

2003 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB792)

Received: 02/16/2004

Received By: agary

Wanted: Soon

Identical to LRB:

For: Phil Montgomery (608) 266-5840

By/Representing: Rose (aide)

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Fin. Inst. - int. rates/loans

Extra Copies:

Submit via email: YES

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

Carbon copy (CC:) to: Rose.Smyrski@legis.state.wi.us
Nicholas.Zavos@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

consumer mortgage lenders; predatory lending

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>
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	agary 02/18/2004	kgilfoy 02/18/2004		_____			
/P1			jfrantze	_____	lemery		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			02/19/2004 _____		02/19/2004		
/1	agary 02/24/2004	kgilfoy 02/24/2004	rschluet 02/24/2004 _____		sbasford 02/24/2004	sbasford 02/24/2004	
/2	agary 02/24/2004	wjackson 02/24/2004	jfrantze 02/24/2004 _____		lnorthro 02/24/2004	lnorthro 02/24/2004	

FE Sent For:

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	agary 02/18/2004	kgilfoy 02/18/2004		_____			
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FE Sent For:

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Proposed Changes to AB 792 Recommended by the
WISCONSIN FINANCIAL SERVICES ASSOCIATION

*point language
→ Dargel hand
request.*



At page 7, line 14, strike "PREDATORY MORTGAGE LENDING" and insert "RESPONSIBLE HIGH COST MORTGAGE LENDING"

Rationale: The purpose of this subsection is to provide additional consumer protections to individuals applying for a high cost home loan. A significant segment of the marketplace benefits may benefit from a high cost subprime loan, and therefore should be permitted to obtain such a loan. Naming this subsection "Predatory Mortgage Lending", and the negative connotations which it implies, is counter to the intent of the subchapter. The WFSA does not believe it is the intent of the Wisconsin General Assembly to prohibit the origination of some types of subprime loans, but to provide additional protections to consumers. Renaming this subchapter clarifies this intent.

2. At page 7, line 20 and 21 strike the existing definition of "covered loan" and insert:

(2) "Covered loan" means a consumer credit mortgage loan transaction other than an open-end credit plan or a reverse mortgage in which:

- i. The borrower is a natural person;
- ii. The debt is incurred by the customer primarily for personal, family, or household purposes;
- iii. The loan is secured by a mortgage on residential real property or by collateral that has a mortgage lien interest in residential real property, and the residential real property is or will be occupied by the customer as the customer's principal dwelling; and
- iv. The terms of the loan provide:

(A) That the loan transaction, including a residential mortgage transaction (as defined in 12 CFR 226.2(a)(24)) at the time the loan is consummated is considered a mortgage under section 152 of the Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, 15 U.S.C. 1602 (aa) and regulations adopted by the Federal Reserve Board, including 12 CFR 226.32; or

(B) For total points and fees payable by the borrower at or before the loan closing, exceed six percent (6%) of the total loan amount, the definition of points and fees does not include reasonable fees paid to affiliates of the lender for bona-fide services listed in 12 CFR 226.4(c)(7).

Reg 7 (Res) purchase money mortgage should be excluded.

→ added to include - Cal more loans than fed. included.

Rationale: The new definition for covered loan clarifies that the loans covered under this subchapter are closed-end real estate loans. Furthermore, this amendment will bring more real-estate loans under the designation of "covered loans" by establishing a point and fee trigger 6% of the total loan amount – significantly lower than federal

law. The new definition clarifies that reasonable fees paid to an affiliate of the lender are not included in the definition of points and fees.

3. At Page 9, line 20 strike all after the word "loans" on line 20 through line 2 on page 10 and insert:

A lender who originates a covered loan may not extend credit to a customer based on the customer's collateral without regard to the customer's ability to repay, including the customer's current or expected income, current obligations, and employment. A lender will be presumed to have violated this subsection if the lender makes a covered loan without verifying or documenting the customer's repayment ability. Any expected income from any source other than the customer's equity in the property securing the covered loan, including regular salary or wages, gifts, expected retirement payments, or income from self employment may be considered when evaluating the customer's ability to repay. A lender may verify and document a customer'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. In the case of a loan based on the borrower's statement of the borrower's income, the reasonable basis for believing there are sufficient funds to support the covered loan may be the income stated by the consumer, as well as other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in connection with loans of that type. A lender may not knowingly or willfully originate a covered loan as a loan based on the borrower's statement of the borrower's income with the intent to evade this subsection.

Rationale: This section improves upon the repayment ability section of the bill by providing the lender clear directions as to how they should determine a customer's ability to repay a covered loan.

4. At Page 11, lines 12 through 14, subsection (2) of the prepayment section and insert:

(2) Subsection (1) does not prohibit the servicer of a covered loan from imposing a prepayment penalty, unless the servicer is also the lender and holds the loan at the time of the refinancing. Furthermore, prepayment fees are subject to the following limitations:

- i. A prepayment fee or penalty is permitted only during the first thirty-six (36) months after the date of execution of a covered loan.
- ii. A lender may not include a prepayment penalty fee in a covered loan unless the lender offers the customer the option of choosing a loan product without a prepayment fee. The terms of the offer must be in writing and initialed by the borrower. The offer must be ~~clearly labeled in large bold type~~ and must include the following disclosure:

clear & conspicuous format (pg 11 line 17) OK / tom

*Loan
Items to
include
in green -
Questions
call me
Gae
Thanks!*

LOAN PRODUCT CHOICE

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

- iii. A prepayment fee or penalty may 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.
- iv. A prepayment fee or penalty may not exceed 60 days interest at the contract rate on the amount prepaid on fixed rate real estate loans over \$25,000 where the borrower prepays more than 20% of the original loan amount within 36 months after the date of execution of a covered loan.
- v. A prepayment fee or penalty may not be collected on fixed rate covered loans of \$25,000 or less or on adjustable rate loans.

Rationale: This revised subchapter provides additional protections to borrowers by limiting the time period during which a prepayment penalty can be charged to the first three years of the loan. Also, this subchapter requires the lender to give the borrower a choice between the mortgage loan with or without a prepayment penalty. This subchapter requires an additional disclosure to the consumer alerting him/her to the prepayment penalty options available. This subsection places limitations on the amount a lender can charge on a prepayment penalty.

5. On Page 11, line 3 insert the following:

SINGLE PREMIUM CREDIT INSURANCE PRODUCTS. A lender may not finance, directly or indirectly, into a covered loan or finance to the same customer within thirty (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. Any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance premium calculated and paid on a monthly or other periodic basis may not be considered financed by the lender. This prohibition does not include contracts issued by a government agency or private mortgage insurance company to insure the lender against loss caused by a customer's default.

Rationale: This provision prohibits a lender from offering a customer a covered loan, which contains a single premium credit insurance product. Consumer activists have long considered this practice among the abusive lending practices engaged by predatory lenders. This provision strengthens the bill by prohibiting this practice.

6. On Page 11, line 3 insert the following:

Refinancing of zero interest loans. A lender may not knowingly or intentionally replace or consolidate a zero (0) interest rate or other subsidized low rate loan made by a governmental or nonprofit lender with a covered loan within the first ten (10) years of the subsidized low rate loan unless the current holder of the loan consents in writing to the refinancing. For purposes of this subsection, a "subsidized low rate loan" is a loan that carries a current interest rate at least two (2) percentage points below the current yield on treasury securities with a comparable maturity. If the loan's current interest rate is either a

discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped up rate, as appropriate, should be used instead of the current rate to determine whether a loan is a subsidized low rate loan.

Rationale: This provision protects customers by prohibiting a lender from refinancing a "Habitat for Humanity" or other subsidized loan product a covered loan.

7. On Page 8, line 9, strike the definition of "municipality" and insert:

(9) "Political subdivision" means a municipality, school district, public library, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, special taxing district, or any other type of local governmental corporate entity.

On Page 12 strike all between line 20 and line 2 on Page 13 and insert:

State Power to Regulate Lending. (1) The state solely shall regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in Wisconsin and the manner in which any business is conducted. This regulation preempts all other regulation of these activities by any political subdivision.

(2) Political subdivisions may not:

(A) Enact, issue, or enforce ordinances, resolutions, regulations, orders, requests for proposals, or requests for bids pertaining to financial or lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a municipality that are based upon lending terms or practices; or

(B) Impose reporting requirements or any other obligations upon persons regarding financial services or lending practices or upon subsidiaries or affiliates that:

- (i) Are subject to the jurisdiction of the department of financial institutions;
- (ii) Are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;
- (iii) Are chartered by the United States Congress to engage in secondary market mortgage transactions;
- (iv) Are created by the Indiana housing finance authority; or
- (v) Originate, purchase, sell, assign, securitize, or service property interests or obligations created by financial transactions or loans made, executed, originated, or purchased by persons referred to in clauses (i), (ii), (iii), or (iv).

Rationale: This section clarifies the state's role in regulating the mortgage lending industry.

PARITY FOR FEDERALLY INSURED DEPOSITORY INSTITUTIONS. --The bill shall not apply to any bank, trust company, savings and loan, savings bank, credit union, or subsidiary thereof, respectively, that is chartered under the laws of this state or any other state only to the extent federal law precludes or preempts or has been determined to preclude or preempt the application of the provisions of this act to any federally chartered bank, trust company, savings and loan, savings bank, or credit union, respectively, and such federal preclusion or preemption shall apply only to the same type of state chartered entity as the federally chartered entity affected.

Needed
2/19
end of day

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Assembly Substitute Amendment,

To **2003 ASSEMBLY BILL 792**

February 2, 2004 - Introduced by Representative MONTGOMERY cosponsored by Senator SCHULTZ. Referred to Committee on Financial Institutions.

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.

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.

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:

7 **CHAPTER 428**

8 **FIRST LIEN REAL ESTATE**

9 **AND OTHER MORTGAGE LOANS**

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

12 **CHAPTER 428**

13 **SUBCHAPTER I**

14 **FIRST LIEN REAL ESTATE LOANS**

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:

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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

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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

RESPONSIBLE HIGH COST SUBCHAPTER II

~~PREDATORY~~ **MORTGAGE LENDING**

hand return
→ []

14 (14)

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.

*insert
7-20*

20 (20)

(2) "Covered loan" means ~~a transaction that involves real property located in~~

21 (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.

ASSEMBLY BILL 792

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.

Insert
s-6

9
Don't
remember

ASSEMBLY BILL 792

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

✓
Insert
9-20

ASSEMBLY BILL 792

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

ASSEMBLY BILL 792

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. *This*

12 *(no R)* 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* ^{and} holds the loan at the
14 time of the refinancing.

*hsl
11-14*

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:

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.

ASSEMBLY BILL 792

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.

^(B) Exclusive state regulation

20 ~~428.209 Municipal authority. 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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12-22-04

ASSEMBLY BILL 792

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,

ASSEMBLY BILL 792

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.

ASSEMBLY BILL 792

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

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

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

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

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

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

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

18 **SECTION 13. Initial applicability.**

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

22 **SECTION 14. Effective date.**

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

25 **(END)**

Insert
15-17
→

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0358/Plins
ARG:.....

INSERT 7-20: ✓

No 8 a consumer credit mortgage loan transaction other than an open-end credit plan or reverse mortgage in which all of the following apply:

(a) The customer is a natural person.

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

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

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

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

2. That total points and fees payable by the customer at or before the loan closing exceed 6 percent of the total loan amount. For purposes of this subdivision, "total points and fees" does not include reasonable fees paid to affiliates of the lender for bona fide services listed in 12 CFR 226.4 (c) (7).

INSERT 8-6: ✓

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

INSERT 9-20: ✓

No 8 A lender who originates a covered loan may not extend credit to a customer based on the customer's collateral without regard to the customer's ability to repay, including the customer's current or expected income, current obligations, and

employment. A lender is presumed to have violated this subsection if the lender makes a covered loan without verifying or documenting the customer's repayment ability. Any expected income from any source other than the customer's equity in the property securing the covered loan, including regular salary or wages, gifts, expected retirement payments, or income from self-employment, may be considered when evaluating the customer's ability to repay. A lender may verify and document a customer'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, which reliable sources may include credit reports, tax returns, pension statements, payment records for employment income and, in the case of a loan based on the customer's statement of the customer's income, the income stated by the customer along with information in the possession of the person originating the loan that is customarily solicited in connection with loans of that type. A lender may not, with the intent to evade this subsection, knowingly originate a covered loan based on a customer's statement of income that is inconsistent with those reliable sources used by the lender to verify and document the customer's income.

INSERT 10-20: ✓

(8g) SINGLE PREMIUM CREDIT INSURANCE PRODUCTS. A lender may not finance, directly or indirectly, 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. This prohibition does not include contracts issued by a government agency or private mortgage insurance company to insure the lender against loss caused by a customer's default and does not apply to individual or group credit life, credit accident and health, credit

disability, or credit unemployment insurance premium calculated and paid on a monthly or other periodic basis.

(8m) REFINANCING OF SUBSIDIZED LOW-RATE LOANS. (a) In this subsection, "subsidized low-rate loan" means a loan that carries a current interest rate at least 2 percentage points below the current yield on treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped-up rate, as applicable, shall be used instead of the current rate to determine whether a loan is a subsidized low-rate loan.

(b) A lender may not 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 10 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 11-14:

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

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

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

*center;
and
change
initial indent
to "0";
and also
change
left indent
to "0"*

LOAN PRODUCT CHOICE DISCLOSURE

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

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

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

INSERT 12-20: ✓

(NOR) The state shall have sole authority, except as provided under federal law, to regulate any

INSERT 12-22: ✓

(NOR) No local governmental unit may attempt to regulate, directly or indirectly, any matter governed by this subchapter or by a rule promulgated under this subchapter, including enacting an ordinance or adopting a resolution or imposing reporting requirements.

INSERT 15-17: ✓

428.211 Parity for federally insured depository institutions. This subchapter does not apply to any state chartered bank, trust company, savings and loan^{association}, savings bank, or credit union, or to any subsidiary of a state chartered bank, trust company, savings and loan^{association}, savings bank, or credit union, to the extent^{that} federal law preempts or prohibits the application of the provisions of this subchapter to a

association

federally chartered bank, trust company, savings and loan, savings bank, or credit union of the same type.

Gary, Aaron

From: Gary, Aaron
Sent: Monday, February 23, 2004 4:47 PM
To: Smyrski, Rose
Subject: RE: draft changes to LRB-s 0358/P1

Hi Rose,

I have reviewed this e-mail and believe I understand the changes to be made. I will redraft to a "/1", which should of course be carefully reviewed to ensure that the changes I have made are exactly what was intended.

With regard to your note re page 5, lines 14-16, I believe lines 14-16 on p. 5 have a different scope than lines 17-18. Taking lines 14-16 out will significantly change the scope of the sub, so I will leave these lines in unless you direct otherwise. I also recommend that you run this by Nick to see if he agrees.

With regard to p. 11, lines 7-13, it sounds like this part of the sub is okay, so I will leave it as is unless you direct otherwise.

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: Smyrski, Rose
Sent: Monday, February 23, 2004 4:07 PM
To: Gary, Aaron
Subject: draft changes to LRB-s 0358/P1

Additions

Prohibit the enforcement of a security interest in household goods

Page 5

lines 14-16

Are these necessary? As long as the loans are covered under the 6% threshold we don't want a referece back to the Reg Z guidelines which are 8%---RIGHT? if we don't need it --remove it

Page 5

lines 18-20

Remove language starting with "For purposes of this subdivision,..." and ending with " for bona fide services listed in 12 CFR 226.4(c)(7).

Page 6

lines 10 - 17

Modify the language to reflect a total restriction on balloon payment.

EXECEPTION--keep the language for seasonal adjustments or irregular income --the only addition in that section is that it must be for loans that are less than one year if the loan is for construction or acquisition.

Page 7

(6) Repayment Ability

Pattern the language after the Reg Z-- short but simple

IN ADDITION: give DFI rule-making authority to determine the ability to pay based on a debt-to-income ratio

Page 11

lines 7-13

YOU had a question on what about loans over \$25,000 and whether or not they are covered--THE INTENT is to have any loan that mets the 6% trigger should be covered under the bill

Gary, Aaron

From: Smyrski, Rose
Sent: Monday, February 23, 2004 4:45 PM
To: Gary, Aaron
Subject: One last change to LRB s0358/P1

Importance: High

Modify Page 9 line 16-19

In this subsection, a "subsidized low-rate loan" means a loan that carries a current interest rate at least 2 percentage points below the **THEN** current yield on treasury securities with a comparable maturity.

Basically add a "then" before current yield

THANK AARON!!!