

2005 Assembly Bill 1037

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2005 WISCONSIN ACT 215

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

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

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

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

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

138.056 (4) (a) 2. Not later than ~~45~~ 30 days after any other change.

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

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

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

138.09 (4) (a) (intro.) The division for the purpose of discovering violations of this chapter may cause an investigation to be made of the business of the licensee

transacted under this section, and shall cause an investigation to be made of convictions reported to the division by any district attorney for violation by a licensee of this chapter. The place of business, books of account, papers, records, safes and vaults of said licensee shall be open to inspection and examination by the division for the purpose of such investigation and the division may examine under oath all persons whose testimony the division may require relative to said investigation. The division may, upon notice to the licensee and reasonable opportunity to be heard, suspend or revoke such license after such hearing if any of the following applies:

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

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

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

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

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

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

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

1. "General order" means an order of the division other than a special order.

2. "Special order" means an order of the division to or affecting a person.

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

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

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

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

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

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

180.1919 (1) (b) 2. If not more than 50 percent of the shareholders in a service corporation described in s. 180.1903 (1m) at any one time are not certified public accountants, the service corporation is converted into and

shall operate solely as a business corporation under applicable provisions of this chapter, exclusive of ss. 180.1901 to 180.1921.

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

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

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

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

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

220.02 (3) It is the intent of sub. (2) to give the division jurisdiction to enforce and carry out all laws relating to banks or banking in this state, including those relating to state banks, savings banks, savings and loan associations, and trust company banks, and also all laws relating to small loan companies or other loan companies or agencies, finance companies, insurance premium finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges, mortgage bankers, loan originators, mortgage brokers, and collection agencies and those relating to sellers of checks under ch. 217, whether doing business as corporations, individuals, or otherwise, but to exclude laws relating to credit unions.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Charges for delayed payment and any discount allowed for early payment in transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates such charges or discounts, or if such charges or discounts are made in connection with the furnishing of electric service

by an electric cooperative organized and operating on a nonprofit basis under ch. 185;

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

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

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

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

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

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

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

SECTION 21. Initial applicability.

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

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

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

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

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

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

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