

CHAPTER 214

SMALL LOANS

| | | | |
|--------|---|--------|---|
| 214.01 | Definitions. | 214.13 | Duties to borrowers. |
| 214.02 | Licenses; applications; fees; bond. | 214.14 | Prohibited practices. |
| 214.03 | Conditions of the issuance of licenses | 214.15 | Wage assignments; liens. |
| 214.04 | Order denying application. | 214.16 | Fraudulent advertising. |
| 214.05 | Licenses; posting; changes of location; renewal; net assets | 214.17 | Foreign loans. |
| 214.06 | Revocation; suspension; reinstatement and term of licenses. | 214.18 | Loans over three hundred dollars |
| 214.07 | Powers of office; advisory committees. | 214.19 | Rate of interest on small loans. |
| 214.08 | Testimonial powers. | 214.20 | Small loans by others than licensee prohibited. |
| 214.09 | Power to secure evidence. | 214.21 | Subterfuge. |
| 214.10 | Office orders; rules of procedure. | 214.22 | Penalties. |
| 214.11 | Court review | 214.23 | Exemptions. |
| 214.12 | Records; reports. | 214.24 | Amendment or repeal. |
| | | 214.26 | Fees. |
| | | 214.27 | Enforcement. |

214.01 Definitions. The following terms, as used in this chapter, shall have the meaning stated, unless the context requires a different meaning:

(1) "Office" means the office of the commissioner of banking.

(2) "Person" includes individuals, partnerships, associations and corporations.

(3) "Small loan" means the loan, use or forbearance of money, goods or things in action of the amount or value of three hundred dollars or less, or the loan, use or sale of credit of the amount or value of three hundred dollars or less.

(4) "Licensee" means a person licensed under this chapter.

(5) "Special order" means an order against a person.

(6) "General order" means an order which is not a special order.

214.02 Licenses; applications; fees; bond. (1) Application for a separate license to make small loans at each office to be operated under this chapter shall be made to the office in writing, under oath, in a form to be prescribed by the office. The office may issue more than one license to the same licensee.

(2) Every application for a license shall be accompanied by a fee of \$100 for investigating the application and the additional sum of \$200 as an annual license fee for the period terminating on the last day of the current calendar year. If the application is filed after June 30 in any year the license fee shall be \$100 in addition to the investigation fee of \$100.

(3) The office may require any licensee to file and maintain in force a bond in a form to be prescribed by it and acceptable to it, in such

sum as it deems necessary to safeguard the interest of the borrowers and the public, not exceeding, however, the sum of \$5,000.

History: 1971 c. 125.

214.03 Conditions of the issuance of licenses. The office shall issue a license to the applicant to make small loans at the office specified in the application in accordance with this chapter, if the office shall find:

(1) That the applicant has filed the required application and bond and paid the required fees.

(2) That the financial responsibility, experience, character and general fitness of the applicant, and of the members thereof if the applicant be a partnership, or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the purposes of this chapter.

(3) That allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted.

214.04 Order denying application. If the office is not satisfied as to all of the matters specified in s. 214.03 it shall enter a special order denying the application for a license and shall return to the applicant his bond and license fee but shall retain the \$100 investigation fee. The office shall make findings of fact as part of and in support of its order denying any application for a license.

214.05 Licenses; posting; changes of location; renewal; net assets. (1) Every license

214.05 SMALL LOANS

2934

issued shall state the address of the office at which the business is to be conducted, the name of the licensee, and if the licensee is a partnership or association, the names of the members thereof, and if a corporation the date and place of its incorporation. Such license shall be kept conspicuously posted in the office of the licensee and shall not be transferable or assignable.

(2) Whenever a licensee shall contemplate a change of his place of business to another location within the same city or village, he shall give written notice thereof to the office, which shall attach to the license its authorization of such removal, specifying the date thereof and the new location. Such authorization shall be authority for the operation of such business under the same license at the specified new location. No change in the place of business of a licensee to a location outside of the original city or village shall be permitted under the same license.

(3) Every licensee shall, on or before the tenth day of each December, pay to the office the annual license fee for the next succeeding calendar year.

(4) Every licensee shall maintain at all times at the office specified in the license the amount of net liquid assets specified in the license issued to that office either in liquid form available for the operation of or actually used in the conduct of such business at the office specified in the license.

214.06 Revocation; suspension; reinstatement and term of licenses. (1) It shall be the duty of the office and it shall have power, jurisdiction and authority, after complaint, notice and hearings as provided in s. 214.10, to revoke any license in the following cases:

(a) If the licensee has failed to pay the annual license fee or to maintain in effect the bond required under this chapter;

(b) If the licensee has violated any provision of this chapter or of any lawful order issued hereunder;

(c) If any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the office in refusing to issue such license.

(2) If the office finds cause for revocation of a license, it shall issue a special order revoking the said license which shall include its findings of fact upon which such order is based.

(3) The office may, without complaint, upon 2 days' notice and opportunity for hearing, suspend any license for a period not exceeding 30 days, pending investigation.

(4) The office may revoke or suspend only the particular license to operate at the office with respect to which grounds for revocation or suspension occur or exist, or, if the office finds that such grounds for revocation or suspension are of general application to all offices operated by such licensee then the office shall revoke or suspend all of the licenses of said licensee or such number of licenses as such grounds apply to.

(5) Any licensee may surrender any license by serving upon the office written notice that he thereby surrenders such license.

(6) The office may on its own motion issue a new license where a license has been revoked, if no fact or condition then exists which would have warranted the office in refusing originally to issue such license.

(7) Every license shall remain in force and effect until the same shall have been revoked or suspended or surrendered by the licensee in accordance with the provisions of this chapter.

214.07 Powers of office; advisory committees. It shall be the duty of the office and it shall have power, jurisdiction and authority to investigate the conditions and ascertain the facts with reference to small loans and upon the basis thereof:

(1) To classify small loans by general order according to size, nature of security, or in accordance with any differentiation which may reasonably distinguish such classes of loans for the purpose of this chapter;

(2) To determine and fix by general order such reasonable maximum rate of interest or charge upon each such class of small loans as will induce efficiently operated commercial capital to enter such business in sufficient amounts to make available reasonably adequate credit facilities to individuals pressed by lack of funds to meet necessities. In any proceeding before the office where a licensee or licensees apply for or seek to have established any rate of interest or charge, such licensee or licensees shall have the burden of proof to show that such rate is necessary to satisfy the requirements of this subsection;

(3) To issue general or special orders in execution of or supplementary to this chapter, but not in conflict therewith, to protect borrowers from oppressive or deceptive practices of licensees: To prevent mortgage foreclosures by licensees against persons who are substantially dependent upon any organized charity or public poor relief agency, to regulate advertising and solicitation of business by licensees, and to prevent evasions of this chapter;

(4) At any time and so often as the office may determine, but at least once each year, to investigate the loans and business and examine the books, accounts, records and files used therein of every licensee. The actual cost of each such examination shall be paid to the office by every licensee so examined within 30 days after demand therefor by the office, and the state may maintain an action for the recovery of such costs in any court of competent jurisdiction;

(5) To appoint advisors from the employes, employers, social workers, legal aid bureaus, bankers and other appropriate classes of persons in the state and in any locality, which advisors shall be consulted by and shall assist the office in the execution of its duties under this chapter. The office may appoint such advisors as deputies. Such persons, either as advisors or deputies, shall receive no compensation for their services but may be reimbursed for their actual and necessary traveling expenses. Such expenses shall be audited and paid and charged to the appropriation of the office for the administration of this chapter.

214.08 Testimonial powers. (1) The office may, in relation to any matter within the office's powers, issue subpoenas and take testimony.

(2) Witnesses shall be entitled to the same fees as are allowed to witnesses in courts of record. Such fees shall be audited and paid by the state in the same manner as other expenses of the office are audited and paid. No witness subpoenaed at the instance of any party other than the office shall be entitled to payment of fees by the state, unless the office certifies that the testimony of such witness was material to the hearing or proceeding.

(3) No person shall, without reasonable cause, fail to comply with a subpoena issued under this section, nor refuse to be sworn or to be examined, or to answer a proper question, or produce a pertinent document, when ordered to do so by the official conducting the investigation or proceeding.

214.09 Power to secure evidence. (1) The office may, by general or special order require licensees to file with the office at such time and in such manner as it may direct, sworn or unsworn reports, or sworn or unsworn answers in writing to specific questions as to any matter upon which the office may demand information under this chapter.

(2) The office or any official, employe, or agent authorized by it may, for purposes with-

in the office's powers, have access during business hours to the offices and places of business, books, accounts, papers, records, files, safes and vaults of persons engaged in the small loans business, whether licensees or not.

(3) No person shall refuse, neglect or fail to render any reports or answer required under this section at such time and in such manner as the office may prescribe. No person shall wilfully make any false entry or statement in any report or answer, nor shall wilfully fail to make full and true entries and statements in any report or answer required under authority of this chapter.

214.10 Office orders; rules of procedure.

(1) The office, prior to the issuance of any general order under this chapter, shall hold a public hearing.

(2) The office, prior to the issuance of any special order under s. 214.06 or 214.07, shall serve a complaint, prepared in the name of the office, upon the person against whom the complaint is made and shall accompany such complaint by notice of a public hearing to be held in the matter not sooner than 10 days after such service. The person against whom the complaint is made shall be entitled to be heard in person, or by agent or attorney, and shall have the benefit of subpoena process to compel the attendance of witnesses.

(4) The office shall serve a copy of any special order upon the person against whom the order is issued and such an order shall be effective upon such service, unless otherwise indicated in the order.

(5) A complaint, notice of hearing, subpoena, special order or any other process issued by the office may be served in the same manner that process in a civil action is served.

(6) The office shall make its own rules of practice and procedure for the conduct of hearings and other proceedings before it, not inconsistent with any provision of this chapter or with any other provision of law governing such practice or procedure.

214.11 Court review. Orders of the office under this chapter shall be subject to review in the manner provided in ch. 227.

214.12 Records; reports. (1) The licensee shall keep and use in his business such books, accounts and records as the office, by general or special order, may find to be necessary and require to enable it to determine whether such licensee is complying with this chapter and with the lawful orders issued hereunder.

(2) Each licensee shall annually, on or before March 15, file a report with the office giving such reasonable and relevant information as the office may, by general or special order, require concerning the business and operations conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the office and shall be subject to public inspection in the discretion of the office. The office shall make and publish annually an analysis and recapitulation of such reports.

214.13 Duties to borrowers. Every licensee shall:

(1) Deliver to the borrower at the time any loan is made a statement in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the agreed rate of interest or charge per annum clearly and plainly expressed as nearly as such rate of interest or charge will permit;

(2) Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made, in a form to be prescribed by the office;

(3) Permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may apply such payment first to all interest in full at the agreed rate up to date of such payment;

(4) Upon repayment of the loan in full, mark indelibly every obligation, other than a security agreement, signed by the borrower with the word "Paid" or "Canceled," and cancel and return any note. When there is no outstanding secured obligation, such licensee shall restore any pledge, cancel and return any assignment, cancel and return any security agreement given to him by the borrower and file a termination statement terminating any filed financing statement given to the licensee by the borrower;

(5) Display prominently in every room of the office or place where such licensed business is conducted, a complete schedule of the rates of charge currently being made by such licensee upon all classes of loans made under this chapter, together with a clear and concise explanation thereof.

214.14 Prohibited practices. (1) No licensee shall take any confession of judgment or any power of attorney. No licensee shall take any note, promise to pay, or security that does not state the actual amount of the loan, the time

for which it is made, and the agreed rate of interest, nor any instrument in which blanks are left to be filled in after execution.

(2) No licensee shall take a lien upon real estate as security for any loan under the provisions of this chapter, except such lien as is created by law upon the recording of a judgment.

(3) No licensee shall conduct a small loans business within any office, room or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the office upon its finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this chapter or of the lawful orders issued thereunder.

(4) No licensee shall transact business or make any loan provided for by this chapter under any other name or at any other place of business than that named in the license.

(5) No amounts whatsoever shall be paid to, deducted by, discounted by or received by any licensee in advance. Interest charged by a licensee shall not be compounded and shall be computed only on unpaid principal balances.

Note: Sub. (5) is amended by ch. 239, laws of 1971, effective March 1, 1973, to read:

(5) No amounts whatsoever shall be paid to, deducted by, discounted by or received by any licensee in advance. Interest charged by a licensee shall not be compounded and shall be computed only on unpaid principal balances. Interest charged by a licensee shall not exceed the amount permitted by ch. 422.

(6) No licensee shall, in addition to the interest or charge herein provided, directly or indirectly charge, contract for or receive any other charge or amount whatsoever for any examination, service, brokerage, commission, expense, fee, bonus or other things or otherwise, except that a licensee may charge an amount sufficient to cover the fee for filing the termination statement required by s. 409.404. If any interest, consideration or charges in excess of those permitted by this chapter, are charged, contracted for or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever.

History: 1971 c. 239.

214.15 Wage assignments; liens. (1) The payment of three hundred dollars or less in money, credit, goods, or things in action, as consideration for any sale, assignment, or order for the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall for the purposes of this chapter be deemed a loan secured by such assignment, and the amount by which such as-

signed compensation exceeds the amount of such consideration actually paid shall be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable. Such transaction shall be governed by and subject to the provisions of this chapter.

(2) No assignment of or order for payment of any salary, wages, commission, or other compensation for services earned or to be earned, given to secure any loan made by any licensee under this chapter, shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution.

(3) Under any such assignment or order for the payment of future salary, wages, commission, or other compensation for services, given as security for a loan made by a licensee under this chapter, a sum equal to ten per cent of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower of such salary, wages, commissions, or other compensation for services, from the time that a copy of such assignment, verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon such loan, is served upon the employer.

(4) No such assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower, shall be valid unless it is in writing, signed in person by the borrower, and if the borrower is married unless it is signed in person by both husband and wife; provided, that written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least six months prior to the making of such assignment, order, mortgage or lien.

214.16 Fraudulent advertising. No licensee or other person shall advertise, print, display, publish, distribute or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed or broadcasted, in any manner whatsoever, any statement or representation with regard to the rates, terms or conditions for the loaning of money, credit, goods or things in action in the amount or of the value of three hundred dollars or less, which is false, deceptive or misleading, or which refers to the supervision of such business by the state of Wisconsin or any department or official thereof.

214.17 Foreign loans. No loan of the amount or value of three hundred dollars or less for which a greater rate of interest, consideration or charges than is permitted by this

chapter has been charged, contracted for, or received, wherever made, shall be enforced in this state and every person in anywise participating therein in this state shall be subject to the provisions of this chapter, provided that the foregoing shall not apply to loans which were legal in the state where and when made.

214.18 Loans over three hundred dollars.

No licensee shall, directly or indirectly, charge, contract for or receive a greater rate of interest or consideration than he would be permitted by law to charge if not licensed under this chapter, upon the loan, use or forbearance of money, goods, or things in action, or the loan, use or sale of credit, of the amount or value of more than three hundred dollars. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as indorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently or both to the licensee at any time the sum of more than \$300 for principal.

214.19 Rate of interest on small loans.

No licensee shall, directly or indirectly, charge, contract for or receive a greater rate of interest or consideration than is fixed as a maximum by the office under authority of s. 214.07, upon any small loan, but every licensee may loan any sum of money not exceeding \$300 in amount and upon any such loan may charge, contract for and receive a rate of interest or consideration which does not exceed the said fixed maximum rate of charge.

214.20 Small loans by others than licensee prohibited.

No person other than a licensee shall engage in the business of making small loans and, directly or indirectly, charge, contract for or receive a greater rate of interest or consideration upon any such loan than he is permitted by law to charge, contract for or receive without being licensed under this chapter.

214.21 Subterfuge. The provisions of this chapter shall apply to any licensee or other person who, by any device, subterfuge or pretense whatever, shall charge, contract for or receive greater interest, consideration or charges than is authorized by this chapter upon any small loan.

214.22 Penalties. (1) Any person who shall wilfully violate any provision of subsection (3) of section 214.08, subsection (3) of section 214.09, section 214.13, 214.14, 214.16, 214.18, 214.19, or 214.20, shall be guilty of a misdemeanor and, for each and every such offense

shall, upon conviction thereof, be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(2) Any contract of loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a misdemeanor under this section, shall be void and the lender shall have no right to collect or receive any principal, interest or charges whatsoever.

214.23 Exemptions. This chapter shall not apply to any person doing business (1) under s. 138.09 nor (2) under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan associations, credit unions, or licensed pawnbrokers, or investment associations governed by ch. 216.

214.24 Amendment or repeal. This chap-

ter or any part thereof may be modified, amended or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that no such subsequent cancellation or alteration nor any revocation, suspension or surrender of a license shall impair or affect the obligation of any pre-existing lawful contract between any licensee and any borrower.

214.26 Fees. All fees and moneys received by the office under authority of this chapter shall be paid by the office into the state treasury within one week after the receipt thereof.

214.27 Enforcement. It shall be the duty of the office and it shall have power, jurisdiction and authority to investigate, ascertain and determine whether this chapter or the lawful orders issued hereunder are being violated and for such purposes the said office shall have all of the powers conferred by ss. 214.08 and 214.09. The office shall report all violations to the district attorney of the proper county for prosecution.