# *2013 DRAFTING REQUEST*

## Bill

| | | | |
|---|---|---|---|
| Received: | **6/25/2013** | Received By: | **agary** |
| Wanted: | **As time permits** | Same as LRB: | |
| For: | **David Craig (608) 266-3363** | By/Representing: | **Nathan Schacht** |
| May Contact: | | Drafter: | **agary** |
| Subject: | **Fin. Inst. - miscellaneous** | Addl. Drafters: | **gmalaise** |
| | | Extra Copies: | |

Submit via email: **YES**
Requester's email: **Rep.Craig@legis.wisconsin.gov**
Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Changes to DFI rules; rulemaking procedures

**Instructions:**

See attached

**Drafting History:**

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Required |
|---|---|---|---|---|---|---|---|
| /P1 | agary 7/18/2013 | kfollett 7/8/2013 | jfrantze 7/8/2013 | _____ _____ | sbasford 7/8/2013 | | State |
| /1 | | kfollett 7/18/2013 | jfrantze 7/18/2013 | _____ _____ | lparisi 7/18/2013 | lparisi 7/18/2013 | State |

FE Sent For: 07-19-2013 ("/1")

<END>

See attached

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FE Sent For:

/1 lsf 7/18 7/18

**<END>**

PAs: Please jacket /1. Thx, HRG

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|---|---|---|---|---|---|---|---|
| /P1 | agary | /PK jf 7/8 | 7/8 | | | | State |

FE Sent For:

**<END>**

## Gary, Aaron

**From:** Schacht, Nathan
**Sent:** Monday, June 24, 2013 4:19 PM
**To:** Gary, Aaron
**Cc:** Grosz, Scott
**Subject:** Banking P-Draft Request (Rep. Craig)

**Importance:** High

Aaron,

Have long list of Admin Code that we'd like to change via legislation. Can you put these changes into a P-Draft by COB July 10th?

Also, I've cc'ed LC Scott Grosz. He has been in our committee's discussions of these changes so he may be able to assist if I'm not translating properly.

Please call or email with any questions.

Best,
Nate

**DFI-Bkg Chapter 10**

- 10.03
  - Modify 10.03 to require the filing of only one notice of appeal and no additional copies. Currently one original and eight copies must be filed.

**DFI-Bkg Chapter 14**

- 14.07
  - Change to mirror Federal Reg E's Liability of Customer for Unauthorized Transfers (205.6).
    - Make same changes to SB 12.07, SL 12.07 and CU 63.07.
- 14.08
  - Add small-value exemption to rule such as in the Federal Reg E's 205.9(e) – use $15 standard that Reg E uses.
    - Make same changes to SB 12.08, SL 12.08 and CU 63.08
- 14.09
  - Eliminate entire Bkg-14.09 Chargeback rule.
    - Make same changes to SB 12.09, SL 12.09, CU 63.09

**DFI-Bkg Chapter 40**

- 40.01
  - Remove references to DFI-Bkg 47 in 40.01, this entire chapter is going to be repealed (see below).
- 40.04(2)
  - Remove "written" from 40.04(2)
- 40.01(5)
  - Language change to specify that "lender" is actually the mortgage broker on behalf of a lender.

**DFI-Bkg Chapter 41**

- 41.05
  - Modify 41.05 to remove obsolete language referencing the year 2010.

**DFI-Bkg Chapter 46**

- 46.01(3)
  - Modify to fix conflict with current statutory definition of "covered loan".

**DFI-Bkg Chapter 47**

- Repeal entire chapter.

**DFI-Bkg Chapter 73**

- 73.02(2)(e)
  - Remove language referencing that the examination will occur in the office of the licensee during regular office hours.
- 73.03(1)(a), 73.03(1)(a)(b), 73.05(4) and 73.05(5)
  - Remove references to "the office of the administrator of the division of banking" and replace with "the division of banking".
- 73.03(2)
  - Require only 1 copy.
    - Remove requirement that a folder of approved forms be kept in the licensed office.
- 73.03(7)
  - Repeal section (superseded by s. 218.02(9)(a).)

**DFI-Bkg Chapter 74**

- 74.07(1)(b) and (c)
  - Remove the term "ledger".
- 74.08
  - Repeal section.
- 74.11(2)(b)
  - Allow debtors to pay with debit card in the same manner that they would be able to pay with a credit card.
- 74.13(1)
  - Remove division's mailing address and replace with web address.

**DFI-Bkg Chapter 76**

- 76.03(1) and (3), 76.11(1), 76.12(1)(a) and (b), and 76.13(1) and (2)
  - Replace "the administrator of the division of banking" with "division of banking".
- 76.06
  - Remove reference to maximum rate.
- 76.07
  - Remove reference to maximum rate.
- 76.09(2)
  - Remove reference to "ledger card".
- 76.11(2)
  - Repeal section.
    - Office of the Commissioner of Banking became part of DFI in 1996.
- 76.12(2)
  - Remove reference to mobile homes.

**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.

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Reg E



issued by the institution or a successor.

(b) *Unsolicited issuance.* A financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is:

(1) Not validated, meaning that the institution has not yet performed all the procedures that would enable a consumer to initiate an electronic fund transfer using the access device;

(2) Accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired;

(3) Accompanied by the disclosures required by § 205.7, of the consumer's rights and liabilities that will apply if the access device is validated; and

(4) Validated only in response to the consumer's oral or written request for validation, after the institution has verified the consumer's identity by a reasonable means.

**§ 205.6 Liability of consumer for unauthorized transfers.**

(a) *Conditions for liability.* A consumer may be held liable, within the limitations described in paragraph (b) of this section, for an unauthorized electronic fund transfer involving the consumer's account only if the financial institution has provided the disclosures required by § 205.7(b)(1), (2), and (3). If the unauthorized transfer involved an access device, it must be an accepted access device and the financial institution must have provided a means to identify the consumer to whom it was issued.

(b) *Limitations on amount of liability.* A consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:

(1) *Timely notice given.* If the consumer notifies the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of $50 or the amount of unauthorized transfers that occur before notice to the financial institution.

(2) *Timely notice not given.* If the consumer fails to notify the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of $500 or the sum of:

(i) $50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and

(ii) The amount of unauthorized transfers that occur after the close of two business days and before notice to the institution, provided the institution establishes that these transfers would not have occurred had the consumer notified the institution within that two-day period.

(3) *Periodic statement; timely notice not given.* A consumer must report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement to avoid liability for subsequent transfers. If the consumer fails to do so, the consumer's liability shall not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the institution, and that the institution establishes would not have occurred had the consumer notified the institution within the 60-day period. When an access device is involved in the unauthorized transfer, the consumer may be liable for other amounts set forth in paragraphs (b)(1) or (b)(2) of this section, as applicable.

(4) *Extension of time limits.* If the consumer's delay in notifying the financial institution was due to extenuating circumstances, the institution shall extend the times specified above to a reasonable period.

(5) *Notice to financial institution.* (i) Notice to a financial institution is given when a consumer takes steps reasonably necessary to provide the institution with the pertinent information, whether or not a particular employee or agent of the institution actually receives the information.

(ii) The consumer may notify the institution in person, by telephone, or in writing.

(iii) Written notice is considered given at the time the consumer mails the notice or delivers it for transmission to the institution by any other usual means. Notice may be considered constructively given when the institution becomes aware of circumstances leading to the reasonable belief that an

unauthorized transfer to or from the consumer's account has been or may be made.

(6) *Liability under state law or agreement.* If state law or an agreement between the consumer and the financial institution imposes less liability than is provided by this section, the consumer's liability shall not exceed the amount imposed under the state law or agreement.

**§ 205.7 Initial disclosures.**

(a) *Timing of disclosures.* A financial institution shall make the disclosures required by this section at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account.

(b) *Content of disclosures.* A financial institution shall provide the following disclosures, as applicable:

(1) *Liability of consumer.* A summary of the consumer's liability, under § 205.6 or under state or other applicable law or agreement, for unauthorized electronic fund transfers.

(2) *Telephone number and address.* The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) *Business days.* The financial institution's business days.

(4) *Types of transfers; limitations.* The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. Details of the limitations need not be disclosed if confidentiality is essential to maintain the security of the electronic fund transfer system.

(5) *Fees.* Any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers.

(6) *Documentation.* A summary of the consumer's right to receipts and periodic statements, as provided in § 205.9, and notices regarding preauthorized transfers as provided in §§ 205.10(a), and 205.10(d).

(7) *Stop payment.* A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in § 205.10(c).

(8) *Liability of institution.* A summary of the financial institution's liability to the consumer under section 910 of the act for failure to make or to stop certain transfers.

(9) *Confidentiality.* The circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer's account to third parties.

(10) *Error resolution.* A notice that is substantially similar to Model Form A–3 as set out in appendix A of this part concerning error resolution.

(11) *ATM fees.* A notice that a fee may be imposed by an automated teller machine operator as defined in § 205.16(a)(1), when the consumer initiates an electronic fund transfer or makes a balance inquiry, and by any network used to complete the transaction.

(c) *Addition of electronic fund transfer services.* If an electronic fund transfer service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required.

[Reg. E, 61 FR 19669, May 2, 1996, as amended at 66 FR 13412, Mar. 6, 2001; 71 FR 1659, Jan. 10, 2006]

**§ 205.8 Change in terms notice; error resolution notice.**

(a) *Change in terms notice*—(1) *Prior notice required.* A financial institution shall mail or deliver a written notice to the consumer, at least 21 days before the effective date, of any change in a term or condition required to be disclosed under § 205.7(b) if the change would result in:

(i) Increased fees for the consumer;

(ii) Increased liability for the consumer;

(iii) Fewer types of available electronic fund transfers; or

(iv) Stricter limitations on the frequency or dollar amount of transfers.

(2) *Prior notice exception.* A financial institution need not give prior notice if an immediate change in terms or conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system. If the

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institution makes such a change permanent and disclosure would not jeopardize the security of the account or system, the institution shall notify the consumer in writing on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent.

(b) *Error resolution notice.* For accounts to or from which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, an error resolution notice substantially similar to the model form set forth in appendix A of this part (Model Form A-3). Alternatively, an institution may include an abbreviated notice substantially similar to the model form error resolution notice set forth in appendix A of this part (Model Form A-3), on or with each periodic statement required by § 205.9(b).

**§ 205.9 Receipts at electronic terminals; periodic statements.**

(a) *Receipts at electronic terminals—General.* Except as provided in paragraph (e) of this section, a financial institution shall make a receipt available to a consumer at the time the consumer initiates an electronic fund transfer at an electronic terminal. The receipt shall set forth the following information, as applicable:

(1) *Amount.* The amount of the transfer. A transaction fee may be included in this amount, provided the amount of the fee is disclosed on the receipt and displayed on or at the terminal.

(2) *Date.* The date the consumer initiates the transfer.

(3) *Type.* The type of transfer and the type of the consumer's account(s) to or from which funds are transferred. The type of account may be omitted if the access device used is able to access only one account at that terminal.

(4) *Identification.* A number or code that identifies the consumer's account or accounts, or the access device used to initiate the transfer. The number or code need not exceed four digits or letters to comply with the requirements of this paragraph (a)(4).

(5) *Terminal location.* The location of the terminal where the transfer is initiated, or an identification such as a code or terminal number. Except in limited circumstances where all terminals are located in the same city or state, if the location is disclosed, it shall include the city and state or foreign country and one of the following:

(i) The street address; or

(ii) A generally accepted name for the specific location; or

(iii) The name of the owner or operator of the terminal if other than the account-holding institution.

(6) *Third party transfer.* The name of any third party to or from whom funds are transferred.

(b) *Periodic statements.* For an account to or from which electronic fund transfers can be made, a financial institution shall send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred; and shall send a periodic statement at least quarterly if no transfer has occurred. The statement shall set forth the following information, as applicable:

(1) *Transaction information.* For each electronic fund transfer occurring during the cycle:

(i) The amount of the transfer;

(ii) The date the transfer was credited or debited to the consumer's account;

(iii) The type of transfer and type of account to or from which funds were transferred;

(iv) For a transfer initiated by the consumer at an electronic terminal (except for a deposit of cash or a check, draft, or similar paper instrument), the terminal location described in paragraph (a)(5) of this section; and

(v) The name of any third party to or from whom funds were transferred.

(2) *Account number.* The number of the account.

(3) *Fees.* The amount of any fees assessed against the account during the statement period for electronic fund transfers, for the right to make transfers, or for account maintenance.

(4) *Account balances.* The balance in the account at the beginning and at the close of the statement period.

(5) *Address and telephone number for inquiries.* The address and telephone number to be used for inquiries or notice of errors, preceded by "Direct inquiries to" or similar language. The address and telephone number provided on an error resolution notice under

§ 205.8(b) given on or with the statement satisfies this requirement.

(6) *Telephone number for preauthorized transfers.* A telephone number the consumer may call to ascertain whether preauthorized transfers to the consumer's account have occurred, if the financial institution uses the telephone-notice option under

§ 205.10(a)(1)(iii).

(c) *Exceptions to the periodic statement requirement for certain accounts*—(1) *Preauthorized transfers to accounts.* For accounts that may be accessed only by preauthorized transfers to the account the following rules apply:

(i) *Passbook accounts.* For passbook accounts, the financial institution need not provide a periodic statement if the institution updates the passbook upon presentation or enters on a separate document the amount and date of each electronic fund transfer since the passbook was last presented.

(ii) *Other accounts.* For accounts other than passbook accounts, the financial institution must send a periodic statement at least quarterly.

(2) *Intra-institutional transfers.* For an electronic fund transfer initiated by the consumer between two accounts of the consumer in the same institution, documenting the transfer on a periodic statement for one of the two accounts satisfies the periodic statement requirement.

(3) *Relationship between paragraphs (c)(1) and (c)(2) of this section.* An account that is accessed by preauthorized transfers to the account described in paragraph (c)(1) of this section and by intra-institutional transfers described in paragraph (c)(2) of this section, but by no other type of electronic fund transfers, qualifies for the exceptions provided by paragraph (c)(1) of this section .

(d) *Documentation for foreign-initiated transfers.* The failure by a financial institution to provide a terminal receipt for an electronic fund transfer or to document the transfer on a periodic statement does not violate this part if:

(1) The transfer is not initiated within a state; and

(2) The financial institution treats an inquiry for clarification or documentation as a notice of error in accordance with § 205.11.

(e) *Exception for receipts in small-value transfers.* A financial institution is not subject to the requirement to make available a receipt under paragraph (a) of this section if the amount of the transfer is $15 or less.

[Reg. E, 61 FR 19669, May 2, 1996, as amended at 72 FR 36593, July 5, 2007]

**§ 205.10 Preauthorized transfers.**

(a) *Preauthorized transfers to consumer's account*—(1) *Notice by financial institution.* When a person initiates preauthorized electronic fund transfers to a consumer's account at least once every 60 days, the account-holding financial institution shall provide notice to the consumer by:

(i) *Positive notice.* Providing oral or written notice of the transfer within two business days after the transfer occurs; or

(ii) *Negative notice.* Providing oral or written notice, within two business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or

(iii) *Readily-available telephone line.* Providing a readily available telephone line that the consumer may call to determine whether the transfer occurred and disclosing the telephone number on the initial disclosure of account terms and on each periodic statement.

(2) *Notice by payor.* A financial institution need not provide notice of a transfer if the payor gives the consumer positive notice that the transfer has been initiated.

(3) *Crediting.* A financial institution that receives a preauthorized transfer of the type described in paragraph (a)(1) of this section shall credit the amount of the transfer as of the date the funds for the transfer are received.

(b) *Written authorization for preauthorized transfers from consumer's account.* Preauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.

(c) *Consumer's right to stop payment*—(1) *Notice.* A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution

# State of Wisconsin
**2013 – 2014 LEGISLATURE**

needed by 7/8

LRB–2577/P1
ARG&GMM:...

## PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

LRS: Do Custom New Sort Draft routine

D-Note

Gen

1 AN ACT ...; **relating to:** rulemaking procedures and modifying and repealing
2 various rules promulgated by the Department of Financial Institutions.

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

INSERT ANAL

insert anal here

**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 unauthorized use or of loss or theft of the access card, the customer's liability may not exceed the lesser of $50 or the amount of unauthorized transfers that occur before notice to the financial institution. If the customer fails to notify the financial institution within two business days after learning of the unauthorized use or of loss or theft of the access card, the customer's liability may not exceed the lesser of $500 or the sum of all of the following: 1) $50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and 2) the amount of unauthorized transfers that occur after two business days and before notice to the financial institution, if the financial institution establishes that these transfers would not have occurred had the customer notified the financial institution within that two–day period. To avoid liability for subsequent transfers, a customer must report an unauthorized transfer from the unauthorized use of a remote terminal access card that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement. If the customer fails to do so, the customer's liability may not exceed the amount of the unauthorized transfers that occur after 60 days and before notice to the financial institution and that would not have occurred if the customer had notified the financial institution within this 60–day period. The customer may also be liable for the amounts specified in the paragraph directly above. If an agreement between the customer and the financial institution imposes less liability than is provided by rule, the customer's liability may not exceed the amount imposed under the agreement.

Under current rules of the division and OCU, every transfer of funds through a remote terminal made by a customer of a financial institution must be evidenced by a written document (receipt) that is made available to the customer at the time of the transaction and that contains specified information, such as the customer's account number, the amount transferred, and the date of the transaction. This bill modifies these rules to create an exception so that a receipt is not required to be made available if the amount of the transfer is $15 or less.

***Collection agencies***

Under current statutes, a person may not operate as a collection agency unless the person is licensed as a collection agency by the division. A "collection agency" is, with certain exceptions, a person engaged in the business of collecting or receiving for payment for others of any account, bill, or other indebtedness.

Under current rules of the division, if a collection agency mentions its rates in advertising or on its forms, the collection agency's full rate or rates must be stated as a percentage or dollar amount. The collection agency also may not make, advertise, or display any statement or representation with regard to its rates that is false, misleading, or deceptive or that omits material information necessary to make the statement or representation not false, misleading, or deceptive. This bill repeals these provisions from the division's rules.

Under current rules of the division, with exceptions, a collection agency may not charge the debtor any fee or cost incurred in the collection of an account. Under one exception, a fee not exceeding the lesser of $25 or three percent of the payment amount may be added to the debtor's account if the debtor makes payment using a credit card. However, this fee may be imposed only if the fee is first disclosed to the debtor and the debtor is not required to pay with a credit card.

This bill modifies these rules to allow, with the same restrictions, the same fee to be imposed when the debtor uses a debit card.

***Adjustment service companies***

Under current statutes, an "adjustment service company" is, with an exception, an individual or business entity engaged as principal in the business of prorating a debtor's income to the debtor's creditors or of assuming a debtor's obligations to the debtor's creditors in return for a service charge or other consideration. To engage in business as an adjustment service company, the individual or business entity must be licensed by the division. There are specified criteria for obtaining such a license and the division has regulatory authority over licensees. The division may make such rules and require such reports as the division deems necessary for the enforcement of the statutory provisions relating to adjustment service companies.

Under current rules of the division, a copy of the contract between an adjustment service company and the debtor must be given to the debtor at the time it is executed and the contract must contain certain provisions, including a statement that the debtor will be permitted to examine his or her accounts in the adjustment service company's office during regular office hours.

This bill modifies the division's rules so that the contract must still include a statement that the debtor will be permitted to examine his or her accounts but is not required to specify that the examination will be in the adjustment service company's office during regular office hours.

Under current rules of the division, all contracts and forms used by an adjustment service company in conducting its business must be submitted in duplicate to the division for prior approval before use. In addition, an adjustment service company must maintain in its office a folder containing the file copy of all approved forms in the order in which the forms were approved.

This bill modifies these rules so that an adjustment service company is not required to submit duplicate copies of contracts and forms to the division and is not required to maintain a folder of approved forms in its office.

Under current rules of the division, each adjustment service company must, on September 15 of each year, submit a report as of July 1 to the division containing such information as the division requires. This bill repeals this rule requiring each adjustment service company to submit a report on September 15 of each year.

***Mortgage bankers, mortgage brokers, and mortgage loan originators***

Under the division's current rules, a licensed mortgage banker, mortgage broker, or mortgage loan originator (licensee) may conduct business only under the name or names listed on the license and, before using any trade name, must obtain written approval from the division for the use of the trade name. A licensee may not use more than five trade names. This bill modifies the division's rules so that approval of a trade name by the division is not required to be in writing.

***Sales finance companies***

Under current statutes, a "sales finance company" is a person engaged in the business of acquiring retail installment contracts from retail sellers and includes 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 non-substantive changes to the division's rules, including changes that conform the division's rules to current statutory provisions and that eliminate obsolete transitional rule provisions.

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

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

INSERT A

insert A here

**SECTION 1.** 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).

Dated _____, 20__.

**SECTION 2.** DFI–Bkg 14.07 (2) (a) (intro.) of the administrative code is amended to read:

DFI–Bkg 14.07 **(2)** (a) (intro.) The liability of a customer of a bank for the unauthorized use of a plastic card or other ~~means providing the customer~~ access device to a customer bank communications terminal ~~may not exceed the lesser of the following~~ shall be determined as follows:

**SECTION 3.** DFI–Bkg 14.07 (2) (a) 1. and 2. of the administrative code are repealed.

**SECTION 4.** DFI–Bkg 14.07 (2) (a) 3., 4., 5., 6., 7. and 8. of the administrative code are created to read:

DFI–Bkg 14.07 **(2)** (a) 3. If the customer notifies the bank within 2 business days after learning of the unauthorized use or of loss or theft of the plastic card or other access device, the customer's liability may not exceed the lesser of $50 or the amount of unauthorized transfers that occur before notice to the bank.

4. If the customer fails to notify the bank within 2 business days after learning of the unauthorized use or of loss or theft of the plastic card or other access device, the customer's liability may not exceed the lesser of $500 or the sum of all of the following:

a. $50 or the amount of unauthorized transfers that occur within the 2 business days, whichever is less.

b. The amount of unauthorized transfers that occur after the close of 2 business days and before notice to the bank, if the bank establishes that these transfers would not have occurred had the customer notified the bank within that 2–day period.

5. A customer must report an unauthorized transfer from the unauthorized use of a plastic card or other access device to a customer bank communications terminal that appears on a periodic statement within 60 days of the bank's transmittal of the statement to avoid liability for subsequent transfers. If the customer fails to do so, the customer's liability may not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the bank and that the bank establishes would not have occurred had the customer notified the bank within the 60–day period. When a plastic card or other access device is involved in the unauthorized transfer, the customer may be liable for other amounts set forth in subd. 3. or 4., as applicable.

6. If the customer's delay in notifying the bank as provided in subd. 5. was due to extenuating circumstances, the bank shall extend the time specified in subd. 5. to a reasonable period.

7. a. Notice to a bank is given when a customer takes steps reasonably necessary to provide the bank with the pertinent information, whether or not a particular employee or agent of the bank actually receives the information.

b. A customer may notify the bank in person, by telephone, or in writing.

c. Written notice is considered given at the time the customer mails the notice or delivers it for transmission to the bank by any other usual means. Notice may be considered constructively given when the bank becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the customer's account has been or may be made.

8. If an agreement between the customer and the bank imposes less liability than is provided by this section, the customer's liability may not exceed the amount imposed under the agreement.

**SECTION 5.** DFI–Bkg 14.07 (2) (b) of the administrative code is amended to read:

DFI–Bkg 14.07 **(2)** (b) A customer furnishing another person with a plastic card or other ~~means of~~ access device to the customer's account through a customer bank communications terminal shall be deemed to authorize all transactions that may be accomplished by that means, until the customer has given actual notice to the bank that further transactions are unauthorized.

**SECTION 6.** DFI–Bkg 14.08 (2) (intro.) of the administrative code is amended to read:

DFI–Bkg 14.08 **(2)** (intro.) TRANSACTION DOCUMENTATION. ~~Every~~ Except as provided in sub. (4), every transfer of funds through a customer bank communications terminal made by a customer of a bank shall be evidenced by a written document made available to the customer at the time of the transaction. The document shall indicate with reasonable specificity the identity of any third party to whom funds are electronically transferred, the identity of the customer's account, the amount of funds transferred, the type of transaction, and the date of the transaction. A customer may be required to re–enter an access device, such as a card, at a terminal in order to receive transaction documentation if all of the following conditions are met:

**SECTION 7.** DFI–Bkg 14.08 (4) of the administrative code is created to read:

DFI–Bkg 14.08 **(4)** (intro.) EXCEPTION FOR WRITTEN DOCUMENT IN SMALL–VALUE TRANSFERS. A bank is not subject to the requirement to make available a written document under sub. (2) if the amount of the transfer is $15 or less.

**SECTION 8.** DFI–Bkg 14.09 of the administrative code is repealed.

**SECTION 9.** DFI–Bkg 40.01 (intro.) and (5) of the administrative code are amended to read:

DFI–Bkg 40.01 (intro.) **Definitions.** In subch. III of ch. 224, Stats., and chs. DFI–Bkg 40 to ~~47~~ 45:

**(5)** "Loan commitment" means a written statement signed by a mortgage broker on behalf of a lender, setting forth the terms and conditions upon which the lender is obligated to make a particular residential mortgage loan to a particular applicant.

**SECTION 10.** DFI–Bkg 40.04 (2) of the administrative code is amended to read:

DFI–Bkg 40.04 (2) Before using any trade name or d/b/a designation, the licensee shall obtain ~~written~~ approval from the division for the use of such trade name or d/b/a designation.

**SECTION 11.** DFI–Bkg 41.01 (intro.) of the administrative code is amended to read:

DFI–Bkg 41.01 (intro.) **License fee.** ~~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 12.** DFI–Bkg 41.05 (intro.) of the administrative code is amended to read:

DFI–Bkg 41.05 (intro.) **License renewals.** For all licenses ~~expiring on or after December 31, 2010~~ under subch. III of ch. 224, Stats., all of the following apply:

**SECTION 13.** DFI–Bkg 46.01 (3) of the administrative code is renumbered DFI–Bkg 46.01 (3) (am) and DFI–Bkg 46.01 (3) (am) (intro.), as renumbered, is amended to read:

DFI–Bkg 46.01 **(3)** (am) (intro.) ~~"Points~~ Except as provided in par. (bm), "points and fees" means any of the following:

**SECTION 14.** DFI–Bkg 46.01 (3) (bm) of the administrative code is created to read:

DFI–Bkg 46.01 **(3)** (bm) "Points and fees" does not include reasonable fees paid to affiliates or nonaffiliates of the lender for bona fide services listed in 12 CFR 226.4 (c) (7).

**SECTION 15.** Chapter DFI–Bkg 47 of the administrative code is repealed.

**SECTION 16.** DFI–Bkg 73.02 (2) (e) of the administrative code is amended to read:

DFI–Bkg 73.02 **(2)** (e) A statement to the effect that the debtor will be permitted to examine his or her accounts ~~in the office of the licensee during regular office hours~~.

**SECTION 17.** DFI–Bkg 73.03 (1) of the administrative code is amended to read:

DFI–Bkg 73.03 **(1)** (a) *Shared office space.* The office of an adjustment service company shall not be shared or have a common waiting room with a practicing attorney, collection agency, justice of the peace, loan or finance company. Before any other business is conducted in the same office with the licensee, prior approval must be granted by the ~~office of administrator of the~~ division of banking. The office shall not be located in a private residence unless the adjustment service office is used solely for business purposes, has an outside entrance and can be isolated from the remainder of the residence. If other approved business is conducted in the same office, the accounting records of such other business shall be kept separate from the account records of the adjustment service company.

(b) *Office hours.* Every licensee shall maintain regular office hours on designated business days from Monday through Friday and must be open for business at least 4 hours each designated business day. Whenever an office is not open for business at least 6 hours a day, or if the licensee maintains irregular office hours, a written notice must be filed with the ~~office of the administrator of the~~ division of banking setting forth the schedule of minimum office hours.

**SECTION 18.** DFI–Bkg 73.03 (2) of the administrative code is amended to read:

DFI–Bkg 73.03 **(2)** FORMS TO BE APPROVED. All agreements, contracts, form letters or any other form whatsoever to be used by licensee in conducting its business shall be submitted ~~in duplicate~~ to the administrator of the division of banking for approval, and no such form or agreement shall be used until approved. ~~A folder containing the file copy of all approved forms including the approved schedule of irregular office hours, if any, must be maintained in the licensed office in the order in which the forms were approved.~~

**SECTION 19.** DFI–Bkg 73.03 (7) of the administrative code is repealed.

**SECTION 20.** DFI–Bkg 73.05 (4) and (5) of the administrative code are amended to read:

DFI–Bkg 73.05 **(4)** Licensee's trust and operating bank accounts for creditor disbursements should be reconciled monthly with the canceled check together with voided or unused checks filed in numerical order after the monthly statement has been reconciled. The numerically numbered check stubs corresponding with all trust account and operating account checks shall be maintained in the office of licensee. All accounts shall be made available for reviewing ~~in the office of administrator of~~ by the division of banking.

**(5)** It is not intended that the information required to be furnished in sub. (1) be retained in the same chronological order. The records of licensees may vary in the event that data processing procedures are adopted which will prevent the licensee from maintaining certain records required above. The ~~office of administrator of the~~ division of banking may approve of the records to be maintained as long as adequate information is available for examination purposes.

**SECTION 21.** DFI–Bkg 74.07 (1) (b) and (c) of the administrative code are amended to read:

DFI–Bkg 74.07 **(1)** (b) A ~~ledger~~ record consisting of asset and liability accounts including a continuous record of all physical assets such as furniture, fixtures and office equipment.

(c) A ~~ledger~~ record of income and expenses.

**SECTION 22.** DFI–Bkg 74.08 of the administrative code is repealed.

**SECTION 23.** DFI–Bkg 74.11 (2) (d) of the administrative code is amended to read:

DFI–Bkg 74.11 **(2)** (d) A fee not to exceed the lesser of $25 or 3% of the payment amount, not including the fee, may be added to the account of the debtor when the debtor makes a payment using a credit card or debit card.

**SECTION 24.** DFI–Bkg 74.13 (1) of the administrative code is amended to read:

DFI–Bkg 74.13 **(1)** Unless the initial communication is written and contains the following notice or the debtor has paid the debt, a licensee shall send the debtor the following notice within 5 days after the initial communication with a debtor: "This collection agency is licensed by the Division of Banking~~, P.O. Box 7876, Madison, Wisconsin 53707~~ in the Wisconsin Department of Financial Institutions,

www.wdfi.org." This notice shall be in at least 8 point type and shall be typed or printed on either a collection notice or on the validation of any debt directed to the debtor by the licensee pursuant to Section 809 of the Federal Fair Debt Collection Practices Act.

**SECTION 25.** DFI–Bkg 76.03 of the administrative code is amended to read:

DFI–Bkg 76.03 **Delinquency and deferral charges.** **(1)** In consumer credit transactions a retail seller may contract for and receive delinquency charges only in accordance with s. 422.203, Stats., and regulations issued by the ~~administrator of the~~ division of banking thereunder.

**(3)** A retail seller may contract for and assess deferral charges only in accordance with s. 422.204, Stats., and regulations issued by the ~~administrator of the~~ division of banking thereunder.

**SECTION 26.** DFI–Bkg 76.06 of the administrative code is amended to read:

DFI–Bkg 76.06 **Refinancing.** Upon refinancing a retail installment contract prior to its maturity the customer shall receive as of the date of the refinancing a rebate of the unearned finance charge pursuant to the provisions of s. DFI–Bkg 76.04, except that for the purposes of computing this amount no minimum finance charge shall be allowed in consumer credit transactions. ~~The rate of finance charge upon refinancing shall not exceed the maximum rate applicable to the vehicle under s. 218.0142, Stats., at the time it was originally financed if the creditor is a licensed motor vehicle dealer. Otherwise, the maximum rate shall not exceed the rate at which the creditor could loan the refinanced balance to the customer.~~

**SECTION 27.** DFI–Bkg 76.07 of the administrative code is amended to read:

DFI–Bkg 76.07 **Consolidation.** Upon consolidation of the unpaid balance of a retail installment contract for the purchase of a motor vehicle with the unpaid

balance of any other transaction for the purchase of a motor vehicle, the customer shall receive a rebate of the unearned finance charge on each retail installment contract pursuant to the provisions of s. DFI–Bkg 76.04, except that for the purposes of computing that amount no minimum finance charge shall be allowed in consumer credit transactions. ~~The rate of finance charge upon consolidation shall not exceed the maximum rate under s. 218.0142, Stats., applicable to the vehicle most recently purchased if the creditor is a licensed motor vehicle dealer. Otherwise the maximum rate shall not exceed the rate at which the creditor could loan the consolidated balance to the customer.~~

**SECTION 28.** DFI–Bkg 76.09 (2) (intro.) and (b) (intro.) of the administrative code ~~is~~ are amended to read:

DFI–Bkg 76.09 **(2)** (intro.) Each motor vehicle sales finance company shall in connection with each transaction evidenced by a retail installment contract retained by such sales finance company for a period of more than 30 days, maintain a written ~~ledger card or~~ record which shall include the following:

(b) (intro.) Paid accounts. In addition to the information required above the written ~~ledger~~ record ~~or ledger card~~ shall include:

**SECTION 29.** DFI–Bkg 76.11 (1) of the administrative code is amended to read:

DFI–Bkg 76.11 **(1)** "Business license" means a license issued by the ~~administrator of the~~ division of banking under ch. 218, Stats., to a motor vehicle dealer.

**SECTION 30.** DFI–Bkg 76.11 (2) of the administrative code is repealed.

**SECTION 31.** DFI–Bkg 76.12 (1) (a) (intro.) and (b) (intro.) of the administrative code ~~is~~ are amended to read:

DFI–Bkg 76.12 (1) (a) (intro.) *General licensing period and expiration dates.* The license period for business licenses is 2 years. The ~~administrator of the~~ division of banking shall issue business licenses that start and expire on the following dates:

(b) (intro.) *Initial licenses.* The ~~administrator of the~~ division of banking may issue initial licenses that go into effect on dates other than the first day of an even–numbered month. The licenses may expire before the end of 2 years, and their expiration dates may be assigned as follows:

**SECTION 32.** DFI–Bkg 76.12 (2) of the administrative code is amended to read:

DFI–Bkg 76.12 **(2)** (5) Licenses run concurrently. A motor vehicle ~~or mobile home~~ license to operate as a sales finance company will be issued to run concurrently with the department of transportation dealer licenses.

**SECTION 33.** DFI–Bkg 76.13 of the administrative code is amended to read:

DFI–Bkg 76.13 **License fees. (1)** The ~~administrator of the~~ division of banking shall collect fees based on the statutory formulas described in s. 218.0114 (15), Stats., and elsewhere, which is the number of years in a licensing period multiplied by the current annual fee of $50. If the dealer originates and carries or retains time sales contracts for more than 30 days in a total amount exceeding $100,000, a bill will be issued for additional business license fees due based upon the schedule of fees in s. 218.0114 (16), Stats.

**(2)** When the ~~administrator of the~~ division of banking issues an initial license for a period less than 2 years, it may reduce the business license fees by the same proportion as the reduction in the business license period.

**SECTION 34.** DFI–CU 63.07 (2) (a) (intro.) of the administrative code is amended to read:

DFI–CU 63.07 **(2)** (a) (intro.) The liability of a customer of a credit union for the unauthorized use of a plastic card or other ~~means providing the customer~~ access device to a remote terminal ~~may not exceed the lesser of the following~~ shall be determined as follows:

**SECTION 35.** DFI–CU 63.07 (2) (a) 1. and 2. of the administrative code are repealed.

**SECTION 36.** DFI–CU 63.07 (2) (a) 3., 4., 5., 6., 7. and 8. of the administrative code are created to read:

DFI–CU 12.07 **(2)** (a) 3. If the customer notifies the credit union within 2 business days after learning of the unauthorized use or of loss or theft of the plastic card or other access device, the customer's liability may not exceed the lesser of $50 or the amount of unauthorized transfers that occur before notice to the credit union.

4. If the customer fails to notify the credit union within 2 business days after learning of the unauthorized use or of loss or theft of the plastic card or other access device, the customer's liability may not exceed the lesser of $500 or the sum of all of the following:

a. $50 or the amount of unauthorized transfers that occur within the 2 business days, whichever is less.

b. The amount of unauthorized transfers that occur after the close of 2 business days and before notice to the credit union, if the credit union establishes that these transfers would not have occurred had the customer notified the credit union within that 2–day period.

5. A customer must report an unauthorized transfer from the unauthorized use of a plastic card or other access device to a remote terminal that appears on a periodic statement within 60 days of the credit union's transmittal of the statement to avoid

1 liability for subsequent transfers. If the customer fails to do so, the customer's
2 liability may not exceed the amount of the unauthorized transfers that occur after
3 the close of the 60 days and before notice to the credit union and that the credit union
4 establishes would not have occurred had the customer notified the credit union
5 within the 60–day period. When a plastic card or other access device is involved in
6 the unauthorized transfer, the customer may be liable for other amounts set forth in
7 subd. 3. or 4., as applicable.

8 6. If the customer's delay in notifying the credit union as provided in subd. 5.
9 was due to extenuating circumstances, the credit union shall extend the time
10 specified in subd. 5. to a reasonable period.

11 7. a. Notice to a credit union is given when a customer takes steps reasonably
12 necessary to provide the credit union with the pertinent information, whether or not
13 a particular employee or agent of the credit union actually receives the information.

14 b. A customer may notify the credit union in person, by telephone, or in writing.

15 c. Written notice is considered given at the time the customer mails the notice
16 or delivers it for transmission to the credit union by any other usual means. Notice
17 may be considered constructively given when the credit union becomes aware of
18 circumstances leading to the reasonable belief that an unauthorized transfer to or
19 from the customer's account has been or may be made.

20 8. If an agreement between the customer and the credit union imposes less
21 liability than is provided by this section, the customer's liability may not exceed the
22 amount imposed under the agreement.

23 **SECTION 37.** DFI–CU 63.07 (2) (b) of the administrative code is amended to
24 read:

DFI–CU 63.07 **(2)** (b) A customer furnishing another person with a plastic card or other ~~means of~~ access device to the customer's account through a remote terminal shall be deemed to authorize all transactions that may be accomplished by that means, until the customer has given actual notice to the credit union that further transactions are unauthorized.

**SECTION 38.** DFI–CU 63.08 (2) (intro.) of the administrative code is amended to read:

DFI–CU 63.08 **(2)** (intro.) TRANSACTION DOCUMENTATION. ~~Every~~ Except as provided in sub. (4), every transfer of funds through a remote terminal made by a customer of a credit union shall be evidenced by a written document made available to the customer at the time of the transaction. The document shall indicate with reasonable specificity the identity of any third party to whom funds are electronically transferred, the identity of the customer's account, the amount of funds transferred, the type of transaction, and the date of the transaction. A customer may be required to reenter an access device, such as a card, at a terminal in order to receive transaction documentation if all of the following conditions are met:

**SECTION 39.** DFI–CU 63.08 (4) of the administrative code is created to read:

DFI–CU 63.08 **(4)** (intro.) EXCEPTION FOR WRITTEN DOCUMENT IN SMALL-VALUE TRANSFERS. A credit union is not subject to the requirement to make available a written document under sub. (2) if the amount of the transfer is $15 or less.

**SECTION 40.** DFI–CU 63.09 of the administrative code is repealed.

**SECTION 41.** DFI–SB 12.07 (2) (a) (intro.) of the administrative code is amended to read:

DFI–SB 12.07 **(2)** (a) (intro.) The liability of a customer of a savings bank for the unauthorized use of a plastic card or other ~~means providing the customer~~ access

device to a remote service unit ~~may not exceed the lesser of the following~~ shall be determined as follows:

**SECTION 42.** DFI–SB 12.07 (2) (a) 1. and 2. of the administrative code are repealed.

**SECTION 43.** DFI–SB 12.07 (2) (a) 3., 4., 5., 6., 7. and 8. of the administrative code are created to read:

DFI–SB 12.07 **(2)** (a) 3. If the customer notifies the savings bank within 2 business days after learning of the unauthorized use or of loss or theft of the plastic card or other access device, the customer's liability may not exceed the lesser of $50 or the amount of unauthorized transfers that occur before notice to the savings bank.

4. If the customer fails to notify the savings bank within 2 business days after learning of the unauthorized use or of loss or theft of the plastic card or other access device, the customer's liability may not exceed the lesser of $500 or the sum of all of the following:

a. $50 or the amount of unauthorized transfers that occur within the 2 business days, whichever is less.

b. The amount of unauthorized transfers that occur after the close of 2 business days and before notice to the savings bank, if the savings bank establishes that these transfers would not have occurred had the customer notified the savings bank within that 2–day period.

5. A customer must report an unathorized transfer from the unauthorized use of a plastic card or other access device to a remote service unit that appears on a periodic statement within 60 days of the savings bank's transmittal of the statement to avoid liability for subsequent transfers. If the customer fails to do so, the customer's liability may not exceed the amount of the unauthorized transfers that

occur after the close of the 60 days and before notice to the savings bank and that the savings bank establishes would not have occurred had the customer notified the savings bank within the 60–day period. When a plastic card or other access device is involved in the unauthorized transfer, the customer may be liable for other amounts set forth in subd. 3. or 4., as applicable.

6. If the customer's delay in notifying the savings bank as provided in subd. 5. was due to extenuating circumstances, the savings bank shall extend the time specified in subd. 5. to a reasonable period.

7. a. Notice to a savings bank is given when a customer takes steps reasonably necessary to provide the savings bank with the pertinent information, whether or not a particular employee or agent of the savings bank actually receives the information.

b. A customer may notify the savings bank in person, by telephone, or in writing.

c. Written notice is considered given at the time the customer mails the notice or delivers it for transmission to the savings bank by any other usual means. Notice may be considered constructively given when the savings bank becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the customer's account has been or may be made.

8. If an agreement between the customer and the savings bank imposes less liability than is provided by this section, the customer's liability may not exceed the amount imposed under the agreement.

**SECTION 44.** DFI–SB 12.07 (2) (b) of the administrative code is amended to read:

DFI–SB 12.07 **(2)** (b) A customer furnishing another person with the plastic card or other ~~means providing~~ access device to the customer's account through a

remote service unit shall be deemed to authorize all transactions that may be accomplished by that means until the customer has given actual notice to the savings bank that further transactions are unauthorized.

**SECTION 45.** DFI–SB 12.08 (2) (intro.) of the administrative code is amended to read:

DFI–SB 12.08 **(2)** (intro.) TRANSACTION DOCUMENTATION. ~~Every~~ Except as provided in sub. (4), every transfer of funds made through a remote service unit by a customer of a savings bank shall be evidenced by a written document made available to the customer at the time of the transaction. The document shall indicate with reasonable specificity the identity of any third party to whom funds are electronically transferred, the identity of the customer's account, the amount of funds transferred, the type of transaction and the date of the transaction. A customer may be required to reenter an access device, such as a card, at a terminal in order to receive transaction documentation if all the following conditions are met:

**SECTION 46.** DFI–SB 12.08 (4) of the administrative code is created to read:

DFI–SB 12.08 **(4)** (intro.) EXCEPTION FOR WRITTEN DOCUMENT IN SMALL-VALUE TRANSFERS. A savings bank is not subject to the requirement to make available a written document under sub. (2) if the amount of the transfer is $15 or less.

**SECTION 47.** DFI–SB 12.09 of the administrative code is repealed.

**SECTION 48.** DFI–SL 12.07 (2) (a) (intro.) of the administrative code is amended to read:

DFI–SL 12.07 **(2)** (a) (intro.) The liability of a customer of an association for the unauthorized use of a plastic card or other ~~means providing the customer~~ access device to a remote service unit ~~may not exceed the lesser of the following~~ shall be determined as follows:

**SECTION 49.** DFI–SL 12.07 (2) (a) 1. and 2. of the administrative code are repealed.

**SECTION 50.** DFI–SL 12.07 (2) (a) 3., 4., 5., 6., 7. and 8. of the administrative code are created to read:

DFI–SL 12.07 **(2)** (a) 3. If the customer notifies the association within 2 business days after learning of the unauthorized use or of loss or theft of the plastic card or other access device, the customer's liability may not exceed the lesser of $50 or the amount of unauthorized transfers that occur before notice to the association.

4. If the customer fails to notify the association within 2 business days after learning of the unauthorized use or of loss or theft of the plastic card or other access device, the customer's liability may not exceed the lesser of $500 or the sum of all of the following:

a. $50 or the amount of unauthorized transfers that occur within the 2 business days, whichever is less.

b. The amount of unauthorized transfers that occur after the close of 2 business days and before notice to the association, if the association establishes that these transfers would not have occurred had the customer notified the association within that 2–day period.

5. A customer must report an unathorized transfer from the unauthorized use of a plastic card or other access device to a remote service unit that appears on a periodic statement within 60 days of the association's transmittal of the statement to avoid liability for subsequent transfers. If the customer fails to do so, the customer's liability may not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the association and that the association establishes would not have occurred had the customer notified the

association within the 60–day period. When a plastic card or other access device is involved in the unauthorized transfer, the customer may be liable for other amounts set forth in subd. 3. or 4., as applicable.

6. If the customer's delay in notifying the association as provided in subd. 5. was due to extenuating circumstances, the association shall extend the time specified in subd. 5. to a reasonable period.

7. a. Notice to an association is given when a customer takes steps reasonably necessary to provide the association with the pertinent information, whether or not a particular employee or agent of the association actually receives the information.

b. A customer may notify the association in person, by telephone, or in writing.

c. Written notice is considered given at the time the customer mails the notice or delivers it for transmission to the association by any other usual means. Notice may be considered constructively given when the association becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the customer's account has been or may be made.

8. If an agreement between the customer and the association imposes less liability than is provided by this section, the customer's liability may not exceed the amount imposed under the agreement.

**SECTION 51.** DFI–SL 12.07 (2) (b) of the administrative code is amended to read:

DFI–SL 12.07 **(2)** (b) A customer furnishing another person with the plastic card or other ~~means providing~~ access device to the customer's account through a remote service unit shall be deemed to authorize all transactions that may be accomplished by that means until the customer has given actual notice to the association that further transactions are unauthorized.

**SECTION 52.** DFI–SL 12.08 (2) (intro.) of the administrative code is amended to read:

DFI–SL 12.08 **(2)** (intro.) TRANSACTION DOCUMENTATION. ~~Every~~ Except as provided in sub. (4), every transfer of funds made through a remote service unit by a customer of an association shall be evidenced by a written document made available to the customer at the time of the transaction. The document shall indicate with reasonable specificity the identity of any third party to whom funds are electronically transferred, the identity of the customer's account, the amount of funds transferred, the type of transaction and the date of the transaction. A customer may be required to reenter an access device, such as a card, at a terminal in order to receive transaction documentation if all the following conditions are met:

**SECTION 53.** DFI–SL 12.08 (4) of the administrative code is created to read:

DFI–SL 12.08 **(4)** (intro.) EXCEPTION FOR WRITTEN DOCUMENT IN SMALL-VALUE TRANSFERS. An association is not subject to the requirement to make available a written document under sub. (2) if the amount of the transfer is $15 or less.

**SECTION 54.** DFI–SL 12.09 of the administrative code is repealed.

INSERT B — insert B here

D - Note

**(END)**

**(INSERT 8–12 TO INSERT A)**

**SECTION 1.** 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) <u>or modified under s. 227.265</u> since the compilation of the preceding register, including emergency rules filed under s. 227.24 (3).

**SECTION 2.** 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) <u>or modified under s. 227.265</u>, in accordance with sub. (3) (e) 1.

**SECTION 3.** 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) <u>or modified under s. 227.265</u> and, for each chapter of the administrative code affected by a rule, do all of the following:

**SECTION 4.** 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<u>, or, in the</u>

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.

**(END OF INSERT)**

**(INSERT B)**

SECTION ~~0~~ #. **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 OF INSERT)**

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–1896/1
ARG&GMM:cjs:ph

# 2013 BILL

INSERT A

AN ACT ***to repeal*** 341.19 (1) (b) and 341.19 (2) (b); ***to consolidate, renumber and amend*** 341.19 (1) (intro.) and (a); ***to amend*** 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 25.40 (1) (a) 3., 35.93 (3), 84.59 (2) (b), 194.46, 227.01 (13) (intro.), 227.11 (2) (intro.), 227.27 (2) and 341.19 (2) (c); and ***to create*** 13.92 (4) (bm) and 227.265 of the statutes; **relating to:** motor vehicle registration, motor carrier appeals, rulemaking procedures, and modifying and repealing various rules promulgated by the Department of Transportation.

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

STATUTORY TREATMENTS

insert ANAL

***Rulemaking 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 (LCS) for review.

insert ANAL cont'd

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 (JCRAR).

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.

***Vehicle registration***

Under current law, certain types of vehicles (mostly motor trucks and vehicles weighing more than 8,000 pounds) may be registered for a quarterly period or a period of consecutive months instead of for an annual or biennial registration period. The Department of Transportation (DOT) must establish a telephone call–in procedure for authorizing the operation of vehicles under DOT's quarterly or consecutive monthly registration system. In addition to the regular registration fee, a fee must be paid to DOT for using of the telephone call–in system. This fee is the lesser of $10 per vehicle or the actual cost of the telephone authorization per vehicle as determined by DOT. A $10 late fee must also be paid to DOT if DOT receives fees arising from use of the telephone call–in system after the payment deadline established by DOT. When the telephone call–in system is used, telephone authorization to operate a vehicle may be canceled before the beginning of a registration period but not after. If the telephone authorization is canceled, the applicant is not required to pay the registration fee but must pay the telephone authorization use fee and any cancellation fee established by DOT.

This bill eliminates the $10 late fee. The bill also allows a telephone authorization to be canceled within 36 hours after making the request for telephone authorization.

***Motor carriers***

Under current law, with limited exceptions, a person who transports passengers or property for hire by motor vehicle on the highways is a common motor carrier or a contract motor carrier (motor carrier). With limited exceptions, a motor carrier must operate under a certificate, license, or permit (authority) authorizing operation as a motor carrier. DOT may, by order, suspend, revoke, or alter a motor carrier's authority, after notice and a hearing, for various violations. Within 20 days after the date of the order, the motor carrier may appeal the order to the Department of Administration's Division of Hearings and Appeals (DHA). This bill increases this appeal time from 20 days to 30 days.

bridges that are not on the state trunk highway system or connecting highways (local bridges). Under the program, the construction of a local bridge project is under DOT's control and supervision, but maintenance following construction is the responsibility of the local governments. The cost of the bridge project is generally divided in thirds between DOT and the county and municipality where the local bridge is located. DOT must promulgate rules to implement this program, including establishing eligibility criteria for local projects. DOT's current rules require that, for a new bridge to be eligible at a new location, the length of the bridge must exceed 475 feet and the estimated cost must exceed $5,000,000. This bill amends DOT's rule to increase the cost eligibility requirement from $5,000,000 to $16,000,000.

***Technical corrections***

The bill makes other minor and technical changes to DOT's rules, including eliminating obsolete phase–in or transition dates; eliminating fees for services that DOT no longer provides and fees repealed from the statutes; correcting references to defunct programs or to repealed or defunct provisions of the administrative code or statutes; and updating or repealing provisions that are inconsistent with current statutes or that were promulgated based on statutes that have since been amended or repealed.

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

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

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).

insert A cont'd

**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.** 25.40 (1) (a) 3. of the statutes is amended to read:~~

25.40 **(1)** (a) 3. Revenues collected under ss. 341.09 (2) (d), (2m) (a) 1., (4), and (7), 341.14 (2), (2m), (6) (d), (6m) (a), (6r) (b) 2., (6w), and (8), 341.145 (3), 341.16 (1) (a) and (b), (2), (2e), and (2m), 341.17 (8), 341.19 (1) (a), 341.25, 341.255 (1), (2) (a), (b), and (c), and (5), 341.26 (1), (2), (2m) (am) and (b), (3), (3m), (4), (5), and (7), 341.264 (1), 341.265 (1), 341.266 (2) (b) and (3), 341.268 (2) (b) and (3), 341.269 (2) (b), 341.30 (3), 341.305 (3), 341.307 (4) (a), 341.308 (3), 341.36 (1) and (1m), 341.51 (2), and 342.14 that are pledged to any fund created under s. 84.59 (2).

**SECTION 7.** 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

insert A cont'd

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.

insert 8-12 to insert A

~~SECTION 8. 84.59 (2) (b) of the statutes is amended to read:~~

~~84.59 (2) (b) The department may, under s. 18.562, deposit in a separate and distinct special fund outside the state treasury, in an account maintained by a trustee, revenues derived under ss. 341.09 (2) (d), (2m) (a) 1., (4), and (7), 341.14 (2), (2m), (6) (d), (6m) (a), (6r) (b) 2., (6w), and (8), 341.145 (3), 341.16 (1) (a) and (b), (2), (2e), and (2m), 341.17 (8), 341.19 (1) (a), 341.25, 341.255 (1), (2) (a), (b), and (c), and (5), 341.26 (1), (2), (2m) (am) and (b), (3), (3m), (4), (5), and (7), 341.264 (1), 341.265 (1), 341.266 (2) (b) and (3), 341.268 (2) (b) and (3), 341.269 (2) (b), 341.30 (3), 341.305 (3), 341.307 (4) (a), 341.308 (3), 341.36 (1) and (1m), 341.51 (2), and 342.14 and from any payments received with respect to agreements or ancillary arrangements entered into under s. 18.55 (6) with respect to revenue obligations issued under this section. The revenues deposited are the trustee's revenues in accordance with the agreement between this state and the trustee or in accordance with the resolution~~

1 pledging the revenues to the repayment of revenue obligations issued under this
2 section. Revenue obligations issued for the purposes specified in sub. (1) and for the
3 repayment of which revenues are deposited under this paragraph are special fund
4 obligations, as defined in s. 18.52 (7), issued for special fund programs, as defined in
5 s. 18.52 (8).

6 **SECTION 9.** 194.46 of the statutes is amended to read:

7 **194.46 Amendment, suspension, or revocation of certificate, license, or**
8 **permit; hearing.** The department may at any time, by its order duly entered after
9 a hearing had, upon notice to the holder of any certificate, license, or permit under
10 this chapter and an opportunity to be heard, at which it shall be proved that the
11 holder has willfully violated or refused to comply with any of the provisions of this
12 chapter or s. 346.924, or any orders or rules of the department, alter, amend,
13 suspend, or revoke the certificate, license, or permit. The department may suspend
14 or revoke a certificate, license, or permit under this chapter if, after providing the
15 holder thereof notice and an opportunity to be heard on the matter, the department
16 finds that service under the certificate, license, or permit has been abandoned. A
17 person who is aggrieved by an order of the department under this section may, within
18 ~~20~~ 30 days after the date that the order is issued, request a review of the order by the
19 division of hearings and appeals.

20 **SECTION 10.** 227.01 (13) (intro.) of the statutes is amended to read:

21 227.01 **(13)** (intro.) "Rule" means a regulation, standard, statement of policy,
22 or general order of general application which has the effect of law and which is issued
23 by an agency to implement, interpret, or make specific legislation enforced or
24 administered by the agency or to govern the organization or procedure of the agency.
25 "Rule" includes a modification of a rule under s. 227.265. "Rule" does not include, and

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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 11.** 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:

Insert A cont'd

**SECTION 12.** 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 13.** 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 14.** 341.19 (1) (intro.) and (a) of the statutes are consolidated, renumbered 341.19 (1) and amended to read:~~

~~341.19 **(1)** The department shall establish a telephone call–in procedure to authorize the operation of vehicles under the quarterly registration system in s. 341.30 or consecutive monthly registration system in s. 341.305. In addition to the registration fee required under s. 341.30 or 341.305, the following fees shall be paid to the department for authorizing the operation of a vehicle under this section: (a)~~

(end of insert)

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

LRB–2577/P1dn
ARG:...kf

Until this session, I do not believe there has been any bill previously drafted for the Wisconsin Legislature that directly amends or repeals provisions of the administrative code in a manner unrelated to the statutory procedure for rule suspension under ch. 227. Accordingly, this bill includes novel provisions. We have also included statutory treatments that we believe are necessary to make these rule treatments workable and consistent with the statutes. For example, a "rule" is defined in s. 227.01 (13) as "a regulation, standard, ... *issued by an agency* ...", but these rule modifications are not issued by DFI; they result from legislative enactment.

I have not conducted any significant research on whether a bill enacted by the legislature and signed by the governor that modifies the details of executive branch rules might be subject to challenge under constitutional principles of separation of powers. I do note that this bill requires the creation of significant amounts of new text in DFI's rules and is not limited to technical modifications. It may be more susceptible to being challenged as overstepping constitutional legislative authority than a bill that merely makes technical changes to executive branch rules. You may wish to recreate some of the text in this draft as a statute rather than a rule.

The instructions for the changes to DFI–Bkg 14.07 were not very specific. Please advise if the changes in the attached draft need modification.

Please let me know if you have any questions or would like any changes made to the attached draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261–6926
E–mail: aaron.gary@legis.state.wi.us

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

LRB–2577/P1dn
ARG:kjf:jf

July 8, 2013

Until this session, I do not believe there has been any bill previously drafted for the Wisconsin Legislature that directly amends or repeals provisions of the administrative code in a manner unrelated to the statutory procedure for rule suspension under ch. 227. Accordingly, this bill includes novel provisions. We have also included statutory treatments that we believe are necessary to make these rule treatments workable and consistent with the statutes. For example, a "rule" is defined in s. 227.01 (13) as "a regulation, standard, ... *issued by an agency* ...", but these rule modifications are not issued by DFI; they result from legislative enactment.

I have not conducted any significant research on whether a bill enacted by the legislature and signed by the governor that modifies the details of executive branch rules might be subject to challenge under constitutional principles of separation of powers. I do note that this bill requires the creation of significant amounts of new text in DFI's rules and is not limited to technical modifications. It may be more susceptible to being challenged as overstepping constitutional legislative authority than a bill that merely makes technical changes to executive branch rules. You may wish to recreate some of the text in this draft as a statute rather than a rule.

The instructions for the changes to DFI–Bkg 14.07 were not very specific. Please advise if the changes in the attached draft need modification.

Please let me know if you have any questions or would like any changes made to the attached draft.

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