

1979 Senate Bill 320

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CHAPTER 168, Laws of 1979

AN ACT to renumber 422.201 (2) and (12); to amend 138.09 (7) (b) (intro.) and 2, 218.01 (6) (b) (intro.) and (d), 422.201 (2) (b) (intro.), as renumbered, (4) and (10) (b), 422.203 (4), 422.402 (1), 422.415 (2) (d) and 943.27; to repeal and recreate 428.101; and to create 138.041, 138.05 (8), 138.051, 138.09 (7) (bm), 218.01 (6) (bm) and (j) and 422.201 (2) (a) and (c) and (12) of the statutes, relating to interest rate ceilings, prepayment of loans, establishing a special study committee of the legislative council and providing a penalty.

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

SECTION 1. 138.041 of the statutes is created to read:

138.041 Federal rate parity. In order to prevent discrimination against state-chartered financial institutions with respect to interest rates, state-chartered banks, credit unions and mutual savings banks may take, receive, reserve and charge on any loan or forbearance made on or after the effective date of this act (1979) and before November 1, 1981, and on any renewal, refinancing, extension or modification made on or after the effective date of this act (1979) and before November 1, 1981, of any loan or forbearance, interest at a federal rate prescribed for federally chartered banks, credit unions and mutual savings banks, respectively, notwithstanding any other statutes. The federal rate described in this section does not include any rate permitted under a federal law which refers to a rate limit established by a state law which does not apply to state chartered banks, credit unions or mutual savings banks.

SECTION 2. 138.05 (8) of the statutes is created to read:

138.05 (8) (a) This section does not apply to any loan or forbearance which is made on or after the effective date of this act (1979) and prior to November 1, 1981, or to any refinancing, renewal, extension, modification or prepayment on or after the effective date of this act (1979) and prior to November 1, 1981, of any loan or forbearance, unless it is made by a federally chartered or state-chartered savings and loan association, except this section does apply to forbearances occurring primarily for personal, family or household purposes for which the only charge is a penalty or late charge for nonpayment when due.

(b) This section does not apply to loans made within 2 years after November 1, 1981, if made pursuant to loan commitments made on or after the effective date of this act (1979) and prior to November 1, 1981, unless made by a federally chartered or state-chartered savings and loan association.

SECTION 3. 138.051 of the statutes is created to read:

138.051 Residential mortgage loans. (1) In this section:

(a) "Contract rate" means the initial rate contracted to be paid on the principal of a loan from time to time.

(b) "Loan" means a loan, other than a loan made by a federally chartered or state-chartered savings and loan association, secured by a first lien real estate mortgage on, or an equivalent security interest in, a one- to 4-family dwelling which the borrower uses as his or her principal place of residence and which is:

1. Made on or after the effective date of this act (1979) and prior to November 1, 1981;

2. Refinanced, renewed, extended or modified on or after the effective date of this act (1979) and prior to November 1, 1981; or

3. Made within 2 years after November 1, 1981, pursuant to a loan commitment made on or after the effective date of this act (1979) and prior to November 1, 1981.

(2) A loan may be prepaid by the borrower at any time in whole or in part without premium or penalty. Upon prepayment of a loan in full by cash, renewal or refinancing, the borrower is entitled to a refund of unearned interest charged determined as follows:

(a) On a loan which is repayable in substantially equal, successive instalments at approximately equal intervals of time and the face amount of which includes predetermined interest charges, the amount of such refund shall be as great a proportion of the total interest charged as the sum of the balances scheduled to be outstanding during the full instalment periods commencing with the instalment date nearest the date of prepayment bears to the sum of the balances scheduled to be outstanding for all instalment periods of the loan.

(b) On any other loan, the amount of the refund shall not be less than the difference between the interest charged and interest, at the rate contracted for, computed upon the unpaid principal balance of the loan from time to time outstanding prior to prepayment in full.

(3) For purposes of computing a refund under sub. (2), interest does not include:

(a) Identifiable and separately itemized charges for services incident to the loan if they are bona fide and paid to 3rd parties unrelated to the lender;

(b) Fees, discounts or other sums actually imposed by government national mortgage association, federal national mortgage association, federal home loan mortgage corporation or any other governmentally sponsored or private secondary mortgage market purchaser of a loan from the original lender; and

(c) A loan administration fee charged by a lender, not to exceed 2% of the principal amount of any construction loan and one percent of the principal amount of any other loan.

(4) For the purpose of calculating the rate of interest on a loan scheduled to be paid in instalments under sub. (2), the parties may agree that any instalment paid within 30 days prior to or after the scheduled due date will be considered to have been paid on the due date.

(5) A bank, credit union or mutual savings bank which originates a loan and which requires an escrow to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow of not less than 5 1/4% per year.

(6) Delinquency charges on a loan shall not exceed an amount determined by application of the contract rate to the unpaid amount, including interest accrued and unpaid, until paid or maturity of the obligation, whether by acceleration or otherwise, whichever first occurs. Interest imposed after maturity may not exceed the contract rate applied to the amount due on the date of maturity.

(7) This section does not apply to a loan insured, or committed to be insured, or secured by mortgage or trust deed insured by the U.S. secretary of housing and urban development, insured, guaranteed or committed to be insured or guaranteed under 38 USC 1801 to 1827 or insured or committed to be insured under 7 USC 1921 to 1995.

SECTION 4. 138.09 (7) (b) (intro.) and 2 of the statutes are amended to read:

138.09 (7) (b) (intro.) A licensee may charge, contract for or receive a rate of interest for a loan or forbearance made prior to the effective date of this act (1979) or after October 31, 1981, which ~~shall~~ does not exceed the greater of either of the following:

2. With respect to any loan, ~~including a loan exceeding \$3,000 of any amount~~, at a rate not to exceed 18% per year computed on the declining unpaid principal balances of the loan from time to time outstanding, calculated according to the actuarial method, but this does not limit or restrict the manner of contracting for the interest, whether by way of add-on, discount or otherwise, so long as the rate of interest does not exceed that permitted by this paragraph.

SECTION 5. 138.09 (7) (bm) of the statutes is created to read:

138.09 (7) (bm) A licensee may charge, contract for or receive a rate of interest for a loan or forbearance made on or after the effective date of this act (1979) and prior to November 1, 1981, which does not exceed the greater of either of the following:

1. With respect to instalment loans or forbearances which are repayable in substantially equal successive instalments at approximately equal intervals, and where the principal does not exceed \$3,000 excluding any interest authorized under this section, and where the scheduled maturity of the loan contract is not more than 36 months and 15 days from the date of making, interest may be deducted in advance at a rate not in excess of \$9.50 per \$100 per year on that part of the loan not exceeding \$2,000 and \$8 per \$100 per year on any remainder. Interest shall be computed at the time the loan is made on the face amount of the contract for the full term of the contract, notwithstanding the requirement for instalment repayments. The face amount of the loan contract or note may exceed \$3,000 by the amount of interest deducted in advance. On contracts which are one year or any number of whole years, the charge shall be computed proportionately on even calendar months.

2. With respect to any loan of any amount, at a rate not to exceed 19% per year computed on the declining unpaid principal balances of the loan from time to time outstanding, calculated according to the actuarial method, but this does not limit or restrict the manner of contracting for the interest, whether by way of add-on, discount or otherwise, so long as the rate of interest does not exceed that permitted by this paragraph.

SECTION 6. 218.01 (6) (b) (intro.) of the statutes is amended to read:

218.01 (6) (b) (intro.) Prior to or concurrent with any instalment sale, the seller shall deliver to the buyer a written statement describing clearly the motor vehicle sold to the buyer, the cash sale price, the cash paid down by the buyer, the amount credited the buyer for any trade-in and a description of the trade-in, the cost to the retail buyer of any insurance, the amount financed which may include the cost of insurance, sales and use taxes, the amount of the finance charge, the amount of any other charge specifying its purpose, the total of payments due from the buyer, the terms of the payment of such total, the amount and date of each payment necessary finally to pay the total and a summary of any insurance coverage to be effected. The commissioner may determine the form of the statement. If a written order is taken from a prospective purchaser in connection with any instalment sale, the written statement shall be given to the purchaser prior to or concurrent with the signing of the order by the purchaser. The finance charge in a retail instalment sale made prior to the effective date of this act (1979) or after October 31, 1981, however computed, excluding the cost of insurance shall not exceed the amount computed on the basis of the following annual percentage rates:

SECTION 7. 218.01 (6) (bm) and (j) of the statutes are created to read:

218.01 (6) (bm) The finance charge in a retail instalment sale made on or after the effective date of this act (1979) and prior to November 1, 1981, or the refinancing, renewal, extension or modification on or after the effective date of this act (1979) and prior to November 1, 1981, of any retail instalment sale, however computed, excluding the cost of insurance shall not exceed the amount computed on the basis of the following annual percentage rates:

1. Any new motor vehicle, the lesser of 18 % per year or a rate of not more than 4 % in excess of the discount rate on 90-day commercial paper in effect 15 days prior to the date of sale at the federal reserve bank in the federal reserve district where the seller is located.

2. Any used motor vehicle, 18 % per year.

(j) This subsection does not apply to a retail installment [instalment] sale made on or after the effective date of this act (1979) and prior to November 1, 1981, of a motor vehicle having a gross vehicular weight or a gross carrying weight of 15,000 pounds or more if the motor vehicle is to be used primarily for a business or commercial purpose, or to any refinancing, renewal, extension or modification on or after the effective date of the act (1979) and prior to November 1, 1981, of any retail instalment sale of such a motor vehicle.

SECTION 8. 218.01 (6) (d) of the statutes is amended to read:

218.01 (6) (d) A violation of par. (a) ~~or~~, (b) ~~shall bar or (bm) bars~~ recovery of any finance charge by the seller, or an assignee of the seller who, at the time of the assignment, had knowledge of the violation, in any suit upon a sales contract arising from the sale where the violation occurred.

SECTION 9. 422.201 (2) of the statutes is renumbered 422.201 (2) (b), and 422.201 (2) (b) (intro.), as renumbered, is amended to read:

422.201 (2) (b) (intro.) The finance charge, calculated according to the actuarial method, may not exceed the equivalent of the total of the following for a consumer credit transaction entered into prior to the effective date of this act (1979), after October 31, 1981 or at any time by a federally chartered or state-chartered savings and loan association:

SECTION 10. 422.201 (2) (a) and (c) of the statutes are created to read:

422.201 (2) (a) The finance charge, calculated according to the actuarial method, may not exceed the equivalent of the total of the following for a consumer credit transaction entered into on or after the effective date of this act (1979) and prior to November 1, 1981, other than by a federally chartered or state-chartered savings and loan association:

1. Eighteen percent per year on that part of the unpaid balance of the amount financed which is \$1,000 or less; and

2. Fifteen percent per year on that part of the unpaid balance of the amount financed which is more than \$1,000.

(c) A purchase, cash advance or other debit transaction entered into by a customer under an open-end credit plan in existence on the effective date of this act (1979) is subject to the limit on finance charges provided under par. (b), except a purchase, cash advance or other debit transaction entered into on or after the effective date of this act (1979) and prior to November 1, 1981, is subject to par. (a) if the creditor mails or delivers to the customer a written notice of a finance charge to be applied which is greater than permitted under par. (b) at least 15 days prior to the beginning date of a billing cycle and the customer makes the purchase, obtains the cash advance or enters into the debit transaction on or after that date.

SECTION 11. 422.201 (4), and (10) (b), as affected by chapter 10, laws of 1979, of the statutes are amended to read:

422.201 (4) For sellers of farm equipment, farm implements and farm tractors, other than licensees under s. 218.01, the finance charge on the sale of equipment may not exceed 18 % per year for consumer credit transactions entered into on or after the effective date of this act (1979) and prior to November 1, 1981, and may not exceed the Class 2 rate for motor vehicles, as specified in s. 218.01 (6) (b), for consumer credit transactions entered into prior to the effective date of this act (1979) or after October 31, 1981, and calculated in accordance with that section.

(10) (b) If the billing cycle is monthly, the maximum periodic rate is 1.5 % of that part of the amount specified in par. (a) ~~which is 500 or less to which the rate of 18 % per year may be applied under sub. (2), 1.25 % of that part of such amount to which the rate of 15 % per year may be applied under sub. (2), and one per cent percent of that part of such amount which is more than 500 to which the rate of 12 % per year may be applied under sub. (2);~~ except that for licensees under s. 138.09 the maximum periodic rate shall not exceed a periodic rate equivalent to the rate permitted under s. 138.09, as determined by the administrator.

SECTION 12. 422.201 (12) of the statutes, as affected by chapter 10, laws of 1979, is renumbered 422.201 (13).

SECTION 13. 422.201 (12) of the statutes is created to read:

422.201 (12) Except as provided in sub. (4), this section does not apply to a consumer credit transaction primarily for an agricultural purpose if the transaction occurs on or after the effective date of this act (1979) and prior to November 1, 1981.

SECTION 14. 422.203 (4) of the statutes, as affected by chapter 10, laws of 1979, is amended to read:

422.203 (4) (a) With respect to a consumer credit transaction other than one primarily for an agricultural purpose, interest after the final scheduled maturity date shall not exceed the greater of either 12 % per year or the annual rate of finance charge assessed on that transaction if the transaction is entered into on or after the effective date of this act (1979) and prior to November 1, 1981, and shall not exceed the maximum rate permitted by s. 138.05 (1) (a), if the transaction is entered into prior to the effective date of this act (1979) or after October 31, 1981, but if such interest is charged no delinquency charge may be taken on the final scheduled instalment.

(b) With respect to a consumer credit transaction primarily for an agricultural purpose, interest after maturity of any scheduled instalment shall not exceed the greater of either 12 % per ~~annum~~ year or an amount determined by applying the annual rate of finance charge assessed on that transaction to that instalment until paid, but if such interest is charged, no delinquency charge may be taken on such instalment. This paragraph does not apply to a consumer credit transaction primarily for an agricultural purpose if the transaction occurs on or after the effective date of this act (1979) and prior to November 1, 1981.

SECTION 15. 422.402 (1) of the statutes is amended to read:

422.402 (1) With respect to a consumer credit transaction other than a transaction which is either a) pursuant to an open-end credit plan, b) not precomputed and on which the annual percentage rate disclosed ~~pursuant to~~ under subch. III is less than 16.5 % for a consumer credit sale in which the seller retains a security interest in real estate which is the subject of the sale or any consumer loan, either of which is entered into on or after the effective date of this act (1979) and prior to November 1, 1981, or 12 % for any other consumer credit transaction or c) a transaction primarily for an agricultural purpose, no merchant shall enter into an agreement which requires a schedule of payments under which any one payment is not equal or substantially equal to all other payments, or under which the intervals between any consecutive payments differ substantially except as permitted in sub. (2) or (3).

SECTION 16. 422.415 (2) (d) of the statutes is amended to read:

422.415 (2) (d) The customer agrees in writing to ~~such a change other than a change made to apply a finance charge permitted by the treatment of s. 422.201 (2) by chapter ... (this act), laws of 1979, to a balance outstanding on the effective date of this act (1979).~~

SECTION 17. 428.101 of the statutes, as affected by chapter 110, laws of 1979, is repealed and recreated to read:

428.101 Applicability. This chapter applies to:

(1) Loans made on or after the effective date of this act (1979) and prior to November 1, 1981, by a creditor other than a savings and loan association 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.

(2) Loans made prior to the effective date of this act (1979) and on and after November 1, 1981, by a creditor other than a savings and loan association and loans made at any time by a savings and loan association to a customer and which are secured by a first lien real estate mortgage or equivalent security interest if the annual percentage rate does not exceed 12% per year and the amount financed is \$25,000 or less.

SECTION 18. 943.27 of the statutes is amended to read:

943.27 Possession of records of certain usurious loans. ~~Except as otherwise authorized by law, any~~ Any person who knowingly possesses any writing representing or constituting a record of a charge of, contract for, receipt of or demand for a rate of interest or consideration exceeding \$20 upon \$100 for one year computed upon the declining principal balance of the loan, use or forbearance of money, goods or things in action or upon the loan, use or sale of credit is, if the rate is prohibited by a law other than this section, guilty of a Class E felony.

SECTION 19. **Legislative council study committee created.** (1) The legislative council is directed to establish, within 30 days after the effective date of this act, a special committee to:

(a) Immediately commence receiving information from business and consumer groups on interest rate practices and problems occurring under this act. The committee shall also independently seek interest rate trend data and such other information as it determines to be appropriate to monitor activities under this act.

(b) Study state laws and rules which regulate financial institutions or affect competition among financial institutions.

(c) Study the treatment of savings and loan associations by this act.

(d) Study the business practices of financial institutions with respect to credit cards.

(e) Study the business practices of finance companies.

(2) The special committee shall appoint a technical advisory committee composed of representatives of consumers, regulators, labor, business and all major types of financial institutions to assist the committee in performing its functions.

(3) The special committee shall report its findings and recommendations to the legislature not later than January 31, 1981. The special committee's report shall:

(a) Recommend whether the statutory changes made by this act shall be made permanent, extended, modified or terminated;

(b) Recommend legislation to eliminate any law which restrains competition among financial institutions; and

(c) Include its findings and recommendations regarding business practices of financial institutions issuing credit cards and finance companies.

SECTION 20. Applicability. This act is not the adoption of a law limiting the amount or rate of interest under P.L. 96-161 or a successor thereto.

SECTION 21. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A Statute Sections	B Old Cross-References	C New Cross-References
45.79 (4)(c)	138.05	138.05 or 138.051
138.06 (1) to (3) and (5)	138.05	138.05 or 138.051
426.201 (1)(a)	138.05	138.05, 1977 stats., 138.05 (1)(a) or (b), 1977 stats.
426.202 (1)(a)(intro.)	138.05 (1)(a) or (b)	138.05 (1)(a), 1977 stats.
426.202 (2)	138.05 (1)(a)	
