



## 2009 ASSEMBLY BILL 392

August 26, 2009 – Introduced by Representatives HINTZ, MILROY, HIXSON, COLON, RICHARDS, BENEDICT, BERCEAU, BERNARD SCHABER, BLACK, CLARK, CULLEN, DANOU, DEXTER, GARTHWAITE, HEBL, HILGENBERG, HRAYCHUCK, HUBLER, KESSLER, MASON, MOLEPSKE JR., NASS, NELSON, A. OTT, PASCH, POCAN, POPE-ROBERTS, ROYS, SCHNEIDER, SEIDEL, SHERMAN, SINICKI, SMITH, SOLETSKI, SPANBAUER, STEINBRINK, TOLES, TURNER, VAN AKKEREN, VRUWINK, YOUNG, ZIEGELBAUER and ZIGMUNT, cosponsored by Senators HANSEN, CARPENTER, COGGS, ELLIS, GROTHMAN, JAUCH, A. LASEE, LASSA, LEHMAN, MILLER, RISSER, ROBSON, TAYLOR, VINEHOUT and WIRCH. Referred to Committee on Financial Institutions.

1     **AN ACT** *to renumber and amend* 138.09 (1d); *to amend* 138.09 (1m) (a); and  
2             *to create* 138.09 (1d) (b) and 138.09 (7m) of the statutes; **relating to:** finance  
3             charges for licensed lenders.

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### ***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 for a consumer loan that is 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 consumer loan made by a licensed lender.

The bill changes the licensing requirement so that it is based on the amount of a loan, rather than the finance charge. Under the bill, a lender other than a financial institution must obtain a license if the lender makes a consumer loan of \$5,000 or less.

The bill also prohibits a lender who is so licensed from assessing a finance charge on a consumer loan that exceeds 36 percent per year. Under the bill, “finance charge” has the same definition as under the Wisconsin Consumer Act, which is also administered by DFI. The bill requires that DFI enforce the foregoing prohibition. A person who violates the prohibition is subject to the same penalty that applies under current law to a licensed lender who does not obtain a license, which is a fine of not more than \$500, imprisonment for not more than six months, or both. In

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addition, the bill allows a borrower to bring an action against a lender who violates the prohibition to recover damages in an amount equal to the greater of the following: 1) twice the amount of the finance charge in connection with the loan made to the borrower; or 2) the actual damages, including incidental and consequential damages, sustained by the borrower by reason of the violation. The bill also allows the borrower to recover the costs of the action, including reasonable attorney fees.

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

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

1           **SECTION 1.** 138.09 (1d) of the statutes is renumbered 138.09 (1d) (intro.) and  
2 amended to read:

3           138.09 **(1d)** (intro.) In this section, “division”:

4           (a) “Division” means the division of banking.

5           **SECTION 2.** 138.09 (1d) (b) of the statutes is created to read:

6           138.09 **(1d)** (b) “Finance charge” has the meaning given in s. 421.301 (20).

7           **SECTION 3.** 138.09 (1m) (a) of the statutes is amended to read:

8           138.09 **(1m)** (a) Before any person may do business under this section or charge  
9 the interest authorized by sub. (7) and before any creditor other than a bank, savings  
10 bank, savings and loan association or credit union may ~~assess a finance charge on~~  
11 make a consumer loan ~~in excess of 18% per year \$5,000 or less~~, that person shall first  
12 obtain a license from the division. Applications for a license shall be in writing and  
13 upon forms provided for this purpose by the division. An applicant at the time of  
14 making an application shall pay to the division a nonrefundable \$300 fee for  
15 investigating the application and a \$500 annual license fee for the period  
16 terminating on the last day of the current calendar year. If the cost of the  
17 investigation exceeds \$300, the applicant shall upon demand of the division pay to

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1 the division the amount by which the cost of the investigation exceeds the  
2 nonrefundable fee.

3 **SECTION 4.** 138.09 (7m) of the statutes is created to read:

4 138.09 **(7m)** (a) No creditor who is licensed under sub. (1m) may assess a  
5 finance charge on a consumer loan that is more than 36 percent per year.

6 (b) If a creditor makes a consumer loan that violates par. (a), the borrower may  
7 bring an action against the creditor for an amount equal to twice the amount of the  
8 finance charge in connection with the loan, or the actual damages, including any  
9 incidental and consequential damages, sustained by the borrower by reason of the  
10 violation, whichever is greater, and, notwithstanding s. 814.04 (1), the costs of the  
11 action, including reasonable attorney fees.

12 **SECTION 5. Initial applicability.**

13 (1) This act first applies to loans made, refinanced, or consolidated on the  
14 effective date of this subsection.

15 **SECTION 6. Effective date.**

16 (1) This act takes effect on the first day of the 3rd month beginning after  
17 publication.

18 (END)