



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2003 Wisconsin Act 63 [2003 Assembly Bill 2]	Universal Banks, Wage Liens, and Article 9 of the Uniform Commercial Code
2003 Acts: www.legis.state.wi.us/2003/data/acts/	Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm

2003 Wisconsin Act 63 makes numerous changes to the chapters that govern the formation, operation, and regulation of credit unions in this state, creates a new type of financial institution called a universal bank, and makes changes to chs. 109 and 409.

CREDIT UNIONS

Some of the major changes relating to credit unions are the following:

1. Expands the pool of people eligible for membership in a credit union.
2. Expands the type of organization that a credit union may invest in, and increases the amount of money that the credit union may invest in those organizations.
3. Expands the power of a credit union to act as a trustee or custodian of member tax-deferred retirement funds, individual retirement accounts, medical savings accounts, and other employee benefit accounts or funds.
4. Allows a credit union to accept deposits from anyone if the credit union satisfies the federal requirements for designation as a low-income credit union.
5. Allows a credit union to establish, with approval, branch offices anywhere inside or outside the state, and allows non-Wisconsin credit unions to establish branch offices in Wisconsin in certain circumstances.
6. Allows credit unions to merge with, acquire, or be acquired by a credit union in any state.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

7. Exempts credit unions from the agriculture, trade, and consumer protection statutes that apply to businesses generally.

UNIVERSAL BANKS

Act 63 creates a new kind of institution called a universal bank. To qualify as a universal bank, the financial institution must meet six requirements: (1) it must have been in existence and continuous operation for at least three years; (2) it must be “well-capitalized,” as defined by federal law; (3) it must not exhibit moderately severe or unsatisfactory financial, managerial, operational, and compliance weakness; (4) it must not have been subject to any enforcement action within the 12 months preceding the application; (5) its most recent evaluation under the federal Community Reinvestment Act must have rated the financial institution as “outstanding” or “satisfactory;” and (6) the most recent report evaluating the financial institution’s compliance with certain federal laws relating to customer privacy must indicate that it is in substantial compliance.

A universal bank may engage in any activity that is authorized for any savings bank, savings and loan association, or state bank. In addition, a universal bank may exercise all of the powers that a national bank, federally chartered savings and loan association, or federally chartered savings bank may exercise. The division of banking must approve the first exercise such of federal power. Once the division approves the exercise of that power for one universal bank, any universal bank may exercise that power. A universal bank may also exercise all powers necessary or convenient to affect the purposes for which the universal bank is organized or to further the business in which the bank is lawfully engaged.

ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE

Wisconsin’s version of Article 9 of the Uniform Commercial Code (UCC) is contained in ch. 409, Stats. Under previous s. 409.617, Stats., when collateral was disposed of by a secured party pursuant to a debtor’s default, all subordinate liens and security interests were discharged *except* for liens held by the state or a local governmental unit. Act 63 deleted this exemption so that when collateral is disposed of by a secured party pursuant to a debtor’s default all subordinate liens and security interests are discharged *including* liens held by the state or a local governmental unit.

CHAPTER 109

Chapter 109 governs issues such as wage liens, when employees must be paid, plant closings, and cessation of health care benefits. Act 63 changed the definition of “employee” for all of ch. 109 to exclude the following workers: (1) an independent contractor; (2) a person employed in a managerial, executive, or commissioned sales capacity; and (3) a person employed in a capacity in which the person is privy to confidential matters involving the employer-employee relationship.

A wage claim lien under ch. 109 is a “super priority” lien. Under prior law it had priority over all liens or debts, regardless of when the lien or debt arose, except for liens of financial institutions that originated before the wage claim lien, and liens relating to costs of certain environmental remediation expenses incurred by the state. A “financial institution” was defined as a bank, savings bank, savings and loan association, or credit union.

Act 63 expanded the group of lenders who take precedence over a wage lien to include a bank, savings bank, savings and loan association, credit union, insurance company, finance company, mortgage banker registered under s. 224.72, community development corporation, small business investment corporation, pension fund or other lender which provides commercial loans in this state.

Act 63 also created an exception to the priority given to these lenders. A wage lien will take precedence over the lien of a lender that originated before the wage lien took effect as to the first \$3,000 of unpaid wages covered under the lien. Those wages must have been earned within the six months preceding the date the employee files a lien with the Department of Workforce Development or the date the employee brings his or her own action to collect the wages.

Effective Date: The provisions of the Act that concern universal banks take effect on February 1, 2004. The provisions of the Act concerning credit unions and Article 9 of the UCC take effect on November 6, 2004. The provisions of the Act concerning wage liens, and the definition of “employee” take effect on December 1, 2003.

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