



2005 SENATE BILL 328

September 14, 2005 - Introduced by Senators HANSEN, COGGS, ERPENBACH and JAUCH, cosponsored by Representatives NELSON, ALBERS, BENEDICT, BERCEAU, BLACK, BOYLE, POCAN, SEIDEL, SHERIDAN, SINICKI and GRIGSBY. Referred to Committee on Housing and Financial Institutions.

1 **AN ACT to renumber and amend** 422.102; **to amend** 138.09 (1m) (a), 138.09
2 (7) (bp), 422.201 (2) (bm) 1. (intro.), 422.201 (2) (bn) and 422.201 (10s); and **to**
3 **create** 138.041 (3), 422.102 (2) and 422.211 of the statutes; **relating to:**
4 interest rates for consumer credit transactions.

Analysis by the Legislative Reference Bureau

Under current law, a lender other than a bank, savings bank, savings and loan association, or credit union (financial institution) generally must obtain a license from the Division of Banking in the Department of Financial Institutions (DFI) to assess a finance charge greater than 18 percent. This type of lender is generally referred to as a "licensed lender." With certain limited exceptions, current law provides no maximum finance charge for a loan made by a licensed lender.

This bill provides that if a licensed lender makes a loan to an individual for personal, family, or household purposes, and the amount of the loan is \$25,000 or less, the licensed lender may not assess a finance charge that exceeds the greater of the following: 1) 18 percent per year; or 2) a rate of 6 percent in excess of the interest rate applicable to six-month U.S. treasury bills. (Under former law, such a maximum interest rate applied to certain consumer loans made between November 1, 1981 and November 1, 1984.)

The finance charge limit under the bill also applies to a credit transaction, such as a loan, made by any person, including a financial institution, if the transaction or loan is for \$25,000 or less and is made for personal, family, or household purposes. However, if a financial institution is located in another state, the limit applies only

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if the limit is not preempted under federal law. Under current federal law, a financial institution is generally allowed to charge an interest rate that is allowed under the law of the state in which the financial institution is located. At present, this federal law preempts state law. Therefore, the bill will apply to financial institutions located in other states only if and when federal law no longer preempts state law. The bill requires DFI to periodically determine whether federal law preempts the bill with respect to out-of-state financial institutions. If DFI determines that federal law does not preempt the bill, DFI must publish the determination in the Wisconsin Administrative Register and the bill applies to out-of-state financial institutions the first day of the third month after such publication.

Finally, the bill prohibits a person from acting as an agent for a financial institution located in another state with respect to certain credit transactions, including loans, for \$25,000 or less that are made for personal, family, or household purposes. Under the bill, a person may not act as an agent for such a transaction if the finance charge exceeds the amount described above and the agent receives more than 50 percent of the revenues from the transaction.

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

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

1 **SECTION 1.** 138.041 (3) of the statutes is created to read:

2 138.041 **(3)** This section does not apply to consumer credit transactions that
3 are subject to s. 422.201 (2) (bm).

4 **SECTION 2.** 138.09 (1m) (a) of the statutes is amended to read:

5 138.09 **(1m)** (a) Before any person may do business under this section or charge
6 the interest authorized by sub. (7) and before any creditor other than a bank, savings
7 bank, savings and loan association or credit union may assess a finance charge on
8 a consumer loan in excess of 18% per year or assess a finance charge that is subject
9 to s. 422.201 (2) (bm) or (10s), that person shall first obtain a license from the division.
10 Applications for a license shall be in writing and upon forms provided for this purpose
11 by the division. An applicant at the time of making an application shall pay to the
12 division a nonrefundable \$300 fee for investigating the application and a \$500

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1 annual license fee for the period terminating on the last day of the current calendar
2 year. If the cost of the investigation exceeds \$300, the applicant shall upon demand
3 of the division pay to the division the amount by which the cost of the investigation
4 exceeds the nonrefundable fee.

5 **SECTION 3.** 138.09 (7) (bp) of the statutes is amended to read:

6 138.09 (7) (bp) A loan, whether precomputed or based upon the actuarial
7 method, made after October 31, 1984, is not subject to any maximum interest rate
8 limit, except that consumer credit transactions entered into on or after the effective
9 date of this paragraph ... [revisor inserts date], are subject to s. 422.102 (2) (bm) and
10 (10s).

11 **SECTION 4.** 422.102 of the statutes is renumbered 422.102 (1) and amended to
12 read:

13 422.102 (1) This Except as provided in sub. (2), this chapter applies to
14 consumer credit transactions.

15 **SECTION 5.** 422.102 (2) of the statutes is created to read:

16 422.102 (2) Section 422.201 (2) (bm) and (10s) apply to a financial institution
17 located in another state only if such application is not preempted under federal law.
18 The administrator shall periodically determine whether such application is
19 preempted under federal law. If the administrator determines that federal law does not
20 preempt such application, all the following apply:

21 (a) The administrator shall cause the determination to be published in the
22 Wisconsin Administrative Register.

23 (b) Section 422.201 (2) (bm) and (10s) first apply to financial institutions
24 located in another state on the first day of the 3rd month after the date of publication
25 under par. (a).

SENATE BILL 328**SECTION 6**

1 **SECTION 6.** 422.201 (2) (bm) 1. (intro.) of the statutes is amended to read:

2 422.201 **(2)** (bm) 1. (intro.) The finance charge, calculated according to the
3 actuarial method, may not exceed the greater of the following for a consumer credit
4 transaction entered into on or after November 1, 1981 and before November 1, 1984,
5 or entered into on or after the effective date of this subdivision [revisor inserts
6 date]:

7 **SECTION 7.** 422.201 (2) (bn) of the statutes is amended to read:

8 422.201 **(2)** (bn) A consumer credit transaction entered into after October 31,
9 1984 and before the effective date of this paragraph [revisor inserts date], is not
10 subject to any maximum limit on finance charges.

11 **SECTION 8.** 422.201 (10s) of the statutes is amended to read:

12 422.201 **(10s)** ~~Regardless of the date that~~ With respect to an open-end credit
13 plan that is entered into before the effective date of this subsection [revisor inserts
14 date], the parties may agree to the payment by the customer of a finance charge at
15 any periodic rate. With respect to an open-end credit plan that is entered into on or
16 after the effective date of this subsection [revisor inserts date], the parties may
17 agree to the payment by the customer of a finance charge that does not exceed the
18 charge allowed under sub. (2) (bm).

19 **SECTION 9.** 422.211 of the statutes is created to read:

20 **422.211 Certain agency relationships prohibited.** No person may act as
21 an agent in this state for a financial institution located in another state with respect
22 to a consumer credit transaction between the financial institution and a customer if
23 the finance charge exceeds the amount specified in s. 422.201 (2) (bm) and the agent
24 receives more than 50 percent of the revenues from the consumer credit transaction.

25 **SECTION 10. Effective date.**

