

2017 - 2018 LEGISLATURE

2017 ASSEMBLY BILL 822

January 10, 2018 - Introduced by Representatives KATZMA, E. BROOKS, R. BROOKS, FELZKOWSKI, JACQUE, KERKMAN, KITCHENS, TAUCHEN, WEATHERSTON, BORN and TUSLER, cosponsored by Senators MARKLEIN, COWLES and FEYEN. Referred to Committee on Ways and Means.

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

Analysis by the Legislative Reference Bureau

This bill allows the Division of Banking (division) and the Office of Credit Unions (OCU) in the Department of Financial Institutions to disclose certain

financial institution information to a Federal Home Loan Bank and to accept and rely on information collected by other agencies or independent third parties in conducting financial institution examinations. The bill also increases the limit on loans by a savings bank to a single person. The bill eliminates the requirement that financial institutions and mortgage bankers pay interest on escrow accounts for residential mortgage loans originated on or after the effective date of the bill. The bill also specifies that the security that may be provided by a public depository to secure the repayment of public deposits includes an irrevocable letter of credit issued by a Federal Home Loan Bank or financial institution. The bill further allows a state bank, with approval of the division, to reduce its capital and distribute cash or other assets to its shareholders. The bill also includes provisions applicable to collateral and other security interests of Federal Home Loan Banks in insurance company liquidation proceedings. Finally, the bill modifies an administrative rule of the Department of Workforce Development to conform the rule to a similar provision under the federal Fair Labor Standards Act (FLSA).

Disclosure of information to Federal Home Loan Bank

Under current law, the division regulates state banks, savings banks, and savings and loan associations and OCU regulates state credit unions (collectively, financial institutions), and this regulation includes periodic examinations of these financial institutions by, and reports from these financial institutions to, the division or OCU. Current law generally requires the division and OCU to maintain the confidentiality of examination information and of reports provided to the division or OCU. However, limited exceptions allow disclosure under certain circumstances,

including disclosure to state regulatory authorities and to the Federal Deposit Insurance Corporation or National Credit Union Administration.

This bill allows the division or OCU to furnish to a Federal Home Loan Bank, upon request, a copy of any examination report made by, or other supervisory information created by, the division or OCU if the Federal Home Loan Bank agrees to treat the information confidentially.

Periodic examinations of financial institutions

With exceptions, current law requires the division and OCU to examine the records and affairs of financial institutions under their respective jurisdictions at least once every 18 months.

Under this bill, in conducting these periodic examinations, the division and OCU may accept and rely on information collected by other agencies or independent third parties in determining whether a financial institution has satisfied any requirement that is part of the examination.

Limit on savings bank loans to one borrower

Under current law, with exceptions, a savings bank may not make loans to a single person totaling more than 15 percent of the savings bank's capital.

This bill increases this limit to 20 percent.

Interest on residential mortgage loan escrow accounts

Under current law, subject to certain exceptions, a financial institution or mortgage banker that originates a residential mortgage loan and requires an escrow

to assure the payment of taxes or insurance must pay interest on the outstanding principal balance of the escrow at the following annual rate: 1) if the loan was originated between February 1, 1984, and December 31, 1993, not less than 5.25 percent; or 2) if the loan was originated on or after January 1, 1994, a variable rate calculated annually by the division and OCU using the average interest rate paid on passbook accounts.

Under this bill, financial institutions and mortgage bankers are not required to pay interest on escrow accounts for residential mortgage loans originated on or after the effective date of the bill.

Security for public deposits

Under current law, the Investment Board and the governing bodies of counties, municipalities, and certain other local governmental units (collectively, public depositors) must designate one or more federal or state credit unions, federal or state savings and loan associations, state banks, savings and trust companies, federal or state savings banks, or national banks in this state (public depositories) for deposit of all public moneys received by the public depositor. The public depositor must specify whether security is required of the public depository to secure the repayment of deposits exceeding deposit insurance.

This bill specifies that the security that may be provided by a public depository includes 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.

Capital reduction by state banks

Current law requires the division, immediately following a state bank's organization, to determine the required capital of the bank, including the required capital stock. "Capital stock" means the bank's stock other than preferred stock, and "capital" includes the bank's capital stock, preferred stock, surplus, and undivided profits. Subject to certain requirements and limitations, a bank's board of directors may declare and pay a dividend from its undivided profits, but the bank's dividends may not impair or diminish the bank's capital except to reduce undivided profits.

This bill provides that, with approval of the division, a state bank may, by vote of its shareholders, reduce its capital and distribute cash or other assets to its shareholders.

Insurance company liquidation proceedings

Current law contains various provisions applicable in a proceeding brought by the commissioner of insurance for the liquidation or rehabilitation of an insurer. Any

receiver, liquidator, or rehabilitator appointed in such a proceeding may seek and obtain from a court a restraining order or injunction to prevent specified conduct by the insurer, including its transaction of business, transfer of property, or wasting of assets.

This bill specifies that a Federal Home Loan Bank may not be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement or similar arrangement.

Current law provides certain powers for the liquidator in a liquidation proceeding, including the power to enter into contracts as necessary to carry out the

liquidation and the power to affirm or disavow any contracts to which the insurer is a party. Also in a liquidation proceeding, if one of the specified conditions is met, a liquidator may avoid a preference and recover property or its value. A "preference" is a transfer of an insurer's property to or for the benefit of a creditor based on a preexisting debt if the transfer is made within one year before the liquidation petition and the transfer's effect is to enable the creditor to obtain a greater percentage of his or her debt than another creditor of the same class.

This bill provides that a liquidator does not have the power to disavow any Federal Home Loan Bank security agreement or similar arrangement, and may not avoid any transfer of money or property in connection with any Federal Home Loan Bank security agreement or similar arrangement, except that a transfer may be avoided if it was made with actual intent to hinder, delay, or defraud creditors.

Exemption from overtime pay requirements for outside salespersons

The FLSA currently provides an exemption from the minimum wage and overtime pay provisions of the FLSA for employees employed as outside salespersons, as defined under the Code of Federal Regulations. Rules promulgated by DWD currently provide an exemption from state overtime pay provisions for outside salespersons who spend 80 percent of their time away from the employer's place of business.

The bill modifies the administrative rule provision to conform the state exemption for outside salespersons to the exemption under the FLSA. Specifically, the bill provides that the state exemption applies to an employee 1) whose primary duty is either making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer, and 2) who is customarily and regularly engaged away from the employer's place of business in performing that primary duty.

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

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

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

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

1 138.052 (5) (am) 1. Except as provided in par. (b) and unless the escrow funds
2 are held by a 3rd party in a noninterest-bearing account, a bank, credit union,
3 savings bank, savings and loan association or mortgage banker which originates a
4 loan on or after January 1, 1994, and before the effective date of this subdivision
5 [LRB inserts date], or a loan subject to subd. 3., and which requires an escrow to
6 assure the payment of taxes or insurance shall pay interest on the outstanding
7 principal balance of the escrow at the variable interest rate established under subd.
8 2.

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

10 186.235 (7) (b) 4. Furnish to a federal home loan bank, upon request, a copy of
11 any examination report made by, or other supervisory information created by, the
12 office of credit unions of any credit union, if the federal home loan bank agrees to treat
13 the information received under this subdivision with the same degree of
14 confidentiality that is required of employees of the office of credit unions under par.
15 (a).

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

17 186.235 (16) (a) Except as provided in par. (b), at least once every 18 months,
18 the office of credit unions shall examine the records and accounts of each credit
19 union. For that purpose the office of credit unions shall have full access to, and may
20 compel the production of, each credit union's records and accounts. The office of
21 credit unions may administer oaths to and examine each credit union's officers and
22 agents. In conducting examinations under this paragraph, the office of credit unions
23 may accept and rely on information collected by other agencies or independent 3rd
24 parties in determining whether a credit union has satisfied any requirement that is
25 part of the examination.

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

2 214.54 (1) Except as provided in sub. (2) and s. 214.49 (4), the total of
3 outstanding loans and extensions of credit, both direct and indirect, made by a
4 savings bank to a single person shall be subject to limits established by rule of the
5 division, but may not exceed ~~15~~ 20 percent of the savings bank's capital.

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

7 214.54 (2) Total outstanding loans and extensions of credit, both direct and
8 indirect, made by a savings bank to a single person may exceed the ~~15~~ 20 percent
9 limit under sub. (1), but may not exceed 25 percent of the savings bank's capital, if
10 all loans or extensions of credit that exceed the ~~15~~ 20 percent limit are at least 100
11 percent secured by readily marketable collateral having a market value that may be
12 determined by reliable and continuously available price quotations.

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

14 214.725 (3) (intro.) ~~An~~ Subject to sub. (3m), an examination shall include a
15 review of all of the following:

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

17 214.725 (3m) In conducting examinations under sub. (1) (a), the division may
18 accept and rely on information collected by other agencies or independent 3rd parties
19 in determining whether a savings bank has satisfied any requirement that is part
20 of the examination.

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

22 214.755 (1) (f) A federal home loan bank if the federal home loan bank agrees
23 to keep the information confidential.

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

1 215.02 (6) (a) 7. The division may furnish to a federal home loan bank a copy
2 of any examination report made by, or other supervisory information created by, the
3 division of any association if the federal home loan bank agrees to keep the
4 examination report or other information confidential.

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

6 215.03 (2) (a) Except as provided in par. (b), at least once within every
7 18-month period, the division shall examine the cash, bills, collaterals, securities,
8 assets, books of account, condition and affairs of all such associations and for that
9 purpose the division or the division's examiners shall have access to, and may compel
10 the production of, all their books, papers, securities and moneys, administer oaths
11 to and examine their officers and agents as to their affairs. In conducting
12 examinations under this paragraph, the division may accept and rely on information
13 collected by other agencies or independent 3rd parties in determining whether an
14 association has satisfied any requirement that is part of the examination. An
15 employee of the division may not examine an association in which the employee is
16 interested as an officer or director.

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

18 220.04 (1) (a) The division shall examine at least once every 18 months the
19 cash, bills, collaterals, securities, assets, books of account, condition and affairs of
20 each bank and trust company bank doing business in this state, except national
21 banks. For that purpose the division may examine on oath any of the officers, agents,
22 directors, clerks, stockholders, customers or depositors thereof, touching the affairs
23 and business of such institution. In conducting examinations under this paragraph,
24 the division may accept and rely on information collected by other agencies or
25 independent 3rd parties in determining whether a bank or trust company bank has

1 satisfied any requirement that is part of the examination. In making such
2 examinations of banks, the division shall determine the fair valuation of all assets
3 in accordance with the schedules, rules and regulations prescribed by the banking
4 review board.

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

6 220.06 (1m) No division employee may examine a bank or licensee in which
7 that person is interested as a stockholder, officer or employee. No division employee
8 may examine a bank or licensee located in the same village, city or county with any
9 bank or licensee in which that person is so interested. Employees in the division, and
10 each member and employee of the banking review board, shall keep secret all facts
11 and information obtained in the course of examinations or from reports not under s.
12 221.1002 (1) filed by a bank or licensee with the division, except so far as the public
13 duty of the person requires reporting upon or taking special action regarding the
14 affairs of any bank or licensee, and except when called as a witness in any criminal
15 proceeding or trial in a court of justice. The division may furnish to the federal
16 deposit insurance corporation, to a federal home loan bank, or to any regulatory
17 authority for state or federal financial institutions, insurance or securities a copy of
18 any examination made of any such bank or licensee or of any report made by such
19 bank or licensee and may give access to and disclose to the corporation or to any
20 regulatory authority for state or federal financial institutions, insurance or
21 securities any information possessed by the division, or to a federal home loan bank
22 any information created by the division, with reference to the conditions or affairs
23 of any such insured bank or licensee if the regulatory authority agrees to treat all
24 information received with the same degree of confidentiality as applies to reports of
25 examination that are in the custody of the division.

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

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

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

11 223.105 (3) (a) To assure compliance with such rules as may be established
12 under s. 220.04 (7), the division of banking and the office of credit unions shall, at
13 least once every 18 months, examine the fiduciary operations of each organization
14 which is under its respective jurisdiction and is subject to examination under sub.
15 (2). If a particular organization subject to examination under sub. (2) is not
16 otherwise under the jurisdiction of one of the foregoing agencies, such examination
17 shall be conducted by the division of banking. In conducting examinations under this
18 paragraph, the division of banking or office of credit unions may accept and rely on
19 information collected by other agencies or independent 3rd parties in determining
20 whether an organization has satisfied any requirement that is part of the
21 examination.

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

23 645.05 (3) NO INJUNCTION AGAINST A FEDERAL HOME LOAN BANK. Notwithstanding
24 subs. (1) and (2) and any other provision of this chapter, no federal home loan bank
25 may be stayed, enjoined, or prohibited from exercising or enforcing any right or cause

1 of action regarding collateral pledged under any security agreement, or any pledge,
2 security, collateral, or guarantee agreement, or any other similar arrangement or
3 credit enhancement relating to a federal home loan bank security agreement.

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

6 645.46 (11) (a) ~~Enter~~ Subject to par. (b), enter into such contracts as are
7 necessary to carry out the order to liquidate, and affirm or disavow any contracts to
8 which the insurer is a party.

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

10 645.46 (11) (b) Notwithstanding any other provision of this chapter, no
11 liquidator has the power to disavow any federal home loan bank security agreement,
12 or any pledge, security, collateral, or guarantee agreement, or any other similar
13 arrangement or credit enhancement relating to a federal home loan bank security
14 agreement.

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

16 645.54 (1) (b) 3. Notwithstanding any other provision of this chapter, no
17 liquidator may avoid any transfer of, or any obligation to transfer, money or any other
18 property arising under or in connection with any federal home loan bank security
19 agreement, or any pledge, security, collateral, or guarantee agreement, or any other
20 similar arrangement or credit enhancement relating to a federal home loan bank
21 security agreement. However, a transfer may be avoided under this paragraph if it
22 was made with actual intent to hinder, delay, or defraud either existing or future
23 creditors.

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

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

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

4 1. Making sales, as defined under 29 USC 203 (k).

5 2. Obtaining orders or contracts for services or for the use of facilities for which
6 a consideration will be paid by the client or customer.