



State of Wisconsin
Department of Financial Institutions

Tony Evers, **Governor**

Kathy Blumenfeld, **Secretary**

Testimony of Catherine Haberland
Assistant Deputy Secretary
The Wisconsin Department of Financial Institutions

Senate Committee on Agriculture, Revenue and Financial Institutions Public Hearing
Thursday, October 10, 2019

Chairperson Marklein and Committee Members:

Thank you for the opportunity to testify today on SB 457. On behalf of the Wisconsin Department of Financial Institutions (DFI), I would like to thank you for bringing up this important piece of legislation and to let you know that DFI supports SB 457, specifically the provisions that DFI initiated on mortgage loan originators and combining our Bank Boards. The Department of Financial Institutions is pleased that you included these legislative changes, which are needed in order for Wisconsin to comply with federal law and also to help us operate more efficiently.

The DFI section on mortgage loan originators is in response to a law passed by Congress in 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act, which improves consumer access to mortgage credit. This new law included a section that amended the SAFE Mortgage Licensing Act of 2008 to temporarily allow loan originators that meet specific requirements to continue to originate loans after: (1) moving from one state to another, and (2) moving from a depository institution to a non-depository institution. To remain consistent with the federal SAFE Act, all states must revise their SAFE Act law to incorporate these changes by November 28, 2019.

This legislative change will:

- Reduce regulatory burden on loan originators who either move from one state to another or move from a depository institution to a non-depository institution without harm to consumers, the mortgage lending industry, or the State.
- Create a uniform standard and efficiency in the process and review of the licensure of loan originators relocating or changing from a depository institution to a non-depository institution.

The other section of SB 457 that includes a DFI request is to combine our Banking Review Board and Savings Review Board. This change was initiated to improve efficiency and eliminate redundancy. It has become difficult to find Savings Review Board members due to a fewer number of savings institution charters. The two Review Boards meet at the same time and perform near identical roles, there are five members on each Review Board and through attrition there will be five members on the new combined Review Board. Currently the Boards each meet once a year, unless there is a bank closure, or a new charter and the functions of the new combined Review Board will be the same. Combining the Review Boards will provide greater efficiency in review board oversight.

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We would appreciate your support for this legislation and DFI is happy to answer any questions that you might have. I am accompanied today by the Department of Financial Institutions Division of Banking Administrator, Heather MacKinnon, who can provide additional help in answering your questions. Thanks for your consideration.

Very truly yours,
[Signature]

[Name]
[Title]
[Address]
[Phone Number]

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REAL PROPERTY, PROBATE & TRUST LAW SECTION

Date: October 9, 2019
To: Members of the Senate Committee
From: Real Property, Probate and Trust Section of the State Bar of Wisconsin
Re: SB 457 – P.O.D. Accounts

The Real Property, Probate and Trust (RPPT) Section of the State Bar of Wisconsin has concerns regarding the proposed P.O.D. (payable on death) changes in Senate Bill 457. RPPT has no other concerns with any of the other provisions as currently drafted in the legislation.

POD accounts are one of many tools that residents use to avoid potentially costly probate proceedings. The bill proposes a statutory “set-off” provision that would allow a financial institution to retain assets in a POD account prior to payment to a designated beneficiary if the deceased account owner had an outstanding liability due the financial institution. This essentially makes an unsecured liability subject to the priority of claims statute, Wis. Stat. §859.25 (see also § 701.505(1)(a)3.), a secured claim favoring the financial institution. The proposed bill would circumvent the priority of claims that would otherwise direct the order in which the trustee satisfies at death: costs and expenses of administration, funeral and burial expenses, statutory provisions for the decedent’s family, the decedent’s last sickness expenses, debts, charges, or taxes owed the federal or state government, among other higher priority claims.

RPPT appreciates the opportunity to discuss the POD issue further and again takes no position on the other aspects of the legislation. If you have any questions, please contact Cale Battles, Governor Relations Coordinator at the State Bar of Wisconsin, at cbattles@wisbar.org or (608) 250-6077.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.



STATE BAR OF WISCONSIN



Testimony of the Wisconsin Bankers Association

Senate Committee on Agriculture, Revenue, and Financial Institutions
Senate Bill 457

October 10, 2019

Chairman Marklein and members of the committee, thank you for the opportunity to testify at this hearing.

WBA represents approximately 225 commercial banks and savings institutions, their nearly 2,300 branch offices and more than 30,000 employees.

WBA is asking for your support on SB 457 that makes several changes to statutes relating to banking practices. WBA feels that these changes will streamline and modernize operations within the financial services industry.

WBA has received several good questions about this bill and what it will accomplish. The information below helps explain key terms and concepts found within the bill.

- 1) P.O.D. accounts and loan obligations to financial institutions – Allow financial institutions to satisfy the account owner's loan obligation before distributing funds to the beneficiary.

A **Payable on Death (P.O.D.) account** is a special type of bank account which allows for the money remaining in the account when the account owner dies to pass directly to the beneficiaries named by the account owner, avoiding probate proceedings and overriding any last will and testament or revocable living trust documents. P.O.D. accounts may have multiple beneficiaries.

A **lien** is the legal right to keep possession of property belonging to another person until a debt owed (the **loan obligation**) by that person is discharged or satisfied.

A **beneficiary** is a person designated to receive funds after the account holder's death. An account holder must record beneficiaries using the financial institution's official beneficiary designation form, then sign and return the form to the bank for the designations to take effect.

Real-life example: A bank customer passes away with \$25,000 in a P.O.D. account and still owing \$5,000 on a mortgage loan with the bank. This bill would allow the bank to satisfy the loan before distributing the remaining \$20,000 to the P.O.D. account's beneficiary, rather than distributing the full \$25,000 and then entering court proceedings to collect on the loan.

- 2) The duty of a bank to make payment on lost, destroyed, or stolen cashier's check, teller's check, or certified check – reduce the period after these checks are issued/guaranteed before the bank is obligated to pay the amount of the check to someone claiming the check was lost, destroyed, or stolen (from 90 days to 14 days). In consultation with the Wisconsin Credit Union League, we are open to increasing this threshold to 20 days.

Each of the three types of checks listed in this bill are considered “safer” than a traditional personal check. A **cashier's check** (sometimes called a **teller's check**) is drawn against the bank's own funds (not the individual's) and is commonly required to make a down payment on a house or condo. A **certified check** is similar to a cashier's check in that it is issued by the bank but draws on the individual's funds.

Real-life example: Under this bill an individual would have 14 days to notify the issuing bank that the check was lost, stolen, or destroyed and receive the funds back. Current law allows for 90 days, which increases the potential for check fraud.

- 3) Providing temporary authority to act as a mortgage loan originator while a license application is pending

A **mortgage loan originator** is a licensed individual who originates (creates), sells, or assists with collecting payments for residential mortgage loans.

Real-life example: Under this bill, a newly hired mortgage loan originator is free to perform his/her duties while his/her application for a license is being reviewed by the Department of Financial Institutions. This would match federal law.

- 4) Property subject to garnishment or tax levy in possession of a financial institution

A **garnishment** is a court order directing that property be seized to satisfy a debt owed. A **tax levy** is a garnishment used by the WI Department of Revenue (DOR) to collect taxes owed by seizing property. The most common property subject to garnishment or tax levy is wages.

This bill protects financial institutions from being held liable for property subject to garnishment until the bank has had a reasonable time to comply with the garnishment or DOR directive.

Real-life example: An individual whose wages are to be garnished to pay child support instead immediately withdraws the funds and leaves the bank on the hook. This bill would protect banks and credit unions from such bad actors.

Definition: “Reasonable time” is a common law term. Black's Law Dictionary defines “reasonable time” to mean the period determined from trade practice, custom, trade practice, or from circumstances like those at issue, as the time required completing a transaction or contract without

a specific maturity date.

Definitional example: The term “reasonable time” is used frequently within the Uniform Commercial Code (UCC). For example, the UCC rules regarding stop payment allows customers the right to request a stop payment on an item so long as the financial institution has necessary information and reasonable time to act.

Application: When served with a garnishment order, a “reasonable time” would mean that a financial institution acts promptly, but is also permitted enough time to receive the order, forward it to the proper department, review the order, ensure compliance with any applicable State or Federal Statutes, identify any accounts it applies to, and attach the order before being held liable as garnishee. This time frame will vary from institution to institution based on size and overall operation, so the common law standard frequently referred to as a “reasonable time” is appropriate.

WBA Members felt comfortable with “reasonable time” in statute and argue what that means on a case by case basis should it go to the course. However, we have heard that some members of the legislature would be more comfortable with a defined time frame and we would support a one business day requirement.

5) Entities that provide to financial institutions electronic data processing services

Most banks and other financial institutions rely on the services of third-party entities to process their electronic data (**electronic data processing servicers**). This electronic data includes customer account information, transaction histories, and other data related to the core banking services of depositing and lending money, which is why these entities are sometimes known as **core providers**. As more and more aspects of banking are done digitally (online or mobile banking, for example), these core providers process greater and greater volumes of valuable data banks collect from their customers.

Real-life example: A bank decides it wants to switch from one core provider to another, but first charges a fee for transferring the data back to the bank that is very difficult to determine – even for the bank. This fee could be large enough to negate any monetary benefit to the bank of switching to the second core provider, essentially holding both the bank and its customers’ data hostage. This bill would prevent that scenario by requiring the fee to be disclosed when the contract is signed.

Real-life example: Bank A wants to buy Bank B. Bank a uses software that will charge a “de-conversion” fee to move the data different format. But the fee that is charged by the software company is complex to figure out on the front end and is so high that Bank A can no longer purchase bank B, making both parties unhappy.

- 6) Loans to state banks by a Federal Home Loan Bank – elimination of 20-year term limitation and limitation on the value of bank assets that may be pledged as collateral to secure the loan.

The **Federal Home Loan Bank System** is an organization created by the Federal Home Loan Bank Act of 1932 in response to the Great Depression. The system is comprised of 11 Federal Home Loan Banks which serve as an additional source of real estate lending support for the U.S. banking system and are exempt from federal and state taxes. These banks receive no taxpayer funding. Banks purchase private stock in the system to become members and gain access to funding/loans.

Under current law, to obtain a loan from the Federal Home Loan Bank, a state-chartered bank may pledge bank assets having a value less than two times the amount of the loan and not more than four times the amount of the bank's capital. In addition, the loan term cannot exceed 20 years.

Real-life example: A state-chartered financial institution wishes to take out a loan from the Federal Home Loan Bank system in order to offer more loans or better rates to its customers. This bill would allow the bank to do so at lower cost by either pledging more assets or lengthening the term beyond 20 years (the same way a 30-year mortgage has lower payments than a 15-year mortgage).

Pro-Tip: Credit Unions and Savings Institutions are already allowed to do this activity.

- 7) Consolidating the Banking Review Board and Savings Institutions Review Board in the Department of Financial Institutions – rename the Banking Review Board as the Banking Institutions Review Board and consolidate it with the Savings Institutions Review Board.

Currently, the Wisconsin Department of Financial Institutions, which regulates state-chartered financial institutions, has both two five-member boards which advise the Division of Banking: the **Banking Review Board** and the **Savings Institutions Review Board**. Both boards advise the Division of Banking on matters related to their institutions. **Savings Institutions** (sometimes called **Savings and Loan Associations, S&Ls, or thrift banks**) are similar to commercial banks but place a stronger emphasis on residential mortgage loans.

Real-life example: Since commercial banks and savings institutions differ only in market focus and a few lending regulations, a single, combined advisory board can serve the same function as two separate boards, reducing cost to the state and, ultimately, taxpayers.

I want to again thank Chair Marklein and members for taking the time to hear our testimony today. We would be happy to answer any questions you may have.



HOWARD MARKLEIN

STATE SENATOR • 17TH SENATE DISTRICT

October 10, 2019

Senate Committee on Agriculture, Revenue and Financial Institutions Testimony on Senate Bill 457

Good Morning!

Thank you committee members for hearing Senate Bill 457 (SB 457) 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 Wisconsin Department of Financial Institutions.

Key provisions of the Financial Institutions Modernization Act include:

- Like most states, Wisconsin permits the owner of a deposit account to designate it as a “payable on death” account. The account owner names a beneficiary; when the account owner dies, the funds transfer immediately to the beneficiary instead of becoming part of the owner’s estate. This bill ensures that, if the account owner owed money to the bank, the bank may setoff (keep) the amount it is owed before paying the beneficiary.
- If a bank issues a certified check, and then the check is lost or destroyed or stolen, current law causes the bank to wait 90 days before issuing a replacement. (Statute does not prohibit the bank from reissuing a certified check prior to 90 days, but the bank is better protected against fraud by waiting for the statutorily specified 90 days—so, in reality, banks wait 90 days.) At the request of financial institutions, this bill reduces what is effectively a 90-day waiting period to 14 days.
- Effective late-November 2019, federal law will allow mortgage bankers who change employers or move across state lines to work for 120 days while their professional license applications are pending approval. This bill brings Wisconsin law into compliance with federal law, allowing mortgage loan originators and mortgage brokers to work temporarily while DFI processes their license applications.
- The bill grants a financial institution a “reasonable time” to comply with a court judgment or a demand by the Department of Revenue to garnish a debtor’s assets. As a simple example, suppose that notice is served on a bank’s headquarters at 9:00 AM that a person’s assets are to be frozen and seized; the bank’s branch locations receive the alert by 11:00 AM; but, in the meantime, the person visits a bank branch at 10:00 AM and withdraws all his cash. Under current law, the bank could be liable for the assets beginning at the time when the

notice is served; this bill provides that the bank is liable only if a reasonable time to comply has expired.

- The bill clarifies that if a financial institution enters into a contract with a data processing servicer, the data remains the property of the financial institution; the data processing servicer has no legal claim to ownership of the data. The bill also provides that such a contract must disclose all fees that the vendor may impose on the financial institution.
- Many state- and federally-chartered financial institutions are members of the Federal Home Loan Bank (FHLB) 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 state banks have stricter limitations than some other types of financial institutions have when borrowing money from FHLB. This bill increases parity among financial institutions by modifying restrictions on FHLB loans that, under current law, apparently apply only to state banks.
- With the number of savings banks and savings and loan associations dwindling in Wisconsin, this bill consolidates the Banking Review Board and the Savings Institutions Review Board into a new Banking Institutions Review Board. The functions of the proposed new board are identical to the current functions of the Banking Review Board and the Savings Institutions Review Board.

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

Thank you again for hearing SB 457, and your timely action on this proposal.



TERRY KATSMAS

STATE REPRESENTATIVE • 26th ASSEMBLY DISTRICT

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P.O. Box 8952
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Date: October 10, 2019
To: Senate Committee on Agriculture, Revenue and Financial Institutions
From: Representative Terry Katsma
Re: Senate Bill 457: Financial Institutions Modernization Act

Dear Chairman Marklein and committee members,

Thank you for convening a hearing on Senate Bill (SB) 457. The proposals offered in this bill are intended to resolve or prevent real challenges that have been brought to my attention either by one or more Wisconsin financial institutions or by our Department of Financial Institutions.

- Like most states, Wisconsin permits the owner of a deposit account to designate it as a “payable on death” account. The account owner names a beneficiary; when the account owner dies, the funds transfer immediately to the beneficiary instead of becoming part of the owner’s estate. This bill ensures that, if the account owner owed money to the bank, the bank may setoff (keep) the amount it is owed before paying the beneficiary. I am concerned that some financial institutions are operating today under the assumption that their contractual agreements with depositors provide the financial institutions with the right of setoff—but, in reality, the financial institutions may not be able to enforce this right.
- If a bank issues a certified check, and then the check is lost or destroyed or stolen, current law causes the bank to wait 90 days before issuing a replacement. (Statute does not prohibit the bank from reissuing a certified check prior to 90 days, but the bank is better protected against fraud by waiting for the statutorily specified 90 days—so, in reality, banks wait 90 days.) At the request of financial institutions, this bill reduces what is effectively a 90-day waiting period to 14 days.
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Thank you for your time and consideration of SB 457.



October 10, 2019

To: Honorable Members – Senate Committee on Agriculture, Revenue & Financial Institutions
From: Sarah Wainscott, Vice President - Government Affairs
Re: **Support for SB 457 (LRB4192) - Introduced by Sen. Marklein & Rep. Katsma**

The Wisconsin Credit Union League, the trade association for Wisconsin's credit unions and their 3.2 million members, **supports Senate Bill 457.**

Specifically, The League supports the proposals related to:

- Provide reliable protection for financial institutions related to payable-on-death (P.O.D.) accounts
Sections 50-53
- Time to respond to a garnishment or levy and related protections
Sections 54-55
- Protection of data and promoting transparency in contractual relationships with data processors.
Section 41

We do make a simple request related to the reduced wait time to reissue a lost, stolen or destroyed cashier's check. Credit unions appreciate the shorter time frame allowing them to better accommodate a member who purchases a cashier's check from the credit union, but then claims it was lost, stolen, or destroyed. However, the 14 days proposed is a dramatic cut to the amount of time that any person (another credit union member, a merchant, or another credit union) has to present a cashier's check for payment without the risk of someone claiming the check was lost, stolen, or destroyed.

Credit unions respectfully request an amendment to Section 49 offering a more balanced 30 day period.

Finally, the sections relating to mortgage loan originator licenses (section 42-43), Federal Home Loan Bank loans (section 37) and the merging of the Banking and Savings Institutions Review Boards (Sections 1-37, 38-40, 44-48) appear to have little or no impact on credit unions. As such, The League has no stance on those sections of the bill.

On behalf of Wisconsin's credit unions, we thank you for your consideration of the industry's input and ask that you support Senate Bill 457 with the single proposed change.

If you would like additional information on credit unions or have questions regarding provisions of the bill, please contact me at swainscott@theleague.coop or (608) 640-4030.

Michael E. Friedman, CPA, JD

Appointment to the Accounting Examining Board

Prepared Testimony for the Senate Committee on
Agriculture, Revenue and Financial Institutions

October 10, 2019

I am applying to be a member of the Accounting Examining Board. For the past 40 years, I have been involved in the accounting profession as a CPA. For almost all of my career, I have worked with two public accounting firms in Milwaukee. I started with Ernst & Young and am currently at Scribner, Cohen and Company, S.C. I have served primarily privately held companies and their owners. My goal has been to provide quality service and assist their businesses in becoming more successful. I have been extremely fortunate to have had a successful career in accounting. Over the past several years, I have held numerous leadership positions within the Wisconsin Institute of CPAs (WICPA). Serving in these roles was a way for me to give something back to the profession. I am the past chairman of the WICPA Federal Tax Committee, past chairman of the WICPA Public Policy Committee, and was President of the WICPA Educational Foundation from June 1, 2017 through May 31, 2019. I recently received the 2019 WICPA CPA in Public Practice Excellence Award.

In serving in the above roles, I have had several contacts with the three CPAs in the Senate. They include Senator Howard Marklein, Senator Dale Kooyenga, and Senator Chris Kapenga. I have also met on numerous occasions to discuss issues related to the accounting profession with my Senator, Senator Alberta Darling. After talking to a few members of the Accounting Examining Board, John Scheid and Rob Misey, and Tammy Hofstede, President and CEO of the WICPA who is here today. I thought serving on the Accounting Examining Board would be another way I could contribute to the accounting profession in Wisconsin. I was privileged that Tammy recommended me to the Governor's office for appointment. Based on my background and over 40 years of experience, I know I will enjoy serving on the Accounting Examining Board and can make a positive contribution.