

Committee Name: **Senate Select Committee – Job Creation (SSC–JC)**

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Testimony before the
Senate Select Committee on Job Creation

In Favor of SB 373

10:00 am, January 27, 2004
by Rose Oswald Poels
Wisconsin Bankers Association

Senators Kanavas and Stepp, and members of the Select Committee, my name is Rose Oswald Poels. I am the Vice President -- Legal of the Wisconsin Bankers Association (WBA). WBA represents nearly 320 commercial banks, savings banks and savings and loan associations of all sizes throughout the state. WBA members are very supportive of SB 373 and I am here today to respectfully request passage of this bill.

WBA worked with Senator Stepp to include this provision in the original regulatory relief bill because we believe that Wisconsin law should be clarified for borrowers and lenders regarding contractual agreements.

This bill requires that enforceable credit agreements be in writing. This requirement does not apply to consumer transactions governed by the Wisconsin Consumer Act. This requirement cannot be undone or avoided based on the doctrine of promissory estoppel, which, if applicable, would permit a complete end run around the requirement that credit agreements be in writing.

There are many reasons why this is important. First, there has been significant and costly litigation over the last 20 years against financial institutions alleging that verbal discussions with customers constituted enforceable credit agreements against the financial institutions when those institutions never intended that those discussions give rise to enforceable agreements. The requirement that the agreements be in writing is intended to prevent these lawsuits based strictly on verbal discussions, which were not intended by both parties to be agreements. While there has not been any such litigation in Wisconsin to our knowledge, this bill is intended to be proactive to prevent such unnecessary costs. Banks have a fiduciary responsibility to lend out their depositors' money in a safe and sound manner and these types of unnecessary lawsuits cumulatively could negatively impact deposits.

Second, more than 33 states have adopted laws preventing this kind of abuse, and requiring that credit agreements be in writing. This includes all of Wisconsin's neighboring states of Minnesota, Iowa, Illinois, and Michigan. In Wisconsin, since the early 1980s, there has been a law requiring that certain agreements be in

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writing, like a guaranty in a credit transaction, and credit agreements should be no different.

Finally, the bill is generally limited to sophisticated borrowers because of the exclusion for Wisconsin Consumer Act transactions. Consumers would continue to get all of the benefits and protections of the Wisconsin Consumer Act.

Thank you for your consideration of my comments today on behalf of the Wisconsin Bankers Association, and I encourage you to vote in favor of SB 373. I would be happy to answer any questions at this time.