

2003 DRAFTING REQUEST

Bill

Received: 12/22/2003

Received By: chanaman

Wanted: Soon

Identical to LRB:

For: John Gard (608) 266-3387

By/Representing:

This file may be shown to any legislator: NO

Drafter: chanaman

May Contact:

Addl. Drafters:

Subject: Fin. Inst. - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Gard@legis.state.wi.us

Carbon copy (CC:) to: robert.marchant@legis.state.wi.us
laura.rose@legis.state.wi.us
daryl.hinz@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Lawsuits concerning credit agreements

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rmarchan 12/22/2003	jdyer 12/23/2003					
/1			chaugen 12/23/2003		lemery 12/23/2003	lemery 01/05/2004	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

*none
needed*

<END>

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/1			chaugen 12/23/2003	_____	lemery 12/23/2003		

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1/?	rmarchan	1/23 jld	OK 12-27	OK 12-23			

FE Sent For:

<END>

393311

12-23

stays + jd

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

roger

1 AN ACT *to repeal* 137.04, 137.06, 196.491 (3) (g) 1m. and 224.30 (2); *to renumber*
2 196.491 (3) (g) 1.; *to renumber and amend* 137.05 (title) and 137.05; *to*
3 *amend* 16.957 (2) (b) 1. (intro.), 16.957 (2) (c) 2., 16.957 (3) (b), 25.96, 66.1001
4 (2) (e), 66.1001 (4) (a), 106.01 (9), 106.025 (4), chapter 137 (title), subchapter I
5 (title) of chapter 137 [precedes 137.01], 137.01 (3) (a), 137.01 (4) (a), 137.01 (4)
6 (b), subchapter II (title) of chapter 137 [precedes 137.04], 146.82 (2) (a) (intro.),
7 196.195 (10), 196.374 (3), 196.491 (1) (d), 196.491 (2) (a) 3., 196.491 (2) (a) 3m.,
8 196.491 (2) (g), 196.491 (3) (a) 3. a., 196.491 (3) (e), 221.0901 (3) (a) 1., 221.0901
9 (8) (a) and (b), 452.09 (2) (a), 452.09 (2) (c) (intro.), 452.09 (3) (d), 889.29 (1),
10 910.01 (1), 910.02 and 910.03; and *to create* 16.957 (2m), 66.0628, 66.1001 (4)
11 (e), 77.52 (2r), 106.04, 137.11 to 137.24, 137.25 (2), 146.82 (2) (a) 22., 196.03 (7),
12 196.195 (5m), 196.374 (3m), 241.02 (3), 295.13 (4) and 452.05 (3) of the statutes;
13 ~~relating to: administrative rule-making procedures, the control of air~~
14 ~~pollution, the protection of navigable waters, nonmetallic mining reclamation,~~
15 ~~financial assurances, the regulation of electric generating facilities and~~

1 ~~high voltage transmission lines, partial deregulation of telecommunications~~
2 ~~services, contributions by electric and gas utilities to the utility public benefits~~
3 ~~fund, grants for energy conservation and other programs, electric and gas~~
4 ~~utility service and rates, reciprocal agreements for real estate licenses,~~
5 ~~comprehensive planning by local governmental units, fees imposed by political~~
6 ~~subdivisions, the confidentiality of patient health care records,~~
7 ~~apprentice-to-journeyman job-site ratios, the acquisition of in-state banks~~
8 ~~and in-state bank holding companies, credits agreements, electronic~~
9 ~~notarization and acknowledgement, electronic transactions and records, a~~
10 ~~sales tax exemption for temporary help services, extending the time limit for~~
11 ~~emergency rule procedures, and granting rule-making authority.~~

Analysis by the Legislative Reference Bureau

INTRODUCTION

This bill makes various changes relating to administrative rule-making procedures, the control of air pollution, the protection of navigable waters, nonmetallic mining reclamation financial assurances, the regulation of electric generating facilities and transmission lines, the deregulation of telecommunications services, contributions to and grants from the utility public benefits fund, economic development costs of electric and gas utilities, reciprocal agreements for real estate licenses, comprehensive planning by local governmental units, fees imposed by political subdivisions, the confidentiality of patient health care records, apprentice-to-journeyman job-site ratios, the acquisition of in-state banks and in-state bank holding companies, electronic notarizations and acknowledgements, electronic transactions and records, a sales tax exemption for temporary help services, and credit agreements and related documents.

LARGE ELECTRIC GENERATING FACILITIES AND HIGH-VOLTAGE TRANSMISSION LINES

Under current law, a person may not begin to construct certain large electric generating facilities or high-voltage transmission lines unless the Public Service Commission (PSC) has issued a certificate of public convenience and necessity (CPCN) for the facility or line. The process for the PSC to consider an application for a CPCN is subject to various deadlines. One deadline requires the PSC to take final action on an application within 180 days after the application is completed. Under certain circumstances, a court may extend the deadline by an additional 180 days. If the PSC fails to take final action within the deadline, current law provides that the

monitoring, accreditation, and health care services review activities by health care facility staff committees or accreditation or review organizations.

Under current federal law, patient health care information may be released without patient authorization by health care providers for, among other purposes, treatment, payment, and health care operations. "Health care operations" is defined in federal law to include quality assessment and improvement activities; credentialing or evaluating of health care practitioners and training; underwriting; medical review, legal services, and auditing; business planning and development; and business management and general administrative activities.

This bill modifies the requirement for release of patient health care records without patient consent to authorize, rather than require, release under specified circumstances, and to eliminate the requirement that a request for the records be received before release. The bill also increases the circumstances under which patient health care records are authorized to be released without patient informed consent, to include purposes of health care operations, as defined and authorized in federal law.

APPRENTICESHIP-TO-JOURNEYMAN JOB-SITE RATIOS

Under current law, the Department of Workforce Development (DWD) may determine reasonable classifications, promulgate rules, issue general or special orders, hold hearing, make findings, and render orders as necessary to oversee the apprenticeship programs provided in this state.

This bill prohibits DWD from prescribing, whether by promulgating a rule, issuing a general or special order, or otherwise, the ratio of apprentices to journeymen that an employer may have at a job site.

ACQUISITIONS OF IN-STATE BANKS AND BANK HOLDING COMPANIES

Current law specifies certain requirements applicable to the acquisition of an in-state bank or in-state bank holding company by an out-of-state bank holding company. This bill applies those requirements to similar acquisitions by out-of-state banks.

LAWSUITS CONCERNING FINANCIAL INSTITUTIONS

With certain exceptions, this bill prohibits any person from bringing a lawsuit against a bank, savings bank, savings and loan association, or any affiliate of such an institution (financial institution) based upon any of the following promises or commitments of the financial institution, unless the promise or commitment is in writing, sets forth relevant terms and conditions, and is signed by the financial institution: 1) a promise or commitment to lend money, grant or extend credit, or make any other financial accommodation; or 2) a promise or commitment to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation. This prohibition does not apply to transactions that are subject to the Wisconsin Consumer Act (which generally regulates credit transactions of \$25,000 or less that are entered into for personal, family, or household purposes).

Currently, under the doctrine of promissory estoppel, the existence of an enforceable contract may be implied if a person makes a promise, the promise is one which the person should reasonably expect to induce action or forbearance of a

definite and substantial character, the promise induces such action or forbearance, and injustice can be avoided only by enforcement of the promise. This bill provides that any promise or commitment described above may not be enforced under the doctrine of promissory estoppel. This prohibition does not apply to transactions that are subject to the Wisconsin Consumer Act. ✓

FINANCIAL ASSURANCE FOR NONMETALLIC MINING RECLAMATION

Current law requires counties to administer ordinances to ensure that nonmetallic mining sites are reclaimed. "Nonmetallic" mining means extracting substances like gravel and stone. Among other things, nonmetallic mining reclamation ordinances must require operators to provide financial assurance to ensure that the nonmetallic mine will be reclaimed. This bill provides that if a city, village, or town requires an operator to provide financial assurance for nonmetallic mining reclamation, the county must credit the value of that financial assurance toward the amount that the operator is required to provide under the county ordinance.

ELECTRONIC NOTARIZATIONS, ACKNOWLEDGEMENTS, TRANSACTIONS, AND RECORDS

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 of the states. Generally, UETA establishes a legal framework that facilitates and validates certain electronic transactions. This bill enacts a version of UETA in Wisconsin, with certain changes.

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

1 unless the in-state bank to be acquired, or all in-state bank subsidiaries of the
2 in-state bank holding company to be acquired, have as of the proposed date of
3 acquisition been in existence and in continuous operation for at least 5 years.

4 (b) ~~The Except as otherwise provided in this paragraph, the division may~~
5 ~~approve an application under sub. (3) (a) for an acquisition of an in-state bank~~
6 ~~holding company that owns one or more in-state banks that have been in existence~~
7 ~~for less than 5 years, if the out-of-state bank holding company applicant divests~~
8 ~~itself of those in-state banks within 2 years after the date of acquisition of the~~
9 ~~in-state bank holding company by the out-of-state bank holding company~~
10 ~~applicant. This paragraph does not apply if the applicant is an in-state bank holding~~
11 ~~company or in-state bank.~~

12 SECTION 43. 224.30 (2) of the statutes is repealed.

13 SECTION 44. 241.02 (3) of the statutes is created to read:

14 241.02 (3) (a) In this subsection:

15 1. "Affiliate" of a bank, savings bank, or savings and loan association means
16 a business entity that controls, is controlled by, or is under common control with the
17 bank, savings bank, or savings and loan association.

18 2. "Financial institution" means a bank, savings bank, or savings and loan
19 association organized under the laws of this state, another state, or the United States
20 and any affiliate of such a bank, savings bank, or savings and loan association.

21 (b) Except as provided in par. (d), no action may be commenced against a
22 financial institution on or in connection with any of the following promises or
23 commitments of the financial institution unless the promise or commitment is in
24 writing, sets forth relevant terms and conditions, and is signed by the financial
25 institution:

1 1. A promise or commitment to lend money, grant or extend credit, or make any
2 other financial accommodation.

3 2. A promise or commitment to renew, extend, modify, or permit a delay in
4 repayment or performance of a loan, extension of credit, or other financial
5 accommodation.

6 (c) Except as provided in par. (d), a promise or commitment by a financial
7 institution described in par. (b) may not be enforced under the doctrine of promissory
8 estoppel.

9 (d) Paragraphs (b) and (c) do not apply to credit transactions that are subject
10 to chs. 421 to 427.

11 **SECTION 45.** 295.13 (4) of the statutes is created to read:

12 295.13 (4) **CREDITING OF FINANCIAL ASSURANCE.** If a nonmetallic mining site is
13 subject to a county ordinance under sub. (1) or (2) and the city, village, or town in
14 which a nonmetallic mining site is located required the operator of the mining site
15 to provide financial assurance for nonmetallic mining reclamation of the nonmetallic
16 mining site, the county shall credit the value of the financial assurance provided to
17 the city, village, or town against the amount of financial assurance that the operator
18 is required to provide under the county ordinance.

19 **SECTION 46.** 452.05 (3) of the statutes is created to read:

20 452.05 (3) The department may, after consultation with the board, enter into
21 reciprocal agreements with officials of other states or territories of the United States
22 for licensing brokers and salespersons and grant licenses to applicants who are
23 licensed as brokers or salespersons in those states or territories according to the
24 terms of the reciprocal agreements.

25 **SECTION 47.** 452.09 (2) (a) of the statutes is amended to read:

1 promulgate permanent rules under section 137.01 (4) (a) of the statutes, as affected
2 by this act, to become effective no later than January 1, 2004.

3 (4) ENERGY CONSERVATION AND EFFICIENCY GRANTS; EMERGENCY RULES. Using the
4 procedure under section 227.24 of the statutes, the public service commission shall
5 promulgate as emergency rules the rules required under section 16.957 (2m) of the
6 statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the
7 statutes, the emergency rules promulgated under this subsection may remain in
8 effect until the date on which the permanent rules required under section 16.957
9 (2m) of the statutes, as created by this act, take effect. Notwithstanding section
10 227.24 (1) (a), (2) (b), and (3) of the statutes, the public service commission is not
11 required to provide evidence that promulgating rules under this subsection as
12 emergency rules is necessary for the preservation of the public peace, health, safety,
13 or welfare and is not required to provide a finding of emergency for the rules
14 promulgated under this subsection.

15 **SECTION 55. Initial applicability.**

16 *Fix component* (1) LAWSUITS CONCERNING CREDIT AGREEMENTS AND RELATED DOCUMENTS. ~~The~~
17 ~~treatment of section 241.02 (3) of the statutes~~ *This act* first applies to actions commenced on
18 the effective date of this subsection. *(end)*

19 (2) PARTIAL DEREGULATION OF TELECOMMUNICATIONS. The treatment of section
20 196.195 (5m) and (10) of the statutes first applies to proceedings initiated by
21 petitions filed with the public service commission, or by notices made on the public
22 service commission's own motion, on the effective date of this subsection.

23 (3) ENGINEERING PLANS. The treatment of section 196.491 (3) (a) 3. a. of the
24 statutes first applies to engineering plans provided to the department of natural
25 resources on the effective date of this subsection.

Emery, Lynn

From: Nowak, Ellen
Sent: Monday, January 05, 2004 1:40 PM
To: LRB.Legal
Subject: Draft review: LRB 03-3933/1 Topic: Lawsuits concerning credit agreements

It has been requested by <Nowak, Ellen> that the following draft be jacketed for the ASSEMBLY:

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