



2001 SENATE BILL 436

February 13, 2002 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Privacy, Electronic Commerce and Financial Institutions.

1 **AN ACT** *to renumber* 138.10 (6); *to renumber and amend* 138.10 (2m) and
2 138.10 (7); *to amend* 138.10 (2), 217.02 (9), 218.04 (1) (a), 221.0316 (4), 223.07
3 (1), 224.02, 551.63 (2), 553.26 (4m) and 553.31 (2); *to repeal and recreate*
4 138.09 (title); and *to create* 138.10 (15) and 220.02 (2) (e) and (f) of the statutes;
5 **relating to:** various changes regarding the department of financial
6 institutions and persons regulated by the department of financial institutions
7 and granting rule-making authority (suggested as remedial legislation by the
8 department of financial institutions).

Analysis by the Legislative Reference Bureau

Pawnbrokers

Currently, pawnbrokers are subject to multiple licensing and operational requirements under the trade regulation statutes, the licensed lender statutes, and the pawnbroker statutes. Under the licensed lender statutes, before any person, including a pawnbroker, may charge interest in excess of 18% per year, the person must obtain a license from the division of banking (division) within the department of financial institutions. The division must investigate all of the relevant facts regarding each applicant. If the division finds that the applicant is of sufficient character and general fitness, is financially responsible, and meets all other

SENATE BILL 436

requirements specified under the licensed lender statutes, the division must grant the license. The licensed lender statutes also contain requirements regarding annual reports by licensees to the division and licensee record keeping.

Under the pawnbroker statutes, a pawnbroker may not charge interest in excess of 3% per month or, unless the pawnbroker is a licensed lender, make a loan in excess of \$150. The pawnbroker statutes also mandate a specific procedure that a pawnbroker must follow when selling property deposited with the pawnbroker as security for a loan.

This bill exempts any person that is a licensed lender from the current prohibitions on charging interest in excess of 3% per month and making loans in excess of \$150. In addition, the bill exempts any pawnbroker that is also a licensed lender from the current, mandated procedure regarding the sale of property deposited as security for a loan. Finally, the bill grants the division the authority to promulgate rules and issue orders to administer and enforce the licensed lender statutes.

Authority of the division of banking

Under current law, the division has general authority to enforce all laws relating to banks and banking in this state. In addition, the division has specific authority to regulate certain financial institutions, including mortgage bankers, loan originators, mortgage brokers, and certain commercial institutions that lend to small businesses. This bill specifies that the division's general authority to enforce laws relating to banks and banking includes the authority to enforce laws relating to these financial institutions.

Trust services

Currently, a state bank may exercise certain trust powers with the approval of the division. In addition, with the approval of the division, a trust company bank or a state bank exercising trust powers may offer trust services at the offices of certain other financial institutions, as long as the offices are in this state. This bill expands the authority of the division to allow a state bank or a trust company bank to offer trust services at the out-of-state offices of these financial institutions.

Sellers of checks

With certain exceptions, current law requires any person who engages in the business of selling and issuing checks, transmitting money, or receiving money for transmission (seller of checks) to obtain a license from the division. Current law also contains numerous regulations specifically governing sellers of checks. Currently, any telegraph company that receives money for immediate transmission by telegraph is exempt from the definition of "seller of checks" and, as a result, from these laws relating to sellers of checks. This bill removes this exemption.

Securities and investments

With certain exceptions, current law prohibits a person from engaging in the business of banking without being organized and chartered as a specified banking institution under state or federal law. Certain agents who receive and hold money, pending investment in real estate or securities on behalf of the person who deposited the money, are not engaged in the business of banking, as that term is currently

SENATE BILL 436

defined. However, this exemption from the definition of banking only applies if the agent keeps the money in a separate trust fund, does not commingle the money with the agent's own property, and does not agree to pay interest on the money other than to account for the actual income that is derived from the money while held pending investment.

This bill expands this exemption from the definition of banking. Under this bill, an agent who receives and holds money, pending investment in real estate or securities on behalf of the person who deposits the money, is not engaged in the business of banking, regardless of whether the money is separately kept and regardless of whether the agent agrees to pay interest on the money. Thus, under this bill, an agent may pay interest on money that the agent receives and holds, pending investment in real estate or securities on behalf of the person who deposited the money.

Under current law, the division of securities in DFI oversees the licensing of securities broker-dealers, agents, investment advisers, and investment adviser representatives. Current law generally requires every order of the division of securities to be appropriate for the protection of both investors and the public interest. Current law also specifically requires the division of securities to restrict or suspend a license if the licensee fails to pay court-ordered child support and to revoke a license if the licensee is liable for delinquent taxes. This bill clarifies that the general standard regarding protection of investors and the public interest does not apply to an order restricting, suspending, or revoking a license due to unpaid child support or delinquent taxes.

Franchises

Under Wisconsin's current franchise investment law, a person attempting to sell a franchise must generally register the franchise offered for sale with the division of securities. It is unclear, though, whether the person is similarly required to register any material changes to the registration statement. This bill clarifies that, once a person has properly registered a franchise, the person is not required to file any additional information except amendments that reflect material changes to the registration statement. This bill also changes the effective date of any amendment filed after the effective date of the registration from the date the division of securities approves of the amendment to the date the division of securities receives the amendment.

Collection agencies

Currently, a person who engages in business as a collection agency must be licensed by the commissioner of banking in DFI and is subject to laws specifically governing collection agencies. However, current law exempts certain entities from the definition of "collection agency" and, as a result, from the statutes governing collection agencies. Currently, certain professional men's associations that collect accounts for their members on a nonprofit basis are exempt from the definition of "collection agency." The term "professional men's association" is not currently defined.

This bill removes this exemption for professional men's associations.

SENATE BILL 436

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

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

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of financial institutions and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 138.09 (title) of the statutes is repealed and recreated to read:

2 **138.09** (title) **Licensed lenders.**

3 **SECTION 2.** 138.10 (2) of the statutes is amended to read:

4 138.10 (2) MAXIMUM LOAN. ~~Unless made by a person licensed under s. 138.09,~~
5 a- A pawnbroker's loan may not exceed \$150.

6 **SECTION 3.** 138.10 (2m) of the statutes is renumbered 138.09 (13) and amended
7 to read:

8 138.09 (13) ~~PAWNBROKING BY LICENSED LENDERS.~~ The division of banking may
9 promulgate rules ~~regulating the conduct of pawnbroking by persons licensed under~~
10 ~~s. 138.09~~ and issue orders to administer and enforce this section.

11 **SECTION 4.** 138.10 (6) of the statutes is renumbered 138.10 (13).

12 **SECTION 5.** 138.10 (7) of the statutes is renumbered 138.10 (14) and amended
13 to read:

14 138.10 (14) PENALTY. Any pawnbroker who ~~shall refuse~~ refuses to comply with
15 sub. (6) (13) shall, ~~upon conviction, be punished by imprisonment~~ be imprisoned in
16 the county jail for not more than one year or ~~by fine~~ fined not exceeding more than
17 \$500.

SENATE BILL 436

1 **SECTION 6.** 138.10 (15) of the statutes is created to read:

2 138.10 **(15)** EXCEPTION. This section does not apply to any person that is
3 licensed under s. 138.09.

NOTE: 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. This SECTION provides that if a pawnbroker registers as a licensed lender, the pawnbroker is exempt from the requirements of s. 138.10, Stats.

4 **SECTION 7.** 217.02 (9) of the statutes is amended to read:

5 217.02 **(9)** “Seller of checks” means a person who, as a service or for a fee or
6 other consideration, engages in the business of selling and issuing checks or the
7 receiving of money for transmission or the transmitting of money, or the transmitting
8 of money to foreign countries, ~~but does not include the business of a telegraph~~
9 ~~company in receiving money for immediate transmission by telegraph.~~

NOTE: This SECTION deletes the exemption of telegraph companies from the definition of “seller of checks.” Telegraph companies no longer exist.

10 **SECTION 8.** 218.04 (1) (a) of the statutes is amended to read:

11 218.04 **(1)** (a) “Collection agency” means any person engaging in the business
12 of collecting or receiving for payment for others of any account, bill or other
13 indebtedness. It shall not include attorneys at law authorized to practice in this state
14 and resident herein, banks, express companies, state savings banks, state savings
15 and loan associations, insurers and their agents, trust companies, ~~or professional~~
16 ~~men’s associations collecting accounts for its members on a nonprofit basis, where~~
17 ~~such members are required by law to have a license, diploma or permit to practice~~
18 ~~or follow their profession, real estate brokers, and real estate salespersons.~~

NOTE: Under current law, a person who engages in business as a collection agency must be licensed by the division of banking in the department of financial institutions

SENATE BILL 436**SECTION 8**

(DFI) 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, this SECTION deletes the exemption.

1 **SECTION 9.** 220.02 (2) (e) and (f) of the statutes are created to read:

2 220.02 (2) (e) Mortgage bankers, loan originators, and mortgage brokers under
3 subch. III of ch. 224.

4 (f) Nondepository small business lenders under subch. IV of ch. 224.

NOTE: Under current law the division of banking (division) in the department of financial institutions 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. This SECTION 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.

5 **SECTION 10.** 221.0316 (4) of the statutes is amended to read:

6 221.0316 (4) TRUST SERVICE OFFICES. A state bank exercising trust powers may,
7 with the approval of the division, establish and maintain a trust service office at any
8 office ~~in this state~~ of any other depository institution, as defined under s. 221.0901
9 (2) (i). A state bank may, with the approval of the division, permit any other
10 depository institution, as defined under s. 221.0901 (2) (i), exercising trust powers
11 or any trust company bank organized under ch. 223 to establish and maintain a trust
12 service office at any of its banking offices. The establishment and operation of a trust
13 service office are subject to s. 223.07. This subsection does not authorize branch
14 banking.

15 **SECTION 11.** 223.07 (1) of the statutes is amended to read:

16 223.07 (1) Any trust company bank may, with the approval of the division,
17 establish and maintain a trust service office at any office ~~in this state~~ of a depository
18 institution, as defined in s. 221.0901 (2) (i), if the establishment of the trust service

SENATE BILL 436

1 office has been approved by the board of directors of the ~~state or national bank~~
2 depository institution at a meeting called for that purpose.

NOTE: Under current law, the division of banking (division) in the department of financial institutions may allow a state bank to exercise certain trust powers. In addition, the division and may allow a trust company bank or a state bank exercising trust powers to offer trust services at the offices of certain other financial institutions, as long as the offices are in this state. During the 1995-1996 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. This and the preceding SECTION expand 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.

3 **SECTION 12.** 224.02 of the statutes is amended to read:

4 **224.02 Banking, defined.** The soliciting, receiving, or accepting of money or
5 its equivalent on deposit as a regular business by any person, partnership,
6 association, or corporation, shall be deemed to be doing a banking business, whether
7 such deposit is made subject to check or is evidenced by a certificate of deposit, a
8 passbook, a note, a receipt, or other writing, provided that nothing herein shall apply
9 to or include money left with an agent, pending investment in real estate or securities
10 for or on account of the agent's principal. ~~Provided, however, that if money so left with~~
11 ~~an agent for investment shall not be kept in a separate trust fund or if the agent~~
12 ~~receiving such money shall mingle same with the agent's own property, whether with~~
13 ~~or without the consent of the principal, or shall make an agreement to pay any certain~~
14 ~~rate of interest thereon or any agreement to pay interest thereon other than an~~
15 ~~agreement to account for the actual income which may be derived from such money~~
16 ~~while held pending investment, the person receiving such money shall be deemed to~~
17 ~~be in the banking business.~~

NOTE: This SECTION 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. This SECTION exempts such agents regardless of whether they pay interest or whether the money is kept separate.

SENATE BILL 436**SECTION 13**

1 **SECTION 13.** 551.63 (2) of the statutes is amended to read:

2 551.63 (2) ~~No~~ Except as provided under s. 551.34 (1m) (b) and (c), no rule, form
3 or order may be made, amended or rescinded unless the division finds that the action
4 is necessary or appropriate in the public interest and for the protection of investors.
5 In prescribing rules and forms the division may cooperate with the securities
6 administrators of other states and the securities and exchange commission with a
7 view to achieving maximum uniformity in the form and content of registration
8 statements, notice filings, applications and reports wherever practicable.

NOTE: 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.

This SECTION 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.

9 **SECTION 14.** 553.26 (4m) of the statutes is amended to read:

10 553.26 (4m) A person who has complied with sub. (1) need not file with the
11 division, during the period when the registration is effective, any more information,
12 ~~including any amendments to the offering circular~~ other than an application or
13 amendment required to be filed under s. 553.31. The division may not require
14 changes in the offering circular filed by the franchisor, subject to the division's
15 authority to suspend or revoke a registration for any of the causes under s. 553.28.

NOTE: This SECTION results from 1995 Wisconsin Act 364. The legislation, 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 in the department of financial institutions. This SECTION makes those changes.

16 **SECTION 15.** 553.31 (2) of the statutes is amended to read:

