



2003 SENATE BILL 509

March 1, 2004 – Introduced by Senator SCHULTZ, cosponsored by Representative MONTGOMERY. Referred to Committee on Agriculture, Financial Institutions and Insurance.

1 **AN ACT to amend** 138.052 (2) (a) 2., 138.052 (9), 138.056 (3) (a), chapter 428
2 (title), 428.101 (intro.), 428.101 (3), 428.102 (intro.), 428.102 (2), 428.103 (1)
3 (intro.) and 428.106; and **to create** subchapter I (title) of chapter 428 [precedes
4 428.101] and subchapter II of chapter 428 [precedes 428.202] of the statutes;
5 **relating to:** regulating certain consumer mortgage lenders, granting
6 rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates a subchapter of the statutes regulating certain consumer mortgage loans, defined as “covered loans.” Significant provisions include the following:

Scope and definitions

This bill creates several prohibitions and requirements applicable to covered loans and the lenders that make them. The bill generally defines “covered loan” as a consumer credit mortgage loan transaction other than an open-end credit plan or reverse mortgage in which the consumer is a natural person, the loan is obtained by the consumer primarily for personal, family, or household purposes, the loan is secured by a mortgage on, or an equivalent security interest in, residential real property occupied or to be occupied by the consumer as the consumer’s principal dwelling, and the terms of the loan provide any of the following:

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(1) That the annual percentage rate at consummation will exceed, by more than eight percent for first-lien loans or by more than ten percent for subordinate-lien loans, the yield on specified U.S. Treasury securities.

(2) That the total points and fees payable by the consumer at or before the loan closing exceed the greater of eight percent of the total loan amount or \$400. (The \$400 amount is adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1).

(3) That the total points and fees payable by the consumer at or before the loan closing exceed six percent of the total loan amount.

The bill defines “lender” as a person who originates a covered loan and to whom the covered loan is initially payable. “Lender” does not include an assignee of a covered loan or any person who, for at least 12 consecutive months, has failed to originate any covered loans.

Prohibitions and requirements on lenders and others

The bill imposes all of the following prohibitions and requirements:

(1) With certain exceptions, no lender may make a covered loan that requires, or that permits the lender to require, a payment that is more than twice as large as the average of all earlier scheduled payments.

(2) No lender may make a covered loan that permits the lender or an assignee of the loan to demand payment of the outstanding balance before the original maturity date, except in cases of default, fraud, or material misrepresentation by the consumer or any act or omission by the consumer that adversely affects the lender’s or assignee’s security for the loan or any right of the lender or assignee in that security or in certain cases where the real property that is pledged as security for the loan has been sold.

(3) With certain exceptions, no lender may make a covered loan with a payment schedule that causes the principal balance to increase.

(4) No lender may make a covered loan that imposes or permits the lender or an assignee of the loan to impose an increase in the interest rate as a result of the consumer’s default.

(5) No lender may make a covered loan that includes a payment schedule that consolidates more than two scheduled payments and pays them in advance out of the proceeds of the loan.

(6) No lender may make covered loans to consumers based on the consumer’s collateral without regard to the consumer’s ability to repay, including the consumer’s current or expected income, current obligations, and employment. A lender is presumed to violate this prohibition if the lender engages in a pattern or practice of making covered loans without verifying and documenting the consumer’s repayment ability.

(7) With certain exceptions, no lender may make a covered loan that refinances an existing covered loan that the lender made to the same consumer, unless the refinancing takes place at least one year after the date on which the loan being refinanced was made or the refinancing is in the interest of the consumer. In addition, with certain exceptions, no assignee or servicer of a covered loan may make a covered loan that refinances the covered loan, unless the refinancing takes place

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at least one year after the date on which the loan being refinanced was made or the refinancing is in the interest of the consumer. No lender, assignee of a covered loan, or servicer may engage in a pattern or practice of evading these prohibitions.

(8) No lender may pay proceeds of a covered loan to a person who is under contract to make home improvements, as specified in the bill, unless the payment is made by an instrument that is payable to the consumer or jointly to the consumer and the person who is under contract or, with the consent of the consumer, the payment is made through a third party in accordance with a written agreement signed by the consumer, the lender, and the person under contract.

(9) With certain exceptions, no lender may finance through a covered loan, or finance to the same customer within 30 days of making a covered loan, any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance product on a prepaid single premium basis sold in conjunction with a covered loan.

(10) No lender may knowingly replace or consolidate a zero-interest rate or other subsidized low-rate loan made by a governmental or nonprofit lender with a covered loan within the first ten years of the zero-interest rate or other subsidized low-rate loan unless the current holder of the loan consents in writing to the refinancing.

(11) No lender may knowingly contract with any person who is engaged in work as a mortgage banker or mortgage broker but who has not obtained the registration required by law.

(12) No lender, mortgage banker, mortgage broker, loan originator (a type of agent of a mortgage banker or mortgage broker), or licensed lender (a person licensed by the Department of Financial Institutions (DFI) to make certain high interest loans) may knowingly make, propose, or solicit fraudulent, false, or misleading statements on any document relating to a covered loan.

(13) No lender, mortgage banker, mortgage broker, loan originator, or licensed lender may recommend or encourage an individual to default on an existing loan or other obligation before and in connection with the making of a covered loan that refinances all or any portion of that existing loan or obligation.

Prepayment

The bill allows a consumer to prepay a covered loan at any time without penalty if the payment is made in the context of a refinancing of the covered loan and if the covered loan is held by the refinancing lender. The bill also allows the servicer of a covered loan to impose a prepayment penalty, unless the servicer is also the lender and holds the loan at the time of the refinancing. The bill provides the following limitations on any otherwise permissible prepayment penalty:

(1) A prepayment penalty is permitted only during the 36 months immediately following the date of consummation of the covered loan.

(2) A lender may not include a prepayment penalty in a covered loan unless the lender offers the consumer the option of choosing a loan product without a prepayment penalty and the offer is in writing, is initialed by the consumer, and includes a prescribed notice to the consumer.

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(3) A prepayment penalty is limited to a calculated amount for certain types of covered loans and is not permitted on other types of covered loans.

Required notice

The bill requires a lender to ensure that the consumer is given a specified notice at least three business days before the lender makes the applicable covered loan.

Exclusive state regulation

The bill provides that the state has sole authority, except as provided under federal law, to regulate any matter governed under the bill or under a rule promulgated pursuant to the bill, and prohibits local governmental units from attempting to regulate any matter governed by the bill.

Debt collection

With certain exceptions, the bill exempts specified personal property and household goods of the consumer from levy, execution, or sale in satisfaction of a judgment for an obligation arising from a covered loan.

Administration and penalties

The bill allows DFI to promulgate rules, perform investigations, hold contested case hearings, and issue orders to administer and enforce the provisions created under the bill. With certain exceptions, if the person required to appear at an enforcement hearing fails to appear or if upon the record made at the hearing DFI finds that a violation has been established, DFI may issue an order specifying any of the following:

(1) That the person must cease and desist from the violation or practice and make restitution for any actual damages suffered by a consumer.

(2) That the person must forfeit not more than \$1,000 per violation or, if the person willfully or knowingly violated this subchapter, not less than \$1,000 nor more than \$10,000 per violation.

(3) That the person must pay to DFI the costs of its investigation.

(4) That a license, registration, or certification issued by DFI to the person is suspended or revoked or will not be renewed.

(5) That any individual who is responsible for the violation must be removed from working in any capacity related to the violation or related to activities regulated by DFI.

(6) Any additional conditions that DFI considers reasonable.

However, it is a defense to any alleged violation if the person alleged to have committed the violation establishes that the person acted in good faith while committing the violation and that, no later than 60 days after the discovery of the violation and before any investigation or other enforcement action by DFI, the person notified the affected consumer of the violation and either made appropriate adjustments to the loan to bring the loan into compliance or changed the terms of the loan in a manner beneficial to the consumer so that the loan is no longer a covered loan.

Parity for federally insured depository institutions

The bill provides that, if federal law preempts or prohibits the application of the provisions of the bill to any federally chartered bank, trust company, savings and

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loan association, savings bank, or credit union, the bill does not apply to the same type of state chartered bank, trust company, savings and loan association, savings bank, or credit union, or to any subsidiary thereof.

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.** 138.052 (2) (a) 2. of the statutes is amended to read:

2 138.052 (2) (a) 2. The Except as provided in s. 428.207, the parties may agree
3 that if a prepayment is made within 5 years of the date of the loan, then the lender
4 shall receive an amount not exceeding 60 days' interest at the contract rate on the
5 amount by which the aggregate principal prepayments for a 12-month period
6 exceeds 20% of the original amount of the loan.

7 **SECTION 2.** 138.052 (9) of the statutes is amended to read:

8 138.052 (9) Chapters 421 to ~~428~~ 427 and subch. I of ch. 428 do not apply to the
9 refinancing, modification, extension, renewal or assumption of a loan which had an
10 original principal balance in excess of \$25,000 if the unpaid principal balance of the
11 loan has been reduced to \$25,000 or less.

12 **SECTION 3.** 138.056 (3) (a) of the statutes is amended to read:

13 138.056 (3) (a) A variable rate loan involving a mobile home transaction or
14 using an approved index may be prepaid at any time in whole or in part without
15 penalty. Other variable rate loans may be prepaid in whole or part without penalty
16 within 30 days after notice of an increase in the interest rate and, except as provided
17 in s. 428.207, with the prepayment penalty under s. 138.052 (2) (a) 2. and 3. if
18 prepayment is made before or after the 30-day period. This paragraph controls if
19 there is a conflict with s. 138.052 (2) (a).

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1 **428.106 Remedies.** (1) Violations of this ~~chapter~~ subchapter may be enforced
2 by a customer subject to this section and ss. 425.308 to 425.311.

3 (2) With respect to a loan subject to this ~~chapter~~ subchapter, if the court as a
4 matter of law finds that any aspect of the transaction, any conduct directed against
5 the customer, by the creditor, or any result of the transaction is unconscionable, the
6 court shall, in addition to the remedies and penalties set forth in this ~~chapter~~
7 subchapter, and a penalty not to exceed that specified in s. 428.103 (2), refuse to
8 enforce the unconscionable aspect of the transaction or so limit the application of any
9 unconscionable aspect or conduct to avoid any unconscionable result.

10 (3) Notwithstanding other provisions of this ~~chapter~~ subchapter, a customer
11 shall not be entitled to recover the specific penalties provided in ss. 428.103 (2) (a)
12 and 428.104 (2) (a) if the person violating this ~~chapter~~ subchapter shows by a
13 preponderance of the evidence that the violation was not intentional and resulted
14 from a bona fide error notwithstanding the maintenance of procedures reasonably
15 adapted to avoid such error.

16 (4) Any action brought by a customer to enforce rights under sub. (1) shall be
17 commenced within one year after the date of the last violation of this ~~chapter~~
18 subchapter, 2 years after consummation of the agreement or one year after the last
19 payment, whichever is later. But in no event shall an action be commenced more
20 than 6 years after the date of the last violation.

21 (5) The administrator specified in s. 426.103, solely through the department
22 of justice, may on behalf of any customer institute an action to enforce this ~~chapter~~
23 subchapter and to recover the damages and penalties provided for this ~~chapter~~
24 subchapter. In such action the administrator may obtain an order restraining by
25 temporary or permanent injunctions any violation of this ~~chapter~~ subchapter. This

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1 subsection shall not be construed to incorporate or grant to the administrator with
2 respect to the enforcement of this ~~chapter~~ subchapter, any of the provisions of ch. 426.

3 **SECTION 12.** Subchapter II of chapter 428 [precedes 428.202] of the statutes is
4 created to read:

CHAPTER 428**SUBCHAPTER II****RESPONSIBLE HIGH COST****MORTGAGE LENDING**

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9 **428.202 Definitions.** In this subchapter:

10 (1) “Bridge loan” means a loan with a maturity of less than 18 months which
11 requires only payments of interest until the time that the unpaid balance is due.

12 (1m) “Business day” has the meaning that is specified under 12 CFR 226.2 (a)
13 (6) for purposes of 12 CFR 226.31.

14 (2) “Covered loan” means a consumer credit mortgage loan transaction other
15 than an open-end credit plan or reverse mortgage in which all of the following apply:

16 (a) The customer is a natural person.

17 (b) The debt is incurred by the customer primarily for personal, family, or
18 household purposes.

19 (c) The loan is secured by a mortgage on, or an equivalent security interest in,
20 residential real property, and the residential real property is or will be occupied by
21 the customer as the customer’s principal dwelling.

22 (d) The terms of the loan provide any of the following:

23 1. That the loan transaction, at the time that the loan is consummated, is
24 considered a mortgage under 15 USC 1602 (aa) and regulations adopted thereunder,
25 including 12 CFR 226.32.

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1 2. That total points and fees payable by the customer at or before the loan
2 closing exceed 6 percent of the total loan amount.

3 **(3)** “Customer” means an individual to whom a covered loan is offered or made.
4 “Customer” does not include a surety, guarantor, cosigner, or endorser.

5 **(4)** “Department” means the department of financial institutions.

6 **(5)** “Lender” means any person who originates a covered loan and to whom the
7 covered loan is initially payable, except that “lender” does not include an assignee
8 of a covered loan or any person who, for at least 12 consecutive months, has failed
9 to originate any covered loans.

10 **(5m)** “Licensed lender” means a person licensed under s. 138.09.

11 **(6)** “Loan originator” has the meaning given in s. 224.71 (1r).

12 **(6m)** “Local governmental unit” has the meaning given in s. 16.97 (7).

13 **(7)** “Mortgage banker” has the meaning given in s. 224.71 (3).

14 **(8)** “Mortgage broker” has the meaning given in s. 224.71 (4).

15 **(10)** “Servicer” has the meaning given in 12 USC 2605 (i) (2).

16 **428.203 Prohibitions on and requirements of lenders and assignees.**

17 **(1) BALLOON PAYMENTS.** Except as otherwise provided in this subsection, no lender
18 may make a covered loan to a customer that requires, or that permits the lender to
19 require, a payment that is more than twice as large as the average of all earlier
20 scheduled payments. This subsection does not apply to a loan under which the
21 payment schedule is adjusted to account for seasonal or irregular income of the
22 customer or to a bridge loan with a maturity of less than one year that the customer
23 obtains for the purpose of facilitating the acquisition or construction of a dwelling as
24 the customer’s principal dwelling.

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1 **(2) CALL PROVISION.** No lender may make a covered loan to a customer that
2 permits the lender or an assignee of the loan to demand payment of the outstanding
3 balance before the original maturity date, except that a covered loan may permit a
4 lender or assignee to so demand as a result of any of the following:

5 (a) The customer's failure to make payments required under the loan.

6 (b) A provision in the loan agreement permitting the lender or assignee to make
7 such a demand after the sale of real property that is pledged as security for the loan.

8 (c) Fraud or material misrepresentation by the customer in connection with the
9 loan.

10 (d) Any act or omission by the customer that adversely affects the lender's or
11 assignee's security for the loan or any right of the lender or assignee in such security.

12 **(3) NEGATIVE AMORTIZATION.** No lender may make a covered loan to a customer
13 with a payment schedule that causes the principal balance to increase, except that
14 this subsection does not prohibit such a payment schedule as a result of a temporary
15 forbearance or loan restructuring consented to by the customer.

16 **(4) INCREASED INTEREST RATE.** No lender may make a covered loan to a customer
17 that imposes or permits the lender or an assignee of the loan to impose an increase
18 in the interest rate as a result of the customer's default.

19 **(5) ADVANCE PAYMENTS.** No lender may make a covered loan to a customer that
20 includes a payment schedule that consolidates more than 2 scheduled payments and
21 pays them in advance out of the proceeds of the loan.

22 **(6) REPAYMENT ABILITY.** No lender may make covered loans to customers based
23 on the customer's collateral without regard to the customer's ability to repay,
24 including the customer's current or expected income, current obligations, and
25 employment. A lender is presumed to have violated this subsection if the lender

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1 engages in a pattern or practice of making covered loans without verifying and
2 documenting the customer's repayment ability.

3 (7) REFINANCING OF EXISTING COVERED LOAN. No lender may make a covered loan
4 that refinances an existing covered loan that the lender made to the same customer,
5 unless the refinancing takes place at least one year after the date on which the loan
6 being refinanced was made or the refinancing is in the interest of the customer. No
7 assignee or servicer of a covered loan may make a covered loan that refinances the
8 covered loan, unless the refinancing takes place at least one year after the date on
9 which the loan being refinanced was made or the refinancing is in the interest of the
10 customer. No lender, assignee of a covered loan, or servicer may engage in a pattern
11 or practice of arranging for the refinancing of covered loans by affiliates or
12 unaffiliated creditors, modifying covered loans, or any other acts for the purpose of
13 evading this subsection. This subsection does not apply to bridge loans.

14 (8) PAYMENTS TO HOME IMPROVEMENT CONTRACTORS. No lender under a covered
15 loan made to a customer may pay proceeds of the loan to a person who is under
16 contract to make improvements to an existing dwelling, unless the payment is made
17 by an instrument that is payable to the customer or jointly to the customer and the
18 person who is under contract or, with the consent of the customer, the payment is
19 made through a 3rd party in accordance with a written agreement signed by the
20 customer, the lender, and the person under contract.

21 (8g) SINGLE PREMIUM CREDIT INSURANCE PRODUCTS. A lender may not finance,
22 directly or indirectly, through a covered loan, or finance to the same customer within
23 30 days of making a covered loan, any individual or group credit life, credit accident
24 and health, credit disability, or credit unemployment insurance product on a prepaid
25 single premium basis sold in conjunction with a covered loan. This prohibition does

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1 not include contracts issued by a government agency or private mortgage insurance
2 company to insure the lender against loss caused by a customer's default and does
3 not apply to individual or group credit life, credit accident and health, credit
4 disability, or credit unemployment insurance premium calculated and paid on a
5 monthly or other periodic basis.

6 **(8m) REFINANCING OF SUBSIDIZED LOW-RATE LOANS.** (a) In this subsection,
7 "subsidized low-rate loan" means a loan that carries a current interest rate at least
8 2 percentage points below the then current yield on treasury securities with a
9 comparable maturity. If the loan's current interest rate is either a discounted
10 introductory rate or a rate that automatically steps up over time, the fully indexed
11 rate or the fully stepped-up rate, as applicable, shall be used instead of the current
12 rate to determine whether a loan is a subsidized low-rate loan.

13 (b) A lender may not knowingly replace or consolidate a zero-interest rate or
14 other subsidized low-rate loan made by a governmental or nonprofit lender with a
15 covered loan within the first 10 years of the zero-interest rate or other subsidized
16 low-rate loan unless the current holder of the loan consents in writing to the
17 refinancing.

18 **(9) UNREGISTERED MORTGAGE BANKERS AND BROKERS.** No lender may knowingly
19 contract with any person for the performance of duties in violation of s. 224.72 (1m).

20 **428.204 False statements.** No lender, licensed lender, loan originator,
21 mortgage banker, or mortgage broker may knowingly make, propose, or solicit
22 fraudulent, false, or misleading statements on any document relating to a covered
23 loan.

24 **428.206 Recommending default.** No lender, licensed lender, loan originator,
25 mortgage banker, or mortgage broker may recommend or encourage an individual

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1 to default on an existing loan or other obligation before and in connection with the
2 making of a covered loan that refinances all or any portion of that existing loan or
3 obligation.

4 **428.207 Prepayment. (1)** A customer may prepay a covered loan at any time
5 without penalty if the payment is made in the context of a refinancing of the covered
6 loan and if the covered loan is held by the refinancing lender. This subsection does
7 not prohibit the servicer of a covered loan from imposing a prepayment penalty,
8 unless the servicer is also the lender and holds the loan at the time of the refinancing.

9 **(2)** Any prepayment penalty under this section is subject to all of the following
10 limitations:

11 (a) A prepayment penalty is permitted only during the 36 months immediately
12 following the date of consummation of a covered loan.

13 (b) A lender may not include a prepayment penalty in a covered loan unless the
14 lender offers the customer the option of choosing a loan product without a
15 prepayment penalty. The terms of the offer shall be in writing and initialed by the
16 customer. The offer shall be in a clear and conspicuous format and include the
17 following disclosure:

18 **LOAN PRODUCT CHOICE DISCLOSURE**

19 I was provided with an offer to accept a product both with and without a
20 prepayment penalty provision. I have chosen to accept the product with a
21 prepayment penalty.

22 (c) A prepayment penalty may not exceed 60 days' interest at the contract rate
23 on the amount prepaid on fixed-rate covered loans over \$25,000 if the borrower
24 prepays more than 20 percent of the original loan amount within 36 months
25 immediately following the date of consummation of the covered loan.

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1 (d) A prepayment penalty may not be collected on fixed-rate covered loans of
2 \$25,000 or less, on adjustable rate loans, or on those fixed-rate covered loans over
3 \$25,000 not specified in par. (c).

4 **428.208 Disclosure to customers.** At least 3 business days before making
5 a covered loan to a customer, a lender shall ensure that the customer has been given
6 the following notice, in writing and in a clear and conspicuous format:

7 **DISCLOSURE TO BORROWER**

8 A. If you obtain this loan, the lender will have a mortgage on your home. You
9 could lose your home and any money that you have put into it if you do not meet your
10 obligations under this loan. Mortgage loan rates and closing costs and fees vary
11 based on many factors, including your particular credit and financial circumstances,
12 your earnings history, your employment status, the loan-to-value ratio of the
13 requested loan, and the type of property that will secure your loan. The loan rate and
14 fees could also vary based on which lender you select.

15 B. As a consumer you should shop around and compare loan rates and fees.
16 You should also consider consulting a qualified independent credit counselor or other
17 experienced financial adviser regarding the rate, fees, and provisions of this
18 mortgage loan before you proceed.

19 C. You are not required to complete this loan agreement merely because you
20 have received these disclosures or have signed a loan application. If you proceed with
21 this mortgage loan, you should also remember that you may face serious financial
22 risks if you use this loan to pay off credit card debts or other debts in connection with
23 this transaction and then subsequently incur significant new debt. If you continue
24 to accumulate debt after this loan is made and then experience financial difficulties,

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1 you could lose your home and any equity that you have in it if you do not meet your
2 mortgage loan obligations.

3 D. Property taxes and homeowner's insurance are your responsibility. Some
4 lenders may require you to escrow money for these payments. However, not all
5 lenders provide escrow services for these payments. You should ask your lender
6 about these services.

7 E. Your payments on existing debts contribute to your credit ratings. You
8 should not accept any advice to ignore your regular payments to your existing
9 creditors.

10 **428.209 Exclusive state regulation authority.** The state shall have sole
11 authority, except as provided under federal law, to regulate any matter governed by
12 this subchapter or by a rule promulgated under this subchapter. No local
13 governmental unit may attempt to regulate, directly or indirectly, any matter
14 governed by this subchapter or by a rule promulgated under this subchapter,
15 including enacting an ordinance or adopting a resolution or imposing reporting
16 requirements.

17 **428.2095 Property exempt from debt collection.** Except to the extent that
18 the lender has a valid security interest permitted under this subchapter or has a lien
19 under ch. 779 in the property, all of the following personal property of the customer
20 is exempt from levy, execution, sale, and other similar process in satisfaction of a
21 judgment for an obligation arising from a covered loan:

22 (1) Clothing of the customer or his or her dependents.

23 (2) Dining table and chairs, refrigerator, heating stove, cooking stove, radio,
24 beds and bedding, couch and chairs, cooking utensils, and kitchenware.

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1 **(3)** Household goods, as defined in 12 CFR 227.13 (d), 12 CFR 535.1 (g), or 16
2 CFR 444.1 (i), consisting of furniture, appliances, one television, linens, china,
3 crockery, and personal effects including wedding rings, except works of art,
4 electronic entertainment equipment, antiques, and jewelry, to the extent that a
5 nonpossessory security interest in these household goods is prohibited under 12 CFR
6 227.13 (d), 12 CFR 535.2 (a) (4), or 16 CFR 444.2 (a) (4).

7 **428.210 Administration and penalties. (1) RULES.** The department may
8 promulgate rules for the administration of this subchapter. The rules shall include
9 guidelines for determining a customer's ability to repay a covered loan based upon
10 the customer's debt-to-income ratio.

11 **(2) INVESTIGATIONS.** (a) At any time that the department has reason to believe
12 that a person has engaged in or is about to engage in an act that violates this
13 subchapter, the department may investigate. In performing an investigation under
14 this paragraph, the department may administer oaths or affirmations, subpoena
15 witnesses, compel their attendance, adduce evidence, and require the production of
16 any matter, including the existence, description, nature, custody, condition, and
17 location of any books, documents, or other tangible things, and the identity and
18 location of persons having knowledge of relevant facts, or any other matter
19 reasonably calculated to lead to the discovery of admissible evidence. The
20 department may access and examine such books, documents, or other tangible
21 things. In any civil action brought on behalf of the department based on evidence
22 obtained in such an investigation, the department may recover the costs of
23 performing the investigation if the department prevails in the action.

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1 (b) If 5 or more persons file a verified complaint with the department alleging
2 that a person has violated this subchapter, the department shall immediately
3 commence an investigation pursuant to par. (a).

4 (c) If the records of a person who is subject to an investigation pursuant to par.
5 (a) are located outside of this state, the person at the person's option shall either
6 make them available to the department at a convenient location within this state or
7 pay the reasonable and necessary expenses for the department to examine them at
8 the place where they are located. The department may designate representatives,
9 including comparable officials of the state in which the records are located, to inspect
10 them on the department's behalf.

11 (d) At the request of the department of financial institutions and upon
12 reasonable notice to all affected persons, the department of justice may apply to any
13 court of record for an order compelling compliance if a person fails to obey a subpoena
14 or to give testimony pursuant to par. (a).

15 **(3) ENFORCEMENT AND PENALTIES.** (a) The department may serve a notice of a
16 hearing that complies with s. 227.44 (1) and (2) on a person if the department
17 reasonably suspects that the person has violated this subchapter. The department
18 may receive complaints alleging violations of this subchapter. A hearing conducted
19 pursuant to a notice under this paragraph shall be conducted in the manner specified
20 for a contested case, as defined in s. 227.01 (3), under ss. 227.44 to 227.50. Except as
21 provided in sub. (4), if the person fails to appear at the hearing or if upon the record
22 made at the hearing the department finds that a violation has been established, the
23 department may issue and serve on the person an order specifying any of the
24 following:

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1 1. That the person must cease and desist from the violation or practice and
2 make restitution for any actual damages suffered by a customer.

3 2. That the person must forfeit not more than \$1,000 per violation or, if the
4 person willfully or knowingly violated this subchapter, not less than \$1,000 nor more
5 than \$10,000 per violation.

6 3. That the person must pay to the department the costs of its investigation.

7 4. That a license, registration, or certification issued by the department to the
8 person is suspended or revoked or will not be renewed.

9 5. That any individual who is responsible for the violation must be removed
10 from working in any capacity related to the violation or related to activities regulated
11 by the department.

12 6. Any additional conditions that the department considers reasonable.

13 (b) An order under par. (a) is effective upon service on the person and may be
14 appealed under s. 220.035.

15 (c) The department of justice, at the request of the department of financial
16 institutions, may bring an action to enforce an order issued under par. (a).

17 **(4) SAFE HARBOR.** It is a defense to any alleged violation of this subchapter if
18 the person alleged to have committed the violation establishes all of the following:

19 (a) That the person acted in good faith while committing the violation.

20 (b) That, no later than 60 days after the discovery of the violation and before
21 any investigation or other enforcement action by the department under this section,
22 the person notified the affected customer of the violation and either made
23 appropriate adjustments to the loan to bring the loan into compliance with this
24 subchapter or changed the terms of the loan in a manner beneficial to the customer
25 so that the loan is no longer a covered loan.

