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# HOWARD MARKLEIN

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STATE SENATOR • 17<sup>TH</sup> SENATE DISTRICT

**February 7, 2018**

## **Senate Committee on Revenue, Financial Institutions & Rural Issues Testimony on Senate Bill 686**

Good Morning!

Thank you committee members for hearing Senate Bill 686 (SB 686) that makes several changes to statutes relating to banking practices. I am happy to be working on this proposal with Rep. Katsma, which has support from both the banks and credit unions in Wisconsin.

Key provisions of the Financial Institutions Modernization Act include:

- ❖ Allows, but does not require, the Department of Financial Institutions (DFI) to disclose a financial institution's confidential examination information to the Federal Home Loan Bank (FHLB)—which is customary in approximately 30 other states, and which many banks and credit unions in Wisconsin would appreciate.
- ❖ Clarifies that a letter of credit from the FHLB is an acceptable form of security for purposes of securing public deposits.
- ❖ Grants the FHLB protection as a secured creditor to insurance companies. It is unclear under state law how the FHLB would be treated if a member insurance company (who owed money to the FHLB) became insolvent.
- ❖ Provides parity among federally- and state-chartered banks in regards to paying dividends to shareholders.
- ❖ Allows, but does not require, DFI to accept and rely upon information collected by other agencies—such as the Federal Deposit Insurance Corporation (FDIC) or independent accounting firms—to be used to satisfy state-chartered financial institutions' examination requirements.
- ❖ Removes the existing state requirement that state-chartered financial institutions pay interest on the escrow accounts connected with residential home loans. There is no such requirement for federally-chartered competitors.
- ❖ Allows a state-chartered savings bank to lend up to 20 percent of its capital to a single borrower. This change would make the law consistent for state banks and state chartered savings banks.

- ❖ Aligns Wisconsin administrative code with federal law regarding positions that are exempt from overtime pay. Wisconsin's definition of an "outside salesperson" is obsolete and does not match the federal definition that took effect in 2004, which affects employees such as mortgage loan originators and financial consultants.

Passing this bill will have a positive impact on Wisconsin's banking industry.

Thank you again for hearing SB 686, and your timely action on this proposal.



# TERRY KATSMAS

STATE REPRESENTATIVE • 26<sup>th</sup> ASSEMBLY DISTRICT

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P.O. Box 8952  
Madison, WI 53708-8952

**Date:** February 7th, 2018  
**To:** Senate Committee on Revenue, Financial Institutions and Rural Issues  
**From:** Representative Terry Katsma  
**Re:** Senate Bill 686: the Financial Institutions Modernization Act

Dear Chairman Marklein and committee members,

Thank you for your prompt consideration of Senate Bill 686. Every financial institution that serves Wisconsin customers (primarily banks and credit unions) is organized under either a federal charter or a state charter. Although most customers would never notice any difference between the two types, there are some important regulatory differences. The statutory improvements proposed under this bill will streamline business for the financial institutions who choose to be governed by the State of Wisconsin rather than Washington, DC.

This omnibus bill:

- Allows, but does not require, the Department of Financial Institutions (DFI) to disclose a financial institution's confidential examination information to the Federal Home Loan Bank (FHLB)—which is customary in approximately 30 other states, and which many banks and credit unions in Wisconsin would appreciate. Very many state- and federally-chartered financial institutions are FHLB members and make use of the liquidity, mortgage and community investment products that the FHLB offers. (For example, the 11 FHLBs across the nation proved to be invaluable sources of emergency liquidity during the financial crisis of 2008.) But because federal law gives the FHLB access to federally-chartered financial institutions' examination reports, and because the FHLB can therefore be more confident in the "health" of any such federally-chartered customer, federally-chartered financial institutions can often get better prices on FHLB products than state-chartered institutions can get. This bill allows, but does not require, DFI to share state-chartered financial institutions' examination reports and other data with the FHLB so that state-chartered institutions are not at a disadvantage against federally-chartered competitors.
- Clarifies that a letter of credit from the FHLB is an acceptable form of security for purposes of securing public deposits. Public depositors (such as local governments) sometimes need to prove the security of public money as collateral in a transaction; one way of doing this is by obtaining a letter of credit from a financial institution. This bill provides that an irrevocable letter of credit from the FHLB—often a desirable product due to its relatively low cost and its Aaa/AA+ credit-rated source—is an acceptable form of security in these situations.
- Clarifies FHLB protection as a secured creditor to insurance companies. It is unclear under state law how the FHLB would be treated if a member insurance company (who owed money to the



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FHLB) became insolvent. Due to this uncertainty, the FHLB has to be more conservative—that is, charge a higher price—when lending to insurance companies compared to financial institutions. This bill, along with Senate Amendment 1 (drafted in consultation with the Office of the Commissioner of Insurance), resolves the uncertainty so that FHLB can have the confidence it needs to provide insurance company borrowers the highest possible value.

- Provides parity among federally- and state-chartered banks in regards to paying dividends to shareholders. This bill provides that, like federally-chartered banks, a state-chartered bank may pay dividends to shareholders from not only its undivided profits but also from its capital with (1) DFI approval and (2) a majority vote of its shareholders.
- Allows, but does not require, DFI to accept and rely upon information collected by other agencies—such as the Federal Deposit Insurance Corporation (FDIC) or independent accounting firms—to be used to satisfy state-chartered financial institutions' examination requirements. Typically, regulators examine state-chartered banks' and credit unions' records at least once every 18 months; this bill would allow, but not require, the regulators to use data from other sources as part of this routine process.
- Removes the existing state requirement that state-chartered financial institutions pay interest on the escrow accounts connected with residential home loans. Under current law, when a homebuyer purchases a new residential mortgage loan from a state-chartered financial institution, the bank or credit union must pay interest on the funds that the homebuyer sets aside in escrow for paying taxes and insurance. (In 2017, that interest rate, set annually by DFI, is 0.14 percent.) There is no such requirement for federally-chartered competitors. This bill would provide parity with federal law; under the bill, all financial institutions, whether federally- or state-chartered, would compete under market forces that are identical in this respect.
- Allows a state-chartered savings bank to lend up to 20 percent of its capital to a single borrower. Under current law, a state bank may already lend up to 20 percent of its capital to any one borrower, but a state-chartered savings bank may lend no more than 15 percent. This bill provides a consistent 20 percent limit for all state banks and state-chartered savings banks.
- Aligns Wisconsin administrative code with federal law regarding positions that are exempt from overtime pay. Wisconsin's definition of an "outside salesperson" is obsolete and does not match the federal definition that took effect in 2004, which affects employees such as mortgage loan originators and financial consultants. Although the Department of Workforce Development (DWD) has an approved Statement of Scope for modernizing DWD 274 (the relevant chapter of Wisconsin Administrative Code) to comply with federal law, this bill would enact a portion of the proposed rule change more promptly than is possible under the normal rulemaking process.

Thank you for your consideration of this bill.



January 19, 2018

The Honorable Terry Katsma  
Wisconsin State Capitol  
P.O. Box 8952  
Madison, WI 53708

The Honorable Howard Marklein  
Wisconsin State Capitol  
P.O. Box 7882  
Madison, WI 53707

Re: FHLB Protections from Stay and Voidable Preference Provisions of the Wisconsin Insurance Code

Dear Representative Katsma and Senator Marklein:

We are writing to commend you for sponsoring legislation that will provide protections to a Federal Home Loan Bank (FHLB) from the stay and voidable preference provisions of the Wisconsin Insurance Code. The undersigned National Guardian Life Insurance Company is a member and shareholders of the Federal Home Loan Bank of Chicago (FHLBC), which is a key source of short-term liquidity and long-term funding for us. FHLBC products allow us to more efficiently manage our asset-liability risk and provide economically-priced financial products. Your legislation will provide legal parity for us with bank, thrift and credit union members by allowing us to receive more favorable collateral values when borrowing from the FHLBC and thus, better serve our Wisconsin customers.

The FHLBC is one of eleven wholesale cooperatives established by Congress to promote housing finance and economic development by making low-cost loans to its members as well as offering mortgage acquisition programs, letters of credit and other financial products. It also serves as a reliable source of liquidity, which can be critical during economic downturns. The FHLBs were one of the few sources of liquidity available to financial institutions during the financial crisis in 2008-09. For these reasons, approximately 720 financial institutions in Wisconsin and Illinois have chosen to be members of the FHLBC, including 253 Wisconsin insurance companies, banks, thrifts, credit unions and community development financial institutions. Profits from the FHLBC also provide millions of dollars each year to Wisconsin in the form of affordable housing grants, down-payment assistance grants, disaster assistance grants and other community investment funding benefitting Wisconsin communities and customers.

As a Congressionally-created entity, federal law protects the FHLBs in the event of a bank, thrift or credit union failure, ensuring their member loans are repaid in full. In the eighty-five year history of the FHLBs, no FHLB has ever lost a dollar on a member loan despite thousands of bank and thrift member failures over the decades. However, the FHLBs do not enjoy similarly broad protections with respect to an insolvency of a member insurance company because state law governs the insurance business. Your legislation therefore is needed to ensure the FHLBC receives the same protections as it does under federal law pertaining to federally-insured depositories.

Due to uncertainty about its rights if a member insurance company was placed into receivership, the FHLBC generally is more conservative when lending to Wisconsin insurers as compared to its depository institution members. This is particularly true if a member insurance company member becomes financially troubled, when it would most likely benefit from the liquidity available from the FHLBC. As a

# Mortgage Guaranty Insurance Corporation

January 19, 2018

The Honorable Terry Katsma  
Wisconsin State Capitol  
P.O. Box 8952  
Madison, WI 53708

The Honorable Howard Marklein  
Wisconsin State Capitol  
P.O. Box 7882  
Madison, WI 53707

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We are writing to commend you for sponsoring legislation that will provide protections to a Federal Home Loan Bank (FHLB) from the stay and voidable preference provisions of the Wisconsin Insurance Code. The undersigned Wisconsin insurance companies are members and shareholders of the Federal Home Loan Bank of Chicago (FHLBC), which is a key source of short-term liquidity and long-term funding for us. FHLBC products allow us to more efficiently manage our asset-liability risk and provide economically-priced financial products. Your legislation will provide legal parity for us with bank, thrift and credit union members by allowing us to receive more favorable collateral values when borrowing from the FHLBC and thus, better serve our Wisconsin customers.

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Due to uncertainty about its rights if a member insurance company was placed into receivership, the FHLBC generally is more conservative when lending to Wisconsin insurers as compared to its depository institution members. This is particularly true if a member insurance company member becomes financially troubled, when it would most likely benefit from the liquidity available from the FHLBC. As a result, Wisconsin insurers may be required to pledge more collateral, or may be restricted in the types of collateral pledged, when borrowing from the FHLBC than a depository institution, both of which increase our borrowing costs or reduce the competitiveness of our insurance products compared to those of out-of-state insurers.

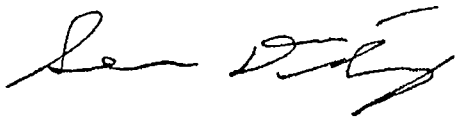
Your legislation will clarify the legal rights of the FHLBC in the unlikely event of an insolvency of a Wisconsin insurance company member. A failure of an insurance company involving secured loans from the FHLBC has never occurred in Wisconsin and has happened only twice nationwide. Nonetheless, protecting the FHLBC from the stay and voidable preference provisions of the Wisconsin insurance code will ensure the FHLBC's rights to repayment and provide parity with federal law. Importantly, this legislation will never allow the FHLB to recover more than it would otherwise be entitled to under its security agreement; it will simply ensure the FHLB is able to fully recover the amounts owed to it as a secured lender. As a result, Wisconsin insurance company members will receive greater borrowing capacity and access to liquidity.

These protections afforded by your legislation are not unusual. The two insurance company insolvencies mentioned above prompted sixteen states in recent years to adopt protections for the FHLBs similar to those afforded under federal law. Illinois was the most recent state to do so, allowing the FHLBC's Illinois insurance company members to begin receiving better collateral values than Wisconsin insurers. Other nearby states that have enacted FHLB protections include Iowa, Michigan, Indiana, Missouri, Nebraska, Kansas and Oklahoma.

Additionally, your legislation will better allow the FHLBC to partner with an insurance company receiver in the event of an insolvency. An insurance company receiver that is working to conserve the assets of an insolvent insurer may want an FHLB advance to be extended or increased for a period of time, or may prefer to substitute collateral securing the loans. The legal certainty provided by your legislation will allow the FHLBC to deal with these issues as flexibly as possible.

For these reasons, we commend your leadership on this important issue. Thank you for your consideration of our views.

Sincerely,



Sean Dilweg  
SVP Government Relations



**Date:** February 7th, 2018  
**To:** Members of the Senate Revenue, Financial Institutions, and Rural Issues Committee  
**From:** Jon Turke, Director – Government Relations  
**Re:** Testimony in support of SB 868

Chairman Marklein and members of the committee:

Thank you for the opportunity to testify on in support of Senate Bill 686, the Financial Institutions Modernization Act.

My name is Jon Turke and I am Director of Government Relations at the Wisconsin Bankers Association. WBA represents approximately 240 commercial banks and savings institutions, their nearly 2,300 branch offices and more than 30,000 employees.

The Wisconsin Bankers Association (WBA) is requesting several changes to statutes relating to banking practices. The below requests are a collection of concepts derived from discussions over the past year with members of the WBA. We feel that these changes will enhance the value of the state charter and streamline operations within the industry.

WBA requests the following changes:

1. Add the Federal Home Loan Bank (FHLB) to the list of entities to which the Wisconsin Department of Financial Institutions (DFI) may disclose reports of examination and confidential supervisory information pertaining to Wisconsin banks, thrifts and credit unions.
2. Amend Wisconsin law to explicitly permit a letter of credit (LC) from the FHLB to be used to secure Wisconsin public unit deposits.
3. Amend Wisconsin laws to provide that an FHLB (1) would not be subject to a stay or prohibited from exercising its rights to collateral pledged to the FHLB by an insurance company member who becomes subject to an insolvency proceeding; and (2) would be excluded from the voidable preference provision of the insolvency statutes. This provides parity for FHLB insurance members with their fellow bank members.
4. Repeal requirement that banks shall pay interest on escrow accounts. This change would not prohibit such interest accounts if a bank chooses to offer.
5. Allow a savings bank to lend up to 20% of its capital to one member. This change brings parity for savings banks with their state bank, universal bank, and savings & loan charters.
6. Federalize the Wisconsin definition of outside sales representative. Outside sales representatives are no longer going door-to-door to make sales. This change will bring law in-line with current practice.
7. Allow DFI to accept information collected by other agencies (FDIC) to be used to satisfy certain exam state requirements.



8. Allow banks to pay dividends out of its capital to match similar powers for national banks.

We appreciate your willingness to consider these concepts. Several banks have recently begun the conversion from switching to a state charter from a national bank. The Department of Financial Institutions has made this a priority of theirs and WBA feels these changes will only enhance those efforts.



February 6<sup>th</sup>, 2018

TO: Honorable Members of the Senate Committee on Revenue, Financial Institutions and Rural Issues

FROM: Pat Wesenberg, President/CEO, Simplicity Credit Union

RE: Support of Senate Bill 686

Thank you for your consideration of Senate bill 686. I am the President/CEO of Simplicity Credit Union, which is 240 million in assets and serves 25,000 members, located in Marshfield, WI. Our credit union, along with 44 other Wisconsin credit unions, is a member of the Federal Home Loan Bank of Chicago. We became members in 2013. Since then, we've found the Federal Home Loan Bank to be a trusted partner and use them for lines of credit and mortgages dual payment plus program.

As a part of our membership agreement, the credit union granted the Federal Home Loan Bank permission to obtain our exam findings. However, state statute did not provide authority for the Office of Credit Unions to share them. I ask that you support this bill to grant that authority.

97% of the Wisconsin's credit unions, including Simplicity, are chartered and regulated at the state level. Our federally chartered counter parts, and neighbors in Illinois already have their exam findings provided to the Federal Home Loan Bank by their respective regulators.

Wisconsin's credit unions attempted to gain parity and grant this authority in 2016 legislation that permitted the Office to provide exam reports to:

"a credit union's attorneys, independent certified public accountants, or other consultants or advisers who have agreed in writing to maintain the confidentiality of the reports."

Additional clarification is necessary to authorize the Office of Credit Unions to share exam findings with the Federal Home Loan Bank specifically, which this bill accomplishes.

We appreciate the open discussions and continued efforts over a number of months to include this important update to credit unions' state statutes in Senate Bill 686. The product is this consensus bill that benefits credit unions and our trusted system-partner, the Federal Home Loan Bank of Chicago.

Thank you for your consideration.

A handwritten signature in cursive script that reads "Patricia A. Wesenberg".

Patricia A. Wesenberg  
President/CEO