



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2005 Wisconsin Act 158
[2005 Senate Bill 512]

**Department of Financial
Institutions Regulatory Changes
(Remedial Legislation)**

2005 Wisconsin Act 158 makes a number of remedial changes to the regulatory authority of the Department of Financial Institutions (DFI).

Under current law, pawnbrokers are subject to regulation under s. 138.10, Stats., which, among other things, limits loans to \$150 and caps interest rates at 3% per month. If a pawnbroker wants to charge interest rates greater than 18%, the pawnbroker must also register as a licensed lender under s. 138.09, Stats., to register as a licensed lender, a pawnbroker must meet certain character and fitness, and financial responsibility requirements. In addition, the pawnbroker must meet certain record keeping and annual reporting requirements. The Act provides that if a pawnbroker registers as a licensed lender, the pawnbroker is exempt from the requirements of s. 138.10, Stats.

The Act deletes the exemption of telegraph companies from the definition of “seller of checks.” Telegraph companies no longer exist.

Under current law, a person who engages in business as a collection agency must be licensed by the Division of Banking and is subject to laws that specifically regulate collection agencies. Certain “professional men’s associations” that collect accounts for their members on a nonprofit basis are exempt from the definition of “collections agency.” Since the term “professional men’s association” is currently not defined and DFI cannot locate any such organizations, the Act deletes the exemption.

Under current law, the Division of Banking has the specific authority to regulate mortgage brokers, mortgage bankers, loan originators, and certain institutions that lend to small businesses. In addition the division’s general authority authorizes it to enforce all laws relating to banks and banking in this state. The Act specifies that the division’s general authority includes the authority to regulate mortgage brokers, mortgage bankers, loan originators, and certain institutions that lend to small businesses.

Under current law, the Division of Banking may allow a state bank to exercise certain trust powers. In addition, the division may allow a trust company bank or a state bank exercising trust

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

powers to offer trust services at the offices of certain other financial institutions, as long as the offices are in this state. During the 1995-96 Legislative Session, the Legislature amended the law to allow out-of-state depository institutions to establish a Trust Service Office at a bank or branch location in Wisconsin. The Act expands the authority of the division to allow a Wisconsin state bank or trust company bank to offer trust services at the out-of-state offices of certain financial institutions.

The Act exempts from the definition of “business of banking” agents who receive and hold money pending investment in real estate or securities on behalf of the person who deposits the money. Under current law, such an agent would only be exempt if the agent kept the money in a separate trust fund, did not mingle the money with the agent’s own property, and did not agree to pay interest on the money. The Act also exempts such agents regardless of whether they pay interest or whether the money is kept separate. According to DFI, the amendment provides a clear exemption from the definition and will allow “agents for investments” to pay interest on free credit balances for their clients.

The current standard in s. 551.63 (2), Stats., for actions of the Division of Securities prohibits rules, forms, or orders from being made, amended, or rescinded unless the division finds that the action is necessary or appropriate in the public interest and for the protection of investors. However, current s. 551.34 (1m) (b) and (c), Stats., require action when a licensee fails to pay court-ordered child support or is liable for delinquent taxes. The Act amends s. 551.63 (2), Stats., to exclude the actions required for child support enforcement and delinquent taxes from the general standard used for division actions.

1995 Wisconsin Act 364, introduced as 1995 Assembly Bill 782, would have repealed s. 553.31, Stats., which requires a franchise registrant to file material amendments to its uniform franchise offering circular. Assembly Amendment 4 to Assembly Bill 782 deleted the proposed repeal of s. 553.31. However, the amendment did not include the necessary changes to s. 553.26 (4m), Stats., to remove inconsistent language and to clarify that the amendments required under s. 553.31, Stats., must still be filed with the Division of Securities. The Act makes those changes.

The Act amends s. 553.31 (2), Stats., to clarify that any amendment that is filed with the Division of Securities after the effective date of a registration of the sale of a franchise is effective upon receipt of the amendment by the division. The current statute is ambiguous as to whether it applies to any amendment filed after an effective registration or only to an amendment to an *application* that was filed after an effective registration.

Effective Date: This Act generally takes effect on March 25, 2006. The sections of the Act regulating pawnbrokers will take effect on September 1, 2006.

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DWS:ksm