



1995 ASSEMBLY BILL 787

January 11, 1996 - Introduced by Representatives VRAKAS, KLUSMAN, HOVEN, GUNDERSON, F. LASEE, KAUFERT, TURNER, LA FAVE, GROTHMAN, RILEY and PLACHE, cosponsored by Senators DARLING, HUELSMAN, ROSENZWEIG, C. POTTER, WINEKE, SHIBILSKI, PANZER, FITZGERALD, BURKE and MOORE. Referred to Committee on Consumer Affairs.

1 **AN ACT to amend** 138.05 (2) (intro.); and **to create** 138.05 (2m) and 422.202 (1)
2 (e) of the statutes; **relating to:** prepayment fees for consumer credit
3 transactions and for certain automobile loans.

Analysis by the Legislative Reference Bureau

Under current law, the Wisconsin consumer act (WCA) contains a number of provisions regulating finance charges in consumer credit transactions. The WCA defines the term "finance charge" broadly to mean the sum of all charges, payable directly or indirectly by the customer as an incident to or as a condition of the extension of credit. The WCA excludes from the definition of finance charge certain expressly permitted additional charges, delinquency charges and deferral charges. This bill amends the WCA to permit a merchant to charge a loan prepayment fee as an expressly permitted additional charge, thus excluding the prepayment fee from the definition of finance charge. Under the bill, the prepayment fee may not exceed \$150 or 2% of the balance on the loan at the time of the prepayment, whichever is less, and may be charged only if the loan is paid off within 6 months of its origination. In order for the prepayment fee to be imposed, the parties must agree to its imposition in writing.

In addition, current law requires that certain loans that both charge interest at a rate in excess of 10% and are not subject to the WCA (for example, consumer loans in excess of \$25,000) may be prepaid by the borrower at any time in whole or in part. If the loan is prepaid, the borrower is entitled to a refund of unearned interest, calculated in a manner specified under current law. This bill amends these provisions to permit the parties to a loan to agree, in writing, to the imposition by a lender of a prepayment fee if the loan is paid off within 6 months of its origination. The prepayment fee may not exceed \$150 or 2% of the balance on the loan at the time of the prepayment, whichever is less.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 138.05 (2) (intro.) of the statutes is amended to read:

2 138.05 (2) (intro.) Any loan for which the rate of interest charged exceeds \$10
3 per \$100 for one year computed upon the declining principal balance may be prepaid
4 by the borrower at any time in whole or in part. ~~Upon~~ Except as provided in sub. (2m),
5 upon prepayment of any such loan in full by cash, renewal or refinancing, the
6 borrower shall be entitled to a refund of unearned interest charged which shall be
7 determined as follows:

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

9 138.05 (2m) The parties to the loan subject to sub. (2) may agree, in writing,
10 to allow the lender to impose a prepayment fee, if the loan is paid off within 6 months
11 of its origination, of \$150 or 2% of the balance on the loan at the time of the
12 prepayment, whichever is less.

13 **SECTION 3.** 422.202 (1) (e) of the statutes is created to read:

14 422.202 (1) (e) A prepayment charge, if the loan is paid off within 6 months of
15 its origination, of \$150 or 2% of the balance on the loan at the time of the prepayment,
16 whichever is less. In order for a prepayment fee to be charged under this paragraph,
17 the parties must agree to its imposition in writing.

18 **SECTION 4. Initial applicability.**

19 (1) This act first applies to consumer credit transactions and loan agreements
20 entered into, renewed, extended or modified on the effective date of this subsection.

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(END)