

Chapter I

Financial Institutions and General Insurance

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The state regulates certain financial institutions through the:

- **Department of Financial Institutions (DFI);** and
- **Office of Credit Unions.**

General insurance matters are under the jurisdiction of the:

- **Office of the Commissioner of Insurance (OCI).**

DFI oversees state-chartered banks and savings institutions (savings and loan associations and savings banks) through its Division of Banking. Similarly, the Office of Credit Unions oversees the operation of state-chartered credit unions. The office is an independent policy-making unit that is attached for administrative purposes to DFI. Regulation of financial institutions is designed to maintain their sound and safe operation.

OCI supervises insurance industry practices in the state. The agency's primary focus is to ensure sound and fair financial practices by insurers doing business in Wisconsin.

Regulation of Financial Institutions

Banks

State Regulation. At the beginning of Wisconsin's statehood, banking corporations were not permitted to exist under Wisconsin law. The Wisconsin Constitution of 1848 prohibited the Legislature from enacting general or special banking legislation, unless a majority of voters at a general election approved of banks. The Constitution provided that, if such a question were submitted to the electors and received approval, the Legislature was then authorized to pass a general or special banking law. Any banking law subsequently adopted by the Legislature was not effective until it also was approved by a majority of voters at a general election. The electorate approved legislative action to authorize banking activities in November 1851, and the first general banking law was approved in the general election of November 1852. The constitutional provisions regarding electorate approval of banking laws were repealed in 1902.

State-chartered banks have been regulated by numerous entities over the years including a Bank Comptroller, the State Treasurer, the Bank Examiner, the Commissioner of Banking, and the Banking Commission. The current regulator, the result of a governmental reorganization contained in 1995 Wisconsin Act 27, is the Division of Banking in DFI. DFI charters state banks, and the division regulates and supervises state-chartered banks in Wisconsin, including regularly examining state banks in order to ensure their sound and safe operation.

The division also has under its jurisdiction entities that are not considered financial institutions, such as mortgage bankers, mortgage brokers, loan originators, loan solicitors, collection agencies, community currency exchanges, sales finance companies, and payday lenders. The division oversees the market practices of these entities.

Federal Regulation. In contrast to the state structure, the modern system of federal bank regulation began with the National Currency Act of 1863 and the National Bank Act of 1864. The federal statutes enacted at that time authorized the creation of national banks for the purposes of the issuance of national currency, rather than the use of individual state bank notes, and financing the Union effort in the Civil War. The officer in charge of this system was the Comptroller of the Currency who headed a separate bureau in the Department of Treasury. The Office of the Comptroller continues to exist. The Bureau of the Comptroller remains in the Department of Treasury, and the Comptroller performs his or her duties under the direction of the Secretary of the Treasury. The Federal Reserve Board and the Federal Deposit Insurance Corporation also have jurisdictional oversight of some aspects of nationally chartered banks. State banks are also affected by federal statutes relating to, and regulations of, the Federal Deposit Insurance Corporation and the Federal Reserve Board, if a state bank is a member of the Federal Reserve System.

Savings Institutions

The first statutory recognition of organizations resembling contemporary savings institutions appears to have arisen in Ch. 331, Laws of 1876. The law provided in part that at any time when five or more persons desired to form a "mutual savings fund, loan or building association," they were required to file a certificate of organization in the office of the clerk of the circuit court of the county in which they intended to carry on the business of the new corporation. Aside from enacting a law regarding the organization of the business, the state was not otherwise involved in the regulation of a "mutual savings fund, loan or building association."

In the 1895 Session of the Wisconsin Legislature, the regulation of building and loan associations was integrated with bank regulation under the Bank Examiner. However, in Ch. 411, Laws of 1947, the Savings and Loan Association Department was

created to regulate the business and was placed under the management and control of the newly created position of Commissioner of Savings and Loan Associations. During the 1991 Session of the Legislature, the Office of the Commissioner assumed jurisdiction over savings banks. In the consolidation undertaken by 1995 Wisconsin Act 27, the office ultimately became the Division of Savings Institutions in DFI. The Division of Savings Institutions was repealed by 2003 Wisconsin Act 33 and its duties were transferred to the Division of Banking in DFI.

DFI, through the Division of Banking, issues certificates of incorporation to savings institutions and supervises savings institutions through an examination process. (State savings institutions also are affected by the regulatory actions of the Federal Deposit Insurance Corporation and the Federal Office of Thrift Supervision. The Office of Thrift Supervision is a part of the Federal Department of the Treasury.)

As in the case of federally chartered banks, federally chartered savings institutions are affected by the actions of certain federal regulators: the Federal Deposit Insurance Corporation and the Office of Thrift Supervision.

Universal Banks

Chapter 222, Stats., authorizes the formation of universal banks. A state bank, state savings bank, or state savings and loan association may apply to become a universal bank. If it is certified as a universal bank, the financial institution retains its original status as a state bank, state savings bank, or state savings and loan association and is subject to all of the regulations of that original institution, except to the extent the requirements are inconsistent with those of 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, or 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 of this 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.

Credit unions are not authorized to become universal banks.

Credit Unions

In 1912, President William Howard Taft, in a promotion of the credit union movement, asked that all states adopt a credit union statute. Subsequent to this request, the Wisconsin Legislature enacted Ch. 733, Laws of 1913, creating the state's first credit union legislation. Under the law, a "cooperative credit union association" was authorized to receive the savings of its members and lend accumulated funds to members at reasonable rates. The membership of a credit union was limited to those individuals who had a defined common bond, such as individuals working for the same employer. Unlike banks and savings institutions, credit unions do not pay federal or state income taxes. The regulator of the early credit unions was the

Commissioner of Banking who, among other powers, had the authority to ensure the soundness of a credit union and to take possession of an unsound credit union.

The first major structural change in the regulation of credit unions occurred with the enactment of Ch. 411, Laws of 1947. This law required the Commissioner of Banks to employ a supervisor of credit unions. The supervisor was responsible for the supervision and examination of credit unions, under the direction and control of the Commissioner.

The creation of separate regulatory structures for banks, savings and loan associations, and credit unions became complete with the enactment of Ch. 193, Laws of 1971. This legislation created an Office of the Commissioner of Credit Unions, under the direction and supervision of the Commissioner of Credit Unions. Previous responsibilities of the Commissioner of Banking were transferred to the new Commissioner of Credit Unions. 1995 Wisconsin Act 27 created the Office of Credit Unions and attached it for administrative purposes to DFI. The Office of Credit Unions charters credit unions and examines credit union records and assets. (Accounts in state-chartered credit unions are insured through the National Credit Union Administration.)

Federal credit unions are chartered and regulated by the National Credit Union Administration.

Regulation of Securities Transactions

Wisconsin statutes require the registration of certain securities before they may be sold in the state. The statutes also require that broker-dealers, agents, investment advisors, and investment advisor representatives be licensed by the state. The regulation of these activities is managed by the Division of Securities in DFI. The laws are designed to protect the public against securities fraud. (The Federal Securities and Exchange Commission regulates security activities nationally.)

Regulation of Consumer Credit Transactions

The Office of Consumer Affairs in the Office of the Secretary of DFI acts as the administrator of the Wisconsin Consumer Act. In general, the act regulates certain credit transactions, trade practices, types of insurance practices, and debt collection practices that are entered into between consumers and financial institutions or merchants. Generally, a consumer is an individual who is involved in a transaction involving no more than \$25,000 when the individual seeks or acquires certain real or personal property, services, money, or credit for personal, family, or household purposes.

General Insurance Regulation

Office of the Commissioner of Insurance

OIC was established through legislation enacted in 1870. OIC is vested with broad powers to ensure that the insurance industry meets the insurance needs of Wisconsin citizens. The major functions of OIC include:

- Reviewing insurance policies proposed for sale in Wisconsin to determine if they meet the requirements of Wisconsin laws.
- Conducting financial examinations of domestic and foreign insurers to assure compliance with Wisconsin laws.

- Monitoring the financial status of licensed companies and applicant companies.
- Issuing licenses to companies, agents, brokers, and others.
- Examining and analyzing rates filed by insurance companies to determine if they are excessive, inadequate, or unfairly discriminatory.
- Investigating and processing consumer complaints.
- Investigating and pursuing administrative actions against agents and insurers who violate Wisconsin insurance laws.
- Operating a state life insurance fund, a property fund for the property owned by local units of government, and a patients and families compensation fund insuring health care providers for medical malpractice.

Statutory Provisions

Chapters 631 and 632, Stats., set out standards for regulating the terms of insurance contracts. These statutes establish explicit standards within which contract terms can be developed for different lines of insurance.

Chapter 632, Stats., also specifically regulates disability insurance, formerly known as “accident and health” insurance. This is insurance covering claims involving hospital care or medical and surgical expenses, loss of income due to accident or disease, and long-term care. The statutes set forth basic standards for these insurance policies and the Commissioner may set further specific standards through administrative rules. For further information on health insurance, see the Briefing Book chapter titled “Health Care and Health Insurance.”

Life insurance policies, accidental death and dismemberment, and annuities also are regulated under ch. 632, Stats. The statutory provisions regarding these issues focus on requiring sellers of insurance to fully inform prospective purchasers as to the coverage and benefits necessary to provide adequate protection for the purchasers’ needs.

Property and casualty insurance primarily is regulated under chs. 625 and 626, Stats. This form of insurance includes coverage relating to fire, credit, title, burglary, robbery, theft, glass breakage, worker’s compensation, automobile liability, and physical damage.

Finally, provisions in ch. 619, Stats., authorize the Commissioner to establish, by rule, mandatory risk-sharing plans for automobile, worker’s compensation, property, basic medical malpractice, and health care liability insurance, if a demonstrated need for these plans exists. Five such risk-sharing plans have been established in Wisconsin.

Segregated Funds

Wisconsin operates the Local Government Property Insurance Fund under ch. 605, Stats., and the State Life Insurance Fund under ch. 607, Stats. Each fund is administered by the Commissioner. The State Treasurer has sole custody of all the assets of the funds. The purpose of the **Local Government Property Insurance Fund** is to make reasonably priced property insurance available for tax-supported local government property, such as government buildings, schools, libraries, and motor vehicles. The fund provides policy and claim service to the policyholders.

The **State Life Insurance Fund** offers a maximum of \$10,000 of life insurance to state residents. The fund is required to distribute net profits annually among the policyholders. Wisconsin is the only state offering a life insurance program to its residents.

The **Injured Patients and Families Compensation Fund**, under ch. 655, Stats., was created in 1975 to provide excess medical malpractice insurance for Wisconsin health care providers. The fund is governed by a Board of Governors and is staffed by OCI. Administrative costs, operating costs, and claim payments are funded through assessments on participating health care providers. From July 1, 1975, through December 31, 2009, 5,657 claims had been filed in which the fund was named. During this period, the fund's total number of paid claims was 665, totaling \$772,337,268. Of the total number of claims in which the fund has been named, 4,800 claims have been closed with no indemnity payment.

In July 2010, the Wisconsin Supreme Court held that transfers of \$200,000,000 from the Injured Patients and Families Compensation Fund to the Medical Assistance Trust Fund were unconstitutional and must be repaid by the Department of Administration, along with interest and lost earnings. See *Wisconsin Medical Society, Inc. v. Morgan*, 2010 WI 94.

Additional References

1. At the beginning of each legislative session, the **Legislative Fiscal Bureau** prepares Informational Papers that describe various state programs. These Informational Papers, which include descriptions of consumer protection programs, may be found at <http://www.legis.state.wi.us/lfb/index.html> (click on Publications).
2. **OCI** has prepared a number of publications describing the functions of the agency, including a Consumer's Guide to Auto Insurance, a Shopper's Guide to Cancer Insurance, a Guide to Long-Term Care, and the Wisconsin Insurance Report. These and other publications may be found at <http://www.oci.wi.gov/pubs.htm>.
3. **DFI** has prepared consumer information at http://www.wdfi.org/consumer_information/. Letters interpreting statutes and rules regarding banks, savings institutions, and credit unions can be accessed on the DFI's general site at <http://www.wdfi.org>. Finally, detailed information about the Wisconsin's Consumer Act can be found at <http://www.wdfi.org/wca>.

Glossary of Terms and Abbreviations

Comptroller of the Currency – Federal agency that issues charters to and regulates national banks.

DFI – State Department of Financial Institutions. The agency that, through the Division of Banking, the Division of Savings Institutions, and the Office of Credit Unions, charters and regulates state banks, savings institutions, and credit unions.

Finance Charge – The sum of all charges payable by a customer as an incident to, or as a condition of, the extension of credit.

National Credit Union Administration – Federal agency that charters and regulates federal credit unions and provides insurance of deposits to both federal- and state-chartered credit unions.

OCI – State Office of the Commissioner of Insurance.

Office of Credit Unions – State agency attached to the DFI for administrative purposes that charters and regulates state-chartered credit unions.

Office of Thrift Supervision – Federal agency that charters and regulates federal savings institutions.

Wisconsin Consumer Act – Wisconsin statutory provisions regulating credit, trade practices, the sale of insurance, and debt collection practices in certain transactions entered into between consumers and financial institutions or merchants. These transactions must involve no more than \$25,000 and be entered into for personal, family, or household purposes.

4. The **Department of Transportation** has prepared information on when and how proof of insurance is required at <http://www.dot.wisconsin.gov/drivers/drivers/apply/doc/proof-of-ins.htm#financial>.
5. The **Legislative Audit Bureau** has recently prepared the following audits relating to state insurance programs:
 - a. Injured Patients and Family Compensation Fund (Report 10-4, which can be found at <http://www.legis.wisconsin.gov/lab/reports/10-4Full.pdf>).
 - b. State Life Insurance Fund (Report 09-14, which can be found at <http://www.legis.wisconsin.gov/lab/reports/09-14Full.pdf>).
 - c. Local Government Property Insurance Fund (Report 09-6, which can be found at <http://www.legis.wisconsin.gov/lab/reports/09-6Full.pdf>).
6. In the 2009-10 Legislative Session, the Legislature created new requirements for payday lenders. A summary of 2009 Wisconsin Act 405 may be found at http://www.legis.state.wi.us/2009/data/lc_act/act405-sb530.pdf.

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