



DAVID CRAIG

STATE REPRESENTATIVE
CHAIRMAN, ASSEMBLY COMMITTEE ON FINANCIAL INSTITUTIONS

Senate Committee on Revenue, Financial Institutions, and Rural Issues
Public Hearing, April 29, 2015
Assembly Bill 23
Representative David Craig, 83rd Assembly District

Chairman Marklein and Committee Members,

Thank you for hearing testimony on Assembly Bill 23.

This bill is fairly simple and straightforward; it prohibits legal action brought against a financial institution for a so-called oral contract. This bill protects the consumer as well as the financial institution by delineating that in order to litigate these frequently high-value contracts, the contracts must be in writing, set forth relevant terms and conditions, be signed by the financial institution and delivered to the individual seeking to enforce the contract. This common sense change will reduce uncertainty and needless litigation which benefits all parties to a transaction.

Further, the transactions governed under the legislation are also subject to a myriad of both federal and state laws already in existence and this bill does not apply to credit transactions subject to the Wisconsin Consumer Act, which covers consumer credit transactions and debt collections of \$25,000 or less.

I believe this is a necessary and important piece of legislation to protect both customers and financial institutions and I ask for your support for the bill.

Thank you and I would be happy to answer any questions you may have on AB 23.

Testimony of the Wisconsin Bankers Association
Heather MacKinnon, Director of Legal, WBA

Senate Committee on Revenue, Financial Institutions, and Rural Issues
Assembly Bill 23

April 29, 2015

Chairman Marklein and Members of the Committee:

Thank you for the opportunity to testify in support of Assembly Bill 23.

My name is Heather MacKinnon, Director of Legal for the Wisconsin Bankers Association, the state's financial industry trade association. We represent 275 commercial banks and savings institutions, their nearly 2,300 branch offices and over 30,000 employees.

This bill prohibits any person from bringing an action against a financial institution or its affiliate on or in connection with an offer, promise, agreement, or commitment to lend money, extend credit, or make any other financial accommodation, or to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation, unless the offer, promise, agreement, or commitment 1) is in writing; 2) sets forth relevant terms and conditions; and 3) is signed with an authorized signature by the financial institution or its affiliate and delivered to the party seeking to enforce the offer, promise, agreement, or commitment. The bill does not apply to credit transactions that are subject to the Wisconsin Consumer Act.

In response to multi-million dollar judgments against financial institutions on the basis of alleged verbal commitments to lend money, at least 41 states have long ago enacted laws that prevent someone from suing a financial institution on the grounds that it broke an oral contract. The majority of states enacting statutes of frauds have opted to make those statutes applicable to a broad range of financial commitments—similar to Assembly Bill 23.

Wisconsin is not one of those states and as such, a financial institution or its affiliate remains vulnerable against potential legal threats.

Some may question why the bill excludes a credit transaction subject to the Wisconsin Consumer Act, however, nearly all of the litigation over the years has been in the commercial loan context. Additionally, consumer purpose loans of \$25,000 and less are already subject to the protections

under the Wisconsin Consumer Act which includes under sec. 422.302 that required information be provided in writing by the financial institution.

We believe the bill provides certainty in agreements for both financial institutions and its customers thereby reducing the number of defaults. Too much can go wrong in a 'verbal contract' as memories and recollections fade. We also believe the bill will reduce litigation over alleged oral contracts.

I will be happy to answer any questions.



TO: Senate Committee on Revenue, Financial Institutions, and Rural Issues

FROM: Attorney Vicky Selkove, Legislative Director, Legal Action of Wisconsin

DATE: April 28, 2015

RE: Assembly Bill 23

Legal Action of Wisconsin (LAW) is a nonprofit law firm. Our attorneys and staff provide free civil legal services to low-income people in 39 Wisconsin counties, across a territory that extends from the southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Consumer law is one of LAW's priority areas and we work to counter the most egregious and predatory practices that target Wisconsin's low-income consumers.

We have several concerns about Assembly Bill 23 and believe it will adversely affect Wisconsin's consumers. Consumers already enter loan transactions with the fear that they will be taken advantage of, that the terms and promises they hear from a financial institution representative will be "too good to be true" or will be different from the "fine print." Consumers already fear that their lack of experience, education, or financial know-how will mean they get taken advantage of by a financial institution.

This bill legitimizes – and even incentivizes – the kind of deceptive practices that add fire to those consumer fears.

Particularly in light of the last decade of the crisis in the financial industry, this bill represents a further tipping of the scale away from consumer rights. Since 2008, consumer confidence in financial institutions has plummeted.

Assembly Bill 23 will serve only to enhance consumers' cynical-but-well-founded belief that lenders can tell them one thing and then turn around and give them completely different terms in the fine print.

1. AB 23 Will Allow "Bait & Switch" Tactics

Assembly Bill 23 will allow financial institutions to get away with bait and switch techniques that harm consumers and further undermine consumer confidence in financial institutions. **The bill appears to be aimed at protecting financial institutions who say one thing to borrowers and then do a different**

thing, costing borrowers money and further eroding consumer trust and confidence in our financial institutions.

For example, under current law, if a lender tells a borrower over the phone or in-person that an applied-for loan has an Annual Percentage Rate (APR) of 4.3% and that monthly payments will be \$200, and then the loan paperwork puts the APR at 5% and monthly payments at \$250, that borrower might have a limited claim of action against the financial institution. Certainly, sometimes, these discrepancies are due to simple mistakes or misunderstandings. But what if there is a pattern and practice of a lender saying one thing over the phone or in-person to consumers, and then having entirely different terms in the transactional paperwork? Assembly Bill 23 would strip away an important means of recourse for those consumers who have faced fraudulent actions from our financial institutions.

The national mortgage crisis provided numerous examples of how lenders made promises that never materialized in the fine print. Mortgage lenders who told borrowers they would be given trial payment plans to avoid foreclosure then proceeded with foreclosure anyway.

Assembly Bill 23 would allow exactly that sort of pattern and practice, and deny borrowers legal recourse to challenge these fraudulent and deceptive tactics – challenges that benefit all of us by exposing and holding accountable the financial bad actors.

2. AB 23 Interferes With Courts' Ability to Prevent Injustices

The bill's language (lines 22-24 on page 2) specifies that, "An offer, promise, agreement, or commitment by a financial institution or its affiliate described in par.(b) may not be enforced under the doctrine of promissory estoppel." In the consumer context, promissory estoppel has been utilized by courts when consumers have reasonably relied on a financial institution's promise and experienced damages as a result of that reliance, even if the contract or loan terms differed from that promise. Assembly Bill 23 would not allow courts to use this well-established judicial principle to prevent injustices by enforcing promises that have been made; this provision removing promissory estoppel is not a common feature of similar laws in other states.

AB 23's co-sponsorship memo indicates that the bill is being introduced in "response to large judgments against financial institutions based on claims of binding oral commitments." **Yet, judgments issued against financial institutions indicate clearly that judges and/or juries have found sufficient evidence to conclude that the financial institution had in fact made oral promises that they did not then honor in the fine print.** Lenders already have significant protections in those cases; it is certainly not easy to bring legal action against a financial institution, nor is it easy to prove that oral promises were made.

Assembly Bill 23's removal of promissory estoppel interferes with judges' ability to intervene in situations to prevent injustice and attempt in a small way to level the playing field between consumers and powerful financial institutions.

3. AB 23 Will Affect Potentially Hundreds of Thousands of Wisconsin Consumers

Assembly Bill 23 appears to apply to all credit transactions and home mortgages over \$25,000. This bill will have far and wide-ranging effects for Wisconsin consumers and homeowners. Given the sheer number of Wisconsin consumer transactions likely to be affected by this bill (and the fact that it will affect many Wisconsinites' most valuable asset, their homes), a cautious approach to this bill would be warranted.

Many other states limit their similar statutes to commercial transactions or transactions of far higher minimum loan amounts (i.e. \$100,000 minimum in California law) where both parties likely have attorneys to help understand complicated legal and financial documents and where the playing field between the parties is more equal.

This bill will also prove particularly problematic for consumers who lack formal educations, who do not speak English as a first language, or for any consumers who rely on in-person or phone conversations for information. Anyone who has ever applied for a mortgage knows how overwhelming and anxiety-producing the paperwork and loan terms can be, even for an experienced consumer. For less experienced consumers and more vulnerable populations, they rely on phone conversations or details conveyed at in-person meetings. This bill opens the door to countless situations where those already-vulnerable consumers rely on promises made on the phone or in-person and then are taken advantage of by different terms in the paperwork.

Thank you for the opportunity to comment on this bill. Do not hesitate to contact me if Legal Action of Wisconsin may provide you with additional information about this or other legislation affecting consumers. You may reach me at (608) 620-2011 or vss@legalaction.org.