



2005 ASSEMBLY BILL 456

June 1, 2005 – Introduced by Representatives HUNDERTMARK, MONTGOMERY, LAMB, HAHN, HINES, OWENS, PETROWSKI, KREIBICH, VRAKAS, PRIDEMORE, VAN ROY, BALLWEG, LOTHIAN and ALBERS, cosponsored by Senators STEPP, PLALE, BROWN and HARSDORF. Referred to Committee on Financial Institutions.

1 **AN ACT to repeal** 138.056 (3) (a); **to renumber** 138.056 (3) (b); **to amend** 138.056
2 (3) (title); and **to create** 138.056 (3m) of the statutes; **relating to:** prepayment
3 penalties on variable rate residential mortgage loans.

Analysis by the Legislative Reference Bureau

Under current law, a residential mortgage loan (a loan secured by a first lien real estate mortgage on, or an equivalent security interest in, a one- to four-family dwelling used by the borrower as his or her principal residence) made after November 1, 1981, may be prepaid in whole or in part by the borrower at any time, but the lender may impose a prepayment penalty or fee if the prepayment is made within five years of the date of the loan. The prepayment penalty or fee may not exceed 60 days' interest at the contract rate on the amount by which the aggregate principal prepayments for a 12-month period exceeds 20 percent of the original amount of the loan.

Current law imposes different prepayment penalty requirements on a "variable rate loan," which is a residential mortgage loan, or a consumer loan secured by an interest in a mobile home, the terms of which permit the interest rate to be increased or decreased. Such increases or decreases may correspond to an "approved index." A variable rate loan involving a mobile home transaction or using an approved index may be prepaid in whole or in part at any time without penalty. Other variable rate loans may be prepaid in whole or in part without penalty within 30 days after notice of an increase in the interest rate, and may be prepaid at other times subject to the prepayment penalty described above.

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This bill eliminates the prepayment penalty requirements for variable rate loans that are described above and creates new requirements. Under the bill, a lender may not include a prepayment penalty in a variable rate loan unless the lender has, in writing, offered the borrower a variable rate loan without a prepayment penalty and the borrower initials the offer to indicate that the borrower has declined the offer. If the borrower declines the offer, the lender may include a prepayment penalty that applies if prepayment of the loan is made within the first three years of the loan and is not made in connection with the sale of the dwelling or mobile home secured by the loan. The bill limits the prepayment penalty or fee to 3 percent in the first year of the loan, 2 percent in the second year of the loan, or 1 percent in the third year of the loan, of the amount by which the prepayment exceeds 80 percent of the principal balance of the loan outstanding immediately prior to prepayment.

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

1 **SECTION 1.** 138.056 (3) (title) of the statutes is amended to read:

2 138.056 (3) (title) ~~FEES AND PENALTIES PROHIBITED.~~

3 **SECTION 2.** 138.056 (3) (a) of the statutes, as affected by 2003 Wisconsin Act
4 257, is repealed.

5 **SECTION 3.** 138.056 (3) (b) of the statutes is renumbered 138.056 (3).

6 **SECTION 4.** 138.056 (3m) of the statutes is created to read:

7 138.056 (3m) **PREPAYMENT PENALTIES.** (a) Notwithstanding s. 138.052 (2) (a),
8 and except as provided in s. 428.207, a lender may not include a prepayment penalty
9 in a variable rate loan unless the lender offers the borrower a variable rate loan
10 without a prepayment penalty, the offer is in writing, and the borrower initials the
11 offer to indicate that the borrower has declined the offer.

12 (b) If a borrower declines an offer required under par. (a), the lender may
13 include a prepayment penalty that provides that, if a prepayment is made within 3
14 years of the date of the loan and prepayment is not made in connection with the sale
15 of the dwelling or mobile home securing the loan, the lender shall receive an amount

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1 not exceeding 3 percent if the prepayment is made in the first year of the loan, 2
2 percent if the prepayment is made in the 2nd year of the loan, or 1 percent if the
3 prepayment is made in the 3rd year of the loan, of the amount by which the
4 prepayment exceeds 80 percent of the principal balance of the loan outstanding
5 immediately prior to the prepayment.

6 (c) This subsection applies variable rate loans made, refinanced, renewed,
7 extended, or modified on or after the effective date of this paragraph ... [revisor
8 inserts date].

9 (END)