

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 493 (Substitute S-2 as passed by the Senate)  
Sponsor: Senator Dick Posthumus  
Committee: Commerce and Technology

Date Completed: 1-23-90

**RATIONALE**

According to the Michigan Bankers Association (MBA), there have been many cases across the nation, including some in Michigan, in which people have sued financial institutions alleging oral agreements of some kind, such as a commitment to extend credit. One such suit in Michigan, in fact, reportedly resulted in a \$2 million settlement against the financial institution. In a related matter, the MBA reports that banks are being sued or threatened with suit as a result of aggressive advertising campaigns in which the banks proclaimed the availability of credit. Apparently, these promotions have been undertaken in the Detroit area in response to complaints during the past few years by people who were unable to obtain loans, and consumers are interpreting the advertisements as offers to extend credit. To protect financial institutions from vulnerability in these types of circumstances, it has been suggested that suits to enforce a promise or commitment to extend credit should not be allowed unless the alleged promise or commitment was in writing.

**CONTENT**

The bill would amend the statute of frauds, which requires certain contracts to be in writing, to specify that no action could be brought at law against a financial institution to enforce any of the following promises or commitments of the financial institution unless the promise or commitment were in writing and signed with an authorized signature by the financial institution:

- A promise or commitment to lend money, grant or extend credit, or make any other financial accommodation.
- A promise or commitment to renew, extend, modify or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation.
- A promise or commitment to waive a provision of a loan, extension of credit, or other financial accommodation.

"Financial institution" would mean a "state or national chartered bank, a state or federal chartered savings bank or savings and loan association, a state or federal chartered credit union, [or] a person licensed or registered under the Mortgage Brokers, Lenders, and Servicers Licensing Act". The term also would apply to affiliates and subsidiaries of such institutions or persons.

The bill would take effect June 1, 1990.

MCL 566.132

**FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

**ARGUMENTS****Supporting Argument**

The bill would avert the type of lawsuits described by the Michigan Bankers Association

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in which the plaintiff alleges an oral agreement or offer to extend credit or lend money. These cases typically are brought by a business that has experienced a large downturn and is making a last ditch effort to generate income, but may involve other circumstances. In one reported case, for example, a doctor wanted to build a health spa and believed that he had received a commitment by a bank to lend him a certain amount of money. When the bank denied the alleged promise, the doctor proceeded with the venture and received a loan from another bank. In the meantime, interest rates went up. A suit by the doctor for the difference in interest rates, other economic losses, and additional damages resulted in a settlement or judgment for over \$1 million.

The statute of frauds already provides that various types of agreements, contracts, or promises are void unless they are in writing, and the bill would include among them certain agreements or commitments made by a financial institution. In doing so, the bill would provide needed protection to banks, savings and loan associations, and credit unions, as well as mortgage brokers, lenders, and servicers. According to the MBA, Minnesota and California recently adopted similar laws.

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