

2011 DRAFTING REQUEST

Bill

Received: 06/06/2011

Received By: agary

Wanted: As time permits

Companion to LRB:

For: Alvin Ott (608) 266-5831

By/Representing: Erin Ruby

May Contact:

Drafter: agary

Subject: Fin. Inst. - securities

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Ott@legis.wisconsin.gov

Carbon copy (CC:) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Securities registration exemption

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	agary 06/10/2011	kfollett 06/27/2011	mduchek 06/27/2011	_____	ggodwin 06/27/2011		State
/1	agary 07/01/2011	kfollett 07/01/2011	jfrantze 07/05/2011	_____	lparisi 07/05/2011	ggodwin 08/11/2011	State

FE Sent For:

*At intro
8/10/11*

<END>

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FE Sent For:

1/1/11
7/1/11
1/5
km 7/5
JA
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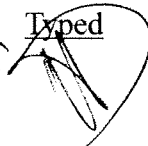
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/P1	agary	1P/1Gf 6/27		_____	_____	_____	_____

FE Sent For:

<END>

Bill Draft Request

Date: 6-6-11

Legislator Requesting Draft: Rep. Al Ott

Person Submitting Request: Erin Ruby – Research Assistant

Person to Contact with Questions: Erin Ruby (6-5831)

Drafting Request:

Rep. Ott would like to request a bill draft to restore the previously existing exemption - under Chapter 551 - from state registration for any securities of a cooperative corporation organized under Chapter 185 or 193.

This exemption was lost under 2007 Wisconsin Act 196, and replaced by the language under s. 551.201 (8).

Please delete the language of (8) and replace it with, “Any securities of a cooperative corporation organized under ch. 185 or 193.”

To provide some context, a copy of a memo prepared by Scott Herrick of Herrick & Kasdorf, LLP, is attached

Feel free to call or send an email with any questions or concerns.

Thank you!

Herrick & Kasdorf, L.L.P.

Patricia K. Hammel
Scott N. Herrick *Court Commissioner*
Robert T. Kasdorf *Trustee in Bankruptcy*
Juscha E.M. Robinson
David R. Sparer

Robert L. Reynolds, Jr. (1930-1994)

Law Offices

16 N. Carroll, Suite 500
Madison WI 53703

Peter Zarov *of counsel*
Roger Buffett *of counsel*

April 19, 2011

Memo: Coop Securities Law Project: Seeking the *status quo ante*
From Scott Herrick

Chapter 551 of the Wisconsin Statutes was repealed and recreated in its entirety effective January 1, 2009, by 2007 Wisconsin Act 196, the "Wisconsin Uniform Securities Law," which had the general purpose of conforming Wisconsin securities law and regulation to a uniform national model.

Prior to that revision Wisconsin law for many years included the following provision, at WS 551.22, "Exempt securities:"

The following securities are exempt from registration under s. 551.21(1):

(12) Any securities of a cooperative corporation organized under ch. 185 or 193.

That "safe harbor" exemption disappeared under the Wisconsin Uniform Securities Law, replaced by a complex exemption requiring considerable legal and administrative discretion and judgment. The text of the surviving exemption reads:

(8) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative.

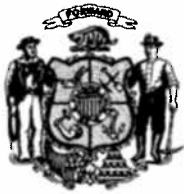
The simple exemption was extremely functional, useful, and valuable in establishing and operating Wisconsin cooperative enterprises. The loss of the exemption has been a hardship especially for new cooperative enterprises, and has created expensive legal challenges in attempting to comply with the new law, which simply does not anticipate or address the cooperative model.

The exemption from state registration, which was not an exemption from anti-fraud standards and not an exemption from federal securities regulation, had served Wisconsin well and was not controversial. I believe that no advocate of the 2007 revision intended effectively to remove the coop exemption; on the contrary, I doubt that any advocate was aware of it. I believe that Wisconsin regulators did not intend or anticipate the loss of the exemption, and have had some difficulty adjusting to it. I believe that the exemption disappeared because the model act did not contain a similar provision, which in turn probably reflects the fact that many states do not share the Wisconsin cooperative tradition; in fact, many states do not have a separate cooperative statute.

I am prepared to advocate aggressively for the original safe-harbor exemption on substantive policy grounds, based on our experience over many years in organizing and representing Wisconsin cooperatives, but I reserve that argument at this time, primarily because no argument has been advanced against the exemption. The loss of the exemption was a mistake, not a decision.

Perhaps other adjustments to the Uniform Act are under consideration. Whether or not a "trailer bill" is being developed, I propose that the Wisconsin Uniform Securities Law be amended to restore the old exemption, replacing the "uniform act" text at WS 551.201 (8), which would now read: *(8) Any securities of a cooperative corporation organized under ch. 185 or 193.*

SH/hs



m
6/10



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

Gen

1 AN ACT ...; **relating to:** exemptions from securities registration requirements.

Analysis by the Legislative Reference Bureau

In 1969, this state enacted the Wisconsin Uniform Securities Law (WUSL), effective January 1, 1970, based upon the Uniform Securities Act of 1956, with some modifications. In 2008, the WUSL was recodified, effective January 1, 2009, based on the Uniform Securities Act of 2002, with some modifications.

Under current law, a person may not offer or sell any security in this state unless the security is registered with the Division of Securities in the Department of Financial Institutions (division), the security or transaction is exempt from registration, or the security is a federal covered security. Certain notice filing requirements may apply to federal covered securities. A "security" is defined broadly under the WUSL and includes stocks, notes, bonds, investment contracts, limited partnership interests, and certain other financial interests.

Under current law, certain securities are exempt from registration with the division, including: securities of the United States, a state or political subdivision of a state, or a foreign government; securities of a federally insured financial institution, an insurance company, a public utility, or a common carrier; securities listed, or approved for listing, on a securities exchange; and securities of certain religious or charitable nonprofit organizations. Another category of securities exempt from registration is: "A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative."

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2205/P1dn

ARG: *kgf*

Date

ATTN: Erin Ruby

As requested, this bill replaces the existing provision in s. 551.201 (8) with the provision in place before the 2008 recodification of chapter 551. However, I believe the prior provision is flawed. Chapter 193 relates to *unincorporated* cooperatives. Therefore, the prior provision is internally inconsistent in referring to "a cooperative corporation organized under ... ch. 193 [*unincorporated* cooperatives]." I would prefer to modify the language in s. 551.201 (8) to read: "Any securities of a cooperative corporation organized under ch. 185 or an unincorporated cooperative association organized under ch. 193." Is it okay to make this change?

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2205/P1dn
ARG:kjf.md

June 27, 2011

ATTN: Erin Ruby

As requested, this bill replaces the existing provision in s. 551.201 (8) with the provision in place before the 2008 recodification of chapter 551. However, I believe the prior provision is flawed. Chapter 193 relates to *unincorporated* cooperatives. Therefore, the prior provision is internally inconsistent in referring to “a cooperative *corporation* organized under ... ch. 193 [*unincorporated* cooperatives].” I would prefer to modify the language in s. 551.201 (8) to read: “Any securities of a cooperative corporation organized under ch. 185 or an unincorporated cooperative association organized under ch. 193.” Is it okay to make this change?

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State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

One East Main Street, Suite 200

P.O. Box 2037

Madison, WI 53701-2037

www.legis.state.wi.us/lrb/

Stephen R. Miller
Chief

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Legal Fax: (800) 264-6948
Library Circulation: (800) 266-7040
Reference Section: (800) 266-0341
Reference Fax: (800) 266-5648

June 27, 2011

MEMORANDUM

To: LRB Attorneys, Legislative Editors, and Legislative Processing Specialists

From: Steve Miller

Subject: Writing the 2011-12 *Summary of Legislation*

Legislators and our other customers like the *Summary of Legislation* and find it useful, so we need to ensure that it is appealing and timely. Legislators use the document to answer constituent questions, to prepare speeches, and to write their newsletters and newspaper columns. I plan to publish the *Summary* very shortly after the legislature wraps up business in the spring or summer of 2012. This memo addresses important guidelines for style and length, so please review them carefully.

If you have questions, please see me.

TIMEFRAME

Each attorney should write a summary of each act or portion of each act no later than two weeks after the Governor signs it. I encourage attorneys to write summaries as soon as possible, even before bills are signed, because attorneys remember the bill content more clearly and it is easy to remove a summary if the bill is vetoed (or modify it if partially vetoed or moved to the proposals that failed enactment). As we reach the end of session (May), I will shorten this deadline to two days to ensure we meet our printing deadline. The book must be fresh to be useful.

If an act falls within two or more assigned subject areas, all relevant attorneys should consult with each other on the wording of the summary. Periodically, Cathlene will distribute a list showing all of the acts and the responsible attorneys. If you feel that the list erroneously assigns you responsibility for an act, resolve the matter with the other attorneys involved. If you believe that a proposal that failed enactment is important enough to be noted in the *Summary of Legislation*, you may write the summary immediately or wait until the end of session because you may not know of future developments.

Place your summaries in the basket in editing as soon as possible and the editors will edit them within two weeks. Keep a copy of each original summary you submit. As the LPSes finish your summaries, they will continually compile the summaries during the session as a draft compile.

Near the end of session, each attorney will receive a copy of the compiled *Summaries* for self-editing. After each attorney finishes editing his or her parts, the LPSes will type the changes to produce a final draft compile. Peter and Cathlene will edit that compile and distribute a copy showing the proposed changes for attorney approval. After all changes are approved, each attorney will receive a clean copy to ensure that the edited summaries are readable, informative, accurate, and make sense.

STYLE

Content

Each summary should be an accurate but concise description of the act's major effects. Summarize only significant provisions in the budget and other acts that deal with many subjects. When determining which provisions in the budget and other acts are significant enough to include, weigh the significance of each against other provisions in that act, not against other acts, which may have minor effects. Each summary should be written for the average educated person. Avoid jargon or technical language. Do not repeat the analysis. Most summaries that are not highlights should not exceed three sentences. The length of the summary will depend upon the length of the act and number of significant policy changes enacted. Judge the significance on the basis of public perception as reflected by media reports. Proposals that failed must be summarized in one sentence. Summaries of the highlight acts should not exceed one page.

Organization

As in the recent editions of the *Summary of Legislation*, the 2011-12 *Summary of Legislation* will be organized by subject area. Indicate the appropriate heading on each summary (see the 2009-10 *Summary of Legislation*). You may suggest appropriate subheadings if they are necessary for organizational clarity, but do not create a subheading for only one act. If your document contains more than one summary, please organize them numerically by act number if known.

Under each heading or subheading, the highlights and other legislation will appear in numerical order of the act; the highlights will be highlighted. The major proposals that failed enactment or adoption will follow. The following definitions should help you decide how to classify your summaries:

Highlights. A highlight is a proposal that occupied a sizable portion of the legislature's time, received significant media coverage, and has a significant legal impact. Do not classify an act as a highlight on the basis of its length, the amount of work required to draft it, or the fact that it is more significant than other acts that you drafted. Each highlight should have a descriptive subheading (see the 2009-10 *Summary*).

Other legislation. An act or significant joint resolution (other than those included in the highlights section).

Major proposals that failed enactment or adoption. A major proposal that failed enactment or adoption although it occupied a sizable portion of the legislature's time, received significant media coverage, and would have had a significant legal impact. Do not include here any portion of an enacted or adopted proposal that failed enactment or adoption.

Writing

Write your summaries in an ordinary Microsoft Word document that you create or use the template in the DocBase. Each document may include more than one summary. Because your focus is content, your only requirements are to: include headings and subheadings, indicate the category of each summary (highlight or other legislation), indicate that you are the author, name the document with your initials and its number (for example, the third summary that Mary puts into editing should be named SUMMGG-3.doc (do not type any slashes in the name), and check in the document to The Client under **LRB Internal Docs/ Summaries/ Summaries 2011-12**.

If you have problems checking in, you may e-mail Cathlene a Word document from Word.

Start each summary with the act or enrolled joint resolution number and the AB, SB, AJR, or SJR number. Within each summary, place provisions in descending order of significance. If an act or joint resolution contains many significant elements, you may wish to write the summary in sentence outline form. See the 2009-10 *Summary of Legislation*. If an act or enrolled joint resolution number is not known, use the bill number to identify your summary. For example, “**Act (SB-999)** provides....”

Each summary of an act should treat only the changes in the law made by that act, even if the law was further changed by another act. If another act further changed the law, include a cross-reference to the second act in the summary of the first act “(see also *Act 195*)”. Such cross-references may need to be added after you write the summaries since you will be writing summaries throughout the session and possibly before further changes to the law.

If an act is summarized under different headings, insert a “see also (other heading)” cross-reference under each heading unless the material is completely unrelated. If you cross-reference another act in a different subject area, note the subject area in your cross-reference. For example, “See also *Agriculture, Act 217*.”

Keep your descriptions of the new law in the present tense unless talking about a past or future event or a law that has been changed since the act you are summarizing was enacted, or that is scheduled to change after January 1, 2013.

If a bill is vetoed, do not summarize it unless it is a “major proposal that failed enactment or adoption.” If a bill is partially vetoed, summarize the act as vetoed. Do not mention partial vetoes or describe the bill before the veto. Presume that partial vetoes are valid until a court rules otherwise. If any vetoes are overruled, supplement or revise your summaries accordingly.

Capitalization

Capitalize proper nouns that designate specific persons or units (2011 Legislature, Wisconsin Supreme Court, Dane County, Department of Justice), programs (Kinship Care Program, Youth Options Program), or federal laws (Social Security Act of 1933). Do not capitalize program descriptions that are not proper names.

Use full names of constitutional officers (State Superintendent of Public Instruction). If you mention any federal position, use “federal” or “U.S.” if necessary to distinguish it from the Wisconsin statutory or constitutional officer.

Distinguish between, and capitalize the initial letters of, U.S. Constitution and Wisconsin Constitution or U.S. Supreme Court and Wisconsin Supreme Court. Use lowercase for references to other courts (appeals, appellate, circuit) unless you refer to a specific court.

Abbreviations

Use the abbreviations from the 2009-10 *Summary of Legislation*. For any department, council, board, or legislative committee not on the list that is ordinarily abbreviated, use, for example, "Joint Committee on Legislative Organization (JCLO)" for the first reference; for subsequent references under the same heading, use "JCLO." Do not abbreviate references to the Department of Commerce or the Department of Tourism. If you want to add new abbreviations, please let Cathlene know.

Numbers

Spell out numbers one to nine except for school grades (grades 1 to 8), percentages (4 percent), and sentences containing many numbers, or a series of numbers, if some of the numbers are below 10 and some are 10 or above. In the latter case, spell out all of the numbers or use numerals for all of the numbers, whichever is most appropriate. Use numerals for numbers 10 and above unless the number begins a sentence. These rules apply to hyphenated phrases that include a number (five-year program, 10-year lease).

Other technical considerations

Do not mention statutory chapter numbers or section numbers. Refer to laws by popular name or subject matter.

Put periods and commas inside quotation marks, and put semicolons outside quotation marks.

All references should be to "act" not "bill."

"Current law" in the analysis is now "former" or "preexisting" law. You should delete such references unless they are essential to the reader's understanding.

Do not mention penalties, specific appropriation amounts, or position changes unless they are an essential element of the act.

Do not mention effective dates unless they are an essential element of the act or they occur after January 1, 2013. Briefly mention sunset dates.

Do not mention studies unless the study is the major effect of the act.

If the name of an agency or subunit of an agency has changed or will change, or if a function has been or will be transferred, use the agency name or describe the function as it exists when the act you are summarizing takes effect. If a later change is to occur, describe that change in parentheses the first time you mention the agency, subunit, or function. For example, "Act 180 directs the commissioner of banking (the secretary of financial institutions effective on July 1, 2013) to send notice to each bank doing business in this state specifying.... The act also directs the commissioner to...."

* * *

Gary, Aaron

From: Ruby, Erin
Sent: Friday, July 01, 2011 11:58 AM
To: Gary, Aaron
Subject: RE: LRB-2205: securities exception for coops

That would be great. My apologies that they called you directly without any heads up. They were supposed to check in with me first.

Thanks, Aaron! Have a wonderful holiday weekend!
Erin

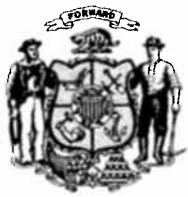
Erin Ruby
Research Assistant
Office of State Representative Al Ott
608.266.5831
erin.ruby@legis.wi.gov

From: Gary, Aaron
Sent: Friday, July 01, 2011 11:56 AM
To: Ruby, Erin
Subject: LRB-2205: securities exception for coops

Hi Erin,
I received a call from a gentleman at the cooperative network (??) who said he reviewed my comments and was fine with the language I proposed in the drafter's note. Do you want me to make this change and redraft as a "/1"?

Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us



State of Wisconsin
2011 - 2012 LEGISLATURE

5000



LRB-2205/1

ARG:kjf:md

7/1

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 AN ACT *to repeal and recreate* 551.201 (8) of the statutes; **relating to:**
2 exemptions from securities registration requirements.

Analysis by the Legislative Reference Bureau

In 1969, this state enacted the Wisconsin Uniform Securities Law (WUSL), effective January 1, 1970, based upon the Uniform Securities Act of 1956, with some modifications. In 2008, the WUSL was recodified, effective January 1, 2009, based on the Uniform Securities Act of 2002, with some modifications.

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LRB-2205/P1dn
ARG:kjf.md

June 27, 2011

INSERT

ATTN: ~~Erin~~ Ruby

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insert
A

~~Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov~~

Godwin, Gigi

From: Ruby, Erin
Sent: Thursday, August 11, 2011 2:12 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-2205/1 Topic: Securities registration exemption

Please Jacket LRB 11-2205/1 for the ASSEMBLY.