

CR 83-42

STATE OF WISCONSIN)
OFFICE OF COMMISSIONER OF BANKING)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, William P. Dixon, Commissioner of Banking, and custodian of the official records of said office, do hereby certify that the annexed rules relating to the leasing of personal property, deposits in other financial institutions, procedures before the Banking Review Board, procedures before the Commissioner of Banking, adjustment service companies, collection agencies, delinquency charges and the Wisconsin Consumer Act, were duly approved and adopted by this office on the 20th day of June, 1983.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at the Office of the Commissioner of Banking in the City of Madison, this 21st day of June, A.D. 1983.



William P. Dixon

William P. Dixon
Commissioner of Banking

RECEIVED

JUN 23 1983
9:20 am
Revisor of Statutes
Bureau

8-1-22

ORDER OF THE OFFICE OF COMMISSIONER OF BANKING

ADOPTING AND REPEALING RULES

CLEARING HOUSE RULE 83-42

To create Bkg. 3.05; to amend Bkg. 4.01(1), 10.05, 10.06, 10.07, 11.05, 11.09, 73.01(1), 74.11(1), 80.221, 80.241, 80.29, 80.301, 80.66 and 80.68; and to repeal Bkg. 80.210, 80.231, 80.24, and 80.27; relating to leasing of personal property, deposits in other financial institutions, procedures before the Banking Review Board, procedures before the Commissioner of Banking, adjustment service companies, collection agencies, the Wisconsin Consumer Act and delinquency charges.

Final Order

Analysis Prepared by the Office of Commissioner of Banking.

1. A rule relating to the leasing of personal property. Under Section 220.04(8), Stats., the Commissioner of Banking with the approval of the Banking Review Board may authorize state chartered banks to exercise any right, power or privilege permitted national banks under federal law, regulation or interpretation. Bkg. 3.05 authorizes state chartered banks to engage in the leasing of personal property. See 12 CFR sec. 7.3400. All limitations contained in the Comptroller's Interpretation are incorporated in Bkg. 3.05.

The purpose of parity rules is to provide state chartered institutions with those rights, powers and privileges granted their federal counterparts. The rules will be applied in a manner consistent with interpretations of the corresponding federal statutes, regulations or interpre-

tations by the appropriate federal regulatory agency. However, to the extent that a rule issued under Sec. 220.04(8), Stats., includes only a portion of a federal law, regulations or interpretation, the excluded portions do not become a part of the Wisconsin Banking Law. See SECTION 1 of the Rules.

2. A rule relating to the investment by a bank in the certificates of deposit and time deposits of another bank. Bkg. 4.01 describes conditions under which banks may invest in certain time deposits and certificates. Bkg. 4.01(1) is repealed and recreated to increase the potential investment by any bank in the time deposits and certificates of domestic offices of insured U.S. banks. The change removes the aggregate limitation and substitutes a limitation on the amount invested in each bank in the category. See SECTION 2 of the Rules.

3. Rules relating to procedures before the Banking Review Board. Several provisions of Ch. Bkg. 10, procedures before the Banking Review Board, are amended to reflect an address change and the renumbering of various Wisconsin statutes. See SECTIONS 3, 4 & 5 of the Rules.

4. Rules relating to procedures before the Commissioner of Banking. Several provisions of Ch. Bkg. 11, procedures before the Commissioner of Banking, are amended to reflect the renumbering of various Wisconsin statutes. See SECTIONS 6 & 7 of the Rules.

5. A rule relating to fees assessed by adjustment service companies. Bkg. 73.01(1) regarding fees assessed by adjustment service companies is amended. The maximum fee which may be charged a debtor has been

increased to \$80 per month. The present maximum of \$40 was established in 1979 and the amendment reflects increased operating expenses by adjustment service companies since that time. See SECTION 8 of the Rules.

6. A rule relating to collection agency notices to debtors. Bkg. 74.11(1) regarding collection agencies is amended to reflect a change in the address of the Office of Commissioner of Banking. See SECTION 9 of the Rules.

7. A rule relating to delinquency charges in non-consumer motor vehicle sales finance contracts. Bkg. 76.03(2) is amended to increase the maximum delinquency charge on motor vehicle sales finance contracts evidencing transactions which are not covered by the Wisconsin Consumer Act from 3% to 5% of the unpaid amount of the installment. See SECTION 10 of the Rules.

8. Rules relating to administration of the Wisconsin Consumer Act. Bkg. 80.210, 80.231, and 80.24 are no longer necessary as a result of amendments to the Wisconsin Consumer Act in Ch. 45, Laws of 1981 and are repealed. Bkg. 80.27 is no longer necessary as a result of an amendment to the Wisconsin Consumer Act in Ch. 407, Laws of 1975 and is repealed. Bkg. 80.221, 80.241, 80.29, 80.301, 80.66 and 80.68 are amended to reflect amendments in Sec. 422.209, Stats., contained in Ch. 45, Laws of 1981. Amendments to Bkg. 80.221, 80.241, 80.66 and 80.68 simple reflect the renumbering of various statutes. Changes to Bkg. 80.29 and 80.301 reflect the requirement that rebates for prepayment in consumer credit transactions with payment terms of 49 months or more be calculated according to the actuarial method. See SECTIONS 11 to 20 of the Rules.

Pursuant to the authority vested in the Commissioner of Banking by Sections 218.01(5), 218.02(7), 218.04(7), 220.02(2), 227.014 and 426.104, Stats., in the Commissioner of Banking and the Banking Review Board by sec. 220.04(8), Stats., and in the Banking Review Board by sec. 220.035(1), Stats., the Commissioner of Banking and the Banking Review Board hereby create, repeal and amend the rules interpreting sections 218.01(5), 218.02(7), 220.02(2), 220.035, 220.04(8), and 422.209, Stats., as follows: 218.04(7),

SECTION 1, Bkg. 3.05 is created to read:

Bkg. 3.05 LEASING OF PERSONAL PROPERTY. (1) DEFINITIONS. In this Section:

- (a) "Full-payout lease" means a lease from which the lessor can reasonable expect to realize a return of its full investment in the leased property plus the estimated cost of financing the property over the term of the lease from:
1. Rentals;
 2. Estimated tax benefits; and
 3. The estimated residual value of the property at the expiration of the initial term of the lease, provided any unguaranteed portion of the estimated residual value relied upon by the bank to yield a full return under this subsection does not exceed 25 percent of the original cost of the property to the lessor.

(b) "Net lease" means a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for any of the following:

1. The servicing, repair or maintenance of the leased property during the lease term;
2. The purchasing of parts and accessories for the leased property. However, improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of this rule;
3. The loan of replacement or substitute property while the leased property is being serviced;
4. The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance; or
5. The renewal of any license or registration for the property unless such action by the bank is clearly necessary to protect its interest as an owner or financier of the property.

(2) AUTHORITY TO LEASE PERSONAL PROPERTY. Subject to the limitations in this rule and provided the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease, a bank may;

(a) Become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property at the request of the lessee who wishes to lease it from the bank; or

(b) Become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and

(c) Incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(3) RECOVERY IN THE EVENT OF DEFAULT. If, in good faith, a bank determines that there has been an unanticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the bank may,

(a) As the owner and lessor under a net, full-payout, lease, take reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease, or

(b) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease.

(4) APPLICATION OF OTHER LAWS. Nothing in this rule shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 15 U.S.C. 1667 et. seq. or the Wisconsin Consumer Act, Chapters 421 to 427, Stats.

(5) LIMITATION ON LEASING CONCENTRATIONS. Leases permissible under this rule are subject to the limitations on obligations under s. 221.29, Stats.

(NOTE: In operating under this rule it is anticipated that banks will estimate the total cost of financing the property over the term of the lease to reflect, among other factors, the term of the lease, the modes of financing available to the lessor, the credit rating of each lessor and lessee involved in the transaction and prevailing rates in the money

and capital markets. Where the calculation of the cost of financing according to this formula is not reasonably determinable, a lease may be considered to have met the test for recovering the cost of financing if the bank's yield from the lease is equivalent to what the yield would be on a similar loan. In all cases, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item.)

SECTION 2, Bkg. 4.01 is repealed and recreated to read:

Bkg. 4.01 DEPOSITS IN OTHER FINANCIAL INSTITUTIONS. Banks may invest in time deposits and certificates of deposits of other financial institutions subject to the following limitations based on total capital and surplus of the bank making the deposit:

(1) In each domestic insured United States bank, including its off-shore branches, and in each domestic insured savings & loan or credit union - 20% of capital and surplus or, in domestic insured financial institutions including their off-shore branches designated by the board of directors, 50% of capital and surplus;

(2) In each uninsured bank or foreign bank, including its domestic branches, and in any other savings & loan or credit union - 20% of capital and surplus.

SECTION 3. 10.05 is amended to read:

Bkg. 10.05 NOTICE OF HEARING. Notice of hearing may be given by registered mail addressed to the party at his the last known post office address, or to his the party's attorney of record, return receipt requested, and the return receipt signed by the addressee or his an authorized agent shall be presumptive evidence that such notice was received by the addressee on the date stated on the receipt. Papers required to be filed with the board may be mailed to the following address:

Office of the Commissioner of Banking
P.O. Box 7876
Madison, WI 53702 7

SECTION 4. Bkg. 10.06 is amended to read:

Bkg. 10.06 PROCEDURE FOR HEARING. Continuances and adjournments of hearings may be granted by the board for cause shown. The appellant may appear in person or by any officer, regular employe or attorney. Any other interested person may likewise so appear. Proceedings shall be in conformity to s. 220.035(2)(c), Stats. Witnesses competent to take an oath shall be sworn by the chairman of the board or the presiding officer and may be examined on behalf of the board by the chairman or presiding officer or by a representative of the attorney general acting as counsel for the board, or, with the permission of the chairman or presiding officer, by any employe of the board or commissioner of banking or by any other interested party or their attorneys. Any interested

party or any of his agents, officers or employees of an interested party may be examined adversely as prescribed by s. ~~325.14~~ 906.11, Stats.

In all other respects, proceedings shall be had as prescribed in Ch. 227, Stats.

SECTION 5. Bkg. 10.07 is amended to read:

Bkg. 10.07 SUBPOENA. The board shall have subpoena powers as granted by s. ~~325.01(4)~~ 885.01(4), Stats.

SECTION 6. Bkg. 11.05 is amended to read:

Bkg. 11.05 SUBPOENAS. The commissioner may issue subpoenas for the attendance of a party or any witness at a hearing, whether the commissioner is to conduct the hearing or not. Subpoenas may be in the form provided by s. ~~325.02~~, 885.02, Stats.

SECTION 7. Bkg. 11.09 is amended to read:

Bkg. 11.09 SERVICE AND FILING OF PAPERS. Unless otherwise provided by law, all orders, notices and other papers may be served by the commissioner by first class or registered mail addressed to any party at his the last known post office address or to his the party's attorney of record. Papers required to be filed with the commissioner may be mailed to the following address: Office of Commissioner of Banking, P.O. Box 7876, Madison, Wisconsin 53702 7.

SECTION 8. Bkg. 73.01(1) is amended to read:

Bkg. 73.01(1) The maximum fee that can be charged a debtor shall not exceed 12% of the amount of money paid to the licensee to be distributed to the creditor or \$40 80 in any one month, whichever is less.

SECTION 9. Bkg. 74.11(1) is amended to read:

Bkg. 74.11 FAIR COLLECTION PRACTICE NOTICE. (1) Within 5 days after the initial communication with a debtor a licensee shall, unless the initial communication is written and contains the following notice or the debtor has paid the debt, send the debtor the following notice in not less than 8 point boldface type:

This collection agency is licensed by the Office of the
Commissioner of Banking, ~~30-West-Mifflin~~, P.O. Box 7876,
Madison, Wisconsin 53703 7.

This notice shall be typed or printed on either a collection notice or on the validation of any debt directed to the debtor by the licensee pursuant to Sec. 809 of the Federal Fair Debt Collection Practice Act. ~~This subsection shall be effective on the first day of the 6th month following its publication in the Wisconsin Administrative Register.~~

SECTION 10. Bkg. 76.03(2) is amended to read:

Bkg. 76.03(2). In all other transactions a retail seller may contract for and receive a delinquency charge on any installment not paid in full on or before the 10th day after its scheduled or deferred due date in an amount not to exceed 3% 5% of the unpaid amount of the installment. No delinquency charge may be collected on an installment which is paid in full on or before the 10th day after its scheduled or deferred due date even though an earlier maturing installment or a delinquency

charge on an earlier installment may not have been paid in full. For purposes of this subsection payments are applied first to current installments and then to delinquent installments. Interest after the final scheduled maturity date shall not exceed the greater of 12% per annum or an amount determined by applying the annual rate of finance charge assessed on that transaction to the unpaid balance until paid, but if such interest is charged no delinquency charge may be taken on the final scheduled installment.

SECTION 11. Bkg. 80.210 is repealed.

SECTION 12. Bkg. 80.221 is amended to read:

Bkg. 80.221 FINANCE CHARGE FOR CONSUMER CREDIT TRANSACTIONS: ACTUARIAL METHOD-COMPOUNDING. The term "actuarial method" as used in s. 422.201, Stats., shall mean the method by which that portion of each payment not applicable to an escrow account is applied first to any finance charge or permitted additional charge accrued from the time of any prior pay-

ment or from the time credit is extended and the remainder, if any, is applied to the unpaid amount financed. With the exception of the calculation of delinquency charges, amounts remitted may be applied to interest and charges and then to principal on the most delinquent installment due and then to interest and charges on the next installment proceeding to more current installments until the amount remitted is exhausted. For purposes of computing the finance charge under s. 422.201~~(9)~~ (10) and (10m), Stats., a merchant may calculate the finance charge on an unpaid balance which includes unpaid finance charges.

SECTION 13 Bkg. 80.231 is repealed.

SECTION 14 Bkg. 80.24 is repealed.

SECTION 15 Bkg. 80.241 is amended to read:

Bkg. 80.241 FINANCE CHARGES FOR CONSUMER CREDIT TRANSACTIONS; MINIMUM FINANCE CHARGE. Section 422.201~~(8)~~ (9), Stats., provides for the election of a minimum finance charge by any merchant, including licensees under s. 218.01, who are limited to the election provided by this section notwithstanding the minimum time price differential provisions of s. 218.01~~(6)(a)~~6 (b)7, Stats.

SECTION 16 Bkg. 80.27 is repealed.

SECTION 17, Bkg. 80.29 is amended to read:

Bkg. 80.29 DEFERRAL CHARGES; "RULE OF 78". The portion of the precomputed finance charge attributable to the final installment of the original schedule of payments as used in s. 422.204(1)(a), Stats., shall

mean the pre-payment rebate calculated according to the Rule of 78 if the transaction is for a term of less than 49 months or the actuarial method if the transaction is for a term of 49 months or more, if the contract were prepaid in full on the payment date immediately preceding final originally schedule maturity.

SECTION 18,
Bkg. 80.301 is amended to read:

Bkg. 80.301 REBATE ON PREPAYMENT; IRREGULAR INSTALLMENT AMOUNTS AND/OR DUE DATES. The unearned portion of the precomputed finance charge on consumer credit transactions described in s. 422.209(3), Stats., having terms of less than 49 months shall be computed in accordance with the provisions of s. 138.05(2)(b), Stats.

SECTION 19 Bkg. 80.66 is amended to read:

Bkg. 80.66 BODY ATTACHMENTS. The term "warrant" as used in s. 425.113, Stats., refers to warrants issued pursuant to s. 816.05, Stats., and does not limit or effect the power of a court to issue an order or attachment pursuant to s. ~~295.07~~ 816.03, Stats., where a person has failed to appear at a supplemental examination.

SECTION 20 Bkg. 80.68 is amended to read:

Bkg. 80.68 NONJUDICIAL ENFORCEMENT LIMITED; SURRENDER OF COLLATERAL. Where a merchant requests or demands the return of collateral, after providing the customer with notice of default and opportunity to cure as required by s. 425.103 5, Stats., a release of the collateral by the customer is not a surrender under ss. 425.204(3) and ~~425.205(1)(a)~~ 206 (1)(a), Stats., if the merchant: (1) fails to provide a notice to the customer which clearly informs the customer of the right to a

hearing on the issue of default before any repossession; (2) misrepresents any material fact or state of the law to the customer; or (3) violates any provision of ch. 427, Stats. The notice contained in sub. (1) of this rule is not required if the collateral has been abandoned by the customer.

The rules and repeals contained in this proposal order shall take effect as provided in Sec. 227.026(1)(intro.), Stats.

Dated: June 21, 1983



William P. Dixon, Commissioner

With respect to SECTIONS 1, 3, 4 & 5

THE BANKING REVIEW BOARD

By 

Edmund Hobbins, Chairman



State of Wisconsin \ OFFICE OF COMMISSIONER OF BANKING

WILLIAM P. DIXON
COMMISSIONER

WILLIAM G. NOBLE
ADMINISTRATOR

DIVISION OF CONSUMER CREDIT
P.O. BOX 7876
MADISON, WISCONSIN 53707

(608) 266-1621

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JUN 23 1983

Revisor of Statutes
Bureau

June 21, 1983

Mr. Gary Poulson
Assistant Revisor
411 West, State Capitol
Madison, WI 53792

RE: Clearing House Rule 83-42

Dear Gary:

Attached please find a certified copy and one additional copy of these rules for publication in the Administrative Code. The rules were submitted to the Senate and Assembly in final draft form on May 19, 1983. We have not received any request for any meeting on these rules from any standing committee of the legislature.

Very truly yours,

Robert A. Patrick
Attorney

RAP:ato

Enclosures