

***2010 ANNUAL REPORT
LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE***

WISCONSIN LEGISLATIVE COUNCIL

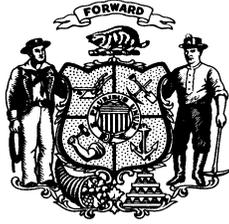
One East Main Street, Suite 401
P.O. Box 2536
Madison, Wisconsin 53701-2536
(608) 266-1304

February 2011

State of Wisconsin
JOINT LEGISLATIVE COUNCIL

Co-Chairs
MARY LAZICH
Senator

JOAN BALLWEG
Representative



LEGISLATIVE COUNCIL STAFF
Terry C. Anderson
Director
Laura D. Rose
Deputy Director

February 2011

TO: THE HONORABLE SCOTT WALKER, GOVERNOR, AND THE WISCONSIN
LEGISLATURE

This report of the calendar year 2010 activity of the Legislative Council Rules Clearinghouse is submitted to you pursuant to s. 227.15 (5), Stats.

Sincerely,

Terry C. Anderson
Director

TCA:jal

JOINT LEGISLATIVE COUNCIL

s. 13.81, Stats.

SENATE MEMBERS

MARY LAZICH, Co-Chair
4405 South 129th Street
New Berlin, WI 53151

TIM CULLEN
3711 N. Spring Hill Drive
Janesville, WI 53545

ALBERTA DARLING
1325 West Dean Road
River Hills, WI 53217

MICHAEL ELLIS
Senate President
1752 County Road GG
Neenah, WI 54956

JON ERPENBACH
6150 Briggs Road
Waunakee, WI 53597

SCOTT FITZGERALD
Majority Leader
N4692 Maple Road
Juneau, WI 53039

PAM GALLOWAY
1506 Pine View Lane
Wausau, WI 54403

JOE LEIBHAM
President Pro Tempore
3618 River Ridge Drive
Sheboygan, WI 53083

MARK MILLER
Minority Leader
4903 Roigan Terrace
Monona, WI 53716

DALE SCHULTZ
515 North Central Avenue
Richland Center, WI 53581

LENA TAYLOR
1518 West Capitol
Milwaukee, WI 53206

ASSEMBLY MEMBERS

JOAN BALLWEG, Co-Chair
170 W. Summit Street
Markesan, WI 53946

PETER BARCA
Minority Leader
1339 38 Ave.
Kenosha, WI 53144

TERESE BERCEAU
4326 Somerset Lane
Madison, WI 53711

JEFF FITZGERALD
Speaker
910 Sunset
Horicon, WI 53032

TAMARA GRIGSBY
2354 N. 41st Street
Milwaukee, WI 53210

DEAN KAUFERT
1360 Alpine Lane
Neenah, WI 54956

BILL KRAMER
Speaker Pro Tempore
2005 Cliff Alex Ct. South, #3
Waukesha, WI 53189

JOHN NYGREN
N2118 Keller Rd.
Marinette, WI 54143

SANDY PASCH
6301 N. Berkeley Blvd.
Whitefish Bay, WI 53217

SCOTT SUDER
Majority Leader
102 South 4th Avenue
Abbotsford, WI 54405

ROBIN VOS
960 Rock Ridge Road
Burlington, WI 53105

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

*Terry C. Anderson, Director, Legislative Council Staff
1 East Main Street, Suite 401, P.O. Box 2536, Madison, Wisconsin 53701-2536*

WISCONSIN LEGISLATIVE COUNCIL STAFF
2010 ANNUAL REPORT ON THE
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE*

CONTENTS

	<u>Page</u>
<i>FUNCTION OF THE LEGISLATIVE COUNCIL RULES CLEARINGHOUSE</i>	3
<i>2010 ACTIVITIES OF THE RULES CLEARINGHOUSE</i>	7
<i>APPENDIX 1: SAMPLE CLEARINGHOUSE REPORT</i>	13
<i>APPENDIX 2: PROCESSING INSTRUCTIONS TO AGENCY HEADS</i>	21

* This Report was prepared by Richard Sweet, Director, and Pam Shannon, Assistant Director, Rules Clearinghouse, Legislative Council.

FUNCTION OF THE LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

REVIEW OF RULES

Legislative review of proposed administrative rules begins with the submission of a rule to the Legislative Council Rules Clearinghouse. Section 227.15, Stats., requires that, prior to any public hearing on a proposed rule or prior to notification of the chief clerk of each house of the Legislature if no hearing is held, an agency must submit the proposed rule to the Legislative Council Rules Clearinghouse for staff review. (See the *Administrative Rules Procedures Manual* (September 2008), prepared by the Legislative Council and the Legislative Reference Bureau, for more information on drafting, promulgating, and reviewing administrative rules.)

The Legislative Council is provided 20 working days, following receipt of a proposed rule, to prepare a report on its review of the rule. However, with the consent of the Director of the Legislative Council, the review period may be extended for an additional 20 working days.

Upon receipt of a proposed administrative rule, a Clearinghouse rule number is assigned and submission of the rule is recorded in the *Bulletin of Proceedings* of the Wisconsin Legislature. Two numbered rule jackets, one for the Assembly and one for the Senate, are prepared.

The Director of the Rules Clearinghouse assigns the rule to a Legislative Council staff member for review and preparation of the statutorily required report. The staff member generally prepares the report within 10 working days and transmits the report to the Director or Assistant Director for final review. When the report on the proposed rule is completed, the staff returns the rule jackets and the Clearinghouse report containing the results of the review to the agency. [See *Appendix I* for a sample Clearinghouse report.]

In accordance with s. 227.15, Stats., the Clearinghouse report:

1. Reviews the statutory authority under which the agency intends to adopt the proposed rule.
2. Reviews the proposed rule for form, style, and placement in the Wisconsin Administrative Code.
3. Reviews the proposed rule to avoid conflict with, or duplication of, existing rules.
4. Reviews the proposed rule to ensure that it provides adequate references to related statutes, rules, and forms.
5. Reviews the language of the proposed rule for clarity, grammar, and punctuation and to ensure the use of plain language.

6. Reviews the proposed rule to determine potential conflicts and to make comparisons with related federal statutes and regulations.

7. Reviews the proposed rule to determine whether the agency has specified the number of business days within which the agency will review and make a determination on an application for a business permit.

As part of this review process, staff of the Legislative Council is directed to ensure that procedures for the promulgation of the rule are followed, as required by ch. 227, Stats., and to streamline and simplify the rule-making process.

OTHER RELATED RESPONSIBILITIES

Other primary rule review responsibilities of the Legislative Council include:

1. Working with and assisting the appropriate legislative committees throughout the rule-making process.

2. Notifying the Joint Committee for Review of Administrative Rules (JCRAR) and appropriate committees of the Legislature whenever the rule-making authority of an agency is eliminated or significantly changed by the repeal, amendment, or creation of a statute, by the interpretive decision of a court of competent jurisdiction, or for any other reason.

3. Assisting the public in resolving problems related to administrative rules. This function includes providing information, identifying agency personnel who may be contacted in relation to rule-making functions, describing locations where copies of rules, proposed rules, and forms are available, and encouraging and assisting participation in the rule-making process.

4. Creating and maintaining an Internet site that includes a copy of each proposed rule in a format that allows the site to be searched using keywords.

The final responsibility of the Legislative Council is the submission of an annual report to the chief clerk of each house of the Legislature and to the Governor summarizing any action taken by the staff and making recommendations to streamline the rule-making process and to eliminate obsolete, duplicative, and conflicting rules. This report is the 31th *Annual Report* submitted by the Legislative Council and covers the staff's activities during calendar year 2010. It has been preceded by an initial report to the 1979 Legislature, which covered the staff's activities from November 2, 1979 to April 1, 1980 (i.e., from the effective date of Ch. 34, Laws of 1979, which initiated the omnibus rule review process, to the end of Floorperiod IV of the 1979 Session) and annual reports for calendar years 1980 to 2009.

RECORDKEEPING SYSTEM

The Legislature's *Bulletin of Proceedings* is used for recording actions relating to the review of administrative rules. The Legislative Council, the Senate and Assembly Chief Clerks, and the Legislative Reference Bureau cooperate in a computerized recordkeeping system.

Commencing with the 1979 Session, action on administrative rules has been shown in a separate part of the *Bulletin of Proceedings*.

Under this system, each proposed rule is assigned a number and entered in the computer system by the staff of the Legislative Council. A copy of the Clearinghouse report is placed in a Senate and Assembly rule jacket (similar to bill jackets) and the rule jacket is then transmitted to the agency promulgating the rule. After transmittal, all legislative actions taken on the rule are entered on the face of the jacket and are reported to the chief clerk of each house. The chief clerk enters the actions in the computer system, thereby compiling a history of all legislative actions taken on the rule.

At the beginning of each biennial session, the administrative rule portion of the *Bulletin of Proceedings* is updated by deletion of all records relating to rules which, in the preceding session, have become effective, have been withdrawn, or have been permanently objected to by law. Also removed from the *Bulletin of Proceedings* annually and withdrawn from the rule-making process is any proposed rule that, in accordance with s. 227.14 (6) (c), Stats., has been pending for at least four years, but no more than five years, after the date of its receipt by the Legislative Council under s. 227.15 (1), Stats. The final *Bulletin of Proceedings* printed for the preceding session then serves as the permanent record of the disposition of those rules. The remaining rules, which are still in the promulgation process, are carried over into the new *Bulletin of Proceedings* for the following biennial session.

Access to rules and agency reports over the Internet became available in 2001 for all rules initiated after the year 2000. These materials may be found at the Legislative Council's website, www.legis.state.wi.us/lc. A useful executive branch website for information about administrative rules is <https://health.wisconsin.gov/admrules/public/Home>.

2010 ACTIVITIES OF THE RULES CLEARINGHOUSE

During 2010, 151 proposed administrative rules were submitted to the Legislative Council by 23 state agencies.

As of December 31, 2010, Clearinghouse reports had been completed on 143 of the 151 proposed rules and 8 rules were in the process of review. In addition to the 143 rule reports completed on 2010 rules, reports were prepared in 2010 on 16 rules received in late 2009. Of the 159 reports completed in 2010, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse activities in 2010 are summarized below:

Rules Received in 2010		151
Withdrawn	0	
No report required	0	
Pending	8	
		-8
2010 Reports Completed		143
2009 Reports Completed in January 2010		16
Total Reports in 2010		159

The table below shows that, from November 2, 1979 (the beginning of the omnibus rule review process) through December 31, 2010, the Clearinghouse has received 6,034 rule submissions and completed reviews on 5,933 proposed rules. Of the total rule submissions, 93 were exempt from the reporting process for various reasons and 8 were under review at the end of 2010.

<i>Year</i>	<i>Received</i>	<i>Completed</i>	<i>Exempt</i>
1979	70	45	12
1980	252	227	24
1981	252	234	9
1982	251	254	3
1983	222	220	4
1984	255	247	2
1985	213	206	4
1986	251	252	4
1987	182	186	1
1988	219	216	5
1989	212	208	1
1990	264	254	3
1991	199	205	2
1992	225	228	0
1993	241	232	1
1994	225	234	0
1995	236	224	2
1996	194	201	1
1997	158	159	1
1998	208	200	2
1999	170	177	1
2000	189	176	1
2001	157	158	1
2002	155	160	1
2003	126	127	2
2004	142	142	0
2005	122	123	0
2006	139	139	3
2007	117	114	0
2008	114	118	0
2009	123	108	3
2010	151	159	0
Total	6,034	5,933	93

In 2010, rules were received from the following 23 state agencies:

Number of Proposed Rules, by Submitting Agency

Department of Administration	2
Department of Agriculture, Trade and Consumer Protection	9
Department of Children and Families	7
Department of Commerce	18
Department of Corrections	2
Department of Employee Trust Funds	3
Department of Financial Institutions	4
Department of Health Services	8
Department of Military Affairs	1
Department of Natural Resources	35
Department of Public Instruction	9
Department of Regulation and Licensing	8
Department of Revenue	6
Department of Transportation	7
Department of Workforce Development	7
Government Accountability Board	3
Insurance Commissioner	12
Office of Justice Assistance	1
Public Defender Board	3
Public Service Commission	4
Technical College System Board	1
University of Wisconsin System	1
Total Number of Rules Submitted	151

Although the statistics presented in this report give some indication of the workload of the Legislative Council staff in reviewing proposed administrative rules, it should be noted that rules vary in length. Similarly, Clearinghouse reports vary from completion of a simple checklist to large reports. In summary, for all rule reports completed in 2010, the Legislative Council staff commented on:

1. The *statutory authority* of a proposed administrative rule on 39 occasions.
2. The *form, style and placement* of proposed administrative rules in the Wisconsin Administrative Code on 128 occasions.
3. A *conflict with, or duplication of*, existing rules on 2 occasions.

4. The *adequacy of references* of proposed administrative rules to related statutes, rules and forms on 72 occasions.

5. *Clarity, grammar, punctuation and use of plain language* in proposed administrative rules on 116 occasions.

6. The *potential conflicts* of proposed administrative rules with, and their comparability to, related federal statutes and regulations on one occasion. In addition, the Legislative Council staff has adopted a policy of noting when proposed rules are based on federal “*guidelines*,” which do not have the force of law, as opposed to rules based on federal “*regulations*,” which do have the force of law and with which the state may have a legal obligation to comply.

7. The *permit action deadline requirement* on no occasions.

WORKING WITH AND ASSISTING COMMITTEES

A Legislative Council staff attorney or analyst works with each standing committee and statutory committees, except Joint Finance. When a committee has a proposed rule referred to it by the presiding officer of the house, the staff member will participate in the committee’s oversight.

During 2010, legislative committees held hearings or requested meetings on **25 proposed rules**. Modifications to rules were either requested or received in the legislative review of **16 proposed rules**. Legislative committees objected to **one rule** during the year.

As a result of committee activities, one rule was subject to JCRAR jurisdiction in 2010.

The table below reviews legislative committee activity in the review of proposed administrative rules beginning on November 2, 1979 and ending on December 31, 2010.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2010)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
11/2/79–80	322	18	5	1	0	No bill introduced, rule withdrawn
1981	252	29	10	4	4	Chapters 20 (SEC. 1561), 26, 31 and 180, Laws of 1981
1982	251	31	4	1	1	1983 Wisconsin Act 94
1983	222	30	5	0	0	—
1984	255	26	2	2	2	1983 Wisconsin Act 310 and 1985 Wisconsin Act 29 (SEC. 826)
1985	213	37	8	3	2	◆ 1985 Wisconsin Act 29 (SECS. 1059r and 2238ng to 2238or) ◆ 1985 Assembly Bill 460, passed and vetoed; override failed
1986	251	30	1	0	0	—
1987	182	30	5	0	0	—
1988	219	38	4	0	0	—
1989	212	22	6	2	0	◆ 1989 Senate Bill 89 and 1989 Assembly Bill 171 (failed to pass) ◆ 1989 Senate Bill 248 and 1989 Assembly Bill 457 (failed to pass)
1990	264	29	2	1	0	◆ 1991 Senate Bill 24 and 1991 Assembly Bill 71 (failed to pass)

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2010)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
1991	199	19	5	1	0	◆ 1991 Senate Bill 442 and 1991 Assembly Bill 840 (failed to pass after rule objected to withdrawn by agency)
1992	225	33	3	2	1	◆ 1993 Wisconsin Act 9 ◆ 1993 Senate Bill 3 and 1993 Assembly Bill 17 (failed to pass)
1993	241	24	1	0	0	—
1994	225	29	3	0	0	—
1995	236	19	0	0	0	—
1996	194	19	1	1	1	◆ 1997 Assembly Bill 5 and 1997 Senate Bill 20 (failed to pass) ◆ 1997 Wisconsin Act 237 (SECS. 320s, 322d and 322e)
1997	158	19	6	0	0	—
1998	208	15	0	0	0	—
1999	170	18	2	1	0	—
2000	189	20	2	1	1	◆ 1999 Wisconsin Act 178
2001	157	14	5	2	0	◆ 2001 Assembly Bill 18 and Senate Bill 2 (failed to pass); ◆ 2001 Assembly Bill 524 and Senate Bill 267 (failed to pass) ◆ 2001 Assembly Bill 697 and Senate Bill 361 (failed to pass)
2002	155	35	2	1	0	◆ 2003 Assembly Bill 25 and Senate Bill 19 (failed to pass)
2003	126	20	2	2	0	◆ 2003 Assembly Bill 253 and Senate Bill 123 (failed to pass)
2004	142	21	4	2	1	◆ 2003 Wisconsin Act 240
2005	122	20	4	3	0	◆ 2005 Assembly Bill 8 and Senate Bill 8 (failed to pass) ◆ 2005 Assembly Bill 12 and Senate Bill 12 (failed to pass) ◆ 2005 Assembly Bill 401 and Senate Bill 200 (failed to pass) ◆ 2005 Assembly Bill 404 and Senate Bill 201 (failed to pass) ◆ 2005 Assembly Bill 442 and Senate Bill 220 (failed to pass)
2006	139	21	8	4	0	2005 Assembly Bill 1225 and Senate Bill 732 (failed to pass, late introduction in 2005 Session and reintroduction in 2007 session as Assembly Bill 37 and Senate Bill 9) 2005 Assembly Bill 1226 and Senate Bill 733 (failed to pass; late introduction in 2005 Session and reintroduction in 2007 session as Assembly Bill 27 and Senate Bill 10)
2007	117	16	2	0	0	—

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2010)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
2008	114	13	1	0	0	—
2009	123	4	0	0	0	—
2010	151	16	1	0	0	—
TOTAL	6,034	715	104	34	13 (PLUS ONE BILL PASSED AND VETOED; VETO NOT OVERRIDDEN)	

* The general system of legislative review of proposed administrative rules, primarily embodied in ss. 227.15 and 227.19, Stats., took effect on November 2, 1979, as part of Ch. 34, Laws of 1979.

ELECTRONIC ACCESS

In 2001, the Legislature, through its service agencies, began providing electronic access to all proposed administrative rules submitted to the Clearinghouse. The system mirrors the process already in place for legislative proposals. That is, interested persons are able to use the Internet to search for proposed rules directly or to link to them from the Legislature's Bulletin of Proceedings. The site holds the initial version of the proposed rule, the Clearinghouse report on the proposed rule, all modified versions of the proposed rule submitted to the Legislature, and the related agency report to the Legislature. Electronic access is available for proposed rules submitted to the Clearinghouse after the year 2000. [The Clearinghouse also has given advice to the Department of Health and Family Services (now the Department of Health Services) regarding a searchable rules website operated by the Executive Branch. That website is now operated by the Department of Administration. The website is <https://health.wisconsin.gov/admrules/public/Home>.]

NOTICE OF CHANGE IN RULE-MAKING AUTHORITY

To date, no court decisions or changes in legislation have been brought to the attention of the Legislative Council staff that would require notification of JCRAR or appropriate standing committees of a change in, or the elimination of, agency rule-making authority.

ASSISTING ADMINISTRATIVE AGENCIES

The Legislative Council staff has responded to numerous questions from agency personnel, relating to both the process and the law governing legislative review of proposed rules.

PUBLIC LIAISON

To date, the Legislative Council staff has received minimal requests from the public. These infrequent questions have either concerned aspects of the rule review procedure or have related to the status of specific rules.

RNS:PS:jal

APPENDIX 1

SAMPLE CLEARINGHOUSE REPORT



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **10-098**

AN ORDER to create chapter DFI-Bkg 75, relating to payday lending.

Submitted by **DEPARTMENT OF FINANCIAL INSTITUTIONS**

07-30-2010 RECEIVED BY LEGISLATIVE COUNCIL.

08-26-2010 REPORT SENT TO AGENCY.

RNS:SG

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 10-098

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

a. Section DFI-Bkg 75.02 (intro.) notwithstanding s. 138.14 (1) (k), Stats., to exclude transactions made for business, commercial, or agricultural purchases. 2009 Act 405 does not appear to exclude any types of payday loans based on the purpose of the loan. Section 138.14 (1) (k), Stats., defines a payday loan as a transaction involving an “individual...” loan recipient and a lender that is a “person,” where the latter term is defined by s. 990.01 (26), Stats., to include “all partnerships, associations and bodies politic or corporate.” While the use of “individual” means a human being in accordance with legislative drafting standards, it is possible for an individual to enter into a loan transaction for a business, commercial, or agricultural purpose (e.g., a person who owns a farm or business as a sole proprietor). Accordingly, what statutory authority does the department have to exclude transactions based on the type of transaction when an individual seeks a loan as described by the statute?

b. Is it appropriate for the department to limit the number of checks that a lender may accept under s. DFI-Bkg 75.03 (2) (c) when s. 138.14 (1) (k) 1., Stats., refers to the presentation of “one or more” checks? The statute does not appear to include the five-check limit that is in the rule.

c. In s. DFI-Bkg 75.08 (2), the department notwithstanding s. 138.14 (12) (f), Stats., to permit actions for recovery of an amount greater than the amount of the check or electronic funds transfer. Since s. 138.14 (12) (f), Stats., specifies an action for the amount of the check or the electronic funds transfer, what is the department’s authority for increasing the amount for which a licensee may bring legal action?

2. Form, Style and Placement in Administrative Code

a. The department should provide plain-language examples of the transactions described in s. DFI-Bkg 75.02 (2).

b. In s. DFI-Bkg 75.03 (2) (intro.) and (3) (intro.), the department should clarify whether it applies to loans that have “any” or “all” of the characteristics in the following paragraphs. For example, it appears that “under any of the following circumstances” should be inserted before the colon in sub. (2) (intro.). Also, see s. DFI-Bkg 75.07 (4) (intro.).

c. Given the presence of s. 138.16 (2), Stats., is s. DFI-Bkg 75.03 (2) (d) unnecessary? At the very least, a cross-reference to the statute should be added.

d. In s. DFI-Bkg 75.04 (1), each paragraph should end in a period and the introductory material should be revised in accordance with s. 1.03 (2) (h), Manual.

e. In s. DFI-Bkg 75.07 (1), “24” should replace “twenty-four”.

f. What is the department’s intent regarding the absence of blank spaces on a repayment agreement under s. DFI-Bkg 75.07 (5) (a) 1.? Does the department intend that no form agreements may be used, or that if a form is used, no space may be left blank?

g. In s. DFI-Bkg 75.09 (1) (b), are there such things as “generally accepted security safeguards”? Should the department be more specific in describing the steps a licensee must take with regard to secure transmission?

h. In s. DFI-Bkg 75.09 (3) (intro.), the department should insert “any of the following occurs” before the colon. [s. 1.03 (2) (h), Manual.]

i. In s. DFI-Bkg 75.09 (5), “shall” should replace “must” and the sentence should be written in the active voice.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Throughout the proposed rule, the department should provide locations for downloading forms that are more precise than the Department of Financial Institutions home page.

b. In s. DFI-Bkg 75.05 (1), does the department intend to refer to “sub. (3)” instead of “subs. (3)” or does it intend to refer to multiple subsections? This comment also applies to s. DFI-Bkg 75.09 (3) (b).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The department’s analysis does not compare this proposed rule with rules in adjacent states. It merely notes that those states regulate payday lenders. A comparison of rules should be added.

- b. In s. DFI-Bkg 75.09 (2) (b) 1., a period should be placed at the end of the subdivision.
- c. In s. DFI-Bkg 75.09 (3) (b), “determines” should replace “determine”.
- d. In s. DFI-Bkg 75.09 (7) (b), a period should be placed after “5” in the first statutory citation.

APPENDIX 2

PROCESSING INSTRUCTIONS TO AGENCY HEADS



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Richard Sweet
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Pam Shannon
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

PROCESSING INSTRUCTIONS TO AGENCY HEADS

[ENCLOSED ARE THE SENATE AND ASSEMBLY RULE JACKETS CONTAINING THE LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT. AN ADDITIONAL COPY OF THE CLEARINGHOUSE REPORT IS ENCLOSED FOR YOUR FILES.]

PLEASE NOTE: Your agency must complete the following steps in the legislative process of administrative rule review:

1. On the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Report Received by Agency."
2. On the appropriate line or lines on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date or dates and, in column 2, "Public Hearing Held" OR "Public Hearing Not Required."
3. Enclose in both clearinghouse rule jackets, in triplicate, the notice and report required by s. 227.19 (2) and (3), Stats. [The report includes the rule in final draft form.]
4. Notify the presiding officer of the Senate and Assembly that the rule is in final draft form by hand delivering the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk. At the time of this submission, on the appropriate line on the face of the clearinghouse rule jacket, each Chief Clerk will enter, in column 1, the appropriate date and, in column 2, "Report Received from Agency." Each clearinghouse rule jacket will be promptly delivered to each presiding officer for referral of the notice and report to a standing committee in each house.
5. If the agency does not proceed with the rule-making process on this rule, on the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Rule Draft Withdrawn by Agency" and hand deliver the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk.

FOR YOUR INFORMATION: A record of all actions taken on administrative rules is contained in the Bulletin of Proceedings of the Wisconsin Legislature. The clearinghouse rule jackets will be retained by the Legislature as a permanent record.

[See reverse side for jacket sample.]

