Committee Name:
Senate Committee – Privacy, Electronic Commerce and Financial Institutions (SC–PECFI)

Appointments

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Record of Committee Proceedings

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03-05-2002

BILL NO. SB436
or
SUBJECT

John F. Kundert
(NAME)
345 W. Washington Ave
(Street Address or Route Number)
Madison, WI 53703
(City and Zip Code)
Dept. of Financial Institutions
(Representing)

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Patty Struck & Michael Mach
(NAME)
345 W. Washington Ave.
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Department of Financial Institutions
(Representing)

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State of Wisconsin
Department of Financial Institutions

Scott McCallum, **Governor** John F. Kundert, **Secretary**

Testimony of
Michael J. Mach, Administrator
Division of Banking
Department of Financial Institutions

Senate Committee on Privacy, Electronic Government and Financial Institutions
SB 436
March 5, 2002

Thank you Senator Erpenbach and members of the Privacy, Electronic Government and Financial Institutions Committee for the opportunity to testify this morning in favor of SB 436. The Department of Financial Institutions has been working with the Legislative Council and the Law Revisions Committee since the November of 2000 on this important remedial legislation and we are pleased that this bill has been introduced and is receiving a hearing before your committee.

The Legislative Reference Bureau has done an excellent job summarizing the provisions contained in this bill. I would like to briefly highlight each of the areas relating to the Division of Banking and explain to you a little about the history of each. If it is acceptable to the committee, I would like to address each item individually and take questions on each.

Pawnbrokers

Prior to 1997, persons operating "pawn shops" were subject to regulation under Wisconsin's trade regulation statutes, s. 134.71, and separate pawnbroker statutes, s. 138.10. Generally, under these statutes, pawnbrokers were required to obtain a license/permit from the municipality in which they operated and were subject to interest caps and certain reporting requirements. However, the budget bill of 1997 (1997 Act 27) included language which allowed pawnbrokers to be licensed by the Department of Financial Institutions as loan companies under s. 138.09. While not necessarily intended, these modifications left a great deal of uncertainty in jurisdiction, limits, and regulation of these entities. In particular, interest limitations for pawnbrokers as loan companies were in direct conflict with interest limitations on pawnbrokers under s. 134.71.

The changes recommended in this proposal are intended to clarify regulatory jurisdiction for pawnbrokers who are licensed as loan companies under s. 138.09, while still maintaining a regulatory role for municipalities who also license pawnbrokers. The proposed changes clarify and strengthen the department's rule-making authority over pawnbrokers by specifically stating that the department may draft rules necessary to regulate them. The reference to this rule-making authority is also moved from s. 138.10 and placed more properly within s. 138.09.

Authority of the Division of Banking

Under s. 220.02, Wis. Stats., the Division of Banking is given the authority to enforce the banking laws of the state related to a specific listing of licensees regulated by the division. When legislation was passed during the 1995-1996 session of the Wisconsin State Legislature transferring responsibility for the regulation of mortgage banking activities from the Department of Regulation and Licensing to the Department of Financial Institutions, an oversight occurred in not including a reference to mortgage banking in s. 220.02.

Similarly, when the Wisconsin State Legislature provided for the regulation of non-depository SBA lenders during the 1999-2000 legislative session, this licensee was also not referenced in s. 220.02.

Inclusion of references to "mortgage banking" and "non-depository SBA lenders" in s. 220.02 will simply remove any ambiguity regarding the use of the division's enforcement authority with these types of licensees.

Trust Services

Currently, a state bank may exercise certain trust powers with the approval of the Division of Banking. The division may also permit a trust company bank or a state bank exercising trust powers to offer trust services at the offices of certain other "financial institutions," as long as the offices are in this state.

When changes were made in ss. 221.0316 (4) and 223.07 (1) during the 1995-1996 session of the Wisconsin State Legislature allowing out-of-state depository institutions to establish a Trust Service Office at a bank or branch location in Wisconsin, an oversight occurred by not adopting language permitting Wisconsin financial institutions to establish Trust Service Offices at a bank or branch location outside of Wisconsin. Elimination of the language "in this state" in both of the aforementioned sections addresses this inadvertent oversight.

Sellers of Checks

The Division of Banking licenses "sellers of checks," which are defined as those persons who sell checks or receive money for transmission. Under s. 217.02 (9), Wis. Stats., "telegraph companies" are exempt from licensing. This type of entity no longer exists and the Department is recommending elimination of this exemption.

Collection Agencies

Persons who act as third-party collection agencies in the state of Wisconsin must be licensed by the Division of Banking. Under s. 218.04(1)(a), certain entities are excluded from the definition of "collection agency" including the undefined term "professional men's associations." This proposal would eliminate this exemption and the use of this antiquated term.

Once again, I would like to thank you for the opportunity to provide testimony on this bill.

State of Wisconsin
Department of Financial Institutions

Scott McCallum, **Governor** John F. Kundert, **Secretary**

Testimony of
Patricia D. Struck, Administrator
Division of Securities
Department of Financial Institutions

Senate Committee on Privacy, Electronic Commerce and Financial Institutions
SB 436
March 5, 2002

Thank you, Senator Erpenbach and members of the Privacy, Electronic Commerce and Financial Institutions Committee, for the opportunity to testify this morning in favor of those provisions of SB 436 that clarify the law administered by the Division of Securities.

Securities and Investments

The issue of "Free Credit Balances" has for decades been a source of interpretive uncertainty involving DFI's Division of Banking and Division of Securities, as well as our predecessor agencies. It has taken up countless hours while we tried to clarify this issue and provide guidance to Wisconsin's securities community.

The issue, under the banking law, is whether or not an "agent for investment" can pay interest to clients on balances pending investment. While the payment of interest on these kinds of accounts may be considered "the business of banking," the Wisconsin State Statutes and various interpretations provide that interest can be paid if certain criteria are met. In general those funds held pending investment must be segregated from other accounts and cannot be co-mingled with the "agent's accounts. Because meeting the prescribed criteria is cumbersome, it has been the practice for a stockbroker, as an "agent for investment" to claim that Wisconsin banking law simply prohibits the payment of interest. The result is that investors in Wisconsin often could not receive interest on the cash balances in their brokerage accounts pending reinvestment.

Proviso language added to the definition of banking in 1931 leaves little flexibility for the Division of Banking to ease restrictions. Amending s. 224.02 to eliminate the language that specifies the criteria with which an "agent for investment" must comply in order to pay interest on free credit balances will provide a clear exemption from the statutory definition of "the business of banking" and ensure Wisconsin investors receive interest on the cash balances in their accounts.

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Franchises

During the final week of the 1995 session, comprehensive changes were made in the Wisconsin Franchise Investment Law. The legislation in its form as originally introduced would have repealed s. 553.31, which requires a franchise registrant to file material amendments to its Uniform Franchise Offering Circular. An Assembly Amendment was adopted during the legislative process, however, that specifically deleted the repeal of s. 551.31 without removing inconsistent language clarifying both that amendments required under s. 553.31 are still required to be filed with the Division and that the effective date of any material amendment filed after the registration of a franchise is the date of receipt of the amendment. Consequently, amendments are needed to ss. 553.26(4m) and 553.31(2) to make those clarifications. The recommended changes also clarify that once a person has registered a franchise, the person is not required to file any additional information except amendments that reflect material changes to the registration statement.