CHAPTER 138

MONEY AND RATES OF INTEREST

138.01 Money. The money of account of this state shall be the dollar, cent and mill; and all accounts in public offices, and other public accounts, and all proceedings in courts shall be kept and had in conformity to this regulation.

138.02 Contracts not affected. Nothing contained in s. 138.01 shall vitiate or affect any account, charge or entry originally made or any note, bond or other instrument expressed in any other money of account; but the same shall be reduced to dollars or parts of a dollar as hereinbefore directed in any suit thereupon.

138.03 Judgments, how computed. In all judgments or decrees rendered by any court of justice for any debt, damages or costs and in all executions issued thereon the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions; and no judgment or other proceeding shall be considered erroneous for such omissions.

138.04 Legal rate. The rate of interest upon the loan or forbearance of any money, goods or things in action shall be $5 upon the $100 for one year and according to that rate for a greater or less sum or for a longer or a shorter time; but parties may contract for the payment and receipt of a rate of interest not exceeding the rate allowed in s. 138.05, in which case such rate shall be clearly expressed in writing.

138.05 Maximum rate; prepayment, disclosure; corporations. (1) Except as authorized by other statutes, no person shall, directly or indirectly, contract for, take or receive in money, goods or things in action, or in any other way, any greater sum or any greater value, for the loan or forbearance of money, goods or things in action, than:

(a) At the rate of $12 upon $100 for one year computed upon the declining principal balance of the loan or forbearance;

(b) With respect to loans or forbearances repayable in substantially equal weekly or monthly instalments and the face amounts of which include predetermined interest charges, at the rate of $6 upon $100 for one year computed upon that portion of the original principal amount of any such loan or forbearance, not including interest charges, for the time of such loan or forbearance, disregarding part payments and the dates thereof; and

(c) With respect to loans or forbearances repayable in instalments other than of the type described in par. (b), the amount of interest may be predetermined at the rate set forth in par. (a) at the time the loan is made on the basis of the agreed rate of interest and the principal balances agreed to be outstanding and stated in the note or loan contract as an addition to the principal; provided that if any agreed balance of principal or principal and interest combined or any instalment of principal or principal and interest combined is prepaid in full by cash or renewal the unearned interest shall be refunded as provided in sub. (2) (b). In the computation of interest upon any bond, note, or other instrument or agreement, interest shall not be compounded, nor shall the interest thereon be construed to bear interest, unless an agreement to that effect is clearly expressed in writing, and signed by the party to be charged therewith.

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

(a) On any such loan which is repayable in substantially equal, successive instalments at approximately equal intervals of time and the face amount of which includes predetermined interest charges, the amount of such refund shall be as great a proportion of the total interest

charged as the sum of the balances scheduled to be outstanding during the full instalment periods commencing with the instalment date nearest the date of prepayment bears to the sum of the balances scheduled to be outstanding for all instalment periods of the loan.

(b) On any other such loan, the amount of such refund shall not be less than the difference between the interest charged and interest, at the rate contracted for, computed upon the unpaid principal balances of the loan from time to time outstanding prior to prepayment in full.

(3) A contract to make loans or an evidence of indebtedness may provide for a rate of interest or penalty payable upon the principal amount of an extension of a loan or forbearance or upon any amount in default under a loan or forbearance which shall not exceed the rate allowed in sub. (1) (a).

(4) Any person making a loan for which interest is agreed to be paid at a rate exceeding the rate of $10 upon $100 for one year computed upon the declining principal of the loan shall, at or prior to making such loan, deliver to the borrower a statement, which may be incorporated in a copy of the evidence of indebtedness, setting forth all of the terms of the transaction in clear and distinct language, including:

(a) The rate of interest agreed upon in terms either of simple interest computed on the declining principal balance or of the actual interest cost in money, and

(b) A statement that the loan may be prepaid in full or in part and that, if the loan is prepaid in full, the borrower may receive a refund of interest charged.

(5) This section shall not apply to loans to corporations except loans made by permittees under s. 138.07.

History: 1971 c. 239.

Note: Ch. 239, laws of 1971, amends sub. (5) and creates sub. (6), effective March 1, 1973, to read:

138.05 (5) This section shall not apply to loans to corporations except loans made by licensees under s. 138.09.

138.05 (6) This section does not apply to transactions governed by chs. 421 to 427.

A revolving charge plan is usurious if the interest charged exceeds 12% per year. State v. J. C. Penney Co. 48 W (2d) 125, 179 NW (2d) 641.

A check credit agreement which provided that interest was to be computed each month and become part of the balance for the next computation did not violate the statute although the rate was one per cent per month. First Wis. Nat. Bank v. Oby, 52 W (2d) 1, 188 NW (2d) 454.

While a retail seller is not prohibited by 138.05 (3), Stats. 1969, from including in a note a provision requiring the payment of 25% of the unpaid balance as a fee for collection of the account, such a provision is enforceable only to the extent that it reasonably relates to the actual collection expenses incurred. 59 Atty. Gen. 76.

The Penney decision and revolving charge accounts. 54 MLR 223.

Usury and the time-price exception; revolving charge accounts; enjoining usury as a public nuisance. 1971 WLR 298.

138.06 Effect of usury and penalties. (1) All instruments, contracts or securities providing a rate of interest exceeding the rate allowed in s. 138.05 shall be valid and effectual to secure the repayment of the principal amount loaned in excess of $2,000; but no interest may be recovered thereon except upon bottomry and respondentia bonds and contracts.

(2) Any lender or agent of a lender who violates s. 138.05 may be fined not less than $25 nor more than $500, or imprisoned not more than 6 months, or both.

(3) Any borrower who paid interest on a loan or forbearance at a rate greater than the rate allowed in s. 138.05 may by himself or his personal representative recover in an action against the lender or his personal representative the amount of interest, principal and charges paid on such loan or forbearance but not more than $2,000 of principal, if such action is brought within 2 years after such excessive interest has been paid.

(4) Any borrower to whom a lender or agent of a lender fails to provide the statement required in s. 138.05 (4) with respect to a loan or forbearance may by himself or his personal representative recover in an action against the lender or his personal representative an amount equal to all interest and charges paid upon such loan or forbearance but not less than $50 plus reasonable attorney's fees incurred in such action.

(5) Notwithstanding subs. (1) to (4), if any violation of s. 138.05 is the result of an unintentional mistake which the lender or agent of the lender corrects upon demand, such unintentional violation shall not affect the enforceability of any provision of the loan contract as so corrected nor shall such violation subject the lender or the agent of the lender to any penalty or forfeiture specified in this section.

(6) In connection with a sale of goods or services on credit or any forbearance arising therefrom prior to October 9, 1970, there shall be no allowance of penalties under this section for violation of s. 138.05, except as to those transactions on which an action has been reduced to a final judgment as of May 12, 1972.

(7) Notwithstanding sub. (6), a seller shall, with respect to a transaction described in sub. (6), refund or credit the amount of interest, to the extent it exceeds the rate permitted by s. 138.05 (1) (a), which was charged in violation of s. 138.05 and paid by a buyer since October 8, 1968, upon individual written demand therefor

made on or before March 1, 1973, and signed by such buyer. A seller who fails within a reasonable time after such demand to make such refund or credit of excess interest shall be liable in an individual action in an amount equal to 3 times the amount thereof, together with reasonable attorney's fees.

History: 1971 c. 308.

138.07 Collateral loan law. (3) REGULATIONS. (a) When the payment of money loaned shall be secured, or purport to be secured by mortgage, bill of sale, pledge, receipt or other evidence of debt upon goods or property, or by assignment of wages, or by power of attorney to execute any such instrument on behalf of the borrower, whether any such instrument or the power given to execute the same, shall be valid or not, or whether any such instrument or power shall be fully executed or executed partly in blank, any person licensed under sub. (4) may take, accept and charge, in addition to the interest at the rate of $14 upon $100 for one year computed upon the declining principal balance of the loan, a service fee in an amount equal to 4% per annum of the loan for the time of such loan, disregarding part payments and the dates thereof, but not to be computed for a period exceeding one year in any event, in lieu of all charges for examinations, views, fees, appraisals, commissions and charges of any kind or description whatsoever in the procuring, making and transacting of the business connected with such loan. In addition to the service fee, a licensee under sub. (4) may charge an amount sufficient to cover the fee for filing the termination statement required by s. 409.404. The rate increase under this section shall cease on July 1, 1973. On and after such date, the rate shall revert to that rate specified in s. 138.05, except as to contracts executed prior to such date.

(b) The full amount of the service fee shall be fully earned at the time the contract is made without regard to the services performed and shall not be deemed interest, but if the same permittee makes a subsequent contract with the same borrower within 12 months of a prior contract for which the permittee has charged a service fee, the permittee shall not charge a service fee on any portion of the subsequent contract which is used to pay any portion of the prior contract, unless the permittee shall refund to the borrower a prorata portion of the service fee for each full month remaining on the contract for which a service fee has been charged, calculated in the same manner in which interest is refunded as hereinafter provided in this section.

(c) No loan made under this section shall be refinanced or renewed in whole or in part under s. 138.09 or ch. 214.

(d) No permittee shall permit any person to be indebted to such permittee under this section, directly or indirectly, at any time, while such person is indebted to such permittee or an affiliate, employe or agent of such permittee under s. 138.09.

(e) The amount of interest may be predetermined at the time the loan is made on the basis of the agreed rate of interest and the principal balances agreed to be outstanding and stated in the note or loan contract as an addition to the principal; provided that if any agreed balance of principal or principal and interest combined or any instalment of principal or principal and interest combined is prepaid in full by cash, renewal or refinancing, the unearned interest shall be refunded as provided in s. 138.05 (2).

(g) Any person, association, copartnership or corporation who, as principal or as agent for another, shall wilfully violate any provisions of this subsection shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 nor more than $1,000, or by imprisonment not more than 6 months, or by both such fine and imprisonment.

(4) PERMITS. Before any person, or any association, copartnership or corporation, heretofore or hereafter created, shall do business under sub. (3), such person, association, copartnership or corporation shall first obtain a permit from the commissioner of banking, who is hereby invested with the supervision of such organizations. Such permit upon application shall be issued to any licensee under s. 138.09 for the location specified in the license of such licensee and such permit shall remain in effect as long as said license shall continue in force. The provisions of s. 138.09 (1) to (6), (7)(d) and (f), (8), (9) and (11) shall apply to any person, association, copartnership or corporation making loans under sub. (3), but a licensee under s. 138.09 shall not be required to pay an additional investigation fee or an annual license fee for a permit under this subsection at the same location licensed under s. 138.09.

History: 1971 c. 60, 239.

Note: This section repealed as of March 1, 1973, by ch. 239, laws of 1971.

138.07 (4), Stats. 1967, which requires a lender doing business under sub. (3) (engaging in the collateral loan business), to secure a permit if the lender chooses to charge a 4% service fee allowed by 138.07 (3) (a) in lieu of the actual cost of making the loan, does not require all parties engaged in the collateral loan business to obtain a permit, but only those who elect to charge more than their actual expenses. Even after acquiring a permit a secured lender may either charge the 4% fee in lieu of the actual expenses of making the loan or may assess the actual expenses. Commercial

Discount Corp. v. Larson, 46 W (2d) 718, 176 NW (2d) 347.

138.07 (4), Stats. 1967, does not incorporate 138.09 (10), and the failure of the statement of loan given the borrower to indicate the nature of the security, in the absence of a showing of wilfulness, does not constitute a misdemeanor. Mortgage Associates, Inc. v. Hendricks, 51 W (2d) 579, 187 NW (2d) 313.

138.09 Precomputed loan law. (1) Before any person may do business under this section or charge the discount and fee authorized by sub. (7) (a), (b) and (c), such person shall first obtain a license from the commissioner of banking. Applications for such license shall be in writing and upon forms provided for this purpose by the commissioner. Every such applicant at the time of making such application shall pay to the commissioner a fee of $100 for investigating the application and the sum of $200 as an annual license fee for the period terminating on the last day of the current calendar year. If the cost of the investigation exceeds $100, the applicant shall upon demand of the commissioner pay to the commissioner the amount by which the cost of the investigation exceeds the $100 fee.

Note: Ch. 239, laws of 1971, amends sub. (1), effective March 1, 1973, to read:

(1) Before any person may do business under this section or charge the interest authorized by sub. (7), such person shall first obtain a license from the commissioner of banking. Applications for such license shall be in writing and upon forms provided for this purpose by the commissioner. Every such applicant at the time of making such application shall pay to the commissioner a fee of $100 for investigating the application and the sum of $200 as an annual license fee for the period terminating on the last day of the current calendar year. If the cost of the investigation exceeds $100, the applicant shall upon demand of the commissioner pay to the commissioner the amount by which the cost of the investigation exceeds the $100 fee.

(2) The commissioner may also require the applicant to file with him, and to maintain in force, a bond in which the applicant shall be the obligor, in a sum not to exceed $5,000 with one or more corporate sureties licensed to do business in Wisconsin, whose liability as such sureties shall not exceed the sum of $5,000 in the aggregate, to be approved by the commissioner, and such bond shall run to the state of Wisconsin for the use of the state and of any person or persons who may have a cause of action against the obligor of the bond under the provisions of this section. Such bonds shall be conditioned that the obligor will conform to and abide by each and every provision of this section, and will pay to the state or to any person or persons any and all moneys that may become due or owing to the state or to such person or persons from the obligor under and by virtue of the provisions of this chapter.

(3) (a) Upon the filing of such application and the payment of such fee, the commissioner shall investigate the relevant facts, and if he shall find that the character and general fitness and the financial responsibility of the applicant, and the members thereof if the applicant is a partnership or association, and the officers and directors thereof if the applicant is a corporation, warrant the belief that the business will be operated in compliance with this section the commissioner shall thereupon issue a license to said applicant to make loans in accordance with the provisions of this section. If the commissioner shall not so find, he shall deny such application.

(b) Every license shall remain in force and effect until suspended or revoked in accordance with this section or surrendered by the licensee, and every licensee shall, on or before each December 10, pay to the commissioner the annual license fee for the next succeeding calendar year.

(c) Such license shall not be assignable and shall permit operation under it only at or from the location specified in the license at which location all loans shall be consummated; but this provision shall not prevent the licensee from making loans under this section at an auction sale conducted or clerked by a licensee.

(d) A separate license shall be required for each place of business maintained by the licensee. Whenever a licensee shall change the address of its place of business to another location within the same city, village or town the licensee shall at once give written notice thereof to the commissioner, who shall replace the original license with an amended license showing the new address, provided the location meets with the requirements of par. (e). No change in the place of business of a licensee to a different city, village or town shall be permitted under the same license.

(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: A loan, finance or discount business under s. 138.07 (4), 218.01 or ch. 214, 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.

Note: Ch. 239, laws of 1971, amends sub. (3) (e), effective March 1, 1973, by deleting the references to "138.07 (4)" and "ch. 214".

(f) Every licensee shall make an annual report to the commissioner for each calendar year on or before March 15 of the following year. Such report shall cover business transacted by the licensee under the provisions of this section and shall give such reasonable and relevant information as the commissioner may require. Such reports shall be made upon blanks furnished by the

commissioner and shall be signed and verified by the oath or affirmation of the licensee if an individual, one of the copartners if a copartnership, or by an officer of the corporation or association if a corporation or association. Any licensee operating under this section shall keep the records affecting loans made pursuant to this section separate and distinct from the records of any other business of such licensee.

(4) The commissioner for the purpose of discovering violations of this chapter may cause an investigation to be made of the business of the licensee transacted under this section, and shall cause an investigation to be made of convictions reported to it by any district attorney for violation by a licensee of this chapter. The place of business, books of account, papers, records, safes and vaults of said licensee shall be open to inspection and examination by the commissioner or his representative for the purpose of such investigation and the commissioner may examine under oath all persons whose testimony he may require relative to said investigation. The commissioner may, upon notice to the licensee and reasonable opportunity to be heard, suspend or revoke such license after such hearing, (a) if the licensee has violated any provision of this chapter and if he determines such violation justifies the suspension or revocation of the license; (b) if any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the commissioner in refusing to issue such license; and (c), if the licensee has failed to pay the annual licensee fee or to maintain in effect the bond, if any, required under sub. (2).

(4a) Any licensee and any other person aggrieved by any order of the commissioner has the right to appeal to the board of review under this section, provided a written notice of appeal is served upon the commissioner and upon the chairman or secretary of the consumer credit review board under s. 220.037 within 10 days from the date of the commissioner's order. Upon service of a written notice of appeal as herein provided the review board shall hold a hearing within a reasonable time thereafter. The review board shall give the parties a written notice of the time and place said hearing will be held. The cost of any investigation or examination or hearing, including witness fees or any other expenses, conducted by the commissioner or the review board shall be paid by the licensee so examined or by the appellant within 30 days after demand therefor by the commissioner, and the state may maintain an action for the recovery of such costs and expenses in any court of competent jurisdiction, except that no cost shall be charged an appellant by the review board unless the board sustains the commissioner.

(5) No licensee or other person, association, copartnership or corporation subject to this section or s. 138.07 shall print, display, publish, distribute or broadcast, or cause to be printed, displayed, published, distributed or broadcast in any manner whatsoever any statement with regard to the rates, terms or conditions for the lending of money, credit, goods or things in action which is false or calculated to deceive. In any advertisement which states or indicates the amount of a loan, the amount of an instalment, or the amount of the charge:

(a) The amount of loan shall be the net proceeds to the borrower after deducting the discount and service fee; if such discount and service fee are not deducted, it shall be the face of the loan;

(b) The statement of the amount of an instalment shall also indicate the number of instalments required to pay the loan contract and the interval between each instalment; and

(c) The amount of the charge shall be the total of the discount and service fee for repayment of the loan contract according to its terms. Any advertisement which states or gives the amount of the charge or the amount of an instalment shall also state and give the amount of the charge in terms of percentage per annum of simple interest.

Note: Ch. 239, laws of 1971, repeals and recreates sub. (5), effective March 1, 1973, to read:

(5) No licensee shall advertise, print, display, publish, distribute or broadcast or cause to be printed, displayed, published, distributed or broadcast in any manner any statement with regard to the rates, terms or conditions for the lending of money, credit, goods or things in action which is false or calculated to deceive. With respect to matters specifically governed by s. 423.301, compliance with such section satisfies the requirements of this section.

(6) The licensee shall keep such books and records in his place of business as in the opinion of the commissioner of banking will enable him to determine whether the provisions of this chapter are being observed. Every such licensee shall preserve the records of final entry used in such business, including cards used in the card system, if any, for a period of at least 2 years after the making of any loan recorded therein.

(7) (a) It is lawful for any person licensed under this section to deduct the discount and service fee authorized by pars. (b) and (c) from a loan which is repayable in substantially equal instalments at approximately equal intervals of time over a period not exceeding 36 1/2 months; provided that the total indebtedness under this section of any person, as borrower, indorser, guarantor or comaker, to the same licensee shall not exceed $3,000 after excluding such charges. When a loan contract provides for instalments

payable at monthly intervals, a first interval of not more than 45 days and not less than 15 days may be treated as a monthly interval.

(b) The discount may be any sum not exceeding 9% a year for the first $300 and 8% a year for any additional amount, computed on the original face amount of the contract for the full period of the contract. If the contract is prepaid in full by cash, renewal or refinancing, the portion of the discount shall be refunded which is applicable to the full instalment periods (or the full months if the instalment period exceeds one month) originally scheduled to follow the date of prepayment. The amount of such refund shall be as great a proportion of the original discount as the sum of the balances scheduled to be outstanding during the full instalment periods following the date of prepayment bears to the sum of the balances scheduled to be outstanding for all instalment periods in the loan contracts but when the instalment periods exceed one month, the proportion shall be determined according to the balances scheduled to be outstanding during consecutive monthly periods. The rate increase shall cease on July 1, 1973. On and after such date, the discount shall not exceed 8% a year for the first $300 and 7% a year for any additional amount, except as to contracts executed prior to such date.

(c) The service fee shall not exceed 2% of the original face amount of the contract or $20, whichever sum is smaller, and shall be in lieu of all fees, charges and expenses in connection with procuring, making or servicing the loan except as provided by pars. (d) and (f). The full amount of the service fee shall be fully earned at the time the contract is made, without regard to the services performed and shall not be deemed interest, but if the same licensee makes a subsequent contract with the same borrower within 4 months of a prior contract for which the licensee has charged a service fee, the licensee shall not charge a service fee on any portion of the subsequent contract which is used to pay any portion of the prior contract. No licensee shall split up or divide a loan into 2 or more contracts or make any additional loan to the same borrower within a period of 30 days, for the purpose of obtaining a greater amount of service fee than would otherwise be permitted. No licensee or an affiliate, employe or agent of such licensee shall make a loan, under s. 138.07 (3), to renew or refinance a loan made by such licensee under this section, unless the resulting loan under s. 138.07 (3) exceeds $3,000.

(d) In case of default lasting more than 10 days, the licensee may charge one per cent of the amount in default, and if the default lasts more than 20 days the licensee may charge an additional one per cent for each succeeding period of 20 days or fraction thereof, but not to exceed 5%. No default charge may be made after acceleration of maturity, unless the licensee gives the same refund of discount which would be required if the contract had been prepaid in full on the date of such acceleration of maturity.

(e) In addition to the discount, service fee, and default charge provided for in pars. (a), (b), (c) and (d), no further or other amount whatsoever shall be directly or indirectly charged, contracted for, deducted, or received, except as provided by paragraph (f). In lieu of deducting the discount and service fee and charging the default charge authorized in pars. (b), (c) and (d), a licensee may contract for and receive a rate of charge not exceeding that rate which, computed on scheduled unpaid balances of the proceeds of the loan contract, would produce an amount of charge equal to the total of the discount and service fee which could be deducted from such loan contract, and such rate of charge may be computed on actual unpaid principal balances from time to time outstanding until the loan is fully paid. When such rate of charge is made in lieu of other charges, the provisions of pars. (b), (c) and (d) relating to refunds, the service fee on subsequent contracts or additional loans, and the default charge, shall not apply to such loans; the amount or rate of such charge shall be used in lieu of the amount of discount and service fee under sub. (5); and such rate of charge shall be shown in lieu of the discount, service fee, default charge and refund of discount in the statement to the borrower required under sub. (8) (a).

(f) A licensee may charge an amount sufficient to cover the fee for filing the termination statement required by s. 409.404. A licensee also may require the borrower to provide insurance on property other than household goods, given as security for any loan made under this section, provided that the amount and term of such insurance and the risks covered thereby shall be related to and commensurate with the amount and term of the loan and the type and value of such property. The licensee may accept, but shall not require, term insurance on the life of the principal borrower in amounts not exceeding the declining unpaid balances of the loan, credit accident and health insurance on the principal borrower within the limitation provided in s. 201.04 (4a), and insurance against liability arising out of the ownership or maintenance of any motor vehicle given as security for the loan. Any insurance permitted hereunder shall be effected at standard and lawful premiums through any licensed insurance agent or company selected by

the borrower. The purchase of such insurance through the licensee or an agent or broker designated by the licensee shall not be a condition precedent to the granting of the loan. If a borrower procures insurance through the licensee or an officer or employe or an affiliate of the licensee, the licensee shall deliver to the borrower within 20 days after the making of the loan, an executed copy of the insurance policy or certificate of insurance, and the cost of such insurance shall be shown in the statement delivered to the borrower required under sub. (8) (a). The premiums on such insurance and any commissions thereon may be received by the licensee in addition to the charges otherwise authorized under this section. The provisions of this paragraph shall not be deemed to alter or amend the statutes of this state relating to insurance or to affect the power of the commissioner of insurance to grant, revoke, or deny licenses.

Note: Ch. 239, laws of 1971, repeals and recreates sub. (7), effective March 1, 1973, to read:

(7) (a) In this section:

1. "Precomputed loan" means a loan in which the debt is expressed as a sum comprising the principal and the amount of interest computed in advance.

2. "Principal" means the total of:

a. The amount paid to, received by or paid or payable for the account of the borrower; and

b. To the extent that payment is deferred: 1) The amount actually paid or to be paid by the licensee for registration, certificate of title or license fees if not included in subd. 2. a; and 2) additional charges permitted under this section.

(b) A licensee may charge, contract for or receive a rate of interest which shall not exceed the following:

1. With respect to instalment loans or forbearances which are repayable in substantially equal successive instalments at approximately equal intervals, and where the principal does not exceed $3,000 excluding any interest authorized under this section, and where the scheduled maturity of the loan contract is not more than 36 months and 15 days from the date of making, interest may be deducted in advance at a rate not in excess of $9.50 per $100 per year on that part of the loan not exceeding $1,000 and $8 per $100 per year on any remainder. Interest shall be computed at the time the loan is made on the face amount of the contract for the full term of the contract, notwithstanding the requirement for instalment repayments. The face amount of the loan contract or note may exceed $3,000 by the amount of interest deducted in advance. On contracts which are one year or any number of whole years, the charge shall be computed proportionately on even calendar months.

2. With respect to any loan, including a loan exceeding $3,000, with respect to any loan interest at a rate not to exceed 18% per year computed on the declining unpaid principal balances of the loan from time to time outstanding, calculated according to the actuarial method, but this does not limit or restrict the manner of contracting for the interest, whether by way of add-on, discount or otherwise, so long as the rate of interest does not exceed that permitted by this paragraph.

(c) 1. Where the interest is precomputed, the interest may be calculated on the assumption that all scheduled payments will be made when due and the effect of prepayment is governed by the provision on rebate upon prepayment. If a loan is prepaid out of the proceeds of a new loan made under this section, the principal of such new loan may include any unpaid charges on the prior loan which have accrued within 60 days before the making of the new loan, unless the prior loan was precomputed in which event the principal of the new loan may include the balance remaining after making the required rebate plus any accrued charges.

2. For the purpose of computing interest under this section, whether at the maximum rate or less, a day shall be considered one-thirtieth of a month when such computation is made for a fraction of a month, except that on loan contracts providing for instalments payable at monthly intervals, a first interval of not more than 45 days and not less than 15 days shall be treated as a monthly interval.

3. In lieu of deducting the interest and charging the delinquency and deferral charges authorized in this section, a licensee may contract for and receive a rate of charge not exceeding that rate which, computed on scheduled unpaid balances of the proceeds of the loan contract, would produce an amount of charge equal to the total of the interest which may be deducted from such loan contract under this section, and such rate of charge may be computed on actual unpaid principal balances from time to time outstanding until the loan is fully paid. When such rate of charge is made in lieu of other charges, the provisions relating to refunds and delinquency charges shall not apply to such loans.

4. If 2 instalments or parts thereof of a precomputed loan are not paid on or before the 10th day after their scheduled or deferred due dates, a licensee may elect to convert the loan from a precomputed loan to one in which the interest is computed on unpaid balances actually outstanding. In this event the licensee shall make a rebate pursuant to the provisions on rebate upon prepayment as of the due date of an unpaid instalment, and thereafter may charge interest from the due date as provided in subd. 3 or by s. 138.09 (7) (b) 2 and no further default or deferral charges shall be made. The rate of interest may equal but not exceed the annual percentage rate of finance charge which was disclosed to the borrower when the loan was made. The rate of interest shall be computed on actual unpaid balances of the contract as reduced by the rebate for the time that such balances are actually outstanding from the due date as of which the rebate was made until the contract is fully paid.

(d) 1. No loan of $3,000 or less, excluding interest, scheduled to be repaid in substantially equal instalments at equal periodic intervals shall provide for a scheduled repayment of principal more than 36 months and 15 days from the date of the contract if the principal exceeds $700, nor more than 24 months and 15 days from the date of the contract if the principal is $700 or less.

2. A licensee may make loans under a continuing loan agreement which provides for future or additional advances under the same instrument if at the time of each new advance of money, any existing unpaid balance is reduced by any required rebate and the resulting amount plus the additional money advanced plus interest, official fees and premiums or identifiable charges for insurance, if any, are combined, and for the purpose of the limitations of subd. 1 only, the date of the loan contract shall be deemed the date of said advance.

(e) 1. With respect to a precomputed loan which is scheduled to be repaid in substantially equal instalments, 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% of the unpaid amount of the instalment. The delinquency charge may be collected only once on any one instalment but may be collected when due or at any time thereafter.

2. With respect to other loans the delinquency charge shall not exceed the rate allowed under par. (b), computed upon the unpaid principal balance exclusive of interest on the loan.

3. Notwithstanding subds. 1 and 2, delinquency charges on precomputed consumer loans shall be governed by s. 422.203.

(f) 1. Subject to subds. 2 and 3, with respect to a precomputed loan, the parties before or after default may agree in writing to a deferral of all or part of any unpaid instalment, and the licensee may make and collect a charge computed in the same manner as the deferral charge computed in accordance with s. 422.204 (1) to (5) whether or not the loan under this section is a consumer loan.

2. In addition to the deferral charge, the licensee may make appropriate additional charges. The amount of such charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

3. The parties may agree in writing at any time, including at the time of a precomputed loan that if an instalment is not paid within 30 days after its due date, the licensee may grant a deferral and make charges under this section, if a notice is sent to the customer advising him of the amount of the deferral charge, the period of deferral and that if the instalment is prepaid before maturity that a proportionate refund of the deferral charge will be given. No deferral charge may be made for a period after the date that such a lender elects to accelerate the maturity of the agreement.

4. Notwithstanding subds. 1, 2 and 3, deferral charges on precomputed consumer loans shall be governed by s. 422.204.

(g) 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. 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:

1. 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, whether or not such precomputed loan is a consumer loan.

2. For any other loan, the amount of the rebate of interest shall not be less than the difference between the interest charged and the interest earned at the agreed rate computed upon the unpaid principal balances, exclusive of interest, of the transaction prior to payment in full.

(h) A licensee may require property insurance, and may accept, but shall not require, credit life insurance or credit accident and health insurance or both, if such insurance is issued in accordance with ch. 424, whether or not the loan is a consumer loan.

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

1. The additional charges allowed in s. 422.202 whether or not the loan is a consumer loan; but no additional charge shall be permitted for the charges set forth in s. 422.202 (2) (b) 2 to 5;

2. An amount sufficient to cover the fee for filing the termination statement required by s. 409.404 on loans secured by merchandise other than a motor vehicle; and

3. On motor vehicle loans, the actual filing fee required for filing with the division of motor vehicles under ch. 342.

(j) No licensee may divide any loan or otherwise encourage any person or any husband and wife to become obligated to the licensee directly, under more than one contract of loan at the same time for the purpose of obtaining a higher rate of finance charge than would otherwise be permitted under this section.

(k) All consumer loans as defined in s. 421.301 (12) shall be governed by chs. 421 to 427, but to the extent that those chapters are inconsistent with this section, this section shall govern.

(8) Every licensee shall:

(a) Deliver to the borrower, at the time a loan is made, a statement in the English language showing in clear and distinct terms the amount and date of the note 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, the amounts of discount and service fee, stated separately, the proceeds of the loan after deducting such discount and service fee, a description of the payment schedule and the default charge. The statement shall also indicate that the borrower may prepay his loan in whole or in part and that if the loan is prepaid in full the borrower will receive a refund of discount as provided by this section. The statement shall also indicate the percentage per annum of interest charged in the transaction.

Note: Ch. 239, laws of 1971, amends sub. (8) (a), effective March 1, 1973, to read:

(8) (a) Deliver to the borrower, at the time a loan is made, a statement in the English language showing in clear and distinct terms the amount and date of the note 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, the amount of interest, the proceeds of the loan after deducting such interest, a description of the payment schedule and the default charge. Disclosures made in accordance with the federal consumer credit protection act and regulation Z shall be deemed to comply with such disclosures. The statement shall also indicate that the borrower may prepay his loan in whole or in part and that if the loan is prepaid in full the borrower will receive a refund of interest as provided by this section. The statement shall also indicate the percentage per annum of interest charged in the transaction.

(b) Give to the borrower a plain and complete receipt for all cash payments made on account of any such loan at the time such payments are made.

(c) Permit payments of the loan in whole or in part prior to its maturity.

(d) 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.

(e) Take no note, promise to pay, security nor any instrument in which blanks are left to be filled in after the loan has been made except that a detailed description or inventory of the security may be filled in, with the written consent of the borrower within 10 days thereafter.

(9) (a) No person, except as authorized by statutes, shall directly or indirectly charge, contract for or receive any interest or consideration greater than allowed in s. 138.05 upon the loan, use or forbearance of money, goods or things in action, or upon the loan, use or sale of credit. The foregoing prohibition shall apply to any person who as security for any such loan, use or forbearance of money, goods or things in action, or for any such loan, use or sale of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who by any device or pretense of charging for his services or otherwise seeks to obtain a greater compensation than is authorized by this section.

(b) No loan made under this section, or s. 138.07 (3) in an amount of $3,000 or less excluding charges for which a greater rate or amount of interest, discount, service fee or other charge, than is allowed by the section under which the loan is made, has been contracted for or received, wherever made, shall be enforced in this state, and every person in any wise participating therein in this state shall be subject to this sec-

tion. If a licensee makes an excessive charge as the result of an unintentional mistake, but upon demand makes correction of such mistake, the loan shall be enforceable and treated as if no violation occurred.

Note: Ch. 239, laws of 1971, amends sub. (9) (b), effective March 1, 1973, to read:

(9) (b) No loan made under this section, for which a greater rate or amount of interest, than is allowed by this section, has been contracted for or received, wherever made, shall be enforced in this state, and every person in any wise participating therein in this state shall be subject to this section. If a licensee makes an excessive charge as the result of an unintentional mistake, but upon demand makes correction of such mistake, the loan shall be enforceable and treated as if no violation occurred at the agreed rate. Nothing in this paragraph shall limit any greater rights or remedies afforded in chs. 421 to 427 to a customer in a consumer credit transaction.

(10) Any person, copartnership or corporation and the several officers and employes thereof who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in a county jail for not more than 6 months, or by both such fine and imprisonment.

(11) The commissioner shall have power to employ necessary examiners or clerks from time to time and fix their compensation.

(12) No person, association, copartnership or corporation doing business under the authority of any law of this state or of the United States relating to banks, savings banks, trust companies, savings or building and loan associations, or credit unions shall be eligible to become a permit holder or licensee under this section or s. 138.07 (4).

Note: Ch. 239, laws of 1971, amends sub. (12) and creates sub. (13), effective March 1, 1973, to read:

(12) No person, association, copartnership or corporation doing business under the authority of any law of this state or of the United States relating to banks, savings banks, trust companies, savings or building and loan associations, or credit unions shall be eligible to become a licensee under this section.

(13) Licenses issued under s. 138.07, 1969 Wis. stats., or 214.03 prior to March 1, 1973, shall continue in force until expiration without further application or approval, upon payment of the fees under this section less any license and investigation fees already paid by the licensee for such license for the 1973 calendar year.

(14) The changes made in s. 138.07 and this section on August 11, 1947 shall not be construed so as to impair or affect the obligation of any loan contract lawfully made prior to such date.

Note: Ch. 239, laws of 1971, amends sub. (14), effective March 1, 1973, to read:

(14) The changes made in s. 138.07, 1969 Wis. stats., and this section on March 1, 1973, shall not be construed so as to impair or affect the obligation of any loan contract lawfully made prior to such date.

History: 1971 c. 60, 125, 239, 307.

138.10 Pawnbrokers. (1) APPLICATION. This section shall be known as the pawnbrokers' law and shall apply to all persons licensed to conduct the business of pawnbroker by the common council of any city of this state.

(2) MAXIMUM LOAN. A pawnbroker's loan shall not exceed $150.

(3) DEFINITIONS. The following terms in this section shall be construed to have the following meanings:

(a) "Pawnbroker" includes any person who engages in the business of lending money on the deposit or pledge of personal property, other than choses in action, securities, or written evidences of indebtedness; or purchases personal property with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price.

(b) "Pledge" means an article or articles deposited with a pawnbroker as security for a loan in the course of his business as defined in par. (a).

(c) "Pledgor" means the person who obtains a loan from a pawnbroker and delivers a pledge into the possession of a pawnbroker, unless such person discloses that he is or was acting for another in which case a "pledgor" means the disclosed principal.

(d) "Person" includes an individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any group of individuals however organized.

(e) "Pawnbroking" means the business of a pawnbroker as defined in this section.

(f) "Pawn ticket" means the card, book, receipt or other record furnished to the pledgor at the time a loan is granted containing the terms of the contract for a loan.

(4) MAXIMUM INTEREST OR CHARGES. A pawnbroker shall not charge, contract for or receive interest in excess of 3% per month on any loan or balance thereon and such interest shall not be increased by charging commission, discount, storage or other charge directly or indirectly, nor by compound interest; provided, however, that when the interest herein specified amounts to less than $1 per month, the minimum charge shall be $1 for the first month and 50 cents for each succeeding month during the loan period.

(5) COMPUTATION OF INTEREST OR CHARGES. The interest and charges authorized by this section shall be computed at the rates specified on the actual principal balance of the loan due for the actual time which has elapsed from the date of the loan to the date of payment.

For the purpose of calculation of interest and charges permitted under this section, a year shall be 12 calendar months, and a month shall be one calendar month, or any fractional part thereof. A calendar month shall be any period from a certain date in one month to the same date in the next succeeding month.

(6) FORFEITURE. A pawnbroker who charges, contracts for or receives interest or charges greater than permitted under this section shall forfeit both principal and interest, and shall return the pledge upon demand of the pledgor and surrender of the pawn ticket, without tender or payment of principal or interest.

(7) PENALTY. Any pawnbroker who shall refuse to comply with sub. (6) shall, upon conviction, be punished by imprisonment in the county jail not more than one year or by fine not exceeding $500.

(8) SALE OF PLEDGE. Upon default in the payment of any loan, a pawnbroker may sell the pledge upon the conditions contained in this section.

(a) A pawnbroker may sell a pledge at private sale for an amount not less than that agreed to by the pledgor, which amount shall be stipulated on the pawn ticket and shall not be less than 125% of the amount of the loan. A pledge which cannot be sold at private sale at the minimum price agreed to by the pledgor must be sold at public auction, which sale shall be conducted in the manner provided by s. 289.48 (1).

(b) No unredeemed pledge may be sold before the expiration of 90 days after the due date of the loan unless otherwise specifically authorized in writing by the pledgor. The authority to sell an unredeemed pledge prior to the expiration of 90 days after the due date of the loan must be given by the pledgor on a date subsequent to the due date of the loan.

(c) An unredeemed pledge must be sold within 12 months of the due date of a loan. No interest or charges permitted under this section may be collected on a loan after the expiration of 12 months of the due date of a loan, whether the loan is renewed or the loan is paid and the pledge redeemed.

(9) NOTICE OF SALE. A pawnbroker shall not sell any pledge unless due notice of such contemplated sale has been forwarded to the pledgor by registered mail to the address given by the pledgor at the time of obtaining the loan or to such new address of the pledgor, as shown on the pawnbroker's record. Notice of the contemplated sale of a pledge shall be mailed to the pledgor not less than 30 days prior to the date of sale. Such notice shall state total amount of principal, interest and charges due on the loan as of the date of the notice.

(10) DISPOSITION OF PROCEEDS. The proceeds from the sale of a pledge shall be applied in the order specified, to the following purposes: Payment of the auctioneer's charges if sold at public auction, or commission for selling not to exceed 5% if sold at private sale; payment of principal of the loan; payment of the interest on the loan permitted under this section, and payment of the charges on the loan permitted under this section; payment of postage for mailing notice to the pledgor of the contemplated sale or notice of the surplus. The surplus, if any, shall be paid to the pledgor or such other person who would have been entitled to redeem the pledge had it not been sold.

(11) NOTICE OF SURPLUS. Notice of any surplus from the sale of a pledge shall be forwarded to the pledgor within 10 days of the date of sale by registered mail to the address given by the pledgor at the time of obtaining the loan or to such new address of the pledgor, of which the pawnbroker has received notice.

(12) REVERSION OF SURPLUS. If a surplus remaining from the sale of a pledge is not paid or claimed within one year from the date of sale, such surplus shall revert to the pawnbroker. The pawnbroker shall not be required to pay any interest on an unpaid surplus.

138.12 Insurance premium finance companies. (1) DEFINITIONS. For purposes of this section:

(a) "Insurance premium finance company" means a person engaged in the business of entering into insurance premium finance agreements.

(b) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract, together with a service charge as authorized and limited by this chapter.

(c) "Licensee" means an insurance premium finance company holding a license issued by the commissioner under this section.

(d) "Commissioner" means the commissioner of banking.

(2) SCOPE. This section shall not apply to:

(a) Any insurance company or agent defined in s. 209.04, any savings and loan association, sales finance company, motor vehicle instalment seller, bank, trust company, licensed lender or credit union authorized to do business in this state, but such organizations, if otherwise eligible, are exempt from the licensing under this section, but subs. (9) to (11) and any rules pro-

mulgated by the commissioner pertaining to such subsections shall be applicable to all premium finance transactions entered into by such organizations in this state if an insurance policy or any rights thereunder is made the security or collateral for repayment of the debt.

(b) The inclusion of insurance in connection with an instalment sale of a motor vehicle or other goods and services.

(c) The financing of insurance premiums in this state under s. 138.04 or 138.05.

Note: Par. (c) is repealed, effective March 1, 1973, by ch. 239, laws of 1971.

(d) The kinds of insurance defined under s. 201.04 (3).

(3) LICENSES. (a) No person except those listed in sub. (2) (a) shall engage in the business of financing insurance premiums in this state without first having obtained a license. Any person who engages in the business of financing insurance premiums in this state without obtaining a license may be fined not more than $200.

(b) The annual license fee is $400 and shall be paid to the commissioner. Licenses may be renewed May 1 of each year upon payment of the fee of $400.

(c) The person to whom the license or the renewal thereof is issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the commissioner requires. The commissioner may, at any time, require the applicant fully to disclose the identity of all stockholders, partners, officers and employes, and he may refuse to issue or renew a license in the name of any person if he is not satisfied that any officer, employe, stockholder or partner thereof, who may materially influence the applicant's conduct, meets the standards of this section.

(4) INVESTIGATION. (a) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and shall issue a license if he finds the applicant is qualified in accordance with this section. If the commissioner does not so find, he shall, within 30 days after he has received such application, so notify the applicant and at the request of the applicant, give the applicant a full hearing.

(b) The commissioner shall issue or renew a license when he is satisfied that the person to be licensed:

1. Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for,

2. Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for, and

3. If a corporation, is a corporation incorporated under the laws of this state or a foreign corporation authorized to transact business in this state.

(5) REVOCATION OR SUSPENSION. (a) The commissioner may revoke or suspend the license of any insurance premium finance company if the commissioner finds that:

1. Any license issued to such company was obtained by fraud,

2. There was any misrepresentation in the application for the license,

3. The holder of such license has otherwise shown himself untrustworthy or incompetent to act as a premium finance company,

4. Such company has violated any provision of this section, or

5. Such company has been rebating part of the service charge as allowed and permitted herein to any insurance agent or insurance broker or any employe of an insurance agent or insurance broker or to any other person as an inducement to the financing of any insurance policy with the premium finance company.

(b) Before the commissioner revokes, suspends or refuses to renew the license of any premium finance company, he shall give such person an opportunity to be fully heard and to introduce evidence in his behalf. In lieu of revoking or suspending the license for any of the causes enumerated in this subsection, after hearing, the commissioner may subject such company to a penalty of not more than $200 for each offense when in his judgment he finds that the public interest would not be harmed by the continued operation of such company. The amount of any such penalty shall be paid by the company to the commissioner for the use of the state. At any hearing under this subsection, the commissioner may administer oaths to witnesses. Anyone testifying falsely, after having been administered such oath, shall be subject to the penalty of perjury.

(c) Any action of the commissioner in refusing to issue or renew a license shall be subject to review under ss. 227.01 to 227.26.

(6) RECORDS. (a) Every licensee shall maintain records of its premium finance transactions and the records shall be open to an examination and investigation by the commissioner. The commissioner may make an examination of the books, records and accounts of any licensee as he deems necessary. The expenses incurred in making any such examination shall be assessed against and paid by the licensee so examined. The commissioner may, at any time, require any licensee to bring such records as he directs to the commissioner's office for examination.

(b) Every licensee shall preserve its records of such premium finance transactions, including cards used in a card system, for at least 3 years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form shall constitute compliance with this requirement.

(7) RULES AND REGULATIONS. The commissioner may make and enforce such reasonable rules as are necessary to carry out this section, but such rules shall not be contrary to nor inconsistent with this section.

(8) PREMIUM FINANCE AGREEMENTS. (a) A premium finance agreement shall:

1. Be dated, signed by or on behalf of the insured, and the printed portion thereof shall be in at least 8-point type,

2. Contain the name and place of business of the insurance agent or insurance broker negotiating the related insurance contract, the name and residence or the place of business of the insured as specified by him, the name and place of business of the premium finance company to which instalment or other payments are to be made, a description of the insurance contracts, including term and type of policy, the premiums for which are advanced or to be advanced under the agreement and the amount of the premiums therefor; and

3. Set forth the following items where applicable:

a. The total amount of the premiums,

b. The amount of the down payment,

c. The principal balance (the difference between items a and b),

d. The amount of the service charge,

e. The balance payable by the insured (sum of items c and d),

f. The number of instalments required, the amount of each instalment expressed in dollars, and the due date or period thereof.

(b) The items set forth in par. (a) 3 need not be stated in the sequence or order in which they appear and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(9) SERVICE CHARGES. A premium finance company shall not charge, contract for, receive or collect a service charge other than as permitted by this section.

(a) The service charge shall be computed on the balance of the premiums due (after subtracting the down payment made by the insured in accordance with the premium finance agreement) from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final instalment of the premium finance agreement is payable.

(b) The service charge shall be a maximum of $6 per $100 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.

(c) The service charge shall be computed on the principal balance of a premium finance agreement payable in successive monthly instalments substantially equal in amount for a period of one year. On a premium finance agreement providing for instalments extending for a period less than or greater than one year, the service charge shall be computed proportionately.

(d) Notwithstanding the provisions of any premium finance agreement, any insured may prepay the obligation in full at any time. In such event he shall receive a refund credit. The amount of such refund credit shall represent at least as great a proportion of the service charge as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of instalments in the agreement. Where the amount of the refund credit is less than $1, no refund need be made. If in addition to the service charge an additional charge was imposed, such additional charge need not be refunded nor taken into consideration in computing the refund credit.

(10) DELINQUENCY OR DEFAULT CHARGE. 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 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. 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.

(11) CANCELLATION. When a premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract listed in the agreement, the following applies:

(a) Not less than 10 days' written notice shall be mailed to the insured of the intent of the insurance premium finance company to cancel the insurance contract unless the default is cured prior to the date stated in the notice. The insurance agent or insurance broker indicated on the premium finance agreement shall also be mailed 10 days' notice of such action.

(b) Pursuant to the power of attorney or other authority referred to above, the insurance premium finance company may cancel on behalf of the insured by mailing to the insurer written notice stating when thereafter the cancellation shall be effective, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself, but without requiring the return of the insurance contract. The insurance premium finance company shall also mail a notice of cancellation to the insured at his last known address and to the insurance agent or insurance broker indicated on the premium finance agreement. Compliance by the premium finance company with the provisions of the premium finance agreement or par. (a), shall not be a condition of effective cancellation hereunder.

(c) Where statutory, regulatory or contractual restrictions provide that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee or other 3rd party, the insurer shall give the prescribed notice on behalf of itself or the insured to such governmental agency, mortgagee or other 3rd party within a reasonable time after the day it receives the notice of cancellation from the premium finance company. When the above restrictions require the continuation of insurance beyond the effective date of cancellation specified by the premium finance company such insurance shall be limited to the coverage to which such restrictions relate and to the persons they are designed to protect.

(d) Whenever a financed insurance contract is canceled the insurer shall return whatever unearned premiums are due under the insurance contract to the insurance premium finance company for the account of the insured, and such action by the insurer shall be deemed to satisfy the insurer's obligations under the insurance contract which relate to the return of unearned premiums. If the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund such excess to the insured but no such refund shall be required if it amounts to less than $1.

(12) NO FILING NECESSARY. No filing of the premium finance agreement or recording of a premium finance transaction shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors or assigns.

(13) ESTABLISHED INSURANCE PREMIUM FINANCE COMPANIES. Any person or corporation engaged in the business of an insurance premium finance company on May 19, 1970, may continue in operation under this section but shall obtain a license by January 1, 1970.

(14) APPLICABILITY OF CHAPTERS 421 TO 427 TO THIS SECTION. All consumer loans as defined in chs. 421 to 427 made by licensees under this section shall be governed by this section to the extent that chs. 421 to 427 are inconsistent with this section.

Note: Sub. (14) is printed as created by ch. 239, laws of 1971. It becomes effective March 1, 1973.

History: 1971 c. 40 s. 93; 1971 c. 125 s. 478; 1971 c. 239.