DORL Department of Regulation and Licensing
DOT . Department of Transportation
DPI . . Department of Public Instruction
DVA . Department of Veterans Affairs
DWD Department of Workforce Development
JCF . . Joint Committee on Finance
OCI . . Office of the Commissioner of Insurance
PSC . Public Service Commission
UW . . University of Wisconsin
WHEDA ..... Wisconsin Housing and Economic Development Authority
WHEFA ..... Wisconsin Health and Educational Facilities Authority

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*** ANALYSIS FROM -0392/3 ***

AGRICULTURE

AGRICULTURAL PRODUCER SECURITY

This bill changes the laws concerning milk contractors, grain dealers, grain warehouse keepers, and vegetable contractors (contractors). A milk contractor is a person who buys milk from milk producers or who markets milk on behalf of producers. A grain dealer is a person who buys grain from grain producers or who markets grain on behalf of producers. A grain warehouse keeper is a person who operates a warehouse in which the person stores grain that belongs to someone else. A vegetable contractor is a person who buys vegetables from vegetable producers for use in food processing or who markets processing vegetables on behalf of producers.

Under current law, this state requires certain contractors to post security with DATCP to provide payment in case the contractors default on payments to producers. This bill establishes a segregated fund, called the agricultural producer security fund (the fund), into which certain contractors must pay, and out of which DATCP provides payment to producers when those contractors default on payments to producers. Under the bill, some contractors are still required to post security with DATCP. The statutory changes concerning agricultural producer security take effect during 2002, on February 1 for vegetable contractors, on May 1 for milk contractors, and on September 1 for grain dealers and warehouse keepers.

Milk contractors

Under current law, persons who operate dairy plants generally must be licensed by DATCP. There is no separate licensing requirement for milk contractors. Under current law, DATCP may not issue a license for a dairy plant unless the applicant satisfies DATCP that the applicant's financial condition is such as to reasonably ensure prompt payment to milk producers. ~~Dairy plant operators are required to submit quarterly financial statements to DATCP.~~ If a dairy plant operator does not meet minimum financial standards, the operator must file a bond or other security with DATCP or must provide for a trustee who receives payment for all dairy products produced by the dairy plant and pays producers.

Under this bill, DATCP issues licenses to milk contractors. A milk contractor must obtain a license if the contractor receives milk in this state that is owned by producers, collects milk from a dairy farm in another state for direct shipment to a dairy plant that the contractor operates in this state, or acquires the right to market milk owned by producers that is produced in this state. A milk contractor may volunteer to be licensed if the milk contractor receives, outside of this state, direct shipments of milk from dairy farms in this state. As under current law, a milk contractor that operates a dairy plant must obtain a dairy plant license.

Under this bill, a milk contractor must file an annual financial statement with DATCP before the milk contractor is first licensed, unless the milk contractor procured less than $1,500,000 in milk from producers in its most recent fiscal year. A licensed milk contractor must file annual financial statements during each license year, unless the milk contractor contributes to the fund and either buys less than $1,500,000 in milk from producers each year or does not buy milk from producers but only markets milk. A licensed milk contractor that does not contribute to the fund must file quarterly financial statements.

A licensed milk contractor that files financial statements which show that the milk contractor does not meet minimum financial standards, or that does not file annual and quarterly financial statements, must contribute to the fund, unless the contractor is disqualified from the fund. If a milk contractor that contributes to the fund defaults on payments to producers, DATCP may pay default claims from the fund.

A milk contractor that is required to file security when first licensed (as explained below) is disqualified from the fund until DATCP releases the security. A milk contractor is disqualified from the fund if DATCP denies, suspends, or revokes

the contractor's license. DATCP may also disqualify a milk contractor from the fund for failing to pay required fund assessments, ~~failing to file required financial statements, or failing to provide reimbursement for payments made by DATCP to claimants because of the contractor's default.~~ If DATCP disqualifies a milk contractor from the fund and the milk contractor files a financial statement that shows that the contractor does not meet minimum financial standards, the milk contractor may not act as a milk contractor in this state.

The bill establishes the formula for determining the amount of the assessments which must be paid by a milk contractor that contributes to the fund, except that DATCP may, by rule, provide for a different formula. The assessments are based on ~~the ratio of the value of current assets to the value of current liabilities,~~ the amount spent to procure milk from producers, ~~the ratio of debt to equity,~~ and the number of consecutive years that the contractor has contributed to the fund.

A milk contractor must file security with DATCP if, when DATCP first licenses the contractor, the contractor's financial statement shows negative equity and the contractor procured more than $1,500,000 in milk from producers in its most recent fiscal year. ~~The bill specifies the kinds of security that DATCP may accept.~~ A dairy plant trusteeship may not be used to provide security after January 1, 2003. DATCP may release security filed by a milk contractor if the contractor procures no more than $1,500,000 in milk from producers in two consecutive years or files annual financial statements that show positive equity for two consecutive years.

This bill requires a milk contractor to maintain insurance that covers all milk and milk products in the possession of the milk contractor.

As under current law, the bill requires a milk contractor to pay a monthly fee to DATCP, based on the amount of milk that the milk contractor procures. Under the bill, if the balance in the fund contributed by milk contractors exceeds $4,000,000 on any February 28, DATCP must credit 50% of the excess against these monthly fees ~~in proportion to the total amount of fees that each milk contractor has paid during the preceding four license years.~~

Grain dealers

Under current law, most grain dealers are required to be licensed, ~~and most grain dealers that are required to be licensed must file financial statements. If the financial statements show that~~ if a grain dealer does not meet minimum financial standards, the grain dealer is required to file security with DATCP.

Under this bill, a grain dealer must obtain a license from DATCP unless the dealer pays cash on delivery for all producer–owned grain that the dealer procures or the dealer buys grain solely for the dealer's own use as feed or seed and spends less than $400,000 per license year for that grain. The license fees vary based on the amount that the grain dealer pays for grain during a license year and the number of trucks used to haul grain. Under the bill, if the balance in the fund contributed by grain dealers exceeds $2,000,000 on any June 30, DATCP must credit 50% of the excess against license fees ~~in proportion to the total amount of fees that each grain dealer has paid during the preceding four license years~~.

The bill requires a grain dealer to file an annual financial statement with DATCP before the dealer is first licensed under this bill if the grain dealer's license application shows more than $500,000 in grain payments during the dealer's most recent fiscal year or shows any obligations under deferred payment contracts. A deferred payment contract is a contract under which a grain dealer takes custody of grain more than seven days before paying for the grain in full. A licensed grain dealer must file an annual financial statement during each license year if the grain dealer makes more than $500,000 in grain payments during the dealer's most recent fiscal year, unless the dealer contributes to the fund and does not buy grain from producers but only markets grain, or if the dealer incurs any obligations under deferred payment contracts.

A grain dealer that is required to be licensed must contribute to the fund, unless the dealer is disqualified. If a grain dealer that contributes to the fund defaults on payments to producers, DATCP may pay default claims from the fund.

A grain dealer that is required to file security (as explained below) with DATCP when the grain dealer is first licensed under this bill because the dealer has negative equity is disqualified from the fund until DATCP releases the security. A grain dealer is disqualified from the fund, and required to pay cash on delivery for grain, if DATCP denies, suspends, or revokes the dealer's license, if DATCP disqualifies the dealer for cause, ~~or if the dealer fails to provide reimbursement for payments made by DATCP to claimants because of the dealer's default~~.

The bill establishes the formula for determining the amount of the assessments which must be paid by a grain dealer that contributes to the fund, except that DATCP may, by rule, provide for a different formula. The assessments are based on ~~the ratio of the value of current assets to the value of current liabilities~~, the amount spent to procure grain from producers, ~~the ratio of debt to equity~~, the amount incurred under

deferred payment contracts, and the number of consecutive years that the dealer has contributed to the fund.

A grain dealer must file security with DATCP if, when DATCP first licenses the dealer under this bill, the grain dealer reports more than $500,000 in grain payments during its most recent fiscal year and the dealer's annual financial statement shows negative equity. A grain dealer that incurs obligations under deferred payment contracts ~~must~~ also file security with DATCP ~~unless the dealer has a debt to equity ratio that satisfies requirements in the bill. The bill specifies the kinds of security that DATCP may accept.~~ DATCP may release security required because the grain dealer had negative equity when first licensed if the dealer makes no more than $500,000 in grain payments in two consecutive years or files annual financial statements that show positive equity for two consecutive years. DATCP may release security required because a grain dealer uses deferred payment contracts if the dealer stops using deferred payment contracts or satisfies debt to equity ratio requirements for two consecutive years.

This bill requires a grain dealer to maintain insurance to cover all grain in the custody of the grain dealer.

Under the bill, grain dealer

Grain warehouse keepers

Current law requires a grain warehouse keeper that holds 50,000 or more bushels of grain for others at any time to obtain a license from DATCP. ~~A warehouse keeper that is required to be licensed must annually file a financial statement with DATCP.~~ Under current law, a grain warehouse keeper that does not satisfy minimum financial standards must file security with DATCP.

Under this bill, as under current law, a grain warehouse keeper that holds 50,000 or more bushels of grain for others at any time must obtain a license from DATCP. ~~A warehouse keeper that has grain warehouses with a combined capacity of more than 50,000 bushels must obtain a license, unless the warehouse keeper proves to DATCP that the warehouse keeper holds no more than 50,000 bushels of grain for others at any time.~~ The bill specifies annual grain warehouse keeper fees that are based on combined warehouse capacity. Under the bill, if the balance in the fund contributed by grain warehouse keepers exceeds $300,000 on any June 30, DATCP must credit 12.5% of the excess against license fees ~~in proportion to the total amount of fees that each warehouse keeper has paid during the preceding four license years.~~

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The bill requires a grain warehouse keeper that operates warehouses with a combined capacity of more than 300,000 bushels to file a financial statement before the warehouse keeper is first licensed under this bill and during each license year.

A licensed grain warehouse keeper is required to contribute to the fund, unless the warehouse keeper is disqualified. If a grain warehouse keeper that contributes to the fund fails to deliver grain to depositors upon demand, DATCP may pay default claims from the fund.

A grain warehouse keeper that is required to file security (as explained below) with DATCP when the warehouse keeper is first licensed under this bill is disqualified from the fund until DATCP releases the security. A grain warehouse keeper is also disqualified from the fund if DATCP denies, suspends, or revokes the warehouse keeper's license.

The bill establishes the formula for determining the amount of the assessments which must be paid by a grain warehouse keeper that contributes to the fund, except that DATCP may, by rule, provide for a different formula. The assessments are based on ~~the ratio of the value of current assets to the value of current liabilities,~~ the capacity of the warehouses, ~~the ratio of debt to equity,~~ and the number of consecutive years that the warehouse keeper has contributed to the fund.

A grain warehouse keeper must file security with DATCP if, when DATCP first licenses the warehouse keeper under this bill, the warehouse keeper operates grain warehouses with a combined capacity of more than 300,000 bushels and the warehouse keeper's annual financial statement shows negative equity. ~~The bill specifies the kinds of security that DATCP may accept.~~ DATCP may release security filed by a grain warehouse keeper if the warehouse keeper has a warehouse capacity of less than 300,000 bushels for at least two consecutive years or files annual financial statements that show positive equity for two consecutive years.

Vegetable contractors

Current law requires a vegetable contractor to obtain a registration certificate from DATCP. A vegetable contractor that does not meet minimum financial standards must file security with DATCP unless the contractor makes payment on delivery for all vegetables obtained from producers or the contractor is a producer–owned cooperative doing business solely ~~on a pooling basis~~ with its producer–owners.

This bill requires a vegetable contractor to obtain a license from DATCP. ~~The license fees are based on the amount that a vegetable contractor owed to vegetable~~

producers over the course of the contractor's most recent fiscal year. Under the bill, if the balance in the fund contributed by vegetable contractors exceeds $1,000,000 on any November 30, DATCP must credit 50% of the excess against license fees in proportion to the total amount of fees that each vegetable contractor has paid during the preceding four license years.

The bill requires a vegetable contractor that annually incurs more than $500,000 in obligations under contracts for the procurement of processing vegetables to file a financial statement before the contractor is first licensed under this bill and during each license year, unless the contractor makes payment on delivery for all vegetables obtained from producers or the contractor is a producer–owned cooperative that procures vegetables only from its producer owners.

A licensed vegetable contractor must contribute to the fund unless the contractor makes payment on delivery for all vegetables obtained from producers, the contractor is a producer–owned cooperative that procures vegetables only from its producer owners, or the contractor is disqualified. If a vegetable contractor that contributes to the fund defaults on payments to producers, DATCP may pay default claims from the fund.

A vegetable contractor that is required to file security (as explained below) with DATCP when the vegetable contractor is first licensed under this bill because the contractor has negative equity is disqualified from the fund until DATCP releases the security. A vegetable contractor is disqualified from the fund if DATCP denies, suspends, or revokes the contractor's license. A vegetable contractor is disqualified from the fund, and required to pay cash on delivery for all vegetables received from producers, if DATCP issues a written notice disqualifying the contractor for cause, including failure to pay fund assessments when due.

The bill establishes the formula for determining the amount of the assessments which must be paid by a vegetable contractor that contributes to the fund, except that DATCP may, by rule, provide for a different formula. The assessments are based on ~~the ratio of the value of current assets to the value of current liabilities,~~ the amount spent to procure vegetables from producers, ~~the ratio of debt to equity,~~ the amount incurred under deferred payment contracts, and the number of consecutive years that the contractor has contributed to the fund.

A vegetable contractor must file security with DATCP if, when DATCP first licenses the contractor under this bill, the contractor reports more than $1,000,000 in obligations under contracts for the procurement of processing vegetables during

its most recent fiscal year and the contractor's annual financial statement shows negative equity. A vegetable contractor that incurs obligations under deferred payment contracts must also file security with DATCP, unless the contractor satisfies financial requirements in the bill, makes payment on delivery for all vegetables obtained from producers, or is a producer–owned cooperative that procures vegetables only from its producer owner. The bill specifies the kinds of security that DATCP may accept. DATCP may release security required because the vegetable contractor had negative equity when first licensed if the contractor makes no more than $1,000,000 in vegetable procurement obligations in two consecutive years or files annual financial statements that show positive equity for two consecutive years. DATCP may release security required because a vegetable contractor uses deferred payment contracts if the contractor stops using deferred payment contracts or satisfies financial requirements for two consecutive years.

This bill requires a vegetable contractor to maintain insurance to cover all vegetables in the custody of the contractor, unless the vegetable contractor pays cash on delivery for all vegetables or the contractor is a producer–owned cooperative that procures vegetables only from its producer owners.

Under this bill, vegetable contractor [Insert from page 10]

Recovery proceedings and administration

Under this bill, when contractors who are licensed, or required to be licensed, fail to make payments when due or when grain warehouse keepers fail to return stored grain upon demand, producers or their agents may file default claims with DATCP. DATCP may conduct a recovery proceeding in response to default claims filed against a contractor and may invite others who may have default claims against the same contractor to file claims. After DATCP audits the claims and determines the amount of each claim to allow, DATCP issues a proposed decision. If a contractor or claimant objects to the proposed decision, DATCP must hold a public hearing and then issue a final decision affirming or modifying the proposed decision.

The bill specifies payment amounts for each claim against a contractor that was contributing to the fund when the default occurred. For a claim against a milk contractor or grain dealer, the payment amount is 90% of the first $20,000 allowed, 85% of the next $20,000 allowed, 80% of the next $20,000 allowed, and 75% of any amount allowed in excess of $60,000. For a claim against a grain warehouse keeper, the payment amount is 100% of the first $100,000 allowed. For a claim against a vegetable contractor, the payment amount is 90% of the first $40,000 allowed, 85% of the next $40,000 allowed, 80% of the next $40,000 allowed, and 75% of any amount

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allowed in excess of $120,000. If a contractor was not a contributing contractor when the default occurred but had posted security with DATCP, DATCP uses the security proceeds to pay the full amount of the allowed claims, except that, as under current law, if the security is not adequate to pay the full amount of the allowed claims, DATCP pays the claimants on a prorated basis. A claimant that does not receive full payment may sue the contractor for the balance of the allowed claim.

The bill requires DATCP to obtain three surety bonds, called industry bonds. One bond is to secure payments of claims against contributing milk contractors, one to secure payments of claims against contributing grain dealers and warehouse keepers, and one to secure payment of claims against contributing vegetable contractors. In addition the bill requires DATCP to obtain a blanket surety bond. The bill requires DATCP to make a demand against the appropriate industry bond if payments of claims against contributing contractors in that industry exceed a threshold specified in the bill. The bill requires DATCP to make a demand against the blanket bond if claims against contributing contractors in an industry exceed the amount available under the industry bond.

The bill authorizes DATCP to demand that a defaulting contractor reimburse DATCP for any claim amounts that were paid from the fund because of the contractor's default. The bill also authorizes a person who issues an industry bond or the blanket bond to require a defaulting contractor to reimburse the amounts that the person paid out because of the contractor's default.

Under this bill, $2,000,000 is transferred from the agrichemical management fund to the agricultural producer security fund on January 1, 2002, as a start–up loan. The bill requires DATCP to repay the loan, plus interest, and to complete the repayment no later than July 1, 2006.

The bill authorizes DATCP to promulgate rules that modify license fees and fund assessments ~~after consulting with the agricultural producer security council, which is created in this bill.~~ The bill requires DATCP to modify assessments to keep the balance in the fund within a specified range. The bill authorizes DATCP to ~~issue orders to require a contractor to remedy a violation of the producer security laws and authorizes DATCP to~~ deny, suspend, revoke, or impose conditions on a contractor's license for cause.

***** ANALYSIS FROM –1753/2 *****

insert comma → subhead Other agriculture

~~AGRICULTURE~~

Under current law, ~~one of the eligibility requirements~~ for a person to claim the farmland preservation tax credit is ~~that~~ the land to which the claim relates must be subject either to a farmland preservation agreement or to an exclusive agricultural use zoning ordinance ~~that is certified by the land and water conservation board~~. A farmland preservation agreement is between the landowner and DATCP. The agreement commits the owner to keep the land in agricultural use for the duration of the agreement, up to 25 years, although the law allows DATCP to release land from an agreement under certain circumstances. Under current law, in some of the circumstances under which DATCP may release land from a farmland preservation agreement, or if land is rezoned from exclusive agricultural use, DATCP is required to file a lien against the land in the amount of the farmland preservation credit received by the owner during the preceding ten years.

This bill eliminates the requirement that DATCP file a lien against land that is released from a farmland preservation agreement or that is rezoned from exclusive agricultural use. Under this bill, DATCP may not release land from a farmland preservation agreement until the owner pays $50 per acre to this state, except in certain ~~cases~~ situations such as the death or disability of the owner. Also under this bill, rezoning of land from exclusive agricultural zoning ~~must be conditioned on payment of $50 per acre of land that is rezoned. Payment is made to the local governmental unit that grants the rezoning, and~~ the local governmental unit forwards the payment to the state.

a local governmental unit must require a payment of $50 per acre as a condition of

***** ANALYSIS FROM –0405/1 *****

~~AGRICULTURE~~

This bill expands DATCP's authority relating to pests. ~~The statutory definition of "pest" is broad and includes any living organism classified as a pest by DATCP by rule. By rule, DATCP has classified the following as pests when present under circumstances where they may be injurious to persons, property, or the environment:~~

~~1. Animals other than humans.~~

~~2. Plants or fungi growing where not wanted.~~

~~3. Microscopic organisms, other than those on or in living animals.~~

Under current law, on agricultural lands and agricultural business premises, if DATCP finds that plants or other pest–harboring materials are so infested with injurious pests as to constitute a hazard to plant or animal life in this state, DATCP may order the property owner to treat the premises or treat or destroy the infested

plants or other material. If the property owner fails to comply with the order, DATCP may treat the premises or treat or destroy the infested plants or other material. This bill ~~changes the law so that~~ DATCP's authority regarding treatment of infested premises and treatment or destruction of infested plants and other material ~~is not limited~~ to agricultural lands and agricultural business premises.

***** ANALYSIS FROM –0393/1 *****

~~AGRICULTURE~~

Under current law, DATCP administers a soil and water resource management program under which DATCP provides grants to counties to help the counties fund ~~activities~~ to reduce soil erosion and water pollution, including cost–sharing grants from counties to land owners. ~~The soil and water resource management program is funded in part with general obligation bonding.~~ This bill increases the authorized general obligation bonding authority for the soil and water resource management program by $7,000,000.

***** ANALYSIS FROM –1615/3 *****

~~AGRICULTURE~~

Under current law, DATCP makes agricultural research and development grants to fund demonstration projects, feasibility analyses, and applied research on new or alternative technologies and practices that will stimulate agricultural development.

This bill authorizes DATCP to make grants and provide technical assistance to support preliminary research and investigations on potential business enterprises that may increase the value of raw agricultural commodities. The bill provides Indian gaming receipts for the new grant program and for the existing agricultural research and development grant program.

***** ANALYSIS FROM –0406/3 *****

~~AGRICULTURE~~

Under current law, a person is subject to a fine or imprisonment if the person violates certain laws enforced by DATCP including laws relating to the manufacture, distribution, and sale of commercial feed, laws relating to the safety of certain consumer products, and laws ~~constituting the federal~~ Hazardous Substances ~~Act~~. This bill provides that a person who violates any of these laws may ~~also~~ be subject to a forfeiture.

~~Current law also provides that DOJ must furnish all legal services required by DATCP in the enforcement of certain laws including laws regulating various trade~~

practices. This bill provides that, in addition to the laws specified under current law, DOJ must also furnish legal services required by DATCP in the enforcement of the Hazardous Substances Act and laws relating to the safety of certain consumer products.

***** ANALYSIS FROM –1462/3 *****

~~AGRICULTURE~~

Current law provides for a World Dairy Center Authority. The duties of the authority include establishing a center for the development of dairying in the United States and the world. This bill eliminates the World Dairy Center Authority.

***** ANALYSIS FROM –1856/6 *****

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

Under the bill, the department of commerce (department) must designate up to 20 areas in the state as technology zones. The department may certify any new or expanding high–technology business located in a technology zone for a tax credit, based on the amount of real and personal property taxes that the business paid in the taxable year; the amount of sales and use taxes that the business paid in the taxable year; and the amount of income and franchise taxes that the business paid in the taxable year. A business certified by the department may claim the tax credit for three years, or for up to five years if the business experiences growth to an extent determined by the department, but not more than $5,000,000 in tax credits may be claimed in a technology zone.

***** ANALYSIS FROM –0667/5 *****

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

The department of commerce (department) administers three types of development zone programs: 1) the development zone program; 2) the development opportunity zone program; and 3) the enterprise development zone program. Generally, after an area is designated as one of the three types of development zones, a person or corporation that conducts or that intends to conduct economic activity in the designated zone is eligible for certain tax credits, which are based on the creation or retention of jobs, on expenses incurred

to remediate environmental problems, and on significant capital investment to retain jobs.

The bill designates an area in the city of Milwaukee as a development opportunity zone and authorizes up to $4,700,000 to be claimed in tax credits for economic activity in the zone. The bill also provides that [illegible] a person conducting economic activity in the zone that would not otherwise be able to claim tax credits may be certified for tax credits if the economic activity is instrumental in enabling another person to conduct economic activity in the zone that would not have occurred but for the first person's involvement, the department determines that the person being certified for tax credits will pass the benefit of the tax credits through to the other person conducting the economic activity in the zone, and the other person conducting economic activity in the zone does not claim tax credits for the economic activity.

In addition, the bill creates an income tax and franchise tax credit for a business that is certified to receive tax credits in the development opportunity zone in the city of Milwaukee. The credit is equal to 3% of the following: 1) the purchase price of tangible personal property that is used for at least 50% of its use for the business at a location in a development zone; and 2) the amount expended to acquire, construct, rehabilitate, remodel, or repair real property in a development zone. A business may claim the credit only to offset taxes that are imposed on income that is attributable to the operations of the business in a development zone.

Partnerships, limited liability companies, and tax–option corporations compute the credit but pass it on to the partners, members, and shareholders in proportion to their ownership interests. If a business claims a credit that exceeds its tax liability, the business will not receive a refund check, but the business may carry forward any remaining credit to subsequent taxable years.

***** ANALYSIS FROM –0641/1 *****

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT–

Under the community–based economic development programs in current law, the department of commerce (department) awards grants to political subdivisions (counties, cities, villages, and towns) and community–based organizations for various purposes related to promoting economic development at the community level. The bill eliminates these programs and creates a new economy for Wisconsin (NEW) program. Under NEW, the department may make grants, not exceeding

$100,000 each, to community–based business incubators and nonprofit organizations that provide services to high–technology businesses or that promote entrepreneurship. Grant proceeds may be used only for assisting small businesses (businesses with fewer than 100 employees) in adopting new technologies in their operations, for assisting technology–based small businesses in activities that further technology transfer, or for assisting entrepreneurs in discovering business opportunities. The bill specifies the factors that the department must consider in awarding the grants and requires the department to develop a grant application, promulgate rules on how the grants will be administered, and enter into a written agreement with each grant recipient that requires the recipient to submit a report to the department that details how the grant proceeds were used.

Under current law, a corporation carrying on urban redevelopment activities is authorized to develop and operate a technology–based incubator and apply for a grant under a community–based economic development program administered by the department. The bill provides that such a corporation may instead develop and operate a community–based business incubator and apply for a grant under NEW. Another provision in current law provides that blight elimination and urban renewal projects include studying the feasibility of developing and operating a technology–based incubator and applying for a grant under a community–based economic development program administered by the department. The bill provides that blight elimination and urban renewal projects include, instead, developing and operating a community–based business incubator and applying for a grant under NEW.

***** COMMERCE** STOP HERE **50/6 *** ELOPMENT**

Under the gaming economic development grant and loan program in current law, the department of commerce (department) may make a grant for professional services, or a grant or loan for fixed asset financing, to an existing business in this state if the business has been negatively impacted by the existence of a casino and has a legitimate need for the grant or loan to improve profitability. Under the gaming economic diversification program in current law, the department may make a grant or loan to an existing business in this state for a project that will diversify the economy of a community. Each program is funded with Indian gaming revenue, out of an annual appropriation, which means that any amount appropriated for a fiscal

$100,000 each, to community–based business incubators and nonprofit organizations that provide services to high–technology businesses or that promote entrepreneurship. Grant proceeds may be used only for assisting small businesses (businesses with fewer than 100 employees) in adopting new technologies in their operations, for assisting technology–based small businesses in activities that further technology transfer, or for assisting entrepreneurs in discovering business opportunities. The bill specifies the factors that the department must consider in awarding the grants and requires the department to develop a grant application, promulgate rules on how the grants will be administered, and enter into a written agreement with each grant recipient that requires the recipient to submit a report to the department that details how the grant proceeds were used.

Under current law, a corporation carrying on urban redevelopment activities is authorized to develop and operate a technology–based incubator and apply for a grant under a community–based economic development program administered by the department. The bill provides that such a corporation may instead develop and operate a community–based business incubator and apply for a grant under NEW. Another provision in current law provides that blight elimination and urban renewal projects include studying the feasibility of developing and operating a technology–based incubator and applying for a grant under a community–based economic development program administered by the department. The bill provides that blight elimination and urban renewal projects include, instead, developing and operating a community–based business incubator and applying for a grant under NEW.

***** ANALYSIS FROM –0650/6 *****

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

Under the gaming economic development grant and loan program in current law, the department of commerce (department) may make a grant for professional services, or a grant or loan for fixed asset financing, to an existing business in this state if the business has been negatively impacted by the existence of a casino and has a legitimate need for the grant or loan to improve profitability. Under the gaming economic diversification program in current law, the department may make a grant or loan to an existing business in this state for a project that will diversify the economy of a community. Each program is funded with Indian gaming revenue out of an annual appropriation, which means that any amount appropriated for a fiscal

year but not spent or encumbered lapses to the general fund at the end of the fiscal year. In addition, loan repayments under each program are used for more grants and loans under the program and are paid out of an annual appropriation for each program.

Under the bill, start–up businesses, in addition to existing businesses, are eligible for the grants and loans under both programs. The bill adds remediating brownfields (which are abandoned, idle, or underused industrial or commercial facilities or sites that are adversely affected for expansion or redevelopment by actual or perceived environmental contamination) as a project purpose for which grants and loans may be awarded under the gaming economic diversification program and requires the department to consider whether a project will take place in a rural community when awarding grants and loans under that program.

The bill consolidates the two annual appropriations of Indian gaming revenue into one appropriation for both programs and changes that consolidated appropriation to a biennial appropriation, which means that amounts appropriated for either fiscal year of a biennium may be used in either fiscal year of the biennium and that any amount appropriated for either fiscal year of the biennium that is not spent or encumbered lapses to the general fund at the end of the biennium, rather than at the end of the fiscal year. The bill also consolidates the two annual loan repayment appropriations into one appropriation for both programs and changes that consolidated appropriation to a biennial appropriation. In addition, the bill authorizes the department to make a grant to the M7 Development Corporation for construction of a multipurpose center at Lincoln Park in the city of Milwaukee. The grant may not exceed $1,000,000, is paid out of the newly consolidated Indian gaming revenue appropriation for the gaming economic development and gaming economic diversification grant and loan programs, and may not be awarded unless the M7 Development Corporation obtains matching financing from the city of Milwaukee.

The bill also authorizes the department to make grants of up to $250,000 in each of fiscal years 2001–02 and 2002–03 to the Chippewa Valley Technical College for a health care education center. The department and the Chippewa Valley Technical College must enter into an agreement that specifies the uses for the grant proceeds and reporting and auditing requirements.

***** ANALYSIS FROM –0645/3 *****

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

Under current law, the department of commerce (department) administers the physician and health care provider loan assistance programs. Under the physician loan assistance program, the department may repay, over a three–year period, up to $50,000 in educational loans on behalf of a physician who specializes in family practice, general internal medicine, general pediatrics, obstetrics and gynecology, or psychiatry and who agrees to practice at least 32 hours per week for three years in a clinic in one or more eligible practice areas in this state. For purposes of the physician loan assistance program, an eligible practice area is an area with a shortage of primary care physicians that is in a primary care health professional shortage area as determined by the federal department of health and human services, an area with a shortage of psychiatrists (a mental health shortage area), an American Indian reservation, or trust lands of an American Indian tribe. Under the health care provider loan assistance program, the department may repay, over a three–year period, up to $25,000 in educational loans on behalf of a physician assistant, nurse–midwife, or nurse practitioner who agrees to practice at least 32 hours per week for three years in a clinic in one or more eligible practice areas in this state. For purposes of the health care provider loan assistance program, an eligible practice area is an area with a shortage of primary care physicians that is in a primary care health professional shortage area as determined by the federal department of health and human services, an American Indian reservation, or trust lands of an American Indian tribe.

The bill expands the physician loan assistance program to include dentists. Under the bill, the department may repay, over a three–year period, up to $50,000 in educational loans on behalf of a dentist who practices general or pediatric dentistry and who agrees to practice at least 32 hours per week for three years in a clinic in an area designated by the federal department of health and human services as having a shortage of dental professionals. A dentist participating in the program is subject to the same requirement as a physician to enter into a written agreement with the department, the same priority considerations as a physician if funding is not sufficient for all applicants, and the same penalty provisions as a physician for breaching the three–year practice agreement.

***** ANALYSIS FROM –1864/6 *****

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

Under current law, the department of commerce must provide grants, not exceeding $900,000, to the city of Milwaukee for a matching grant program administered by the Milwaukee Economic Development Corporation. Under that program, grants are provided to persons for remediation and economic redevelopment projects in the Menomonee valley. A person receiving a grant must provide matching funds for at least 50% of the cost of the project. Funding for the grants to the city of Milwaukee comes from Indian gaming revenue.

The bill requires the department of commerce to make grants in the 2001–03 fiscal biennium to the Milwaukee Economic Development Corporation for its matching grant program and to the Menomonee Valley Partners, Inc. A person receiving a grant from these grant proceeds must provide matching funds at least equal to the amount of the grant. Funding comes from the environmental fund, to which Indian gaming revenue is transferred to cover the grants. The proceeds of these grants must be used to support job creation and private sector implementation of the Menomonee valley land use plan.

*** ANALYSIS FROM –0878/2 ***

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

WHEDA administers a number of loan guarantee programs under which WHEDA guarantees repayment of a percentage of the outstanding principal amounts of loans made by private lenders to qualified borrowers for various business and agricultural purposes. Most of the loan guarantee programs are backed by funds in the Wisconsin development reserve fund, although guarantees under the job training loan guarantee program are backed by funds in the Wisconsin job training reserve fund and guarantees under the drinking water loan guarantee program are backed by funds in the Wisconsin drinking water reserve fund.

Each loan guarantee program has a limit on the total outstanding principal amount of all loans that WHEDA may guarantee under the program (guarantee limit). In that way, WHEDA may guarantee more loans under a program as the loans already guaranteed under that program are paid down. The bill eliminates the separate guarantee limit under each of the guarantee loan programs that are backed by the Wisconsin development reserve fund and establishes one overall guarantee limit of $62,000,000 for all programs backed by that reserve fund. Thus, as loans

guaranteed under a program that is backed by the Wisconsin development reserve fund are paid down, WHEDA may guarantee more loans under any of the programs that are backed by the Wisconsin development reserve fund and is not limited to guaranteeing more loans under the same program under which the loans are being paid down. In addition, WHEDA may request JCF to increase or decrease the overall guarantee limit under the Wisconsin development reserve fund. Under current law, WHEDA may request JCF to increase or decrease the guarantee limit under any individual guarantee loan program.

The bill also removes from the statutes the agricultural production drought assistance loan guarantee program. WHEDA may not guarantee loans under that program after June 30, 1989, and, since no loan guaranteed under the program may extend beyond five years after it was initially granted, no loans are currently outstanding under the program.

***** ANALYSIS FROM –0774/1 *****

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

WHEDA administers a number of loan guarantee programs under which WHEDA guarantees repayment of a percentage of the outstanding principal amounts of loans made by private lenders to qualified borrowers for various business and agricultural purposes. The guarantees are backed by funds in the Wisconsin development reserve fund (reserve fund). Under current law, WHEDA is required to ensure that the cash balance in the reserve fund is maintained at a ratio of $1 of reserve funding to $4.50 of outstanding principal that WHEDA may guarantee under all of its loan guarantee programs, except the cultural and architectural landmark loan guarantee program, under which WHEDA no longer guarantees new loans. The bill changes the ratio at which WHEDA must maintain the reserve fund to $1 of reserve funding to $5.50 of outstanding principal that WHEDA may guarantee under all of the programs guaranteed from the fund, except the cultural and architectural landmark loan guarantee program. The reserve funding ratio for that program remains at $1 of reserve funding to $4 of outstanding guaranteed principal.

***** ANALYSIS FROM –0880/5 *****

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

WHEDA administers a number of loan guarantee programs under which WHEDA guarantees repayment of a percentage of the outstanding principal amounts of loans made by private lenders to qualified borrowers for various business and agricultural purposes. Under the small business development loan guarantee program, WHEDA may guarantee repayment of up to the lesser of $200,000 or 80% of the principal of a loan made by a private lender to a small business (a business with 50 or fewer full–time employees) or the elected governing body of a federally recognized American Indian tribe or band in this state. The proceeds of a small business development loan may be used only for expenses associated with the expansion or acquisition of a business or with the start–up of a day care business. The bill adds to the eligible uses of a small business development loan expenses associated with the start–up of a small business in a vacant storefront in the downtown area of a rural community, which is defined in the bill as a city, town, or village with a population of less than 50,000.

***** ANALYSIS FROM –0782/P1 *****

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

The department of tourism (department) administers the heritage tourism program in current law. In each fiscal biennium, the department may, upon application, select up to two areas of the state to participate in the program, which entitles an area to assistance in assessing its potential for heritage tourism (tourism that is based on historical or prehistorical resources) and in developing and implementing a plan to increase such tourism. Also under the program, the department must award grants for promoting heritage tourism in the selected areas to the persons that applied on behalf of the areas. Only one grant may be awarded to an applicant in a fiscal year, and grants may be awarded to an applicant only in two fiscal years.

The bill provides that the two grants that may be awarded to an applicant on behalf of a selected area may be awarded only in the two fiscal years of the fiscal biennium in which the area was selected. The bill also provides that, after the fiscal biennium in which an area was selected, the department may award grants of up to $5,000 in a fiscal year to a nonprofit organization that is located in the area. A

nonprofit organization is eligible for the new grants even if it previously received grants as the applicant on behalf of the area.

*** ANALYSIS FROM –1888/3 ***

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

Under current law, WHEFA may issue bonds to finance certain projects undertaken for health, educational facilities, and housing. Projects that may be financed include, among others, the acquisition of a hospital, the construction or operation of an ambulatory surgery center or home health agency, and the construction, remodeling, furnishing, or equipping of a health or educational facility or related structure. An educational facility is defined as a regionally accredited, private, nonprofit postsecondary educational institution. The bill redefines an educational facility as a facility used for education by a regionally accredited, private, nonprofit institution so that the education–related projects for which WHEFA may issue bonds are not limited to facilities and related structures for postsecondary education purposes.

*** ANALYSIS FROM –2099/2 ***

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

The bill authorizes the department of commerce to advertise and promote products made in the state of timber produced in the state and provides funding from the conservation fund for this purpose.

*** ANALYSIS FROM –1694/11 ***

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

This bill provides that, if the Wisconsin Advanced Telecommunications Foundation (foundation) grants to DOA the unencumbered balances of its endowment fund and fast start fund, then moneys are transferred to the department of commerce to make grants for research on emerging technologies that promote industrial and economic development in southeastern Wisconsin. *See* **EDUCATION, OTHER EDUCATIONAL AND CULTURAL AGENCIES.**

EDUCATION

HIGHER EDUCATION

This bill directs the technical college system (TCS) board to establish a system that allows a student enrolled in one technical college to enroll in a course offered

over the Internet by another technical college without paying additional fees to the technical college offering the course. The bill also directs the TCS board to assist technical colleges to develop Internet courses and to establish an Internet site that provides information on all such courses.

The bill also provides for the transfer of moneys to the board of regents of the UW System for various purposes if the Wisconsin Advanced Telecommunications Foundation grants to DOA the unencumbered balances of its endowment fund and fast start fund. *See* **OTHER EDUCATIONAL AND CULTURAL AGENCIES.**

OTHER EDUCATIONAL AND CULTURAL AGENCIES

Under current law, the state has participated in the formation and operation of the Wisconsin Advanced Telecommunications Foundation (foundation), which is organized as a nonstock corporation. As required under current law, the foundation has established an endowment fund, which consists of a onetime $500,000 contribution by the state and contributions by telecommunications providers. As also required under current law, the foundation has established a fast start fund, which consists of contributions by telecommunications providers. The foundation uses both funds to provide funding for advanced telecommunications technology applications projects and efforts to educate telecommunications users about advanced telecommunications services. Current law also provides that if the foundation substantially ceases operations, the state's unencumbered contribution to the endowment fund must be returned to the state.

This bill eliminates all provisions under current law regarding the foundation. In addition, the bill provides that, if the foundation grants the unencumbered balances of the endowment fund and the fast start fund to DOA in fiscal year 2001–02, including the contributions made by telecommunications providers, then $2,000,000 of the moneys that are received are transferred to the TCS board for establishing an Internet site that lists all the Internet courses provided by the technical colleges and to assist technical colleges to develop Internet courses.

If the foundation makes the grant described above, the bill provides that the following moneys that are received are transferred to the technology for educational achievement in Wisconsin (TEACH) board for the following purposes: 1) $136,200 for administrative and support services to resolve the outstanding business of the foundation and performing other duties specified by the secretary of the TEACH board; and 2) $566,200 for closing out any existing grants made by the foundation.

In addition, if the foundation makes the grant described above, the bill provides that the following moneys that are received are transferred to the board of regents of the UW System for the following purposes: 1) $250,000 for the UW Learning Innovations at UW–Extension to establish a nonprofit, tax–exempt corporation whose purpose is to establish distance education classrooms in Wisconsin trade offices abroad and offer UW System distance education courses from those classrooms; 2) $3,000,000 for funding the activities of the UW Learning Innovations at UW–Extension; 3) $500,000 for developing wireless networking systems that allow students to use laptop computers and docking stations to connect to the Internet; 4) $2,000,000 for funding the UW System's project designated "Internet 2," which upgrades technology infrastructure on campuses for enhancing high–speed Internet activity; 5) $500,000 for purchasing a digital mammography machine for the UW Medical School; and 6) $1,000,000 for funding the Wisconsin advanced distributed co–laboratory, a computer laboratory located on the UW–Madison campus. If the last transfer is made, the UW System board of regents must submit a report to DOA by September 1, 2003, that shows how the money was used and describes any federal funding for the co–laboratory.

Also under the bill, if the foundation makes the grant described above, then the following moneys that are received are transferred to DPI for the following purposes: 1) $579,000 for upgrading the Wisconsin Informational Network for School Success; 2) $77,800 for upgrading the state school finance information system; 3) $526,000 for completing a network upgrade and upgrading and replacing assistive technology devices and related software programs for the Wisconsin Center for the Blind and Visually Impaired; 4) $161,600 for replacing the automated system at the Wisconsin Regional Library for the Blind and Physically Handicapped; and 5) $500,000 for making a grant to the National Geographical Society Education Foundation for establishing a program for awarding grants and supporting programs for improving geographical education in the state, with an emphasis on student use of geographic information systems technology. The transfer of $500,000 for making the grant to the National Geographical Society Education Foundation is contingent on that foundation's contribution of $500,000 in matching funds for the program that is established.

The bill also provides that, if the foundation makes the grant described above, $1,500,000 is transferred to the department of commerce to make grants, no later than June 30, 2003, to the University of Wisconsin–Milwaukee, the University of

Wisconsin–Parkside, Marquette University, the Milwaukee School of Engineering, and the Medical College of Wisconsin. The grants must be used for research related to emerging technologies that promote industrial and economic development in southeastern Wisconsin. The department of commerce and a grant recipient must enter into an agreement that specifies reporting and auditing requirements for the grant.

Finally, the bill provides that, if the foundation makes the grant described above, $168,300 is transferred to the higher educational aids board for upgrading technology at the board.

***** ANALYSIS FROM –0646/2 *****

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

Under the brownfields grant program in current law, the department of commerce makes grants to persons, municipalities, and local development corporations for redevelopment of brownfields and remediation activities associated with the redevelopment. Brownfields are abandoned, idle, or underused industrial or commercial facilities or sites that are adversely affected for expansion or redevelopment by actual or perceived environmental contamination. For purposes of grant eligibility, "person" is defined as an individual, partnership, corporation, or limited liability company; "municipality" is defined as a city, village, town, or county; and "local development corporation" is defined as a nonprofit corporation that promotes economic development within a specific geographic area and that demonstrates a commitment to or experience in the redevelopment of brownfields. The bill eliminates the definitions for "municipality" and "local development corporation"; provides that a "person" is eligible for a grant under the program; and defines "person" as an individual, partnership, limited liability company, corporation, nonprofit organization, city, village, town, county, or trustee, including a trustee in bankruptcy.

***** ANALYSIS FROM –1734/3 *****

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

Forward Wisconsin, Inc., is a private corporation formed to promote economic development in the state by encouraging business enterprises to locate in the state. A general purpose revenue appropriation to the department of commerce funds payments to Forward Wisconsin, Inc., for its advertising, marketing, and promotion

are paid with general purpose revenue and

activities and for its salary, travel, and other expenses related to its economic development promotion activities. The corporation also receives private funds. The bill creates another appropriation to the department of commerce, funded with Indian gaming revenue, for payments to Forward Wisconsin, Inc., for its activities to recruit out–of–state businesses to locate in this state.

***** ANALYSIS FROM –1735/2 *****

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

Under current law, the department of commerce may award up to $1,000,000 in grants per fiscal year, until June 30, 2001, to technology–based nonprofit organizations to provide support for manufacturing extension centers. The funding comes from repayments of loans made by the department of commerce for various business, manufacturing, and technology development purposes. The bill extends the manufacturing extension center grant program by removing the end date of June 30, 2001, and changes the funding source to Indian gaming revenue.

***** ANALYSIS FROM –1736/2 *****

COMMERCE AND ECONOMIC DEVELOPMENT

ECONOMIC DEVELOPMENT

Under current law, the department of commerce may award a grant of up to $10,000 to a business with 25 or fewer employees, or with no more than $2,500,000 in gross annual income in the preceding year, for the purpose of providing skills training or other education related to the needs of the business to current or prospective employees of the business. The statutes do not specify the appropriation from which the grants are to be paid. The bill provides that the grants are to be paid from an appropriation that is funded with Indian gaming revenue.

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***** ANALYSIS FROM –1536/3 *****

COMMERCE AND ECONOMIC DEVELOPMENT

STET COMMERCE

In 1999, the National Conference of Commissioners on Uniform State Laws approved the Uniform Electronic Transactions Act (UETA) and recommended it for enactment in all the states. Generally, UETA establishes a legal framework that facilitates and validates certain electronic transactions. This bill enacts UETA in Wisconsin, with minor, nonsubstantive changes necessary to incorporate the act into the existing statutes.

INSERT RM 28

Uniform Electronic Transactions Act

This bill enacts a version of the Uniform Electronic Transactions Act (UETA), which was approved and recommended for enactment by the National Conference of Commissioners on Uniform State Laws in 1999. The bill contains only minor, nonsubstantive changes to the recommended version of UETA as necessary to incorporate UETA into the existing statutes. Currently, a combination of state and federal laws govern the use of electronic documents and signatures in this state. The most significant federal law in this regard is the Electronic Signatures in Global and National Commerce Act, commonly known as "E–sign." Although E–sign contains provisions that potentially affect the maintenance and destruction of public records and the acceptance of electronic documents by governmental units, E–sign primarily affects the use of electronic documents and signatures in consumer and business transactions.

Like E–sign, the bill primarily affects the use of electronic documents and electronic signatures in transactions. Under the bill's broad definitions, such things as information stored on a computer disk or a voice mail recording would likely qualify for use as an electronic document. However, like E–sign, this bill does not apply to the execution of wills, to testamentary trusts, or to a transaction governed by any chapter of this state's version of the Uniform Commercial Code other than the chapter dealing with sales of goods. Unlike E–sign, this bill may permit the use of electronic documents for matters relating to family law; court documents; notices of the cancellation of utility services; certain notices of default, acceleration, repossession, foreclosure, eviction, or the right to cure; certain notices of the cancellation or termination of health insurance or life insurance; and product recall notices.

Like E–sign, this bill specifies that a document or signature may not be denied legal effect or enforceability solely because it is in electronic form. Unlike E–sign, this bill further states that an electronic document satisfies any law requiring a document to be in writing and that an electronic signature satisfies any law requiring a signature. This bill does not require the use of electronic documents or electronic signatures. Rather, the bill applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. However, unlike current law under E–sign, this bill does not contain any protections that specifically apply only to consumer transactions. The consumer protections currently in effect under E–sign would likely have no effect in this state upon the enactment of this bill.

Under this bill, a person may use an electronic document in a transaction to satisfy any law requiring the person to provide, send, or deliver information in writing to another person. Although the bill also states that a document relating to a transaction may not be denied legal effect solely because it is in electronic form, the bill likely permits a person to deny the legal effect of an electronic document that is provided, sent, or delivered in violation of this provision. The bill also specifies that, with certain exceptions, a document must satisfy any law requiring the document to

be posted or displayed in a certain manner; to be sent, communicated, or transmitted by a specified method; or to contain information that is formatted in a certain manner. Although this provision is subject to varying interpretations, it likely requires the parties to a transaction to comply with any legal requirement relating to the provision of information *other than a requirement that the information be provided on paper.*

The bill establishes the time and location of the sending and receipt of an electronic document, although the parties to a transaction may agree to alter the effect of these provisions. The bill also permits a sender to expressly provide in an electronic document that the document is deemed to be sent from a different location. The bill also establishes the legal effects of any change or error in an electronic document that occurs in a transmission between the parties to a transaction. These effects depend in part upon whether the parties have consented to the use of a security procedure and whether the transaction is an automated transaction involving an individual.

With certain exceptions, the bill permits the use of an electronic document to satisfy any law that requires document retention, as long as the retained information satisfies certain requirements relating to content and accessibility. An electronic document retained in compliance with these provisions has the same legal status as the original document and need not contain any information the sole purpose of which is to enable the document to be sent, communicated, or received. Under current law, ~~this ancillary information~~ is normally required to be retained if the document to which it is attached is required to be retained. The bill specifies that the state may enforce laws enacted after ~~of~~ this bill that prohibit a person from using an electronic document to satisfy any requirement that the person retain a document for evidentiary, audit, or like purposes. It is unclear, though, what types of retention requirements are enacted for "evidentiary, audit, or like purposes." The bill also specifies that it does not preclude a governmental unit of this state from imposing additional requirements for the retention of any document subject to its jurisdiction. It is unclear how this provision relates to other provisions of the bill which provide that certain electronic documents satisfy any retention requirement.

Like E–sign, this bill also permits electronic notarization, acknowledgement, or verification of a signature or document relating to a transaction, as long as the electronic signature of the person performing the notarization, acknowledgement, or verification is accompanied by all other information required by law. In addition, like E–sign, this bill contains provisions potentially affecting the maintenance and destruction of public records. However, this potential effect is less likely to occur under this bill, if the scope of the UETA provisions is interpreted to be consistent with the prefatory note and comments to the recommended version of UETA. The bill also clarifies an ambiguity in current law under E–sign by authorizing a person to submit an electronic document or signature to a governmental unit only if the governmental unit consents. Furthermore, the bill grants DOA primary rule–making authority regarding ~~to~~ the use of electronic documents and signatures by governmental units and grants DOA and the secretary of state joint rule–making authority regarding certain electronic notarizations.

E–sign generally preempts inconsistent state laws. However, with possible limited exceptions, E–sign does not preempt a state law that constitutes an enactment of the recommended version of UETA. Several provisions of UETA are subject to varying interpretations. Unless otherwise noted, the foregoing analysis reflects the interpretation, if any, that is supported by the prefatory note or official comments to the recommended version of UETA.

Current law regarding electronic documents, transactions, and signatures

Currently, a combination of state and federal laws govern the use of electronic records, transactions, and signatures in this state. The most significant federal law in this regard is the Electronic Signatures in Global and National Commerce Act, commonly known as "E–sign," which was enacted after UETA was recommended for enactment in all of the states. With certain exceptions relating to existing or pending document retention requirements, E–sign took effect on October 1, 2000. Although much of E–sign represents new law in this state, some of the issues addressed in E–sign were addressed under state law previous to E–sign. With certain exceptions, E–sign preempts the state law to the extent that the treatment is inconsistent with the treatment under E–sign.

1. PUBLIC RECORDS

Under E–sign, any law that requires retention of a contract or document relating to a transaction in or affecting interstate or foreign commerce may be satisfied by retaining an electronic document, as long as the retained information satisfies certain requirements relating to accuracy and accessibility. Thus, under E–sign, a custodian of a public record relating to a covered transaction is likely permitted to destroy the original record if a proper electronic copy is retained. This authority is consistent with current provisions in state law that, in most cases, permit electronic retention of public records; however, the state law in certain cases imposes additional quality control and evidentiary preservation requirements that must be followed if a public record is to be retained electronically. It is unclear whether these additional requirements continue to apply or would be preempted as inconsistent with these provisions of E–sign.

2. ACCEPTANCE OF ELECTRONIC DOCUMENTS BY GOVERNMENTAL UNITS

Current law relating to the acceptance of electronic documents by governmental units in this state is ambiguous. Under current state law, any document that is required by law to be submitted in writing to a governmental unit and that requires a written signature may be submitted in an electronic format, as long as the governmental unit consents. Current state law does not require any governmental unit to accept documents in an electronic format, but provides that an electronic signature may be substituted for a manual signature if certain requirements are met.

E–sign, however, may require any governmental unit that is a "governmental agency" under E–sign (an undefined term) to accept certain electronic documents

that relate to transactions in or affecting interstate or foreign commerce. E–sign states that it does not require any person to agree to use or accept electronic documents or electronic signatures, other than a governmental agency with respect to any document that is not a contract to which it is a party. Although no provision of E–sign specifically requires a governmental agency to use or accept electronic documents or signatures, under E–sign, a document relating to a covered transaction may not be denied legal effect solely because it is in electronic form. Thus, E–sign implies that a governmental agency may be required under E–sign to accept an electronic document relating to a covered transaction, as long as the document is not a contract to which the governmental agency is a party. This implication conflicts with another provision of E–sign, which states that E–sign generally does not limit or supersede any requirement imposed by a state regulatory agency (an undefined term) that documents be filed in accordance with specified standards or formats.

3. ELECTRONIC DOCUMENTS AND SIGNATURES IN COMMERCE

Promissory notes

Currently, this state's version of the Uniform Commercial Code contains the primary legal framework allowing for transactions in this state involving promissory notes (commonly, loan documents). Title II of E–sign contains the primary legal framework relating to a new type of promissory note, termed a "transferrable record," which allows for the marketing of electronic versions of promissory notes in transactions secured by real property.

Other documents and records

The primary electronic commerce provisions of E–sign are contained in Title I, which establishes a legal framework relating to electronic transactions in or affecting interstate or foreign commerce. Generally, Title I contains provisions that relate to the use of "electronic records" and signatures in covered transactions, the retention of "electronic records" of covered transactions, and the notarization and acknowledgement of covered electronic transactions. Title I broadly defines the term "electronic record" to include, among other things, any information that is stored by means of electrical or digital technology and that is retrievable in perceivable form. This definition likely covers such things as information stored on a computer disk or a voice mail recording. Because of this broad definition, in this analysis of E–sign, the term "document" is generally used in place of the term record. Title I also defines "transaction" broadly to mean any action or set of actions relating to the conduct of

business, consumer, or commercial affairs between two or more persons, including governmental agencies.

Currently, under Title I, a signature, contract, or other document relating to a covered transaction may not be denied legal effect, validity, or enforceability solely because it is in an electronic form, as long as the electronic contract or record, if it is otherwise required to be in writing, is capable of being retained and accurately reproduced by the relevant parties. Similarly, a contract relating to a covered transaction may not be denied legal effect solely because an electronic signature or electronic document was used in its formation.

Title I also permits electronic notarization, acknowledgement, or verification of a signature or document relating to a covered transaction, as long as the electronic signature of the person performing the notarization, acknowledgement, or verification is accompanied by all other information required by law. In addition, Title I provides that no person is required under Title I to agree to use or accept electronic records or signatures.

However, under Title I, any law that requires retention of a contract or document relating to a covered transaction may be satisfied by retaining an electronic document, as long as the retained information satisfies certain requirements relating to accuracy and accessibility. Title I contains similar provisions with regard to laws requiring retention of a check. An electronic contract or document retained in compliance with these provisions generally has the same legal status as an original document. As discussed above with regard to public records custodians, this provision of Title I also likely permits any *private* custodian of records relating to covered transactions to destroy original records if a proper electronic copy is retained.

Consumer protections

Under Title I, with regard to consumer transactions in or affecting interstate or foreign commerce, existing laws requiring written disclosure currently may be satisfied electronically only if the consumer consents after being informed of certain rights and of the technical requirements necessary to access and retain the electronic document. In addition, the consumer must consent or confirm his or her consent electronically in a manner that reasonably demonstrates that the consumer can access the information that is required to be provided to the consumer. The legal effect of a contract, though, may not be denied solely because of a failure to obtain the consumer's electronic consent consistent with this requirement. Title I also

specifies that the use of electronic documents permitted under these consumer provisions does not include the use of an oral communication, such as a voice mail recording, unless that use is permitted under other applicable law.

Any federal regulatory agency, with respect to a matter within the agency's jurisdiction, may exempt a specified category or type of document from the general consumer consent requirement, if the exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.

Exemptions

All of the following are exempt from coverage under the primary electronic commerce provisions of E–sign and, as a result, currently may not be provided in electronic format unless otherwise authorized by law:

1. A document to the extent that it is governed by a law covering the creation and execution of wills, codicils, or testamentary trusts.

2. A document to the extent that it is governed by a law covering adoption, divorce, or other matters of family law.

3. A document to the extent that it is governed by certain sections of the Uniform Commercial code.

4. Court orders or notices and official court documents, including briefs, pleadings, and other writings.

5. Notices of cancellation or termination of utility services, including water, heat, and power.

6. Notices of default, acceleration, repossession, foreclosure, or eviction or the right to cure under a credit agreement secured by, or a rental agreement for, a primary residence of an individual.

7. Notices of the cancellation or termination of health insurance or life insurance, other than annuities.

8. Product recall notices.

9. Documents required to accompany the transportation of hazardous materials.

A federal regulatory agency may remove any of these exemptions, as the particular exemption applies to a matter within the agency's jurisdiction, if the agency finds that the exemption is no longer necessary for the protection of consumers and that the elimination of the exemption will not increase the material risk of harm to consumers.

Limits on the scope of Title I

In addition to these specific exemptions, Title I has a limited effect upon certain specified laws. For example, Title I states that it does not affect any requirement imposed by state law relating to a person's rights or obligations other than the requirement that contracts or other documents be in nonelectronic form. However, this provision may conflict with other provisions of Title I which appear to specifically affect obligations other than writing or signature requirements. Title I also has a limited effect on any state law enacted before E–sign that expressly requires verification or acknowledgement of receipt of a document. Under Title I, this type of document may be provided electronically only if the method used also provides verification or acknowledgement of receipt. In addition, Title I does not affect any law that requires a warning, notice, disclosure, or other document to be posted, displayed, or publicly affixed within a specified proximity.

State authority under Title I

Title I provides that a state regulatory agency that is responsible for rule making under any statute may interpret the primary electronic commerce provisions of Title I with respect to that statute, if the agency is authorized by law to do so. Rules, orders, or guidance produced by an agency under this authority must meet specific requirements relating to consistency with existing provisions of Title I; to regulatory burden; to justification for the rule, order, or guidance; and to neutrality with regard to the type of technology needed to satisfy the rule, order, or guidance. A state agency may also mandate specific performance standards with regard to document retention, in order to assure accuracy, integrity, and accessibility of retained electronic documents. However, under state law, the rule–making authority of a state agency is limited to interpretation and application of state law and no state agency may promulgate a rule that conflicts with state law.

Relationship between E–sign and UETA

With certain exceptions, E–sign preempts state laws that are inconsistent with its provisions. One of the exceptions permits a state to supersede the effect of the primary electronic commerce provisions of Title I by enacting a law that constitutes an enactment of UETA. However, a state may not use the optional provision in UETA that permits a state to insert exemptions relating to specific areas of state law from the application of UETA as a loophole to avoid the requirements of E–sign. If a state enacts UETA without significant change and containing no new exemptions under

this provision of UETA, the state enactment of UETA will likely not be preempted by E–sign.

Because this bill makes no significant changes to the substance of UETA and the text is consistent with the intent of the version of UETA recommended for enactment in all of the states, the bill likely qualifies for this exception from preemption and, if enacted, would likely supplant the primary electronic commerce provisions of E–sign in this state. However, certain provisions of UETA and, as a result, this bill, are susceptible to varying interpretations. Many of these provisions are similar to current law under E–sign. This bill generally does not clarify these provisions. Rather, in order to avoid preemption, the text of this bill generally remains consistent with the recommended version of UETA.

UETA

The following analysis of the version of UETA contained in this bill generally reflects an interpretation that is consistent with the prefatory note and official comments accompanying UETA, which generally discuss the intent of each recommended provision of UETA. For the provisions that are subject to varying interpretations, this analysis discusses each primary interpretation and indicates which interpretation, if any, is supported by the prefatory note or comments. Although the prefatory note and comments have no legal effect, in the past courts have often relied on the prefatory notes and comments to other uniform laws when interpreting ambiguous provisions of those laws. In some instances, the interpretation supported by the prefatory note or comments is difficult to derive from the text of the bill.

1. PUBLIC RECORDS

This bill includes a provision potentially affecting the maintenance of public records that is similar to the provision currently in effect under E–sign. With certain exceptions, the bill permits a person to satisfy any law that requires retention of a document by retaining an electronic document, as long as the retained information satisfies certain requirements relating to accuracy and accessibility. Like current law under E–sign, this provision may be interpreted to permit a custodian of a public record relating to a transaction to destroy the original record and retain an electronic copy, notwithstanding other current statutes regarding the conversion of public records into electronic format and retention requirements.

However, this interpretation is less likely to occur under this bill than it is in current law under E–sign. Unlike E–sign, this bill specifically states that it applies

only to transactions between parties each of which has agreed to conduct transactions by electronic means. (See discussion under "Electronic Documents and Signatures in Commerce" (subheading "Applicability and definitions") below.) Although the definition of "transaction" may be interpreted broadly to include a typical governmental action like the filing of a document, the prefatory note and comments to UETA imply that a narrower interpretation is intended which covers only the actions of the government as a market participant. Thus, if interpreted consistently with the prefatory note and comments, the electronic document retention provisions will likely apply to the parties to a transaction, rather than to a governmental unit that stores public records relating to the filings and transactions of others.

This bill also provides that a person may comply with these electronic document retention provisions using the services of another person. If the term "transaction" is interpreted broadly, this provision may permit a public records custodian to transfer public records to other governmental or private parties for retention. However, if the term "transaction" is interpreted consistently with the prefatory note and comments to UETA, this provision generally would not apply to a public records custodian's retention of most public records.

2. ACCEPTANCE OF ELECTRONIC DOCUMENTS BY GOVERNMENTAL UNITS

The same ambiguities regarding the acceptance of electronic documents by governmental units exist under this bill as exist currently under E–sign, although under this bill it is more likely that a governmental unit is not required to accept electronic documents. This bill attempts, in a manner consistent with UETA, to restore the law as it existed in this state before E–sign regarding the acceptance of electronic documents by governmental units. Thus, under this bill, any document that is required by law to be submitted in writing to a governmental unit and that requires a written signature may be submitted in an electronic format if the governmental unit consents. Although this bill, like current law under E–sign, also states that a document relating to a transaction may not be denied legal effect solely because it is in electronic form, it is more likely under this bill that this provision has no effect on the authority of a governmental unit to refuse to accept an electronic document. Unlike current law under E–sign, this bill does not contain any statement that a governmental unit is required to accept an electronic document.

With certain exceptions, this bill grants DOA primary rule–making authority with regard to the use of electronic documents and signatures by governmental units

and grants DOA and the secretary of state joint rule–making authority with regard to certain electronic notarizations. In addition, this bill requires any governmental unit that adopts standards regarding the governmental unit's receipt of electronic records or electronic signatures to promote consistency and interoperability with similar standards adopted by other governmental units, the federal government, and other persons interacting with governmental units of this state.

1. ELECTRONIC DOCUMENTS AND SIGNATURES IN COMMERCE

Rule of construction

This bill specifies that it must be construed and applied to facilitate electronic transactions consistent with other applicable law, to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices, and to bring about uniformity in the law of electronic transactions.

Applicability and definitions

Generally, the bill applies to the use of electronic records and electronic signatures relating to transactions. Like current law under E–sign, this bill broadly defines the term "electronic record" to include, among other things, any information that is stored by means of electrical or digital technology and that is retrievable in a perceivable form. This definition would likely cover such things as information stored on a computer disk or a voice mail recording. Because of this broad definition, in this analysis of the version of UETA contained in this bill, the term "document" is generally used in place of the term "record." Under the bill, an "electronic signature" includes, among other things, a sound, symbol, or process that relates to electrical technology, that is attached to or logically associated with a document, and that is executed or adopted by a person with intent to sign the document.

The bill defines "transaction" to mean an action or set of actions between two or more persons relating to the conduct of business, commercial, or governmental affairs. Although this definition may be interpreted broadly to include a typical interaction with the government like the filing of a document, the prefatory note and comments to UETA imply that a narrower interpretation is intended which covers the actions of the government as a market participant. In addition, although the definition does not expressly cover consumer–to–consumer or consumer–to–business transactions, it is possible to interpret this definition, consistent with the official comments, to cover these transactions.

This bill, like current law under E–sign, does not apply to a transaction governed by a law relating to the execution of wills or the creation of testamentary

trusts or to a transaction governed by any chapter of this state's version of the Uniform Commercial Code other than the chapter dealing with sales of goods. However, because this bill does not contain all of the exemptions currently in effect under E–sign, this bill may permit a broader use of electronic documents relating to transactions than is currently permitted under E–sign. Unlike current law, this bill may permit the use of electronic documents for matters relating to family law; electronic court documents; electronic notices of the cancellation of utility services; electronic notices of default, acceleration, repossession, foreclosure, or eviction or the right to cure under a credit agreement secured by, or a rental agreement for, an individual's primary residence; electronic notices of the cancellation or termination of health insurance or life insurance; and electronic notices of product recalls.

Agreements to use electronic documents and electronic signatures

This bill does not require the use of electronic documents or electronic signatures. Rather, the bill applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Under the bill, this agreement is determined from the context, the surrounding circumstances, and the parties' conduct. A party that agrees to conduct one transaction by electronic means may refuse to conduct other transactions by electronic means. Although the bill also states that a document relating to a transaction may not be denied legal effect solely because it is in electronic form, it is likely that, consistent with the comments, these provisions permit a person to deny the legal effect of an electronic document relating to a transaction if a party to the transaction never agreed to conduct the transaction electronically. With certain exceptions, the parties to any transaction may agree to vary the effect of this bill as it relates to that transaction.

Consumer protections

Unlike current law under E–sign, this bill does not contain any protections that specifically apply only to consumers. The consumer protections currently in effect under E–sign would likely have no effect in this state upon the enactment of this bill.

Legal effect of electronic documents and electronic signatures

As noted earlier, this bill specifies that a document or signature may not be denied legal effect or enforceability solely because it is in electronic form. The bill also specifies that a contract may not be denied legal effect or enforceability solely because an electronic document was used in its formation. These provisions are similar to provisions in current law under E–sign. Unlike E–sign, this bill further

states that an electronic document satisfies any law requiring a record to be in writing and that an electronic signature satisfies any law requiring a signature.

Effect of laws relating to the provision of information

Under this bill, if the parties to a transaction have agreed to conduct the transaction electronically and if a law requires a person to provide, send, or deliver information in writing to another person, a party may, with certain exceptions, satisfy the requirement with respect to that transaction by providing, sending, or delivering the information in an electronic document that is capable of retention by the recipient at the time of receipt. Although the bill also states that a document relating to a transaction may not be denied legal effect solely because it is in electronic form, it is likely that, consistent with the comments, the bill permits a person to deny the legal effect of an electronic document relating to a transaction if the electronic document is provided, sent, or delivered in violation of this provision. The bill further provides that an electronic document is not enforceable against the recipient of the document if the sender inhibits the ability of the recipient to store or print the document.

The bill also specifies that, with certain exceptions, a document must satisfy any law requiring the document to be posted or displayed in a certain manner; to be sent, communicated, or transmitted by a specified method; or to contain information that is formatted in a certain manner. There are three possible interpretations of this provision. First, the provision may prohibit the use of an electronic document if a law requires the document to be posted, displayed, sent, communicated, transmitted, or formatted on paper. Second, the provision may instead require a paper document to be used in addition to an electronic document in these circumstances. Third, consistent with the comments, the provision may require the parties to a transaction to comply with any legal requirement relating to the provision of information *other than a requirement that the information be provided on paper.*

Attribution of electronic documents

Under this bill, an electronic document or electronic signature is attributable to a person whose act created the document or signature. The act of a person may be shown in any manner, including through the use of a security procedure that determines the person to whom an electronic document or electronic signature is attributable.

Effect of change or error

This bill contains three provisions that determine the effect of a change or error in an electronic document that occurs in a transmission between the parties to a transaction. First, if the parties have agreed to use a security procedure to detect changes or errors and if one of the parties fails to use a security procedure and an error or change occurs that the nonconforming party would have detected had the party used the security procedure, the other party may avoid the effect of the changed or erroneous electronic document. Second, in an automated transaction involving an individual, the individual may avoid the effect of an electronic document that results from an error made by the individual in dealing with the automated agent of another person, if the automated agent did not provide an opportunity for prevention or correction of the error. However, an individual may avoid the effect of the electronic document only if the individual, at the time he or she learns of the error, has received no benefit from the thing of value received from the other party under the transaction and only if the individual satisfies certain requirements relating to notification of the other party and return or destruction of the thing of value received. Third, if neither of these provisions applies to the transaction, the change or error has the effect provided by other law, including the law of mistake, and by any applicable contract between the parties.

Electronic notarization and acknowledgement

Like current law under E–sign, this bill permits electronic notarization, acknowledgement, or verification of a signature or document relating to a transaction, as long as the electronic signature of the person performing the notarization, acknowledgement, or verification is accompanied by all other information required by law.

Retention of electronic documents

Under this bill, any law that requires retention of a document may, with certain exceptions, be satisfied by retaining an electronic document, as long as the retained information satisfies certain requirements relating to accuracy and accessibility. The bill contains similar provisions with regard to laws requiring retention of a check, although the term "check" is not defined under the bill and, as a result, may not include a share draft or money order. These provisions are similar to current law under E–sign. However, unlike E sign, this bill specifies that an electronic document that is required to be retained must accurately reflect the information set forth in the document *after it was first generated in its final form as an electronic*

document or otherwise. The comments indicate that this provision is intended to ensure that the content of a document is retained when documents are converted or reformatted to allow for ongoing electronic retention. However, this provision may be interpreted to permit a retention requirement to be satisfied by retaining only the final version of a document that has earlier versions.

The bill provides that an electronic document retained in compliance with these provisions need not contain any information the sole purpose of which is to enable the document to be sent, communicated, or received. Under current law, this ancillary information is normally required to be retained along with the document to which it is attached. In addition, as under E–sign, an electronic contract or document retained in compliance with these provisions generally has the same legal status as an original document. Like E–sign, this bill also provides that a person may comply with these electronic document retention provisions using the services of another person.

The bill provides that the state may enact laws, after enactment of this bill, that prohibit a person from using an electronic document to satisfy any requirement that the person retain a document for evidentiary, audit, or like purposes. It is unclear, though, what types of retention requirements are enacted for "evidentiary, audit, or like purposes." It is also unclear how this provision relates to other provisions of the bill which provide that an electronic document satisfies any retention requirement as long as specified requirements relating to accuracy and accessibility are also satisfied.

In addition, the bill specifies that it does not preclude a governmental unit of this state from specifying additional requirements for the retention of any document subject to its jurisdiction. It is unclear how this provision relates to other provisions of the bill which provide that an electronic document satisfies any retention requirement as long as specified requirements relating to accuracy and accessibility are also satisfied. It is also unclear whether this provision grants rule–making authority or merely references any authority that may exist currently. Also, although it is unclear from the text whether this provision applies to nongovernmental documents or only to documents in the possession of a governmental unit, the official comments imply that the provision is intended to apply to nongovernmental documents that are subject to a governmental unit's jurisdiction.

Evidence

Under this bill, a document or signature may not be excluded as evidence solely because it is in electronic form. This provision confirms the treatment of electronic documents and signatures under current law.

Automated transactions

This bill validates contracts formed in automated transactions by the interaction of automated agents of the parties or by the interaction of one party's automated agent and an individual. Under current law, it is possible to argue that an automated transaction may not result in an enforceable contract because, at the time of the transaction, either or both of the parties lack an expression of human intent to form the contract.

Time and location of electronic sending and receipt

Under this bill, an electronic document is sent when the electronic document a) is addressed or otherwise properly directed to an information processing system that the intended recipient has designated or uses for the purpose of receiving electronic documents or information of the type sent and from which the recipient is able to retrieve the electronic document; b) is in a form capable of being processed by that information processing system; and c) enters an information processing system outside of the control of the sender or enters a region of the information processing system used or designated by the recipient that is under the recipient's control. An electronic document is received when the electronic document enters and is in a form capable of being processed by an information processing system that the recipient has designated or uses for the purpose of receiving electronic documents or information of the type sent and from which the recipient is able to retrieve the electronic document. The bill permits the parties to a transaction to agree to alter the effect of these provisions with respect to the transaction. Under the bill, an electronic document may be received even if no individual is aware of its receipt. Furthermore, under the bill, an electronic acknowledgment of receipt from the information processing system used or designated by the recipient establishes that the electronic document was received but does not establish that the information sent is the same as the information received.

These provisions may be interpreted to alter laws under which the date of receipt of a public record submitted for filing is the date on which a paper copy is received or postmarked, so that the date of electronic filing constitutes the date of receipt instead. However, as noted earlier, this bill specifically states that it applies

only to transactions between parties each of which has agreed to conduct transactions by electronic means. Although the definition of "transaction" may be interpreted broadly to include a typical governmental action like the filing of a document, the prefatory note and comments to UETA imply that a narrower interpretation is intended which covers only the actions of the government as a market participant. If the narrower interpretation applies, then these provisions will likely have no effect upon the filing of most public records.

Under this bill, an electronic document is deemed to be sent from the sender's place of business that has the closest relationship to the underlying transaction and to be received at the recipient's place of business that has the closest relationship to the underlying transaction. If the sender or recipient does not have a place of business, the electronic document is deemed to be sent or received from the sender's or recipient's residence. The bill also permits a sender to expressly provide in an electronic document that the document is deemed to be sent from a different location. The bill also permits the parties to a transaction to agree to alter the effect of these provisions on the transaction. To the extent that an electronic document may constitute a sale, with the seller receiving payment electronically, these provisions may be interpreted to permit a seller to argue that a sale occurred in a jurisdiction where the seller is not subject to a tax that would otherwise be imposed under Wisconsin law. However, the official comments imply that this interpretation is not intended.

In addition, under the bill, if a person is aware that an electronic document purportedly sent or purportedly received in compliance with these provisions was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Although the official comments are silent on the meaning of this provision, it is likely intended to give a court direction as to what law to apply to determine the legal effect when there is a *failure* to send or receive an electronic document in the manner provided under the bill.

Transferable records

This bill expands current law with regard to transactions involving the use of transferable records (electronic versions of certain documents under the Uniform Commercial Code). Although current law under E–sign only permits the use of transferrable records in transactions secured by real property, this bill permits the use of transferable records in any transaction in which a promissory note or document of title under the Uniform Commercial Code may be used. Under this bill,

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Universal banking

This bill allows a savings bank, a savings and loan association, and a state bank (a financial institution) to become certified by the division of banking in DFI as a universal bank. If certified as a universal bank, the financial institution may exercise certain additional powers.

In order to be certified as a universal bank, a financial institution must be chartered or organized, and regulated, as a Wisconsin financial institution and be in existence and continuous operation for at least three years; must be well–capitalized; must not exhibit moderately severe or unsatisfactory financial, managerial, operational, and compliance weaknesses; and must not have been the subject of any enforcement action within the 12 months preceding the application. In addition, 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. Also, the most recent evaluation of the financial institution under certain federal laws relating to customer privacy must indicate that the financial institution is in substantial compliance with those federal laws. A financial institution that the division of banking certifies as a universal bank retains its original status and remains subject to all of the laws that applied to the financial institution prior to its certification as a universal bank, except to the extent that such laws are inconsistent with the powers and duties of universal banks. The bill expands the powers of a financial institution that becomes certified as a universal bank to include any activity authorized for any savings bank, savings and loan association, or state bank.

In addition, the bill does all of the following with respect to the powers that a universal bank may exercise:

1. The bill permits a universal bank, with the approval of the division of banking, to exercise all powers that may be exercised directly by a national bank, a federally chartered savings bank, or a federally chartered savings and loan association. The division of banking may require a universal bank to exercise a federal power through a subsidiary, in order to limit the risk of exposure of the universal bank. In addition, the bill permits a universal bank, with the approval of the division of banking, to exercise through a subsidiary all powers that a subsidiary of these federal financial institutions may exercise.

2. A universal bank may 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, the general rule is that the total liabilities of any one person to a universal bank may not exceed 20% of the capital of the universal bank. In addition, the bill grants a universal bank additional authority to lend an aggregate amount to all borrowers not to exceed 20% of the bank's capital. The division of banking may suspend this additional authority based upon factors including the 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.

3. To the extent consistent with safe and sound banking practices, a universal bank may purchase, sell, underwrite, and hold certain investment securities in an amount up to 100% of the universal bank's capital. A universal bank may not invest greater than 20% of its capital in any one obligor or issuer. Subject to certain limits the bill also allows a universal bank to purchase, sell, underwrite, and hold equity securities. Universal banks may also invest in certain housing properties and projects and profit–participation projects. The bill provides that a universal bank also may invest without limitation in several specific types of securities. The universal bank may invest in risk management instruments, including financial futures transactions, financial operations transactions, and forward commitments, solely for the purpose of reducing, hedging, or otherwise managing its interest rate risk exposure. In addition, a universal bank may invest in other financial institutions. However, 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.

4. The bill permits a universal bank to establish the types and terms of deposits that the universal bank solicits and accepts. A universal bank may pledge its assets as security for deposits and, with the approval of the division of banking, may securitize its assets for sale to the public. In addition, a universal bank may exercise certain safe deposit and trust powers.

5. 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. In addition, the bill allows a universal bank to engage in activities that are reasonably related or incident to the purposes of the universal bank. Under the bill, any activity permitted under the federal Bank Holding Company 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: real estate–related services; insurance services, other than insurance underwriting; securities brokerage; investment advice; securities and bond underwriting; mutual fund activities; financial consulting; and tax planning and preparation. 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.

Credit unions

This bill makes numerous changes to the laws that govern the formation, operation, and regulation of credit unions in this state. The major provisions relating to credit unions include the following:

1. This bill expands the pool of individuals, organizations, and associations that are eligible for membership in a credit union. Under this bill, credit union membership is open to individuals who reside or are employed in well–defined, contiguous neighborhoods and communities, except that, if the office of credit unions determines, subsequent to a merger, that it is inappropriate to require the members of a credit union to reside or be employed in contiguous neighborhoods and communities, the requirement that these neighborhoods and communities be contiguous does not apply. In addition, membership is open to individuals who reside or are employed in well–defined, contiguous rural districts or multicounty regions. This bill also opens credit union membership to any organization or association that has its principal business location within any geographic limits of the credit union's field of membership. This bill also permits a credit union to accept any organization or association as a member, if a majority of the directors, owners, or members of the organization or association are eligible for membership.

2. Under current law, if the need exists, a credit union may establish branch offices within this state or no more than 25 miles outside of this state. A credit union seeking to establish a branch office must first obtain the approval of the office of credit unions. In addition, under current law regarding interstate mergers and acquisitions of credit unions, a credit union organized in this state may only merge with, acquire, or be acquired by a state or federal credit union that has its principal office in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, or Ohio. This bill expands the authority of a credit union to establish branch offices. Under this bill, with the permission of the office of credit unions, a credit union may establish branch offices anywhere inside or outside of this state. In addition, this bill repeals this geographic limitation on mergers and acquisitions of credit unions.

3. Current law does not specifically permit a credit union organized under the laws of another state (non–Wisconsin credit union) to establish a branch office in this state. This bill specifies that a non Wisconsin credit union may establish a branch office in this state if the office of credit unions finds that certain conditions apply to the non–Wisconsin credit union.

4. Under current law, subject to certain limitations, a credit union may invest in an organization that is organized primarily to provide goods and services to credit unions, credit union organizations, and credit union members (credit union service organization). Under current law, a credit union may invest in a credit union service organization that is a corporation. Currently, a credit union service organization may provide, among other things, credit card services, automated teller services, financial planning, and insurance sales. This bill permits a credit union to invest in a credit union service organization that is a corporation, limited partnership, limited liability company, or any other entity that is permitted under state law and that is approved by the office of credit unions. The bill also permits the office of credit unions to increase the maximum amount that a credit union may invest in a credit union service organization. In addition, the bill expands the types of goods and services that a credit union service organization may provide to include electronic transaction services.

5. This bill expands the authority of a credit union to act as a trustee, allowing a credit union, to the extent permitted by federal law, to act as a trustee or custodian of member tax deferred retirement funds, individual retirement accounts, medical savings accounts, and other employee benefit accounts or funds. In addition, this bill allows a credit union, to the extent permitted by federal law, to act as a depository for member qualified and nonqualified deferred compensation funds.

6. Current law contains several credit union reporting requirements and, with certain exceptions, requires the office of credit unions to annually examine the records and accounts of each credit union. The employees of the office of credit unions and members of the credit union review board must keep information obtained in the course of examinations confidential, with limited exceptions. A violation of this confidentiality requirement is subject to a forfeiture of up to $200. This bill specifies that, with certain exceptions, any employee of the office of credit unions or member of the credit union review board who discloses any information about the private account or transactions of a credit union or who discloses any information obtained in the course of an examination is subject to a fine of not less than $100 nor more than $1,000, imprisonment for not less than six months nor more than three years, or both, and may be required to forfeit his or her office or position. This bill also creates a crime for knowingly falsifying certain credit union reports or statements. Any person who commits this crime may be fined not less than $1,000 nor more than $5,000 or imprisoned for not less than one year nor more than 15 years, or both. ←

7. This bill requires credit unions to comply with certain federal laws relating to customer financial privacy and requires the office of credit unions to examine credit unions for compliance with these federal laws.

8. Under current law, credit unions are subject to the provisions of chs. 93 to 100 (agriculture, trade, and consumer protection statutes) that apply to businesses generally. Banks, savings banks, and savings and loan associations are specifically exempted from the definition of "business" that applies in the agriculture, trade, and consumer protection statutes. This bill specifically exempts credit unions from this definition.

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an electronic document qualifies as a transferable record only if the issuer of the electronic document expressly agrees that the electronic document is a transferable record.

***** ANALYSIS FROM –0601/1 *****

~~COMMERCE AND ECONOMIC DEVELOPMENT~~

COMMERCE

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Credit unions and universal banks

This bill makes numerous changes to the chapter that governs the formation, operation, and regulation of credit unions in this state and creates a new type of financial institution called a universal bank. The major provisions relating to credit unions and universal banks include the following:

Credit union membership

Under current law, credit union membership is open to groups having a common bond of occupation or association; residents within a well–defined neighborhood, community, or rural district; employees of related industries or industries that operate within a well–defined neighborhood, community, or rural district; members of certain fraternal, labor, educational, or other similar organizations; and credit union employees. Furthermore, credit union membership is open to the immediate family of all individuals who are qualified for membership. Current law defines "members of the immediate family" as any relative of a member or of a member's spouse who is living with the member and as the member's spouse, parents, stepchildren, and children. In addition, current law permits a credit union to accept an organization or association as a member if a majority of the members of the organization or association are eligible for membership.

This bill expands the pool of individuals, organizations, and associations that are eligible for membership in a credit union. Under this bill, credit union membership is open to individuals who reside or are employed in well–defined, contiguous neighborhoods and communities, except that, if the office of credit unions determines, subsequent to a merger, that it is inappropriate to require the members of a credit union to reside or be employed in contiguous neighborhoods and communities, the requirement that these neighborhoods and communities be contiguous does not apply. In addition, membership is open to individuals who reside or are employed in well–defined, contiguous rural districts or multicounty regions.

This bill also opens credit union membership to any organization or association that has its principal business location within any geographic limits of the credit

union's field of membership. This bill also permits a credit union to accept any organization or association as a member, if a majority of the directors, owners, or members of the organization or association are eligible for membership. Furthermore, this bill repeals the definition of "members of the immediate family" contained in current law and instead requires a credit union's bylaws to specify the conditions that determine eligibility for membership.

Credit union investments

Under current law, a credit union may invest up to 1.5% of its total assets in an organization that is organized primarily to provide goods and services to credit unions, credit union organizations, and credit union members (credit union service organization). Under current law, a credit union may invest in a credit union service organization that is a corporation. Current law also specifies the types of goods and services that a credit union service organization may provide. These goods and services include, among other things, credit card services, automated teller services, financial planning, and insurance sales. However, current law is ambiguous as to whether the percentage limitation on a credit union's investment in credit union service organizations applies to the aggregate total of all credit union investments in credit union service organizations or to a credit union's investment in each particular credit union service organization.

This bill expands the types of organizations in which a credit union may invest. Under this bill, a credit union may invest in a credit union service organization that is a corporation, limited partnership, limited liability company, or any other entity that is permitted under state law and that is approved by the office of credit unions.

This bill also provides that the office of credit unions may permit a credit union to invest greater than 1.5% of credit union assets in a credit union service organization. In addition, this bill clarifies that the limitation on a credit union's investment in credit union service organizations applies to the aggregate total of all credit union investments in credit union service organizations. This bill also expands the types of goods and services that a credit union service organization may provide to include electronic transaction services.

Credit union powers

Currently, to the extent permitted by federal law, a credit union may act as trustee of member tax deferred funds and as a depository for member–deferred compensation funds. This bill expands this authority, allowing a credit union, to the extent permitted by federal law, to act as a trustee or custodian of member tax

deferred retirement funds, individual retirement accounts, medical savings accounts, and other employee benefit accounts or funds. In addition, this bill allows a credit union, to the extent permitted by federal law, to act as a depository for member qualified and nonqualified deferred compensation funds.

Under current law, funds held in trust under a burial agreement (commonly known as a funeral trust) must be deposited in a bank, savings bank, savings and loan association, or credit union. This bill clarifies that a credit union may accept these deposits if the deposits are made by a credit union member.

Branch offices of Wisconsin credit unions

Under current law, if the need exists, a credit union may establish branch offices within this state or no more than 25 miles outside of this state. In addition, if certain conditions are met, a credit union may establish a limited service office outside of this state to serve members of the credit union. A credit union seeking to establish a branch office or limited service office must first obtain the approval of the office of credit unions.

This bill expands the authority of a credit union to establish branch offices. Under this bill, with the permission of the office of credit unions, a credit union may establish branch offices anywhere inside or outside of this state. This bill repeals the authority for a credit union to establish a limited service office, although a credit union may continue to operate a limited service office that is in existence on the effective date of this bill.

Branch offices of non–Wisconsin credit unions

Current law does not specifically permit a credit union organized under the laws of another state (non–Wisconsin credit union) to establish a branch office in this state. This bill specifies that a non–Wisconsin credit union may establish a branch office in this state if the office of credit unions finds that certain conditions apply to the non–Wisconsin credit union. For example, the non–Wisconsin credit union must be organized under laws similar to ch. 186, must be financially solvent, and must have federal insurance for member deposits. In addition, the office of credit unions must find that credit unions organized under the laws of this state are allowed to do business under similar conditions in the home state of the non–Wisconsin credit union.

Interstate mergers and acquisitions of credit unions

Under current law regarding interstate mergers and acquisitions of credit unions, a credit union organized in this state may only merge with, acquire, or be

acquired by a state or federal credit union that has its principal office in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, or Ohio. This bill repeals this geographic limitation on mergers and acquisitions of credit unions and, thus, expands the number of credit unions that are eligible to merge with, acquire, or be acquired by a credit union organized in this state.

Credit union reports and financial privacy

Current law contains several credit union reporting requirements and, with certain exceptions, requires the office of credit unions to annually examine the records and accounts of each credit union. The employees of the office of credit unions and members of the credit union review board must keep information obtained in the course of examinations confidential, with limited exceptions. A violation of this confidentiality requirement is subject to a forfeiture of up to $200.

This bill expands the confidentiality requirement to also include information contained in certain reports that a credit union provides to the office of credit unions. In addition, this bill specifies that, with certain exceptions, any employee of the office of credit unions or member of the credit union review board who discloses any information about the private account or transactions of a credit union or who discloses any information obtained in the course of an examination is subject to a fine of not less than $100 nor more than $1,000, imprisonment for not less than six months nor more than three years, or both, and may be required to forfeit his or her office or position.

This bill also requires credit unions to comply with certain federal laws relating to customer financial privacy and requires the office of credit unions to examine credit unions for compliance with these federal laws.

Other credit union changes

Current law specifically requires any officer or employee of a credit union who sells credit life insurance or credit accident or sickness insurance on behalf of the credit union to pay to the credit union all commissions received from the sale. This bill clarifies that an officer or employee of a credit union must pay to the credit union all commissions received from the sale of any authorized insurance product sold on behalf of the credit union.

This bill also creates a crime for knowingly falsifying certain credit union reports or statements. Any person who commits this crime may be fined not less than $1,000 nor more than $5,000 or imprisoned for not less than one year nor more than 15 years or both.

Under current law, credit unions are subject to the provisions of chs. 93 to 100 (agriculture, trade, and consumer protection statutes) that apply to businesses generally. Banks, savings banks, and savings and loan associations are specifically exempted from the definition of "business" that applies in the agriculture, trade, and consumer protection statutes. This bill specifically exempts credit unions from this definition.

Universal banks

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 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 of universal banks

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; 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; and 6) the most recent report received by the financial institution evaluating the financial institution's compliance with certain federal laws relating to customer privacy must indicate that the financial institution is in substantial compliance with these federal

laws. 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 may also 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 of universal banks

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 is 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 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 of universal banks

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:

1) Federal powers: Under the bill, with the approval of the division of banking, a universal bank may exercise all powers that may be exercised directly 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 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.

2) 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. However, 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 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.

3) 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 limitation 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 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.

4) 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 for its safekeeping charges on the contents of property accepted for safekeeping. 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.

5) 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.

In addition to these necessary or convenient powers, the bill allows a universal bank to engage in activities that are reasonably related or incident 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 institution does not have sufficient management expertise for the activity. The division of banking may also require a universal bank to engage in certain of these activities through a subsidiary, with appropriate safeguards to limit the risk exposure of the universal bank. Amounts invested in a single subsidiary that engages in these activities may not exceed 20% of the universal bank's capital, unless a higher percentage is approved by the division of banking.

sub-subheading

***** ANALYSIS FROM –2318/3 *****

COMMERCE AND ECONOMIC DEVELOPMENT

ALCOHOL BEVERAGES

Under current the ~~law~~ Fair Dealership Law, which applies to most types of product distributors, a wholesaler of fermented malt beverages that operates under a contract or agreement, expressed or implied, with a brewer (known as the

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grantor) for distribution of a brewer's products, and that maintains a "community of interest" (i.e. a sufficiently close continuing financial interest) with the brewer, is considered a dealer and may not have its distribution rights terminated, cancelled, not renewed, or substantially changed in terms of competitive circumstances, without good cause. ~~The burden of establishing good cause lies with the brewer.~~ Good cause means failure by the wholesaler to comply substantially with essential and reasonable requirements imposed ~~or sought to be imposed~~ upon the wholesaler by the brewer, which requirements are not discriminatory as compared to their application by the brewer to other similarly situated wholesalers. Good cause also means bad faith by the wholesaler in carrying out the brewer's distribution business. ~~A brewer must also provide a wholesaler with notice of an intent to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the wholesaler's distribution rights, and the wholesaler is entitled to an opportunity to cure any deficiency alleged by the brewer.~~ A brewer that terminates, cancels, fails to renew, or substantially changes the wholesaler's distribution rights without good cause may be held liable, and injunctive relief preventing the brewer's actions may be obtained.

Under this bill, a fermented malt beverages wholesaler that does not maintain a "community of interest" with a brewer may be considered a dealer of the brewer, such that the wholesaler's product distribution rights may not be terminated by the brewer without "good cause." ~~The bill does not otherwise directly affect the relationship between the brewer and the fermented malt beverages wholesaler.~~ However, the bill also requires that, if a fermented malt beverages wholesaler's authorization to distribute products is terminated in whole or in part by a brewer (even for "good cause"), any succeeding fermented malt beverages wholesaler must compensate the terminated wholesaler for the fair market value of the distributorship that was terminated by the brewer. ~~If the brewer terminates a wholesaler's distribution rights to some but not all of the brewer's products or brands, the terminated wholesaler must be compensated for the fair market value of the distribution rights for the products or brands terminated.~~ An exception exists if the terminated wholesaler was terminated by the brewer because the terminated wholesaler: engaged in material fraudulent conduct or made material and substantial misrepresentations in its dealings with the brewer or others; was convicted of a felony substantially related to operation of the dealership; or knowingly distributed products outside the territory authorized by the brewer.

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Disputes regarding the amount of compensation owed by a succeeding wholesaler to a terminated wholesaler must be mutually resolved between the parties or resolved through binding arbitration through a nationally recognized arbitration association.

Under current law, with certain exceptions, the outright sale, transfer, or assignment of a license to sell alcohol beverages at retail is illegal and unenforceable ~~except as specifically authorized by statute. The statutes authorize such direct transfers only if the license holder dies, becomes bankrupt, or makes an assignment for the benefit of creditors.~~ However, current licensees or permittees at times agree to surrender ~~their license or permit~~ their license or permit for a premises to the issuing authority upon promise of payment by another party ~~on the condition that~~ if the surrender of the license or permit results in the other party being awarded the liquor license or permit for the premises by the issuing authority.

This bill prohibits municipalities and ~~the department of revenue~~ DOR from issuing to an applicant a retail license or permit to sell alcohol beverages if the premises described in the application ~~are~~ is already covered by a current license or permit of the same kind unless each fermented malt beverage wholesaler to whom the current licensee or permittee is indebted is first notified that another person has applied for a license or permit for the same premises ~~that is subject to a surrender agreement.~~

Under current law, a person who ~~in good faith and in the ordinary course of business of lending money~~ holds a security interest in alcohol beverages ~~or warehouse receipts~~ may, without a license or permit, sell alcohol beverages. This bill requires that a sale of fermented malt beverages by a secured party be made within 30 days after the secured party takes possession of the fermented malt beverages unless the secured party demonstrates good cause why this time period is insufficient to make a sale that is commercially reasonable or in conformity with the parties' security agreement.

Under current law, any person who ships fermented malt beverages from out–of–state must hold an out–of–state shippers' permit, which authorizes the permittee to ship fermented malt beverages only to licensed wholesalers within the state. Violators shall be fined not more than $1,000 or imprisoned for not more than 90 days or both ~~and their out–of–state shippers' permit may be revoked.~~ This bill requires DOR to issue a written warning for an out–of–state shipper's first violation, and requires that any subsequent violation result in a fine of not more than $10,000 or imprisonment for not more than two years or both.

Current law generally prohibits any brewer or wholesaler of fermented malt beverages from furnishing anything of value to a retailer of fermented malt

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A number of exceptions to this prohibition exist.

beverages. ~~A specific~~ One exception allows brewers and wholesalers to give to any fermented malt beverage retailer, for placement inside the premises, signs, clocks, or menu boards with an aggregate value of not more than $150. ~~A retailer that receives a gift in excess of the limit must repay the value of the gift to the extent that it exceeds the limit. The fermented malt beverage retailer must keep an invoice or credit memo that includes information about the gift, and these records are subject to inspection by DOR.~~ This bill increases the aggregate limit on the value of signs, clocks, or menu boards from $150 to $2,500 during any calendar year. ~~The bill also requires the brewer or wholesaler, as well as the fermented malt beverage retailer, to keep written documentation containing information about the gift and subjects the brewer's or wholesaler's records to inspection by DOR, as well.~~

~~Under current law,~~ Another exception ~~to the prohibition against gifts from brewers or wholesalers to fermented malt beverage retailers~~ allows a brewer or wholesaler to provide signs made from paper or cardboard for placement inside the retailer's premises. This bill allows a brewer or wholesaler to also provide signs made from plastic, vinyl, or other materials with a useful life of less than one year, without limitation on the aggregate value of these signs.

~~Under current law,~~ Another exception ~~to the prohibition against gifts from brewers or wholesalers to fermented malt beverage retailers~~ allows a brewer or wholesaler to purchase advertising ~~for a fair consideration from a local~~ from a national or statewide trade association ~~which derives its principle income from membership~~ of retailers. This bill allows a brewer or wholesaler to purchase advertising from an advertising agency or media company to promote brewer or wholesaler sponsored sweepstakes, contests, or promotions on the premises of retailers if the promotional material includes at least five unaffiliated retailers and if the retailer on whose premises the sweepstakes, contest, or promotion will occur does not receive compensation for hosting the event. The bill also allows a brewer or wholesaler to conduct its own sweepstakes, contest, or promotion on the premises of a retailer if these same conditions are satisfied.

~~Under current law,~~ Another exception ~~to the prohibition against gifts from brewers or wholesalers to fermented malt beverage retailers~~ allows a brewer or wholesaler to provide business entertainment to a fermented malt beverage retailer ~~in one day that has a value of $75 or less.~~ This bill increases the allowable business entertainment ~~daily~~ value limit from $75 ~~to~~ per day to $500 per day and limits the number of days ~~that business entertainment may be provided~~ to not more than 12 in a calendar year.

ARG

Under current law, another exception to the prohibition against gifts from brewers or wholesalers to fermented malt beverage retailers allows a brewer that produces 350,000 or more barrels of fermented malt beverages annually to make contributions ~~contribute money or other things of value~~ to ~~certain~~ national or statewide trade associations ~~which derive their principal income from membership dues~~ of retailers. This bill allows any brewer or wholesaler to make contributions ~~contribute money or other things of value~~ to ~~a trade~~ national, statewide, or local trade association of retailers. This would include allowing brewers or wholesalers to join local tavern leagues.

~~Current law requires an applicant~~ for an operator's license (commonly called a bartender's license) ~~successfully complete a responsible beverage server training course at any location that is offered by a technical college district and that conforms to specified curriculum guidelines or a comparable training course that is approved by DOR or the educational approval board.~~ This bill also permits an applicant to complete a responsible beverage server training course by means of computer–based training and testing, including curriculum offered through the Internet.

*** ANALYSIS FROM –0712/4 ***

~~COMMERCE AND ECONOMIC DEVELOPMENT~~

~~COMMERCE~~

This bill requires DFI to establish by rule fees for a number of services provided by DFI relating to the regulation of business associations, ~~which~~ fees are currently set by statute. The services include providing electronic access to, or preparing and supplying copies or certified copies of, certain resolutions, deeds, bonds, records, documents, or other papers deposited with or kept by DFI; issuing certificates or statements, in any form, relating to the results of searches of records and files of DFI; processing any service of process, notice, or demand served on DFI; processing, in an expeditious manner, a document required or permitted to be filed with DFI; providing, in an expeditious manner, electronic access to certain resolutions, deeds, bonds, records, documents, or other papers deposited with or kept by DFI; and preparing, in an expeditious manner, certain copies, certified copies, certificates, or statements provided to DFI.

In addition, the bill authorizes DFI to administratively dissolve a limited liability company if any of the following occur: the limited liability company does not pay, within one year after they are due, any fees or penalties due DFI; the limited liability company is without a registered agent or registered office in this state for at least one year; and the limited liability company does not notify DFI within one

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year that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

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***** ANALYSIS FROM –0658/2 *****

~~COMMERCE AND ECONOMIC DEVELOPMENT~~

COMMERCE

Under Wisconsin's version of the Uniform Unclaimed Property Act (UUPA), certain types of property are presumed to be abandoned if the owner of the property fails to take steps to evidence ownership within a specified time period (dormancy period). For example, a stock or other intangible ownership interest in a business association is presumed to be abandoned if the business association pays out at least seven dividends or other sums as a result of the ownership interest during a seven–year period and the dividends or sums are unclaimed by the owner.

With certain limited exceptions, the holder of property that is presumed to be abandoned must report the property to the state treasurer before May 1 of each even–numbered year. By September 20 following the report, the state treasurer must publish a list containing the names of persons appearing to be owners of abandoned property. By December 1, the holder must pay or deliver the reported property to the state treasurer, unless the owner has claimed the property or the presumption of abandonment is erroneous. The UUPA permits a person to enter into an abandoned property recovery contract, under which the person agrees to provide an owner of property, for a fee, with services toward the recovery of abandoned property. However, an abandoned property recovery contract is not enforceable if it is entered into within two years after the date by which the abandoned property is required to be delivered to the state treasurer.

This bill changes the time–line for reporting and delivering to the state treasurer property that is presumed to be abandoned. Under this bill, with certain limited exceptions, the holder of property that is presumed to be abandoned must report and deliver the property to the state treasurer before November 1 of each year. The state treasurer must publish a notice containing the names of apparent owners of abandoned property by July 1 of each year.

This bill also shortens to five years the dormancy period that applies to a stock or other intangible ownership interest in a business association. In addition, under the bill, an abandoned property recovery contract is not enforceable if it is entered into within one year, rather than two years, after the date by which the abandoned property is required to be delivered to the state treasurer.

COURTS AND PROCEDURE

OTHER COURTS AND PROCEDURE

Under current law, if there are no heirs of a decedent in an intestate estate (an estate in which the decedent did not leave a will), or if a legacy or distributive share in an estate cannot be paid to the distributee or is not claimed by the distributee within 120 days after entry of the final judgment, the property escheats to the state and is paid or delivered to the state treasurer (treasurer). The treasurer must publish notice in the official state newspaper with such information as the name of the decedent, the time and place of death, the amount paid to the treasurer, and how a person may make a claim against the escheated property. Within ten years after the notice is published, a person may make a claim against the escheated property by filing a petition with the probate court that settled the estate and by sending copies of the petition to DOR and the attorney general. If the person establishes his or her claim in a court hearing, the court certifies the claim to DOA, which audits the claim; issues an order for any death tax due; and issues an order distributing the estate. The treasurer pays the claim.

The bill changes this procedure somewhat. The treasurer must publish a notice regarding escheated property at least annually (current law specifies no time requirement); a person filing a petition with the probate court must send a copy of the petition to the treasurer, instead of to DOR; the court is no longer required to certify a claim to DOA, which is no longer required to audit claims; and the court is no longer required to issue an order for any death tax due.

The bill also provides a new, optional procedure for making a claim against escheated property. The new procedure is similar to a procedure under current law for claiming abandoned property by filing a claim with the treasurer, except that under the new procedure the value of the claimed escheated property may not exceed $5,000. Rather than filing a petition with the probate court, a person claiming escheated property of $5,000 or less may, within ten years after publication by the treasurer of notice regarding the estate and the escheated property, file a claim with the treasurer, who must consider the claim within 90 days after filing. If the treasurer allows the claim, the treasurer must provide written notice to and obtain the written consent of the attorney general and file written notice of the allowed claim, as well as the written consent of the attorney general, with the probate court that settled the estate. After the necessary filings, the probate court must issue an order requiring the treasurer to pay the claim. If the treasurer does not act on a claim

INSERT RM 57

Unclaimed property

Under Wisconsin's version of the Uniform Unclaimed Property Act (UUPA), certain types of property are presumed to be abandoned if the owner of the property fails to take steps to evidence ownership within a specified time period (dormancy period). With certain limited exceptions, every other year the holder of property that is presumed to be abandoned must report and deliver the property to the state treasurer. With certain limited exceptions, the treasurer must sell the property within three years after the date on which the treasurer receives the property. If the property is a security other than a stock (for example, a stock option or an interest in a limited partnership), the treasurer must hold the security for at least one year before selling it, unless it is in the best interest of the state to do otherwise. Except for amounts sufficient to cover possible claims and the treasurer's administrative expenses, the treasurer currently deposits the clear proceeds of the sale of delivered property in the school fund.

Persons claiming an interest in any abandoned or unclaimed property delivered to the treasurer may file a claim with the treasurer to obtain the property. If a claim is allowed, the treasurer generally must deliver the property to the claimant or pay the claimant the amount the treasurer actually received or the net proceeds of the sale of the property, plus certain amounts for dividends or interest accruing to the property. However, if the claim is for any property other than a stock and if the treasurer sold the property within three years after the date on which the treasurer received the property, the treasurer must pay the claimant the value of the property at the time the claim was filed or the net proceeds of the sale, whichever is greater. This alternate method of valuation also applies if the claim is for a stock that the treasurer sold within three years after the date of receipt, as long as the claim is filed within that three–year period.

With certain limited exceptions, this bill requires annual reporting and delivery of unclaimed property to the state treasurer. The bill also shortens from seven years to five the dormancy period that applies to a stock or other intangible ownership interest in a business association. The bill establishes a single procedure that applies to the sale of all abandoned securities delivered to the treasurer, which requires the treasurer to hold the securities for at least one year before selling them, unless it is in the best interest of the state to do otherwise. In addition, the bill deletes the alternate method of valuation that applies to property, including stocks, sold within three years after the date on which the treasurer received the property. Thus, under this bill, the treasurer's liability for any claim is generally limited to delivery of the applicable abandoned or unclaimed property or payment of the amount the treasurer actually received or the net proceeds of the sale of the property, plus certain amounts for dividends or interest accruing to the property.

This bill also alters the procedure under the UUPA that applies to the reporting and delivery of certain support payments that qualify as abandoned property. *See* **HEALTH AND HUMAN SERVICES, OTHER HEALTH AND HUMAN SERVICES.**

State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1997/3
MDK:jld:pg

DOA:.....Statz – Telemarketing requirements

FOR 2001–03 BUDGET — NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

COMMERCE AND ECONOMIC DEVELOPMENT

COMMERCE

This bill creates three prohibitions regarding "telephone solicitations," which are defined as unsolicited telephone calls encouraging a person to purchase property, goods, or services. First, the bill prohibits an employee of a professional telemarketer from using a blocking service that withholds from the recipient of the call the name or telephone number associated with the telephone line used to make the call. The bill defines "professional telemarketer" as any business with employees whose primary duty is to make telephone solicitations.

Second, the bill prohibits an employee of a professional telemarketer from making a telephone solicitation to a person who has provided notice to the professional telemarketer that the person does not want to receive telephone solicitations.

Third, the bill prohibits an employee of a professional telemarketer from making a telephone solicitation unless, when initiating the telephone conversation, the employee discloses each the following: 1) the employee's name; 2) the identity of the person selling the property, goods, or services for whom the telephone solicitation is being made; and 3) the purpose of the call.

The bill's prohibitions apply to any interstate telephone solicitation that is received by a person in this state and to any intrastate telephone solicitation. Also,

if an employee of a professional telemarketer violates a prohibition, the professional telemarketer is subject to a forfeiture of not more than $500. Under certain circumstances, a professional telemarketer may be subject to a supplemental forfeiture of not more than $10,000 if the telephone solicitation was directed against an elderly person or a disabled person. The bill's prohibitions are enforced by DATCP, except that a district attorney, upon informing DATCP, may enforce a prohibition.

In addition, the bill makes changes to a prohibition under current law against any person using a prerecorded message in a telephone solicitation without the consent of the person called. Under this bill, the prohibition applies to any employee of a professional telemarketer, instead of any person. Also, under the bill, if an employee of a professional telemarketer violates the prohibition, the professional telemarketer is subject to the forfeiture and supplemental forfeiture described above. In addition, like the three prohibitions created by the bill, the prohibition applies to any interstate telephone solicitation that is received by a person in this state and to any intrastate telephone solicitation. Finally, the bill requires DATCP to enforce the prohibition, except that a district attorney, upon informing DATCP, may enforce the prohibition. Under current law, district attorneys, not DATCP, are required to enforce the prohibition.

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:

SECTION 1. 100.264 (2) (intro.) of the statutes is amended to read:

100.264 **(2)** SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183, 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 ~~or~~, 100.46, or 100.52 or a rule promulgated under one of those sections, the person shall be subject to a supplemental forfeiture not to exceed $10,000 for that violation if the conduct by the defendant, for which the violation was imposed, was perpetrated against an elderly person or disabled person and if the court finds that any of the following factors is present:

SECTION 2. 100.52 (title) of the statutes is created to read:

100.52 (title) **Telephone solicitations.**

within 90 days after the claim is filed, or if the treasurer disallows a claim, the person filing the claim may file an action in the probate court that settled the estate to establish the claim.

***** ANALYSIS FROM –2025/2 *****

COMMERCE AND ECONOMIC DEVELOPMENT

COMMERCE

Currently, under this state's version of the Uniform Unclaimed Property Act (UUPA), all abandoned or unclaimed property must be delivered to the state treasurer. With certain limited exceptions, the treasurer must sell the property within three years after the date on which the treasurer receives the property. If the property is a security other than a stock (for example, a stock option or an interest in a limited partnership), the treasurer must hold the security for at least one year before selling it, unless it is in the best interest of the state to do otherwise. Except for amounts sufficient to cover possible claims and the treasurer's administrative expenses, the treasurer currently deposits the clear proceeds of the sale of delivered property in the school fund.

Persons claiming an interest in any abandoned or unclaimed property delivered to the treasurer may file a claim with the treasurer to obtain the property. If a claim is allowed, the treasurer generally must deliver the property to the claimant or pay the claimant the amount the treasurer actually received or the net proceeds of the sale of the property, plus certain amounts for dividends or interest accruing to the property. However, if the claim is for any property other than a stock and if the treasurer sold the property within three years after the date on which the treasurer received the property, the treasurer must pay the claimant the value of the property at the time the claim was filed or the net proceeds of the sale, whichever is greater. This alternate method of valuation also applies if the claim is for a stock that the treasurer sold within three years after the date of receipt, as long as the claim is filed within that three–year period.

This bill establishes a single procedure that applies to the sale of all securities delivered to the treasurer under UUPA. Under this bill, the treasurer must hold all securities for at least one year before selling them, unless it is in the best interest of the state to do otherwise. In addition, this bill deletes the alternate method of valuation that applies to property, including stocks, sold within three years after the date on which the treasurer received the property. Thus, under this bill, the treasurer's liability for any claim is generally limited to delivery of the applicable

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abandoned or unclaimed property or payment of the amount the treasurer actually received or the net proceeds of the sale of the property, plus certain amounts for dividends or interest accruing to the property.

sub-sub

securities agents

***** ANALYSIS FROM –0597/1 *****

COMMERCE AND ECONOMIC DEVELOPMENT

COMMERCE

With certain exceptions, current law prohibits a person from engaging in the business of banking without being organized and chartered as a national bank, state bank, or trust company bank. 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 defined. However, this exemption from the definition of banking only applies if the agent keeps the money in a separate trust fund, does not mingle 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.

to include

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.

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***** ANALYSIS FROM –0599/1 *****

COMMERCE AND ECONOMIC DEVELOPMENT

COMMERCE

sub-sub

Wisconsin Consumer Act

Under current law, a transaction in which a consumer is granted credit in an amount of $25,000 or less and which is entered into for personal, family, or household purposes (consumer credit transaction) is generally subject to the Wisconsin Consumer Act. The Wisconsin Consumer Act provides obligations, remedies, and penalties that current law generally does not require for other transactions.

With certain limited exceptions, any person who makes or solicits consumer credit transactions in this state must register with DFI. ~~Current law requires the person to register within 30 days after commencing business and then annually thereafter.~~ Among other things, the required registration statement must state the

average outstanding monthly balance, calculated according to a prescribed formula, of all consumer credit transactions that the person entered into in this state during the reporting period. A person who is subject to this registration requirement must pay a registration fee, unless the average outstanding monthly balance of all consumer credit transactions that the person entered into in this state is $250,000 or less. Although DFI may determine the registration fee, based upon certain specified criteria, current law contains a minimum fee of $25 and a maximum fee of $1,500 or 0.005% of the average monthly outstanding balance, whichever is less.

This bill changes these registration and fee requirements. This bill requires a registration statement to include the year–end balance of all consumer credit transactions rather than the average outstanding monthly balance. Also, under the bill, the year–end balance includes any consumer credit transaction that a person entered into or obtained by assignment, as long as the transaction originated in this state. In addition, under the bill, a person is exempt from the annual registration requirement, and the annual registration fee, if the person's year–end balance is $250,000 or less, although the person still must make an initial registration and pay an initial registration fee. This bill also deletes the statutory minimum and maximum registration fees and requires DFI to set registration fees by rule, based upon the existing, specified criteria.

***** ANALYSIS FROM –2023/1 *****

COMMERCE AND ECONOMIC DEVELOPMENT

COMMERCE

This bill creates a regulatory flexibility committee whose ten members are appointed by the governor. The committee is required to issue a report, which may include recommendations for legislation, that will consider issues related to agency regulation of businesses, including requiring agencies to consider the direct and indirect impact of proposed rules; allowing businesses a grace period to correct a violation and avoid being penalized; allowing installment payments of fines or forfeitures; and granting additional authority to the Joint Committee for Review of Administrative Rules to suspend or modify existing or proposed rules.

***** ANALYSIS FROM –0676/2 *****

average outstanding monthly balance, calculated according to a prescribed formula, of all consumer credit transactions that the person entered into in this state during the reporting period. A person who is subject to this registration requirement must pay a registration fee, unless the average outstanding monthly balance of all consumer credit transactions that the person entered into in this state is $250,000 or less. Although DFI may determine the registration fee, based upon certain specified criteria, current law contains a minimum fee of $25 and a maximum fee of $1,500 or 0.005% of the average monthly outstanding balance, whichever is less.

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***** ANALYSIS FROM –2023/1 *****

COMMERCE AND ECONOMIC DEVELOPMENT

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***** ANALYSIS FROM –0676/2 *****

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Next immediate page

COMMERCE AND ECONOMIC DEVELOPMENT

BUILDINGS AND SAFETY

Fire dues program and fire safety laws

Under current law, an eligible city, village, or town (municipality) may receive a grant from the department of commerce (department) that may be used to purchase fire protection equipment, to provide fire inspection services and public education, to train fire fighters and fire inspectors, and to fund certain accounts established for the benefit of fire fighters (fire dues program). Under current law, the fire dues program is funded annually with an amount approximately equal to 2% of the premiums assessed during the previous year for private fire insurance and 2% of the premiums paid to the local government property insurance fund for the insurance of certain property owned by local governments. The department determines the amount of each grant based upon the equalized valuation of real property improvements within each eligible municipality, except that an eligible municipality may not receive an amount that is less than the municipality received in 1979.

Under current law, with certain limited exceptions, the chief of the fire department in every municipality is a deputy of the department and is required to comply with certain fire safety laws. These fire safety laws generally require the fire department, the fire chief, or other designated individuals to keep certain records, perform fire inspections, and provide public fire education. This bill makes numerous changes and clarifications to the fire dues program and the fire safety laws, including the following:

Eligibility for a grant from the fire dues program

With certain exceptions, in order for a municipality to be eligible to receive a grant from the fire dues program, the chief of the municipal fire department currently must provide a fire inspection for every public building and place of employment in the fire department's territory. Generally, in every municipality other than the city of Milwaukee, these inspections must be performed at least once every six months. A municipality must certify to the department that all required inspections were provided. Furthermore, in order to be eligible to receive a grant, a municipality must receive services from a fire department that provides a training program prescribed by rule of the department.

The bill changes these eligibility requirements. Under the bill, a municipality may be eligible to receive a grant if the municipality ensures that at least 95% of the required fire inspections are provided for in the municipality and if the municipality

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Fire dues program

Under current law, an eligible city, village, or town (municipality) may receive a grant from the department of commerce that may be used to purchase fire protection equipment, to provide fire inspection services and public education, to train fire fighters and fire inspectors, and to fund certain accounts established for the benefit of fire fighters (fire dues program). The fire dues program is funded from a percentage of certain insurance premiums.

This bill makes numerous changes and clarifications to the fire dues program. With certain exceptions, in order for a municipality to be eligible to receive a grant from the fire dues program, the chief of the municipal fire department currently must provide a fire inspection for every public building and place of employment in the fire department's territory. Under the bill, a municipality may be eligible to receive a grant if the municipality ensures that at least 95% of the required fire inspections are provided for in the municipality and if the municipality certifies to the department of commerce that these inspections were provided. It is unclear under current law whether certain fire dues program eligibility requirements and fire safety laws apply to a municipality or to a fire department that provides services to a municipality. In general, the bill specifies that the fire dues program eligibility requirements apply to a municipality rather than to a fire department. In addition, the bill requires a municipality to ensure that certain fire safety laws, such as those requiring fire inspections, that apply to a fire department, a fire chief, or other designated individuals are followed in the municipality.

Fire safety laws

Current law generally requires the chief of each municipal fire department to comply with certain fire safety laws relating to fire inspections and fire safety education. This bill authorizes the department of commerce to create a fire safety and injury prevention education program. In addition, this bill makes numerous changes and clarifications to the fire safety laws. Among other things, the bill expands the department of commerce's authority with regard to fire safety to include jurisdiction over and supervision of all buildings, structures, premises, and public thoroughfares in this state for the purpose of administering all laws relating to fire inspections, fire prevention, fire detection, and fire suppression. In addition, the bill authorizes the department of commerce to enter a private dwelling, with the consent of the owner or renter, in order to verify the proper installation and maintenance of smoke detectors and fire suppression devices, such as fire sprinklers.

certifies to the department that these inspections were provided. In addition, the bill specifies that the training program that is required for eligibility must train fire fighters and inspectors who provide fire suppression services, fire prevention inspections, or public education with regard to fire safety.

Current law also permits a municipality to maintain eligibility for a grant if the municipality receives fire protection services under a contract. Under current law, if a municipality contracts with another city, village, or town for fire protection services, the municipality is eligible for a grant if the contract is sufficient to provide fire protection to the entire municipality. In addition, under the contract, the fire department providing services must do so without endangering property within the fire department's own territory.

The bill specifically excludes a mutual aid agreement relating to fire protection from the type of contracts that a municipality may use to satisfy these eligibility requirements. Although the term is undefined, generally a mutual aid agreement relating to fire protection is a backup, rather than a primary, plan for the provision of fire protection services. Under the bill, if a municipality enters into a mutual aid agreement, the municipality may still be eligible to receive a grant if the municipality satisfies all applicable eligibility requirements.

Municipal and fire department duties

It is unclear under current law whether certain fire dues program eligibility requirements and fire safety laws apply to a municipality or to a fire department that provides services to a municipality. Furthermore, it is unclear whether the term "fire department," as it currently is used in the fire dues program and fire safety laws, includes other organizations that may provide fire protection services to a municipality, such as a fire company or combined protective services department.

In general, the bill specifies that the fire dues program eligibility requirements apply to a municipality rather than to a fire department. In addition, the bill requires a municipality to ensure that certain fire safety laws, such as those requiring fire inspections, that apply to a fire department, a fire chief, or other designated individuals are followed in the municipality. The bill also clarifies that the term "fire department," as the term is used in the fire dues program and fire safety laws, includes any organization that is permitted under current law to provide fire protection services to a municipality.

Current law requires the department of commerce to maintain a record of all fires occurring in this state and requires the records to be open to public inspection.

The bill requires each fire department, rather than the department of commerce, to maintain a record of all fires occurring within the fire department's territory. In addition, the bill permits the department of commerce, by rule, to require a fire department to provide the department of commerce with a copy of a fire record. The bill clarifies that a fire record is open to public inspection under the open records law.

Jurisdiction and authority of the department under the fire safety laws

Under current law, the department generally has jurisdiction over places of employment and public buildings, as well as certain residential buildings. In addition, the department may perform a fire inspection in any building, premises, or public thoroughfare. In certain circumstances, the department may also enter a private dwelling to determine whether the dwelling contains all required smoke detectors. Current law is ambiguous regarding whether the department must obtain the consent of an owner or renter to enter a private dwelling.

The bill expands the department's jurisdiction and authority with regard to fire safety. Under the bill, the department has jurisdiction over and supervision of all buildings, structures, premises, and public thoroughfares in this state for the purpose of administering all laws relating to fire inspections, fire prevention, fire detection, and fire suppression. In addition, the bill authorizes the department to enter a private dwelling in order to verify the proper installation and maintenance of smoke detectors and fire suppression devices, such as fire sprinklers. The bill clarifies that the department may enter a private dwelling only with the consent of the owner or renter.

Fire safety and injury prevention program

Under current law, the department of commerce is required to provide to the department of public instruction an outline of a course of study in fire prevention, for use in the public schools. However, the department of commerce does not have the authority under current law to directly provide public education regarding fire safety.

The bill authorizes the department to create a fire safety and injury prevention education program. The department must design the program to educate the public regarding fire prevention, fire detection, fire suppression, injury prevention, and any other related subject matter. The bill permits the department to make grants to support the purposes of the program.

***** ANALYSIS FROM –0677/2 *****

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Subs-Subs

Manufactured building code enforcement

COMMERCE AND ECONOMIC DEVELOPMENT

STET subhead

BUILDINGS AND SAFETY

Under current law, the department of commerce (department) administers the manufactured building code to ensure that minimum standards are met for the manufacture and installation of manufactured buildings as dwellings. Currently, a city, village, town, or county (municipality) may, with the approval of the department of commerce, enact an ordinance to enforce the manufactured building code with regard to the installation of manufactured buildings as dwellings in the municipality. A county ordinance applies in any city, village, or town within the county that has not adopted ordinances to enforce the manufactured building code, unless the city, village, or town is exempt from administration of the manufactured building code. Currently, any city, village, or town with a population of 2,500 or less (small municipality) is exempt from administration of the manufactured building code.

Generally, inspections must be performed to enforce the manufactured building code in a municipality (manufactured building code inspections). Current law permits a municipality to perform these manufactured building code inspections and, unless the particular municipality is exempt from administration of the manufactured building code, requires the department to perform manufactured building code inspections that are not otherwise provided for in a municipality. Current law also requires the department to contract, at municipal expense, to perform any manufactured building code inspections that a municipality requires. It is unclear, however, whether this contracting requirement permits the department to perform required manufactured building code inspections directly or requires the manufactured building code inspections to be performed by a third party under contract with the department.

This bill removes the requirement that a municipality obtain department of commerce approval before enacting an ordinance to enforce the manufactured building code with regard to the installation of manufactured buildings as dwellings in the municipality. In addition, this bill creates new requirements relating to the administration of the manufactured building code in small municipalities. Under this bill, a small municipality may do any of the following:

1. Enact an ordinance to enforce the manufactured building code, either independently or jointly with another municipality, with regard to the installation of manufactured buildings as dwellings in the small municipality.

(B) Adopt a resolution requesting the appropriate county to enforce the manufactured building code with regard to the installation of manufactured buildings as dwellings in the municipality.

(C) Adopt a resolution not to exercise either of the above options, in which case the small municipality is exempt from administration of the manufactured building code.

(D) Take no action, in which case the department of commerce must enforce the manufactured building code throughout the municipality.

The bill also changes the provisions regarding manufactured building code inspections performed by the department in municipalities. Under this bill, the department may perform these inspections directly or may contract with a third party for the inspections. In addition, the bill removes the requirement that a municipality pay for any manufactured building code inspections that are provided by the department under contract. However, under the bill, the department retains the authority to establish a fee, by rule, to defray the cost of performing manufactured building code inspections in a municipality.

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***** ANALYSIS FROM -2142/4 *****

CORRECTIONAL SYSTEM

ADULT CORRECTIONAL SYSTEM

Under current law, any person who is serving a sentence, other than a life sentence, for a felony that was committed before December 31, 1999, may be paroled after serving 25% of his or her sentence. The parole commission makes the decision as to when the person actually is paroled, based on specific criteria. Currently, any person who is serving a sentence, other than a life sentence, for a felony that was committed on or after December 31, 1999, is not eligible for parole. Instead, the person is sentenced to prison and to extended supervision for a specific time determined by the court. The term of imprisonment may be reduced if the person is placed in the challenge incarceration program, that provides a limited number of youthful offenders a program of strenuous exercise, manual labor, substance abuse treatment, and personal development counseling.

This bill allows the secretary of corrections to release a prisoner, other than one who is sentenced to life imprisonment, eligible for parole or extended supervision before the end of his or her mandatory time of imprisonment and regardless of when the offense was committed, if the prisoner is seriously or terminally ill. Under the bill, the prisoner may be released if the secretary determines that the release of the inmate would not pose a risk of harm to

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audited financial report prepared by DOA, and the estimated change in the surplus or deficit based on recommendations in the biennial budget bill or bills.

***** ANALYSIS FROM –2308/1 *****

STATE GOVERNMENT

STATE FINANCE

Current statutes contain a statement that states that "[n]o bill directly or indirectly affecting general purpose revenues ... may be enacted by the legislature if the bill would cause the estimated general fund balance on June 30 of any fiscal year ... to be an amount equal to less than the following percentage of the total general purpose revenue appropriations for that fiscal year plus any amount from general purpose revenue designated as "Compensation Reserves" for that fiscal year ...." For fiscal year 2002–03, the amount is 1.4%. This bill reduces this amount to 1.2%.

***** ANALYSIS FROM –2007/2 *****

COMMERCE AND ECONOMIC DEVELOPMENT

BUILDINGS AND SAFETY

This bill transfers authority to regulate water and sewer service provided to occupants of manufactured home parks from PSC to the department of commerce. *See* **STATE GOVERNMENT, PUBLIC UTILITY REGULATION.**

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STATE GOVERNMENT

PUBLIC UTILITY REGULATION

This bill transfers authority to regulate water and sewer service provided to occupants of manufactured home parks from PSC to the department of commerce. Under current law, PSC is required to promulgate rules that establish standards for water or sewer service that is provided to occupants of a mobile home park by the park operator or a contractor. A "mobile home park" is defined as any tract of land containing two or more individual plots of land that are rented for the accommodation of a mobile home. A "mobile home" is defined as a manufactured home. PSC's rules must include requirements for metering, billing, depositing, arranging deferred payment, installing service, refusing or discontinuing service, and resolving disputes about service. The rules must also ensure that charges are reasonable and not unjustly discriminatory, that service is reasonably adequate, and that any related practice is just and reasonable. PSC may, on its own motion or upon a complaint by a mobile home park occupant, issue an order or commence a civil action against an operator or contractor to enforce the rules. In addition, DOJ, after

any person. The secretary must also determine that the inmate's health care costs are likely to be paid by the federal medicare program, a veteran's program, medical assistance, or another federal or state medical program, or by the inmate. The bill requires DOC to promulgate rules regarding eligibility for this conditional medical parole or extended supervision program and establishing criteria for revoking the parole or extended supervision.

*** ANALYSIS FROM -1855/2 ***

CORRECTIONAL SYSTEM

ADULT CORRECTIONAL SYSTEM

Revocation of extended supervision

Under current law, if a person violates a requirement of parole or extended supervision, DOC may return the person to prison. Current law also permits DOC to take a person into custody if it alleges that the person has violated a condition or rule relating to parole. This bill specifies that DOC may also take a person under extended supervision into custody if it alleges that the person has violated a condition or rule relating to extended supervision. In addition, the bill specifies how to calculate the amount of time remaining on a bifurcated sentence, for purposes of determining the maximum amount of time for which a person may be returned to prison after a violation of extended supervision and the length of the term of extended supervision that the person must serve thereafter.

CRIMES

CRIMINAL SENTENCES

The structure of felony sentences under current law

Current law sets maximum terms of imprisonment for all crimes. It also specifies how a term of imprisonment is structured. Under current law, if a person committing a felony before December 31, 1999, is sentenced to prison for a term of years, the person receives an indeterminate sentence, which typically consists of a term of confinement followed by parole. The person's term of confinement is not fixed when the sentence is imposed. He or she may be released on parole after serving as little as one–fourth of the sentence, as much as two–thirds of it (or more, if the crime for which the person was sentenced is classified as a serious felony), or some amount in between.

Current law provides a separate system for prison sentences for crimes committed on or after December 31, 1999. If a court chooses to sentence a felony offender to imprisonment in a state prison (other than through a life sentence) for

a felony committed on or after December 31, 1999, the court must do so by imposing a bifurcated sentence. For the first part of the bifurcated sentence, the court sentences the person to a fixed term of confinement in prison. The minimum term of confinement is one year. The maximum term of confinement under a bifurcated sentence for felonies classified in the criminal code ranges from two to 40 years. If the person is being sentenced to prison for an unclassified felony, the term of confinement in prison portion of the sentence may not exceed 75% of the total length of the bifurcated sentence.

An offender is not eligible for parole under a bifurcated sentence. Instead, after serving the term of confinement portion of the bifurcated sentence, he or she serves a fixed term of extended supervision as the second part of the bifurcated sentence.

Concurrent and consecutive sentences

Under current law, a court may order any sentence to be served concurrent with or consecutive to any other sentence imposed at the same time or previously. This bill specifies how the person will serve the periods of confinement and the periods of extended supervision and parole under the sentences as a result of the concurrent or consecutive nature of the sentences under the following circumstances: 1) when the court requires a sentence under which the person may be placed on extended supervision (a "determinate sentence") to be served concurrent with or consecutive to another determinate sentence; 2) when the court requires a determinate sentence to be served concurrent with or consecutive to an indeterminate sentence; or 3) when the court requires an indeterminate sentence to be served concurrent with or consecutive to a determinate sentence. The bill also requires that a person sentenced to consecutive indeterminate and determinate sentences serve the term of extended supervision under the determinate sentence before serving the period of parole under the indeterminate sentence, regardless of the order in which the crimes were committed or the sentences imposed.

Penalties for criminal attempts

Current law specifies that the maximum term of imprisonment for an attempt to commit a felony (other than certain felonies having separate penalties for attempts) is one–half of the maximum term of imprisonment for the completed crime. This bill specifies that the maximum term of confinement under a bifurcated sentence imposed for an attempt to commit a classified felony is one–half of the maximum term of confinement for the completed crime. The bill also specifies that the maximum term of confinement under a bifurcated sentence imposed for an

attempt to commit an unclassified felony is 75% of the maximum term of imprisonment for the attempt.

Other changes

1. This bill specifies that, if a misdemeanor offender may be sentenced to prison because of the application of one or more sentence enhancers and the court decides to sentence the person to prison, the court must impose a bifurcated sentence. In sentencing a person to prison in such a case, the term of confinement in prison portion of the sentence may not constitute more than 75% of the bifurcated sentence.

2. Under current law, the maximum term of probation for a misdemeanor is two years, and the maximum term of probation for a felony is the maximum term of imprisonment for the crime or three years, whichever is greater. Under this bill, the maximum term of probation for a felony or for a misdemeanor for which a court may impose a bifurcated sentence is the maximum term of confinement in prison for the crime or three years, whichever is greater.

3. Under current law, if a person is found not guilty of a crime by reason of mental disease or mental defect and the crime is not punishable by life imprisonment, the maximum term for which the person may be committed to the department of health and family services is two–thirds of the maximum term of imprisonment for the crime. Under this bill, the maximum term of commitment for a felony other than one punishable by life imprisonment or for a misdemeanor for which a court may impose a bifurcated sentence is the maximum term of confinement that could be imposed on a person convicted of the crime.

***** ANALYSIS FROM –1606/3 *****

CORRECTIONAL SYSTEM

ADULT CORRECTIONAL SYSTEM

Under current law, ~~upon the death of an inmate of a state correctional institution~~, the person in charge of a state correctional institution is required to notify the inmate's relative of the death. Currently, DOC is also required to provide the relative with written notification that DOC, upon request, will provide the relative with a copy of any autopsy ~~performed on the inmate~~ or ~~a copy of~~ any ~~other~~ report or information regarding the inmate's death.

Under current law, if the district attorney has notice that the death of a person may be the result of homicide (~~including homicide by negligent handling of a dangerous weapon or resulting from intoxicated use of a motor vehicle~~) or suicide, or may have occurred under unexplained or suspicious circumstances, the district

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attorney may order an inquest to determine the cause of the person's death. If a coroner or medical examiner has similar knowledge about a person's death, the coroner or medical examiner is required to notify the district attorney of the circumstances surrounding the death and may request that the district attorney order an inquest. The district attorney may order an inquest based on that information or may request that the coroner or medical examiner conduct a preliminary examination and report back to the district attorney. If the district attorney does not order an inquest, under current law the coroner or medical examiner may petition the circuit court to order an inquest.

Under this bill, the coroner or medical examiner is required to conduct an autopsy of every individual who dies while he or she is in the legal custody of DOC and is an inmate in a correctional facility located in this state. If the coroner or medical examiner determines that the person's death was the result of any of the circumstances that could result in the district attorney ordering an inquest, such as homicide, the coroner or medical examiner is required to follow current law regarding notification of the district attorney and requesting an inquest.

If an individual dies while he or she is in the legal custody of DOC and confined to a correctional facility in another state under a contract with DOC, DOC must have an autopsy performed on the individual. Under the bill, the autopsy must be performed by either a coroner or medical examiner of the county from which the individual was sentenced to the custody of DOC or by an appropriate authority in the other state. If a coroner or medical examiner of the county from which the individual was sentenced to the custody of DOC performs the autopsy and determines that the individual's death may have been the result of any of the situations that would permit the district attorney in Wisconsin to order an inquest, that person must send a copy of the results of the autopsy to the appropriate authority in the other state.

The bill requires DOC to pay the costs of the autopsy.

*** ANALYSIS FROM –0475/3 ***

CORRECTIONAL SYSTEM

ADULT CORRECTIONAL SYSTEM

This bill gives DOC authority to establish medium security correctional institutions at Redgranite and New Lisbon. Funding for the building of these institutions was included in the state building program in 1997 Wisconsin Act 27, the budget act.

The bill also specifies that any correctional institution that has been constructed by a private person and leased or purchased by the state for use by DOC is a state prison. ~~It also provides that~~ the medium security penitentiary located near Black River Falls ~~is to be called~~ the "Jackson Correctional Institution."

***** ANALYSIS FROM –0473/3 *****

CORRECTIONAL SYSTEM

ADULT CORRECTIONAL SYSTEM

This bill increases the number of members of the parole commission from six to eight ~~from the effective date of this bill~~ until June 30, 2003. After that date, the parole commission reverts back to six members. The parole commission determines if a person may be released on parole from an adult correctional facility. The chairperson of the parole commission ~~, who is nominated by the governor and with the advice and consent of the senate appointed,~~ appoints the other members of the parole commission.

***** ANALYSIS FROM –0470/1 *****

CORRECTIONAL SYSTEM

ADULT CORRECTIONAL SYSTEM

Under current law, DOC may require a prisoner in a ~~secured~~ correctional ~~facility for adults or for children~~ institution to pay a deductible, coinsurance, copayment, or similar charge if the prisoner receives medical or dental care and the prisoner earns wages while he or she ~~is a resident of the secured correctional facility~~. Currently, DOC has the authority to exempt or waive the payment of those charges under criteria that DOC establishes by rule.

This bill deletes the requirement that the prisoner must earn wages while he or she ~~is a resident of the secured~~ resides in the institution correctional ~~facility~~ before he or she may be required to pay a deductible, coinsurance, copayment, or similar charge.

***** ANALYSIS FROM –0606/2 *****

CORRECTIONAL SYSTEM

ADULT CORRECTIONAL SYSTEM

Under current law, as interpreted in *State ex rel. Speener v. Gudmanson,* 234 Wis. 461 (2000), the definition of "correctional institution" for purposes of the prisoner litigation reform legislation, 1997 Wisconsin Act 133, does not include an out–of–state jail. As a result of that decision, ~~the provisions of that legislation that place specific duties and limits on prisoners who want to begin actions based on prison or jail conditions do not apply~~ to persons who are in the custody of DOC and

are not subject to the requirements of the prison litigation reform legislation

placed in a jail or prison that is located outside of this state. This bill overrides that decision by defining a "prisoner" for purposes of prison litigation to include any person who is incarcerated, imprisoned, or otherwise detained and who is in the custody of the department of corrections or of the sheriff, superintendent, or other keeper of a jail or house of corrections. All persons who are placed in a jail or prison outside this state by DOC are in the custody of DOC.

stop here

***** ANALYSIS FROM –0451/1 *****

CORRECTIONAL SYSTEM

ADULT CORRECTIONAL SYSTEM

Under current law, until July 1, 2001, DOC may operate the juvenile correctional facility at Prairie du Chien as a state prison for nonviolent offenders who are not more than 21 years of age. This bill extends that authority to July 1, 2003.

***** ANALYSIS FROM –0449/3 *****

CORRECTIONAL SYSTEM

include assessments &

JUVENILE CORRECTIONAL SYSTEM

Under current law relating to community youth and family aids, generally referred to as "youth aids," DOC is required to allocate various state and federal moneys to counties to pay for state–provided juvenile correctional services and local delinquency–related and juvenile justice services. DOC charges counties for the costs of services provided by DOC according to per person daily cost assessments specified in the statutes. Currently, those assessments ~~are~~ $154.08 for care in a juvenile correctional facility or a treatment facility, $76.71 for corrective sanctions services, and $18.62 for aftercare services. This bill increases those assessments for fiscal year 2001–02 to $171.16 for care in a juvenile correctional facility or a treatment facility, $82.89 for corrective sanctions services, and $23.25 for aftercare services and for fiscal year 2002–03 to $176.06 for care in a juvenile correctional facility or a treatment facility, $84.87 for corrective sanctions services, and $23.80 for aftercare services. The bill also eliminates statutorily set assessments for care in a child caring institution, group home, foster home, or treatment foster home.

***** ANALYSIS FROM –0447/3 *****

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

Under current law, a court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) may place a juvenile ten years of age or over who has committed a Class A felony or a juvenile 14 years of age or over who has committed

a Class B felony in the serious juvenile offender program (SJOP) if the juvenile court finds that the only other disposition that would be appropriate for the juvenile would be placement in a juvenile secured correctional facility. The SJOP contains various component phases for its participants, including placement in a juvenile secured correctional facility or, if the participant is 17 years of age or over, an adult prison. The SJOP also includes a component phase of intensive or other field supervision, including juvenile corrective sanctions supervision, juvenile aftercare supervision or, if the participant is 17 years of age or over, adult intensive sanctions supervision. Also, under current law, DOC may transfer a juvenile who is placed in a juvenile secured correctional facility to the Racine Youthful Offender Correctional Facility, which is a medium security adult correctional institution for offenders 15 to 21 years of age, if the juvenile is 15 years of age or over and the conduct of the juvenile in the juvenile secured correctional facility presents a serious problem to the juvenile or others.

The Wisconsin Supreme Court recently held, however, in *State of Wisconsin v. Hezzie R.*, 219 Wis. 2d 849 (1998), that subjecting a juvenile ~~who has been adjudicated delinquent and~~ who has no right to a trial by jury under the Juvenile Justice Code to placement in an adult prison violates the juvenile's constitutional right to a trial by jury because placement in an adult prison constitutes criminal punishment rather than juvenile rehabilitation. Accordingly, this bill eliminates the authority of DOC to transfer a juvenile who has been adjudicated delinquent to an adult prison, including the intensive sanctions program, which is defined in the statutes as a state prison.

Current law contains conflicting provisions relating to the age under which a juvenile who has been sentenced to an adult prison (juvenile prisoner) must be placed in a juvenile secured correctional facility and the age at which a juvenile prisoner may be transferred to an adult prison. One provision requires DOC to keep juvenile prisoners under 15 years of age in a juvenile secured correctional facility, another provision requires DOC to keep juvenile prisoners under 16 years of age in a juvenile secured correctional facility, and another provision does not permit DOC to transfer a juvenile prisoner to an adult prison until the juvenile attains 17 years of age. This bill provides a uniform age of 15 years at which DOC may transfer a juvenile prisoner to an adult prison.

***** ANALYSIS FROM –0448/3 *****

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

Under current law, if a juvenile 14 years of age or over is adjudged delinquent for committing a violation that would be a Class B felony if committed by an adult and if the only other disposition that would be appropriate for the juvenile would be a placement in a secured correctional facility, the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) may place the juvenile in the serious juvenile offender program (SJOP) administered by DOC for a period of five years. DOC must provide each participant in the SJOP with a series of component phases that are based on public safety considerations and the participant's need for supervision, care, and rehabilitation, including a component phase consisting of a placement in a Type 1 secured correctional facility, such as Ethan Allen School or Lincoln Hills School, for a period of not more than three years. DOC may also return a participant to a component phase that was used previously for the participant without a hearing, unless DOC provides for a hearing by rule.

This bill permits the juvenile court to extend the period for which a participant in the SJOP program may be placed in a Type 1 secured correctional facility for not more than an additional two years if the juvenile court finds that the participant is in need of the supervision, care, and rehabilitation that a placement in a Type 1 secured correctional facility provides and that public safety considerations require that the participant be placed in such a facility. The bill also permits DOC to extend the period for which a participant in the SJOP program may be placed in a Type 1 secured correctional facility for not more than an additional 30 days without a hearing, unless DOC provides for a hearing by rule. In addition, the bill specifies that a 30–day extension under the bill does not preclude a two–year extension under the bill, and vice versa.

*** ANALYSIS FROM –0446/2 ***

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

Under current law, a juvenile may be taken into custody under circumstances in which a law enforcement officer believes, on reasonable grounds, that the juvenile has violated the terms of supervision ordered by the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) or the terms of aftercare supervision administered by DOC or a county department of human services or social services (county department). A juvenile who has been taken into custody on

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¶ Under current law, a participant in the SJOP who has committed a Class A felony may be placed in a juvenile secured correctional facility or an adult prison until the participant has reached 25 years of age and a participant in the SJOP who has committed a Class B felony may be placed in ~~a juvenile secured correctional facility or an adult~~ such prison for not more than ~~5~~ three years.

or

(end of insert)

that ground may be held in custody if probable cause exists to believe that the juvenile will run away so as to be unavailable for proceedings of the juvenile court or proceedings for revocation of aftercare supervision. This bill permits a juvenile who has violated a condition of the juvenile's placement in a Type 2 secured correctional facility or a Type 2 child caring institution (Type 2 CCI) or a condition of the juvenile's participation in the intensive sanctions program to be taken into custody by a law enforcement officer and held in custody if the juvenile is at risk of running away so as to be unavailable for action by DOC or a county department relating to that violation.

Type 2 secured correctional facilities consist of the corrective sanctions program, under which DOC places a juvenile in the community and provides the juvenile with intensive surveillance and community–based treatment services, the ~~serious juvenile offender program~~, which includes certain component phases under which DOC provides a juvenile with supervision that is more restrictive than ordinary supervision in the community, and CCIs that DOC has designated as Type 2 secured correctional facilities for the placement of certain juveniles who have been adjudged delinquent. Similarly, Type 2 CCIs consist of CCIs that DOC has designated for the placement of certain juveniles who have been adjudged delinquent and placed under the supervision of a county department, ~~and the~~ intensive supervision program is a program under which a juvenile is placed in the community and the county department provides the juvenile with intensive surveillance and community–based treatment services.

***** ANALYSIS FROM –2174/2 *****

~~CORRECTIONAL~~ JUVENILE CORRECTIONAL SYSTEM

Under current law, DOC is required to provide a juvenile boot camp program for juveniles who have been adjudged delinquent and placed under the supervision of DOC. This bill eliminates that program.

***** ANALYSIS FROM –0452/1 *****

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

~~Under current law, DOC provides a corrective sanctions program for juveniles who have been placed under the supervision of DOC. Under the corrective sanctions program, DOC must place a participant in the community, provide intensive surveillance of the participant, and~~ provide an average of $3,000 per year per slot to

purchase community–based treatment services for each participant. This bill requires DOC to provide an average of *not more than* $3,000 per year per slot to purchase those services.

***** ANALYSIS FROM –0166/4 *****

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

Under current law, DOC is required to enter into contracts with organizations in Milwaukee County, Kenosha County, Racine County, and Brown County to provide services in those counties for the diversion of youths from gang activities into productive activities (youth diversion program). This bill transfers administration of the youth diversion program from DOC to the office of justice assistance in DOA.

STATE GOVERNMENT

OTHER STATE GOVERNMENT

Under current law, certain appropriations provided to the office of justice assistance (OJA) may be used for administering federal grants for law enforcement assistance. Under this bill, OJA may use the appropriations to administer any grant for law enforcement assistance.

***** ANALYSIS FROM –0437/3 *****

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

Under current law, DHFS operates the Mendota Juvenile Treatment Center (center), as a juvenile secured correctional facility, to provide evaluations and treatment for juveniles whose behavior presents a serious problem to themselves or others in other juvenile secured correctional facilities and whose mental health needs can be met at the center. Currently, DOC is required to transfer to DHFS ~~$2,489,300 in program revenues in fiscal year 1999–2000 and $2,489,900 in program revenues in fiscal year 2000–01~~ for those services. This bill requires DOC to transfer to DHFS ~~*$2,694,400* in program revenues in fiscal year~~ 2001–02 and ~~*$2,947,200* in program revenues in fiscal year~~ 2002–03 ~~for those services~~.

***** ANALYSIS FROM –0052/1 *****

COURTS AND PROCEDURE

PUBLIC DEFENDER

Under current law, the state public defender may not provide legal services or assign an attorney to an adult in a criminal case if the adult is not in custody and has not been charged with a crime. Likewise, the state public defender may not provide