

## STATEMENT OF SCOPE

### Department of Financial Institutions Division of Banking

**Rule No.:** DFI-Bkg, DFI-SL, DFI-SB, DFI-WCA (multiple chapters)

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**Relating to:** Authorizing the use of mobile and intermittent branches by state banks, eliminating obsolete provisions, correcting cross-references, eliminating rules that conflict with statutes, correcting errors, modifying the structure of existing rules in nonsubstantive ways, and clarifying rules governing collection agencies.

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**Rule Type:** Permanent

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#### 1. Finding/nature of emergency (Emergency Rule only):

N/A

#### 2. Detailed description of the objective of the proposed rule:

The Division of Banking, a division of the Department of Financial Institutions, seeks to amend certain rules it administers in three respects.

First, it proposes to modify Wis. Admin. Code DFI-Bkg 8.01 (1), which currently defines a state bank branch as a “permanent” facility, to allow state banks to offer services through attended mobile branches as well, subject to the approval of the Division. This change will enable banks to extend services to Wisconsinites in areas where permanent branches may not be feasible, and it helps state banks maintain parity with national banks (which are authorized to operate mobile and intermittent branches), and state savings banks, state savings and loan associations, and state credit unions (which are not subject to rules limiting their branches to “permanent” locations).

Second, the Division proposes to update certain rules governing collection agencies, which are licensed by the Division, to reflect changes in industry practices during the 16 years since the existing rules were enacted. The proposed rules would clarify the meaning of the term “actual process of collection;” specify that a “terminated license” includes any license that has expired or been surrendered or revoked; clarify that a licensee’s trust checking account must be identified as a “trust account;” restrict third-party payment processors from withdrawing funds from a trust account; clarify that a collection agency may charge a contracted fee for reasonable costs incurred for each account placed in error by the creditor that is returned to the creditor; and require a collection agency to disclose and obtain Division approval for a trade name before using it to conduct business in the state.

Third, the Division proposes several non-substantive revisions to its rules to keep up to date with current law and drafting practices, including:

- a. Eliminating obsolete rules identified by staff or in the rules report required under Wis. Stat., s. 227.29 (1) (c), or rules that conflict with other state or federal rules or statutes as provided under Wis. Stat. s. 227.29 (1) (d).
- b. Correcting erroneous cross-references to other state or federal rules or statutes.
- c. Modifying the structure of existing rules in nonsubstantive ways to ensure that the rules are drafted to be substantially in the form and style used by the legislative reference bureau, and consistent with the manual prepared by the bureau and the legislative council staff, as provided in Wis. Stat., ss. 227.14 (1) and 227.15 (7).

### **3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

With regard to mobile branches, the proposed rule serves the existing policies of (1) expanding opportunities for consumers and businesses to obtain banking services, and (2) maintaining parity among depository financial institutions across charter types with regard to authorized activities. The alternative of not allowing state-chartered banks to utilize mobile branches is contrary to those policies and creates a needless inconsistency with state credit union law, which does not limit credit unions to permanent branches; with state law that applies to savings banks and savings and loan associations, which also does not limit such entities to permanent branches; and with federal law governing national banks, which may also utilize mobile and intermittent branches.

The proposed changes to collection agency rules serve the policies of clarifying the law for licensees in a manner consistent with both current industry practices and the need for continued regulatory supervision to protect the public.

The remainder of the proposed rules foster compliance with existing statutory policies requiring the elimination of obsolete rules, correction of cross-reference errors, elimination of conflicts with current statutes, and modification of existing rules to ensure consistency with current drafting conventions.

### **4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

With regard to state banks, the Division “by rule may, with the approval of the banking institutions review board, authorize state banks to . . . exercise any right, power, or privilege permitted national banks under federal law, regulation, or interpretation.” See Wis. Stat., s.

220.04 (8). The Division will seek the approval of the review board before submitting to the Legislature any rule promulgated under this statutory provision.

With regard to savings and loan associations, the Division is required, subject to the approval of the review board, to “issue orders prescribing reasonable rules for conducting the business of associations, subject to the requirements of ch. [227](#).” See Wis. Stat., s. 215.02 (7) (a). The Division will seek the approval of the review board before submitting to the Legislature any rule promulgated under this statutory provision.

With regard to savings banks, the Division is required to “promulgate rules” to supervise such institutions. See Wis. Stat., s. 214.715 (1) (d).

With regard to collection agencies, the Division has the duty and authority to “make all necessary or proper orders, rules and regulations for the administration and enforcement of this section.” See Wis. Stat., s. 218.04 (7) (d).

All other proposed amendments are non-substantive and seek to ensure that rules the Division administers are compliant with Wis. Stat., s. 227.14 (1), which requires that in drafting administrative rules “an agency shall adhere substantially to the form and style used by the legislative reference bureau in the preparation of bill drafts and the form and style specified in the manual prepared by the legislative council staff and the legislative reference bureau under s. [227.15 \(7\)](#),” and with Wis. Stat., s. 227.29 (1), which directs agencies to address rules that are “unauthorized,” “obsolete or that have been rendered unnecessary,” or “duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction.”

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

75-150 hours

**6. List with description of all entities that may be affected by the proposed rule:**

The proposed changes relating to mobile and intermittent branches would affect state banks chartered under Wis. Stat., ch. 221. The proposed clarifications relating to collection agencies would affect collection agencies licensed with the Division under Wis. Stat., ch. 218, subch. III. The other proposed changes concern drafting style and the removal of obsolete provisions or cross-references, which are nonsubstantive in nature.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

Branching by state-chartered financial institutions is generally a matter of state law, and there are no federal rules governing whether state-chartered banks, savings banks, or savings and loan associations may utilize mobile or intermittent branches. Federal regulations do govern national banks, however, and — unlike Wis. Admin. Code DFI-Bkg 8.01 (1) — those federal regulations define a branch bank to include “a seasonal [agency](#) described in [12 U.S.C. 36\(c\)](#), a mobile facility, a temporary facility, or an intermittent facility.” 12 C.F.R. § 5.30 (d) (1) (i)

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

These proposed rules would not have an immediate or measurable economic impact upon the Division or its licensees. While the availability of mobile branches may provide some economic benefit to the banks and customers who utilize them, those benefits are dependent on several variables and the Division is unable to estimate them in advance.

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