

State of Wisconsin



2017 Assembly Bill 822

Date of enactment: April 16, 2018
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2017 WISCONSIN ACT 340

AN ACT *to renumber and amend* 645.46 (11); *to amend* 34.07, 138.052 (5) (am) 1., 186.235 (16) (a), 214.54 (1), 214.54 (2), 214.725 (3) (intro.), 215.03 (2) (a), 220.04 (1) (a), 220.06 (1m) and 223.105 (3) (a); and *to create* 186.235 (7) (b) 4., 214.725 (3m), 214.755 (1) (f), 215.02 (6) (a) 7., 221.0328 (4), 645.05 (3), 645.46 (11) (b) and 645.54 (1) (b) 3. of the statutes; **relating to:** confidentiality of financial institution information maintained by the Department of Financial Institutions; periodic examinations of financial institutions; savings bank loan limitations; interest on residential mortgage loan escrow accounts; capital of state banks; security provided by public depositories; insurance company liquidation proceedings; and modifying an administrative rule of the Department of Workforce Development related to an exemption from overtime pay requirements for outside salespersons.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 34.07 of the statutes is amended to read:

34.07 Security. A surety bond or other security, including an irrevocable letter of credit issued by a federal home loan bank, state bank, national bank, federal or state savings bank, federal or state credit union, or federal or state savings and loan association, may be required of or given by any public depository for any public deposits that exceed the amount of deposit insurance provided by an agency of the United States and the coverage provided under s. 34.08 (2).

SECTION 2. 138.052 (5) (am) 1. of the statutes is amended to read:

138.052 (5) (am) 1. Except as provided in par. (b) and unless the escrow funds are held by a 3rd party in a noninterest-bearing account, a bank, credit union, savings bank, savings and loan association or mortgage banker which originates a loan on or after January 1, 1994, and before the effective date of this subdivision [LRB inserts date], or a loan subject to subd. 3., and which

requires an escrow to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow at the variable interest rate established under subd. 2.

SECTION 3. 186.235 (7) (b) 4. of the statutes is created to read:

186.235 (7) (b) 4. Furnish to a federal home loan bank, upon request, a copy of any examination report made by, or other supervisory information created by, the office of credit unions of any credit union, if the federal home loan bank agrees to treat the information received under this subdivision with the same degree of confidentiality that is required of employees of the office of credit unions under par. (a).

SECTION 4. 186.235 (16) (a) of the statutes is amended to read:

186.235 (16) (a) Except as provided in par. (b), at least once every 18 months, the office of credit unions shall examine the records and accounts of each credit union. For that purpose the office of credit unions shall have full access to, and may compel the production of,

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

each credit union's records and accounts. The office of credit unions may administer oaths to and examine each credit union's officers and agents. In conducting examinations under this paragraph, the office of credit unions may accept and rely on information collected by other agencies or independent 3rd parties in determining whether a credit union has satisfied any requirement that is part of the examination.

SECTION 5. 214.54 (1) of the statutes is amended to read:

214.54 (1) Except as provided in sub. (2) and s. 214.49 (4), the total of outstanding loans and extensions of credit, both direct and indirect, made by a savings bank to a single person shall be subject to limits established by rule of the division, but may not exceed ~~45~~ 20 percent of the savings bank's capital.

SECTION 6. 214.54 (2) of the statutes is amended to read:

214.54 (2) Total outstanding loans and extensions of credit, both direct and indirect, made by a savings bank to a single person may exceed the ~~45~~ 20 percent limit under sub. (1), but may not exceed 25 percent of the savings bank's capital, if all loans or extensions of credit that exceed the ~~45~~ 20 percent limit are at least 100 percent secured by readily marketable collateral having a market value that may be determined by reliable and continuously available price quotations.

SECTION 7. 214.725 (3) (intro.) of the statutes is amended to read:

214.725 (3) (intro.) ~~As~~ Subject to sub. (3m), an examination shall include a review of all of the following:

SECTION 8. 214.725 (3m) of the statutes is created to read:

214.725 (3m) In conducting examinations under sub. (1) (a), the division may accept and rely on information collected by other agencies or independent 3rd parties in determining whether a savings bank has satisfied any requirement that is part of the examination.

SECTION 9. 214.755 (1) (f) of the statutes is created to read:

214.755 (1) (f) A federal home loan bank if the federal home loan bank agrees to keep the information confidential.

SECTION 10. 215.02 (6) (a) 7. of the statutes is created to read:

215.02 (6) (a) 7. The division may furnish to a federal home loan bank a copy of any examination report made by, or other supervisory information created by, the division of any association if the federal home loan bank agrees to keep the examination report or other information confidential.

SECTION 11. 215.03 (2) (a) of the statutes is amended to read:

215.03 (2) (a) Except as provided in par. (b), at least once within every 18-month period, the division shall

examine the cash, bills, collaterals, securities, assets, books of account, condition and affairs of all such associations and for that purpose the division or the division's examiners shall have access to, and may compel the production of, all their books, papers, securities and moneys, administer oaths to and examine their officers and agents as to their affairs. In conducting examinations under this paragraph, the division may accept and rely on information collected by other agencies or independent 3rd parties in determining whether an association has satisfied any requirement that is part of the examination. An employee of the division may not examine an association in which the employee is interested as an officer or director.

SECTION 12. 220.04 (1) (a) of the statutes is amended to read:

220.04 (1) (a) The division shall examine at least once every 18 months the cash, bills, collaterals, securities, assets, books of account, condition and affairs of each bank and trust company bank doing business in this state, except national banks. For that purpose the division may examine on oath any of the officers, agents, directors, clerks, stockholders, customers or depositors thereof, touching the affairs and business of such institution. In conducting examinations under this paragraph, the division may accept and rely on information collected by other agencies or independent 3rd parties in determining whether a bank or trust company bank has satisfied any requirement that is part of the examination. In making such examinations of banks, the division shall determine the fair valuation of all assets in accordance with the schedules, rules and regulations prescribed by the banking review board.

SECTION 13. 220.06 (1m) of the statutes is amended to read:

220.06 (1m) No division employee may examine a bank or licensee in which that person is interested as a stockholder, officer or employee. No division employee may examine a bank or licensee located in the same village, city or county with any bank or licensee in which that person is so interested. Employees in the division, and each member and employee of the banking review board, shall keep secret all facts and information obtained in the course of examinations or from reports not under s. 221.1002 (1) filed by a bank or licensee with the division, except so far as the public duty of the person requires reporting upon or taking special action regarding the affairs of any bank or licensee, and except when called as a witness in any criminal proceeding or trial in a court of justice. The division may furnish to the federal deposit insurance corporation, to a federal home loan bank, or to any regulatory authority for state or federal financial institutions, insurance or securities a copy of any examination made of any such bank or licensee or of any report made by such bank or licensee and may give access to and disclose to the corporation or to any regula-

tory authority for state or federal financial institutions, insurance or securities any information possessed by the division, or to a federal home loan bank any information created by the division, with reference to the conditions or affairs of any such insured bank or licensee if the regulatory authority agrees to treat all information received with the same degree of confidentiality as applies to reports of examination that are in the custody of the division.

SECTION 14. 221.0328 (4) of the statutes is created to read:

221.0328 (4) **REDUCTION OF CAPITAL.** Subject to the approval of the division, and subject to ss. 221.0211 (4) and 221.0323 (1) and (2), a bank may, by a vote of shareholders owning, in the aggregate, at least two-thirds of its capital stock, reduce its capital. Notwithstanding sub. (2) and subject to ss. 221.0216 (5) and 221.0327, as part of its capital reduction plan approved by the division in accordance with this subsection, and with the affirmative vote of shareholders owning at least two-thirds of the shares of each class of its stock outstanding, a bank may distribute cash or other assets to its shareholders.

SECTION 15. 223.105 (3) (a) of the statutes is amended to read:

223.105 (3) (a) To assure compliance with such rules as may be established under s. 220.04 (7), the division of banking and the office of credit unions shall, at least once every 18 months, examine the fiduciary operations of each organization which is under its respective jurisdiction and is subject to examination under sub. (2). If a particular organization subject to examination under sub. (2) is not otherwise under the jurisdiction of one of the foregoing agencies, such examination shall be conducted by the division of banking. In conducting examinations under this paragraph, the division of banking or office of credit unions may accept and rely on information collected by other agencies or independent 3rd parties in determining whether an organization has satisfied any requirement that is part of the examination.

SECTION 16. 645.05 (3) of the statutes is created to read:

645.05 (3) **INJUNCTIONS AGAINST A FEDERAL HOME LOAN BANK.** (a) In this subsection, “insurer–member” means a member of the federal home loan bank in question that is an insurer.

(b) Notwithstanding subs. (1) and (2) and any other provision of this chapter, a federal home loan bank may be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement, or any pledge, security, collateral, or guarantee agreement, or any other similar arrangement or credit enhancement relating to a federal home loan bank security agreement, for a period not to exceed 10 days after the appointment of a receiver for an insurer–member of the federal home loan bank. If the federal home loan bank fails to comply with the provi-

sions of pars. (c) and (d), the court may, within 10 days following the appointment of the receiver, extend the stay until the federal home loan bank complies with the provisions of pars. (c) and (d).

(c) Not later than 5 days after notification to the federal home loan bank of the appointment of a receiver for an insurer–member, the federal home loan bank shall deliver to the receiver a process and timeline for all of the following:

1. The release of collateral held by the federal home loan bank that exceeds the amount that is required to support the outstanding secured loan obligations and that is remaining after any repayment of loans, as determined under the applicable agreements between the federal home loan bank and the insurer–member.

2. The release of any collateral remaining in the federal home loan bank’s possession following repayment of all outstanding secured obligations in full.

3. The payment of fees owed by the insurer–member.

4. The redemption or repurchase of federal home loan bank stock in excess of the minimum amount the insurer–member is required to own.

(d) Upon the request of the receiver and not later than 5 days after notification to the federal home loan bank of the appointment of a receiver for an insurer–member, the federal home loan bank shall provide any available options for the insurer–member to renew or restructure an advance. In determining which options are available, the federal home loan bank may consider market conditions, the terms of the advance outstanding to the insurer–member, the applicable policies of the federal home loan bank, and compliance with the Federal Home Loan Bank Act and corresponding regulations.

(e) A federal home loan bank shall, within 7 days of receipt of a repurchase request made by the insurer–member, repurchase any outstanding capital stock in excess of the amount of stock the insurer–member is required to hold as a minimum investment. The federal home loan bank shall repurchase the excess outstanding capital stock if the repurchase is all of the following:

1. Permissible under federal laws and regulations and the federal home loan bank’s capital plan.

2. Consistent with the capital stock practices then applicable to the federal home loan bank’s entire membership.

SECTION 17. 645.46 (11) of the statutes is renumbered 645.46 (11) (a) and amended to read:

645.46 (11) (a) ~~Enter~~ Subject to par. (b), enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.

SECTION 18. 645.46 (11) (b) of the statutes is created to read:

645.46 (11) (b) Notwithstanding any other provision of this chapter, no liquidator has the power to disavow any federal home loan bank security agreement, or any

pledge, security, collateral, or guarantee agreement, or any other similar arrangement or credit enhancement relating to a federal home loan bank security agreement.

SECTION 19. 645.54 (1) (b) 3. of the statutes is created to read:

645.54 (1) (b) 3. Notwithstanding any other provision of this chapter, no liquidator may avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any federal home loan bank security agreement, or any pledge, security, collateral, or guarantee agreement, or any other similar arrangement or credit enhancement relating to a federal home loan bank security agreement. However, a transfer may be avoided under this paragraph if it was made with actual intent to hinder, delay, or defraud either existing or future creditors.

SECTION 20. DWD 274.04 (2) of the administrative code is repealed and recreated to read:

DWD 274.04 (2) An employee who meets all of the following conditions:

(a) The employee's primary duty, as determined under 29 CFR 541.500 (b), is any of the following:

1. Making sales, as defined under 29 USC 203 (k).
2. Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.

(b) The employee is customarily and regularly engaged away from the employer's place of business, as described under 29 CFR 541.502, in performing the employee's primary duty described under par. (a).

SECTION 21. Effective dates. This act takes effect on the day after publication, except as follows:

- (1) The treatment of section DWD 274.04 (2) of the administrative code takes effect as provided in section 227.265 of the statutes.