan originator (a type of agent of a mortgage banker or mortgage broker), or licensed lender (a person licensed by the Department of Financial Institutions (DFI) to make certain high interest loans) may knowingly make, propose, or solicit fraudulent, false, or misleading statements on any document relating to a covered loan.

(11) No lender, mortgage banker, mortgage broker, loan originator, or licensed lender may recommend or encourage an individual to default on an existing loan or other obligation before and in connection with the making of a covered loan that refinances all or any portion of that existing loan or obligation.

***Prepayment***

With certain exceptions, the bill allows a consumer to prepay a covered loan at any time without penalty if the payment is made in the context of a refinancing of the covered loan and if the covered loan is held by the refinancing lender. The bill allows the servicer of a covered loan to impose a prepayment penalty, unless the servicer is also the lender that holds the loan at the time of the refinancing.

***Required notice***

The bill requires a lender to ensure that the consumer is given a specified notice at least three business days before the lender makes the applicable covered loan.

***Municipal authority***

The bill prohibits any city, village, town, or county from enacting an ordinance that regulates a matter specifically governed under the bill or under a rule promulgated pursuant to the bill. The bill also retroactively invalidates any such ordinance in existence when the bill takes effect.

***Administration and penalties***

The bill allows DFI to promulgate rules, perform investigations, hold contested case hearings, and issue orders to administer and enforce the provisions created under the bill. With certain exceptions, if the person required to appear at an enforcement hearing fails to appear or if upon the record made at the hearing DFI finds that a violation has been established, DFI may issue an order specifying any of the following:

(1) That the person must cease and desist from the violation or practice and make restitution for any actual damages suffered by a consumer.

(2) That the person must forfeit not more than \$1,000 per violation or, if the person willfully or knowingly violated this subchapter, not less than \$1,000 nor more than \$10,000 per violation.

(3) That the person must pay to DFI the costs of its investigation.

(4) That a license, registration, or certification issued by DFI to the person is suspended or revoked or will not be renewed.

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(5) That any individual who is responsible for the violation must be removed from working in any capacity related to the violation or related to activities regulated by DFI.

(6) Any additional conditions that DFI considers reasonable.

However, it is a defense to any alleged violation if the person alleged to have committed the violation establishes that the person acted in good faith while committing the violation and that, no later than 60 days after the discovery of the violation and before any investigation or other enforcement action by DFI, the person notified the affected consumer of the violation and either made appropriate adjustments to the loan to bring the loan into compliance or changed the terms of the loan in a manner beneficial to the consumer so that the loan is no longer a covered loan.

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

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

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

2           138.052 (2) (a) 2. ~~The~~ Except as provided in s. 428.207, the parties may agree  
3 that if a prepayment is made within 5 years of the date of the loan, then the lender  
4 shall receive an amount not exceeding 60 days' interest at the contract rate on the  
5 amount by which the aggregate principal prepayments for a 12-month period  
6 exceeds 20% of the original amount of the loan.

7           **SECTION 2.** 138.052 (9) of the statutes is amended to read:

8           138.052 (9) Chapters 421 to ~~428~~ 427 and subch. I of ch. 428 do not apply to the  
9 refinancing, modification, extension, renewal or assumption of a loan which had an  
10 original principal balance in excess of \$25,000 if the unpaid principal balance of the  
11 loan has been reduced to \$25,000 or less.

12           **SECTION 3.** 138.056 (3) (a) of the statutes is amended to read:

13           138.056 (3) (a) A variable rate loan involving a mobile home transaction or  
14 using an approved index may be prepaid at any time in whole or in part without

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1 penalty. Other variable rate loans may be prepaid in whole or part without penalty  
2 within 30 days after notice of an increase in the interest rate and, except as provided  
3 in s. 428.207, with the prepayment penalty under s. 138.052 (2) (a) 2. and 3. if  
4 prepayment is made before or after the 30-day period. This paragraph controls if  
5 there is a conflict with s. 138.052 (2) (a).

6 **SECTION 4.** Chapter 428 (title) of the statutes is amended to read:

**CHAPTER 428****FIRST LIEN REAL ESTATE****AND OTHER MORTGAGE LOANS**

7  
8  
9  
10 **SECTION 5.** Subchapter I (title) of chapter 428 [precedes 428.101] of the statutes  
11 is created to read:

**CHAPTER 428****SUBCHAPTER I****FIRST LIEN REAL ESTATE LOANS**

12  
13  
14  
15 **SECTION 6.** 428.101 (intro.) of the statutes is amended to read:

16 **428.101 Applicability.** (intro.) This ~~chapter~~ subchapter applies to:

17 **SECTION 7.** 428.101 (3) of the statutes is amended to read:

18 428.101 (3) Loans made on or after November 1, 1981, by a creditor to a  
19 customer and which are secured by a first lien real estate mortgage or equivalent  
20 security interest if the amount financed is \$25,000 or less and if the loan is not subject  
21 to subch. II.

22 **SECTION 8.** 428.102 (intro.) of the statutes is amended to read:

23 **428.102 Definitions.** (intro.) In this ~~chapter~~ subchapter:

24 **SECTION 9.** 428.102 (2) of the statutes is amended to read:

**BILL**

1           428.102 (2) “Creditor” means a person who regularly engages in, arranges for  
2 or procures from 3rd persons, loans within the scope of this ~~chapter~~ subchapter.

3           **SECTION 10.** 428.103 (1) (intro.) of the statutes is amended to read:

4           428.103 (1) (intro.) The following limitations shall apply to all loans subject to  
5 this ~~chapter~~ subchapter:

6           **SECTION 11.** 428.106 of the statutes is amended to read:

7           **428.106 Remedies.** (1) Violations of this ~~chapter~~ subchapter may be enforced  
8 by a customer subject to this section and ss. 425.308 to 425.311.

9           (2) With respect to a loan subject to this ~~chapter~~ subchapter, if the court as a  
10 matter of law finds that any aspect of the transaction, any conduct directed against  
11 the customer, by the creditor, or any result of the transaction is unconscionable, the  
12 court shall, in addition to the remedies and penalties set forth in this ~~chapter~~  
13 subchapter, and a penalty not to exceed that specified in s. 428.103 (2), refuse to  
14 enforce the unconscionable aspect of the transaction or so limit the application of any  
15 unconscionable aspect or conduct to avoid any unconscionable result.

16           (3) Notwithstanding other provisions of this ~~chapter~~ subchapter, a customer  
17 shall not be entitled to recover the specific penalties provided in ss. 428.103 (2) (a)  
18 and 428.104 (2) (a) if the person violating this ~~chapter~~ subchapter shows by a  
19 preponderance of the evidence that the violation was not intentional and resulted  
20 from a bona fide error notwithstanding the maintenance of procedures reasonably  
21 adapted to avoid such error.

22           (4) Any action brought by a customer to enforce rights under sub. (1) shall be  
23 commenced within one year after the date of the last violation of this ~~chapter~~  
24 subchapter, 2 years after consummation of the agreement or one year after the last

**BILL**

1 payment, whichever is later. But in no event shall an action be commenced more  
2 than 6 years after the date of the last violation.

3 (5) The administrator specified in s. 426.103, solely through the department  
4 of justice, may on behalf of any customer institute an action to enforce this ~~chapter~~  
5 subchapter and to recover the damages and penalties provided for this ~~chapter~~  
6 subchapter. In such action the administrator may obtain an order restraining by  
7 temporary or permanent injunctions any violation of this ~~chapter~~ subchapter. This  
8 subsection shall not be construed to incorporate or grant to the administrator with  
9 respect to the enforcement of this ~~chapter~~ subchapter, any of the provisions of ch. 426.

10 **SECTION 12.** Subchapter II of chapter 428 [precedes 428.202] of the statutes is  
11 created to read:

**CHAPTER 428****SUBCHAPTER II****PREDATORY MORTGAGE LENDING**

12  
13  
14  
15 **428.202 Definitions.** In this subchapter:

16 (1) "Bridge loan" means a loan with a maturity of less than 18 months which  
17 requires only payments of interest until the time that the unpaid balance is due.

18 (1m) "Business day" has the meaning that is specified under 12 CFR 226.2 (a)  
19 (6) for purposes of 12 CFR 226.31.

20 (2) "Covered loan" means a transaction that involves real property located in  
21 this state and that is subject to 12 CFR 226.32.

22 (3) "Customer" means an individual to whom a covered loan is offered or made.  
23 "Customer" does not include a surety, guarantor, cosigner, or endorser.

24 (4) "Department" means the department of financial institutions.

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1           (5) “Lender” means any person who originates a covered loan and to whom the  
2 covered loan is initially payable, except that “lender” does not include an assignee  
3 of a covered loan or any person who, for at least 12 consecutive months, has failed  
4 to originate any covered loans.

5           (5m) “Licensed lender” means a person licensed under s. 138.09.

6           (6) “Loan originator” has the meaning given in s. 224.71 (1r).

7           (7) “Mortgage banker” has the meaning given in s. 224.71 (3).

8           (8) “Mortgage broker” has the meaning given in s. 224.71 (4).

9           (9) “Municipality” means a county, city, village, or town.

10          (10) “Servicer” has the meaning given in 12 USC 2605 (i) (2).

11           **428.203 Prohibitions on and requirements of lenders and assignees.**

12          (1) **BALLOON PAYMENTS.** Except as otherwise provided in this subsection, no lender  
13 may make a covered loan to a customer that requires, or that permits the lender to  
14 require, a payment that is more than twice as large as the average of all earlier  
15 scheduled payments, unless the payment becomes due at least 60 months after the  
16 date on which the loan is made. This subsection does not apply to a loan under which  
17 the payment schedule is adjusted to account for seasonal or irregular income of the  
18 customer or to a bridge loan that the customer obtains for the purpose of facilitating  
19 the acquisition or construction of a dwelling as the customer’s principal dwelling.

20          (2) **CALL PROVISION.** No lender may make a covered loan to a customer that  
21 permits the lender or an assignee of the loan to demand payment of the outstanding  
22 balance before the original maturity date, except that a covered loan may permit a  
23 lender or assignee to so demand as a result of any of the following:

24           (a) The customer’s failure to make payments required under the loan.

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1 (b) A provision in the loan agreement permitting the lender or assignee to make  
2 such a demand after the sale of real property that is pledged as security for the loan.

3 (c) Fraud or material misrepresentation by the customer in connection with the  
4 loan.

5 (d) Any act or omission by the customer that adversely affects the lender's or  
6 assignee's security for the loan or any right of the lender or assignee in such security.

7 (3) **NEGATIVE AMORTIZATION.** No lender may make a covered loan to a customer  
8 with a payment schedule that causes the principal balance to increase, except that  
9 this subsection does not prohibit such a payment schedule as a result of a temporary  
10 forbearance or loan restructuring consented to by the customer.

11 (4) **INCREASED INTEREST RATE.** No lender may make a covered loan to a customer  
12 that imposes or permits the lender or an assignee of the loan to impose an increase  
13 in the interest rate as a result of the customer's default.

14 (5) **ADVANCE PAYMENTS.** No lender may make a covered loan to a customer that  
15 includes a payment schedule that consolidates more than 2 scheduled payments and  
16 pays them in advance out of the proceeds of the loan.

17 (6) **REPAYMENT ABILITY.** No lender may engage in a pattern or practice of making  
18 covered loans to customers who have collateral but who, considering their current  
19 and expected income, current obligations, and employment status, would be unable  
20 at the time of application to make the scheduled payments under the loans. In  
21 assessing a customer's ability to make scheduled payments, a lender may consider  
22 any expected income of the customer from any source, together with information  
23 from the customer's credit reports, income tax returns, financial account statements,  
24 wage statements, and any other source which the lender is authorized to access and

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1 which may provide the lender with information concerning the customer's income  
2 and current obligations.

3 (7) REFINANCING OF EXISTING COVERED LOAN. No lender may make a covered loan  
4 that refinances an existing covered loan that the lender made to the same customer,  
5 unless the refinancing takes place at least one year after the date on which the loan  
6 being refinanced was made or the refinancing is in the interest of the customer. No  
7 assignee or servicer of a covered loan may make a covered loan that refinances the  
8 covered loan, unless the refinancing takes place at least one year after the date on  
9 which the loan being refinanced was made or the refinancing is in the interest of the  
10 customer. No lender, assignee of a covered loan, or servicer may engage in a pattern  
11 or practice of arranging for the refinancing of covered loans by affiliates or  
12 unaffiliated creditors, modifying covered loans, or any other acts for the purpose of  
13 evading this subsection. This subsection does not apply to bridge loans.

14 (8) PAYMENTS TO HOME IMPROVEMENT CONTRACTORS. No lender under a covered  
15 loan made to a customer may pay proceeds of the loan to a person who is under  
16 contract to make improvements to an existing dwelling, unless the payment is made  
17 by an instrument that is payable to the customer or jointly to the customer and the  
18 person who is under contract or, with the consent of the customer, the payment is  
19 made through a 3rd party in accordance with a written agreement signed by the  
20 customer, the lender, and the person under contract.

21 (9) UNREGISTERED MORTGAGE BANKERS AND BROKERS. No lender may knowingly  
22 contract with any person for the performance of duties in violation of s. 224.72 (1m).

23 **428.204 False statements.** No lender, licensed lender, loan originator,  
24 mortgage banker, or mortgage broker may knowingly make, propose, or solicit

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1 fraudulent, false, or misleading statements on any document relating to a covered  
2 loan.

3 **428.206 Recommending default.** No lender, licensed lender, loan originator,  
4 mortgage banker, or mortgage broker may recommend or encourage an individual  
5 to default on an existing loan or other obligation before and in connection with the  
6 making of a covered loan that refinances all or any portion of that existing loan or  
7 obligation.

8 **428.207 Prepayment.** (1) Except as provided in sub. (2), a customer may  
9 prepay a covered loan at any time without penalty if the payment is made in the  
10 context of a refinancing of the covered loan and if the covered loan is held by the  
11 refinancing lender.

12 (2) Subsection (1) does not prohibit the servicer of a covered loan from imposing  
13 a prepayment penalty, unless the servicer is also the lender that holds the loan at the  
14 time of the refinancing.

15 **428.208 Disclosure to customers.** At least 3 business days before making  
16 a covered loan to a customer, a lender shall ensure that the customer has been given  
17 the following notice, in writing and in a clear and conspicuous format:

18 **DISCLOSURE TO BORROWER**

19 A. If you obtain this loan, the lender will have a mortgage on your home. You  
20 could lose your home and any money that you have put into it if you do not meet your  
21 obligations under this loan. Mortgage loan rates and closing costs and fees vary  
22 based on many factors, including your particular credit and financial circumstances,  
23 your earnings history, your employment status, the loan-to-value ratio of the  
24 requested loan, and the type of property that will secure your loan. The loan rate and  
25 fees could also vary based on which lender you select.

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1           B. As a consumer you should shop around and compare loan rates and fees.  
2           You should also consider consulting a qualified independent credit counselor or other  
3           experienced financial adviser regarding the rate, fees, and provisions of this  
4           mortgage loan before you proceed.

5           C. You are not required to complete this loan agreement merely because you  
6           have received these disclosures or have signed a loan application. If you proceed with  
7           this mortgage loan, you should also remember that you may face serious financial  
8           risks if you use this loan to pay off credit card debts or other debts in connection with  
9           this transaction and then subsequently incur significant new debt. If you continue  
10          to accumulate debt after this loan is made and then experience financial difficulties,  
11          you could lose your home and any equity that you have in it if you do not meet your  
12          mortgage loan obligations.

13          D. Property taxes and homeowner's insurance are your responsibility. Some  
14          lenders may require you to escrow money for these payments. However, not all  
15          lenders provide escrow services for these payments. You should ask your lender  
16          about these services.

17          E. Your payments on existing debts contribute to your credit ratings. You  
18          should not accept any advice to ignore your regular payments to your existing  
19          creditors.

20          **428.209 Municipal authority.** (1) **AUTHORITY LIMITED.** No municipality may  
21          enact an ordinance or adopt a resolution regulating a matter specifically governed  
22          by this subchapter or by a rule promulgated under this subchapter.

23          (2) **RETROACTIVE EFFECT.** If a municipality has in effect on the effective date of  
24          this subsection .... [revisor inserts date], an ordinance or resolution that is

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1 inconsistent with sub. (1), the ordinance or resolution does not apply and may not be  
2 enforced.

3 **428.210 Administration and penalties. (1) RULES.** The department may  
4 promulgate rules for the administration of this subchapter.

5 **(2) INVESTIGATIONS.** (a) At any time that the department has reason to believe  
6 that a person has engaged in or is about to engage in an act that violates this  
7 subchapter, the department may investigate. In performing an investigation under  
8 this paragraph, the department may administer oaths or affirmations, subpoena  
9 witnesses, compel their attendance, adduce evidence, and require the production of  
10 any matter, including the existence, description, nature, custody, condition, and  
11 location of any books, documents, or other tangible things, and the identity and  
12 location of persons having knowledge of relevant facts, or any other matter  
13 reasonably calculated to lead to the discovery of admissible evidence. The  
14 department may access and examine such books, documents, or other tangible  
15 things. In any civil action brought on behalf of the department based on evidence  
16 obtained in such an investigation, the department may recover the costs of  
17 performing the investigation if the department prevails in the action.

18 (b) If 5 or more persons file a verified complaint with the department alleging  
19 that a person has violated this subchapter, the department shall immediately  
20 commence an investigation pursuant to par. (a).

21 (c) If the records of a person who is subject to an investigation pursuant to par.  
22 (a) are located outside of this state, the person at the person's option shall either  
23 make them available to the department at a convenient location within this state or  
24 pay the reasonable and necessary expenses for the department to examine them at  
25 the place where they are located. The department may designate representatives,

**BILL**

1 including comparable officials of the state in which the records are located, to inspect  
2 them on the department's behalf.

3 (d) At the request of the department of financial institutions and upon  
4 reasonable notice to all affected persons, the department of justice may apply to any  
5 court of record for an order compelling compliance if a person fails to obey a subpoena  
6 or to give testimony pursuant to par. (a).

7 **(3) ENFORCEMENT AND PENALTIES.** (a) The department may serve a notice of a  
8 hearing that complies with s. 227.44 (1) and (2) on a person if the department  
9 reasonably suspects that the person has violated this subchapter. The department  
10 may receive complaints alleging violations of this subchapter. A hearing conducted  
11 pursuant to a notice under this paragraph shall be conducted in the manner specified  
12 for a contested case, as defined in s. 227.01 (3), under ss. 227.44 to 227.50. Except as  
13 provided in sub. (4), if the person fails to appear at the hearing or if upon the record  
14 made at the hearing the department finds that a violation has been established, the  
15 department may issue and serve on the person an order specifying any of the  
16 following:

17 1. That the person must cease and desist from the violation or practice and  
18 make restitution for any actual damages suffered by a customer.

19 2. That the person must forfeit not more than \$1,000 per violation or, if the  
20 person willfully or knowingly violated this subchapter, not less than \$1,000 nor more  
21 than \$10,000 per violation.

22 3. That the person must pay to the department the costs of its investigation.

23 4. That a license, registration, or certification issued by the department to the  
24 person is suspended or revoked or will not be renewed.



## Gary, Aaron

---

**From:** Klein, Jonathan  
**Sent:** Thursday, February 26, 2004 9:53 AM  
**To:** Gary, Aaron  
**Subject:** RE: Predatory Lending

Perfect! I really appreciate all you are doing for us.

-----Original Message-----

**From:** Gary, Aaron  
**Sent:** Thursday, February 26, 2004 9:51 AM  
**To:** Klein, Jonathan  
**Subject:** RE: Predatory Lending

Jonathan,

You were on the phone, hence this e-mail. I got your message. I will work the amendment (LRBa2407) into your bill. I am actually working on it right now; it isn't done yet because the analysis had to be significantly reconfigured to reflect all the changes between the initial and final versions.

Aaron R. Gary  
Legislative Attorney  
Legislative Reference Bureau  
608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

-----Original Message-----

**From:** Klein, Jonathan  
**Sent:** Wednesday, February 25, 2004 1:44 PM  
**To:** Gary, Aaron  
**Subject:** RE: Predatory Lending

Aaron,

Yes. Basically we need a /2 that is identical to the most recent ASA to AB 792. Thanks for all your help, Aaron.

Jonathan

-----Original Message-----

**From:** Gary, Aaron  
**Sent:** Wednesday, February 25, 2004 1:37 PM  
**To:** Klein, Jonathan  
**Subject:** RE: Predatory Lending

*2/26 Hc from Jonathan - VM  
- add LRBA 2407 too*

Do you want Sen. Schultz's bill to be identical in content to Rep. Montgomery's sub (ASA1 to AB-279), so the only difference is that your bill has an analysis but the assembly sub doesn't? thanks. Aaron

Aaron R. Gary  
Legislative Attorney  
Legislative Reference Bureau  
608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

-----Original Message-----

**From:** Klein, Jonathan  
**Sent:** Wednesday, February 25, 2004 12:37 PM  
**To:** Gary, Aaron  
**Subject:** Predatory Lending

Aaron,

I need to request revisions to our current Predatory lending draft (LRB-4170/1) to include the changes made in the current Assembly Substitute Amendment (LRBs-0358/2).

Jonathan Klein  
Office of Senator Dale Schultz  
(800) 978-8008  
(608) 266-0703

Needed  
by 3/1  
end of day

- 4/70/2

LRB: ~~035824~~  
ARG:kmg:jf  
↑

~~ASSEMBLY SUBSTITUTE AMENDMENT~~  
~~TO 2003 ASSEMBLY BILL 792~~

D-note

~~February 25, 2004 - Offered by Representative MONTGOMERY.~~

Gen. Cat.

1 AN ACT to amend 138.052 (2) (a) 2., 138.052 (9), 138.056 (3) (a), chapter 428  
2 (title), 428.101 (intro.), 428.101 (3), 428.102 (intro.), 428.102 (2), 428.103 (1)  
3 (intro.) and 428.106; and to create subchapter I (title) of chapter 428 [precedes  
4 428.101] and subchapter II of chapter 428 [precedes 428.202] of the statutes;  
5 relating to: regulating certain consumer mortgage lenders, granting  
6 rule-making authority, and providing a penalty.

insert  
ANAL

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

7 SECTION 1. 138.052 (2) (a) 2. of the statutes is amended to read:  
8 138.052 (2) (a) 2. The Except as provided in s. 428.207, the parties may agree  
9 that if a prepayment is made within 5 years of the date of the loan, then the lender  
10 shall receive an amount not exceeding 60 days' interest at the contract rate on the  
11 amount by which the aggregate principal prepayments for a 12-month period  
12 exceeds 20% of the original amount of the loan.



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

5           **SECTION 8.** 428.102 (intro.) of the statutes is amended to read:

6           **428.102 Definitions.** (intro.) In this ~~chapter~~ subchapter:

7           **SECTION 9.** 428.102 (2) of the statutes is amended to read:

8           428.102 (2) "Creditor" means a person who regularly engages in, arranges for  
9 or procures from 3rd persons, loans within the scope of this ~~chapter~~ subchapter.

10          **SECTION 10.** 428.103 (1) (intro.) of the statutes is amended to read:

11          428.103 (1) (intro.) The following limitations shall apply to all loans subject to  
12 this ~~chapter~~ subchapter:

13          **SECTION 11.** 428.106 of the statutes is amended to read:

14          **428.106 Remedies.** (1) Violations of this ~~chapter~~ subchapter may be enforced  
15 by a customer subject to this section and ss. 425.308 to 425.311.

16          (2) With respect to a loan subject to this ~~chapter~~ subchapter, if the court as a  
17 matter of law finds that any aspect of the transaction, any conduct directed against  
18 the customer, by the creditor, or any result of the transaction is unconscionable, the  
19 court shall, in addition to the remedies and penalties set forth in this ~~chapter~~  
20 subchapter, and a penalty not to exceed that specified in s. 428.103 (2), refuse to  
21 enforce the unconscionable aspect of the transaction or so limit the application of any  
22 unconscionable aspect or conduct to avoid any unconscionable result.

23          (3) Notwithstanding other provisions of this ~~chapter~~ subchapter, a customer  
24 shall not be entitled to recover the specific penalties provided in ss. 428.103 (2) (a)  
25 and 428.104 (2) (a) if the person violating this ~~chapter~~ subchapter shows by a

1 preponderance of the evidence that the violation was not intentional and resulted  
2 from a bona fide error notwithstanding the maintenance of procedures reasonably  
3 adapted to avoid such error.

4 (4) Any action brought by a customer to enforce rights under sub. (1) shall be  
5 commenced within one year after the date of the last violation of this ~~chapter~~  
6 subchapter, 2 years after consummation of the agreement or one year after the last  
7 payment, whichever is later. But in no event shall an action be commenced more  
8 than 6 years after the date of the last violation.

9 (5) The administrator specified in s. 426.103, solely through the department  
10 of justice, may on behalf of any customer institute an action to enforce this ~~chapter~~  
11 subchapter and to recover the damages and penalties provided for this ~~chapter~~  
12 subchapter. In such action the administrator may obtain an order restraining by  
13 temporary or permanent injunctions any violation of this ~~chapter~~ subchapter. This  
14 subsection shall not be construed to incorporate or grant to the administrator with  
15 respect to the enforcement of this ~~chapter~~ subchapter, any of the provisions of ch. 426.

16 **SECTION 12.** Subchapter II of chapter 428 [precedes 428.202] of the statutes is  
17 created to read:

18 **CHAPTER 428**

19 **SUBCHAPTER II**

20 **RESPONSIBLE HIGH COST**

21 **MORTGAGE LENDING**

22 **428.202 Definitions.** In this subchapter:

23 (1) "Bridge loan" means a loan with a maturity of less than 18 months which  
24 requires only payments of interest until the time that the unpaid balance is due.

1           **(1m)** "Business day" has the meaning that is specified under 12 CFR 226.2 (a)  
2 (6) for purposes of 12 CFR 226.31.

3           **(2)** "Covered loan" means a consumer credit mortgage loan transaction other  
4 than an open-end credit plan or reverse mortgage in which all of the following apply:

5           (a) The customer is a natural person.

6           (b) The debt is incurred by the customer primarily for personal, family, or  
7 household purposes.

8           (c) The loan is secured by a mortgage on, or an equivalent security interest in,  
9 residential real property, and the residential real property is or will be occupied by  
10 the customer as the customer's principal dwelling.

11           (d) The terms of the loan provide any of the following:

12           1. That the loan transaction, at the time that the loan is consummated, is  
13 considered a mortgage under 15 USC 1602 (aa) and regulations adopted thereunder,  
14 including 12 CFR 226.32.

15           2. That total points and fees payable by the customer at or before the loan  
16 closing exceed 6 percent of the total loan amount.

17           **(3)** "Customer" means an individual to whom a covered loan is offered or made.  
18 "Customer" does not include a surety, guarantor, cosigner, or endorser.

19           **(4)** "Department" means the department of financial institutions.

20           **(5)** "Lender" means any person who originates a covered loan and to whom the  
21 covered loan is initially payable, except that "lender" does not include an assignee  
22 of a covered loan or any person who, for at least 12 consecutive months, has failed  
23 to originate any covered loans.

24           **(5m)** "Licensed lender" means a person licensed under s. 138.09.

25           **(6)** "Loan originator" has the meaning given in s. 224.71 (1r).

1 (6m) "Local governmental unit" has the meaning given in s. 16.97 (7).

2 (7) "Mortgage banker" has the meaning given in s. 224.71 (3).

3 (8) "Mortgage broker" has the meaning given in s. 224.71 (4).

4 (10) "Servicer" has the meaning given in 12 USC 2605 (i) (2).

5 **428.203 Prohibitions on and requirements of lenders and assignees.**

6 (1) BALLOON PAYMENTS. Except as otherwise provided in this subsection, no lender  
7 may make a covered loan to a customer that requires, or that permits the lender to  
8 require, a payment that is more than twice as large as the average of all earlier  
9 scheduled payments. This subsection does not apply to a loan under which the  
10 payment schedule is adjusted to account for seasonal or irregular income of the  
11 customer or to a bridge loan with a maturity of less than one year that the customer  
12 obtains for the purpose of facilitating the acquisition or construction of a dwelling as  
13 the customer's principal dwelling.

14 (2) CALL PROVISION. No lender may make a covered loan to a customer that  
15 permits the lender or an assignee of the loan to demand payment of the outstanding  
16 balance before the original maturity date, except that a covered loan may permit a  
17 lender or assignee to so demand as a result of any of the following:

18 (a) The customer's failure to make payments required under the loan.

19 (b) A provision in the loan agreement permitting the lender or assignee to make  
20 such a demand after the sale of real property that is pledged as security for the loan.

21 (c) Fraud or material misrepresentation by the customer in connection with the  
22 loan.

23 (d) Any act or omission by the customer that adversely affects the lender's or  
24 assignee's security for the loan or any right of the lender or assignee in such security.

1           (3) NEGATIVE AMORTIZATION. No lender may make a covered loan to a customer  
2 with a payment schedule that causes the principal balance to increase, except that  
3 this subsection does not prohibit such a payment schedule as a result of a temporary  
4 forbearance or loan restructuring consented to by the customer.

5           (4) INCREASED INTEREST RATE. No lender may make a covered loan to a customer  
6 that imposes or permits the lender or an assignee of the loan to impose an increase  
7 in the interest rate as a result of the customer's default.

8           (5) ADVANCE PAYMENTS. No lender may make a covered loan to a customer that  
9 includes a payment schedule that consolidates more than 2 scheduled payments and  
10 pays them in advance out of the proceeds of the loan.

11           (6) REPAYMENT ABILITY. No lender may <sup>make</sup> ~~engage in a pattern or practice of making~~  
12 covered loans to customers based on the customer's collateral without regard to the  
13 customer's ability to repay, including the customer's current or expected income,  
14 current obligations, and employment. A lender is presumed to have violated this  
15 subsection if the lender engages in a pattern or practice of making covered loans  
16 without verifying and documenting the customer's repayment ability.

17           (7) REFINANCING OF EXISTING COVERED LOAN. No lender may make a covered loan  
18 that refinances an existing covered loan that the lender made to the same customer,  
19 unless the refinancing takes place at least one year after the date on which the loan  
20 being refinanced was made or the refinancing is in the interest of the customer. No  
21 assignee or servicer of a covered loan may make a covered loan that refinances the  
22 covered loan, unless the refinancing takes place at least one year after the date on  
23 which the loan being refinanced was made or the refinancing is in the interest of the  
24 customer. No lender, assignee of a covered loan, or servicer may engage in a pattern  
25 or practice of arranging for the refinancing of covered loans by affiliates or

1 unaffiliated creditors, modifying covered loans, or any other acts for the purpose of  
2 evading this subsection. This subsection does not apply to bridge loans.

3 (8) PAYMENTS TO HOME IMPROVEMENT CONTRACTORS. No lender under a covered  
4 loan made to a customer may pay proceeds of the loan to a person who is under  
5 contract to make improvements to an existing dwelling, unless the payment is made  
6 by an instrument that is payable to the customer or jointly to the customer and the  
7 person who is under contract or, with the consent of the customer, the payment is  
8 made through a 3rd party in accordance with a written agreement signed by the  
9 customer, the lender, and the person under contract.

10 (8g) SINGLE PREMIUM CREDIT INSURANCE PRODUCTS. A lender may not finance,  
11 directly or indirectly, through a covered loan, or finance to the same customer within  
12 30 days of making a covered loan, any individual or group credit life, credit accident  
13 and health, credit disability, or credit unemployment insurance product on a prepaid  
14 single premium basis sold in conjunction with a covered loan. This prohibition does  
15 not include contracts issued by a government agency or private mortgage insurance  
16 company to insure the lender against loss caused by a customer's default and does  
17 not apply to individual or group credit life, credit accident and health, credit  
18 disability, or credit unemployment insurance premium calculated and paid on a  
19 monthly or other periodic basis.

20 (8m) REFINANCING OF SUBSIDIZED LOW-RATE LOANS. (a) In this subsection,  
21 "subsidized low-rate loan" means a loan that carries a current interest rate at least  
22 2 percentage points below the then current yield on treasury securities with a  
23 comparable maturity. If the loan's current interest rate is either a discounted  
24 introductory rate or a rate that automatically steps up over time, the fully indexed

1 rate or the fully stepped-up rate, as applicable, shall be used instead of the current  
2 rate to determine whether a loan is a subsidized low-rate loan.

3 (b) A lender may not knowingly replace or consolidate a zero-interest rate or  
4 other subsidized low-rate loan made by a governmental or nonprofit lender with a  
5 covered loan within the first 10 years of the zero-interest rate or other subsidized  
6 low-rate loan unless the current holder of the loan consents in writing to the  
7 refinancing.

8 (9) UNREGISTERED MORTGAGE BANKERS AND BROKERS. No lender may knowingly  
9 contract with any person for the performance of duties in violation of s. 224.72 (1m).

10 **428.204 False statements.** No lender, licensed lender, loan originator,  
11 mortgage banker, or mortgage broker may knowingly make, propose, or solicit  
12 fraudulent, false, or misleading statements on any document relating to a covered  
13 loan.

14 **428.206 Recommending default.** No lender, licensed lender, loan originator,  
15 mortgage banker, or mortgage broker may recommend or encourage an individual  
16 to default on an existing loan or other obligation before and in connection with the  
17 making of a covered loan that refinances all or any portion of that existing loan or  
18 obligation.

19 **428.207 Prepayment.** (1) A customer may prepay a covered loan at any time  
20 without penalty if the payment is made in the context of a refinancing of the covered  
21 loan and if the covered loan is held by the refinancing lender. This subsection does  
22 not prohibit the servicer of a covered loan from imposing a prepayment penalty,  
23 unless the servicer is also the lender and holds the loan at the time of the refinancing.

24 (2) Any prepayment penalty under this section is subject to all of the following  
25 limitations:

1 (a) A prepayment penalty is permitted only during the 36 months immediately  
2 following the date of consummation of a covered loan.

3 (b) A lender may not include a prepayment penalty in a covered loan unless the  
4 lender offers the customer the option of choosing a loan product without a  
5 prepayment penalty. The terms of the offer shall be in writing and initialed by the  
6 customer. The offer shall be in a clear and conspicuous format and include the  
7 following disclosure:

8 **LOAN PRODUCT CHOICE DISCLOSURE**

9 I was provided with an offer to accept a product both with and without a  
10 prepayment penalty provision. I have chosen to accept the product with a  
11 prepayment penalty.

12 (c) A prepayment penalty may not exceed 60 days' interest at the contract rate  
13 on the amount prepaid on fixed-rate covered loans over \$25,000 if the borrower  
14 prepays more than 20 percent of the original loan amount within 36 months  
15 immediately following the date of consummation of the covered loan.

16 (d) A prepayment penalty may not be collected on fixed-rate covered loans of  
17 \$25,000 or less, on adjustable rate loans, or on those fixed-rate covered loans over  
18 \$25,000 not specified in par. (c).

19 **428.208 Disclosure to customers.** At least 3 business days before making  
20 a covered loan to a customer, a lender shall ensure that the customer has been given  
21 the following notice, in writing and in a clear and conspicuous format:

22 **DISCLOSURE TO BORROWER**

23 A. If you obtain this loan, the lender will have a mortgage on your home. You  
24 could lose your home and any money that you have put into it if you do not meet your  
25 obligations under this loan. Mortgage loan rates and closing costs and fees vary

1 based on many factors, including your particular credit and financial circumstances,  
2 your earnings history, your employment status, the loan-to-value ratio of the  
3 requested loan, and the type of property that will secure your loan. The loan rate and  
4 fees could also vary based on which lender you select.

5 B. As a consumer you should shop around and compare loan rates and fees.  
6 You should also consider consulting a qualified independent credit counselor or other  
7 experienced financial adviser regarding the rate, fees, and provisions of this  
8 mortgage loan before you proceed.

9 C. You are not required to complete this loan agreement merely because you  
10 have received these disclosures or have signed a loan application. If you proceed with  
11 this mortgage loan, you should also remember that you may face serious financial  
12 risks if you use this loan to pay off credit card debts or other debts in connection with  
13 this transaction and then subsequently incur significant new debt. If you continue  
14 to accumulate debt after this loan is made and then experience financial difficulties,  
15 you could lose your home and any equity that you have in it if you do not meet your  
16 mortgage loan obligations.

17 D. Property taxes and homeowner's insurance are your responsibility. Some  
18 lenders may require you to escrow money for these payments. However, not all  
19 lenders provide escrow services for these payments. You should ask your lender  
20 about these services.

21 E. Your payments on existing debts contribute to your credit ratings. You  
22 should not accept any advice to ignore your regular payments to your existing  
23 creditors.

24 **428.209 Exclusive state regulation authority.** The state shall have sole  
25 authority, except as provided under federal law, to regulate any matter governed by

1 this subchapter or by a rule promulgated under this subchapter. No local  
2 governmental unit may attempt to regulate, directly or indirectly, any matter  
3 governed by this subchapter or by a rule promulgated under this subchapter,  
4 including enacting an ordinance or adopting a resolution or imposing reporting  
5 requirements.

6 **428.2095 Property exempt from debt collection.** Except to the extent that  
7 the lender has a valid security interest permitted under this subchapter or has a lien  
8 under ch. 779 in the property, all of the following personal property of the customer  
9 is exempt from levy, execution, sale, and other similar process in satisfaction of a  
10 judgment for an obligation arising from a covered loan:

11 (1) Clothing of the customer or his or her dependents.

12 (2) Dining table and chairs, refrigerator, heating stove, cooking stove, radio,  
13 beds and bedding, couch and chairs, cooking utensils, and kitchenware.

14 (3) Household goods, as defined in 12 CFR 227.13 (d), 12 CFR 535.1 (g), or 16  
15 CFR 444.1 (i), consisting of furniture, appliances, one television, linens, china,  
16 crockery, and personal effects including wedding rings, except works of art,  
17 electronic entertainment equipment, antiques, and jewelry, to the extent that a  
18 nonpossessory security interest in these household goods is prohibited under 12 CFR  
19 227.13 (d), 12 CFR 535.2 (a) (4), or 16 CFR 444.2 (a) (4).

20 **428.210 Administration and penalties.** (1) RULES. The department may  
21 promulgate rules for the administration of this subchapter. The rules shall include  
22 guidelines for determining a customer's ability to repay a covered loan based upon  
23 the customer's debt-to-income ratio.

24 (2) INVESTIGATIONS. (a) At any time that the department has reason to believe  
25 that a person has engaged in or is about to engage in an act that violates this

1 subchapter, the department may investigate. In performing an investigation under  
2 this paragraph, the department may administer oaths or affirmations, subpoena  
3 witnesses, compel their attendance, adduce evidence, and require the production of  
4 any matter, including the existence, description, nature, custody, condition, and  
5 location of any books, documents, or other tangible things, and the identity and  
6 location of persons having knowledge of relevant facts, or any other matter  
7 reasonably calculated to lead to the discovery of admissible evidence. The  
8 department may access and examine such books, documents, or other tangible  
9 things. In any civil action brought on behalf of the department based on evidence  
10 obtained in such an investigation, the department may recover the costs of  
11 performing the investigation if the department prevails in the action.

12 (b) If 5 or more persons file a verified complaint with the department alleging  
13 that a person has violated this subchapter, the department shall immediately  
14 commence an investigation pursuant to par. (a).

15 (c) If the records of a person who is subject to an investigation pursuant to par.  
16 (a) are located outside of this state, the person at the person's option shall either  
17 make them available to the department at a convenient location within this state or  
18 pay the reasonable and necessary expenses for the department to examine them at  
19 the place where they are located. The department may designate representatives,  
20 including comparable officials of the state in which the records are located, to inspect  
21 them on the department's behalf.

22 (d) At the request of the department of financial institutions and upon  
23 reasonable notice to all affected persons, the department of justice may apply to any  
24 court of record for an order compelling compliance if a person fails to obey a subpoena  
25 or to give testimony pursuant to par. (a).

1           **(3) ENFORCEMENT AND PENALTIES.** (a) The department may serve a notice of a  
2 hearing that complies with s. 227.44 (1) and (2) on a person if the department  
3 reasonably suspects that the person has violated this subchapter. The department  
4 may receive complaints alleging violations of this subchapter. A hearing conducted  
5 pursuant to a notice under this paragraph shall be conducted in the manner specified  
6 for a contested case, as defined in s. 227.01 (3), under ss. 227.44 to 227.50. Except as  
7 provided in sub. (4), if the person fails to appear at the hearing or if upon the record  
8 made at the hearing the department finds that a violation has been established, the  
9 department may issue and serve on the person an order specifying any of the  
10 following:

11           1. That the person must cease and desist from the violation or practice and  
12 make restitution for any actual damages suffered by a customer.

13           2. That the person must forfeit not more than \$1,000 per violation or, if the  
14 person willfully or knowingly violated this subchapter, not less than \$1,000 nor more  
15 than \$10,000 per violation.

16           3. That the person must pay to the department the costs of its investigation.

17           4. That a license, registration, or certification issued by the department to the  
18 person is suspended or revoked or will not be renewed.

19           5. That any individual who is responsible for the violation must be removed  
20 from working in any capacity related to the violation or related to activities regulated  
21 by the department.

22           6. Any additional conditions that the department considers reasonable.

23           (b) An order under par. (a) is effective upon service on the person and may be  
24 appealed under s. 220.035.

1 (c) The department of justice, at the request of the department of financial  
2 institutions, may bring an action to enforce an order issued under par. (a).

3 (4) SAFE HARBOR. It is a defense to any alleged violation of this subchapter if  
4 the person alleged to have committed the violation establishes all of the following:

5 (a) That the person acted in good faith while committing the violation.

6 (b) That, no later than 60 days after the discovery of the violation and before  
7 any investigation or other enforcement action by the department under this section,  
8 the person notified the affected customer of the violation and either made  
9 appropriate adjustments to the loan to bring the loan into compliance with this  
10 subchapter or changed the terms of the loan in a manner beneficial to the customer  
11 so that the loan is no longer a covered loan.

12 **428.211 Parity for federally insured depository institutions.** This  
13 subchapter does not apply to any state chartered bank, trust company, savings and  
14 loan association, savings bank, or credit union, or to any subsidiary of a state  
15 chartered bank, trust company, savings and loan association, savings bank, or credit  
16 union, to the extent that federal law preempts or prohibits the application of the  
17 provisions of this subchapter to a federally chartered bank, trust company, savings  
18 and loan association, savings bank, or credit union of the same type.

19 **SECTION 13. Initial applicability.**

20 (1) This act first applies to loans for which applications are received by a lender,  
21 as defined in section 428.202 (5) of the statutes, as created by this act, on the effective  
22 date of this subsection.

23 **SECTION 14. Effective date.**





State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB 44170/1  
ARC:kmgjif

2003 BILL

INSERT ANAL

1 AN ACT to amend 138.052 (2) (a) 2., 138.052 (9), 138.056 (3) (a), chapter 428  
2 (title), 428.101 (intro.), 428.101 (3), 428.102 (intro.), 428.102 (2), 428.103 (1)  
3 (intro.) and 428.106; and to create subchapter I (title) of chapter 428 [precedes  
4 428.101] and subchapter II of chapter 428 [precedes 428.202] of the statutes;  
5 relating to: regulating certain consumer mortgage lenders, granting  
6 rule-making authority, and providing a penalty.

INSERT ANAL

*Analysis by the Legislative Reference Bureau*

This bill creates a subchapter of the statutes regulating certain consumer mortgage loans, defined as "covered loans." Significant provisions include the following:

*Scope and definitions*

Insert A

This bill creates several prohibitions and requirements applicable to covered loans and the lenders that make them. The bill generally defines "covered loan" as a consumer transaction that involves real property located in this state, that is secured by the consumer's principal dwelling, and in which either: 1) the annual percentage rate at consummation will exceed, by more than eight percent for first-lien loans or by more than ten percent for subordinate-lien loans, the yield on specified U.S. Treasury securities; or 2) the total points and fees payable by the consumer at or before loan closing will exceed the greater of eight percent of the total

**BILL**

loan amount or \$400. (The \$400 amount is adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1).

The bill defines "lender" as a person who originates a covered loan and to whom the covered loan is initially payable. "Lender" does not include an assignee of a covered loan or any person who, for at least 12 consecutive months, has failed to originate any covered loans.

***Prohibitions and requirements on lenders and others***

The bill imposes all of the following prohibitions and requirements:

(1) With certain exceptions, no lender may make a covered loan that requires, or that permits the lender to require, a payment that is more than twice as large as the average of all earlier scheduled payments ~~unless the payment becomes due at least 60 months after the date on which the loan is made.~~

(2) No lender may make a covered loan that permits the lender or an assignee of the loan to demand payment of the outstanding balance before the original maturity date, except in cases of default, fraud, or material misrepresentation by the consumer or any act or omission by the consumer that adversely affects the lender's or assignee's security for the loan or any right of the lender or assignee in that security or in certain cases where the real property that is pledged as security for the loan has been sold.

(3) With certain exceptions, no lender may make a covered loan with a payment schedule that causes the principal balance to increase.

(4) No lender may make a covered loan that imposes or permits the lender or an assignee of the loan to impose an increase in the interest rate as a result of the consumer's default.

(5) No lender may make a covered loan that includes a payment schedule that consolidates more than two scheduled payments and pays them in advance out of the proceeds of the loan.

(6) No lender may <sup>make</sup> ~~engage in a pattern or practice of making~~ covered loans to consumers ~~who have collateral but who, considering their current and expected income, current obligations, and employment status, would be unable at the time of application to make the scheduled payments under the loans.~~

(7) With certain exceptions, no lender may make a covered loan that refinances an existing covered loan that the lender made to the same consumer, unless the refinancing takes place at least one year after the date on which the loan being refinanced was made or the refinancing is in the interest of the consumer. In addition, with certain exceptions, no assignee or servicer of a covered loan may make a covered loan that refinances the covered loan, unless the refinancing takes place at least one year after the date on which the loan being refinanced was made or the refinancing is in the interest of the consumer. No lender, assignee of a covered loan, or servicer may engage in a pattern or practice of evading these prohibitions.

(8) No lender may pay proceeds of a covered loan to a person who is under contract to make home improvements, as specified in the bill, unless the payment is made by an instrument that is payable to the consumer or jointly to the consumer and the person who is under contract or, with the consent of the consumer, the

**BILL**

payment is made through a third party in accordance with a written agreement signed by the consumer, the lender, and the person under contract.

Insert C

(11) ~~(10)~~ No lender may knowingly contract with any person who is engaged in work as a mortgage banker or mortgage broker but who has not obtained the registration required by law.

(12) ~~(11)~~ No lender, mortgage banker, mortgage broker, loan originator (a type of agent of a mortgage banker or mortgage broker), or licensed lender (a person licensed by the Department of Financial Institutions (DFI) to make certain high interest loans) may knowingly make, propose, or solicit fraudulent, false, or misleading statements on any document relating to a covered loan.

(13) ~~(12)~~ No lender, mortgage banker, mortgage broker, loan originator, or licensed lender may recommend or encourage an individual to default on an existing loan or other obligation before and in connection with the making of a covered loan that refinances all or any portion of that existing loan or obligation.

**Prepayment**

~~With certain exceptions~~ The bill allows a consumer to prepay a covered loan at any time without penalty if the payment is made in the context of a refinancing of the covered loan and if the covered loan is held by the refinancing lender. The bill also allows the servicer of a covered loan to impose a prepayment penalty, unless the servicer is also the lender ~~and~~ holds the loan at the time of the refinancing.

Insert D

**Required notice**

The bill requires a lender to ensure that the consumer is given a specified notice at least three business days before the lender makes the applicable covered loan.

**Municipal authority**

The bill prohibits any city, village, town, or county from enacting an ordinance that regulates a matter specifically governed under the bill or under a rule promulgated pursuant to the bill. The bill also retroactively invalidates any such ordinance in existence when the bill takes effect.

Insert E

**Administration and penalties**

The bill allows DFI to promulgate rules, perform investigations, hold contested case hearings, and issue orders to administer and enforce the provisions created under the bill. With certain exceptions, if the person required to appear at an enforcement hearing fails to appear or if upon the record made at the hearing DFI finds that a violation has been established, DFI may issue an order specifying any of the following:

- (1) That the person must cease and desist from the violation or practice and make restitution for any actual damages suffered by a consumer.
- (2) That the person must forfeit not more than \$1,000 per violation or, if the person willfully or knowingly violated this subchapter, not less than \$1,000 nor more than \$10,000 per violation.
- (3) That the person must pay to DFI the costs of its investigation.
- (4) That a license, registration, or certification issued by DFI to the person is suspended or revoked or will not be renewed.

**BILL**

(5) That any individual who is responsible for the violation must be removed from working in any capacity related to the violation or related to activities regulated by DFI.

(6) Any additional conditions that DFI considers reasonable.

However, it is a defense to any alleged violation if the person alleged to have committed the violation establishes that the person acted in good faith while committing the violation and that, no later than 60 days after the discovery of the violation and before any investigation or other enforcement action by DFI, the person notified the affected consumer of the violation and either made appropriate adjustments to the loan to bring the loan into compliance or changed the terms of the loan in a manner beneficial to the consumer so that the loan is no longer a covered loan.

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:*

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

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

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

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

**SECTION 3.** 138.056 (3) (a) of the statutes is amended to read:

138.056 (3) (a) A variable rate loan involving a mobile home transaction or using an approved index may be prepaid at any time in whole or in part without

insert  
F

**INSERTS TO INSERT ANAL:** ✓

**INSERT A:** ✓

(no P) a consumer credit mortgage loan transaction other than an open-end credit plan or reverse mortgage in which the consumer is a natural person, the loan is obtained by the consumer primarily for personal, family, or household purposes, the loan is secured by a mortgage on, or an equivalent security interest in, residential real property occupied or to be occupied by the consumer as the consumer's principal dwelling, and the terms of the loan provide any of the following:

(1) That the annual percentage rate at consummation will exceed, by more than eight percent for first-lien loans or by more than ten percent for subordinate-lien loans, the yield on specified U.S. Treasury securities.

(2) That the total points and fees payable by the consumer at or before the loan closing exceed the greater of eight percent of the total loan amount or \$400. (The \$400 amount is adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1).

(3) That the total points and fees payable by the consumer at or before the loan closing exceed six percent of the total loan amount.

**INSERT B:** ✓

(no P) based on the consumer's collateral without regard to the consumer's ability to repay, including the consumer's current or expected income, current obligations, and employment. A lender is presumed to violate this prohibition if the lender engages in a pattern or practice of making covered loans without verifying and documenting the consumer's repayment ability.

**INSERT C:** ✓

(9) With certain exceptions, no lender may finance through a covered loan, or finance to the same customer within 30 days of making a covered loan, any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance product on a prepaid single premium basis sold in conjunction with a covered loan.

(10) No lender may knowingly replace or consolidate a zero-interest rate or other subsidized low-rate loan made by a governmental or nonprofit lender with a covered loan within the first ten years of the zero-interest rate or other subsidized low-rate loan unless the current holder of the loan consents in writing to the refinancing.

**INSERT D:** ✓

(no P) The bill provides the following limitations on any otherwise permissible prepayment penalty:

(1) A prepayment penalty is permitted only during the 36 months immediately following the date of consummation of the covered loan.

(2) A lender may not include a prepayment penalty in a covered loan unless the lender offers the consumer the option of choosing a loan product without a prepayment penalty and the offer is in writing, is initialed by the consumer, and includes a prescribed notice to the consumer.

(3) A prepayment penalty is limited to a calculated amount for certain types of covered loans and is not permitted on other types of covered loans.

**INSERT E:** ✓

***Exclusive state regulation***

The bill provides that the state has sole authority, except as provided under federal law, to regulate any matter governed under the bill or under a rule promulgated pursuant to the bill, and prohibits local governmental units from attempting to regulate any matter governed by the bill.

***Debt collection***

With certain exceptions, the bill exempts specified personal property and household goods of the consumer from levy, execution, or sale in satisfaction of a judgment for an obligation arising from a covered loan.

**INSERT F:**

***Parity for federally insured depository institutions***

The bill provides that, if federal law preempts or prohibits the application of the provisions of the bill to any federally chartered bank, trust company, savings and loan association, savings bank, or credit union, the bill does not apply to the same type of state chartered bank, trust company, savings and loan association, savings bank, or credit union, or to any subsidiary thereof.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4170/2dn

ARG:./:....

*ARG*

**ATTN: Jonathan Klein**

The attached draft is identical to ASA1 to AB-792, except that an analysis is included and a change has been made at p. 7, line 11, to reflect the change to ASA1 to AB-792 made by LRBa2407.

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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4170/2dn  
ARG:kmg:jf

February 27, 2004

ATTN: Jonathan Klein

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