

**2003 DRAFTING REQUEST**

**Bill**

Received: **09/10/2003**

Received By: **rmarchan**

Wanted: **Soon**

Identical to LRB:

For: **Phil Montgomery (608) 266-5840**

By/Representing: **rose**

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

Drafter: **rmarchan**

May Contact:

Addl. Drafters:

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

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Montgomery@legis.state.wi.us**

Carbon copy (CC:) to: **robert.marchant@legis.state.wi.us**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Predatory lending

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**Instructions:**

See Attached

---

**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>
/?	rmarchan 09/12/2003	kgilfoy 09/25/2003		_____			
/P1	rmarchan 11/17/2003	kgilfoy 11/18/2003	pgreensl 09/26/2003	_____	sbasford 09/26/2003		State
/1			rschlue	_____	sbasford	sbasford	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			11/18/2003	_____	11/18/2003	01/28/2004	
				_____		sbasford	
				_____		01/28/2004	

FE Sent For: *at intro*  
*1/30*

<END>

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/1			rschlue	_____	sbasford		

*jacket  
for  
Assembly State  
per  
Rose*

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/?	rmarchan 09/12/2003	kgilfoy 09/25/2003					
/P1		1-11/18 King		pgreensl 09/26/2003		sbasford 09/26/2003	

Handwritten notes and signatures at the bottom of the page, including a large scribble and the initials "JF".

FE Sent For:

**<END>**

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1?	rmarchan	1/pt - 9/25 king	BP PS	9 BP PS			
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FE Sent For:

<END>

## Marchant, Robert

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**From:** Smyrski, Rose  
**Sent:** Wednesday, August 27, 2003 2:40 PM  
**To:** Marchant, Robert  
**Subject:** anotherlegislative request



WBA-Legislative  
intent of bill...

Rob

Attached is an outline of a proposal that is suppose to address the issue of predatory lending. Rep. Montgomery would like to have this drafted in legislation.

Once you have an opportunity to review this draft, I would like to meet with you and members of WBA (Bankers Association) to discuss and clarify intent.

It eases my burden , which is good since my time here is getting short while I'm getting bigger. :-)

Thanks Rob

Rose



## Definitions

For the purposes of this section, the following terms shall have the following meaning:

- (1) "Bridge loan" means temporary or short-term financing with a maturity of less than 18 months, which only requires payments of interest until such time as the entire unpaid balance is due and payable.
- (2) "Consumer" means a natural person to whom a Covered Loan is offered or extended, and does not include sureties, guarantors, co-signors or endorsers.
- (3) "Covered loan" means a consumer credit mortgage loan transaction, involving real property located within this State, that is subject to the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. § 1602 (aa)), and Section 226.32 of Title 12 of the Code of Federal Regulations, and the Official Staff Commentary to the regulations as each may be amended from time to time.
- (4) "Department" means the Wisconsin Department of Financial Institutions.
- (5) "Lender" means any person, other than an assignee, who in any twelve-month period originates one or more Covered Loans and who is the person to whom the Covered Loan is initially payable, either on the face of the note or contract, or by agreement when there is no contract, shall be deemed to be the Lender.
- (6) "Loan originator" has the meaning contained in section 224.71(1r).
- (7) "Mortgage banker" has the meaning contained in section 224.71(3).
- (8) "Mortgage broker" has the meaning contained in section 224.71(4).
- (9) "Municipality" has the meaning contained in section 67.01(5).
- (10) "Servicer" has the meaning contained in section 2605(i)(2) of the Real Estate Settlement Procedures Act of 1974, 12 USC 2601 et.seq., as amended from time to time.

## Limitations

- (1) Balloon Payment. A Covered Loan shall not provide for a payment schedule with any periodic payment that is more than twice as large as the average of earlier periodic payments, unless the balloon payment becomes due and payable not less than sixty (60) months after the date of the loan. This subsection does not apply

when the payment schedule is adjusted to account for seasonal or irregular income of the Consumer or if the purpose of the loan is a Bridge Loan connected with, or related to, the acquisition or construction of a dwelling to become the Consumer's principal dwelling.

- (2) Call Provision. A Covered Loan shall not contain a provision that permits the Lender, in its sole discretion, to accelerate the indebtedness. This subsection does not apply if repayment of the loan has been accelerated because of any of the following:
  - a. A default.
  - b. A due-on-sale provision.
  - c. A fraud or material misrepresentation by a Consumer in connection with the loan.
  - d. Any action or inaction by the Consumer that adversely affects the Lender's security for the loan or any rights of the Lender in the Security.
- (3) Negative Amortization. A Covered Loan shall not provide for a payment schedule with regular periodic payments that cause the principal balance to increase. This subsection does not prohibit negative amortization as a consequence of a temporary forbearance or restructure consented to by the Consumer.
- (4) Increased Interest Rate. A Covered Loan shall not provide for any increase in the interest rate as a result of default notwithstanding applicable law. This subsection does not apply to periodic interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan agreement, if the change in the interest rate is not occasioned by the event of default or permissible acceleration of the indebtedness.
- (5) Advance Payments. A Covered Loan shall not include any terms under which more than two scheduled payments required under the loan are paid in advance from the loan proceeds.
- (6) Prepayment Fees and Penalties.
  - a. Except as otherwise prohibited, a prepayment fee or penalty is permitted only during the first sixty (60) months after the date of consummation of a Covered Loan.
  - b. A prepayment fee or penalty shall not be charged on a refinancing of a Covered Loan if the Covered Loan being refinanced is owned by the

refinancing Lender at the time of the refinancing. This subsection b. does not apply to the servicer of the loan unless the servicer is also the owner.

- c. This subsection does not apply to Construction Loans. For the purposes of this subsection, "Construction Loan" means a short-term loan, not to exceed eighteen (18) months, for the sole purpose of building a residential dwelling where progress payments are made as construction progresses.

### **Restricted Acts and Practices**

- (1) Disclosure. A Lender shall not make a Covered Loan unless the Lender or a party authorized by the Lender has given the following disclosure to the Consumer not later than the time the disclosure is required under the disclosure provision contained in 12 CFR 226.31(c). The disclosure must be conspicuous and in writing.

#### **Disclosure to Borrower**

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

As a Consumer, you should shop around and compare loan rates and fees. You should also consider consulting a qualified independent credit counselor or other experienced financial advisor regarding the rate, fees and provisions of this mortgage loan before you proceed.

You are not required to complete this loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card debt or other debt. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home

and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Some Lenders may require you to escrow for these payments. However, not all Lenders provide escrow services for these payments. You should ask your Lender about these services.

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

(2) Repayment Ability.

- a. In making a Covered Loan, the Lender shall not engage in a pattern or practice of extending credit to a Consumer based on the Consumer's collateral, if considering the Consumer's current and expected income, current obligations, and employment status, the Consumer will be unable to make the scheduled payments to repay the obligation.
- b. Any expected income from any source other than the Consumer's equity in the property securing the Covered Loan, including regular salary or wages, gifts, expected retirement payments or income from self-employment can be considered. A lender may verify and document a Consumer's income and current obligations through any reliable source that provides the Lender with a reasonable basis for believing there are sufficient funds to support the Covered Loan. Reliable sources include, but are not limited to, credit reports, tax returns, pension statements and payment records for employment income.

(3) Refinancing of Existing Covered Loan. A Lender shall not within one year of having made a Covered Loan to a Consumer refinance such loan into another Covered Loan to the same Consumer, unless the refinancing is in the interest of the Consumer. An assignee holding or servicing a Covered Loan shall not, for the remainder of the one-year period following the date of the origination of the Covered Loan, refinance any Covered Loan with the same Consumer into another Covered Loan, unless the refinancing is in the Consumer's interest. A Lender shall not engage in acts or practices to evade this subsection, including a pattern or practice of arranging for the refinancing of its own Covered Loans by affiliates or unaffiliated creditors, or modifying a Covered Loan, whether or not the existing Covered Loan is satisfied and replaced by the new Covered Loan or not.

(4) Home Improvement Contracts. A Lender shall not pay a contractor under a home-improvement contract from the proceeds of a Covered Loan other than by an

instrument payable to the Consumer or jointly to the Consumer and the contractor or, at the election of the Consumer, through a third party escrow agent in accordance with the terms established in a written agreement signed by the Consumer, the Lender and the contractor prior to the disbursement of funds to the contractor.

- (5) Prohibition Against False Statements on Mortgage Documents. No Loan Originator, Mortgage Banker, Mortgage Broker or Lender shall knowingly make, propose, alter, or solicit fraudulent, false, or misleading statements on any mortgage document or on any document related to a mortgage, including but not limited to a mortgage application, real estate appraisal, residential real estate offer to purchase, or real estate settlement or closing document. For purposes of the subsection, "fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bone fide error.
- (6) Prohibition Against Recommending or Encouraging Default. No Loan Originator, Mortgage Banker, Mortgage Broker or Lender shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a Covered Loan that refinances all or any portion of such existing loan or debt.

#### **Municipalities**

- (1) Prohibitions; applicability. Municipalities of this State shall not enact or enforce an ordinance, resolution or rule relating to the lending activities of a person who is governed by this section.

#### **Safe Harbor**

A Lender in a Covered Loan who, when acting in good faith, fails to comply with this section, will not be deemed to have violated this section if the Lender establishes that within sixty (60) days of the discovery of the error and prior to the institution of any action under this section, the Consumer is notified of the compliance failure, and whatever adjustments are necessary are made to the loan to either make the Covered Loan satisfy the requirements of this section, or change the terms of the loan in a manner beneficial to the Consumer so that the loan will no longer be considered a Covered Loan subject the provisions of this section.

#### **Enforcement; applicability**

- (1) General Prohibition. A Loan Originator, Mortgage Banker, Mortgage Broker or Lender, as defined in this section, shall not find, negotiate, table fund or otherwise make a Covered Loan that violates any provision of this section.

- (2) Nonlicensed Mortgage Bankers and Brokers; prohibition. A Lender shall not pay compensation to, contract with or employ as an independent contractor a person who is acting as a Mortgage Banker or Mortgage Broker but who is not licensed under Chapter 224, unless such person is exempt from licensing thereunder.
- (3) Administrative authority. The Department may conduct examinations and investigations and issue subpoenas and orders to enforce this section as provided in this section.
- (4) Administrative penalties. If the Department determines that a person covered by this section has violated any provision of this section, the Department may do any of the following that it deems appropriate:
- a. Impose a civil penalty of up to \$1000 for each offense. In addition to this amount, if a person willfully or knowingly violates this section, the Department may impose a civil penalty of not less than \$1,000 and not more than \$10,000 for each offense. The Department may require the person to pay investigative costs, if any.
  - b. Suspend, revoke or refuse to renew any license issued by the Department.
  - c. Prohibit or permanently remove any individual responsible for violation of this section from working in his or her present capacity or in any other capacity related to activities regulated by the Department.
  - d. Order a person to cease and desist any violation of this section and to make restitution for actual damages to Consumers.
  - e. Impose such other conditions as the Department deems appropriate.

#### **Effective Date**

This section shall become effective the 1<sup>st</sup> day of the 10<sup>th</sup> month following the month of publication and shall only apply to loans originated after the effective date of this section, as to which applications were taken on or after the effective date.



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-3260/P1  
RJM:.....

*WOW*  
*9/12*

*Rund*  
*Chute*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*Gen. Cat.*

1 AN ACT *Gen. Cat.*; relating to: regulating certain consumer mortgage lenders, granting  
2 rule-making authority, and providing a penalty.

---

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

---

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

3 SECTION 1. 138.052 (2) (a) 2. of the statutes is amended to read:  
4 138.052 (2) (a) 2. The Except as provided in s. 428.203 (6), the parties may agree  
5 that if a prepayment is made within 5 years of the date of the loan, then the lender  
6 shall receive an amount not exceeding 60 days' interest at the contract rate on the  
7 amount by which the aggregate principal prepayments for a 12-month period  
8 exceeds 20% of the original amount of the loan.

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

9 SECTION 2. 138.056 (3) (a) of the statutes is amended to read:

1 138.056 (3) (a) A variable rate loan involving a mobile home transaction or  
 2 using an approved index may be prepaid at any time in whole or in part without  
 3 penalty. Other variable rate loans may be prepaid in whole or part without penalty  
 4 within 30 days after notice of an increase in the interest rate and, except as provided  
 5 in s. 428.203 (6), with the prepayment penalty under s. 138.052 (2) (a) 2. and 3. if  
 6 prepayment is made before or after the 30-day period. This paragraph controls if  
 7 there is a conflict with s. 138.052 (2) (a).

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

8 **SECTION 3.** 138.052 (9) of the statutes is amended to read:

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

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

13 **SECTION 4.** Subchapter II of chapter 428 [precedes 428.202] of the statutes is  
 14 created to read:

15 **CHAPTER 428**  
 16 **SUBCHAPTER II**  
 17 **PREDATORY LENDING** MORTGAGE

18 **428.202 Definitions.** In this subchapter:

19 (1) "Bridge loan" means a loan with a maturity of less than 18 months which  
 20 requires only payments of interest until the time <sup>that</sup> the unpaid balance is due ~~and~~  
 payable.

\*\*\*\*NOTE: Simplified.

21 (2) "Customer" means an individual to whom a covered loan is offered or made.

22 "Customer" does not include a surety, guarantor, <sup>co</sup>signor, or endorser.

Insert A

← Ins. 2-20 ← from p. 3.



Ins. 2-20

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

\*\*\*\*NOTE: Simplified by relying on a single cross-reference. The statutory cross-reference seemed to cover the same category of loans as the regulatory cross-reference. The reference to staff commentary is unnecessary because any relevant staff commentary will reflect an interpretation of the scope provision itself.

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

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

\*\*\*\*NOTE: Simplified.

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

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

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

11 (9) "Municipality" means a county, city, village, or town.

\*\*\*\*NOTE: Eliminated references to governmental bodies that appear to be irrelevant to the draft.

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

13 **428.203 Prohibitions on and requirements of creditors and assignees.**

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

of the

1 obtains for the purpose of facilitating the acquisition or construction of a dwelling as  
2 the customer's principal dwelling.

\*\*\*\*NOTE: Eliminated passive voice. Clarified. Filled in gaps consistent with my  
understanding of your intent.

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

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

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

10 (c) Fraud or material misrepresentation by the customer in connection with the  
11 loan.

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

\*\*\*\*NOTE: All of sub. (2) is spelled out more fully. Eliminated passive voice.

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

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

\*\*\*\*NOTE: Eliminated unnecessary language. Eliminated passive voice.

ⓑ

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

ⓑ

\*\*\*\*NOTE: Eliminated passive voice.

4 (6) REPAYMENT ABILITY. No lender may engage in a pattern or practice of making  
5 covered loans to customers who have collateral but who, considering their current  
6 and expected income, current obligations, and employment status, would be unable  
7 to make the scheduled payments under the loans. In assessing a customer's ability  
8 to make scheduled payments, a lender may consider any expected income of the  
9 customer from any source, together with information from the customer's credit  
10 reports, income tax returns, financial account statements, wage statements, and any  
11 other source which the lender is authorized to access and which may provide the  
12 lender with information concerning the customer's income and current obligations.

ⓑ

\*\*\*\*NOTE: Simplified and clarified.

13 (7) REFINANCING OF EXISTING COVERED LOAN. No lender may make a covered loan  
14 that refinances an existing covered loan that the lender made to the same customer,  
15 unless the refinancing takes place at least one year after the date on which the loan  
16 being refinanced was made or the refinancing is in the interest of the customer. No  
17 assignee or servicer of a covered loan may make a covered loan that refinances the  
18 covered loan, unless the refinancing takes place at least one year after the date on  
19 which the loan being refinanced was made or the refinancing is in the interest of the  
20 customer. No lender, assignee of a covered loan, or servicer may engage in a pattern  
21 or practice of arranging for the refinancing of covered loans by affiliates or  
22 unaffiliated creditors, modifying covered loans, or any other acts for the purpose of  
23 evading this subsection.

(3) \*\*\*\*NOTE: Simplified and clarified.

1 (8) PAYMENTS TO HOME IMPROVEMENT CONTRACTORS. No lender under a covered  
2 loan made to a customer may pay proceeds of the loan to a person who is under  
3 contract to complete a remodelling project with regard to an existing building affixed  
4 to real estate, unless the payment is made by an instrument that is payable to the  
5 customer or jointly to the customer and the person who is under contract or, with the  
6 consent of the customer, the payment is made through a 3rd party in accordance with  
7 a written agreement signed by the customer, the lender, and the person under  
8 contract.

(8) \*\*\*\*NOTE: Simplified and clarified. → UN

9 (9) ~~NO~~ REGISTERED MORTGAGE BANKERS AND BROKERS. No lender may contract  
10 with any person for the performance of duties in violation of s. 224.72 (1m).

\*\*\*\*NOTE: Corrected and simplified.

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

\*\*\*\*NOTE: Simplified and clarified. Eliminated unnecessary language.

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

\*\*\*\*NOTE: Simplified and clarified. (8)(1)

18 428.207 Prepayment. ~~UN~~ Except as provided in pars. (b) and (c), a customer  
19 may prepay a covered loan at any time without penalty if the payment is made in the  
20 context of a refinancing of the covered loan and if the covered loan is held by the  
21 refinancing lender.

subs. (2) and (3)

-7-  
Subsection (1)

(B) (2)

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

Subsection (1)

(B) (3)

4 Paragraph (a) does not prohibit a lender from imposing a prepayment  
5 penalty if the refinancing results in the customer obtaining a loan with a maturity  
6 of 18 months or less for the sole purpose of financing the construction of a residential  
7 dwelling, pursuant to which payments vary depending upon the progress of the  
8 construction.

Subsection (3)

\*\*\*\*NOTE: Clarified all of proposed s. 428.204. Eliminated language establishing the 60-month period. For standard loans, s. 138.052 (2) (a) 2. already specifies this time period. For variable loans, s. 138.056 (3) (a) governs. Paragraph (c) needs further review. It was unclear whether the intent was to allow prepayment penalties if the refinancing is to obtain a construction loan (that's how it's drafted) or if a construction loan is refinanced.

9 **428.208 Disclosure to customers.** At least three business days before  
10 making a covered loan to a customer, a lender shall ensure that the customer has  
11 been given the following notice, in writing and in at least 12-point type:

3

12 **DISCLOSURE TO BORROWER** ← Center, and change "Left Indent" to "0"

13 A.A. If you obtain this loan, the lender will have a mortgage on your home. You could  
14 lose your home and any money <sup>that</sup> you have put into it, if you do not meet your  
15 obligations under this loan. Mortgage loan rates and closing costs and fees vary  
16 based on many factors <sup>(1)</sup> including your particular credit and financial circumstances,  
17 your earnings history, your employment status, the loan-to-value ratio of the  
18 requested loan, and the type of property that will secure your loan. The loan rate and  
19 fees could also vary based on which lender you select.

20 B.AA As a consumer, you should shop around and compare loan rates and fees. You  
21 should also consider consulting a qualified independent credit counselor or other

1 experienced financial advisor<sup>e</sup> regarding the rate, fees, and provisions of this  
2 mortgage loan before you proceed.

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

11 <sup>D. AA</sup> Property taxes and homeowner's insurance are your responsibility. Some  
12 lenders may require you to escrow ~~money~~ ~~fixes~~ for these payments. However, not all lenders  
13 provide escrow services for these payments. You should ask your lender about these  
14 services.

15 <sup>E. AA</sup> Your payments on existing debts contribute to your credit ratings. You should  
16 not accept any advice to ignore your regular payments to your existing creditors.

17 **428.209 Municipal authority. (1) AUTHORITY LIMITED.** No municipality may  
18 enact an ordinance or adopt a resolution regulating a matter specifically governed  
19 by this subchapter or by a rule promulgated under this subchapter.

20 <sup>B</sup> (2) **RETROACTIVE EFFECT.** If a municipality has in effect on the effective date of  
21 this subsection .... [revisor inserts date], an ordinance or resolution that is  
22 inconsistent with sub. (1), the ordinance or resolution does not apply and may not be  
23 enforced.

\*\*\*\*NOTE: All of proposed s. 428.209 is reworded to more clearly express my  
understanding of your intent.

1

8

B

**422.210 Administration and penalties. (1) RULES.** The department may

2

promulgate rules for the administration of this subchapter.

\*\*\*\*NOTE: I added sub. (1). It seemed consistent with your intent.

3

(2) INSERT B

\*\*\*\*NOTE: Subsection (2) is significantly fleshed-out. It is based upon similar provisions in the consumer act (s. 426.106).

4

B

**(3) ENFORCEMENT AND PENALTIES.** (a) The department may serve a notice of a

5

hearing that complies with s. 227.44 (1) and (2) on a person if the department

6

reasonably suspects that the person has violated this subchapter. The department

7

may receive complaints alleging violations of this subchapter. A hearing conducted

8

pursuant to a notice under this paragraph shall be conducted in the manner specified

9

for a contested case, as defined in s. 227.01 (3), under ss. 227.44 to 227.50. Except as

10

provided in par. (d), if the person fails to appear at the hearing or if upon the record

11

made at the hearing the department finds that a violation has been established, the

12

department may issue and serve on the person an order specifying any of the

13

following:

must

14

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

15

16

2. That the person 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

17

18

\$10,000 per violation.

must

19

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

20

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

21

*who is* *must*

1 5. That any individual responsible for the violation be removed from working  
2 in any capacity related to the violation or related to activities regulated by the  
3 department.

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

\*\*\*\*NOTE: This entire paragraph is more fully expressed in order to ensure that persons alleged to have violated the subchapter receive due process of law.

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

*of financial institutions*

7 (c) The department of justice, at the request of the department, may bring an  
8 action to enforce an order issued under par. (a).

\*\*\*\*NOTE: This paragraph (c) is added to ensure that someone is authorized to go into court to enforce DFI's orders under this subsection.

9 (d) It is a defense to any alleged violation of this subchapter if the person alleged  
10 to have committed the violation establishes all of the following:

11 1. That the person acted in good faith while committing the violation.

12 2. That, no later than 60 days after <sup>the</sup> discovery of the violation and before any  
13 investigation or other enforcement action by the department under this section, the  
14 person notified the affected customer of the violation and either made appropriate  
15 adjustments to the loan to bring the loan into compliance with this subchapter or  
16 changed the terms of the loan in a manner beneficial to the customer so that the loan  
17 is no longer a covered loan.

\*\*\*\*NOTE: This paragraph (d) is clarified.

18 **SECTION 5. Initial applicability.**

19 (1) This act first applies to loans for which applications are received by <sup>(the)</sup>  
20 lender on the effective date of this subsection. →

*as defined in section 428.202 (5) of the statutes, as created by this act*

21 **SECTION 6. Effective date.**

*a*





BILL

INSERT A

1 422.411 (2m) (intro.) ~~A Except as provided under s. 428.203 (16), a lender~~  
2 licensed under s. 138.09 may contract for the customer's payment of reasonable  
3 attorney fees actually incurred by the licensed lender to foreclose a mortgage or  
4 equivalent security interest in residential real property, but the customer is liable for  
5 attorney fees only if all of the following conditions are satisfied:

6 SECTION 9. Chapter 428 (title) of the statutes is amended to read:

7 FIRST LIEN REAL ESTATE AND

move  
down

~~HIGH COST MORTGAGE LOANS~~

OTHER

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

11 CHAPTER 428

12 SUBCHAPTER I

13 FIRST LIEN REAL ESTATE LOANS

14 SECTION 11. 428.101 (intro.) of the statutes is amended to read:

15 428.101 Applicability. (intro.) This ~~chapter~~ subchapter applies to:

16 SECTION 12. 428.101 (3) of the statutes is amended to read:

17 428.101 (3) Loans made on or after November 1, 1981, by a creditor to a  
18 customer and which are secured by a first lien real estate mortgage or equivalent  
19 security interest if the amount financed is \$25,000 or less and if the loan is not subject  
20 to subch. II.

21 SECTION 13. 428.102 (intro.) of the statutes is amended to read:

22 428.102 Definitions. (intro.) In this ~~chapter~~ subchapter:

23 SECTION 14. 428.102 (2) of the statutes is amended to read:

24 428.102 (2) "Creditor" means a person who regularly engages in, arranges for  
25 or procures from 3rd persons, loans within the scope of this ~~chapter~~ subchapter.

CHAPTER 428

## BILL

1           **SECTION 15.** 428.103 (1) (intro.) of the statutes is amended to read:

2           428.103 (1) (intro.) The following limitations shall apply to all loans subject to  
3 this ~~chapter~~ <sup>✓</sup>subchapter:

4           **SECTION 16.** 428.106 of the statutes is amended to read:

5           **428.106 Remedies.** (1) Violations of this ~~chapter~~ subchapter may be enforced  
6 by a customer subject to this section and ss. 425.308 to 425.311.

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

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

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

**BILL**

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

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

**SUBCHAPTER II****HIGH COST MORTGAGE LOANS**

12           **428.202 Definitions.** In this subchapter:

13           (1) "Affiliate" means a person that controls, is controlled by, or is under common  
14 control with another person.

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

17           (3) "Customer" means a person other than an organization who seeks or  
18 acquires a high cost mortgage loan for personal, family, household, or agricultural  
19 purposes.

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

21           (5) "High cost mortgage loan" means a loan made by a creditor to a customer,  
22 which is secured by a real estate mortgage or equivalent security interest and which  
23 satisfies any of the following:

24           (a) If the loan is secured by a first lien real estate mortgage or equivalent  
25 security interest, the annual percentage rate of interest charged under the loan

*(end in)*

BILL

INSERT B ✓

1 of one of the parties to the action, shall amend its order to provide that all principal  
2 officers and agents of the business entity who knew, should have known of, or  
3 knowingly participated in the violation, as determined by the court, are jointly and  
4 severally liable for the forfeiture, penalty, or award.

5 **428.209 Administration and civil penalty. (1) RULES.** The department may  
6 promulgate rules for the administration of this subchapter. The department shall  
7 promulgate a rule under which the department annually adjusts the amount  
8 specified in s. 428.202 (5) (c) and publishes the adjusted amount in the Wisconsin  
9 administrative register. The annual adjustment shall be based upon the change in  
10 the consumer price index, all items, U.S. city average, over the preceding 12-month  
11 period as determined by the bureau of labor statistics of the U.S. department of labor.  
12 The department shall promulgate a rule pursuant to which the department approves  
13 counselors for purposes of the notice under s. 428.204 (2).

14 **(2) REVIEW OF ACT, PRACTICE, PROCEDURE, OR FORM.** Upon the request of any  
15 person, the department shall review any act, practice, procedure, or form that has  
16 been submitted to the department in writing to determine whether the act, practice,  
17 procedure, or form is consistent with this subchapter.

18 **(3) INVESTIGATIONS.** (a) At any time that the department has reason to believe  
19 that a person has engaged in or is about to engage in an act that violates this  
20 subchapter, the department may investigate. In performing an investigation under  
21 this paragraph, the department may administer oaths or affirmations, subpoena  
22 witnesses, compel their attendance, adduce evidence, and require the production of  
23 any matter, including the existence, description, nature, custody, condition, and  
24 location of any books, documents, or other tangible things, and the identity and  
25 location of persons having knowledge of relevant facts, or any other matter

**BILL**

1 reasonably calculated to lead to the discovery of admissible evidence. The  
2 department may access and examine such books, documents, or other tangible  
3 things. In any civil action brought on behalf of the department based on evidence  
4 obtained in such an investigation, the department may recover the costs of  
5 performing the investigation if the department prevails in the action.

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

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

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

*of financial institutions*

20 ~~(4) ENFORCEMENT AND CIVIL PENALTY. (a) The department may serve a notice  
21 of a hearing that complies with s. 227.44 (1) and (2) on a person if the department  
22 reasonably suspects that the person has violated this subchapter. The department  
23 may receive complaints alleging violations of this subchapter. A hearing conducted  
24 pursuant to a notice under this paragraph shall be conducted in the manner specified  
25 for a contested case, as defined in s. 227.01 (3), under ss. 227.44 to 227.50. If the~~

*(end ins)*

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

LRB-32607dn

RJM:/::...

RP  
King

Representative Montgomery:

Attached is the draft that you requested concerning predatory lending. The draft is in preliminary form for your review, with many notes highlighting changes I made to the submitted language. Please feel free to call if you have any questions concerning the draft. Also, please note that many provisions in this draft may be preempted by federal law from applying to nationally chartered financial institutions and state financial institutions that are federally insured. If you would like me to investigate the preemption issue further, so that I can provide you with more detailed information, please let me know. that

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: robert.marchant@legis.state.wi.us

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

LRB-3260/P1dn  
RJM:kmg:pg

September 26, 2003

Representative Montgomery:

Attached is the draft that you requested concerning predatory lending. The draft is in preliminary form for your review, with many notes highlighting changes that I made to the submitted language. Please feel free to call if you have any questions concerning the draft. Also, please note that many provisions in this draft may be preempted by federal law from applying to nationally chartered financial institutions and state financial institutions that are federally insured. If you would like me to investigate the preemption issue further so that I can provide you with more detailed information, please let me know.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: robert.marchant@legis.state.wi.us



① X-ref should be to 428.207, not 203

~~② Def. of licensed driver. 5138.01~~

③ Delete conveyance of assignment on pg. 5, line 20

④ employment status at time of application - Page make clear that sub (6) is based on car at the time of application.  
(page 7)

⑤ Exempt bridge loans from sub (7) on pg 7

⑥ Define licensed lender + add to lender list - license no. + license holder is listed

⑦ Page 8, line 13 - knowingly contract

⑧ Page 9, line 8 - delete sub. (3) + x-refs to it

⑨ Define homes by as consistent w/ def. in <sup>CR</sup> 226.31(c) at page 9, line 13.

⑩ Elongate point size requirement. Do clear + consistent.

⑪ move (5) on page 13 a sub. (4) SAFE HARBOR

⑫ Page 8, lines 7+8 - see memo-up

SOON

Pen NR

DNOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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.

INS ANALYSIS

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a later version.

**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: 428.207 ✓  
 8 138.052 (2) (a) 2. ~~The Except as provided in s. 428.203(1b).~~ 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

1 amount by which the aggregate principal prepayments for a 12-month period  
2 exceeds 20% of the original amount of the loan.

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

4 138.052 (9) Chapters 421 to ~~428~~ 427 and subch. I of ch. 428 do not apply to the  
5 refinancing, modification, extension, renewal or assumption of a loan which had an  
6 original principal balance in excess of \$25,000 if the unpaid principal balance of the  
7 loan has been reduced to \$25,000 or less.

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

9 138.056 (3) (a) A variable rate loan involving a mobile home transaction or  
10 using an approved index may be prepaid at any time in whole or in part without  
11 penalty. Other variable rate loans may be prepaid in whole or part without penalty  
12 within 30 days after notice of an increase in the interest rate and, except as provided  
13 in s. ~~428.203 (6)~~ <sup>428.207</sup> with the prepayment penalty under s. 138.052 (2) (a) 2. and 3. if  
14 prepayment is made before or after the 30-day period. This paragraph controls if  
15 there is a conflict with s. 138.052 (2) (a).

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

17 CHAPTER 428

18 FIRST LIEN REAL ESTATE

19 AND OTHER MORTGAGE LOANS

20 SECTION 5. Subchapter I (title) of chapter 428 [precedes 428.101] of the statutes  
21 is created to read:

22 CHAPTER 428

23 SUBCHAPTER I

24 FIRST LIEN REAL ESTATE LOANS

25 SECTION 6. 428.101 (intro.) of the statutes is amended to read:

1           **428.101 Applicability.** (intro.) This ~~chapter~~ subchapter applies to:

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

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

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

8           **428.102 Definitions.** (intro.) In this ~~chapter~~ subchapter:

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

10          428.102 (2) "Creditor" means a person who regularly engages in, arranges for  
11 or procures from 3rd persons, loans within the scope of this ~~chapter~~ subchapter.

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

13          428.103 (1) (intro.) The following limitations shall apply to all loans subject to  
14 this ~~chapter~~ subchapter:

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

16          **428.106 Remedies. (1)** Violations of this ~~chapter~~ subchapter may be enforced  
17 by a customer subject to this section and ss. 425.308 to 425.311.

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



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

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

\*\*\*\*NOTE: Simplified.

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

\*\*\*\*NOTE: Simplified by relying on a single cross-reference. The statutory cross-reference seemed to cover the same category of loans as the regulatory cross-reference. The reference to staff commentary is unnecessary because any relevant staff commentary will reflect an interpretation of the scope of the provision itself.

5 (3) "Customer" means an individual to whom a covered loan is offered or made.

6 "Customer" does not include a surety, guarantor, cosign<sup>e</sup>r, or endorser.

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

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

\*\*\*\*NOTE: Simplified.

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

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

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

15 (9) "Municipality" means a county, city, village, or town.

\*\*\*\*NOTE: Eliminated references to governmental bodies that appear to be irrelevant to the draft.

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

17 **428.203 Prohibitions on and requirements of ~~creditors~~ and assignees.**

18 (1) BALLOON PAYMENTS. Except as otherwise provided in this subsection, no lender  
19 may make a covered loan to a customer that requires, or that permits the lender  
20 ~~an assignee of the loan~~ to require, a payment that is more than twice as large as the

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

1 average of all earlier scheduled payments, unless the payment becomes due at least  
2 60 months after the date on which the loan is made. This subsection does not apply  
3 to a loan under which the payment schedule is adjusted to account for seasonal or  
4 irregular income of the customer or to a bridge loan that the customer obtains for the  
5 purpose of facilitating the acquisition or construction of a dwelling as the customer's  
6 principal dwelling.

\*\*\*\*NOTE: Eliminated passive voice. Clarified. Filled in gaps consistent with my understanding of your intent.

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

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

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

14 (c) Fraud or material misrepresentation by the customer in connection with the  
15 loan.

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

\*\*\*\*NOTE: All of sub. (2) is spelled out more fully. Eliminated passive voice.

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

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

\*\*\*\*NOTE: Eliminated unnecessary language. Eliminated passive voice.

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

\*\*\*\*NOTE: Eliminated passive voice.

at the time of  
application

7           (6) REPAYMENT ABILITY. No lender may engage in a pattern or practice of making  
8 covered loans to customers who have collateral but who, considering their current  
9 and expected income, current obligations, and employment status, would be unable  
10 to make the scheduled payments under the loans. In assessing a customer's ability  
11 to make scheduled payments, a lender may consider any expected income of the  
12 customer from any source, together with information from the customer's credit  
13 reports, income tax returns, financial account statements, wage statements, and any  
14 other source which the lender is authorized to access and which may provide the  
15 lender with information concerning the customer's income and current obligations.

\*\*\*\*NOTE: Simplified and clarified.

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



*make improvements to an existing dwelling*

1 customer. No lender, assignee of a covered loan, or servicer may engage in a pattern  
2 or practice of arranging for the refinancing of covered loans by affiliates or  
3 unaffiliated creditors, modifying covered loans, or any other acts for the purpose of  
4 evading this subsection. *This subsection does not apply to bridge loans.*

*\*\*\*\*NOTE: Simplified and clarified.*

5 (8) PAYMENTS TO HOME IMPROVEMENT CONTRACTORS. No lender under a covered  
6 loan made to a customer may pay proceeds of the loan to a person who is under  
7 ~~contract to complete a remodeling project with regard to an existing building affixed~~  
8 ~~to real estate~~ unless the payment is made by an instrument that is payable to the  
9 customer or jointly to the customer and the person who is under contract or, with the  
10 consent of the customer, the payment is made through a 3rd party in accordance with  
11 a written agreement signed by the customer, the lender, and the person under  
12 contract.

*\*\*\*\*NOTE: Simplified and clarified.*

*Knowingly*

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

*\*\*\*\*NOTE: Corrected and simplified.*

*licensed lender*

15 **428.204 False statements.** No lender, ~~loan~~ originator, mortgage banker, or  
16 mortgage broker may knowingly make, propose, or solicit fraudulent, false, or  
17 misleading statements on any document relating to a covered loan.

*\*\*\*\*NOTE: Simplified and clarified. Eliminated unnecessary language.*

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

*\*\*\*\*NOTE: Simplified and clarified.*

1           **428.207 Prepayment.** (1) Except as provided in <sup>Sub.</sup> ~~subs~~ (2) ~~and (3)~~, a customer  
2 may prepay a covered loan at any time without penalty if the payment is made in the  
3 context of a refinancing of the covered loan and if the covered loan is held by the  
4 refinancing lender.

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

8           (3) Subsection (1) does not prohibit a lender from imposing a prepayment  
9 penalty if the refinancing results in the customer obtaining a loan with a maturity  
10 of 18 months or less for the sole purpose of financing the construction of a residential  
11 dwelling, pursuant to which payments vary depending upon the progress of the  
12 construction.

\*\*\*\*NOTE: Clarified all of proposed s. 428.204. Eliminated language establishing the 60-month period. For standard loans, s. 138.052 (2) (a) 2. already specifies this time period. For variable loans, s. 138.056 (3) (a) governs. Subsection (3) needs further review. It was unclear whether the intent was to allow prepayment penalties if the refinancing is to obtain a construction loan (that's how it's drafted) or if a construction loan is refinanced.

13           **428.208 Disclosure to customers.** At least 3 business days before making  
14 a covered loan to a customer, a lender shall ensure that the customer has been given  
15 the following notice, in writing and in ~~at least 12-point type:~~ <sup>a clear and conspicuous</sup>  
16 <sup>format</sup>

DISCLOSURE TO BORROWER

17           A. If you obtain this loan, the lender will have a mortgage on your home. You  
18 could lose your home and any money that you have put into it if you do not meet your  
19 obligations under this loan. Mortgage loan rates and closing costs and fees vary  
20 based on many factors, including your particular credit and financial circumstances,  
21 your earnings history, your employment status, the loan-to-value ratio of the

1 requested loan, and the type of property that will secure your loan. The loan rate and  
2 fees could also vary based on which lender you select.

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

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

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

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

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

1 (2) RETROACTIVE EFFECT. If a municipality has in effect on the effective date of  
2 this subsection ... [revisor inserts date], an ordinance or resolution that is  
3 inconsistent with sub. (1), the ordinance or resolution does not apply and may not be  
4 enforced.

\*\*\*\*NOTE: All of proposed s. 428.209 is reworded to more clearly express my understanding of your intent.

↓  
Ⓟ  
428.210

5 ~~428.210~~ Administration and penalties. (1) RULES. The department may promulgate rules for the administration of this subchapter.

\*\*\*\*NOTE: I added sub. (1). It seemed consistent with your intent.

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

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

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

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

\*\*\*\*NOTE: Subsection (2) is significantly fleshed-out. It is based upon similar provisions in the consumer act (s. 426.106).

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

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

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

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

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

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

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

\*\*\*\*NOTE: This entire paragraph is more fully expressed in order to ensure that persons alleged to have violated the subchapter receive due process of law.

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

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

\*\*\*\*NOTE: This paragraph (c) is added to ensure that someone is authorized to go into court to enforce DFI's orders under this subsection.

15          (d) It is a defense to any alleged violation of this subchapter if the person alleged  
16 to have committed the violation establishes all of the following:

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

18          (b) That, no later than 60 days after the discovery of the violation and before any  
19 investigation or other enforcement action by the department under this section, the  
20 person notified the affected customer of the violation and either made appropriate  
21 adjustments to the loan to bring the loan into compliance with this subchapter or

(B) (C5)  
(4) SAFE HARBOR.

1 changed the terms of the loan in a manner beneficial to the customer so that the loan  
2 is no longer a covered loan.

3 **\*\*\*\*NOTE: This paragraph (d) is clarified.**

3 **SECTION 13. Initial applicability.**

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

7 **SECTION 14. Effective date.**

8 (1) This act takes effect on the first day of the 10th month beginning after  
9 publication.

10

(END)

INSERT ANALYSIS

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 2) percent for first-lien loans, or by more than 3) percent for subordinate-lien loans, the yield on specified U.S. Treasury securities; or 4) The total points and fees payable by the consumer at or before loan closing will exceed the greater of 5) 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).

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 on lenders:

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

4) (D) 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) (E) No lender may make a covered loan that includes a payment schedule that consolidates more than 2 scheduled payments and pays them in advance out of the proceeds of the loan.

6) (F) 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

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eight

eight

of

loan

TWO



income, current obligations, and employment status, would be unable at the time of application to make the scheduled payments under the loans.

7

(G) 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

(H) 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 payment is made through a 3rd party in accordance with a written agreement signed by the consumer, the lender, and the person under contract.

9

(I) 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

(J) 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, 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.

third (DFI)

11

(K) 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 3 business days before the lender makes the applicable covered loan.

**Municipal authority**

three

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.

DFI

**Administration and penalties**

The bill allows ~~the department of financial institutions~~ 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 ~~the department~~ finds that a violation has been established, ~~the department~~ may issue an order specifying any of the following:

- ① (A) That the person must cease and desist from the violation or practice and make restitution for any actual damages suffered by a consumer.
- ② (B) 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 (C) That the person must pay to ~~the department~~ the costs of its investigation.
- ④ (D) That a license, registration, or certification issued by ~~the department~~ to the person is suspended or revoked or will not be renewed.
- ⑤ (E) 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 ~~the department~~.
- ⑥ (F) Any additional conditions that ~~the department~~ 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 ~~the department~~, 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.

DFI

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

LRB-3260/1dn

RJM:jjy...

*King*

Representative Montgomery:

Attached is a redraft of the predatory mortgage lending draft. This redraft includes a few nonsubstantive changes and makes substantive changes with regard to the following proposed sections: 428.202 (1m) and (5m); 428.203 (1), (6), (7), (8), and (9); 428.204; 428.206; 428.207; 428.208 (intro.) As you review the draft, please feel free to call if you have any questions.

*and*

Robert J. Marchant  
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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3260/1dn  
RJM:kmg:rs

November 18, 2003

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