

A faint, grayscale illustration of the Wisconsin State Capitol building, featuring its prominent dome and classical architectural details, serves as a background for the title text.

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CHAPTER 17 – FINANCIAL INSTITUTIONS

In order to maintain their safe and sound operation, the state regulates certain financial institutions through the Department of Financial Institutions and the Office of Credit Unions. The Department of Financial Institutions oversees state-chartered banks and savings institutions (savings and loan associations and savings banks) through its Division of Banking. Similarly, the Office of Credit Unions oversees the operation of state-chartered credit unions. The Office of Credit Unions is an independent policy-making unit that is attached for administrative purposes to the Department of Financial Institutions. The Department of Financial Institutions also regulates securities transactions, consumer credit transactions, and consumer finance transactions such as payday lending and auto-title lending.

Scott Grosz, Principal Attorney
Wisconsin Legislative Council

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REGULATION OF FINANCIAL INSTITUTIONS

Banks

Historical State Regulation

At the beginning of Wisconsin's statehood, banking corporations were not permitted to exist under Wisconsin law. The Wisconsin Constitution of 1848 prohibited the Legislature from enacting general or special banking legislation, unless a majority of voters at a general election approved of banks.

Banks, savings and loans, savings banks, and credit unions differ in their authorized activities and business purposes.

The Constitution provided that, if such a question were submitted to the electors and received approval, the Legislature was then authorized to pass a general or special banking law. Any banking law subsequently adopted by the Legislature was not effective until it also was approved by a majority of voters at a general election. The electorate approved legislative action to authorize banking activities in November 1851, and the first general banking law was approved in the general election of November 1852. The constitutional provisions regarding electorate approval of banking laws were repealed in 1902.

State-chartered banks have been regulated by numerous entities over the years, including a Bank Comptroller, the State Treasurer, the Bank Examiner, the Commissioner of Banking, and the Banking Commission.

Modern State Regulation

The current regulator of banks in Wisconsin is the Division of Banking in the Department of Financial Institutions (DFI). DFI charters state banks, and the Division of Banking regulates and supervises state-chartered banks in Wisconsin, including regularly examining state banks in order to ensure their sound and safe operation. [chs. 220 to 224, Stats.]

The Division of Banking also has under its jurisdiction entities that are not considered financial institutions, such as mortgage bankers, mortgage brokers, loan originators, loan solicitors, collection agencies, community currency exchanges, sales finance companies, and payday lenders. The division oversees the market practices of these entities. [chs. 138, 218, and 224, Stats.]

Banks, savings and loans, savings banks, and credit unions are subject to state regulation if they are "state chartered."

Historical Federal Regulation

The modern system of federal bank regulation began with the National Currency Act of 1863 and the National Bank Act of 1864. The federal statutes enacted at that time authorized the creation of national banks for the purposes of issuing national currency,

rather than the use of individual state bank notes, and financing the Union effort in the Civil War. The officer in charge of this system was the Comptroller of the Currency, who headed a separate office in the Department of the Treasury.

By common measures, most financial institutions operate under a federal charter.

Modern Federal Regulation

Presently, the Office of the Comptroller remains in the Department of the Treasury, and the Comptroller performs his or her duties under the direction of the Secretary of the

For more information on federal regulation, see:

- <http://www.fdic.gov/regulations>
- <http://www.occ.treas.gov>
- <http://www.federalreserve.gov>

Treasury. The Federal Reserve Board and the Federal Deposit Insurance Corporation (FDIC) also have jurisdictional oversight of some aspects of nationally chartered banks. State banks are also affected by federal statutes relating to, and regulations of, the FDIC and the Federal Reserve Board, if a state bank is a member of the Federal Reserve System.

Savings Institutions

Historical State Regulation

Organizations resembling contemporary savings institutions were first recognized in Ch. 331, Laws of 1876. The law provided that at any time when five or more persons desired to form a “mutual savings fund, loan or building association,” they were required to file a certificate of organization in the office of the clerk of the circuit court of the county in which they intended to carry on the business of the new corporation. Aside from enacting a law regarding the organization of the business, the state was not otherwise involved in the regulation of a “mutual savings fund, loan or building association.”

In the 1895 Session of the Wisconsin Legislature, the regulation of building and loan associations was integrated with bank regulation under the Bank Examiner. However, in Ch. 411, Laws of 1947, the Savings and Loan Association Department was created to regulate savings and loan companies and was placed under the management and control of the newly created position of Commissioner of Savings and Loan Associations.

Modern State Regulation

The DFI, through the Division of Banking, issues certificates of incorporation to savings institutions and supervises savings institutions through an examination process. State savings institutions also are affected by the regulatory actions of the FDIC and the Federal Office of the Comptroller of the Currency (OCC). The OCC (formerly the Office of Thrift Supervision, which merged with the OCC in 2011) is a part of the U.S. Department of the Treasury. [chs. 214 and 215, Stats.]

For more information on the FDIC and OCC, see:

- <https://www.fdic.gov/regulations/laws/>
- <http://www.occ.treas.gov/>

Federal Regulation

As in the case of federally chartered banks, federally chartered savings institutions are affected by the actions of certain federal regulators: the FDIC and the OCC.

Universal Banks

Chapter 222, Stats., authorizes the formation of universal banks. A state bank, state savings bank, or state savings and loan association may apply to become a universal bank. If it is certified as a universal bank, the financial institution retains its original status as a state bank, state savings bank, or state savings and loan association and is subject to all of the regulations of that original institution, except to the extent the requirements are inconsistent with those of a universal bank.

To qualify as a universal bank, the financial institution must meet six requirements: (1) it must have been in existence and continuous operation for at least three years; (2) it must be “well-capitalized,” as defined by federal law; (3) it must not exhibit moderately severe or unsatisfactory financial, managerial, operational, or compliance weakness; (4) it must not have been subject to any enforcement action within the 12 months preceding the application; (5) its most recent evaluation under the Federal Community Reinvestment Act must have rated the financial institution as “outstanding” or “satisfactory”; and (6) the most recent report evaluating the financial institution’s compliance with certain federal laws relating to customer privacy must indicate that it is in substantial compliance.

A universal bank may engage in any activity that is authorized for any savings bank, savings and loan association, or state bank. In addition, a universal bank may exercise all of the powers that a national bank, federally chartered savings and loan association, or federally chartered savings bank may exercise. The Division of Banking must approve the first exercise of such powers. Once the division approves the exercise of that power for one universal bank, any universal bank may exercise that power. A universal bank may also

Universal banks may engage in activities authorized for any federal or state chartered financial institution.

exercise all powers necessary or convenient to effect the purposes for which the universal bank is organized or to further the business in which the bank is lawfully engaged.

Credit unions are not authorized to become universal banks.

Credit Unions

Historical State Regulation

In 1912, President William Howard Taft, in a promotion of the credit union movement, asked that all states adopt a credit union statute. Subsequent to this request, the Wisconsin Legislature enacted Ch. 733, Laws of 1913, creating the state's first credit union legislation.

A credit union exists to serve the interests of its members rather than to generate a profit for its shareholders.

Under the law, a “cooperative credit union association” was authorized to receive the savings of its members and lend accumulated funds to members at reasonable rates. The membership of a credit union was limited to those individuals who had a defined common bond, such as individuals working for the same employer. Unlike banks and savings institutions, credit unions do not pay federal or state income taxes. The regulator of the early credit unions was the Commissioner of Banking who, among other powers, had the authority to ensure the soundness of a credit union and to take possession of an unsound credit union.

The first major structural change in the regulation of credit unions occurred with the enactment of Ch. 411, Laws of 1947. This law required the Commissioner of Banks to employ a supervisor of credit unions. The supervisor was responsible for the supervision and examination of credit unions, under the direction and control of the Commissioner.

Modern State Regulation

The creation of separate regulatory structures for banks, savings and loan associations, and credit unions became complete with the enactment of Ch. 193, Laws of 1971. This legislation created an Office of the Commissioner of Credit Unions. Previous responsibilities of the Commissioner of Banking were transferred to the new Commissioner of Credit Unions. 1995 Wisconsin Act 27 created the Office of Credit Unions and attached it to DFI for administrative purposes. The Office of Credit Unions, now headed by a director rather than a commissioner, charters credit unions and examines credit union records and assets. Accounts in state-chartered credit unions are insured through the National Credit Union Administration. [ch. 186, Stats.]

Federal Regulation

Federal credit unions are chartered and regulated by the National Credit Union Administration (NCUA). For more information on the NCUA, see: <http://www.ncua.gov>.

STATE REGULATION OF SECURITIES TRANSACTIONS

For more information on securities regulations, see:

- <http://www.sec.gov>
- <http://www.wdfi.org/fi/securities/>

Wisconsin statutes require the registration of certain securities before they may be sold in the state. The statutes also require that broker-dealers, agents, investment advisors, and investment advisor representatives be licensed by the state. The regulation of these activities is managed by the Division of Securities in DFI.

The laws are designed to protect the public against securities fraud. (The Federal Securities and Exchange Commission regulates security activities nationally.) [See, generally, ch. 551, Stats.]

STATE REGULATION OF PAYDAY AND AUTO-TITLE LENDING

In the 2009-10 Legislative Session, the Legislature created new requirements for payday lending. As a result of a partial veto by Governor Doyle, the legislation also prohibited auto-title lending. A summary of 2009 Wisconsin Act 405 may be found at: <http://www.legis.wisconsin.gov/lc>. [See, also, s. 138.14, Stats.]

In the 2011-12 Legislative Session, the Legislature modified the regulation of payday lending and repealed the prohibition on auto-title lending as part of 2011 Wisconsin Act 32, the Biennial Budget Act. A summary of the modifications to payday lending and auto-title lending in 2011 Wisconsin Act 32 may be viewed at: <http://www.legis.wisconsin.gov/lfb/>. [See, also, ss. 138.09 and 138.16, Stats.]

STATE REGULATION OF CONSUMER CREDIT TRANSACTIONS

For more information on the Wisconsin Consumer Act, see:

- [www.wdfi.org/consumer information](http://www.wdfi.org/consumer_information)
- www.wdfi.org/wca

The Office of Consumer Affairs in the Office of the Secretary of DFI acts as the administrator of the Wisconsin Consumer Act. In general, the Act regulates certain credit transactions, trade practices, types of insurance practices, and debt collection practices that are entered into between consumers and financial

institutions or merchants. Generally, a consumer is an individual who is involved in a transaction involving no more than \$25,000 when the individual seeks or acquires certain real or personal property, services, money, or credit for personal, family, or household purposes. [chs. 421 to 427, Stats.]

FEDERAL CONSUMER FINANCIAL PROTECTION

The Consumer Financial Protection Bureau (CFPB) has broad regulatory authority over businesses including banks, credit unions, and the mortgage industry, as well as payday lenders, debt collectors, the student loan industry, and other consumer finance transactions. The CFPB was created in 2011 pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act,

The CFPB, a federal entity created in 2011, has broad authority regarding consumer protection. See <http://www.consumerfinance.gov> for more information.

ADDITIONAL REFERENCES

1. Wisconsin Department of Financial Institutions: <http://www.wdfi.org>.
2. U.S. Department of the Treasury: <http://www.treas.gov>.
3. Federal Deposit Insurance Corporation: <http://www.fdic.gov>.
4. U.S. Securities and Exchange Commission: <http://www.sec.gov>.
5. Consumer Financial Protection Bureau: <http://www.consumerfinance.gov>.

GLOSSARY

Office of the Comptroller of the Currency (OCC): Federal agency that issues charters to and regulates national banks and savings institutions.

Consumer Finance Protection Bureau: A federal entity with broad authority to provide consumer education, enforce federal consumer financial laws, and study consumer financial markets.

DFI: The Wisconsin Department of Financial Institutions. The agency that, through the Division of Banking and the Office of Credit Unions, charters and regulates state banks, savings institutions, and credit unions.

National Credit Union Administration: Federal agency that charters and regulates federal credit unions and provides insurance of deposits to both federal- and state-chartered credit unions.

Office of Credit Unions: State agency attached to DFI for administrative purposes that charters and regulates state-chartered credit unions.

Office of Thrift Supervision (OTS): Defunct federal agency that chartered and regulated federal savings institutions. The OTS was merged with various federal agencies in 2011 (primarily the OCC).

Wisconsin Consumer Act: Wisconsin statutes regulating credit, trade practices, the sale of insurance, and debt collection practices in certain transactions entered into between consumers and financial institutions or merchants. Covered transactions must involve no more than \$25,000 and be entered into for personal, family, or household purposes.

Wisconsin Legislative Council

One East Main Street, Suite 401

Madison, WI 53703-3382

Phone: (608) 266-1304