



DATE: November 6, 2013

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

FROM: Jay Risch, Heather MacKinnon and Mike Semmann, WBA (608) 441-1215

RE: Please support the Financial Institutions Rule Reform Bill, AB 277

Thank you Chairman Schultz and Members of the Senate Committee on Financial Institutions and Rural Issues for holding a public hearing on this important bill. My name is Jay Risch, the Director of Government Relations at the Wisconsin Bankers Association.

WBA, the state's largest financial industry trade association, supports the various administrative rule reforms in AB 277. WBA urges members of the committee to support AB 277, a bipartisan regulatory reform bill that passed in the State Assembly on a voice vote on October 8, 2013.

One particular reform in the bill that got the most discussion during the Assembly committee process would make Wisconsin's state chartered bank rules regarding customer liability for the unauthorized use of a credit card align with federal Regulation E, aka the 1978 Electronic Fund Transfer Act (EFTA). Currently, a patchwork of different state and federal rules apply to different card transactions. Purchases you make with the card in your purse or wallet are governed by different combinations of rules depending on whether the purchase was made at an ATM, online or at a brick-and-mortar merchant. This is precisely the sort of government regulatory complexity that adds costs to customer services and creates confusion – and AB 277 helps fix this problem.

Also, there is currently no time period in the state administrative code governing when a customer must inform his or her financial institution about an unauthorized use of his or her plastic card. The longer it takes for an unauthorized purchase to get reported to the financial institution, the greater the potential loss. As soon as a financial institution is notified about unauthorized purchases, it can take immediate steps to stop them. Preventing unauthorized purchases benefit both financial institutions and their customers as whole. Again, AB 277 aligns state law with the reasonable customer notification expectations under federal Reg E.

Please see the attached sheet for a more detailed analysis of the consumer protection features of EFTA.

FACT SHEET REGARDING ELECTRONIC FUNDS TRANSFER ACT AND CONSUMER LIABILITY

1. The Electronic Fund Transfers Act (EFTA), *enacted in 1978*, establishes basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services. The primary objective of EFTA is the protection of individual consumers engaged in electronic fund transfers. The requirements of EFTA are implemented through Regulation E. All banking regulatory agencies routinely examine financial institutions to ensure compliance with EFTA's requirements, which includes proper content and delivery of required disclosures and error resolutions procedures.
2. EFTA, and Regulation E, applies to deposit accounts held by a consumer that permits for a transfer of funds electronically, including: point-of-sale (POS) transfers; automated teller machine (ATM) transactions; transfers resulting from debit card transactions; and direct deposits or withdrawals of funds.
3. Certain electronic fund transfers which can be made by the use of a debit card (e.g. debit card information provided to purchase goods via Internet) are *currently* governed by EFTA rules, including the rules regarding the liability of a consumer for unauthorized transfers. **These current rules will continue to apply should AB 277 become law.**
4. Certain electronic fund transfers which can be made by the use of a debit card but are processed via the credit card systems (e.g. a point-of-sale transaction to purchase goods at a merchant processed via MasterCard or VISA system) are *currently* governed by MasterCard or VISA credit card rules, including the rules regarding the liability of a consumer for unauthorized transfers. **These current rules will continue to apply should AB 277 become law.**
5. Certain electronic fund transfers which can be made via the use of a debit card at terminals which are not processed via a credit card system (e.g. withdrawal for cash at an ATM) are currently governed by State administrative code sections. Unlike EFTA, these administrative code sections do not have a timing requirement for a customer to report an unauthorized transaction conducted with a plastic card to the financial institution. **This timing "loophole" has been abused by bad actors over recent years who conduct these types of transactions and then wait months to report the transactions as unauthorized.** This lag in time to report unauthorized transactions results in significant financial loss to financial institutions as institutions are required to reimburse the customer and seek recovery from the party who conducted the reported unauthorized transaction. The longer the customer waits to report the unauthorized transaction the more difficult it is for the financial institution to locate the party who conducted the unauthorized transaction for recovery.
6. Customers receive detailed disclosures regarding electronic fund transfers when services which permit electronic transfers (e.g. a debit card) are added to a deposit account; this includes proper use of the service. These disclosures also clearly outline potential consumer liability for an unauthorized electronic fund transfer.

Just as customers are instructed to always report missing or stolen checks immediately - customers are also instructed to immediately report a missing or stolen debit card. In these same conversations customers are instructed to report any unauthorized transactions reported on their deposit account periodic statement. Also in these conversations customers are instructed that their personal identification number (PIN) used to access a deposit account via the debit card should not be shared with any other party; and if at any time that PIN is compromised to notify the financial institution immediately so that new PIN can be established. Timely reporting of

unauthorized transactions and of missing or stolen cards is critical so that financial institutions can stop unauthorized activity from occurring.

7. EFTA is not the only area of law that requires customers to notify financial institutions of unauthorized activity. Under UCC Articles 3 and 4, as incorporated under Wisconsin's Statutes Chapters 403 and 404, customers are required to review periodic statements and report unauthorized signatures or alterations within a reasonable period of time not to exceed 30 days from receipt of the periodic statement. Case law permits the reasonable period of 14 days from receipt of the periodic statement. If a customer fails to report unauthorized signatures or alterations within that period, the customer may be barred from recovery from the financial institution. The customer would find recovery from the wrongdoer directly. Sec. 404.406 Wis. Stats.
8. Some claim consumers will be unduly harmed by revising State administrative code to align with consumer liability for unauthorized transfers under EFTA. However, the typical customer is one that does *not* wait to report unauthorized transactions or missing or stolen debit cards - it is just the opposite. The typical customer does not wait to report unauthorized transactions or missing cards (whether it be a missing credit card or missing debit card). Would you wait to report a lost or stolen wallet or purse?

EFTA, which is well adopted, provides for a *reasonable period of time* for consumers to report unauthorized transactions or missing or stolen cards. EFTA also provides that the longer the customer waits to report the unauthorized transaction or missing or stolen cards, *and* when a financial institution can prove that had the customer reported such facts within the time period required under EFTA the unauthorized transactions could have been prevented - the customer may share in the loss. This is a similar, reasonable standard, as applies under UCC Articles 3 and 4 as outlined above.

9. Others claim that persons with limited cognitive abilities (such as a ward with a named conservator or guardian of the estate, or a beneficiary of social security or veterans benefits under a representative payee appointment) will be harmed should AB 277 become law. However, for a deposit account that is established because of the appointment of conservator, guardian of the estate, or representative payee, the *only* authorized person to act on the deposit account is the conservator, guardian, or representative payee. AB 277 does not impact the ward or beneficiary because these persons are already protected from acting on the account in the first place.
10. To further assist customers with up-to-date account activity and balance information, financial institutions offer a variety of services for which a customer can inquire about account balances and transactions even before receipt of their deposit account periodic statement. These include, telephone services, ATM balance services, online banking services and mobile banking. Additionally, customers are always able to talk about their deposit accounts and electronic fund transfer services at any time with their financial institution representatives.

Additionally, much work is also done by financial institutions to further educate customers and to make them more aware of how to protect themselves against unauthorized transactions - electronic funds transfers or otherwise. Financial institutions conduct many campaigns on the topic, including via: periodic statements messages; information on the institution's webpage; consumer newsletters and hosted events for elderly customers with guest speakers, such as from law enforcement. This type of consumer awareness and education will continue in the future.



DAVID CRAIG

STATE REPRESENTATIVE

Senate Committee on Financial Institutions and Rural Issues
Public Hearing, November 6, 2013
Assembly Bill 277 Testimony
Representative David Craig, 83rd Assembly District

Chairman Schultz and Members of the Committee,

Thank you for taking the time to hear testimony on this legislation, Assembly Bill 277.

This legislation is the first of several regulatory reform bills that will be produced by the Assembly Committee on Financial Institutions as part of the "Right the Rules" project. Beginning in February, our committee began the process of reviewing the portions of the administrative code that are impacted in this legislation. Putting together the feedback generated by regulators, stakeholders and elected officials, this legislation reflects the compilation of not just my work but of the work of our committee as a whole.

AB-277 touches on various aspects of banking and credit union regulations. From simplifying filing requirements, ensuring obsolete codes are removed, to streamlining federal and state banking and credit union code, this legislation balances the need for a robust financial industry in our state, while also ensuring the financial industry is operated in a manner that preserves strong protections for our constituents. At its heart, this legislation ensures that Wisconsin consumer protections are strong, while also helping our smaller state chartered banks and credit unions remain competitive with their national competitors and their competitors in surrounding states.

This legislation is a step towards ensuring that our state responsibly regulates businesses while also recognizing that those businesses are job creators and should not be forced to comply with unnecessary burdens placed upon them by government. It is a bipartisan example of how our legislature can come together to do what is right for both Wisconsin consumers and Wisconsin job creators in the financial services sector.

For the many reasons I have stated, I ask for your support of AB-277.