

ENGROSSED 1999 ASSEMBLY BILL 563

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1 AN ACT *to amend* 220.04 (9) (a) 2.; and *to create* 220.14 (5), chapter 222 and
2 227.245 of the statutes; **relating to:** the creation of a new type of financial
3 institution; the powers of and requirements applicable to these financial
4 institutions; providing an exemption from emergency rule procedures; and
5 granting rule-making authority.

Analysis by the Legislative Reference Bureau

Engrossment information:

The text of Engrossed 1999 Assembly Bill 563 consists of the bill, as adopted in the assembly on February 9, 2000, as affected by the following Assembly Amendments adopted in the assembly on February 8, 2000: Assembly Amendments 1 and 2.

Content of Engrossed 1999 Assembly Bill 563:

Under current law, the division of savings institutions regulates state savings banks and state savings and loan associations, and the division of banking regulates state banks. This bill allows a state savings bank, state savings and loan association or state bank (financial institution) to apply to the division of banking to become certified as a universal bank. If certified as a universal bank, a financial institution may exercise certain powers, in addition to those that are granted under the statutes under which the financial institution is organized. A universal bank retains its status as a savings and loan association, savings bank or state bank and remains

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subject to existing regulatory and supervisory requirements, except to the extent that these requirements are inconsistent with the requirements applicable to universal banks. Universal banks are subject to the following provisions:

Certification

A financial institution may apply to become certified as a universal bank by filing a written application with the division of banking. In order to be certified as a universal bank, the financial institution must meet all of the following requirements: 1) the financial institution must be chartered or organized, and regulated, as a Wisconsin financial institution and must have been in existence and continuous operation for at least three years; 2) the financial institution must be “well-capitalized”, as defined in federal law; 3) the financial institution must not exhibit moderately severe or unsatisfactory financial, managerial, operational and compliance weaknesses; 4) the financial institution must not have been the subject of any enforcement action within the 12 months preceding the application; and 5) the most recent evaluation of the financial institution under the federal Community Reinvestment Act must rate the financial institution as “outstanding” or “satisfactory” at helping to meet the credit needs of its entire community. If these requirements are met, the division of banking must certify the financial institution as a universal bank. If a universal bank fails to maintain compliance with these requirements, the division of banking must limit the universal bank’s exercise of universal banking powers. In addition, a universal bank may be decertified if it fails to maintain compliance with these requirements. With the approval of the division of banking, a universal bank also may elect to terminate its certification. As a precondition to elective decertification, the universal bank must terminate the exercise of all universal banking powers.

Organization and regulation

A financial institution that is certified as a universal bank remains subject to all of the requirements and duties, and remains able to exercise all of the powers, that applied to the financial institution prior to its certification as a universal bank, except to the extent that such requirements, duties and powers are inconsistent with the requirements, powers and duties of universal banks. After a financial institution becomes certified as a universal bank, the division of banking becomes responsible for establishing the capital requirements applicable to the universal bank.

A universal bank continues to operate under the articles of incorporation and bylaws that were in effect prior to its certification as a universal bank, and these articles and bylaws may be amended in accordance with the law governing savings banks, savings and loan associations or state banks, whichever is applicable to the financial institution. Current law generally prohibits a savings bank or a savings and loan association from using the term “bank” in its corporate name, without also using the term “savings”. Notwithstanding these provisions, the bill allows any financial institution that becomes certified as a universal bank to use the term “bank” in its corporate name without using the word “savings”, subject to certain limitations relating to the distinguishability of the name.

Under current law, the division of banking regulates mergers and acquisitions of state banks, and the division of savings institutions regulates mergers and

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acquisitions of savings banks and savings and loan associations. Under the bill, the division of banking assumes responsibility for reviewing and approving the mergers and acquisitions of all financial institutions that have been certified as universal banks, including savings banks and savings and loan associations. The standards to be used by the division of banking in reviewing a merger or acquisition of a universal bank generally track the standards currently applicable to the various financial institutions that may become certified as universal banks, except that universal banks may generally acquire or merge with any type of financial institution.

Powers

The bill expands the powers of a financial institution that becomes certified as a universal bank. Currently, savings banks, savings and loan associations and banks have differing powers under both state and federal law. Under the bill, a universal bank is authorized to engage in any activity authorized for any savings bank, savings and loan association or state bank beginning on the first day of the third month beginning after the bill's publication. In addition, the bill specifically permits a universal bank to exercise all of the following powers:

Federal powers: Under the bill, with the approval of the division of banking, a universal bank may exercise all powers that may be directly exercised by a national bank, a federally chartered savings and loan association or a federally chartered savings bank. The division of banking may, however, require a universal bank to exercise a federal power through a subsidiary of the universal bank in order to limit the risk exposure of the universal bank.

In addition, with the approval of the division of banking, a universal bank may exercise through a subsidiary all powers that a subsidiary of these federal financial institutions may exercise.

Lending powers: Under current law, the lending powers of a financial institution depend on whether the financial institution is organized as a savings bank, savings and loan association or state bank. The lending powers granted to universal banks under the bill are most similar to the lending powers granted to state banks under current law. Current law imposes some restrictions on the types and purposes of loans that savings banks and savings and loan associations may make. Under the bill, a universal bank may make, sell, purchase, arrange, participate in, invest in or otherwise deal in loans or extensions of credit for any purpose. Like state banks, the limitations imposed on a universal bank's lending generally focus on the total amount of liabilities of any one lender at any one time. Although the limit varies depending on the lender and on the type of security pledged for the loan, the general rule is that the total liabilities of any one person to a universal bank may not exceed 20% of the universal bank's capital. The lending limits for universal banks are generally the same as for state banks, except that universal banks are granted additional authority to lend, through the universal bank or its subsidiaries, an aggregate amount to all borrowers from the universal bank and all of its subsidiaries not to exceed 20% of the universal bank's capital, but the loans to any one borrower made under any lending authority of the universal bank may not exceed 20% of the universal bank's capital. Loans made under this additional authority are not subject

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to rules regarding bad debts or classification of losses for a period of two years from the date of the loan. This additional authority may be suspended by the division of banking. Among the factors that may be considered by the division of banking in suspending this authority are a universal bank's capital adequacy, management, earnings, liquidity and sensitivity to market risk. The bill prohibits a universal bank, in determining whether to make a loan or extension of credit, from considering any health information obtained from the records of an affiliate of the universal bank that is engaged in the business of insurance, unless the person to whom the health information relates consents.

Investment powers: A universal bank may purchase, sell, underwrite and hold investment securities, consistent with safe and sound banking practices, in an amount up to 100% of the universal bank's capital. Investment securities include commercial paper; banker's acceptances; marketable securities in the form of bonds, notes and debentures; and similar instruments. A universal bank may not invest greater than 20% of its capital in any one obligor or issuer. A universal bank may purchase, sell, underwrite and hold equity securities, consistent with safe and sound banking practices, in an amount up to 20% of the universal bank's capital, unless the division of banking approves a greater percentage. A universal bank may also invest in certain housing properties and projects, except that the total investment in any one project may not exceed 15% of the universal bank's capital and except that the total amount invested in housing properties and projects may not exceed 50% of the universal bank's capital. A universal bank may take equity positions in profit-participation projects, including projects funded through loans from the universal bank, in an aggregate amount not to exceed 20% of the universal bank's capital. The division of banking may suspend a universal bank's authority to invest in profit-participation projects.

The bill permits a universal bank to invest without limitations in certain types of securities, including: 1) obligations of certain federal agencies or federally chartered corporations and associations; 2) deposit accounts or insured obligations of insured financial institutions; 3) securities of certain business development corporations and urban renewal investment corporations; 4) certain securities of bank insurance companies; 5) securities of certain corporations operating automated teller machines; 6) securities of service corporation subsidiaries of the universal bank; 7) advances of federal funds; 8) risk management instruments, including financial futures transactions, financial operations transactions and forward commitments, but solely for the purpose of reducing, hedging or otherwise managing its interest rate risk exposure; 9) securities of subsidiaries exercising certain fiduciary powers; and 10) securities of agricultural credit corporations. A universal bank may invest in other financial institutions. The investment powers of a universal bank may be exercised directly or indirectly through a subsidiary, unless the division of banking requires the investment to be made through a subsidiary in order to limit the risk exposure of the universal bank. The bill contains specific provisions governing the purchase by a universal bank of its own stock and of stock in banks and bank holding companies.

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Deposit and trust powers: The bill permits a universal bank to establish the types and terms of deposits that the universal bank will solicit and accept. A universal bank may pledge its assets as security for deposits. With the approval of the division of banking, a universal bank may securitize its assets for sale to the public, subject to any procedures established by the division of banking. A universal bank may exercise safe deposit powers and have a lien on the contents of property accepted for safekeeping for its safekeeping charges. If these charges remain unpaid for two years or if property accepted for safekeeping is not called for within two years, a universal bank may sell the property at public auction. The bill authorizes a universal bank to exercise the same trust powers that trust company banks are permitted to exercise under current law.

Incidental and related powers: Under the bill, a universal bank may exercise all powers necessary or convenient to effect the purposes for which the universal bank is organized or to further the businesses in which the universal bank is lawfully engaged. Current law does not have a similar provision for savings banks, savings and loan associations or state banks.

In addition to these necessary or convenient powers, the bill allows a universal bank to engage in activities that are reasonably related or incidental to the purposes of the universal bank. With certain exceptions, a universal bank may engage in these activities either directly or indirectly through a subsidiary. Under the bill, any activity permitted under the federal Bank Holding Act satisfies the reasonably related or incidental criterion. The bill also contains a list of specific activities that meet the reasonably related or incidental criterion. The listed activities include: 1) business and professional services; 2) data processing; 3) courier and messenger services; 4) credit-related activities; 5) consumer services; 6) real estate-related services; 7) insurance services, other than insurance underwriting; 8) securities brokerage; 9) investment advice; 10) securities and bond underwriting; 11) mutual fund activities; 12) financial consulting; 13) tax planning and preparation; 14) community development and charitable activities; and 15) debt cancellation contracts.

A universal bank may also engage in activities that the division of banking determines by rule are reasonably related or incidental to these listed activities. In addition, the division of banking, by rule, may determine that other activities are reasonably related or incidental activities. In promulgating these rules, the division of banking need not follow the standard notice, hearing and publication requirements that generally apply to administrative rule-making.

A universal bank must give 60 days' prior written notice to the division of banking of the universal bank's intention to exercise a necessary or convenient power or to engage in a reasonably related or incidental activity. The division of banking may deny a universal bank the authority to exercise a necessary or convenient power or to engage in a reasonably related or incidental activity, other than an activity that is contained in the specific list of reasonably related or incidental activities, if the division of banking determines that the activity is not a reasonably related or incidental activity, that the financial institution is not well-capitalized, that the financial institution is the subject of an enforcement action or that the financial

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1 (a) For a universal bank organized as a stock organization, the universal bank's
2 capital stock, preferred stock, undivided profits, surplus, outstanding notes and
3 debentures approved by the division, other forms of capital designated as capital by
4 the division and other forms of capital considered to be qualifying capital of the
5 universal bank by a deposit insurance corporation.

6 (b) For a universal bank organized as a mutual organization, the universal
7 bank's net worth, undivided profits, surplus, outstanding notes and debentures
8 approved by the division, other forms of capital designated as capital by the division
9 and other forms of capital considered to be qualifying capital by a deposit insurance
10 corporation.

11 (3) "Deposit insurance corporation" means the Federal Deposit Insurance
12 Corporation or other instrumentality of, or corporation chartered by, the United
13 States that insures deposits of financial institutions and that is supported by the full
14 faith and credit of the U.S. government as stated in a congressional resolution.

15 (4) "Division" means the division of banking.

16 (5) "Financial institution" means a state savings bank organized under ch. 214,
17 state savings and loan association organized under ch. 215 or a state bank chartered
18 under ch. 221.

19 (6) "Universal bank" means a financial institution that has been issued a
20 certificate of authority under s. 222.0205.

21 (7) "Well-capitalized" has the meaning given in 12 USC 1831o (b) (1) (A).

22 **222.0103 Applicability. (1) SAVINGS BANKS.** A universal bank that is a savings
23 bank organized under ch. 214 remains subject to all of the requirements, duties and
24 liabilities, and may exercise all of the powers, of a savings bank, except that in the

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1 event of a conflict between this chapter and those requirements, duties, liabilities or
2 powers, this chapter shall control.

3 **(2) SAVINGS AND LOAN ASSOCIATIONS.** A universal bank that is a savings and loan
4 association organized under ch. 215 remains subject to all of the requirements,
5 duties and liabilities, and may exercise all of the powers, of a savings and loan
6 association, except that, in the event of a conflict between this chapter and those
7 requirements, duties, liabilities or powers, this chapter shall control.

8 **(3) BANKS.** A universal bank that is a bank chartered under ch. 221 remains
9 subject to all of the requirements, duties and liabilities, and may exercise all of the
10 powers, of a bank, except that, in the event of a conflict between this chapter and
11 these requirements, duties, liabilities or powers, this chapter shall control.

12 **222.0105 Fees.** The division may establish such fees as it determines are
13 appropriate for documents filed with the division under this chapter and for services
14 provided by the division under this chapter.

15 **222.0107 Administration. (1) POWERS OF DIVISION.** The division shall
16 administer this chapter for all universal banks.

17 **(2) RULE-MAKING AUTHORITY.** The division may promulgate rules to administer
18 and carry out this chapter. The division may establish additional limits or
19 requirements on universal banks, if the division determines that the limits or
20 requirements are necessary for the protection of depositors, members, investors or
21 the public.

22 SUBCHAPTER II

23 CERTIFICATION

24 **222.0201 Procedure. (1) APPLICATION.** A financial institution may apply to
25 become certified as a universal bank by filing a written application with the division.

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1 The application shall include such information as the division may require. The
2 application shall be on such forms and in accordance with such procedures as the
3 division may prescribe.

4 (2) REVIEW BY DIVISION. An application submitted to the division shall either
5 be approved or disapproved by the division in writing within 60 days after its
6 submission to the division. The division and the financial institution may mutually
7 agree to extend the application period for an additional period of 60 days. The
8 division shall approve an application if all of the applicable requirements under s.
9 222.0203 (1) are met.

10 **222.0203 Eligibility. (1) REQUIREMENTS.** The division may approve an
11 application from a financial institution for certification as a universal bank only if
12 all of the following requirements are met:

13 (a) The financial institution is chartered or organized, and regulated, under ch.
14 214, 215 or 221 and has been in existence and continuous operation for a minimum
15 of 3 years prior to the date of the application.

16 (b) The financial institution is well-capitalized.

17 (c) The financial institution does not exhibit a combination of financial,
18 managerial, operational and compliance weaknesses that is moderately severe or
19 unsatisfactory, as determined by the division based upon the division's assessment
20 of the financial institution's capital adequacy, asset quality, management capability,
21 earnings quantity and quality, adequacy of liquidity, and sensitivity to market risk.

22 (d) During the 12-month period prior to the application, the financial
23 institution has not been the subject of an enforcement action and there is no
24 enforcement action pending against the financial institution by any state or federal
25 financial institution regulatory agency, including the division.

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1 (e) The most current evaluation prepared under 12 USC 2906 that the financial
2 institution has received rates the financial institution as “outstanding” or
3 “satisfactory” in helping to meet the credit needs of its entire community, including
4 low-income and moderate-income neighborhoods, consistent with the safe and
5 sound operation of the financial institution.

6 **(2) FAILURE TO MAINTAIN ELIGIBILITY; LIMITATION OF AUTHORITY AND**
7 **DECERTIFICATION.** For any period during which a universal bank fails to meet the
8 requirements under sub. (1), the division shall by order limit or restrict the exercise
9 of the powers of the universal bank under this chapter. In addition to or lieu of
10 limiting or restricting the universal bank’s authority under this subsection, the
11 division may by order revoke the universal bank’s certificate of authority issued
12 under s. 222.0205.

13 **222.0205 Certificate of authority.** Upon approval of the application under
14 s. 222.0201 for certification as a universal bank, the division shall issue to the
15 applicant a certificate of authority stating that the financial institution is certified
16 as a universal bank under this chapter.

17 **222.0207 Voluntary termination of certification.** A financial institution
18 that is certified as a universal bank under this chapter may elect to terminate its
19 certification upon 60 days’ prior written notice to the division and written approval
20 of the division. The financial institution shall, as a condition to the termination,
21 terminate its exercise of all powers granted under this chapter prior to the
22 termination of the certification. Written approval of the termination by the division
23 is void if the financial institution fails to satisfy the precondition to termination
24 under this section.

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SUBCHAPTER III

ORGANIZATION

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3 **222.0301 Articles of incorporation and bylaws.** A universal bank shall
4 continue to operate under its articles of incorporation and bylaws as in effect prior
5 to certification as a universal bank or as such articles or bylaws may be subsequently
6 amended in accordance with the provisions of the chapter under which the universal
7 bank was organized or chartered.

8 **222.0303 Name. (1) USE OF “BANK”.** Notwithstanding ss. 214.035, 215.40 (1)
9 and 215.60 (1) and subject to subs. (2) and (4), a universal bank may use the word
10 “bank” in its name, without having to include the word “savings”. Notwithstanding
11 ss. 215.40 (1) and 215.60 (1) and subject to subs. (2) and (4), a universal bank that
12 is organized under ch. 215 and that uses the word “bank” in its name in accordance
13 with this section need not include the words “savings and loan association” or
14 “savings association” in its name.

15 **(2) DISTINGUISHABILITY.** Except as provided in subs. (3) and (4), the name of the
16 universal bank shall be distinguishable upon the records of the division from all of
17 the following names:

18 (a) The name of any other financial institution organized under the laws of this
19 state.

20 (b) The name of a national bank or foreign bank authorized to transact business
21 in this state.

22 **(3) EXCEPTIONS.** A universal bank may apply to the division for authority to use
23 a name that does not meet the requirement under sub. (2). The division may
24 authorize the use of the name if any of the conditions under s. 221.0403 (2) (a) or (b)
25 is met.

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1 **(4) USE OF SAME NAME.** A universal bank may use a name that is used in this
2 state by another financial institution or by an institution authorized to transact
3 business in this state, if the universal bank has done any of the following:

4 (a) Merged with the other institution.

5 (b) Been formed by reorganization of the other institution.

6 (c) Acquired all or substantially all of the assets, including the name, of the
7 other institution.

8 **222.0305 Capital and assets. (1) CAPITAL REQUIREMENTS.** Notwithstanding
9 subch. VI of ch. 214 and ss. 215.24 and 221.0205, the division shall determine the
10 minimum capital requirements of universal banks.

11 **(2) CERTAIN ASSET REQUIREMENTS.** Section 214.045 does not apply to universal
12 banks.

13 **222.0307 Acquisitions, mergers and asset purchases. (1) IN GENERAL.** A
14 universal bank may, with the approval of the division, purchase the assets of, merge
15 with, acquire or be acquired by any other financial institution, universal bank,
16 national bank, federally chartered savings bank or savings and loan association, or
17 by a holding company of any of these entities. Notwithstanding subch. III of ch. 214
18 and ss. 214.09 and 215.36, the approval of the division of savings and loan is not
19 required.

20 **(2) APPLICATIONS FOR APPROVAL.** An application for approval under sub. (1) shall
21 be submitted on a form prescribed by the division and accompanied by a fee
22 determined by the division. In processing and acting on applications under this
23 section the division shall apply the following standards:

24 (a) For universal banks organized under ch. 214, ss. 214.09, 214.62 to 214.64
25 and 214.665 and subch. III of ch. 214.

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1 (b) For universal banks organized under ch. 215, ss. 215.35, 215.36, 215.53 and
2 215.73.

3 (c) For universal banks chartered under ch. 221, subchs. VII and IX of ch. 221.

SUBCHAPTER IV

POWERS

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6 **222.0401 Federal financial institution powers. (1) IN GENERAL. (a)**
7 *Powers exercised by universal bank.* A universal bank, with the approval of the
8 division, may exercise any power that may be directly exercised by a federally
9 chartered savings bank, a federally chartered savings and loan association or a
10 federally chartered national bank.

11 (b) *Powers exercised by subsidiary of universal bank.* A universal bank,
12 through a subsidiary and with the approval of the division, may exercise any power
13 that a federally chartered savings bank, a federally chartered savings and loan
14 association or a federally chartered national bank may exercise through a subsidiary.

15 **(2) APPROVAL REQUIRED FOR EXERCISE OF FEDERAL POWER.** A universal bank shall
16 file with the division a written request to exercise a power under sub. (1). The
17 division shall determine whether the requested power is permitted under sub. (1).
18 Within 60 days after receiving a request under this subsection, the division shall
19 approve the request, if the power is permitted under sub. (1), or shall disapprove the
20 request if the power is not permitted under sub. (1). The division and the universal
21 bank may mutually agree to extend this 60-day period for an additional period of 60
22 days.

23 **(3) EXERCISE OF FEDERAL POWERS THROUGH A SUBSIDIARY.** The division may
24 require that certain powers exercisable by a universal bank under sub. (1) (a) be

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1 exercised through a subsidiary of the universal bank with appropriate safeguards to
2 limit the risk exposure of the universal bank.

3 **222.0403 Loan powers. (1) PERMITTED PURPOSES.** A universal bank may
4 make, sell, purchase, arrange, participate in, invest in or otherwise deal in loans or
5 extensions of credit for any purpose.

6 **(2) IN GENERAL.** Except as provided in subs. (3) to (8), the total liabilities of any
7 person, other than a municipal corporation, to a universal bank for a loan or
8 extension of credit may not exceed 20% of the capital of the universal bank at any
9 time. In determining compliance with this section, liabilities of a partnership
10 includes the liabilities of the general partners, computed individually as to each
11 general partner on the basis of his or her direct liability.

12 **(3) CERTAIN SECURED LIABILITIES.** The percentage limitation under sub. (2) is
13 50% of the universal bank's capital, if the liabilities under sub. (2) are limited to the
14 following types of liabilities:

15 (a) *Warehouse receipts.* A liability secured by warehouse receipts issued by
16 warehouse keepers who are licensed and bonded in this state under ss. 99.02 and
17 99.03 or under the federal Bonded Warehouse Act or who hold a registration
18 certificate under ch. 127, if all of the following requirements are met:

- 19 1. The receipts cover readily marketable nonperishable staples.
- 20 2. The staples are insured, if it is customary to insure the staples.
- 21 3. The market value of the staples is not, at any time, less than 140% of the face
22 amount of the obligation.

23 (b) *Certain bonds or notes.* A liability in the form of a note or bond that meets
24 any of the following qualifications:

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1 1. The note or bond is secured by not less than a like amount of bonds or notes
2 of the United States issued since April 24, 1917, or certificates of indebtedness of the
3 United States.

4 2. The note or bond is secured or covered by guarantees or by commitments or
5 agreements to take over, or to purchase, the bonds or notes, and the guarantee,
6 commitment or agreement is made by a federal reserve bank, the federal small
7 business administration, the federal department of defense or the federal maritime
8 commission.

9 3. The note or bond is secured by mortgages or trust deeds insured by the
10 federal housing administration.

11 **(4) OBLIGATIONS OF LOCAL GOVERNMENTAL UNITS.** (a) *Definition.* In this
12 subsection, “local governmental unit” has the meaning given in s. 16.97 (7).

13 (b) *General limitation.* Except as otherwise provided in this subsection, the
14 total liabilities of a local governmental unit to a universal bank for money borrowed
15 may not, at any time, exceed 25% of the capital of the universal bank.

16 (c) *Revenue obligations.* Liabilities in the form of revenue obligations of a local
17 governmental unit are subject to the limitations provided in par. (b). In addition, a
18 universal bank is permitted to invest in a general obligation of that local
19 governmental unit in an amount that will bring the combined total of the general
20 obligations and revenue obligations of a single local governmental unit to a sum not
21 in excess of 50% of the capital of the universal bank.

22 (d) *General obligations.* If the liabilities of the local governmental unit are in
23 the form of bonds, notes or other evidences of indebtedness that are a general
24 obligation of a local governmental unit, the total liability of the local governmental
25 unit may not exceed 50% of the capital of the universal bank.

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1 (e) *Temporary borrowings.* The total amount of temporary borrowings of any
2 local governmental unit maturing within one year after the date of issue may not
3 exceed 60% of the capital of the universal bank. Temporary borrowings and
4 longer-term general obligation borrowings of a single local governmental unit may
5 be considered separately in determining compliance with this subsection.

6 **(5) OBLIGATIONS OF CERTAIN INTERNATIONAL ORGANIZATIONS; OTHER FOREIGN BONDS.**

7 A universal bank may purchase bonds offered for sale by the International Bank for
8 Reconstruction and Development and the Inter-American Development Bank or
9 such other foreign bonds as may be approved under rules established by the division.
10 At no time shall the aggregate investment in any of these bonds issued by a single
11 issuer exceed 10% of the capital of the universal bank.

12 **(6) FOREIGN NATIONAL GOVERNMENT BONDS.** A universal bank may purchase

13 general obligation bonds issued by any foreign national government if the bonds are
14 payable in United States funds. The aggregate investment in these foreign bonds
15 may not exceed 3% of the capital of the universal bank, except that this limitation
16 does not apply to bonds of the Canadian government and Canadian provinces that
17 are payable in United States funds.

18 **(7) LIMITS ESTABLISHED BY BOARD.** (a) *When financial statements required.* A

19 universal bank may not make or renew a loan or loans, the aggregate total of which
20 exceeds the level established by the board of directors without being supported by a
21 signed financial statement of the borrower, unless the loan is secured by collateral
22 having a value in excess of the amount of the loan. A signed financial statement
23 furnished by the borrower to a universal bank in compliance with this paragraph
24 must be renewed annually as long as the loan or any renewal of the loan remains
25 unpaid and is subject to this paragraph.

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1 (b) *Treatment of loans complying with limits.* A loan or a renewal of a loan made
2 by a universal bank in compliance with par. (a), without a signed financial statement,
3 may be treated by the universal bank as entirely independent of any secured loan
4 made to the same borrower if the loan does not exceed the limitations provided in this
5 section.

6 **(8) EXCEPTIONS.** This section does not apply to any of the following:

7 (a) *Liabilities secured by certain short-term federal obligations.* A liability that
8 is secured by not less than a like amount of direct obligations of the United States
9 which will mature not more than 18 months after the date on which such liabilities
10 to the universal bank are entered into.

11 (b) *Certain federal and state obligations or guaranteed obligations.* A liability
12 that is a direct obligation of the United States or this state, or an obligation of any
13 governmental agency of the United States or this state, that is fully and
14 unconditionally guaranteed by the United States or this state.

15 (c) *Commodity Credit Corporation liabilities.* A liability in the form of a note,
16 debenture or certificate of interest of the Commodity Credit Corporation.

17 (d) *Discounting bills of exchange or business or commercial paper.* A liability
18 created by the discounting of bills of exchange drawn in good faith against actually
19 existing values or the discounting of commercial or business paper actually owned
20 by the person negotiating the same.

21 (e) *Certain other federal or federally guaranteed obligations.* In obligations of,
22 or obligations that are fully guaranteed by, the United States and in obligations of
23 any federal reserve bank, federal home loan bank, the Student Loan Marketing
24 Association, the Government National Mortgage Association, the Federal National

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1 Mortgage Association, the Federal Home Loan Mortgage Corporation, the
2 Export–Import Bank of Washington or the Federal Deposit Insurance Corporation.

3 **(9) ADDITIONAL AUTHORITY.** (a) *In general.* In addition to the authority
4 granted under subs. (1) to (8), and except as provided in par. (b), a universal bank may
5 lend under this subsection, through the universal bank or subsidiary of the universal
6 bank, to all borrowers from the universal bank and all of its subsidiaries, an
7 aggregate amount not to exceed 20% of the universal bank’s capital. Neither a
8 universal bank nor any subsidiary of the universal bank may lend to any borrower,
9 under this subsection and any other law or rule, an amount that would result in an
10 aggregate amount for all loans to that borrower that exceeds 20% of the universal
11 bank’s capital. A universal bank or its subsidiary may take an equity position or
12 other form of interest as security in a project funded through such loans. Every
13 transaction by a universal bank or its subsidiary under this subsection shall require
14 prior approval by the governing board of the universal bank or its subsidiary,
15 respectively. Such loans are not subject to s. 221.0326 or to classification as losses,
16 for a period of 2 years from the date of each loan except as provided in par. (b).

17 (b) *Suspension of additional authority.* The division may suspend authority
18 established under this subsection and, in such case, may specify how an outstanding
19 loan shall be treated by the universal bank or its subsidiary. Among the factors that
20 the division may consider in suspending authority under this subsection are the
21 universal bank’s capital adequacy, asset quality, earnings quantity, earnings quality,
22 adequacy of liquidity and sensitivity to market risk and the ability of the universal
23 bank’s management.

24 **(10) EXERCISE OF LOAN POWERS; PROHIBITED CONSIDERATIONS.** In determining
25 whether to make a loan or extension of credit, no universal bank may consider any

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1 health information obtained from the records of an affiliate of the universal bank
2 that is engaged in the business of insurance, unless the person to whom the health
3 information relates consents.

4 **222.0405 Investment powers. (1) INVESTMENT SECURITIES.** Except as
5 provided in subs. (3) to (8), a universal bank may purchase, sell, underwrite and hold
6 investment securities, consistent with safe and sound banking practices, up to 100%
7 of the universal bank's capital. A universal bank shall not invest greater than 20%
8 of the universal bank's capital in the investment securities of one obligor or issuer.
9 In this subsection, "investment securities" includes commercial paper, banker's
10 acceptances, marketable securities in the form of bonds, notes, debentures and
11 similar instruments that are regarded as investment securities.

12 **(2) EQUITY SECURITIES.** Except as provided in subs. (3) to (8), a universal bank
13 may purchase, sell, underwrite and hold equity securities, consistent with safe and
14 sound banking practices, up to 20% of capital or, if approved by the division in
15 writing, a greater percentage of capital.

16 **(3) HOUSING ACTIVITIES.** With the prior written consent of the division, a
17 universal bank may invest in the initial purchase and development, or the purchase
18 or commitment to purchase after completion, of home sites and housing for sale or
19 rental, including projects for the reconstruction, rehabilitation or rebuilding of
20 residential properties to meet the minimum standards of health and occupancy
21 prescribed for a local governmental unit, the provision of accommodations for retail
22 stores, shops and other community services that are reasonably incident to that
23 housing, or in the stock of a corporation that owns one or more of those projects and
24 that is wholly owned by one or more financial institutions. The total investment in
25 any one project may not exceed 15% of the universal bank's capital, nor may the

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1 aggregate investment under this subsection exceed 50% of capital. A universal bank
2 may not make an investment under this subsection unless it is in compliance with
3 the capital requirements set by the division under s. 222.0305 (1) and with the capital
4 maintenance requirements of its deposit insurance corporation.

5 **(4) PROFIT-PARTICIPATION PROJECTS.** A universal bank may take equity positions
6 in profit-participation projects, including projects funded through loans from the
7 universal bank, in an aggregate amount not to exceed 20% of capital. The division
8 may suspend the investment authority under this subsection. If the division
9 suspends the investment authority under this subsection, the division may specify
10 how outstanding investments under this subsection shall be treated by the universal
11 bank or its subsidiary. Among the factors that the division may consider in
12 suspending authority under this subsection are the universal bank's capital
13 adequacy, asset quality, earnings quantity, earnings quality, adequacy of liquidity
14 and sensitivity to market risk and the ability of the universal bank's management.
15 This subsection does not authorize a universal bank, directly or indirectly through
16 a subsidiary, to engage in the business of underwriting insurance.

17 **(5) DEBT INVESTMENTS.** A universal bank may invest in bonds, notes, obligations
18 and liabilities described under s. 222.0403 (3) to (7), subject to the limitations under
19 those subsections.

20 **(6) CERTAIN LIABILITIES.** This section does not limit investment in the
21 liabilities described in s. 222.0403 (8).

22 **(7) CERTAIN INVESTMENTS.** A universal bank may invest without limitation in
23 any of the following:

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1 (a) *Business development corporations.* Stocks or obligations of a corporation
2 organized for business development by this state or by the United States or by an
3 agency of this state or the United States.

4 (b) *Urban renewal investment corporations.* Obligations of an urban renewal
5 investment corporation organized under the laws of this state or of the United States.

6 (c) *Certain bank insurance companies.* An equity interest in an insurance
7 company or an insurance holding company organized to provide insurance for
8 universal banks and for persons affiliated with universal banks, solely to the extent
9 that this ownership is a prerequisite to obtaining directors' and officers' insurance
10 or blanket bond insurance for the universal bank through the company.

11 (d) *Certain remote service unit corporations.* Shares of stock, whether
12 purchased or otherwise acquired, in a corporation acquiring, placing and operating
13 remote service units under s. 214.04 (21) or 215.13 (46) or bank communications
14 terminals under s. 221.0303 (2).

15 (e) *Service corporations.* Equity or debt securities or instruments of a service
16 corporation subsidiary of the universal bank.

17 (f) *Federal funds.* Advances of federal funds.

18 (g) *Certain risk management financial products.* With the prior written
19 approval of the division, financial futures transactions, financial options
20 transactions, forward commitments or other financial products for the purpose of
21 reducing, hedging or otherwise managing its interest rate risk exposure.

22 (h) *Certain fiduciaries.* A subsidiary organized to exercise corporate fiduciary
23 powers under ch. 112.

24 (i) *Agricultural credit corporations.* An agricultural credit corporation. Unless
25 a universal bank owns at least 80% of the stock of the agricultural credit corporation,

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1 a universal bank may not invest more than 20% of the universal bank's capital in the
2 agricultural credit corporation.

3 (j) *Deposit accounts and insured obligations.* Deposit accounts or insured
4 obligations of any financial institution, the accounts of which are insured by a deposit
5 insurance corporation.

6 (k) *Certain federal obligations.* Obligations of, or obligations that are fully
7 guaranteed by, the United States and stocks or obligations of any federal reserve
8 bank, federal home loan bank, the Student Loan Marketing Association, the
9 Government National Mortgage Association, the Federal National Mortgage
10 Association, the Federal Home Loan Mortgage Corporation or the Federal Deposit
11 Insurance Corporation.

12 (L) *Other investments.* Any other investment authorized by the division.

13 **(8) INVESTMENTS IN OTHER FINANCIAL INSTITUTIONS.** In addition to the authority
14 granted under ss. 222.0307 and 222.0409, and subject to the limitations of sub. (2),
15 a universal bank may invest in other financial institutions.

16 **(9) INVESTMENTS THROUGH SUBSIDIARIES.** A universal bank may make
17 investments under this section, directly or indirectly through a subsidiary, unless
18 the division determines that an investment shall be made through a subsidiary with
19 appropriate safeguards to limit the risk exposure of the universal bank.

20 **222.0407 Universal bank purchase of its own stock. (1) IN GENERAL.** A
21 universal bank may hold or purchase not more than 10% of its capital stock, notes
22 or debentures, except as provided in sub. (2) or (3).

23 **(2) DIVISION APPROVAL.** A universal bank may hold or purchase more than 10%
24 of its capital stock, notes or debentures, if approved by the division.

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1 **(3) ADDITIONAL AUTHORITY.** A universal bank may hold or purchase more than
2 10% of its capital stock, notes or debentures if the purchase is necessary to prevent
3 loss upon a debt previously contracted in good faith. Stock, notes or debentures held
4 or purchased under this subsection may not be held by the universal bank for more
5 than 6 months if the stock, notes or debentures can be sold for the amount of the claim
6 of the universal bank against the holder of the debt previously contracted. The
7 universal bank shall either sell the stock, notes or debentures within 12 months of
8 acquisition under this subsection or shall cancel the stock, notes or debentures.
9 Cancellation of the stock, notes or debentures reduces the amount of the universal
10 bank's capital stock, notes or debentures. If the reduction reduces the universal
11 bank's capital below the minimum level required by the division, the universal bank
12 shall increase its capital to the amount required by the division.

13 **(4) LOANS SECURED BY CAPITAL, SURPLUS OR DEPOSITS.** A universal bank may not
14 loan any part of its capital, surplus or deposits on its own capital stock, notes or
15 debentures as collateral security, except that a universal bank may make a loan
16 secured by its own capital stock, notes or debentures to the same extent that the
17 universal bank may make a loan secured by the capital stock, notes and debentures
18 of a holding company for the universal bank.

19 **222.0409 Stock in bank-owned banks.** With the approval of the division,
20 a universal bank may acquire and hold stock in one or more banks chartered under
21 s. 221.1202 or national banks chartered under 12 USC 27 (b) or in one or more
22 holding companies wholly owning such a bank. Aggregate investments under this
23 section may not exceed 10% of the universal bank's capital.

24 **222.0411 General deposit powers. (1) IN GENERAL.** A universal bank may
25 set eligibility requirements for, and establish the types and terms of, deposits that

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1 the universal bank solicits and accepts. The terms set under this subsection may
2 include minimum and maximum amounts that the universal bank may accept and
3 the frequency and computation method of paying interest.

4 **(2) PLEDGE OF SECURITY FOR DEPOSITS.** Subject to the limitations of s. 221.0324
5 that are applicable to banks, a universal bank may pledge its assets as security for
6 deposits.

7 **(3) SECURITIZATION OF ASSETS.** With the approval of the division, a universal
8 bank may securitize its assets for sale to the public. The division may establish
9 procedures governing the exercise of authority granted under this subsection.

10 **(4) SAFE DEPOSIT POWERS.** A universal bank may take and receive, from any
11 individual or corporation for safekeeping and storage, gold and silver plate, jewelry,
12 money, stocks, securities, and other valuables or personal property; and rent out the
13 use of safes or other receptacles upon its premises upon such compensation as may
14 be agreed upon. A universal bank has a lien for its charges on any property taken
15 or received by it for safekeeping. If the lien is not paid within 2 years from the date
16 the lien accrues, or if property is not called for by the person depositing the property,
17 or by his or her representative or assignee, within 2 years from the date the lien
18 accrues, the universal bank may sell the property at public auction. A universal bank
19 shall provide the same notice for a sale under this subsection that is required by law
20 for sales of personal property on execution. After retaining from the proceeds of the
21 sale all of the liens and charges due the bank and the reasonable expenses of the sale,
22 the universal bank shall pay the balance to the person depositing the property, or to
23 his or her representative or assignee.

24 **222.0413 Other service and incidental activity powers. (1) NECESSARY**
25 **OR CONVENIENT POWERS.** Unless otherwise prohibited or limited by this chapter, a

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1 universal bank may exercise all powers necessary or convenient to effect the
2 purposes for which the universal bank is organized or to further the businesses in
3 which the universal bank is lawfully engaged.

4 **(2) REASONABLY RELATED POWERS.** (a) Subject to any applicable state or federal
5 regulatory or licensing requirements, a universal bank may engage, directly or
6 indirectly through a subsidiary, in activities reasonably related or incident to the
7 purposes of the universal bank. Activities reasonably related or incident to the
8 purposes of the universal bank are those activities that are part of the business of
9 financial institutions, or closely related to the business of financial institutions, or
10 convenient and useful to the business of financial institutions, or reasonably related
11 or incident to the operation of financial institutions or are financial in nature.
12 Activities that are reasonably related or incident to the purposes of a universal bank
13 include the following:

- 14 1. Business and professional services.
- 15 2. Data processing.
- 16 3. Courier and messenger services.
- 17 4. Credit-related activities.
- 18 5. Consumer services.
- 19 6. Real estate-related services, including real estate brokerage services.
- 20 7. Insurance and related services, other than insurance underwriting.
- 21 8. Securities brokerage.
- 22 9. Investment advice.
- 23 10. Securities and bond underwriting.
- 24 11. Mutual fund activities.
- 25 12. Financial consulting.

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1 13. Tax planning and preparation.

2 14. Community development and charitable activities.

3 15. Debt cancellation contracts.

4 16. Any activities that are reasonably related or incident to activities under
5 subds. 1. to 15., as determined by rule of the division under par. (b).

6 (b) An activity that is authorized by statute or regulation for financial
7 institutions to engage in as of the effective date of this paragraph [revisor inserts
8 date], is an activity that is reasonably related to or incident to the purposes of a
9 universal bank. An activity permitted under the Bank Holding Company Act is an
10 activity that is reasonably related to or incident to the purposes of a universal bank.
11 The division may, by rule, expand the list of activities under par. (a) 1. to 15. that are
12 reasonably related or incident to the purposes of a universal bank and, by rule, may
13 establish which activities are reasonably related or incident to the activities under
14 par. (a) 1. to 15. Any activity approved by rule of the division under this paragraph
15 shall be authorized for all universal banks.

16 **(3) NOTICE REQUIREMENT.** A universal bank shall give 60 days' prior written
17 notice to the division of the universal bank's intention to engage in an activity under
18 this section.

19 **(4) STANDARDS FOR DENIAL.** The division may deny the authority of a universal
20 bank to engage in an activity under this section, other than those activities described
21 in sub. (2) (a) 1. to 15., if the division determines that the activity is not an activity
22 reasonably related or incident to the purposes of a universal bank. The division may
23 deny the authority of a universal bank to engage in an activity under this section if
24 the division determines that the universal bank is not well-capitalized, that the

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1 universal bank is the subject of an enforcement action or that the universal bank
2 does not have satisfactory management expertise for the proposed activity.

3 (5) INSURANCE INTERMEDIATION. A universal bank, or an officer or salaried
4 employe of a universal bank, may obtain a license as an insurance intermediary, if
5 otherwise qualified. A universal bank may not, directly or indirectly through a
6 subsidiary, engage in the business of underwriting insurance.

7 (6) OTHER ACTIVITIES APPROVED BY THE DIVISION. A universal bank may engage
8 in any other activity that is approved by rule of the division.

9 (7) ACTIVITIES PROVIDED THROUGH A SUBSIDIARY. A universal bank may engage
10 in an activity under this section, directly or indirectly through a subsidiary, unless
11 the division determines that the activity must be conducted through a subsidiary
12 with appropriate safeguards to limit the risk exposure of the universal bank.

13 (8) LIMITATIONS ON INVESTMENTS THROUGH SUBSIDIARIES. The amount of the
14 investment in any one subsidiary that engages in an activity under this section may
15 not exceed 20% of capital or, if approved by the division, a higher percentage
16 authorized by the division. The aggregate investment in all subsidiaries that engage
17 in an activity under this subsection may not exceed 50% of capital or, if approved by
18 the division, a higher percentage authorized by the division.

19 (9) OWNERSHIP OF SUBSIDIARIES. A subsidiary that engages in an activity under
20 this section may be owned jointly, with one or more other financial institutions,
21 individuals or entities.

22 **222.0415 Trust powers.** Subject to rules of the division, a universal bank may
23 exercise trust powers in accordance with s. 221.0316.

24 **SECTION 2t.** 227.245 of the statutes is created to read:

ENGROSSED ASSEMBLY BILL 563**SECTION 2t**

1 **227.245 Permanent rules; exemptions. (1)** PROMULGATION OF UNIVERSAL
2 BANKING RULES. Except as provided in subs. (2) and (3), the division of banking may
3 promulgate a rule under s. 222.0413 (2) (b) without complying with the notice,
4 hearing and publication procedures under this chapter.

5 **(2) FILING AND PUBLICATION.** The division of banking shall file a rule described
6 under sub. (1) as provided in s. 227.20. At the time that the rule is filed, the division
7 of banking shall mail a copy of the rule to the chief clerk of each house and to each
8 member of the legislature, shall publish in the official state newspaper a class 1
9 notice under ch. 985 containing a copy of the rule and shall take any other step it
10 considers feasible to make the rule known to persons who will be affected by the rule.

11 **(3) EFFECTIVE DATE.** A rule described under sub. (1) takes effect as provided
12 under s. 227.22.

13 **SECTION 3. Nonstatutory provisions.**

14 (1) Except as otherwise provided in this subsection, using the procedure under
15 section 227.24 of the statutes, the division of banking may promulgate rules
16 authorized under chapter 222 of the statutes, as created by this act, for the period
17 before permanent rules become effective, but not to exceed the period authorized
18 under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24
19 (1) (a) and (2) (b) of the statutes, the division of banking need not provide evidence
20 of the necessity of preservation of the public peace, health, safety or welfare in
21 promulgating rules under this subsection. This subsection does not apply to the
22 promulgation of rules under section 222.0413 (2) (b) of the statutes, as created by this
23 act.

24 **SECTION 4m. Effective dates.** This act takes effect on the first day of the 3rd
25 month beginning after publication, except as follows:

