

2007 DRAFTING REQUEST

Senate Amendment (SA-SB298)

Received: **11/29/2007**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Jim Sullivan (608) 266-2512**

By/Representing: **Kyle Leighton**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters: **pkahler
agary**

Subject: **Real Estate - miscellaneous
Courts - civil procedure**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Sullivan@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Remedies and other technical changes to foreclosure-related bill

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>
/?							
/1	rnelson2 11/29/2007 pkahler 12/03/2007 agary 12/06/2007 pkahler 12/06/2007	jdyer 12/06/2007	jfrantze 12/06/2007	_____	lparisi 12/06/2007	lparisi 12/06/2007	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	pkahler 01/07/2008	jdye 01/07/2008	pgreensl 01/07/2008	_____	lparisi 01/07/2008	lparisi 01/07/2008	

FE Sent For:

<END>

2007 DRAFTING REQUEST

Senate Amendment (SA-SB298)

Received: 11/29/2007

Received By: pkahler

Wanted: As time permits

Identical to LRB:

For: Jim Sullivan (608) 266-2512

By/Representing: Kyle Leighton

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters: pkahler
agary

Subject: Real Estate - miscellaneous
Courts - civil procedure

Extra Copies:

Submit via email: YES

Requester's email: Sen.Sullivan@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Remedies and other technical changes to foreclosure-related bill

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>
/?							
/1	rnelson2 11/29/2007	jdyer 12/06/2007	jfrantze 12/06/2007	_____	lparisi 12/06/2007	lparisi 12/06/2007	
	pkahler 12/03/2007	12/7 jld	✓	_____	_____	_____	
	agary 12/06/2007		✓	_____	_____	_____	
	pkahler 12/06/2007		PS	PS/JP	_____	_____	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

2007 DRAFTING REQUEST

Senate Amendment (SA-SB298)

Received: 11/29/2007

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Jim Sullivan (608) 266-2512**

By/Representing: **Kyle Leighton**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters: **pkahler**

Subject: **Real Estate - miscellaneous
Courts - civil procedure**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Sullivan@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Remedies and other technical changes to foreclosure-related bill

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>
1/?	rnelson2	1 12/6 jld	J 12/6	J/RW 12/6			

FE Sent For:

<END>

Kahler, Pam

From: Sweet, Richard
Sent: Thursday, November 29, 2007 1:50 PM
To: Kahler, Pam
Subject: FW: SB 298
Attachments: Foreclosure Fraud -Additional Comments re SB 298 and AB 568.doc

Pam,

Just to follow-up, what they want to do on DATCP's first point is to beef up the notice to include language about waiver of rights if a sale is coming in the next 5 days.

Just a heads-up--They are also talking about getting together with DFI next Monday to discuss their concerns. Most are pretty technical and I think they're going to invite you and Aaron to the meeting.

Dick

From: Leighton, Kyle
Sent: Thursday, November 29, 2007 1:36 PM
To: Kahler, Pam
Cc: Swentkofske, Matthew; Sweet, Richard
Subject: FW: SB 298

Hi Pam:

Could we get started on a simple amendment to SB 298 to be introduced by Senator Sullivan in committee? We have to incorporate both DATCP changes and DFI changes. Attached is the memo about the DATCP changes, all of which we are fine with. We will be sending along the changes from DFI that we agree on later, but I thought we could get started on these in the meantime. Would that be possible?

Thank you,

Kyle Leighton
Office of State Senator Jim Sullivan
State Capitol Room 15 South
PO Box 7882
Madison, WI 53707-7882
608-266-2512

From: Jenkins, Janet A - DATCP [mailto:Janet.Jenkins@Wisconsin.gov]
Sent: Monday, November 12, 2007 3:00 PM
To: Leighton, Kyle
Subject: SB 298

Kyle -

Attached is what I previously sent to you with the explanations in red. I hope this helps. If not, please let me know.

Janet

<<Foreclosure Fraud -Additional Comments re SB 298 and AB 568.doc>>

DATCP Additional Comments Re: SB 298 & AB 568

PJK ① Sec. 846.40 (3)(a) 9. – This section provides the form of the notice to be given to a person in any contract between a foreclosure purchaser and the consumer. The “notice” as drafted contains language telling the consumer that the foreclosure purchaser cannot ask a consumer to sign a deed, etc., until the consumer’s right to cancel is done.

Our question is: Does this language conflict with Sec. 846.40(6) in the bill which says, essentially, that a consumer can sign a deed, etc., if the sheriff’s sale is coming up within the next 5 days? It seems to us it might and that the result is that the consumer will be confused. The language in the notice should be reconciled with the provisions of Sec. 846.40(6).

We think the language in the two different statutes does conflict. Sec. 846.40 (3)(a)9. states that the consumer cannot sign a deed, etc., until the period of the consumer’s right to cancel is done. However, Sec. 846.40(6) states that a consumer can sign a deed before this notice period is over if the sheriff’s sale is in 5 or fewer days. So what the notice under Sec. 846,40(3)(a) 9. prohibits is permitted by Sec. 840.46. Thus, the two sections need to be reconciled.

RPN ② Sec. 846.45(6), the enforcement provisions looks like DATCP is intended to enforce this section. However, some of the language is ambiguous. For example, Sec. 846.45(6) (d) states that DATCP can pursue administrative actions for violations. We don’t know really what that means, especially in light of the fact that Sec. 846.45(7) makes a violation a criminal offense which DATCP cannot prosecute.

The real problem with the “Remedies” section is that it is ambiguous in terms of what the foreclosed homeowner may do and what DATCP can do. More specifically:

- Sec. 846.45(6)(a) states that violation of the section is considered a violation of Sec. 100.18 and that the remedies under 100.18(11) are available. It goes on to give foreclosed homeowners the right to bring an action. DATCP enforces Sec. 100.18. Are you now providing private persons with the enforcement? It’s ambiguous.
- Sec. 846.45(6)(b) says that no court action can be brought except a foreclosed homeowner or DOJ. Does this mean DATCP cannot investigate a violation and seek enforcement? That’s what the provision currently provides. This does not make a great deal of sense given that DATCP enforces Sec. 100.18. What happens typically in consumer protection violations, which includes violations of Sec. 100.18, is that we investigate (we have investigative authority under Secs. 93.14 and 93.15, which is why we added that to our suggested revision below). We then refer the case to DOJ who serves as our lawyer for bringing the action. (That is why we added the language below about adding this new section to the list of statutes for which DOJ provides serves as the lawyer.) However, as currently written, we couldn’t use this procedure.

- Sec. 846.45(6)(c) states that a court may award certain monetary penalties in an action in which the plaintiff prevails. Who is the “plaintiff”? Is it only the foreclosed homeowner or does it include DOJ (or DATCP) if we’re given enforcement authority. The section doesn’t say. This makes it ambiguous. Also, how does this fit with (6)(a) where it states that the remedies under 100.18(11) are available? The remedy you propose in (6)(c) is not a remedy under 100.18(11). Again, this leads to ambiguity.
- Sec. 846.45(6)(d) states that DATCP can pursue administrative action for a violation, but doesn’t state what administrative action. We have no authority to pursue administrative action unless a statute gives that authority. If this provision of the bill is intended to provide that authority, it conflicts with (6)(b) above which excludes DATCP from bringing a court action, and if not a court action, what can we do? Again, the provision, taken together with the other provisions of Sec. 845.46 is very ambiguous.
- What we have done in the recommendation below is to clearly delineate what DATCP can do to enforce and what foreclosed homeowners can do to enforce. Obviously, you can change it as you like, eg. instead of twice the monetary damages, you can insert 1 ½ of the damages, etc. as you have in the current Sec. 846.45(6)(c). We just recommended the twice because that is consistent with what is provided for other violations of consumer protection laws. Of course, if you don’t want DATCP to have anything to do w/ this statute, our suggested changes do not work. However, the bill would still need to be amended to clearly delineate what DOJ can do and what foreclosed homeowners can do. Right now, it is just too ambiguous and contradictory in parts.

Our legal counsel advises the following:

Concerning LRB – 2833/1, I recommend deleting the current s. 846.45 (6) and (7), page 23, lines 21 through 24, and page 24, lines one through 16 be deleted.

The following section (6) should be inserted instead:

(6) Penalties and remedies. (a) The department of agriculture, trade and consumer protection may exercise its authority under ss. 93.14 and 93.15 to investigate violations of this section.

(b) Any person suffering pecuniary loss because of a violation of this section may commence an action to recover the pecuniary loss. If the person prevails, the person shall recover twice the amount of the pecuniary loss, or \$200 for each violation, whichever is greater, together with costs, including reasonable attorney fees.

The department may commence an action in the name of the state to restrain by temporary or permanent injunction a violation of this section.

Before entry of final judgment, the court may make any necessary orders to restore to a person any pecuniary loss suffered by the person because of the violation.

(d) The department or a district attorney may commence an action in the name of the state to recover a forfeiture to the state of not less than \$100 nor more than \$10,000 for each violation of this section.

(e) A person who violates this section is subject to a fine of not less than \$25 nor more than \$10,000 or imprisonment not to exceed one year or both for each violation.

We also need to amend the AG's authority by adding the following section to the bill:

SECTION 7. 165.25 (4) (ar) of the statutes is amended to read:

165.25 (4) (ar) The department of justice shall furnish all legal services required by the department of agriculture, trade and consumer protection relating to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18, 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50, 100.51, 100.95, ~~and 100.97,~~ and 846.45 and chs. 126, 136, 344, 704, 707, and 779, together with any other services as are necessarily connected to the legal services.

Please note that I deleted the current section (6) (e), which puts a 4 year statute of limitations on the private action, injunctive relief, and possibly (its hard to understand this part of the bill) civil forfeiture actions. Current law gives 3 years for the private consumer action and 6 years for civil forfeiture and injunctive relief. I don't think adding one year to the private action and taking 2 years off of the civil forfeiture and injunctive relief actions makes any sense. Current law deals with the statute of limitations appropriately and nothing is needed in this bill to change it.

PJK

3. Finally, just a legal matter: at page 24, line 20, add: "section is voidable at the option..." Something is not legally "void" if there's an option involved.

Kahler, Pam

From: Jenkins, Janet A - DATCP [Janet.Jenkins@Wisconsin.gov]
Sent: Friday, November 30, 2007 2:19 PM
To: Leighton, Kyle
Cc: Kahler, Pam
Subject: RE: SB 298

Hi, Kyle -

Pam and I talked and we've got the issue resolved. We concluded that our suggestion would probably create more confusion given other provisions and references in the bill, so we w/draw it. If you need to talk more, just give me a call. Thanks.

Janet Jenkins

From: Leighton, Kyle [mailto:Kyle.Leighton@legis.wisconsin.gov]
Sent: Thursday, November 29, 2007 3:40 PM
To: Jenkins, Janet A - DATCP
Subject: SB 298

Hi Janet:

Pam, our drafter with the LRB, is going to call you regarding a question about your suggested changes for this bill. Let me know when you two talk so I can talk with you about it.

Thanks,

Kyle Leighton

Office of State Senator Jim Sullivan

State Capitol Room 15 South

PO Box 7882

Madison, WI 53707-7882

608-266-2512

Concerns Relating to Senate Bill 298

MAJOR CONCERNS:

1. Most of the services (page 19) done by a foreclosure consultant ("FC") would make the FC an adjustment service company under s. 218.02. Also, it is possible that a licensed adjustment service company who primarily provides debt, budget, or financial consulting for non-real estate transactions would be considered a foreclosure consultant subject to the provisions of 846.45. It would be difficult for an entity to comply with the laws applicable to both a foreclosure consultant and an adjustment service company because there would be conflicts between the provisions of 846.45, Section 218.02, and Rule DFI-Bkg 73.

2. Do we want to exempt loan originators and mortgage brokers from the FC portion of this bill? *no change to bill + keep 846.45 (1)(c) l. & for now, too*

3. We need clarification regarding who is covered by this law. Is it anyone who works with a Wisconsin resident? Does it matter if the real property is not located in Wisconsin? *define res = foreclosure as rp in this state? yes*

OTHER CONCERNS:

4. In Section 4 on page 6, the provisions of 846.40(2) require that the contract be written in the same language principally used by the foreclosure purchaser and the foreclosed homeowner to negotiate the sale of residence in foreclosure. Similar wording also is in 846.45(3)(c), which pertains to the contract of a foreclosure consultant. It is recommended that the contracts be in English plus the language principally used to negotiate the contract with the foreclosed homeowner.

* See the wording in Section 423.203(2), Wisconsin Statutes.

5. In Section 4 on page 8, the provisions of 846.40(4)(b) include the sentence "Cancellation occurs when the foreclosed homeowner delivers by any means, a signed and dated written notice of cancellation." As it is unclear who the cancellation notice could be given to, it is recommended that this sentence be revised to "Cancellation occurs when the foreclosed homeowner delivers by any means to the foreclosure purchaser, a signed and dated written notice of cancellation." *yes, do*

6. In Section 4 on page 11, the provisions of 846.40(8)(a)4 require the foreclosure purchaser to comply with the requirements of 12 CFR 226.31, 226.32, and 226.34. It is unclear what this means because 226.32(a)(2)(i) does not apply to a "residential mortgage transaction," which includes a transaction where a mortgage is being created in connection with the acquisition of a dwelling. Does this mean that if a mortgage is created by the foreclosure purchaser, the requirements of 226.32 do not apply?

Also, there is the concern that 226.32(d)(1)(i) prohibits a "balloon payment" on a loan with a term of less than five years. Would a land contract be considered a loan? If yes, then any agreement to allow a foreclosed homeowner to buy the dwelling back within five years, by making a balloon payment at the time of repurchase would be prohibited. It is our understanding that currently many agreements involving foreclosure purchasers are for a term of less than five years.

*don't think it's a loan
"contract for deed" if pay X amt
over X years*

	foreclosure consultant	ASC
contract	3 day right to cancel	no right to cancel
fees	cannot collect money until finished providing services	can collect money throughout term of DMP
fees	no maximum fee	fees capped
loans	allows FC to make loan to debtor and charge up to 8% interest	prohibits making a loan unless no fee is charged
fees	ASC fee structure may result in only \$50 earned unless creditors are paid and are willing to contribute up to 15% to FC	Fee structure is based on monthly debtor payments
wage assignment	prohibited	allowed, if debtor requests and is for debtor's convenience



State of Wisconsin
Department of Financial Institutions

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

Testimony of
Michael J. Mach, Administrator
Department of Financial Institutions – Division of Banking
Committee on Veterans and Military Affairs, Biotechnology and Financial Institutions
Senate Bill 298
November 13, 2007

Chairman Sullivan and member of the committee thank you for this opportunity to testify on Senate Bill 298. I commend your efforts for addressing this important issue.

I would like to address a few concerns that DFI noted when we reviewed the bill. Most of our concerns relate to the definition of a foreclosure consultant.

The activities described on Page 17, lines 15 through 19, are activities that would require the foreclosure consultant to be licensed as an adjustment service company under the provisions of section 218.02, Stats. DFI has in fact pursued persons acting as foreclosure advisors for unlicensed adjustment service company act. We don't necessarily see the fact that a foreclosure consultant would have to be licensed as an adjustment service company as a problem, however there is conflict between SB 298 and current law that would need to be reconciled. Most of these conflicts relate to the how and when fees are paid.

The activities described on Page 17, on line 20, are activities that would require a foreclosure consultant to be licensed as a mortgage broker, however on Page 18 on lines 24 and 25 mortgage brokers are exempted from the definition of a foreclosure consultant, which appears to create a conflict.

Our other major concern relates to jurisdictional issues. It would seem clear to us that the provisions of the bill would apply to a Wisconsin resident if the property is located in Wisconsin. It is not clear if the provisions of the bill would apply to a Wisconsin resident if the property is located out-of-state.

Finally, we do have some questions if the references in the bill to the federal Truth-in-Lending act may actually apply to the transactions contemplated by SB 298 and we have some suggestions relating to improving the right to cancel, based on our experience administering the Wisconsin Consumer Act.

I have attached a more detailed discussion on each topic for your review.

Thank you for your consideration.

Division of Banking

Mail: PO Box 7876 Madison, WI 53707-7876

Voice: (608) 261-7578

Fax: (608) 267-6889

Courier: 345 W. Washington Ave. 4th Floor Madison, WI 53703

TTY: (608) 266-8818

Internet: www.wdfi.org

the same requirement that apply w/ respect to
covered loans

go w/ state or fed?
(ch. 428)

use:

applicable provisions
the same as the ones that

Kahler, Pam

From: Gary, Aaron
Sent: Tuesday, December 04, 2007 1:53 PM
To: Swentkofske, Matthew
Cc: Kahler, Pam; Sweet, Richard
Subject: FW: SB 298
Attachments: SB 298

Matt,

I received this response from DFI (in the e-mail attachment). I agree with DFI's assessment. What do you think about replacing (thru the amendment) subd. 4. in the bill with DFI's recommended approach - it makes good sense to me.

Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Plale, Jean [mailto:Jean.Plale@dfi.state.wi.us]
Sent: Tuesday, December 04, 2007 1:08 PM
To: Gary, Aaron
Cc: Mach, Mike J - DFI; Hellmer, Ray L - DFI
Subject: RE: SB 298

Ray Hellmer is our technical expert on Reg Z. I asked him to look at your email and give us any comments he has. His email is attached.

<<SB 298>>

-----Original Message-----

From: Gary, Aaron [mailto:Aaron.Gary@legis.wisconsin.gov]
Sent: Monday, December 03, 2007 4:46 PM
To: Swentkofske, Matthew; Mach, Mike J - DFI
Cc: Leighton, Kyle; Sweet, Richard; Kahler, Pam; catherine.haberland@dfi.state.wi.us; Plale, Jean M - DFI
Subject: RE: SB 298

After our meeting, I reviewed 15 USC 1639 and 12 CFR 226.31, 226.32, and 226.34 again.

I could revise p. 11, lines 11 to 17 to read something like the following:

4. The foreclosure purchaser complies with the same requirements, as applicable, for disclosure, loan

12/04/2007

terms, and conduct under the federal Home Ownership Equity Protection Act, 15 USC 1639, or its implementing regulations, 12 CFR 226.31, 226.32, and 226.34, that apply to a creditor extending mortgage credit subject to 12 CFR 226.32, with respect to [for] any foreclosure reconveyance in which the foreclosed homeowner obtains a vendee's interest in a land contract[, regardless of whether the terms of the land contract meet the annual percentage rate or points and fees requirements for a covered loan under 12 CFR 226.32 (a) and (b)].

*Since I cannot do strikeouts on Outlook, deleted material is in brackets.

However, I would not recommend doing so. Upon further review, I believe that this whole provision is ill-conceived. To insert "as applicable" begs the question of what is applicable. The essence of SB-298 does not conceive of a direct loan between the foreclosure purchaser and the foreclosed homeowner, yet the disclosures and notices under HOEPA are for a (high-cost) consumer credit loan. Would the specific notices (exact language) of 12 CFR 226.32 (c) (1) and 226.34 (a) (2) have to be given by the foreclosure purchaser? They would be very misleading, and make little sense, to the foreclosed homeowner. I think virtually all of these federal provisions make little sense in the context of this bill, even if we attempt to modify the Minnesota language. Moreover, the last sentence of the above-provision ("regardless ...") suggests to me that the Minnesota legislature did not recognize the general inapplicability of these provisions (that they believed the limitation was the specific "high-cost" elements in 12 CFR 226.32 (a) and (b).]

I would recommend eliminating this provision entirely, rather than trying to leave it to the courts to make sense of an apparently senseless provision. To the extent the foreclosure reconveyance could involve a loan, wouldn't that loan already be subject to TILA and Reg. Z? To the extent there is something specific in these federal provisions, I would be happy to lay out the language of those provisions within created s. 846.40 (8) of the bill, but I don't think these cross-references work and I don't believe the flaw is correctable; I believe the only coherent option is elimination or rewriting the salient provisions directly into this bill (thru the amendment).

Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Swentkofske, Matthew
Sent: Thursday, November 29, 2007 2:43 PM
To: Mach, Mike J - DFI
Cc: Leighton, Kyle; Sweet, Richard; Kahler, Pam; Gary, Aaron; 'catherine.haberland@dfi.state.wi.us'
Subject: SB 298

Mike,

I would like to thank you for your testimony on SB 298. As we go forward, I would like to sit down with you, Leg Council and LRB to ensure we deal with the questions that you raised regarding the bill. We are looking to move quite quickly on this bill to ensure that it gets to the Senate floor by the end of the year.

I am hopeful we can meet on Monday at either 1 or 2 PM at our office.

Thanks.

Matt Swentkofske
Office of Senator Jim Sullivan
5th Senate District
matthew.swentkofske@legis.wisconsin.gov
608-266-2512

Gary, Aaron

From: Hellmer, Ray L - DFI
Sent: Tuesday, December 04, 2007 9:35 AM
To: Plale, Jean M - DFI
Subject: SB 298
Attachments: RE: SB 298; RE: SB 298

I agreed with Mr. Gary's comments that the whole section referring to HOEPA and Section 32 loans should be deleted.

At the time that the "foreclosure purchaser" is buying the property, it is very unlikely that the foreclosure purchaser would be making a loan to the person ("foreclosed homeowner") who is selling the property. However, there could be a loan made by the foreclosure purchaser to the foreclosed homeowner when, after a time period such as three years has elapsed, the foreclosed homeowner purchases the property back; this is referred to as a "subsequent conveyance" in SB 298.

There also could be situations where the foreclosure purchaser and the foreclosed homeowner would enter into a land contract where the foreclosed homeowner would make payments to buy the property back from the foreclosure purchaser over a certain time period, such as by making monthly installments for five years and then by paying the remaining unpaid balance at the end of the five year period.

I note that the following question was asked: To the extent the foreclosure reconveyance could involve a loan, wouldn't that loan already be subject to TILA and Reg. Z? The loan would not be subject to TILA and Reg. Z if the person extending the credit did not "regularly extend credit." There is a footnote to Regulation Z/Section 226.2(a)(17) that indicates a creditor regularly extends credit if they extend credit more than five times for transactions secured by a dwelling. Also, see the Official Staff Commentary for the above Section.

I would suggest that a provision be added to SB 298 that requires that if the foreclosure purchaser extends credit to, or arranges for credit to be extended to, the foreclosed homeowner, the creditor would be required to comply with TILA and Regulation Z, regardless of whether the person extending credit meets the definition of a creditor as set forth in Regulation Z. I added the provision about arranging for the extension of credit because, in some instances, the foreclosure purchaser may arrange for credit to be extended through a related party rather than having the foreclosure purchaser extend the credit.

-----Original Message-----

From: Plale, Jean
Sent: Tuesday, December 04, 2007 7:59 AM
To: Hellmer, Ray
Subject:

<<RE: SB 298>> <<RE: SB 298>>

12/6

He to Dick Sweet & Kyle
6-2982

- ABC be exempted for non-real estate business but covered for real estate business

- if conflict, 896.40 governs

certified mail or in person but w/ receipt
• no e-mail

→ by any means

p. 9 ~~sent to bill~~

item 2. →

- leave subd. par. d. in

item 6. → take out this

- replace w/ JFI's suggestion

Gary, Aaron

From: Leighton, Kyle
Sent: Wednesday, December 05, 2007 4:55 PM
To: Gary, Aaron; Sweet, Richard
Cc: Tim Elverman
Subject: RE: SB 298

Yes, I would say so.

Kyle Leighton
Office of State Senator Jim Sullivan
State Capitol Room 15 South
PO Box 7882
Madison, WI 53707-7882
608-266-2512

From: Gary, Aaron
Sent: Wednesday, December 05, 2007 4:55 PM
To: Sweet, Richard
Cc: Leighton, Kyle
Subject: RE: SB 298

Following up on our conversation today about removing notice by e-mail, I assume you want the same thing for cancellations involving foreclosure consultants as well, right?

Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Sweet, Richard
Sent: Friday, November 30, 2007 10:29 AM
To: Gary, Aaron
Cc: Leighton, Kyle
Subject: FW: SB 298

Aaron, FYI.

Dick

12/06/2007

Kyle - by phone, 12-6

certified ~~mail~~
mail

effective upon deposit
in mail

~~return receipt~~

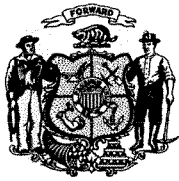
personal delivery → effect upon

personally delivery

in personal delivery,

~~request~~ preclusion of delivery

must give deliverer of
& cancellation
notice a receipt



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBa0929/1
PJK/RPN/ARG:.....

r m is run jld

SENATE AMENDMENT,
TO 2007 SENATE BILL 298

*Friday
12-6*

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 4, line 1: before that line insert:

3 **"SECTION 1g.** 165.25 (4) (ar) of the statutes is amended to read:

4 165.25 (4) (ar) The department of justice shall furnish all legal services
5 required by the department of agriculture, trade and consumer protection relating
6 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
7 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50,
8 100.51, and 100.195, and 846.45 and chs. 126, 136, 344, 704, 707, and 779, together
9 with any other services as are necessarily connected to the legal services."

History: 1971 c. 125 s. 522 (1); 1971 c. 215; 1973 c. 333; 1975 c. 81, 199; 1977 c. 29 s. 1656 (27); 1977 c. 187, 260, 273, 344; 1981 c. 20, 62, 96; 1983 a. 27; 1983 a. 36 s. 96 (2), (3), (4); 1983 a. 192; 1985 a. 29, 66; 1987 a. 416; 1989 a. 31, 115, 187, 206, 359; 1991 a. 25, 39, 269; 1993 a. 27, 28, 365; 1995 a. 27 ss. 4453 to 4454m, 9126 (19); 1995 a. 201; 1997 a. 27, 111; 2001 a. 16; 2003 a. 111, 235; 2005 a. 96, 458; 2007 a. 1.

10 **2.** Page 4, line 1: delete "**Section 1**" and substitute "**Section 1m**".

11 **3.** Page 6, line 1: after "property" insert "located in this state".

12 **4.** Page 6, line 9: after "type," insert "both in English and".

1 **5.** Page 6, line 11: after “foreclosure” insert “if other than English”.

2 **6.** Page 8, line 1: delete lines 1 to 9 and substitute:

3 “(b) Cancellation occurs when the foreclosed homeowner delivers to the
4 foreclosure purchaser, personally or by certified mail, a signed and dated written
5 notice of cancellation. The contract and notice of cancellation form under sub. (5) (b)
6 must contain a street or physical address to which notice of cancellation may be
7 mailed by certified mail or personally delivered. A post office box may be designated
8 for delivery by certified mail only if it is accompanied by a street or physical address
9 at which the notice may be personally delivered. If the notice of cancellation is
10 personally delivered, the foreclosure purchaser must provide a receipt to the
11 foreclosed homeowner. If cancellation is mailed by certified mail, delivery is effective
12 when the notice of cancellation is deposited in the U.S. mail. If cancellation is
13 personally delivered, delivery is effective when the notice of cancellation is handed
14 to the foreclosure purchaser and the foreclosure purchaser gives the foreclosed
15 homeowner a receipt.”

16 **7.** Page 9, line 12: delete lines 12 to 16 and substitute:

17 “2. To cancel this transaction, you may mail by certified mail or personally
18 deliver a signed and dated copy of this notice of cancellation to ... (name of purchaser)
19 at ... (street or physical address of purchaser’s place of business) NOT LATER THAN
20 ... (date and time of day). If you personally deliver this notice of cancellation, ...
21 (name of purchaser) must give you a receipt.”

22 **8.** Page 11, line 11: delete lines 11 to 17.

23 **9.** Page 15, line 7: after that line insert:

1 “(g) If a foreclosure purchaser extends credit to, or arranges for credit to be
2 extended to, the foreclosed homeowner, the foreclosure purchaser or other person
3 with whom the foreclosure purchaser has arranged for the extension of credit shall
4 comply with all requirements specified in Regulation Z under the federal Truth in
5 Lending Act, 12 CFR 226, that apply to a creditor, as defined in 12 CFR 226.2 (a) (17)
6 (i), in a residential mortgage transaction, as defined in 12 CFR 226.2 (24), regardless
7 of whether the foreclosure purchaser or other person extending credit actually meets
8 the definition of a creditor under 12 CFR 226.2 (a) (17) (i).”

9 **10.** Page 19, line 4: after that line insert:

10 “j. An adjustment service company licensed under s. 218.02, but only when
11 engaged in business unrelated to real estate.”

12 **11.** Page 20, line 3: delete lines 3 to 8 and substitute:

13 “(b) 1. Cancellation occurs when the foreclosed homeowner delivers, personally
14 or by certified mail, written notice of cancellation to the foreclosure consultant at the
15 foreclosure consultant’s address specified in the contract.

16 2. If notice of cancellation is given by certified mail, cancellation is effective
17 when the notice is deposited in the U.S. mail, properly addressed with postage
18 prepaid. If notice of cancellation is personally delivered, the foreclosure consultant
19 must give the foreclosed homeowner a receipt, and cancellation is effective when the
20 foreclosed homeowner hands the notice to the foreclosure consultant and is given a
21 receipt by the foreclosure consultant.”

22 **12.** Page 21, line 1: after “written” insert “both in English and”.

23 **13.** Page 21, line 2: after “contract” insert “if other than English”.

24 **14.** Page 21, line 12: delete lines 12 to 17 and substitute:

1 ✓“1. The name and street or physical address of the foreclosure consultant to
2 which the notice of cancellation is to be mailed by certified mail ✓ or personally
3 delivered. A post office box does not constitute a physical address. ✓ A post office box
4 may be designated for delivery by certified mail only if it is accompanied by a street
5 or physical address at which the notice may be personally delivered.” ✓

6 **15.** Page 21, line 22: after “language” insert “or languages” ✓

7 **16.** Page 22, line 3: delete lines 3 to 8 and substitute:

8 “2. To cancel this transaction, you may either mail by certified mail or
9 personally deliver a signed and dated copy of this notice of cancellation, or any other
10 written notice of cancellation, to (name of foreclosure consultant) at (street or
11 physical address of foreclosure consultant’s place of business) NOT LATER THAN
12 MIDNIGHT OF ✓ (date). If you personally deliver a notice of cancellation, (name
13 of foreclosure consultant) must give you a receipt.” ✓

14 **17.** Page 23, line 21: delete the material beginning with that line and ending
15 with on page 24, line 16, and substitute:

16 “(6) PENALTIES AND REMEDIES. ✓ (a) The department of agricultural, trade ✓ and
17 consumer protection may investigate violations of this section under ss. ✓ 93.14 and
18 93.15. ✓

19 (b) Any person suffering a pecuniary loss because of a violation of this ✓ section
20 may commence an action against the violator. If the court determines that the person
21 suffered a pecuniary loss because of the violation, the court shall award the person
22 twice the amount of the pecuniary loss or \$200, ✓ whichever is greater, for each
23 violation, together with costs and, notwithstanding s. 814.04 (1), ✓ reasonable attorney ✓
24 fees.

1 (c) The department of agricultural, trade and consumer protection may
2 commence an action to restrain a violation of this section. In addition to providing
3 any equitable relief, the court may award any person who suffered a pecuniary loss
4 because of the violation twice the amount of the pecuniary loss or \$200, whichever
5 is greater, for each violation.

6 (d) The department of agricultural, trade and consumer protection or the
7 district attorney may commence an action to recover a forfeiture of not less than \$100
8 nor more than \$10,000 for a violation of this section.

9 (e) Whoever violates this section may be fined not less than \$25 nor more than
10 \$10,000 or imprisoned for not more than one year in the county jail, or both.”

11 **18.** Page 24, line 17: delete “(8)” and substitute “(7)”.

12 **19.** Page 24, line 20: delete “void” and substitute “voidable”.

13 **20.** Page 24, line 20: after that line insert:

14 “(8) STATUTORY CONFLICTS RELATED TO ADJUSTMENT SERVICE COMPANIES. To the
15 extent that any provision of this section is inconsistent with s. 218.02 with respect
16 to a foreclosure consultant that is licensed under s. 218.02 and engages in
17 adjustment service company business related to real estate, the provisions of this
18 section shall super^sede any conflicting provision of s. 218.02.”

19

(END)

Kyle Lighter
modify amendment to SB 298
(a0929/1)

for cancellation of contract (in both
sections)

require purchaser + consultant
to give receipt + be subject
to penalty if do not

but cancellation is still
effective w/o getting a
receipt.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBa0929/2
PJK/RPN/ARG:jld:jf

rm is run

SENATE AMENDMENT ,
TO 2007 SENATE BILL 298

*D-note
SOON
(in 1-7)*

1 At the locations indicated, amend the bill[✓] as follows:

2 **1.** Page 4, line 1: before that line insert:

3 “SECTION 1g. 165.25 (4) (ar) of the statutes is amended to read:

4 165.25 (4) (ar) The department of justice shall furnish all legal services
5 required by the department of agriculture, trade and consumer protection relating
6 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
7 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50,
8 100.51, and 100.195, and 846.45 and chs. 126, 136, 344, 704, 707, and 779, together
9 with any other services as are necessarily connected to the legal services.”.

10 **2.** Page 4, line 1: delete “SECTION 1” and substitute “SECTION 1m”.

11 **3.** Page 6, line 1: after “property” insert “located in this state”.

12 **4.** Page 6, line 9: after “type,” insert “both in English and”.

13 **5.** Page 6, line 11: after “foreclosure” insert “if other than English”.

1 **6.** Page 8, line 1: delete lines 1 to 9 and substitute:

2 “(b) Cancellation occurs when the foreclosed homeowner delivers to the
3 foreclosure purchaser, personally or by certified mail, a signed and dated written
4 notice of cancellation. The contract and notice of cancellation form under sub. (5) (b)
5 must contain a street or physical address to which notice of cancellation may be
6 mailed by certified mail or personally delivered. A post office box may be designated
7 for delivery by certified mail only if it is accompanied by a street or physical address
8 at which the notice may be personally delivered. If the notice of cancellation is
9 personally delivered, the foreclosure purchaser must provide a receipt to the
10 foreclosed homeowner. If cancellation is mailed by certified mail, delivery is effective
11 when the notice of cancellation is deposited in the U.S. mail. If cancellation is
12 personally delivered, delivery is effective when the notice of cancellation is handed
13 to the foreclosure purchaser[✓] and the foreclosure purchaser gives the foreclosed
14 homeowner a receipt.”[✓]

15 **7.** Page 9, line 12: delete lines 12 to 16 and substitute:

16 “2. To cancel this transaction, you may mail by certified mail or personally
17 deliver a signed and dated copy of this notice of cancellation to (name of purchaser)
18 at (street or physical address of purchaser’s place of business) NOT LATER THAN
19 (date and time of day). If you personally deliver this notice of cancellation,
20 (name of purchaser) must give you a receipt.”

21 **8.** Page 11, line 11: delete lines 11 to 17.

22 **9.** Page 15, line 7: after that line insert:

23 “(g) If a foreclosure purchaser extends credit to, or arranges for credit to be
24 extended to, the foreclosed homeowner, the foreclosure purchaser or other person

1 with whom the foreclosure purchaser has arranged for the extension of credit shall
2 comply with all requirements specified in Regulation Z under the federal Truth in
3 Lending Act, 12 CFR 226, that apply to a creditor, as defined in 12 CFR 226.2 (a) (17)
4 (i), in a residential mortgage transaction, as defined in 12 CFR 226.2 (24), regardless
5 of whether the foreclosure purchaser or other person extending credit actually meets
6 the definition of a creditor under 12 CFR 226.2 (a) (17) (i).”.

7 **10.** Page 19, line 4: after that line insert:

8 “j. An adjustment service company licensed under s. 218.02, but only when
9 engaged in business unrelated to real estate.”.

10 **11.** Page 20, line 3: delete lines 3 to 8 and substitute:

11 “(b) 1. Cancellation occurs when the foreclosed homeowner delivers, personally
12 or by certified mail, written notice of cancellation to the foreclosure consultant at the
13 foreclosure consultant’s address specified in the contract.

14 2. If notice of cancellation is given by certified mail, cancellation is effective
15 when the notice is deposited in the U.S. mail, properly addressed with postage
16 prepaid. If notice of cancellation is personally delivered, the foreclosure consultant
17 must give the foreclosed homeowner a receipt, ^{→ insert 3-17 ✓} and cancellation is effective when the
18 foreclosed homeowner hands the notice to the foreclosure consultant [✓] and is given a
19 receipt by the foreclosure consultant.”.

20 **12.** Page 21, line 1: after “written” insert “both in English and”.

21 **13.** Page 21, line 2: after “contract” insert “if other than English”.

22 **14.** Page 21, line 12: delete lines 12 to 17 and substitute:

23 “1. The name and street or physical address of the foreclosure consultant to
24 which the notice of cancellation is to be mailed by certified mail or personally

1 delivered. A post office box does not constitute a physical address. A post office box
2 may be designated for delivery by certified mail only if it is accompanied by a street
3 or physical address at which the notice may be personally delivered.”

4 **15.** Page 21, line 22: after “language” insert “or languages”.

5 **16.** Page 22, line 3: delete lines 3 to 8 and substitute:

6 “2. To cancel this transaction, you may either mail by certified mail or
7 personally deliver a signed and dated copy of this notice of cancellation, or any other
8 written notice of cancellation, to (name of foreclosure consultant) at (street or
9 physical address of foreclosure consultant’s place of business) NOT LATER THAN
10 MIDNIGHT OF (date). If you personally deliver a notice of cancellation, (name
11 of foreclosure consultant) must give you a receipt.”

12 **17.** Page 23, line 21: delete the material beginning with that line and ending
13 with page 24, line 16, and substitute:

14 **“(6) PENALTIES AND REMEDIES.** (a) The department of agricultural, trade and
15 consumer protection may investigate violations of this section under ss. 93.14 and
16 93.15.

17 (b) Any person suffering a pecuniary loss because of a violation of this section
18 may commence an action against the violator. If the court determines that the person
19 suffered a pecuniary loss because of the violation, the court shall award the person
20 twice the amount of the pecuniary loss or \$200, whichever is greater, for each
21 violation, together with costs and, notwithstanding s. 814.04 (1), reasonable attorney
22 fees.

23 (c) The department of agricultural, trade and consumer protection may
24 commence an action to restrain a violation of this section. In addition to providing

✓
Insert 4-11
→

1 any equitable relief, the court may award any person who suffered a pecuniary loss
2 because of the violation twice the amount of the pecuniary loss or \$200, whichever
3 is greater, for each violation.

4 (d) The department of agricultural, trade and consumer protection or the
5 district attorney may commence an action to recover a forfeiture of not less than \$100
6 nor more than \$10,000 for a violation of this section.

7 (e) Whoever violates this section may be fined not less than \$25 nor more than
8 \$10,000 or imprisoned for not more than one year in the county jail, or both.”.

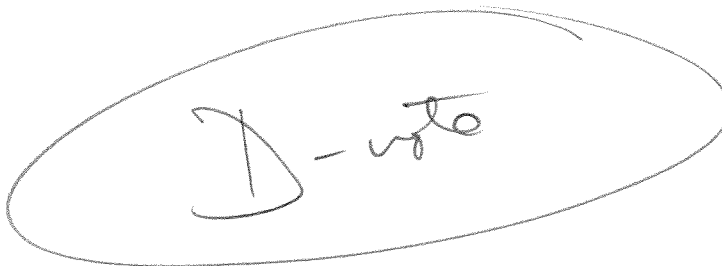
9 **18.** Page 24, line 17: delete “(8)” and substitute “(7)”.

10 **19.** Page 24, line 20: delete “void” and substitute “voidable”.

11 **20.** Page 24, line 20: after that line insert:

12 “(8) STATUTORY CONFLICTS RELATED TO ADJUSTMENT SERVICE COMPANIES. To the
13 extent that any provision of this section is inconsistent with s. 218.02 with respect
14 to a foreclosure consultant that is licensed under s. 218.02 and engages in
15 adjustment service company business related to real estate, the provisions of this
16 section shall supersede any conflicting provision of s. 218.02.”.

17 (END)



D - vote

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0929/2ins
PJK:.....

INSERT 3-17

1

From

. Cancellation, if personally delivered, ~~NO~~

(END OF INSERT 3-17)

INSERT 4-11

2

1. Page 23, line 15: after that line insert: ✓

3

“(h) ✓ Fail to give a receipt to a foreclosed homeowner ✓ if the foreclosed homeowner

4

personally delivers ✓ written notice of cancellation of a contract under sub. (2) (b).” ✓

(END OF INSERT 4-11)

timely ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0929/2dn

PJK:.....

date

Jld

For this version of the amendment, I removed the language that seemed to imply that cancellation of a contract is not effective unless a receipt is given. The amendment already contained language requiring a foreclosure purchaser or a foreclosure consultant to give a receipt if notice of cancellation was personally delivered. Since a receipt is required under s. 846.40 (4) (b), not giving a receipt is a violation of "this section" (i.e., s. 846.40) under s. 846.40 (10) (a) to (c). In s. 846.45 (4) (h), I specified that a failure to give a receipt is a violation of "this section" (i.e., s. 846.45). Thus, the penalties under s. 846.45 (6) will apply to the failure to give a receipt.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

under s. 846.45(2)(b)2

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0929/2dn
PJK:jld:pg

January 7, 2008

For this version of the amendment, I removed the language that seemed to imply that cancellation of a contract is not effective unless a receipt is given. The amendment already contained language requiring a foreclosure purchaser or a foreclosure consultant to give a receipt if notice of cancellation was personally delivered. Since a receipt is required under s. 846.40 (4) (b), not giving a receipt is a violation of "this section" (i.e., s. 846.40) under s. 846.40 (10) (a) to (c). In s. 846.45 (4) (h), I specified that a failure to give a receipt is a violation of "this section" (i.e., s. 846.45). Thus, the penalties under s. 846.45 (6) will apply to the failure to give a receipt under s. 846.45 (2) (b) 2.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov