

CHAPTER 45 , Laws of 1981

AN ACT to repeal 215.21 (11) and (19) and 218.11 (6) (L); to renumber 138.041; to renumber and amend 422.201 (4) and 422.209 (2); to amend 138.051 (5), 138.053 (4) (b), 138.055 (5) (b), 138.09 (3) (e) and (7) (b) (intro.), (g) (intro.) and (i) (intro.), 138.12 (9) (b) and (11) (a), 218.01 (6) (b) (intro.), 227.027 (1), 422.201 (2) (b) (intro.), (10) (intro.) and (12), 422.202 (2) (intro.), 422.203 (1) and (4), 422.402 (1) and 428.101 (2); to repeal and recreate 422.209 (4); and to create 138.041 (2), 138.05 (8) (c), 138.051 (8), 138.052, 138.056, 138.06 (8), 138.09 (7) (bn), (bp) and (gm), 138.10 (4m), 138.12 (9) (bm), 186.012 (4), 215.02 (18), 218.01 (6) (bn), (bp) and (k), 220.04 (8), 422.201 (2) (bm), (bn) and (d), (4) (b), (10m), (10n) and (12m), 422.202 (2m), 422.203 (4) (c), 422.209 (2) (b) and (6m), 422.402 (1m), (5) and (6), 422.4155 and 428.101 (3) of the statutes, relating to interest rate ceilings, prepayment of loans and finance charges.

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

SECTION 1. 138.041 of the statutes is renumbered 138.041 (1).

SECTION 2. 138.041 (2) of the statutes is created to read:

138.041 (2) In order to prevent discrimination against state-chartered financial institutions with respect to interest rates, state-chartered banks, credit unions, savings and loan associations and mutual savings banks may take, receive, reserve and charge on any loan or forbearance made on or after the effective date of this subsection (1981) and before November 1, 1984, or after October 31, 1987, and on any renewal, refinancing, extension or modification made on or after the effective date of this subsection (1981) and before November 1, 1984, or after October 31, 1987, of any loan or forbearance, interest at a federal rate prescribed for federally chartered banks, credit unions, savings and loan associations 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, savings and loan associations or mutual savings banks.

SECTION 3. 138.05 (8) (c) of the statutes is created to read:

138.05 (8) (c) This section does not apply to any loan or forbearance which is made on or after the effective date of this paragraph (1981), or to any refinancing, renewal, extension, modification or prepayment on or after the effective date of this paragraph (1981), of any loan or forbearance, 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.

SECTION 4. 138.06 (8) of the statutes is created to read:

138.06 (8) This section does not apply to a loan or forbearance made on or after the effective date of this subsection (1981).

SECTION 5. 138.051 (5) of the statutes is amended to read:

138.051 (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%~~ 5.25% per year.

This subsection applies to any refinancing, renewal, extension or modification of the loan on or after the effective date of this act (1981).

SECTION 6. 138.051 (8) of the statutes is created to read:

138.051 (8) The contract rate is not subject to rate limitations imposed under this chapter or s. 218.01 or 422.201.

SECTION 7. 138.052 of the statutes is created to read:

**138.052 Residential mortgage loans.** (1) In this section:

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

(b) "Loan" means a loan 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 made, refinanced, renewed, extended or modified on or after the effective date of this section (1981), but does not include a mobile home transaction as defined in s. 138.056 (1) (c).

(c) "Loan administration" means a lender's processing of a loan and includes review, underwriting and evaluation of the loan application, document processing and preparation and administration of the loan closing, but does not include appraisals, inspections, surveys, credit reports or other activities incidental to loan origination and normally taking place outside the office of the lender or performed by 3rd persons.

(d) "Person related to" has the meaning given under s. 421.301 (32) and (33).

(2) (a) 1. A loan may be prepaid by the borrower at any time in whole or in part.

2. The parties may agree that if a prepayment is made within 5 years of the date of the loan, then the lender shall receive an amount not exceeding 60 days' interest at the contract rate on the amount by which the aggregate principal prepayments for a 12-month period exceeds 20% of the original amount of the loan.

3. If a prepayment is made 5 or more years from the date the loan is made, no premium or penalty may be received by the lender. This subdivision applies notwithstanding any refinancing, renewal, extension or modification of the loan.

(b) Upon prepayment of a loan in full by cash, renewal or refinancing, the borrower is entitled to a refund of unearned interest paid. Unearned interest is at the option of the lender, either:

1. The portion of interest which is allocable to all unexpired payment periods as scheduled. Except as otherwise agreed by the parties under sub. (4), a payment period is unexpired if prepayment is made within 15 days after the payment's due date. The unearned interest is the interest which, assuming all payments are made as scheduled, would be earned for each unexpired payment period by applying to unpaid balances of principal, according to the actuarial method, the contract rate on the date of prepayment. The creditor may decrease the annual interest rate to the next multiple of 0.25%.

2. The total interest charge less the amount determined by applying the contract rate, according to the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

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

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

(b) Fees, discounts or other sums actually imposed by the government national mortgage association, the federal national mortgage association, the federal home loan mortgage corporation or other governmentally sponsored secondary mortgage market purchaser of the loan or any private secondary mortgage market purchaser of the loan who is not a person related to the original lender.

(c) A loan administration fee charged by a lender, including fees paid to 3rd parties for loan administration services, not exceeding 2% of the principal amount of any construction loan and 2% of the principal amount of any other loan.

(d) The amount of any prepayment charge authorized under sub. (2) (a) 2 and received.

(e) Loan commitment fees.

(f) Amounts paid to the lender by any person other than the borrower.

(4) For the purpose of calculating the rate of interest under sub. (2) (b) 1, the parties may agree that any instalment paid within 30 days prior to or after the scheduled due date is paid on the due date.

(5) (a) Except as provided in par. (b), a bank, credit union, mutual savings bank, savings and loan association or mortgage banker which originates a loan after January 31, 1983, 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 5.25% per year, unless the escrow funds are held by a 3rd party in a noninterest-bearing account.

(b) The parties may agree to waive payment of all or part of the interest required under par. (a) if more than 75% of the lender's interest in the loan is sold to a 3rd party who is not a person related to the lender and the escrow funds are held by the 3rd party.

(6) The parties may agree to imposition of a late payment charge not exceeding 5% of the unpaid amount of any instalment not paid on or before the 15th day after its due date. For purposes of this subsection, payments are applied first to current instalments and then to delinquent instalments. A delinquency charge may be imposed only once on any instalment.

(7) Interest imposed on the amount due after acceleration or maturity of a loan may not exceed the contract rate.

(8) 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.

(9) Chapters 421 to 428 do not apply to the refinancing, modification, extension, renewal or assumption of a loan which had an original principal balance in excess of \$25,000 if the unpaid principal balance of the loan has been reduced to \$25,000 or less.

(10) This section does not apply to loans to corporations.

(11) The contract rate is not subject to rate limitations imposed under this chapter or s. 218.01 or 422.201.

(12) (a) Any lender violating sub. (2) (b), (5), (6) or (7) is liable to the borrower for \$500 plus actual damages, costs and reasonable attorney fees.

(b) Paragraph (a) does not apply to an unintentional mistake corrected by the lender on demand.

SECTION 8. 138.053 (4) (b) of the statutes is amended to read:

138.053 (4) (b) This section applies only to transactions initially entered into on or after June 12, 1976 and before the effective date of this act (1981).

SECTION 9. 138.055 (5) (b) of the statutes is amended to read:

138.055 (5) (b) This section applies only to transactions initially entered into on or after June 12, 1976 and before the effective date of this act (1981).

SECTION 10. 138.056 of the statutes is created to read:

**138.056 Variable rate loans.** (1) DEFINITIONS. In this section:

(a) "Approved index" means any of the following:

1. The national average mortgage contract rate for major lenders on the purchase of previously occupied homes, as computed by the federal home loan bank board.

2. The monthly average of weekly auction rates on U.S. treasury bills with a maturity of 3 months or 6 months made available by the federal reserve board.

3. The monthly average yield on U.S. treasury securities adjusted to a constant maturity of 1, 2, 3 or 5 years, made available by the federal reserve board.

4. An index readily verifiable by borrowers and beyond the control of an individual lender and approved by:

- a. The commissioner of savings and loan, if the lender is a savings and loan association;
- b. The commissioner of credit unions, if the lender is a credit union;
- c. The commissioner of insurance, if the lender is an insurance company; or
- d. The commissioner of banking for all other lenders.

(b) "Dwelling" includes a cooperative housing unit and a mobile home as defined in s. 218.10 (2).

(c) "Mobile home transaction" means a consumer credit sale, as defined in s. 421.301 (9), of or a consumer loan, as defined in s. 421.301 (12), secured by a first lien or equivalent security interest in a mobile home as defined in s. 218.10 (2).

(d) "Variable rate loan" means a mobile home transaction or a loan as defined in s. 138.052 (1) (b), the terms of which permits the interest rate to be increased or decreased.

(2) REQUIRED TERMS. A variable rate loan contract shall:

(a) Provide for a term of not more than 40 years.

(b) Use an approved index if it provides for adjustments to the interest rate corresponding to an index. The initial index value shall be the most recently available value of the index prior to the date of closing of the loan. The interest rate at adjustment shall reflect the difference, in reference to the interest rate of the variable rate loan at the date of closing, between the initial index value and the index value most recently available as of the date notice of the interest rate adjustment is mailed under sub. (4) except the lender may decrease the interest rate or decline to increase the interest rate at any time. The interest rate shall be decreased to reflect any downward movement of the index except to the extent the decrease offsets increases in the index not implemented as interest rate increases. An increase in the index permitting the lender to increase the interest rate but declined by the lender for any rate adjustment interval may be carried over and applied in succeeding interest rate adjustment intervals to the extent the increase is not offset by subsequent decreases in the index. The variable rate loan contract may provide for minimum interest rate change increments which shall apply to both increases and decreases. The variable rate loan contract may limit interest rate decreases only if interest rate increases are restricted at least to the same extent.

(c) Provide for no more than a one percent increase in the interest rate not more than once each 6 months, if it does not provide for adjustments to the interest rate corresponding to an approved index. If an increase is waived, the lender may at any time increase the interest rate to a rate equal to the interest rate if all increases were made at the first opportunity.

(3) FEES AND PENALTIES PROHIBITED. (a) A variable rate loan involving a mobile home transaction or using an approved index may be prepaid at any time in whole or in part without penalty. Other variable rate loans may be prepaid in whole or part without penalty within 30 days after notice of an increase in the interest rate and with the prepayment penalty under s. 138.052 (2) (a) 2 and 3 if prepayment is made before or after the 30-day period. This paragraph controls if there is a conflict with s. 138.052 (2) (a).

(b) No costs or fees may be charged in connection with adjustment to the interest rate of a variable rate loan or an adjustment to the payment, principal balance or term implementing an interest rate adjustment.

(4) NOTICE OF INTEREST PAYMENT CHANGES. (a) If a change in the interest rate occurs, the lender shall give the borrower notice of the change within:

1. Thirty days before the change if an increase in periodic payments other than the final payment is required.

2. Fifteen days after any other change.

(b) The notice shall be mailed to the borrower's last-known address and shall contain all of the following information:

1. The effective date of the interest rate change.

2. The amount of the interest rate change.

3. The changes in any index which cause the interest rate change.

4. The amount of the contractual monthly principal and interest payments required as a result of the change.

5. The prepayment rights of the borrower.

(5) NEGATIVE AMORTIZATION. The principal balance of a variable rate loan may be increased to implement an interest rate adjustment only if within 10 years after the loan is made, and at least every 5 years thereafter, the payment amount is adjusted to a level at least sufficient to amortize the loan at the then existing interest rate and principal balance over the remaining term of the loan. The payment amount shall be maintained at least at that level until subsequently adjusted under this subsection, except that the payment amount shall be decreased to reflect any decrease in the interest rate.

(6) DISCLOSURE. Before making a variable rate loan, the lender shall disclose all of the following information to at least one of the borrowers:

(a) That the loan contract contains a variable interest rate provision.

(b) An identification of any approved index used in the loan contract and the current base of the approved index.

(c) The borrower's prepayment rights on receiving notice of a change in the interest rate.

(d) That a notice of any interest rate increase must be given to the borrower.

(7) PRIORITY. Any interest accrued or added to the principal of a variable rate loan to implement an interest rate adjustment retains the priority of the original mortgage or equivalent security interest.

(8) APPLICABILITY. (a) This section does not apply to loans or forbearances to corporations.

(b) This section applies only to transactions initially entered into on or after the effective date of this section (1981).

SECTION 11. 138.09 (3) (e) of the statutes is amended to read:

138.09 (3) (e) A licensee may conduct, and permit others to conduct, at the location specified in its license, any one or more of the following businesses not subject to this section: A business which is engaged in making loans under s. 138.05 for business or agricultural purposes or exceeding \$25,000 in principal amount, a business engaged in making first lien real estate mortgage loans under ss. 138.051 to 138.06, a loan, finance or discount business under s. 218.01, or an insurance business, or a currency exchange under s. 218.05, or a seller of checks business under ch. 217; but merchandise shall not be sold at such location; and no other business shall be conducted at such location unless written authorization is granted the licensee by the commissioner.

SECTION 12. 138.09 (7) (b) (intro.) of the statutes is 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 April 6, 1980 ~~or after October 31, 1981~~, which does not exceed the greater of either of the following:

SECTION 13. 138.09 (7) (bn) and (bp) of the statutes are created to read:

138.09 (7) (bn) 1. A licensee may charge, contract for or receive a rate of interest, calculated according to the actuarial method, which may not exceed the greater of the following for a loan or forbearance of less than \$3,000 entered into on or after the effective date of this paragraph (1981) and before November 1, 1984, or after October 31, 1987:

a. Twenty-three percent per year.

b. A rate of 6% in excess of the interest rate applicable to 2-year U.S. treasury notes as determined under subd. 3. a.

c. A rate of 6% in excess of the interest rate applicable to 6-month U.S. treasury bills as determined under subd. 3. b.

2. A licensee may charge, contract for or receive a rate of interest, calculated according to the actuarial method, which may not exceed the greater of the following for a loan or forbearance of \$3,000 or more entered into on or after the effective date of this paragraph (1981) and before November 1, 1984, or after October 31, 1987:

a. Twenty-one percent per year.

b. A rate of 6% in excess of the interest rate applicable to 2-year U.S. treasury notes as determined under subd. 3. a.

c. A rate of 6% in excess of the interest rate applicable to 6-month U.S. treasury bills as determined under subd. 3. b.

3. a. For purposes of subds. 1. b and 2. b, the interest rate applicable to 2-year U.S. treasury notes for any calendar year quarter is the average annual interest rate determined by the last auction of the notes in the preceding calendar year quarter, increased to the next multiple of 0.5% if the average annual interest rate includes a fractional amount.

b. For purposes of subds. 1. c and 2. c, the interest rate applicable to 6-month U.S. treasury bills for any month is the average annual discount interest rate determined by the last auction of the bills in the preceding month, increased to the next multiple of 0.5% if the average annual discount interest rate includes a fractional amount.

4. Information regarding the amount of the maximum finance charge under subds. 1 and 2 for any month or calendar year quarter shall be available at the office of the commissioner.

5. This paragraph does not restrict the manner of contracting for interest, whether by add-on, discount or otherwise, if the interest rate does not exceed the rate under this paragraph.

(bp) A precomputed loan made after October 31, 1984 and before November 1, 1987, is not subject to any maximum interest rate limit.

SECTION 14. 138.09 (7) (g) (intro.) of the statutes is amended to read:

138.09 (7) (g) (intro.) ~~Upon~~ Except as provided in par. (gm), ~~upon~~ prepayment in full by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest as provided in this ~~subsection~~ paragraph. If the combined rebate of interest and credit insurance premiums otherwise required is less than \$1, no rebate need be made. The refunds shall be determined as follows:

SECTION 15. 138.09 (7) (gm) of the statutes is created to read:

138.09 (7) (gm) 1. Upon prepayment in full of a loan entered into on or after the effective date of this paragraph (1981) and before November 1, 1984, or after October 31, 1987, and which has a term of less than 49 months, by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest as provided in this paragraph. If the combined rebate of interest and credit insurance premiums otherwise required is less than \$1, no rebate need be made. The refunds shall be determined as follows:

a. On a loan where the interest is precomputed and which is repayable in substantially equal successive instalments at approximately equal intervals, the amount of rebate shall be computed under s. 422.209 (2) (a) except for any additional interest charge under par. (c) 2.

b. For any other loan, the amount of the rebate of interest may not be less than the difference between the interest charged and the interest earned at the agreed rate, computed upon the unpaid principal balance.

c. If the first payment period is greater than one month and additional interest is charged under par. (c) 2, the additional interest is earned on the first instalment date and may not be considered in computing rebates.

2. Upon prepayment of a loan entered into on or after the effective date of this paragraph (1981) and before November 1, 1984, or after October 31, 1987, and which has a term of 49 months or more, by cash, renewal, refinancing or otherwise, the borrower shall be entitled to a rebate of the unearned interest under s. 422.209 (2) (b). If the combined rebate of interest and credit insurance premiums otherwise required is less than \$1, no rebate need be made. If the first payment period is greater than one month and additional interest is charged under par. (c) 2, the additional interest is earned on the first instalment date and may not be considered in computing rebates.

SECTION 16. 138.09 (7) (i) (intro.) of the statutes is amended to read:

138.09 (7) (i) (intro.) In addition to the interest charge permitted in par. (b), the licensee may charge:

SECTION 17. 138.10 (4m) of the statutes is created to read:

138.10 (4m) WHEN LIMIT ON MAXIMUM INTEREST DOES NOT APPLY. Subsection (4) does not apply to a pawnbroker's loan made after October 31, 1984 and before November 1, 1987.

SECTION 18. 138.12 (9) (b) of the statutes is amended to read:

138.12 (9) (b) The service charge shall be a maximum of \$6 per \$100 may not exceed the interest rate authorized under s. 422.201 (2) (bm) per year plus an additional charge of \$10 per premium finance agreement, but, if the principal balance is \$50 or less there shall be no additional charge, and if the principal balance is more than \$50 but not more than \$100, the additional charge is \$6.

SECTION 19. 138.12 (9) (bm) of the statutes is created to read:

138.12 (9) (bm) Paragraph (b) applies only to a premium finance agreement in which the related insurance contract is for personal, family or household use entered into before November 1, 1984, or after October 31, 1987. The service charge for any other premium finance agreement shall be as agreed by the parties to the agreement.

SECTION 20. 138.12 (11) (a) of the statutes is amended to read:

138.12 (11) (a) A premium finance agreement may provide for the payment by the insured of a delinquency or default charge of \$1 to a maximum of 5% of the any delinquent instalment but not to exceed \$5 on any instalment which is in default for a period of 5 days or more. If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge equal to the difference between any delinquency or default charge imposed in

~~respect to the instalment in default and \$5 of \$15.~~ A premium finance agreement may also provide for the payment of statutory attorneys' fees and statutory court costs if the agreement is referred for collection to an attorney not a salaried employe of the insurance premium finance company.

SECTION 21. 186.012 (4) of the statutes is created to read:

186.012 (4) Unless the commissioner is expressly restricted by statute from acting under this subsection with respect to a specific power, right or privilege, the commissioner by rule may, with the approval of the credit union review board, authorize credit unions to exercise any power under the notice, disclosure or procedural requirements governing federally chartered credit unions or to make any loan or investment or exercise any right, power or privilege of federally chartered credit unions permitted under a federal law, regulation or interpretation. Notice, disclosure and procedures prescribed by statute which may be modified by a rule adopted under this subsection include, but are not limited to, those provided under s. 138.056. A rule adopted under this subsection may not affect s. 138.041 or chs. 421 to 428 or restrict powers granted credit unions under this chapter.

SECTION 22. 215.02 (18) of the statutes is created to read:

215.02 (18) **AUTHORITY TO GRANT CERTAIN POWERS.** Unless the commissioner is expressly restricted by statute from acting under this subsection with respect to a specific power, right or privilege, the commissioner by rule may, with the approval of the review board, authorize associations to exercise any power under the notice, disclosure or procedural requirements governing federally chartered associations or to make any loan or investment or exercise any right, power or privilege of federally chartered associations permitted under a federal law, regulation or interpretation. Notice, disclosure and procedures prescribed by statute which may be modified by a rule adopted under this subsection include, but are not limited to, those provided under s. 138.056. A rule adopted under this subsection may not affect s. 138.041 or chs. 421 to 428 or restrict powers specifically granted associations under this chapter.

SECTION 23. 215.21 (11) and (19) of the statutes are repealed.

SECTION 24. 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 April 6, 1980 ~~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 25. 218.01 (6) (bn), (bp) and (k) of the statutes are created to read:

218.01 (6) (bn) 1. Except as provided in subd. 3, the finance charge in a retail instalment sale which is a consumer transaction as defined in s. 421.301 (13) made on or after the effective date of this paragraph (1981) and before November 1, 1984, or after October 31, 1987, or the refinancing, renewal, extension or modification on or after the effective date of this paragraph (1981) and before November 1, 1984, or after October



31, 1987, of any such retail instalment sale, excluding the cost of insurance, may not exceed the maximum rate provided in s. 422.201 (2) (bm).

2. For any retail instalment sale which is not a consumer transaction as defined in s. 421.301 (13) and is made on or after the effective date of this paragraph (1981) and before November 1, 1984, or after October 31, 1987, or for any refinancing, renewal, extension or modification on or after the effective date of this paragraph (1981) and before November 1, 1984, or after October 31, 1987, of any such retail instalment sale, the maximum finance charges under pars. (b) and (bm) do not apply.

3. For any retail instalment sale of a mobile home as defined in s. 218.10 (2) made on or after the effective date of this paragraph (1981) and before November 1, 1984, or after October 31, 1987, or for any refinancing, renewal, extension or modification on or after the effective date of this paragraph (1981) and before November 1, 1984, or after October 31, 1987, of any such retail instalment sale, the maximum finance charges under pars. (b) and (bm) do not apply.

(bp) A retail instalment sale made after October 31, 1984 and before November 1, 1987, is not subject to any maximum finance charge limit.

(k) This subsection does not apply to a retail instalment sale of a motor vehicle made on or after the effective date of this paragraph (1981) and before November 1, 1984, or after October 31, 1987, if the motor vehicle is to be used primarily for business or commercial purposes and not for the buyer's personal, family or household use.

SECTION 26. 218.11 (6) (L) of the statutes is repealed.

SECTION 27. 220.04 (8) of the statutes is created to read:

220.04 (8) Unless the commissioner is expressly restricted by statute from acting under this subsection with respect to a specific power, right or privilege, the commissioner of banking by rule may, with the approval of the banking review board, authorize state banks to exercise any power under the notice, disclosure or procedural requirements governing national banks or to make any loan or investment or exercise any right, power or privilege permitted national banks under federal law, regulation or interpretation. Notice, disclosure and procedures prescribed by statute which may be modified by a rule adopted under this subsection include, but are not limited to, those provided under s. 138.056. A rule adopted under this subsection may not affect s. 138.041 or chs. 421 to 428 or restrict powers specifically granted state banks under this chapter or ch. 221 or ch. 222 or 224.

SECTION 28. 227.027 (1) of the statutes is amended to read:

227.027 (1) If preservation of the public peace, health, safety or welfare necessitates putting a rule into effect prior to the time it could be put into effect if the agency were to comply with the notice, hearing and publication requirements of this chapter, or if an agency acts under s. 186.012 (4), 215.02 (18) or 220.04 (8), the agency may adopt such rule may be adopted as an emergency rule. An emergency rule takes effect upon publication in the official state paper or on such later date as is specified in a statement published with the rule, but. An emergency rule remains in effect only for a period of 120 days, except that an emergency rule adopted under s. 186.012 (4), 215.02 (18) or 220.04 (8) remains in effect for one year or until the emergency rule is suspended or the proposed rule corresponding to the emergency rule is disapproved by the joint committee for review of administrative rules, whichever is sooner. If the emergency rule is suspended or a proposed rule under s. 186.012 (4), 215.02 (18) or 220.04 (8) is disapproved by the joint committee for review of administrative rules, any person may complete any transaction entered into or committed to in reliance on the suspended or disapproved rule and shall have 45 days to discontinue other activity undertaken in reliance on the suspended or disapproved rule.

SECTION 29. 422.201 (2) (b) (intro.) of the statutes 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 April 6, 1980, ~~after October 31, 1981 or at any time by a federally chartered or state chartered savings and loan association:~~

SECTION 30. 422.201 (2) (bm), (bn) and (d) of the statutes are created to read:

422.201 (2) (bm) 1. The finance charge, calculated according to the actuarial method, may not exceed the greater of the following for a consumer credit transaction entered into on or after the effective date of this paragraph (1981) and before November 1, 1984, or after October 31, 1987:

a. Eighteen percent per year.

b. A rate of 6% in excess of the interest rate applicable to 6-month U.S. treasury bills as determined under subd. 2.

2. For purposes of subd. 1. b, the interest rate applicable to 6-month U.S. treasury bills for any month is the average annual discount interest rate determined by the last auction of the bills in the preceding month, increased to the next multiple of 0.5% if the average annual discount interest rate includes a fractional amount.

3. Information regarding the amount of the maximum finance charge under subd. 1 for any month shall be available at the office of the administrator.

(bn) A consumer credit transaction entered into after October 31, 1984 and before November 1, 1987, is not subject to any maximum limit on finance charges.

(d) A purchase, cash advance or other debit transaction entered into by a customer under an open-end credit plan in existence on November 1, 1984, is subject to the finance charge determined by the creditor, if the creditor mails or delivers to the customer a written notice of any increase in the finance charge at least 15 days before 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. This paragraph does not apply to an open-end credit plan in existence after October 31, 1987.

SECTION 31. 422.201 (4) of the statutes is renumbered 422.201 (4) (a) and amended to read:

422.201 (4) (a) 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 April 6, 1980 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 April 6, 1980 ~~or after October 31, 1981~~, and calculated in accordance with that section.

SECTION 32. 422.201 (4) (b) of the statutes is created to read:

422.201 (4) (b) For sellers of farm equipment, farm implements and farm tractors the finance charge on the sale of equipment may not exceed the maximum rate provided in sub. (2) (bm) for consumer credit transactions entered into on or after the effective date of this paragraph (1981) and before November 1, 1984, or after October 31, 1987.

SECTION 33. 422.201 (10) (intro.) of the statutes is amended to read:

422.201 (10) (intro.) With respect to consumer credit transactions pursuant to an open-end credit plan entered into before the effective date of this act (1981), the parties may agree to the payment by the customer of a finance charge not in excess of those permitted by sub. (2) or (3), whichever is applicable.

SECTION 34. 422.201 (10m) and (10n) of the statutes are created to read:

422.201 (10m) (a) With respect to consumer credit transactions under an open-end credit plan entered into on or after the effective date of this subsection (1981) and before November 1, 1984, or after October 31, 1987, the parties may agree to the payment by

the customer of a finance charge determined by application of a rate not in excess of 18 % per year calculated according to the actuarial method, except as provided in pars. (b) and (h).

(b) 1. Notwithstanding par. (a), with respect to consumer credit transactions under an open-end credit plan entered into on or after the effective date of this subsection (1981) and before November 1, 1984, or after October 31, 1987, the parties may agree to the payment by the customer of a finance charge of which the customer is notified under subd. 3 if the constant maturity yield on 2-year U.S. government securities on each of 5 successive Thursdays exceeds 15 % per year.

2. The finance charge under subd. 1 shall remain in effect for a period of 182 days commencing on the first Friday after the 5th successive Thursday described in subd. 1. A consecutive 90-day period in which the maximum finance charge may not exceed the maximum finance charge agreed to under subd. 1 shall commence, if a consecutive 182-day period is not required under this subdivision. A consecutive 182-day period in which the maximum finance charge may not exceed the maximum finance charge agreed to under subd. 1 shall commence if the constant maturity yield on 2-year U.S. government securities on each of the 5 successive Thursdays immediately preceding the last day of the expiring 90-day or 182-day period exceeds 15 % per year.

3. The increased finance charge permitted under this paragraph may not be imposed unless the creditor gives notice of the increase to the customer by mail, addressed to the customer's last-known post-office address, not more than 60 days and not less than 30 days prior to any change in the finance charge. The notice shall disclose in the following order that:

- a. The customer may pay outstanding balances under preexisting terms.
- b. The customer may pay outstanding balances under preexisting terms and accept the application of the increased finance charge to future balances by entering into consumer credit transactions after the expiration of the notice period.
- c. The customer may accept the application of the increased finance charge to both existing and future balances by signing an appropriate agreement between the parties.
- d. Following the expiration of all consecutive periods in which the finance charge under subd. 1 may be imposed, the finance charge agreed upon between the parties under par. (a) shall be applied to unpaid balances accrued during these periods.

(c) A finance charge determined by application of a periodic rate not in excess of those permitted in par. (d) or (e) shall be determined by applying the periodic rate permitted in par. (d) or (e) to one of the following:

1. The average daily balance of the account.
2. The unpaid balance of the account on the last day of the billing cycle after first deducting all payments, credits and refunds during the billing cycle.
3. The median amount within a specified range within which the unpaid balance as calculated according to subd. 1 or 2 is included. A charge may be made under this subdivision only if the creditor, subject to classifications and differentiations the creditor may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not exceed the charge resulting from applying that percentage to the lowest amount within the range by more than 8 % of the charge on the median amount.

(d) If the billing cycle is monthly, a maximum periodic rate of 1.5 % may be applied to that part of the amount specified in par. (c) to which the rate of 18 % per year may be applied and one-twelfth of that part of the amount specified in par. (c) to which the rate under par. (b) 1 may be applied. For licensees under s. 138.09 the maximum periodic rate may not exceed the periodic rate permitted under s. 138.09, as determined by the administrator.

(e) If the billing cycle is not monthly, the maximum periodic rates are those percentages which bear the same proportion to the percentages specified in par. (d) as the number of days in the billing cycle bears to 30.

(f) For purposes of pars. (d) and (e), a billing cycle is monthly if the average length of 12 successive cycles is not less than 30 or more than 32 days.

(g) If its availability is disclosed to all prospective buyers, a discount of 5% or less of the stated price offered by a merchant in connection with a sale for agricultural purposes or to induce immediate payment in full other than by use of a credit card may not be included in the finance charge for the purpose of determining the maximum rate of finance charge under this subsection for a customer who elects to use a credit card or to have the agricultural transaction posted to the customer's open-end account.

(h) 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 subsection (1981), is subject to the limit on finance charges under sub. (2) (a), except a purchase, cash advance or other debit transaction entered into on or after the effective date of this subsection (1981) and before November 1, 1984, or after October 31, 1987, is subject to the limits on finance charges provided in pars. (a) and (b) 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 sub. (2) (a) 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. This paragraph does not prohibit changes in open-end credit terms under s. 422.415.

(10n) A consumer credit transaction under an open-end credit plan entered into after October 31, 1984 and before November 1, 1987, is not subject to any maximum limit on finance charges.

SECTION 35. 422.201 (12) of the statutes is amended 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 April 6, 1980 ~~and prior to November 1, 1981.~~

SECTION 36. 422.201 (12m) of the statutes is created to read:

422.201 (12m) This section does not apply to consumer credit sales of or consumer loans secured by a first lien on or equivalent security interest in mobile homes as defined in s. 218.10 (2), if the sales or loans are made on or after the effective date of this subsection (1981).

SECTION 37. 422.202 (2) (intro.) of the statutes is amended to read:

422.202 (2) (intro.) With respect to a consumer credit transaction which involves a mobile home transaction as defined in s. 138.056 (1) (c) or the extension of credit secured by an interest in real property, the parties may agree to the payment by the customer of the following charges in addition to the finance charge, if they will be paid to persons not related to the merchant, are reasonable in amount, bona fide and not for the purpose of circumvention or evasion of this subchapter:

SECTION 38. 422.202 (2m) of the statutes is created to read:

422.202 (2m) Except as provided in pars. (a) to (c), with respect to consumer credit transactions entered into under an open-end credit plan on or after the effective date of this subsection (1981), the parties may agree to the payment by the customer of the following charges in addition to the finance charge:

(a) A charge not to exceed \$2 in any billing cycle in which the creditor receives less than a minimum payment due as agreed by the parties. Any charge imposed under this paragraph may not be included in any outstanding balance for purposes of calculating any finance charge or minimum payment. A charge may not be made under this paragraph after October 31, 1984.

(b) A charge not to exceed 50 cents in any billing cycle in which there are at least 28 calendar days and where the balance as calculated in s. 422.201 (10m) is less than \$33.34. If the charge permitted in this subsection is imposed, no finance charge may be imposed under s. 422.201 (10m) nor may the charge permitted in par. (a) be imposed or collected. A charge may be imposed under this paragraph notwithstanding s. 422.415, except that no charge may be imposed under this paragraph after October 31, 1984.

(c) A charge not to exceed \$2 for each cash advance under an open-end credit plan other than by a seller credit card or an overdraft checking loan. A charge may not be made under this paragraph after October 31, 1984. In this paragraph:

1. "Cash advance" means a consumer loan in which the customer receives currency or its equivalent, but does not include credit for the purchase of goods or services.

2. "Overdraft checking loan" means an open-end credit plan in which loans are made only if the customer overdraws a debit account maintained with a supervised financial organization.

(d) Other charges not constituting finance charges, as determined by rule of the administrator.

(e) This subsection does not prohibit charges which the administrator has determined not to be finance charges prior to the effective date of this paragraph (1981).

SECTION 39. 422.203 (1) and (4) of the statutes are amended to read:

422.203 (1) With respect to a consumer credit transaction other than one pursuant to an open-end credit plan, the parties may agree to a delinquency charge on any instalment not paid in full on or before the 10th day after its scheduled or deferred due date in an amount not to exceed \$3 or 3% of the unpaid amount of the instalment, whichever is less, except that in a mobile home transaction as defined in s. 138.056 (1) (c) the delinquency charge may not exceed \$6 or 3% of the unpaid amount of the instalment, whichever is less.

(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~~ may 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 April 6, 1980 and prior to November 1, 1981, and ~~shall~~ may not exceed the maximum rate permitted by s. 138.05 (1) (a), if the transaction is entered into prior to April 6, 1980 ~~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~~ may not exceed the greater of either 12% per 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 April 6, 1980 ~~and prior to November 1, 1981~~.

SECTION 40. 422.203 (4) (c) of the statutes is created to read:

422.203 (4) (c) 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 paragraph (1981), but if interest is charged no delinquency charge may be taken on the final scheduled instalment.

SECTION 41. 422.209 (2) of the statutes is renumbered 422.209 (2) (a) and amended to read:

422.209 (2) (a) The unearned portion of the precomputed finance charge on consumer credit transactions repayable in substantially equal successive instalments at approximately equal intervals shall be equal to at least that portion of the finance charge which the sums of the instalment balances of the obligation scheduled to be outstanding after the instalment date nearest the date of prepayment bears to the sum of all instalment balances originally scheduled to be outstanding under the obligation. For the purpose of determining the instalment date nearest the date of prepayment when payments are monthly, any prepayment made on or before the 15th day following an instalment due date shall be deemed to have been made as of the instalment due date, and if prepayment occurs on or after the 16th day it shall be deemed to have been made on the succeeding instalment due date. This method of calculating rebates may be referred to as the "rule of 78" or "sum of the digits" method. This paragraph applies to consumer credit transactions entered into before the effective date of this act (1981), and to consumer credit transactions having initial terms of less than 49 months entered into on or after the effective date of this act (1981).

SECTION 42. 422.209 (2) (b) of the statutes is created to read:

422.209 (2) (b) The unearned portion of the finance charge on consumer credit transactions entered into on or after the effective date of this paragraph (1981), and which have terms of 49 months or more is, at the option of the creditor, either of the following:

1. The portion of the finance charge which is allocable to all unexpired payment periods as scheduled or deferred. A payment period is unexpired if prepayment is made within 15 days after the payment's due date. The unearned finance charge is the finance charge which, assuming all payments are made as scheduled or deferred, would be earned for each unexpired payment period by applying to unpaid balances of principal, according to the actuarial method, the annual percentage rate disclosed to the customer under subch. III or, in the case of a transaction for an agricultural purpose, the annual percentage rate based on the finance charge. The creditor may decrease the annual interest rate to the next multiple of 0.25 %.

2. The finance charge less the amount determined by applying the annual percentage rate disclosed to the customer under subch. III or, in the case of a transaction for an agricultural purpose, the annual percentage rate based on the finance charge, according to the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

SECTION 43. 422.209 (4) of the statutes is repealed and recreated to read:

422.209 (4) (a) Except as provided in par. (b), the unearned portion of a deferral charge is the deferral charge multiplied by the number of unexpired payment periods as of the date of prepayment and divided by the total number of instalments deferred.

(b) If the unearned finance charge is calculated under sub. (2) (b), the deferral charge shall be refunded in full.

SECTION 44. 422.209 (6m) of the statutes is created to read:

422.209 (6m) For purpose of this section, the finance charge in a mobile home transaction as defined in s. 138.056 (1) (c) does not include fees, discounts, or other sums actually imposed by the government national mortgage association, the federal national mortgage association, the federal home loan mortgage corporation or other governmentally sponsored secondary mortgage market purchaser of the loan or any private secondary mortgage market purchaser of the loan who is not a person related to the original lender.

SECTION 45. 422.402 (1) of the statutes is amended to read:

422.402 (1) ~~With~~ Except as provided in sub. (1m), with respect to a consumer credit transaction other than a transaction which is a) pursuant to an open-end credit plan, b) not precomputed and on which the annual percentage rate disclosed 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 April 6, 1980 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 46. 422.402 (1m), (5) and (b) [(6)] of the statutes are created to read:

422.402 (1m) With respect to a consumer credit transaction other than a transaction which is a) pursuant to an open-end credit plan, b) not precomputed and on which the annual percentage rate disclosed under subch. III is not more than 18% 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 subsection (1981) and before November 1, 1984, 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).

(5) This section does not apply to a mobile home transaction as defined in s. 138.056 (1) (c) made on or after the effective date of this subsection (1981) and before November 1, 1984, if:

(a) The transaction complies with s. 138.056; or

(b) The unequal or irregular payment is the final scheduled payment of the transaction, and the merchant agrees to refinance the final scheduled payment at a rate of interest not in excess of the rate disclosed pursuant to subch. III of ch. 422 by more than one percent multiplied by the number of 6-month periods in the term of the immediately prior mobile home transaction.

(6) This section does not apply to consumer credit transactions entered into on or after November 1, 1984, and before October 31, 1987.

SECTION 47. 422.4155 of the statutes is created to read:

**422.4155 Notice of termination of liability.** (1) In an open-end credit plan in which more than one person may be obligated for extensions of credit, any person may terminate his or her liability for future extensions of credit under the plan by giving written notice to the creditor of the person's termination of liability. The person's liability for future extensions of credit under the plan shall continue as to loans extended to, or purchases made by, any other person under the plan for 15 business days after the creditor's receipt of the termination notice. The terminating person's liability may not exceed the greater of the requested and contracted for credit limit under the plan or the balance outstanding under the plan on the receipt of the termination notice plus \$500.

(2) Notwithstanding sub. (1), a person remains liable for loans extended to, or purchases made by, the person after giving the termination notice.

SECTION 48. 428.101 (2) of the statutes is amended to read:

428.101 (2) Loans made prior to April 6, 1980 ~~and on and after November 1, 1981~~, by a creditor other than a savings and loan association and loans made ~~at any time before the effective date of this act (1981)~~, 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 49. 428.101 (3) of the statutes is created to read:

428.101 (3) Loans made on or after the effective date of this subsection (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.

SECTION 50. **Rejection of federal preemption.** It is declared that this state rejects the applicability in this state of sections 501 (a) (1), 511, 521, 522 and 523 of P.L. 96-221, as amended by P.L. 96-399.

SECTION 51. **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	B	C
Statute Sections	Old Cross-References	New Cross-References
45.79 (4)(c)	138.05 or 138.051	138.05, 138.051 or 138.052
138.04	138.05	138.041 to 138.056, 138.09 to 138.12, 218.01 or 422.201
138.057	138.053 or 138.055	138.053, 138.055 or 138.056
138.06 (1) to (3) and (5)	138.05 or 138.051	138.05, 138.051 or 138.052
138.09 (7)(g) 1	422.209	422.209 (2)(a)
218.01 (6)(d)	par. (a), (b) or (bm)	par. (a), (b), (bm), (bn), (bp) or (k)
422.209 (3)	sub. (2)	sub. (2)(a)
422.415 (1)	sub. (2)	sub. (2) and s. 422.202 (2m)(b)

SECTION 52. **Initial applicability.** (1) The treatment or creation of sections 138.09 (7) (g) (intro.) and (gm) and 422.209 (2) (a) and (b) and (4) of the statutes by this act first applies to transactions other than loans under sections 138.051 and 138.052 of the statutes, as affected by this act, on the first day of the 6th month beginning after the effective date of this act.

(2) The treatment or creation of section 138.12 (9) (b) and (bm) and (11) (a) of the statutes by this act first applies to insurance premium finance agreements entered into on or after the effective date of this act.

SECTION 53. **Effective date.** This act takes effect on November 1, 1981, or the day after its publication, whichever is later.