

Report From Agency

STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS

RULE REPORT TO THE LEGISLATURE
Clearinghouse Rule 23-026

Relating to the elimination of rules made obsolete or redundant by 2021 Wisconsin Act 258, and various updates to Uniform Commercial Code rules, chs. DFI-CCS 1, 2, 3, 4, 5, 6, 7, and 10 of Wisconsin Administrative Code.

Attached: Proposed rule, fiscal estimate and economic impact analysis, and Clearinghouse report to agency.

Governor's approval: The governor approved this rule on October 5, 2023.

Basis and purpose of the proposed rule: The Department of Financial Institutions, Division of Corporate and Consumer Services, proposes an order to revise chs. DFI-CCS 1 to 7 and 10.

The proposed rule order seeks to accomplish three categories of changes: 1) implement 2021 Wisconsin Act 258, which affects limited liability companies and other entities required to file business records with the division, by eliminating rules that were superseded by the Act; 2) update various provisions relating to UCC filings to reflect minor changes in technology and practices — as well as minor changes to the language of the model administrative rules promulgated by the Secured Transactions Section of the International Association of Commercial Administrators (“IACA”) — that have occurred in the 20 years since the administrative rules governing the UCC were originally promulgated in this state; and 3) incentivize online filings and reduce administrative costs to the public.

To accomplish the three categories of revisions listed above, the proposed rule would make a number of changes, including the following:

- 1) Regarding the first category of changes related to 2021 Wisconsin Act 258, for example, the Act's language includes most of the substantive content of existing section DFI-CCS 10.04 of the Wisconsin Administrative Code; because that content is now set forth in statute, the redundant language of the administrative rule is unnecessary and can be repealed. In addition, while the Act specified filing fees for almost all documents to be filed with the Department under the applicable statutory chapters, it did not specify fees for (1) applications for reinstatement under chapters 179, 181, or 183, (2) amendments, cancellations, or renewals of partnership authority under chapter 179, (3) statements of change of registered agent or registered agent's name, email, address, or street address under chapter 180, (4) statements of revocation or rescission of dissolution under chapters

178, 179, 181, or 183, (5) statements of withdrawal of a filed record before effectiveness under chapters 179, 180, 181, or 183, (6) statements of disassociation under chapter 179, or (7) statements of authority or denial under chapter 183. The proposed rule would fill those gaps by establishing fees for those documents that are identical to the fees charged for the same document types under analogous statutory chapters.

- 2) With regard to updates of UCC filing provisions and the current IACA-related changes, the Department consulted the most recent version of the IACA model rules and the rules, practices, technology, and experiences of filing offices in other states when considering administrative rules to govern UCC filings, as it did in proposing these changes. While virtually all the changes in this proposed rule are non-substantive clarifications and repeals of provisions addressing practices that have become obsolete (such as accepting cash payments) or system limitations that no longer apply (such as character limits on certain online forms), the Department believes these proposed updates will better harmonize Wisconsin's rules with modern practices and rule language in other states.
- 3) To incentivize online filings and reduce consumer costs, the proposed rules would impose larger fees for filing documents on paper where an online option is available and update certain UCC search and document fees to more closely reflect the capabilities of the department's UCC system and, with regard to bulk image requests, to ensure that any third-party costs to retrieve the images are paid by the requesting party rather than the public.

Summary of comments, agency's response, and explanation of any modifications as a result of comments or testimony:

The Department received no written comments either electronically or by USPS.

Persons appearing or registering for or against the rule at hearing:

No persons registered for or against the rule at the hearing, and no member of the public appeared at the (Microsoft Teams) public hearing.

Changes to analysis or fiscal estimate: None.

Response to legislative council recommendations: All of the recommendations were adopted and both concerns raised by the Council were either addressed in the draft or by staff verifying that the concern raised by the Council could not occur in practice.

Final regulatory flexibility analysis, changes to energy impact report, housing impact analysis, and response to any report prepared by the SBRRB: Not applicable.

