State of Wisconsin
2013 - 2014 LEGISLATURE

LRB-2577/1
ARG&GMM:kjf&cjs:jf

2013 ASSEMBLY BILL 277

INSERTS

August 7, 2013 - Introduced by Representatives CRAIG, HINTZ, BALLWEG, HUTTON, KAHL, LEMAHIEU, OHNSTAD, SANFELIPPO, SARGENT, STROEBEL, MARKLEIN, ZEPNICK and HONADEL, cosponsored by Senator GUDEX. Referred to Committee on Financial Institutions.

AN ACT ***to amend*** 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 35.93 (2) (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e) (intro.), 35.93 (3) (e) 1., 227.01 (13) (intro.), 227.11 (2) (intro.) and 227.27 (2); and ***to create*** 13.92 (4) (bm) and 227.265 of the statutes; **relating to:** rule-making procedures and modifying and repealing various rules promulgated by the Department of Financial Institutions.

~~*Analysis by the Legislative Reference Bureau*~~

STATUTORY TREATMENTS

insert ANAL

Rule-making procedures

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.

2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.

3. Subject to certain exceptions, a public hearing is held on the proposed rule.

4. The final draft of the proposed rule is submitted to the governor for approval.

5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule-making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

INSERT ANAL cont'd

TREATMENTS OF ADMINISTRATIVE RULES

This bill modifies and repeals various rules promulgated by the Department of Financial Institutions (DFI), as described below.

Remote terminals accessing financial institution accounts

Under current statutes, a bank, savings and loan association, savings bank, or credit union (collectively, financial institution) may acquire, place, and operate, or participate in the acquisition, placement, and operation of, at locations away from the financial institution, what is variously referred to as customer bank communications terminals, remote terminals, or remote service units (collectively remote terminals), in accordance with rules established by the Division of Banking (division) in DFI or the Office of Credit Unions (OCU) in DFI. A remote terminal is a terminal or other facility that is not located at a financial institution and through which customers and financial institutions may engage in electronic transactions that are incidental to the conduct of the business of financial institutions.

Under current rules of the division and OCU, when any sale of goods or services is paid directly through a remote terminal and involves an aggregate transfer of funds of $50 or more from an account of a financial institution customer to the account of another person, the financial institution must reverse the transaction and recredit the customer's account upon receipt of notice by the customer within three business days after the date of the sale. This process is referred to as a chargeback. This bill repeals this chargeback provision from the rules of the division and OCU.

Under current rules of the division and OCU, the liability of a customer of a financial institution for the unauthorized use of a plastic card or other means providing the customer access to a remote terminal (access card) may not exceed the lesser of the following: 1) $50; or 2) the amount of any money, property, or services obtained by its unauthorized use prior to the time the financial institution is notified, or becomes aware, of circumstances that lead to the belief that unauthorized access to the customer's account may be obtained.

This bill modifies this rule relating to limits on customer liability for the unauthorized use of a remote terminal access card. Under the bill, if the customer notifies the financial institution within two business days after learning of the

INSERT ANAL–B:

Authorized activities of credit unions

1. Incidental powers activities

Current statutes specify various powers and authorized activities of a credit union, including authority to sell insurance, annuities, and related products, to participate with other lenders in loans of any type that the credit union could make by itself, and to exercise all powers necessary and proper to carry out the purposes of the credit union. In addition, a credit union may undertake any activity, exercise any power, or offer any financially related product or service that any other provider of financial products or services in this state may undertake, exercise, or provide if the Office of Credit Unions (OCU) in DFI, by rule, authorizes the activity, power, product, or service for credit unions. OCU also has general authority, subject to the approval of the Credit Union Review Board, to promulgate rules authorizing credit unions to make any loan or investment or exercise any right, power, or privilege afforded federally–chartered credit unions.

Under current OCU rules authorizing Wisconsin–chartered credit unions to engage in incidental activities in the same manner that these activities are available to federally–chartered credit unions, a credit union may offer and enter into debt cancellation contracts and debt suspension agreements with customers, subject to various requirements and restrictions. Under a debt cancellation contract or debt suspension agreement, a credit union agrees to cancel or suspend, respectively, all or part of a customer's obligation to repay a loan from the credit union upon the occurrence of a specified event. Under other OCU rules, Wisconsin–chartered credit unions are authorized to engage in loan participation agreements with other credit unions and financial institutions in the same manner that these participation agreements are available to federally–chartered credit unions, subject to various requirements and restrictions.

This bill repeals the chapters of OCU's rules relating to credit unions' debt cancellation contracts, debt suspension agreements, and loan participation agreements. The bill creates new statutory provisions relating to incidental powers of credit unions. Under the bill, OCU must publish on DFI's Internet site a list of activities and powers incidental to the business of a credit union that are authorized for federally–chartered credit unions as of the effective date of the bill. In addition to any other activity or power authorized by statute, a Wisconsin–chartered credit union may engage in any listed activity or exercise any listed power. After the effective date of the bill, if any activity or power incidental to the business of a credit union that is not listed becomes authorized for federally–chartered credit unions, within 30 days after the activity or power becomes authorized, OCU must make a determination as to whether the activity or power should also be authorized for Wisconsin–chartered credit unions. In making this determination, OCU must consider the degree to which the following apply with respect to the activity or power:

1) it is necessary, convenient, or useful for effectively carrying out the mission or business of a credit union; 2) it is the functional equivalent or logical outgrowth of activities or powers that are part of the mission or business of a credit union; and 3) it involves risks similar in nature to those already assumed as part of the business of the credit union and it is not likely to be detrimental to the overall safety and soundness of the credit union. If OCU determines that the activity or power authorized for federally–chartered credit unions should also be authorized for Wisconsin–chartered credit unions, OCU must add the activity or power to the list and a Wisconsin–chartered credit union may then engage in the activity or exercise the power. OCU is not required to engage in rule–making in developing, publishing, or updating this list.

2. Credit union service organizations

Under current statutes, subject to certain limitations, a credit union may invest in credit union service organizations (CUSOs) that are approved by OCU and are organized primarily to provide goods and services to credit unions, credit union organizations, and credit union members. A CUSO may provide specified types of services related to the routine daily operations of credit unions, including: checking and currency services; accounting services; clerical and management services; electronic transaction services; insurance, securities, or real estate brokerage services; loan support services; record retention services; and trust and other fiduciary services. In addition, OCU may expand this list of CUSO services authorized for all credit unions upon written request of any credit union.

Current OCU rules establish certain requirements and limitations with respect to CUSOs and credit unions that invest in them, including requirements related to corporate separation between a credit union and a CUSO, notice and legal advice required before investing in a CUSO, the amount of the permissible investment in a CUSO, conflicts of interest between credit union officials and a CUSO, and a CUSO's financial reporting duties to OCU.

This bill repeals the chapter of OCU's rules relating to CUSOs but does not modify any statute relating to CUSOs.

3. Investment in deposit accounts and the securities of certain institutions

Under OCU's current rules relating to permissible investments by credit unions, a credit union may invest in deposit accounts of federally–insured banks and savings and loan associations (insured financial institutions) if the aggregate investment per financial institution does not exceed the greater of the institution's deposit insurance limit or one–half of the unimpaired balance of the credit union's regular reserve, which is an amount the credit union sets aside to cover losses.

This bill allows a credit union to make investments in deposit accounts of insured financial institutions that exceed this aggregate investment limit if OCU approves the investment.

Under OCU's current rules, credit unions may make investments in securities issued by hospitals, churches, dioceses, and similar institutions (institutional investments), subject to various restrictions. Among the restrictions on these investments, an individual credit union may not invest more than $50,000 in securities issued by any one individual institution without OCU's prior approval.

This bill increases this investment limit from $50,000 to $100,000 and also provides that this amount increases biennially to adjust for inflation.

4. Time deposits

Under OCU's current rules, a credit union's board of directors must establish the dividend periods applicable to each classification of member savings and must establish the credit union's policy with regard to maturities and minimum denominations for each classification of certificates of deposit. A certificate of deposit is defined as a savings deposit evidenced by a non-negotiable instrument that contains certain information, including the principal amount of the deposit and dividend rate, the expiration date at which time the certificate of deposit is due and payable, and any penalties that may be imposed for early withdrawal. Certain requirements apply with respect to certificates of deposit, including notice to the depositor prior to maturity setting forth the terms and options available with regard to continuation or renewal of the certificate. The credit union's board of directors must also establish the credit union's policy with regard to the penalties for early withdrawal from certificate of deposit accounts.

This bill modifies OCU's rules so that these provisions currently applicable only to certificates of deposit apply to all time deposits, not just certificates of deposit. The modified rules do not define the term "time deposit."

5. Acquisition of conditional sales contracts of members

Under current statutes, a credit union may purchase or acquire conditional sales contracts or similar instruments (conditional sales contracts) executed by credit union members.

Under OCU's current rules, credit unions may purchase or acquire conditional sales contracts executed by their members, although if the credit union has assets of less than $1,000,000, it may do so only with the prior, written approval of OCU. These rules also include certain requirements and restrictions with respect to conditional sales contracts. The term "conditional sales contract" is not defined by statute or by rule.

This bill modifies both the statutes and the rules to replace the term "conditional sales contracts" with the term "interests in credit sales transactions."

Control procedures for credit unions

1. Audits in lieu of examination

Under current statutes, the board of directors of a credit union must hire a certified public accountant (CPA) to conduct a comprehensive annual audit of the records, accounts, and affairs of the credit union or the board may instead appoint an auditing committee to annually audit the records, accounts, and cash of the credit union and to verify member accounts. OCU may order an independent audit at the credit union's expense if OCU finds an annual audit to be unsatisfactory. Also under current statutes, at least once every 18 months, OCU must examine the records and accounts of each credit union (periodic examination).

Under OCU's current rules, OCU may accept an audit report of a CPA who is not an employee of the credit union in lieu of all or a portion of the OCU's periodic examination. For OCU to accept an examination from the CPA of a credit union, the

CPA must satisfy certain requirements, including that the CPA submit an additional special report on forms provided by OCU that are the regular examination forms completed by OCU staff examiners during the course of their routine examinations.

This bill modifies OCU's rules to allow OCU to accept, in lieu of a periodic examination, an audit report of a CPA who is an employee of the credit union. The CPA's examination must include a determination that the credit union is operating in accordance with generally accepted accounting principles, rather than regular accepted credit union accounting principles as specified in OCU's current rules. The bill also repeals the requirement that the CPA submit additional special reports on OCU forms.

2. Reserves for member business loans with potential losses

Current OCU rules require credit unions to adopt member business loan policies and also impose various requirements and restrictions on member business loans. A member business loan is, with certain exceptions, a loan in which the borrower intends to use the proceeds for commercial, corporate, or agricultural purposes or for purposes involving investment property or a business venture. With exceptions, there is a total aggregate limit on the amount of a credit union's member business loans as well as a per–member limit. A credit union must classify member business loans for which there is a potential loss as substandard, doubtful, or loss, according to the degree to which the loss is likely. For these loans classified as substandard, doubtful, or loss, the credit union must establish a reserve of the following minimum amounts: 10 percent of the outstanding balance of a substandard loan, subject to variation; 50 percent of the outstanding balance of a doubtful loan; and 100 percent of the outstanding balance of a loss loan.

This bill repeals OCU's rules requiring credit unions to classify member business loans for which there is a potential loss as substandard, doubtful, or loss and to establish a specified reserve amount for each of these classified member business loans.

Record retention by financial institutions

Under current statutes, a credit union, state bank, savings and loan association (S&L), or savings bank may have its records reproduced by a photographic or optical imaging process that accurately and permanently reproduces the originals and then dispose of the originals after first obtaining the written consent of, respectively, OCU or the Division of Banking (division) in DFI. The reproduced records are thereafter treated the same as originals.

Under this bill, after having its records accurately reproduced in this manner, a credit union, statebank, S&L, or savings bank is not required to obtain the written consent of OCU or the division to thereafter dispose of the originals.

Under current statutes, a state bank and an S&L may destroy or dispose of its records that have become obsolete after first obtaining the written consent of the division.

This bill repeals these statutory provisions relating to destruction of obsolete records.

Under current statutes, the division must, by rule, prescribe periods of time for which savings banks must retain records and after the expiration of which the savings bank may destroy those records.

Under this bill, the division must by rule prescribe standards by which savings banks must retain records and may thereafter destroy those records.

Under current rules of OCU and the division, each credit union, savings bank, and S&L must retain its records in a manner consistent with prudent business practices and in accordance with other provisions of state and federal law. For credit unions, the record retention system utilized must be able to produce accurate and verifiable records and include an index to the retained forms. Each credit union, savings bank, and S&L must retain its records for at least the minimum period specified in a particular publication of the Financial Managers Society, Inc. (FMS). A credit union, savings bank, or S&L may destroy its records at the end of the applicable minimum retention period specified in the applicable FMS publication unless a longer retention period is required by other state or federal law. In the destruction of records, the credit union, savings bank, or S&L must take reasonable precautions to assure the confidentiality of information in the records.

The division's current rules for state banks include a detailed schedule setting forth minimum record retention periods according to record type. A state bank may destroy its records after the applicable minimum retention period has expired.

This bill modifies the rules of OCU and the division to eliminate the requirement that credit union, savings bank, and S&L records must be retained for at least the minimum period specified in the applicable FMS publication.

The bill also eliminates the division's rule establishing a schedule of required minimum retention periods, according to record type, for state banks. The bill specifies that, subject to the requirement that records be retained in a manner consistent with prudent business practices and in accordance with other provisions of state and federal law, a credit union, state bank, S&L, or savings bank may destroy its records. In the destruction of records, the credit union, state bank, S&L, or savings bank must take reasonable precautions to assure the confidentiality of information in the records. The bill also creates a definition of "record" that clarifies that a record may be in either hard–copy or electronic format. For state banks, S&Ls, and savings banks, the bill specifies that the record retention system must be able to accurately produce records and for credit unions the bill eliminates the requirement that the record retention system include an index to retained forms.

Technical corrections

The bill makes other minor, clarifying, technical, or nonsubstantive changes to OCU's rules.

motor vehicle dealers that sell motor vehicles under installment contracts or that acquire retail installment contracts. A "retail installment contract" means a contract to sell a motor vehicle at retail in which the price of the motor vehicle is payable in at least one installment over a period of time and in which the seller has retained title to, or taken a security interest in, the vehicle. A "retail seller" is a person that sells motor vehicles under a retail installment contract to a buyer for the buyer's personal use or consumption. Sales finance companies are licensed by the division. A retail installment sale made after October 31, 1984, is not subject to any maximum finance charge limit. Other credit transactions are also generally not subject to maximum finance charge limits or interest rate limits.

Under current rules of the division, upon refinancing a retail installment contract or consolidating retail installment contracts, the customer is entitled to a rebate of unearned finance charges. The division's rules also specify that the rate of finance charge upon refinancing or consolidation may not exceed the maximum rate applicable by statute if the creditor is a licensed motor vehicle dealer or, if not, the maximum rate at which the creditor could make a loan to the customer.

This bill modifies these rules to eliminate the provisions referencing a maximum rate when a retail installment contract is refinanced or consolidated.

Review procedure

Under the division's current rules, any interested person aggrieved by any act, order, or determination of the division related to banking may file with the division an original and eight copies of a notice of appeal seeking review by the Banking Review Board. This bill eliminates the requirement that eight copies of the notice of appeal be filed.

Technical corrections

The bill makes other minor, clarifying, technical, or nonsubstantive changes to the division's rules, including changes that conform the division's rules to current statutory provisions.

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:

insert A

SECTION 1. 13.92 (4) (bm) of the statutes is created to read:

13.92 **(4)** (bm) If 2 or more rules filed under s. 227.20 or modified under s. 227.265 affect the same unit of the Wisconsin administrative code without taking cognizance of the effect thereon of the other rules and if the legislative reference bureau finds that there is no mutual inconsistency in the changes made by each such

rule, the legislative reference bureau shall incorporate the changes made by each rule into the text of the unit and document the incorporation in a note to the unit. For each such incorporation, the legislative reference bureau shall include in a correction bill a provision formally validating the incorporation. Section 227.27 (2) is not affected by printing decisions made by the legislative reference bureau under this paragraph.

SECTION 2. 13.92 (4) (c) of the statutes is amended to read:

13.92 **(4)** (c) The legislative reference bureau may insert in the Wisconsin administrative code a note explaining any change made under par. (b) or (bm).

SECTION 3. 13.92 (4) (d) of the statutes is amended to read:

13.92 **(4)** (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not apply to any change made by the legislative reference bureau under par. (b) or (bm).

SECTION 4. 13.92 (4) (e) of the statutes is amended to read:

13.92 **(4)** (e) The legislative reference bureau shall prepare and keep on file a record of each change made under par. (b) or (bm).

SECTION 5. 13.92 (4) (f) of the statutes is amended to read:

13.92 **(4)** (f) The legislative reference bureau shall notify the agency involved of each change made under par. (b) or (bm).

SECTION 6. 35.93 (2) (b) 4. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(2)** (b) 4. Copies of all rules filed with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265 since the compilation of the preceding register, including emergency rules filed under s. 227.24 (3).

SECTION 7. 35.93 (2) (c) 1. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(2)** (c) 1. Each chapter of the Wisconsin administrative code that has been affected by rules filed with legislative reference bureau under s. 227.20 (1) or modified under s. 227.265, in accordance with sub. (3) (e) 1.

SECTION 8. 35.93 (3) of the statutes is amended to read:

35.93 **(3)** The legislative reference bureau shall compile and deliver to the department for printing copy for a register which shall contain all the rules filed under s. 227.20 or modified under s. 227.265 since the compilation of rules for the preceding issue of the register was made and those executive orders which are to be in effect for more than 90 days or an informative summary thereof. The complete register shall be compiled and published before the first day of each month and a notice section of the register shall be compiled and published before the 15th day of each month. Each issue of the register shall contain a title page with the name "Wisconsin administrative register", the number and date of the register, and a table of contents. Each page of the register shall also contain the date and number of the register of which it is a part in addition to the other necessary code titles and page numbers. The legislative reference bureau may include in the register such instructions or information as in the bureau's judgment will help the user to correctly make insertions and deletions in the code and to keep the code current.

SECTION 9. 35.93 (3) (e) (intro.) of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(3)** (e) (intro.) The legislative reference bureau shall incorporate into the appropriate chapters of the Wisconsin administrative code each permanent rule filed with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265 and, for each chapter of the administrative code affected by a rule, do all of the following:

SECTION 10. 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(3)** (e) 1. Publish the chapter in the appropriate end-of-month register in accordance with the filing deadline for publication established in the rules procedures manual published under s. 227.15 (7) ~~or~~, in an end-of-month register agreed to by the submitting agency and the legislative reference bureau, or, in the case of a rule modified under s. 227.265, in the end-of-month register for the month in which the bill modifying the rule is enacted.

SECTION 11. 227.01 (13) (intro.) of the statutes is amended to read:

227.01 **(13)** (intro.) "Rule" means a regulation, standard, statement of policy, or general order of general application which has the effect of law and which is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency. "Rule" includes a modification of a rule under s. 227.265. "Rule" does not include, and s. 227.10 does not apply to, any action or inaction of an agency, whether it would otherwise meet the definition under this subsection, which:

SECTION 12. 227.11 (2) (intro.) of the statutes is amended to read:

227.11 **(2)** (intro.) Rule-making authority is expressly conferred on an agency as follows:

SECTION 13. 227.265 of the statutes is created to read:

227.265 Repeal or modification of rules. If a bill to repeal or modify a rule is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply. Instead, the legislative reference bureau shall publish the repeal or modification in the Wisconsin administrative code and register as required under s. 35.93, and the repeal or modification shall take effect as provided in s. 227.22.

SECTION 14. 227.27 (2) of the statutes is amended to read:

227.27 **(2)** The code shall be prima facie evidence in all courts and proceedings as provided by s. 889.01, but this does not preclude reference to or, in case of a discrepancy, control over a rule filed with the legislative reference bureau ~~or the secretary of state~~ under s. 227.20 or modified under s. 227.265, and the certified copy of a rule shall also and in the same degree be prima facie evidence in all courts and proceedings.

SECTION 15. DFI-Bkg 10.03 of the administrative code is amended to read:

DFI-Bkg 10.03 **Notice of appeal.** Any interested person aggrieved by any act, order, or determination of the administrator of the division of banking under chs. 220, 221, and 223, Stats., may file with the administrator of the division of banking within 10 days after the act, order, or determination to be reviewed ~~an original and 8 copies of~~ a Notice of Appeal in the manner prescribed by s. DFI-Bkg 10.05 in the following form:

To the Wisconsin Banking Review Board:

The undersigned hereby appeals from the order of the administrator of the division of banking dated _____, 20__, whereby it was ordered that (here set forth the substance of the order).

The nature of petitioner's interest is: (Here set forth the nature of petitioner's interest).

The grounds of appeal are the following: (Here set forth the exceptions or objections relied on, and if no answer has been filed, then also an answer to the findings of fact in the order, in the manner prescribed by s. DFI-Bkg 11.11, rules of Procedure for proceedings and hearings had before the administrator of the division of banking).

Gary, Aaron

From: Schacht, Nathan
Sent: Monday, January 13, 2014 4:52 PM
To: Gary, Aaron
Subject: LRB 3765/P1 edits

Importance: High

Aaron,

Please make the below changes and then jacket the bill (do not add the electronic records stats language we discussed after you sent over the P-draft). Is it possible to be me the digital copy of the /1 sometime tomorrow?

Section 29:
Please delete section. (we will be doing an amendment that will address electronic records but need to do some checking on Feds regs/stats 1st)

Section 56:
YES, to your question on the FSLIC change.

Section 59:
YES, to your question about removing the quoted language.

Thanks,
Nate

Nathan Schacht
Office of State Representative David Craig
83rd Assembly District
P: (608) 266-3363
E: nathan.schacht@legis.wi.gov
NOTE: Emails sent to and from this account may be subject to open records requests and should not be considered private.

Gary, Aaron

From: Schacht, Nathan
Sent: Tuesday, January 14, 2014 9:25 AM
To: Gary, Aaron
Subject: RE: LRB 3765/P1 edits

Yes, we'll address that in the amendment.

Nathan Schacht
Office of State Representative David Craig

From: Gary, Aaron
Sent: Tuesday, January 14, 2014 9:14 AM
To: Schacht, Nathan
Subject: RE: LRB 3765/P1 edits

Regarding section 29, I assume you want to delete the same definition of "record" wherever it appears (for example, p. 14, lines 16-18), right?
Thanks.
Aaron

From: Schacht, Nathan
Sent: Tuesday, January 14, 2014 8:59 AM
To: Gary, Aaron
Subject: RE: LRB 3765/P1 edits

Thank you!

Nathan Schacht
Office of State Representative David Craig

From: Gary, Aaron
Sent: Tuesday, January 14, 2014 8:34 AM
To: Schacht, Nathan
Subject: RE: LRB 3765/P1 edits

Yes, I can get that done today, provided editing/typing staff can fit it in between floor amendments.
Aaron

From: Schacht, Nathan
Sent: Monday, January 13, 2014 4:52 PM
To: Gary, Aaron
Subject: LRB 3765/P1 edits
Importance: High

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Section 29:

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-3765/1
ARG:wlj:jm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT ~~*to repeal*~~ 215.26 (3) and 220.28; ***to amend*** 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 35.93 (2) (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e) (intro.), 35.93 (3) (e) 1., 186.113 (7), 186.71 (1), 214.75 (4), 214.75 (5) (a), 215.26 (4) (a), 220.285 (1), 227.01 (13) (intro.), 227.11 (2) (intro.) and 227.27 (2); and ***to create*** 13.92 (4) (bm), 186.118, 227.01 (13) (yv) and 227.265 of the statutes; **relating to:** rule–making procedures and modifying and repealing various rules promulgated by the Department of Financial Institutions.

Analysis by the Legislative Reference Bureau

STATUTORY TREATMENTS

Rule–making procedures

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.

2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.

3. Subject to certain exceptions, a public hearing is held on the proposed rule.

4. The final draft of the proposed rule is submitted to the governor for approval.

5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule–making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

TREATMENTS OF ADMINISTRATIVE RULES

This bill modifies and repeals various rules promulgated by the Department of Financial Institutions (DFI), as described below.

Authorized activities of credit unions

1. Incidental powers activities

Current statutes specify various powers and authorized activities of a credit union, including authority to sell insurance, annuities, and related products, to participate with other lenders in loans of any type that the credit union could make by itself, and to exercise all powers necessary and proper to carry out the purposes of the credit union. In addition, a credit union may undertake any activity, exercise any power, or offer any financially related product or service that any other provider of financial products or services in this state may undertake, exercise, or provide if the Office of Credit Unions (OCU) in DFI, by rule, authorizes the activity, power, product, or service for credit unions. OCU also has general authority, subject to the approval of the Credit Union Review Board, to promulgate rules authorizing credit unions to make any loan or investment or exercise any right, power, or privilege afforded federally chartered credit unions.

Under current OCU rules authorizing Wisconsin–chartered credit unions to engage in incidental activities in the same manner that these activities are available to federally chartered credit unions, a credit union may offer and enter into debt cancellation contracts and debt suspension agreements with customers, subject to various requirements and restrictions. Under a debt cancellation contract or debt suspension agreement, a credit union agrees to cancel or suspend, respectively, all or part of a customer's obligation to repay a loan from the credit union upon the occurrence of a specified event. Under other OCU rules, Wisconsin–chartered credit unions are authorized to engage in loan participation agreements with other credit unions and financial institutions in the same manner that these participation agreements are available to federally chartered credit unions, subject to various requirements and restrictions.

This bill repeals the chapters of OCU's rules relating to credit unions' debt cancellation contracts, debt suspension agreements, and loan participation agreements. The bill creates statutory provisions relating to incidental powers of credit unions. Under the bill, OCU must publish on DFI's Internet site a list of activities and powers incidental to the business of a credit union that are authorized for federally chartered credit unions as of the effective date of the bill. In addition to any other activity or power authorized by statute, a Wisconsin–chartered credit union may engage in any listed activity or exercise any listed power. After the effective date of the bill, if any activity or power incidental to the business of a credit union that is not listed becomes authorized for federally chartered credit unions, within 30 days after the activity or power becomes authorized, OCU must make a determination as to whether the activity or power should also be authorized for Wisconsin–chartered credit unions. In making this determination, OCU must consider the degree to which the following apply with respect to the activity or power: 1) it is necessary, convenient, or useful for effectively carrying out the mission or business of a credit union; 2) it is the functional equivalent or logical outgrowth of activities or powers that are part of the mission or business of a credit union; and 3) it involves risks similar in nature to those already assumed as part of the business of the credit union and it is not likely to be detrimental to the overall safety and soundness of the credit union. If OCU determines that the activity or power authorized for federally chartered credit unions should also be authorized for Wisconsin–chartered credit unions, OCU must add the activity or power to the list and a Wisconsin–chartered credit union may then engage in the activity or exercise the power. OCU is not required to engage in rule making in developing, publishing, or updating this list.

2. Credit union service organizations

Under current statutes, subject to certain limitations, a credit union may invest in credit union service organizations (CUSOs) that are approved by OCU and are organized primarily to provide goods and services to credit unions, credit union organizations, and credit union members. A CUSO may provide specified types of services related to the routine daily operations of credit unions, including checking and currency services; accounting services; clerical and management services; electronic transaction services; insurance, securities, or real estate brokerage services; loan support services; record retention services; and trust and other fiduciary services. In addition, OCU may expand this list of CUSO services authorized for all credit unions upon written request of any credit union.

Current OCU rules establish certain requirements and limitations with respect to CUSOs and credit unions that invest in them, including requirements related to corporate separation between a credit union and a CUSO, notice and legal advice required before investing in a CUSO, the amount of the permissible investment in a CUSO, conflicts of interest between credit union officials and a CUSO, and a CUSO's financial reporting duties to OCU.

This bill repeals the chapter of OCU's rules relating to CUSOs but does not modify any statute relating to CUSOs.

3. Investment in deposit accounts and the securities of certain institutions

Under OCU's current rules relating to permissible investments by credit unions, a credit union may invest in deposit accounts of federally insured banks and savings and loan associations (insured financial institutions) if the aggregate investment per financial institution does not exceed the greater of the institution's deposit insurance limit or one–half of the unimpaired balance of the credit union's regular reserve, which is an amount the credit union sets aside to cover losses.

This bill allows a credit union to make investments in deposit accounts of insured financial institutions that exceed this aggregate investment limit if OCU approves the investment.

Under OCU's current rules, credit unions may make investments in securities issued by hospitals, churches, dioceses, and similar institutions (institutional investments), subject to various restrictions. Among the restrictions on these investments, an individual credit union may not invest more than $50,000 in securities issued by any one individual institution without OCU's prior approval.

This bill increases this investment limit from $50,000 to $100,000 and provides that this amount increases biennially to adjust for inflation.

4. Time deposits

Under OCU's current rules, a credit union's board of directors must establish the dividend periods applicable to each classification of member savings and must establish the credit union's policy with regard to maturities and minimum denominations for each classification of certificates of deposit. A certificate of deposit is defined as a savings deposit evidenced by a non–negotiable instrument that contains certain information, including the principal amount of the deposit and dividend rate, the expiration date at which time the certificate of deposit is due and payable, and any penalties that may be imposed for early withdrawal. Certain requirements apply with respect to certificates of deposit, including notice to the depositor prior to maturity setting forth the terms and options available with regard to continuation or renewal of the certificate. The credit union's board of directors must also establish the credit union's policy with regard to the penalties for early withdrawal from certificate of deposit accounts.

This bill modifies OCU's rules so that these provisions currently applicable only to certificates of deposit apply to all time deposits, not just certificates of deposit. The modified rules do not define the term "time deposit."

5. Acquisition of conditional sales contracts of members

Under current statutes, a credit union may purchase or acquire conditional sales contracts or similar instruments (conditional sales contracts) executed by credit union members.

Under OCU's current rules, credit unions may purchase or acquire conditional sales contracts executed by their members, although if the credit union has assets of less than $1,000,000, it may do so only with the prior, written approval of OCU. These rules also include certain requirements and restrictions with respect to conditional sales contracts. The term "conditional sales contract" is not defined by statute or by rule.

This bill modifies both the statutes and the rules to replace the term "conditional sales contracts" with the term "interests in credit sales transactions."

Control procedures for credit unions

1. Audits in lieu of examination

Under current statutes, the board of directors of a credit union must hire a certified public accountant (CPA) to conduct a comprehensive annual audit of the records, accounts, and affairs of the credit union, or the board may instead appoint an auditing committee to annually audit the records, accounts, and cash of the credit union and to verify member accounts. OCU may order an independent audit at the credit union's expense if OCU finds an annual audit to be unsatisfactory. Also under current statutes, at least once every 18 months, OCU must examine the records and accounts of each credit union (periodic examination).

Under OCU's current rules, OCU may accept an audit report of a CPA who is not an employee of the credit union in lieu of all or a portion of the OCU's periodic examination. For OCU to accept an examination from the CPA of a credit union, the CPA must satisfy certain requirements, including that the CPA submit an additional special report on forms provided by OCU that are the regular examination forms completed by OCU staff examiners during the course of their routine examinations.

This bill modifies OCU's rules to allow OCU to accept, in lieu of a periodic examination, an audit report of a CPA who is an employee of the credit union. The CPA's examination must include a determination that the credit union is operating in accordance with generally accepted accounting principles, rather than regular accepted credit union accounting principles as specified in OCU's current rules. The bill also repeals the requirement that the CPA submit additional special reports on OCU forms.

2. Reserves for member business loans with potential losses

Current OCU rules require credit unions to adopt member business loan policies and impose various requirements and restrictions on member business loans. A member business loan is, with certain exceptions, a loan in which the borrower intends to use the proceeds for commercial, corporate, or agricultural purposes or for purposes involving investment property or a business venture. With exceptions, there is a total aggregate limit on the amount of a credit union's member business loans as well as a per–member limit. A credit union must classify member business loans for which there is a potential loss as substandard, doubtful, or loss, according to the degree to which the loss is likely. For these loans classified as substandard, doubtful, or loss, the credit union must establish a reserve of the following minimum amounts: 10 percent of the outstanding balance of a substandard loan, subject to variation; 50 percent of the outstanding balance of a doubtful loan; and 100 percent of the outstanding balance of a loss loan.

This bill repeals OCU's rules requiring credit unions to classify member business loans for which there is a potential loss as substandard, doubtful, or loss and to establish a specified reserve amount for each of these classified member business loans.

Record retention by financial institutions

Under current statutes, a credit union, state bank, savings and loan association (S&L), or savings bank may have its records reproduced by a photographic or optical imaging process that accurately and permanently reproduces the originals and then

dispose of the originals after first obtaining the written consent of, respectively, OCU or the Division of Banking (division) in DFI. The reproduced records are thereafter treated the same as originals.

Under this bill, after having its records accurately reproduced in this manner, a credit union, state bank, S&L, or savings bank is not required to obtain the written consent of OCU or the division to thereafter dispose of the originals.

Under current statutes, a state bank or an S&L may destroy or dispose of its records that have become obsolete after first obtaining the written consent of the division.

This bill repeals these statutory provisions relating to destruction of obsolete records.

Under current statutes, the division must, by rule, prescribe periods of time for which savings banks must retain records and after the expiration of which the savings bank may destroy those records.

Under this bill, the division must by rule prescribe standards by which savings banks must retain records and may thereafter destroy those records.

Under current rules of OCU and the division, each credit union, savings bank, and S&L must retain its records in a manner consistent with prudent business practices and in accordance with other provisions of state and federal law. For credit unions, the record retention system utilized must be able to produce accurate and verifiable records and include an index to the retained forms. Each credit union, savings bank, and S&L must retain its records for at least the minimum period specified in a particular publication of the Financial Managers Society, Inc. (FMS). A credit union, savings bank, or S&L may destroy its records at the end of the applicable minimum retention period specified in the applicable FMS publication unless a longer retention period is required by other state or federal law. In the destruction of records, the credit union, savings bank, or S&L must take reasonable precautions to assure the confidentiality of information in the records.

The division's current rules for state banks include a detailed schedule setting forth minimum record retention periods according to record type. A state bank may destroy its records after the applicable minimum retention period has expired.

This bill modifies the rules of OCU and the division to eliminate the requirement that credit union, savings bank, and S&L records must be retained for at least the minimum period specified in the applicable FMS publication.

The bill also eliminates the division's rule establishing a schedule of required minimum retention periods, according to record type, for state banks. The bill specifies that, subject to the requirement that records be retained in a manner consistent with prudent business practices and in accordance with other provisions of state and federal law, a credit union, state bank, S&L, or savings bank may destroy its records. In the destruction of records, the credit union, state bank, S&L, or savings bank must take reasonable precautions to assure the confidentiality of information in the records. The bill also creates a definition of "record" that clarifies that a record may be in either hard–copy or electronic format. For state banks, S&Ls, and savings banks the bill specifies that the record retention system must be able to

accurately produce records, and for credit unions the bill eliminates the requirement that the record retention system include an index to retained forms.

Technical corrections

The bill makes other minor, clarifying, technical, or nonsubstantive changes to OCU's rules.

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:

SECTION 1. 13.92 (4) (bm) of the statutes is created to read:

13.92 **(4)** (bm) If 2 or more rules filed under s. 227.20 or modified under s. 227.265 affect the same unit of the Wisconsin administrative code without taking cognizance of the effect thereon of the other rules and if the legislative reference bureau finds that there is no mutual inconsistency in the changes made by each such rule, the legislative reference bureau shall incorporate the changes made by each rule into the text of the unit and document the incorporation in a note to the unit. For each such incorporation, the legislative reference bureau shall include in a correction bill a provision formally validating the incorporation. Section 227.27 (2) is not affected by printing decisions made by the legislative reference bureau under this paragraph.

SECTION 2. 13.92 (4) (c) of the statutes is amended to read:

13.92 **(4)** (c) The legislative reference bureau may insert in the Wisconsin administrative code a note explaining any change made under par. (b) or (bm).

SECTION 3. 13.92 (4) (d) of the statutes is amended to read:

13.92 **(4)** (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not apply to any change made by the legislative reference bureau under par. (b) or (bm).

SECTION 4. 13.92 (4) (e) of the statutes is amended to read:

13.92 **(4)** (e) The legislative reference bureau shall prepare and keep on file a record of each change made under par. (b) or (bm).

SECTION 5. 13.92 (4) (f) of the statutes is amended to read:

13.92 **(4)** (f) The legislative reference bureau shall notify the agency involved of each change made under par. (b) or (bm).

SECTION 6. 35.93 (2) (b) 4. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(2)** (b) 4. Copies of all rules filed with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265 since the compilation of the preceding register, including emergency rules filed under s. 227.24 (3).

SECTION 7. 35.93 (2) (c) 1. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(2)** (c) 1. Each chapter of the Wisconsin administrative code that has been affected by rules filed with legislative reference bureau under s. 227.20 (1) or modified under s. 227.265, in accordance with sub. (3) (e) 1.

SECTION 8. 35.93 (3) of the statutes is amended to read:

35.93 **(3)** The legislative reference bureau shall compile and deliver to the department for printing copy for a register which shall contain all the rules filed under s. 227.20 or modified under s. 227.265 since the compilation of rules for the preceding issue of the register was made and those executive orders which are to be in effect for more than 90 days or an informative summary thereof. The complete register shall be compiled and published before the first day of each month and a notice section of the register shall be compiled and published before the 15th day of each month. Each issue of the register shall contain a title page with the name

"Wisconsin administrative register", the number and date of the register, and a table of contents. Each page of the register shall also contain the date and number of the register of which it is a part in addition to the other necessary code titles and page numbers. The legislative reference bureau may include in the register such instructions or information as in the bureau's judgment will help the user to correctly make insertions and deletions in the code and to keep the code current.

SECTION 9. 35.93 (3) (e) (intro.) of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(3)** (e) (intro.) The legislative reference bureau shall incorporate into the appropriate chapters of the Wisconsin administrative code each permanent rule filed with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265 and, for each chapter of the administrative code affected by a rule, do all of the following:

SECTION 10. 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(3)** (e) 1. Publish the chapter in the appropriate end–of–month register in accordance with the filing deadline for publication established in the rules procedures manual published under s. 227.15 (7) ~~or~~, in an end–of–month register agreed to by the submitting agency and the legislative reference bureau, or, in the case of a rule modified under s. 227.265, in the end–of–month register for the month in which the bill modifying the rule is enacted.

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SECTION 11. 186.113 (7) of the statutes is amended to read:

186.113 **(7)** ~~CONDITIONAL SALES CONTRACTS~~ ACQUIRING INTERESTS IN CREDIT SALES TRANSACTIONS. Purchase or acquire ~~conditional sales contracts or similar~~

~~instruments executed by~~ interests in credit sales transactions involving credit union members.

SECTION 12. 186.118 of the statutes is created to read:

186.118 Incidental powers parity with federal credit unions. (1) In addition to any activity or power authorized under ss. 186.098, 186.11, 186.113, 186.115, and 186.235 (21), a credit union organized under s. 186.02 may engage in any activity or exercise any power that is listed by the office of credit unions under sub. (2) or (3) (b).

(2) The office of credit unions shall publish on the department of financial institutions' Internet site a list of activities and powers incidental to the business of a credit union that are authorized for federally chartered credit unions as of the effective date of this subsection .... [LRB inserts date].

(3) (a) After the effective date of this paragraph .... [LRB inserts date], if any activity or power incidental to the business of a credit union that is not listed under sub. (2) becomes authorized for federally chartered credit unions, within 30 days after the activity or power becomes authorized the office of credit unions shall make a determination as to whether the activity or power should also be authorized for credit unions organized under s. 186.02. In making this determination, the office of credit unions shall consider the degree to which the following apply with respect to the activity or power:

1. It is necessary, convenient, or useful for effectively carrying out the mission or business of a credit union.

2. It is the functional equivalent or logical outgrowth of activities or powers that are part of the mission or business of a credit union.

3. It involves risks similar in nature to those already assumed as part of the business of the credit union and it is not likely to be detrimental to the overall safety and soundness of the credit union.

(b) If the office of credit unions determines under par. (a) that the activity or power authorized for federally chartered credit unions should also be authorized for credit unions organized under s. 186.02, the office of credit unions shall add the activity or power to the list under sub. (2).

SECTION 13. 186.71 (1) of the statutes is amended to read:

186.71 **(1)** Any credit union may cause any or all records kept by such credit union to be recorded, copied or reproduced by any photostatic, photographic or miniature photographic process or by optical imaging if the process employed correctly, accurately and permanently copies, reproduces or forms a medium for copying, reproducing or recording the original record on a film or other durable material. A credit union may thereafter dispose of the original record ~~after first obtaining the written consent of the office of credit unions~~.

SECTION 14. 214.75 (4) of the statutes is amended to read:

214.75 **(4)** The division shall by rule prescribe ~~periods of time for~~ standards by which savings banks must retain records and ~~after the expiration of which, the savings bank~~ may destroy those records. Liability may not accrue against the savings bank, the division or this state for destruction of records according to rules of the division promulgated under this subsection. In an action in which records of the savings bank may be called in question or demanded, a showing of ~~the expiration of the retention period~~ compliance with the division's standards shall be sufficient to excuse ~~for failure~~ any inability to produce the records.

****~~NOTE:~~ It doesn't seem to me that any change is needed to s. 214.75 (1), stats. Please let me ~~know if~~ you believe otherwise.

SECTION 15. 214.75 (5) (a) of the statutes is amended to read:

214.75 **(5)** (a) A savings bank may cause records kept by the savings bank to be recorded, copied or reproduced by any photostatic, photographic or miniature photographic process or by optical imaging if the process employed correctly, accurately and permanently copies, reproduces or forms a medium for copying, reproducing or recording the original record on a film or other durable material. A savings bank may thereafter dispose of the original record ~~after obtaining the written consent of the division~~. This subsection~~, except that part requiring written consent of the division,~~ is applicable to federal savings banks if it does not contravene federal law.

SECTION 16. 215.26 (3) of the statutes is repealed.

SECTION 17. 215.26 (4) (a) of the statutes is amended to read:

215.26 **(4)** (a) Any association may cause any or all records kept by such association to be recorded, copied or reproduced by any photostatic, photographic or miniature photographic process or by optical imaging if the process employed correctly, accurately and permanently copies, reproduces or forms a medium for copying, reproducing or recording the original record on a film or other durable material. An association may thereafter dispose of the original record ~~after first obtaining the written consent of the division~~. This section~~, excepting the part of it which requires written consent of the division,~~ is applicable to federal associations insofar as it does not contravene federal law.

SECTION 18. 220.28 of the statutes is repealed.

SECTION 19. 220.285 (1) of the statutes is amended to read:

220.285 **(1)** Any state bank, trust company bank, licensee under ss. 138.09, 138.12, 138.14, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, or 224.725 or ch. 217 may cause any or all records kept by such bank, licensee, or registered person to be recorded, copied or reproduced by any photostatic, photographic or miniature photographic process or by optical imaging if the process employed correctly, accurately and permanently copies, reproduces or forms a medium for copying, reproducing or recording the original record on a film or other durable material. A bank~~,~~ may thereafter dispose of the original record. A licensee~~,~~ or registered person may thereafter dispose of the original record after first obtaining the written consent of the division. This section~~, excepting that part of it which requires written consent of the division,~~ is applicable to national banking associations insofar as it does not contravene federal law.

SECTION 20. 227.01 (13) (intro.) of the statutes is amended to read:

227.01 **(13)** (intro.) "Rule" means a regulation, standard, statement of policy, or general order of general application which has the effect of law and which is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency. "Rule" includes a modification of a rule under s. 227.265. "Rule" does not include, and s. 227.10 does not apply to, any action or inaction of an agency, whether it would otherwise meet the definition under this subsection, which:

SECTION 21. 227.01 (13) (yv) of the statutes is created to read:

227.01 **(13)** (yv) Relates to any determination or list under s. 186.118.

SECTION 22. 227.11 (2) (intro.) of the statutes is amended to read:

227.11 **(2)** (intro.) Rule–making authority is expressly conferred on an agency as follows:

SECTION 23. 227.265 of the statutes is created to read:

227.265 Repeal or modification of rules. If a bill to repeal or modify a rule is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply. Instead, the legislative reference bureau shall publish the repeal or modification in the Wisconsin administrative code and register as required under s. 35.93, and the repeal or modification shall take effect as provided in s. 227.22.

SECTION 24. 227.27 (2) of the statutes is amended to read:

227.27 **(2)** The code shall be prima facie evidence in all courts and proceedings as provided by s. 889.01, but this does not preclude reference to or, in case of a discrepancy, control over a rule filed with the legislative reference bureau ~~or the secretary of state~~ under s. 227.20 or modified under s. 227.265, and the certified copy of a rule shall also and in the same degree be prima facie evidence in all courts and proceedings.

SECTION 25. DFI–Bkg 9.01 of the administrative code is repealed and recreated to read:

DFI–Bkg 9.01 **Retention of records; destruction of records.** **(1)** In this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

****NOTE: This definition of "record" is identical to that in s. 137.11 (12), stats., which is part of the state's adoption of the Uniform Electronic Transactions Act (UETA).

(B) (1) ~~(2)~~ Each bank shall retain its records in a manner consistent with prudent business practices and in accordance with this chapter and other applicable state or federal laws, rules, and regulations. The record retention system utilized must be able to accurately produce such records.

(3) Except where a retention period is required by state or federal laws, rules, or regulations, a bank may destroy its records subject to the considerations set forth in sub. (2). In the destruction of records, the bank shall take reasonable precautions to assure the confidentiality of information in the records.

SECTION 26. DFI–Bkg 41.01 (intro.) of the administrative code is amended to read:

DFI–Bkg 41.01 **License fee.** (intro.) ~~Except as provided in s. DFI–Bkg 47.04, the~~ The following nonrefundable fees shall be submitted with an application for a license or renewal of a license under subch. III of ch. 224, Stats.:

SECTION 27. Chapter DFI–Bkg 47 of the administrative code is repealed.

SECTION 28. DFI–CU 54.05 (2) (b) 3. of the administrative code is amended to read:

DFI–CU 54.05 **(2)** (b) 3. A final title letter report showing the status of the current lien.

SECTION 29. DFI–CU 57.001 of the administrative code is created to read:

DFI–CU 57.001 **Definition.** In this chapter, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

****NOTE: This definition of "record" is identical to that in s. 137.11 (12), stats., which is part of the state's adoption of the Uniform Electronic Transactions Act (UETA).

SECTION 30. DFI–CU 57.01 of the administrative code is amended to read:

DFI–CU 57.01 **Retention of records.** Each credit union shall retain its records in a manner consistent with prudent business practices and in accordance with this chapter and other applicable state or federal laws, rules, and regulations. The record retention system utilized must be able to accurately produce ~~accurate and~~

~~verifiable records and include an index to the retained forms. Each credit union shall retain its records for at least the minimum period specified in the January 1996 edition of the technical publication of the Financial Managers Society, Inc. of Chicago, Illinois, titled "Financial Institutions Record Retention Manual."~~ such records.

SECTION 31. DFI–CU 57.01 (note) of the administrative code is repealed.

SECTION 32. DFI–CU 57.03 of the administrative code is amended to read:

DFI–CU 57.03 **Destruction of records.** Except where a ~~longer~~ retention period is required by ~~other~~ state or federal laws, rules, ~~and~~ or regulations, a credit union may destroy its records ~~at the end of the applicable minimum retention period determined under~~ subject to the considerations set forth in s. DFI–CU 57.01. In the destruction of records, the credit union shall take reasonable precautions to assure the confidentiality of information in the records.

SECTION 33. DFI–CU 59.03 (1) of the administrative code is amended to read:

DFI–CU 59.03 **(1)** The institutional security must ~~have at least a "AA" rating by fitch investors service of New York City, or a comparable rating service~~ be rated by a nationally recognized statistical rating organization in one of its 2 highest rating categories.

SECTION 34. DFI–CU 59.03 (6) of the administrative code is renumbered DFI–CU 59.03 (6) (a) and amended to read:

DFI–CU 59.03 **(6)** (a) An individual credit union may not invest more than ~~$50,000~~ $100,000, subject to adjustment under par. (b), in securities issued by any one individual institution without the prior approval of the director of credit unions.

SECTION 35. DFI–CU 59.03 (6) (b) of the administrative code is created to read:

DFI–CU 59.03 **(6)** (b) 1. In this paragraph, "consumer price index" means the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor.

2. On July 1 of each even–numbered year beginning on July 1, 2016, the legislative fiscal bureau shall make a calculation of the percentage difference between the consumer price index for the 12–month period ending on December 31 of the preceding year and the consumer price index for the 12–month period ending on December 31 of the year that is 2 years before the preceding year and, if this percentage difference is a positive number, shall make a calculation of the dollar amount specified under par. (a) as adjusted by this percentage difference, rounded to the nearest multiple of $1,000. The legislative fiscal bureau shall notify the legislative reference bureau of these calculated amounts, and the legislative reference bureau shall publish these calculated amounts in the Wisconsin Administrative Register. If the calculated percentage difference is a positive number, then on the effective date of the Wisconsin Administrative Register, the amount under par. (a) is adjusted to reflect the calculated adjusted amount, as published.

SECTION 36. DFI–CU 60.01 (title) of the administrative code is amended to read:

DFI–CU 60.01 (title) ~~**Definitions**~~ **Definition**.

SECTION 37. DFI–CU 60.01 (1) of the administrative code is repealed.

SECTION 38. DFI–CU 60.01 (2) of the administrative code is renumbered DFI–CU 60.01 and amended to read:

DFI–CU 60.01 ~~"Passbook~~ In this chapter, "passbook savings account" means any book, statement of account, or similar record in which a running account of all

moneys paid in or withdrawn by a credit union member on a savings account are recorded.

SECTION 39. DFI–CU 60.03 of the administrative code is amended to read:

DFI–CU 60.03 ~~**Certificates of deposit**~~ **Time deposits**. **(1)** The board of directors shall establish the policy with regard to maturities and minimum denominations for each classification of ~~certificates of~~ time deposit. This policy shall be reviewed from time to time as conditions require.

(2) (a) At least 10 days prior to the maturity of a ~~certificate of~~ time deposit, the credit union shall provide the holder written notice which sets forth the terms and options available to the holder with regard to continuation or renewal of the ~~certificate~~ time deposit.

(b) If the credit union elects not to renew a ~~certificate of~~ time deposit, the credit union shall send the holder a clear notice of this intent at least 10 days prior to the maturity of the ~~certificate~~ time deposit. If a member is duly notified of the intention not to renew, it shall be optional with the credit union whether dividends will continue to be paid after maturity on ~~certificates of deposit~~ time deposits not surrendered at maturity date.

(3) At the option of the credit union, additional deposits may be permitted to ~~certificate of~~ time deposit accounts without extending the original maturity of the ~~certificate~~ time deposit.

(4) The information contained in s. DFI–CU 60.06 shall be disclosed on all ~~certificates of deposit~~ time deposits or accompanying disclosure forms.

SECTION 40. DFI–CU 60.05 (1) and (2) of the administrative code are amended to read:

DFI–CU 60.05 **(1)** The board of directors shall establish the policy with regard to the penalties for early withdrawal from ~~certificate of~~ time deposit accounts or passbook savings accounts with stated maturities. Early withdrawal penalties may be enforced up to the maximum permitted by the depository institutions deregulation committee for similar types of accounts held in banks and savings and loan associations. If early withdrawal penalties are enforced by a credit union, these penalties shall be applied in a consistent manner to all accounts of a similar classification. This policy shall state the conditions under which penalties may be waived or modified.

(2) Penalties imposed for early withdrawal from ~~certificate of~~ time deposit accounts or passbook savings accounts with maturities may be deducted from the principal amount of the ~~certificate~~ time deposit or account balance.

SECTION 41. DFI–CU 60.06 of the administrative code is amended to read:

DFI–CU 60.06 **Credit union dissolution.** The liability for dividends declared by the board of directors on ~~certificate of~~ time deposit accounts and passbook savings accounts shall terminate without penalty to the credit union upon the credit union entering an involuntary dissolution procedure, or if the director shall take possession of the credit union under s. 186.235 (11), Stats. Upon dissolution, the director shall determine the priority of payout of the various classifications of savings.

SECTION 42. DFI–CU 61 (title) of the administrative code is amended to read:

DFI–CU 61 (title) **CREDIT UNION PURCHASE OR ACQUISITION OF ~~CONDITIONAL SALES CONTRACTS OR SIMILAR INSTRUMENTS EXECUTED BY CREDIT UNION MEMBERS~~ INTERESTS IN CREDIT SALES TRANSACTIONS**

SECTION 43. DFI–CU 61.01 (1) of the administrative code is renumbered DFI–CU 61.01 and amended to read:

DFI–CU 61.01 **Limitations.** Subject to the following minimum requirements, credit unions with assets of $1,000,000 or more may purchase or acquire ~~conditional sales contracts or similar instruments executed~~ interests in credit sales transactions entered into by their members. Credit unions with assets of less than $1,000,000 may do so ~~subject to the following minimum requirements,~~ only with the prior, written approval of the director.

****NOTE: It appears that the "following minimum requirements" were repealed, as this provision was sub. (1) but all other subsections have now been eliminated.

SECTION 44. DFI–CU 61.02 (1) and (2) of the administrative code are amended to read:

DFI–CU 61.02 **(1)** The maximum interest rate (finance charge) chargeable to the member–borrower by a seller ~~on a conditional sales contract or similar instrument sold to~~ in a credit sales transaction involving a credit union shall not exceed that permitted by s. 422.201, Stats. ~~On such contracts~~ In such transactions, neither the seller nor the credit union, in the aggregate, may directly benefit by interest charges, including "Time Price Differential", processing or service fees by an amount in excess of that permitted by s. 422.201, Stats.

(2) The interest rate or finance charges ~~on conditional sales contracts and similar instruments~~ in credit sales transactions and on all loans shall be calculated and applied on a simple interest basis on the unpaid balance. "Add–on" or "Discount" interest rates on purchased ~~contracts~~ interests in these transactions and on other credit union loans are not permitted.

SECTION 45. DFI–CU 61.03 (1), (2) and (3) of the administrative code are amended to read:

DFI–CU 61.03 **(1)** Subject to the discretion of the board of directors a portion of interest charges (finance charges) on purchased ~~contracts~~ interests in credit sales transactions may be shared by the credit union with the seller subject, however, to s. DFI–CU 61.02.

(2) When interest income (finance charges) is shared with the seller, on ~~contracts~~ interests in credit sales transactions purchased with recourse, the credit union shall establish as a liability on its records, a dealer reserve. This reserve shall be adjusted and negotiated with the seller at least annually on the basis of the interest which has been accrued or earned.

(3) On ~~contracts~~ interests in credit sales transactions purchased without recourse, the shared interest (finance charges) paid to the seller must be set up as a deferred charge and applied at least semi–annually to the income received on those ~~contracts~~ interests.

SECTION 46. DFI–CU 61.04 of the administrative code is amended to read:

DFI–CU 61.04 **Dealer financial statements.** Credit unions purchasing member ~~contracts~~ interests in credit sales transactions made with recourse must secure annual sworn financial statements from each participating seller until the purchased ~~contracts~~ interests have been paid. These sworn financial statements are to be retained by the credit union for review by departmental examiners.

SECTION 47. Chapter DFI–CU 65 of the administrative code is repealed.

SECTION 48. DFI–CU 66.02 (2) (note) of the administrative code is repealed.

SECTION 49. DFI–CU 67.01 of the administrative code is amended to read:

DFI–CU 67.01 **Purpose.** The director may accept an audit report of a certified public accountant ~~who is not an employee of the credit union~~ in lieu of all or a portion of the routine examination which is made by or caused to be made by the director as required by s. 186.235 (16), Stats.

SECTION 50. DFI–CU 67.02 (2) of the administrative code is amended to read:

DFI–CU 67.02 **(2)** "Accountant" means a certified public accountant who ~~is not an employee of the credit union and~~ is licensed in the state of Wisconsin.

SECTION 51. DFI–CU 67.03 (8) of the administrative code is amended to read:

DFI–CU 67.03 **(8)** The credit union is operating in accordance with ~~regular~~ generally accepted ~~credit union~~ accounting principles.

SECTION 52. DFI–CU 67.04 (3) and (3) (note) of the administrative code are repealed.

SECTION 53. DFI–CU 67.04 (4) of the administrative code is amended to read:

DFI–CU 67.04 **(4)** The credit union requesting the director to accept an audit by an accountant shall pay to the director the current hourly examination fee established by s. 186.235 (14) (c), Stats., for the review and analysis of the audit report~~,~~ and management report ~~and the special report on the forms supplied by the director~~.

SECTION 54. DFI–CU 67.05 (1) of the administrative code is amended to read:

DFI–CU 67.05 **(1)** The director will analyze and review or cause to have analyzed or reviewed the reports and worksheets required by s. DFI–CU 67.04 (2) ~~and (3)~~ and determine if they satisfy s. DFI–CU 67.03.

SECTION 55. DFI–CU 68.02 (note) of the administrative code is repealed.

SECTION 56. DFI–CU 68.06 (2) of the administrative code is amended to read:

DFI–CU 68.06 **(2)** AUTHORIZED DEPOSITORY FINANCIAL INSTITUTIONS. A credit union may invest in deposit accounts of any authorized depository financial institution, provided the aggregate investment per institution shall not exceed the greater of the deposit insurance limit under federal deposit insurance corporation ~~or federal savings and loan insurance corporation~~ or 1/2 the unimpaired balance of the credit union's regular reserve unless the director of credit unions approves investment by the credit union exceeding this amount.

****NOTE: Do you want to change this reference to the federal savings and loan insurance corporation (FSLIC), which hasn't existed for decades? The FDIC now insures the deposits of all financial institutions, including savings associations. I note that a similar change would be required in s. DFI–CU 68.08 (2), the definition of "authorized depository financial institution."

SECTION 57. Chapter DFI–CU 70 of the administrative code is repealed.

SECTION 58. DFI–CU 72.12 and 72.13 of the administrative code are repealed.

SECTION 59. Chapter DFI–CU 74 of the administrative code is repealed.

****NOTE: Section 186.098 (9m), stats., allows a credit union to enter into loan participation agreements "subject to rules prescribed by the office of credit unions." Is this still OK or do you want me to remove this language in quotes?

SECTION 60. DFI–SL 6.001 of the administrative code is created to read:

DFI–SL 6.001 **Definition.** In this chapter, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

****NOTE: This definition of "record" is identical to that in s. 137.11 (12), stats., which is part of the state's adoption of the Uniform Electronic Transactions Act (UETA).

SECTION 61. DFI–SL 6.01 of the administrative code is amended to read:

DFI–SL 6.01 **Destruction of records.** Except where a ~~longer~~ retention period is required by ~~another~~ state or federal ~~agency having jurisdiction over the association, the division authorizes the destruction of records at the end of the applicable minimum retention period determined under~~ laws, rules, or regulations,

an association may destroy its records subject to the considerations set forth in s. DFI–SL 6.03. In the destruction of records, the association shall take reasonable precautions ~~should be taken~~ to assure the confidentiality of ~~members' accounts~~ information in the records.

SECTION 62. DFI–SL 6.03 of the administrative code is amended to read:

DFI–SL 6.03 **Records retention requirements.** Each association shall retain its records in a manner consistent with prudent business practices and in accordance with this chapter and ~~the~~ other applicable state or federal laws, rules ~~or~~, and regulations ~~of state or federal agencies. Each association shall retain its records for the minimum period specified in the technical publication of the Financial Managers Society, Inc. of Chicago, Illinois, titled "Records Retention Guidelines" and dated July 1986~~. The record retention system utilized must be able to accurately produce such records.

SECTION 63. DFI–SB 6.001 of the administrative code is created to read:

DFI–SB 6.001 **Definition.** In this chapter, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

***NOTE: This definition of "record" is identical to that in s. 137.11 (12), stats., which is part of the state's adoption of the Uniform Electronic Transactions Act (UETA).

SECTION 64. DFI–SB 6.01 of the administrative code is amended to read:

DFI–SB 6.01 **Retention of records.** Each savings bank shall retain its records in a manner consistent with prudent business practices and in accordance with this chapter and ~~the~~ other applicable state or federal laws, rules ~~of state agencies~~, and regulations ~~of federal agencies. Each savings bank shall retain its records for the minimum period specified in the technical publication of the Financial~~

~~Managers Society, Inc. of Chicago, Illinois, titled "Records Retention Guidelines" and dated 1992.~~ The record retention system utilized must be able to accurately produce such records.

SECTION 65. DFI–SB 6.01 (second note) of the administrative code is repealed.

SECTION 66. DFI–SB 6.03 of the administrative code is amended to read:

DFI–SB 6.03 **Destruction of records.** Except where a ~~longer~~ retention period is required by ~~another~~ state or federal ~~agency having jurisdiction over the savings bank~~ laws, rules, or regulations, a savings bank may destroy its records ~~at the end of the applicable minimum retention period determined under~~ subject to the considerations set forth in s. DFI–SB 6.01. In the destruction of records, the savings bank shall take reasonable precautions to assure the confidentiality of information in the records.

SECTION 67. DFI–SB 6.05 (1) of the administrative code is amended to read:

DFI–SB 6.05 **(1)** MICROPHOTOGRAPHY STANDARDS. Microphotography may be used to commit a savings bank's records to microfilm. The film used shall be of a quality which permits it to be legible for ~~at least the retention periods under s. DFI–SB 6.01~~ as long as the records are retained.

SECTION 68. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 35.93 (2) (b) 4. and (c) 1. and (3) (e) (intro.) and 1. of the statutes takes effect on January 1, 2015.

(END)

INSERT 9–21:

SECTION 1. 186.098 (9m) of the statutes is amended to read:

186.098 **(9m)** PARTICIPATION LOANS. ~~Subject to rules prescribed by the office of credit unions, a~~ A credit union may participate with other lenders in a loan of any type that the credit union may otherwise make.

strike extra space

History: 1971 c. 193 ss. 20, 42 (1); 1971 c. 239, 307; 1973 c. 255; 1975 c. 345; 1979 c. 282; 1981 c. 156; 1983 a. 368, 369, 538; 1987 a. 13 s. 26f; Stats. 1987 s. 186.098; 1989 a. 103; 1993 a. 482; 1995 a. 27; 1995 a. 151 ss. 94 to 112, 301; 1997 a. 35, 152; 1999 a. 9, 83; 2003 a. 33.

INSERT 22–23:

SECTION 2. DFI–CU 68.03 (2) of the administrative code is amended to read:

DFI–CU 68.03 (2) "Authorized depository financial institution" means any bank ~~insured by the federal deposit insurance corporation~~ or savings and loan association insured by the federal ~~savings and loan~~ deposit insurance corporation.

Barman, Mike

From: Barman, Mike
Sent: Tuesday, January 14, 2014 2:18 PM
To: Arthur, Jackie
Subject: RE: Submitted: LRB -3765/1 Topic: Rules changes, mostly related to credit unions?body=

I will submit your early FE request to DOA for agency FE assignment.

Please contact me if I can be of further assistance.

Mike Barman (Lead Program Assistant)
State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

From: Arthur, Jackie
Sent: Tuesday, January 14, 2014 2:14 PM
To: LRB.Legal
Cc: Schacht, Nathan
Subject: Submitted: LRB -3765/1 Topic: Rules changes, mostly related to credit unions?body=

Please start the fiscal process prior to introduction.

Bill will be introduced early next week.

Thank you!

Jackie Arthur
Office of Rep. David Craig
83rd Assembly District
P. (608) 266-3363

Attention: Emails sent to and from this account may be subject to open records requests and should not be considered private.

Memo

To: Representative Craig *(The Draft's Requester)*

Per your request ... the attached fiscal estimate was prepared for your un–introduced 2013 session draft.

LRB Number: LRB–3765

Version: "/1" (original)

Fiscal Estimate Prepared By: (agency abbr.) DFI

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

* *

Entered In Computer And Copy Sent To Requester Via E–Mail: 01 / 23 / 2013

To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Un–introduced Draft*

> **If re–drafted ...** please insert this cover sheet and attached early fiscal estimate into the drafting file "guts" ... after the draft's old version (the version that this fiscal estimate was based on), and just before re–draft of the updated version.

> **If introduced ...** please make sure the attached fiscal estimate is for the **current version** ... write the draft's new introduction number below and give this packet to Mike (or Lori) to re–process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2013 AB 649

Barman, Mike

From: Barman, Mike
Sent: Wednesday, January 22, 2014 3:26 PM
To: Rep.Craig
Cc: Arthur, Jackie
Subject: LRB-3765/1 (un-introduced) (FE by DFI - attached - for your review)

FE-3765_DFIorg....

Drafter: ARG
Subject: Fin. Inst. - miscellaneous

Mike Barman (**Lead Program Assistant**)
State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov