

2005 ASSEMBLY BILL 1037

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

Analysis by the Legislative Reference Bureau

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

ASSEMBLY BILL 1037**SECTION 1**

1 **SECTION 1.** 138.056 (4) (a) 1. of the statutes is amended to read:

2 138.056 (4) (a) 1. At least ~~30~~ 15 days before the change if an increase in periodic
3 payments other than the final payment is required.

4 **SECTION 2.** 138.056 (4) (a) 2. of the statutes is amended to read:

5 138.056 (4) (a) 2. Not later than ~~15~~ 30 days after any other change.

6 **SECTION 3.** 138.056 (4) (c) of the statutes is created to read:

7 138.056 (4) (c) This subsection does not apply to a loan secured by an equivalent
8 security interest as determined as of the date that the loan is made.

9 **SECTION 4.** 138.09 (4) (a) (intro.) of the statutes is amended to read:

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

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

21 138.09 (4) (a) 1. The licensee has violated any provision of this chapter and if
22 the division determines such violation justifies the suspension or revocation of the
23 license;

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

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1 138.09 (4) (a) 2. Any fact or condition exists which, if it had existed at the time
2 of the original application for such license, would have warranted the division in
3 refusing to issue such license; ~~and,~~

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

5 138.09 (4) (d) The cost of any investigation, examination, or hearing, including
6 witness fees or any other expenses, conducted by the division under this section shall
7 be paid by the licensee so examined within 30 days after demand therefor by the
8 division, and the state may maintain an action for the recovery of such costs and
9 expenses.

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

11 138.12 (5m) DISCIPLINARY ORDERS. (a) In this subsection:

- 12 1. “General order” means an order of the division other than a special order.
13 2. “Special order” means an order of the division to or affecting a person.

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

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

18 180.1911 (1) Except as provided in s. ss. 180.1903 (1m) and 180.1913, each
19 shareholder, director and officer of a service corporation must at all times be licensed,
20 certified or registered by a state agency in the same field of endeavor or be a health
21 care professional. An individual who is not so licensed, certified or registered may
22 not have any part in the ownership or control of the service corporation, except that
23 the nonparticipant spouse of a married individual has the rights of ownership
24 provided under ch. 766. A proxy to vote any shares of the service corporation may
25 not be given to a person who is not so licensed, certified or registered.

ASSEMBLY BILL 1037**SECTION 10**

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

3 180.1919 (1) (b) 1. If Except as provided in subd. 2., if all shareholders of a
4 service corporation cease at any one time and for any reason to be licensed, certified
5 or registered in the particular field of endeavor for which the service corporation was
6 organized, the service corporation is converted into and shall operate solely as a
7 business corporation under applicable provisions of this chapter, exclusive of ss.
8 180.1901 to 180.1921.

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

10 180.1919 (1) (b) 2. If not more than 50 percent of the shareholders in a service
11 corporation described in s. 180.1903 (1m) at any one time are not certified public
12 accountants, the service corporation is converted into and shall operate solely as a
13 business corporation under applicable provisions of this chapter, exclusive of ss.
14 180.1901 to 180.1921.

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

16 220.02 (2) (g) Insurance premium finance companies under s. 138.12.

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

18 220.02 (2) (h) Mortgage bankers, loan originators, and mortgage brokers under
19 subch. III of ch. 224.

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

21 220.02 (3) It is the intent of sub. (2) to give the division jurisdiction to enforce
22 and carry out all laws relating to banks or banking in this state, including those
23 relating to state banks, savings banks, savings and loan associations, and trust
24 company banks, and also all laws relating to small loan companies or other loan
25 companies or agencies, finance companies, insurance premium finance companies.

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1 motor vehicle dealers, adjustment service companies, community currency
2 exchanges, mortgage bankers, loan originators, mortgage brokers, and collection
3 agencies and those relating to sellers of checks under ch. 217, whether doing business
4 as corporations, individuals, or otherwise, but to exclude laws relating to credit
5 unions.

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

7 220.04 (10) If it appears to the division that a person has engaged or is about
8 to engage in an act or practice constituting a violation of the laws of this state relating
9 to banks and banking, including this chapter, chs. 217, 218 and 221 to 224 and s. ss.
10 138.09 and 138.12, or a rule promulgated or order issued under those laws, the
11 division may bring an action in the name of the state in the circuit court of the
12 appropriate county to enjoin the acts or practices and to enforce compliance with the
13 laws, rules or orders, or the division may refer the matter to the district attorney of
14 the appropriate county or, if the alleged violation may be enforced by the attorney
15 general under sub. (12) or s. 220.12, 221.1005 or 224.06 (7) or is statewide in nature,
16 to the attorney general. Upon a proper showing, the court may grant a permanent
17 or temporary injunction or restraining order, appoint a receiver for the defendant or
18 the defendant's assets or order rescission of any acts determined to be unlawful. The
19 court may not require the division to post a bond.

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

21 220.06 (1) In this section, "licensee" means a person licensed by the division
22 under ch. 138, 217 or 218 or under s. 224.92 or registered by the division under s.
23 224.72.

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

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1 220.285 (1) Any state bank, trust company bank, licensee under ss. 138.09,
2 138.12, 218.0101 to 218.0163, 218.02, 218.04 or 218.05 or ch. 217, or person
3 registered under s. 224.72 may cause any or all records kept by such bank ~~or~~ licensee,
4 or registered person to be recorded, copied or reproduced by any photostatic,
5 photographic or miniature photographic process or by optical imaging if the process
6 employed correctly, accurately and permanently copies, reproduces or forms a
7 medium for copying, reproducing or recording the original record on a film or other
8 durable material. A bank ~~or~~ licensee, or registered person may thereafter dispose
9 of the original record after first obtaining the written consent of the division. This
10 section, excepting that part of it which requires written consent of the division, is
11 applicable to national banking associations insofar as it does not contravene federal
12 law.

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

14 220.285 (2) Any photographic, photostatic or miniature photographic copy or
15 reproduction or copy reproduced from a film record or any copy of a record generated
16 from optical disk storage of a bank record or record of a licensee or registered person
17 is considered to be an original record for all purposes and shall be treated as an
18 original record in all courts or administrative agencies for the purpose of its
19 admissibility in evidence. A facsimile, exemplification or certified copy of any such
20 photographic copy or reproduction, copy reproduced from a film record or copy
21 generated from optical disk storage of a record shall, for all purposes, be considered
22 a facsimile, exemplification or certified copy of the original record.

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

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1 **421.202 Exclusions.** (intro.) Chapters 421 to 427 do not apply to any of the
2 following:

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

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

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

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

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

14 **(6)** Consumer credit transactions in which the amount financed exceeds
15 \$25,000, motor vehicle consumer leases in which the total lease obligation exceeds
16 \$25,000 or other consumer transactions in which the cash price exceeds \$25,000;

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

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

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

23 428.101 **(3)** Loans made on or after November 1, 1981, by a creditor to a
24 customer and which are secured by a first lien real estate mortgage or equivalent

ASSEMBLY BILL 1037**SECTION 20**

1 security interest if the amount financed is \$25,000 or less and if the loan is not subject
2 to subch. II.

3 **SECTION 21. Initial applicability.**

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

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

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

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

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

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

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

19 (END)