



## 1997 ASSEMBLY BILL 832

February 25, 1998 - Introduced by COMMITTEE ON FINANCIAL INSTITUTIONS, by request of Department of Financial Institutions. Referred to Committee on Financial Institutions.

1     **AN ACT** *to repeal* 221.0205 (1) (title) and 221.0205 (2); *to renumber* 221.0205  
2           (1); *to renumber and amend* 221.0901 (3) (c); *to amend* 220.04 (1) (a),  
3           221.0216 (5), 221.0302 (5) (c), 221.0513 (title) and 221.0609 (1) (title); and *to*  
4           **create** 221.06105, 221.0901 (3) (c) 2. and 221.0903 of the statutes; **relating to:**  
5           in-state branches of out-of-state banks; examination of state banks and trust  
6           company banks by the division of banking; action without a meeting by a bank's  
7           board of directors; dividend rights on capital stock; providing an exemption  
8           from emergency rule procedures; and granting rule-making authority.

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*Analysis by the Legislative Reference Bureau*

**INTERSTATE BRANCHING**

Under the federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, federal bank regulatory agencies may approve applications for adequately capitalized and managed banks to consolidate their multistate operations and branch interstate by acquiring banks outside their home state, effective June 1, 1997, unless the state opts out no later than that date. This type of interstate branching is often referred to as interstate branching by acquisition. States have the option of allowing de novo interstate branching (interstate branching by establishing new branches) by enacting nondiscriminatory legislation

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permitting this branching. Wisconsin has enacted a law that allows banks to establish branches out of state with appropriate regulatory approvals.

This bill creates a number of provisions authorizing the division of banking (the division) to regulate out-of-state banks that maintain branches in this state. These provisions take effect on June 1, 1997, or on the day after publication, whichever is later. First, the bill requires out-of-state banks with an in-state branch to notify the division regarding any change of control of the out-of-state bank. Second, the bill grants the division rule-making authority to establish periodic reporting requirements for out-of-state banks maintaining an in-state branch and to establish assessments for out-of-state banks. Third, the bill authorizes the division to examine in-state branches maintained by out-of-state banks, if the division considers an examination necessary to determine whether an in-state branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. Fourth, if the division determines that an in-state branch of an out-of-state bank is being operated in violation of the laws of this state or is being operated in an unsafe or unsound manner, the division may take any enforcement action against the in-state branch that it would be able to take if the in-state branch were a state bank. The bill contains provisions allowing the division to enter into joint examination and enforcement actions with other bank supervisory agencies and allows the division to contract with other bank supervisory agencies to receive and to provide bank examination services. The bill exempts these contracts from state contracting requirements, including competitive bidding requirements.

This bill also creates certain notification requirements for mergers, consolidations and other transactions that involve a Wisconsin bank and will result in an out-of-state bank. The resulting out-of-state bank must give notice to the division of the proposed merger, consolidation or other transaction no later than the date on which it files an application for the proposed merger, consolidation or other transaction with the federal bank supervisory agency. The notification must include: 1) a copy of the application submitted to the federal bank supervisory agency; 2) evidence that the out-of-state bank has complied with requirements applicable to foreign corporations under the state's corporate law; and 3) any filing fee required by the division.

**OTHER**

Under current law, the division of banking is required to examine banks at least once each year. This bill amends this provision to require an examination at least once every 18 months. Current law provides that the division of banking shall determine the required capital of a bank, subject to review by the banking review board. It also specifies that the capital stock of the bank is unimpaired when its capital notes and debentures or preferred stock, or both, exceed this capital requirement. This bill repeals the provision specifying when a bank's capital stock is unimpaired but retains the requirement that the division of banking set the required capital of a bank.

This bill also makes a number of minor changes and corrections to language enacted in 1995 Wisconsin Act 336, sometimes referred to as the Banking and Regulatory Efficiency Act (BREA), which repealed and recreated chapter 221

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governing state banks. As repealed and recreated, the chapter contains provisions allowing shareholders of a bank to act without a meeting by unanimous written consent. This bill adds a similar provision allowing a bank's board of directors to act without a meeting by unanimous written consent. The bill also modifies the requirements for payment of dividends on capital stock to provide these dividends may not be paid until dividends on preferred stock has been paid in full.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2           220.04 (1) (a) The division shall examine at least once ~~in each year~~ every 18  
3 months the cash, bills, collaterals, securities, assets, books of account, condition and  
4 affairs of each bank and trust company bank doing business in this state, except  
5 national banks. For that purpose the division may examine on oath any of the  
6 officers, agents, directors, clerks, stockholders, customers or depositors thereof,  
7 touching the affairs and business of such institution. In making such examinations  
8 of banks, the division shall determine the fair valuation of all assets in accordance  
9 with the schedules, rules and regulations prescribed by the banking review board.

10           **SECTION 2.** 221.0205 (1) (title) of the statutes is repealed.

11           **SECTION 3.** 221.0205 (1) of the statutes is renumbered 221.0205.

12           **SECTION 4.** 221.0205 (2) of the statutes is repealed.

13           **SECTION 5.** 221.0216 (5) of the statutes is amended to read:

14           221.0216 (5) DIVIDEND RIGHTS. A dividend may not be declared or paid on  
15 capital stock if until the cumulative dividends on the preferred stock have been paid  
16 in full. If the bank is placed in liquidation, a payment may not be made to the holders  
17 of the capital stock if the holders of the preferred stock have not been paid in full the  
18 par value of the stock plus all cumulative dividends.

**ASSEMBLY BILL 832****SECTION 6**

1           **SECTION 6.** 221.0302 (5) (c) of the statutes is amended to read:

2           221.0302 (5) (c) Acting as an agent, or having another bank act as agent, ~~under~~  
3 ~~a contract~~ under s. 221.0301 (8).

4           **SECTION 7.** 221.0513 (title) of the statutes is amended to read:

5           **221.0513** (title) **Action Shareholder action without a meeting.**

6           **SECTION 8.** 221.0609 (1) (title) of the statutes is amended to read:

7           221.0609 (1) (title) HOW ~~FILED~~ FILLED.

8           **SECTION 9.** 221.06105 of the statutes is created to read:

9           **221.06105 Board action without a meeting. (1)** WHEN PERMITTED. Unless  
10 the articles of incorporation or bylaws provide otherwise, action required or  
11 permitted under this chapter to be taken at a board of directors' meeting may be  
12 taken without a meeting if the action is taken by all members of the board. The action  
13 shall be evidenced by one or more written consents describing the action taken,  
14 signed by each director and retained by the bank.

15           **(2)** EFFECTIVE DATE. Action taken under this section is effective when the last  
16 director signs the consent, unless the consent specifies a different effective date.

17           **(3)** EFFECT OF ACTION. A written consent signed under this section has the effect  
18 of a unanimous vote taken at a meeting at which all directors were present, and may  
19 be described as such in any document.

20           **SECTION 10.** 221.0901 (3) (c) of the statutes is renumbered 221.0901 (3) (c) 1.  
21 and amended to read:

22           221.0901 (3) (c) 1. In a transaction ~~under par. (b)~~ in which the division's  
23 approval is not required under par. (b), the parties shall give written notice to the  
24 division at least 15 days before the effective date of the acquisition, unless a shorter  
25 period of notice is required under applicable federal law.

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1           **SECTION 11.** 221.0901 (3) (c) 2. of the statutes is created to read:

2           221.0901 **(3)** (c) 2. In a transaction in which the division's approval is not  
3 required because the transaction is expressly permitted under federal law, an  
4 out-of-state bank that will result from a merger, consolidation or other transaction  
5 involving an in-state bank shall give notice to the division of the proposed merger,  
6 consolidation or other transaction no later than the date on which it files an  
7 application for the proposed merger, consolidation or other transaction with the  
8 federal bank supervisory agency. The notification shall include all of the following:

9           a. A copy of the application submitted to the federal bank supervisory agency.

10           b. Evidence that the out-of-state bank has complied with any applicable  
11 requirements under subch. XV of ch. 180.

12           c. Any filing fee required by the division.

13           **SECTION 12.** 221.0903 of the statutes is created to read:

14           **221.0903 In-state branches maintained by out-of-state banks. (1)**

15           DEFINITIONS. In this section:

16           (a) "Bank supervisory agency" means any of the following:

17           1. An agency of another state with primary responsibility for chartering and  
18 supervising banks.

19           2. The U.S. office of the comptroller of the currency.

20           3. The Federal Deposit Insurance Corporation.

21           4. The board of governors of the federal reserve board.

22           (b) "Home state" means:

23           1. With respect to a state-chartered bank, the state in which the bank is  
24 chartered.

**ASSEMBLY BILL 832****SECTION 12**

1           2. With respect to a national bank, the state in which the main office of the bank  
2 is located.

3           3. With respect to a foreign bank, the state determined to be the home state of  
4 the foreign bank under 12 USC 3103 (c).

5           (c) “In-state branch” means a branch under s. 221.0302 located in this state.

6           (d) “Out-of-state bank” means a bank with a home state other than this state.

7           (e) “State bank” means a bank chartered under this chapter.

8           **(2) NOTICE AND FILING REQUIREMENTS.** Each out-of-state bank that has an  
9 in-state branch shall give the division notice of any merger, consolidation or other  
10 transaction that would cause a change of control with respect to the out-of-state  
11 bank or a bank holding company of the out-of-state bank, such that a filing would  
12 be required under 12 USC 1817 (j) or 12 USC 1841 to 1850. The notice required under  
13 this subsection shall be provided at least 30 days prior to date that the transaction  
14 is to become effective, unless the division determines that a transaction is an  
15 emergency transaction.

16           **(3) REPORTING REQUIREMENTS.** The division may promulgate rules establishing  
17 periodic reporting requirements for out-of-state banks maintaining an in-state  
18 branch. Any reporting requirements established by rules promulgated under this  
19 subsection shall be consistent with all of the following:

20           (a) Reporting requirements applicable to state banks.

21           (b) The division’s regulatory responsibilities with respect to that out-of-state  
22 bank and its in-state branch.

23           **(4) EXAMINATIONS.** (a) *Examination power of division.* The division may  
24 examine an in-state branch maintained by an out-of-state bank, if the division  
25 considers the examination necessary to determine whether the in-state branch is

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1 being operated in compliance with the laws of this state and in accordance with safe  
2 and sound banking practices. The provisions of ch. 220, as they apply to  
3 examinations of state banks, apply to the examination of in-state branches of  
4 out-of-state banks.

5 (b) *Contracts for examination services.* The division may enter into contracts  
6 with any bank supervisory agency with concurrent jurisdiction over a state bank or  
7 an in-state branch of an out-of-state bank to engage the services of the agency's  
8 examiners at a reasonable rate of compensation, or to provide the services of the  
9 division's examiners to the agency at a reasonable rate of compensation. Contracts  
10 entered into under this paragraph are exempt from ss. 16.70 to 16.76 and 16.767 to  
11 16.82.

12 (5) ENFORCEMENT. If the division determines that an in-state branch of an  
13 out-of-state bank is being operated in violation of the laws of this state or is being  
14 operated in an unsafe or unsound manner, the division may take any enforcement  
15 action against the in-state branch that it would be able to take if the in-state branch  
16 were a state bank.

17 (6) JOINT EXAMINATION AND ENFORCEMENT ACTIONS. The division may enter into  
18 joint examinations and joint enforcement actions with other bank supervisory  
19 agencies having concurrent jurisdiction over a state bank with an out-of-state  
20 branch, or an in-state branch of an out-of-state bank. This subsection does not  
21 prevent the division from making examinations or taking enforcement actions  
22 independently, if the division considers it appropriate to carry out its responsibilities  
23 or to ensure compliance with the laws of this state.

24 (7) ASSESSMENTS. The division may promulgate rules establishing assessments  
25 for in-state branches of out-of-state banks.

**ASSEMBLY BILL 832****SECTION 13****1 SECTION 13. Nonstatutory provisions.**

2 (1) EMERGENCY RULE-MAKING AUTHORITY. Using the procedure under section  
3 227.24 of the statutes, the division of banking shall promulgate rules required under  
4 section 221.0902 (3) and (7) of the statutes, as created by this act, for the period before  
5 permanent rules become effective, but not to exceed the period authorized under  
6 section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a)  
7 and (2) (b) of the statutes, the division need not provide evidence of the necessity of  
8 preservation of the public peace, health, safety or welfare in promulgating rules  
9 under this subsection.

10 (END)