



2005 DRAFTING REQUEST

Bill

Received: **03/31/2005**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Cathy Stepp (608) 266-1832**

By/Representing: **Scott Manley**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - banking inst.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Stepp@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Branches of out-of-state banks

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
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| /4 | | | rschlue 01/26/2006 | _____ | sbasford 01/26/2006 | mbarman 01/31/2006 | |

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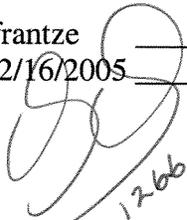
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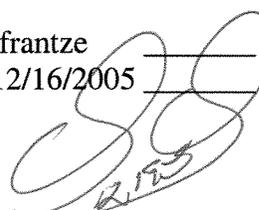
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FE Sent For:

<END>

- 2939

Kunkel, Mark

From: Hanaman, Cathlene
Sent: Thursday, March 31, 2005 9:11 AM
To: Kunkel, Mark
Subject: FW: De Novo Branching

Enjoy!

-----Original Message-----

From: Manley, Scott
Sent: Thursday, March 31, 2005 8:09 AM
To: Hanaman, Cathlene
Subject: De Novo Branching

Cathlene,

Attached below is the rationale and proposed language for the de novo branching legislation Senator Stepp would like to have drafted. I hope this is helpful. Please feel free to call if you have any questions.

Thank you!

Scott



mw_921680_5.DOC

AN ACT CONCERNING FINANCIAL REGULATION:

PURPOSE: Under current Wisconsin law, out-of-state banks, including state banks and national banks, generally may not establish de novo or acquire a branch office facility in Wisconsin. This Act would allow an out-of-state bank to open or acquire a branch office in Wisconsin if the Division of Banking of the Wisconsin Department of Financial Institutions determines that the home state's laws are reciprocal with Wisconsin's interstate branching laws. This reciprocity determination would be made by the Division of Banking on a state-by-state basis. Once a reciprocity determination is made by the Division of Banking for a particular home state, an out-of-state bank located in that home state may rely on this authority to open or acquire a branch facility in Wisconsin by filing an initial notice with the Division of Banking. Subsequent branch facilities may be opened or acquired in Wisconsin by the same out-of-state bank without having to file any further notice with the Division of Banking. Many other states presently have interstate branching laws that would likely be determined to be reciprocal with Wisconsin's laws. No out-of-state state or national bank will be able to open or acquire a branch facility in Wisconsin unless there has been a finding of reciprocity for such bank's home state by the Division of Banking, and unless such bank has filed an initial notice with the Division of Banking.

In addition to allowing out-of-state banks to establish or acquire branch facilities in Wisconsin following a finding of reciprocity by the Division of Banking and the filing of an initial notice by the out-of-state bank, the new law also amends current Wisconsin law on the subject of interstate bank acquisitions. Presently Wisconsin law prohibits an out-of-state banking organization from acquiring a Wisconsin bank unless the Wisconsin bank has been in existence and in continuous operation for at least five (5) years. This Act changes existing law by eliminating the 5-year age requirement in the acquisition by an out-of-state banking organization of a Wisconsin bank, if the home state of the out-of-state banking organization has laws that are determined by the Division of Banking to be reciprocal with Wisconsin's laws.

Section 1. Wisconsin Statutes are amended by adding a new Section 221.0904, as follows:

Section 221.0904 Out-of-state banks establishing branches.

(1) **General.** No out-of-state bank shall establish a branch in this state, unless:

- (a) the laws of the home state of such out-of-state bank permit such out-of-state bank to establish a branch in this state; and
- (b) the laws of the home state of such out-of-state bank permit a state bank to establish a branch in that state pursuant to terms and conditions that are deemed by the division to be reciprocal as provided in sub. (2) of this section,

as defined in s. 221.0903 (1)(b)? YES

as defined in 221.0903 (1) (d) ? YES

SAME AS "in state branch" defined in s. 221.0903 (1) (c) ? NO ? 221.0302 applies to in state banks?

and any notice requirements prescribed in sub. (3) of this section have been complied with by the out-of-state bank.

- (2) **Reciprocity Determination.** The determination of whether the interstate branching laws of a home state of an out-of-state bank are reciprocal as required in sub (1) of this section shall be made in writing by the division. The division shall not make a finding of reciprocity unless the division determines that the laws of the home state permit a bank in this state to establish a branch in the home state under terms and conditions that are substantially similar to the provisions of this section. The division shall consider, at a minimum, whether the laws of the home state discriminate in any way against a bank chartered under this chapter and whether the laws of the home state impose administrative or regulatory burdens that are substantially more restrictive than those imposed by this section on an out-of-state bank seeking to establish a branch in this state. The division shall periodically publish a list of states that the division has determined have reciprocal interstate branching laws. If the division has not made a reciprocity determination for a particular home state, an out-of-state bank chartered in such state must file a request, on a form prescribed by the division, for a reciprocity determination, and obtain a reciprocity determination from the division before establishing a branch in this state pursuant to sub. (1) of this section.
- (3) **Notice to Division.** Before an out-of-state bank may establish its first branch in this state pursuant to sub (1) of this section, the out-of-state bank must first file notice of the proposed branch facility with the division. The division may prescribe the form of such notice and may accept a copy of a notice or application provided by the out-of-state bank to its chartering authority or to its appropriate federal banking agency. Subsequent branch facilities of the same out-of-state bank may be established in Wisconsin without filing any further notices with the division.
- (4) **Additional Branching Authority.** After an out-of-state bank lawfully establishes a branch in this state pursuant to the provisions of this section, such out-of-state bank may establish and maintain additional branches in this state to the same extent as a bank chartered under this chapter.
- (5) **Definitions.** Terms used in this section shall have the definitions provided in s. 221.0903(1).

* * * * *

Section 2. Wisconsin Statutes are revised by adding new subparagraphs (jg), (Lg) and (mcm) to Section 221.901(2), amending subparagraph (a) to Section 221.0901(8) and by adding

new subparagraphs (d), (e) and (f) to Section 221.0901(8), such that the revised sections shall read as follows:

Sec. 221.0901(2). Definitions

(jg) "Home state" means:

1. With respect to an out-of-state bank, the state in which the bank is chartered.
2. With respect to an out-of-state bank holding company, the state in which the total deposits of all banking subsidiaries of such company are the largest.

(Lg) "Out-of-state bank" means a bank that is not an in-state bank.

(mcm) "Out-of-state banking organization" means an out-of state bank or an out-of-state bank holding company.

Sec. 221.0901(8). Age Requirement

- (a) Except as otherwise provided in pars. (b), (c) and (d), the division may not approve an application under sub. (3) (a), other than an application by an in-state bank holding company or in-state bank, unless the in-state bank to be acquired, or all in-state bank subsidiaries of the in-state bank holding company to be acquired, have as of the proposed date of acquisition been in existence and in continuous operation for at least 5 years.
- (b) Except as otherwise provided in this paragraph, the division may approve an application under sub. (3) (a) for an acquisition of an in-state bank holding company that owns one or more in-state banks that have been in existence for less than 5 years, if the applicant divests itself of those in-state banks within 2 years after the date of acquisition of the in-state bank holding company by the applicant. This paragraph does not apply if the applicant is an in-state bank holding company or in-state bank.
- (c) Paragraphs (a) and (b) do not apply to an in-state bank that is the surviving bank of a merger with an in-state bank that had been in existence and continuous operation for at least 5 years at the time of the merger or would have been in existence and in continuous operation for at least 5 years as of the proposed date of acquisition, if the merger had not taken place.
- (d) Paragraph (a) does not apply to the merger or acquisition by an out-of-state banking organization of all or substantially all of the assets of an in-state bank or an in-state bank holding company that owns one or more in-state banks if:

Compare to
defn's
in
221.0901's
221.0903

state-chartered bank
noted bank

How is this
diff. from
current
law?

1. The laws of the home state of the out-of-state banking organization permit an in-state bank or an in-state bank holding company to acquire an out-of-state banking organization in the home state; and
2. The laws of the home state of the out-of-state banking organization permit an in-state bank or an in-state bank holding company to acquire an out-of-state banking organization in that home state pursuant to terms and conditions that are deemed by the division to be reciprocal as provided in par. (e).

(e)

The determination of whether the interstate banking laws of a home state of an out-of-state banking organization are reciprocal as required in par. (d) shall be made in writing by the division. The division shall not make a finding of reciprocity unless the division determines that the laws of the home state permit an in-state bank or an in-state bank holding company to merge with or acquire an out-of-state banking organization under terms and conditions that are substantially similar to the provisions of this section. The division shall consider, at a minimum, whether the laws of the home state discriminate in any way against an in-state bank or an in-state bank holding company under this chapter and whether the laws of the home state impose administrative or regulatory burdens that are substantially more restrictive than those imposed by this section on an out-of-state banking organization seeking to merge or acquire an in-state bank or an in-state bank holding company. The division shall periodically publish a list of states that the division has determined have reciprocal interstate banking laws. If the division has not made a reciprocity determination for a particular home state, an out-of-state banking organization located in that home state must file a request, on a form prescribed by the division, for a reciprocity determination, and obtain a reciprocity determination from the division before merging or acquiring an in-state bank or an in-state bank holding company pursuant to par. (d) of this section.

Section 3. Wisconsin Statutes are revised by amending Sections 221.0302(3) and 221.0302(4), such that the revised sections shall read as follows:

with the approval of the division

Sec. 221.0302(3). Transfer. A bank may transfer a branch bank to any other bank located in this state, ~~or a bank located in another state to the extent that the state has reciprocal interstate branching laws, as determined by the division in accordance with s. 221.904.~~

Sec. 221.0302(4). Out-Of-State-Branches. A bank may establish a branch bank in another state in accordance with the requirements in the state where the branch is to be located.

with the approval of the division

Compare to current law



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2939/P1

MDK...*kgf*

O-note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Am 9/9

gen cat

1 **AN ACT** *to amend* 221.0302 (3), 221.0302 (4) and 221.0901 (8) (a); and *to create*
2 221.0901 (2) (jm), 221.0901 (2) (Lm), 221.0901 (2) (mm), 221.0901 (8) (d) and (e),
3 221.0904 and 227.01 (13) (zw) of the statutes; **relating to:** regulation of bank
4 branches, mergers and acquisitions of banks, providing an exemption from
5 rule-making procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 **SECTION 1.** 221.0302 (3) of the statutes is amended to read:
7 221.0302 (3) **TRANSFER.** A bank may transfer a branch bank to any other bank
8 located in this state ~~with the approval of the division.~~ A bank may transfer a branch

1 bank to a bank located in another state only if the division has determined under s.
2 221.0904 (3) (b) that the state's laws are reciprocal regarding establishing branches.

3 History: 1995 a. 336; 1997 a. 146.

3 **SECTION 2.** 221.0302 (4) of the statutes is amended to read:

4 221.0302 (4) OUT-OF-STATE BRANCHES. A bank may establish a branch bank in
5 another state ~~with the approval of the division and the appropriate bank regulator~~
6 in the in accordance with the requirements of the state where the branch is to be
7 established.

8 History: 1995 a. 336; 1997 a. 146.

8 **SECTION 3.** 221.0901 (2) (jm) of the statutes is created to read:

9 221.0901 (2) (jm) "Home state" means, with respect to an out-of-state bank,
10 the state in which the bank is chartered and, with respect to an out-of-state bank
11 holding company, the state in which the total deposits of all banking subsidiaries of
12 the company are the largest.

****NOTE: Regarding determining the home state of an out-of-state bank holding company, it is possible for different states to have the largest deposits at different times, correct? This possibility doesn't cause any problems for the draft, does it?

13 **SECTION 4.** 221.0901 (2) (Lm) of the statutes is created to read:

14 221.0901 (2) (Lm) "Out-of-state bank" means a bank that is not an in-state
15 bank.

16 **SECTION 5.** 221.0901 (2) (mm) of the statutes is created to read:

17 221.0901 (2) (mm) "Out-of-state banking organization" means an
18 out-of-state bank or out-of-state bank holding company.

19 **SECTION 6.** 221.0901 (8) (a) of the statutes is amended to read:

20 221.0901 (8) (a) Except as provided in pars. (b) and, (c), and (d), the division
21 may not approve an application under sub. (3) (a), other than an application by an
22 in-state bank holding company or in-state bank, unless the in-state bank to be

1 acquired, or all in-state bank subsidiaries of the in-state bank holding company to
 2 be acquired, have as of the proposed date of acquisition been in existence and in
 3 continuous operation for at least 5 years.

4 History: 1995 a. 336; 1997 a. 146; 2003 a. 293.

SECTION 7. 221.0901 (8) (d) and (e) of the statutes are created to read:

5 221.0901 (8) (d) Paragraph (a) does not apply to the merger or acquisition by
 6 an out-of-state banking organization of all or substantially all of the assets of an
 7 in-state bank, or of ^{an} in-state bank holding company that owns one or more in-state
 8 banks, if all of the following apply:

9 1. The laws of the home state of the out-of-state banking organization allow
 10 an in-state bank or in-state ^{bank} holding company to acquire an out-of-state banking
 11 organization in the home state.

12 2. The division determines under par. (e) that the laws of the home state of the
 13 out-of-state banking organization are reciprocal with respect to mergers and
 14 acquisitions.

15 (e) 1. The division shall periodically publish a list of states that the division
 16 has found have laws that are reciprocal for purposes of par. (d) 2. and a list of states
 17 that the division has found have laws that are not reciprocal. An out-of-state
 18 banking organization with a home state for which the division has made no such
 19 determination may request, on a form prescribed by the division, that the division
 20 make a determination regarding the home state.

X *****NOTE: The instructions require only ^{one} list, i.e., the list of states that are
 reciprocal. However, I require 2 lists: 1) states that are determined to be reciprocal, and
 2) states that are determined not be reciprocal. Is that okay?

*****NOTE: What if the division determines that a state's laws are reciprocal and
 includes the state on the reciprocal list, and the state subsequently amends its laws so
 that they are no longer reciprocal? How should the draft address that situation? Should
 the draft require the division to periodically recheck the lists?

****NOTE: Should the above specify whether a hearing can be requested before the division makes a determination? Also, I'm assuming that a determination that is requested by an out-of-state banking organization can be appealed under s. 227.52. Is that okay?

1 2. The division shall make determinations under subd. 1. in writing. The
 2 division may not determine that the laws of a state are reciprocal under subd. 1.
 3 unless the divisions finds that the laws of that state allow an in-state bank or
 4 in-state bank holding company to merge with or acquire an out-of-state banking
 5 organization under terms and conditions that are substantially similar to the terms
 6 and conditions under this section. In making such a finding, the division shall
 7 consider, at a minimum, whether the laws of that state discriminate in any way
 8 against an in-state bank or in-state bank holding company and whether the laws
 9 of that state impose regulatory burdens that are substantially more restrictive than
 10 the requirements under this section that apply to an out-of-state banking
 11 organization seeking to merge or acquire an in-state bank or in-state bank holding
 12 company.

13 **SECTION 8.** 221.0904 of the statutes is created to read:

14 **221.0904 Out-of-state banks establishing branches. (1) DEFINITIONS.** In
 15 this section:

16 (a) "Home state" has the meaning given in s. 221.0903 (1) (b).

17 (b) "Out-of-state bank" has the meaning given in s. 221.0903 (1) (c).

18 (c) "State bank" has the meaning given in s. 221.0903 (1) (e).

19 **(2) IN GENERAL.** No out-of-state bank may establish a branch in this state
 20 unless all of the following apply:

****NOTE: I'm assuming that out-of-state banks are not subject to the branching requirements in s. 221.0302. The reason is that a "bank" for purposes of s. 221.0302 is a bank chartered in this state. See the definition of "bank" at s. 220.01 (1). Are my assumptions correct? (I raise these questions because the instructions use the term

X "branch" rather than "in-state branch" as defined in s. 221.0903 (1) (c), which states that an "in-state branch" is a branch established by a bank under s. 221.0302.)

1 (a) The laws of the home state of the out-of-state bank allow the out-of-state
2 bank to establish a branch in this state.

3 (b) The division determines under sub. (3) (b) that the laws of the home state
4 of the out-of-state bank are reciprocal with respect to a state bank establishing a
5 branch in that state.

6 (c) The out-of-state bank complies with the notice requirements under sub. (4).

7 **(3) RECIPROCITY.** (a) The division shall periodically publish a list of states that
8 the division has found have laws that are reciprocal for purposes of sub. (2) (b) and
9 a list of states that the division has found have laws that are not reciprocal. An
10 out-of-state bank with a home state for which the division has made no such
11 determination may request, on a form prescribed by the division, that the division
12 make a determination regarding the home state.

***NOTE: As noted above, what if the division determines that a state's laws are reciprocal, and the state subsequently amends its laws so that they are no longer reciprocal? How should the draft address that situation? Also, in such a situation, what should happen to an out-of-state bank that has established a branch in this state if the division discovers that the home state has subsequently amended its laws so that they are not reciprocal? You don't want to revoke the bank's authority to operate the branch, correct?

13 (b) The division shall make determinations under par. (a) in writing. The
14 division may not determine that the laws of a state are reciprocal under par. (a)
15 unless the divisions finds that the laws of that state allow a state bank to establish
16 a branch in the state under terms and conditions that are substantially similar to the
17 terms and conditions under this section. In making such a finding, the division shall
18 consider, at a minimum, whether the laws of that state discriminate in any way
19 against a state bank and whether the laws of that state impose regulatory burdens

1 that are substantially more restrictive than the requirements under this section that
2 apply to an out-of-state bank seeking to establish a branch in this state.

****NOTE: As noted above, do you want to specify whether a hearing can be requested before the division makes a determination? Also, I'm assuming that a determination that is requested by an out-of-state bank can be appealed under s. 227.52. Is that okay?

3 (4) NOTICE. (a) Except as provided in par. (b), an out-of-state bank may not
4 establish a branch in this state without providing prior notice to the division. The
5 division shall promulgate rules specifying the requirements and procedures for
6 making such notice. The rules shall allow an out-of-state bank to provide notice by
7 submitting to the division a copy of any notice or application regarding the proposed
8 branch that the out-of-state bank submits to the regulatory authority of its home
9 state or the appropriate federal regulatory authority.

10 (b) If an out-of-state bank establishes a branch in this state pursuant to this
11 section, the out-of-state bank is not required to provide notice for any subsequent
12 branches established in this state.

13 (5) ADDITIONAL BRANCHING AUTHORITY. An out-of-state bank that establishes
14 a branch in this state pursuant to this section may establish additional branches in
15 this state to the same extent as a state bank.

****NOTE: As noted above, what if the division determines that a state's law has been amended so that it no longer is reciprocal with Wisconsin law? Should the out-of-state bank be allowed to establish subsequent branches in this state?

16 SECTION 9. 227.01 (13) (zw) of the statutes is created to read:

17 227.01 (13) (zw) Determines whether a state law is reciprocal under s.
18 221.0901 (8) (e) 2. or 221.0904 (3) (b).

****NOTE: The above excludes the reciprocity determinations from the definition of "rule" for purposes of ch. 227. As a result, the division is not required to use the rule-making process for making such determinations. Is that okay?

19

(END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2939/P1dn

MDK: *kjf*

Date

Sen. Stepp:

Please see the questions included in the NOTES in this preliminary draft. I will prepare a version that can be introduced after I resolve my questions.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2939/P1dn
MDK:kjf:jf

September 8, 2005

Sen. Stepp:

Please see the questions included in the NOTES in this preliminary draft. I will prepare a version that can be introduced after I resolve my questions.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

Kunkel, Mark

From: Risch, Jay
Sent: Thursday, October 13, 2005 12:19 PM
To: Kunkel, Mark
Subject: FW: Draft review: LRB 05-2939/P1 Topic: Branches of out-of-state banks
Attachments: DeNovo branch LRB2939 comments to CBW 091505.doc

Mark,

Please make the following changes.

Thanks - Jay

From: Daryll Lund [mailto:daryll@communitybankers.org]
Sent: Tuesday, September 20, 2005 10:24 AM
To: Risch, Jay
Subject: RE: Draft review: LRB 05-2939/P1 Topic: Branches of out-of-state banks

Jay,

In addition to our legal counsel's comments I have attached DFI's comments of the draft. Thank you for your help on this important issue.

Daryll J. Lund
President & CEO
Community Bankers of Wisconsin
608-833-4229
daryll@communitybankers.org

From: Risch, Jay [mailto:Jay.Risch@legis.state.wi.us]
Sent: Thursday, September 08, 2005 4:12 PM
To: Daryll Lund; msemmann@wisbank.com
Subject: FW: Draft review: LRB 05-2939/P1 Topic: Branches of out-of-state banks

This just in...

Comments?

From: Basford, Sarah
Sent: Thursday, September 08, 2005 12:24 PM
To: Sen.Stepp
Subject: Draft review: LRB 05-2939/P1 Topic: Branches of out-of-state banks

Following is the PDF version of draft LRB 05-2939/P1 and drafter's note.

10/13/2005



State of Wisconsin
Department of Financial Institutions

Jim Doyle, **Governor**

Lorrie Keating Heinemann, **Secretary**

September 16, 2005

TO: Daryll Lund, President and CEO, Community Bankers of Wisconsin

FROM: Carrie Templeton, Executive Assistant

Thank you for giving the Department of Financial Institutions (DFI) the opportunity to provide comments and input on legislative draft LRB-2939/P1.

DFI would suggest the following changes be made to the draft:

1. Page 1, Line 8: Do not strike out the language "with the approval of the division." We believe that branch transfers should remain subject to division approval. ✓
2. Page 2, Line 5: Again, do not strike out the language "with the approval of the division". DFI believes the creation of new branches should remain subject to division approval. ✓
3. Page 2, Lines 6-7: The language "in accordance with the requirements of the state where the branch is to be established" may be removed. This section, beginning on line 4, would then read: 221.0302 (4) OUT-OF-STATE BRANCHES. A bank may establish a branch bank in another state with the approval of the division. ✓
4. Page 3, Lines 15-16: The language "2. and a list of states that the division has found have laws that are not reciprocal" may be removed. DFI does not believe the maintenance of two lists is necessary. ✓
5. Page 5, Lines 6-7: Similar to the item above, the language "and a list of states that the division has found have laws that are not reciprocal" may be removed. ✓

Regarding the questions from the drafter as found in the "Notes" sections, DFI would provide the following comments:

1. Note 1, Page 2, between lines 12-13: DFI believes that it would be possible for different states to have the largest deposits at different times, but this would not cause a problem in enforcing these statutes. ✓
2. Note 2, Page 3, bottom of page: DFI does not believe the maintenance of two lists is necessary. ✓
3. Note 3, Page 3, bottom of page: DFI does not believe this situation would be a problem. ✓
4. Note 4, Page 3, bottom of page: DFI does not believe a hearing is necessary as there is already an appeal process in place. ✓
5. Note 5, Page 4, between lines 20-21: Out-of-state banks would follow the requirements of their own state. ✓
6. Note 6, Page 5, between lines 10-11: Similar to Note 3 above, DFI does not believe this would be a problem. ✓
7. Note 7, Page 5, bottom of page: Similar to Note 4 above, DFI does not believe a hearing would be necessary. ✓
8. Note 8, Page 6, between lines 13-14: Similar to Notes 3 and 6 above, DFI does not believe this would be a problem. ✓
9. Note 9, Page 6, between lines 16-17: DFI does not believe rulemaking for these provisions would be necessary. ✓

Again, thank you for providing DFI with the opportunity to comment on legislative draft LRB-2939/P1. Please feel free to contact me if I can provide additional information or answer any questions.

Office of the Secretary

Mail: PO Box 8861 Madison, WI 53708-8861

Voice: (608) 264-7800

Fax: (608) 261-4DFI

Courier: 345 W. Washington Ave. 5th Floor Madison, WI 53703

TTY: (608) 266-8818

Internet: www.wdfi.org

Kunkel, Mark

From: Risch, Jay
Sent: Thursday, October 13, 2005 12:20 PM
To: Kunkel, Mark
Subject: FW: Draft review: LRB 05-2939/P1 Topic: Branches of out-of-state banks

More info

From: Daryll Lund [mailto:daryll@communitybankers.org]
Sent: Tuesday, September 20, 2005 10:23 AM
To: Risch, Jay
Subject: RE: Draft review: LRB 05-2939/P1 Topic: Branches of out-of-state banks

Jay,

Below are the comments from our legal counsel regarding the draft. Please share with the drafter and let me know next steps. Thanks.

Daryll J. Lund
President & CEO
Community Bankers of Wisconsin
608-833-4229
daryll@communitybankers.org

Comments on LRB Draft:

The only comment we have relates to the proposed amendment to Sections 221.0302(3) and 221.0302(4) of the Wisconsin statutes, which would remove the requirement that a state bank obtain prior DFI approval for (i) the transfer by a state bank of a branch to another state bank, or (ii) the establishment by a state bank of an out-of-state branch. DFI has objected to this change in its September 16th letter and has taken the position that these transactions should remain subject to DFI approval. We agree with DFI's position. As an initial matter, this change is not directly related to the issue of whether interstate banking and branching by an out-of-state banking organization should be permitted in Wisconsin. Section 221.0302(3) deals with the transfer of branches among state banks in Wisconsin. Section 221.0302(4) deals with interstate branching by Wisconsin banks into other states. Perhaps there was a concern on the part of the LRB that Wisconsin state banks would need to obtain prior DFI approval for these transactions, while an out-of-state banking organization would not have a similar approval process to the extent that the out-of-state banking organization already received approval for a branch in Wisconsin (i.e., the legislation provides that no approval is required for any additional branches). However, from a practical perspective, an out-of-state banking organization with a branch in Wisconsin must comply with the laws of the host state (i.e., the laws where the bank is located), which in most cases, have similar approval requirements for the transfer or establishment of a branch office in another state. Accordingly, we do not believe that the existing approval requirements in Sections 221.0302(3) and 221.0302(4) are problematic.

We have no comments to the remaining draft of the legislation, which is substantively identical to the version that we prepared in March. We concur with DFI's responses to the drafter's notes. In particular:

1. Note 1, page 2: Determining which state the out-of-state banking organization is "located" should be determined as of the time of the application. Once an out-of-state banking organization has established a branch in Wisconsin, it would essentially have "grandfather rights," and as such, could continue to open or acquire new branches in the future, regardless of whether the out-of-state banking organization is located in a state with reciprocal branching and banking laws in the future.
2. Note 2, page 3: This is a DFI issue, although we believe that it would be unduly burdensome to require DFI to make a 50-state reciprocity determination - especially to the extent that state laws may be amended from time to time. In practice, we envision that DFI will review the laws in adjacent states, and make other determinations on a case-by-case basis.

10/24/2005

3. Note 3, page 3: The list of state reciprocal laws will need to be updated periodically. In practice, the initial "notice" from the out-of-state banking organization should enable DFI to update and review the respective state's laws regarding banking/branching.
4. Note 4, page 3: A hearing seems unnecessary, although an appeal right seems reasonable.
5. Note 5, page 4: Out--of-state banking organizations are not subject to Section 221.0302 - this is why the legislation does not use the term "in-state branch," which is a branch of a Wisconsin bank.
6. Note 6, page 5: See comments to Note 1 above. In practice, you could not revoke a bank's authority after a branch is opened.
7. Note 7, page 5: See comments to Note 4 above.
8. Note 8, page 6: See comments to Note 1 above.
9. Note 9, page 6: See comments to Note 4 above.

From: Risch, Jay [mailto:Jay.Risch@legis.state.wi.us]
Sent: Thursday, September 08, 2005 4:12 PM
To: Daryll Lund; msemmann@wisbank.com
Subject: FW: Draft review: LRB 05-2939/P1 Topic: Branches of out-of-state banks

This just in...

Comments?

From: Basford, Sarah
Sent: Thursday, September 08, 2005 12:24 PM
To: Sen.Stepp
Subject: Draft review: LRB 05-2939/P1 Topic: Branches of out-of-state banks

Following is the PDF version of draft LRB 05-2939/P1 and drafter's note.

the entire bank, the branch is treated as an insured bank whose home state is the state in which the branch is located.³⁵⁹ This means that minimum age laws requiring a bank to be in existence for some minimum period before being eligible for acquisition would apply to the branch.³⁶⁰

[d] Establishing a De Novo Interstate Branch

Under the authority described above that authorizes the responsible banking agencies to approve interstate bank mergers, the mechanism for establishing interstate branch offices of a bank is through merger with an existing bank. This authority does not allow a federal banking agency to approve the de novo establishment of a branch in a state in which the bank does not already have a main office or branch. The IBBA defines a de novo branch of a state bank as a branch that is originally established by the state bank as a branch and does not become a branch as a result of an acquisition or a conversion, merger, or consolidation transaction.³⁶¹

A state may elect to permit interstate branching through de novo branches. When a state opts in by such an election, the appropriate federal banking agency may approve an application by the bank "to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch."³⁶² The law of the host state exercising the election to opt in must be a law that "applies equally to all banks; and...expressly permits all out-of-State banks to establish de novo branches in such State." When a host state has such a law, and the other conditions required for approval have been satisfied, the FDIC in the case of an insured state bank and the Comptroller in the case of a national bank may approve an application to establish a de novo branch

³⁵⁹ Id. (amending 12 USC § 1831u(a)(4)(A)).

³⁶⁰ The conference report states that

[t]he Conferees intend that, in approving such acquisitions, Federal regulators will ensure that state minimum age restrictions under paragraph (5) which apply to such acquisitions are preserved. Federal banking agencies should not approve the acquisition of a branch (if permitted under paragraph (4)) in host States which have minimum age laws regarding the acquisition of banks, unless such laws expressly permit branches in the host state to be acquired without the acquisition of the bank.

HR Rep. No. 651, 103d Cong., 2d Sess. 52 (1994).

³⁶¹ Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, § 103(a), § 103(b), § 108 Stat. 2338, 2352-2353 (1994) (amending 12 USC § 1828(d)(4)(C)). There is a similar definition for a national bank. Id. at 103(a) (amending 12 USC § 36(g)(3)(A)).

³⁶² Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, § 103(a), 108 Stat. 2338, 2352 (1994) (amending 12 USC § 36(g)(1)) (national banks); Id. at § 103(b) (amending 12 USC § 1828(d)(4)(A)) (insured state nonmember banks).

notwithstanding that the branch is located in a state (other than the applicant bank's home state) in which the bank does not maintain a branch.³⁶³

[e] Establishing an Interstate Branch After Initial Entry in a State

Once a bank has entered a state through an interstate merger transaction, the bank is able to establish additional branches in the state in accordance with the federal and state law applicable to bank branches in that state. This may permit the bank to establish and operate additional branches that are de novo branches. The IBBA specifies that after a bank initially enters a state through an interstate bank merger, the resulting bank may establish additional branches in the host state to the same extent that any bank in the merger transaction could have established a branch in the state under federal or state law if it had not been involved in the merger.³⁶⁴ As the conference report states:

Once a bank has established branches in a host State through an interstate merger transaction, such bank may establish and acquire additional branches at any location in the host State where any bank involved in the interstate merger transaction could have established or acquired branches under applicable Federal or State law.³⁶⁵

[f] Exclusivity of Interstate Bank Merger Procedures

These limitations on interstate bank mergers in the IBBA are reinforced by provisions of the act that make the authority given by the act (other than certain specific laws applicable to emergency acquisitions of financially troubled institutions) the exclusive means for establishing a branch office after May 31, 1997.³⁶⁶

³⁶³Id. at § 103(a), § 103(b) (amending 12 USC § 36(g)(1), 12 USC § 1828(d)(4)).

³⁶⁴Id. at § 102(a) (amending 12 USC § 1831u(d)(2)). This section provides:

Following the consummation of any interstate merger transaction, the resulting bank may establish, acquire, or operate additional branches at any location where any bank involved in the transaction could have established, acquired, or operated a branch under applicable Federal or State law if such bank had not been a party to the merger transaction.

Id. See id. at § 102(b) (amending 12 USC § 36(d)), which makes the same provisions apply to a national bank's establishment and operation of a branch in a state other than its home state.

³⁶⁵HR Rep. No. 651, 103d Cong., 2d Sess. 50 (1994).

³⁶⁶Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, § 102(b)(1), (b)(2), 108 Stat. 2338, 2349-2350 (1994) (amending 12 USC § 30, 12 USC § 36(e)) (exclusive authority for additional branches of a national bank) provides in 12 USC § 36(e),

Effective June 1, 1997, a national bank may not acquire, establish, or operate a branch in any State other than the bank's home State...or a State in which the

TO DAY

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RM has been run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT IA

Reyen

1 AN ACT to amend 221.0302 (3), 221.0302 (4) and 221.0901 (8) (a); and to create
 2 221.0901 (2) (jm), 221.0901 (2) (Lm), 221.0901 (2) (mm), 221.0901 (8) (d) and (e),
 3 221.0904 and 227.01 (13) (zw) of the statutes; relating to: regulation of bank
 4 branches, mergers and acquisitions of banks, providing an exemption from
 5 rule-making procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 SECTION 1. 221.0302 (3) of the statutes is amended to read:
 7 221.0302 (3) TRANSFER. A bank may transfer a branch bank to any other bank
 8 located in this state with the approval of the division. A bank may transfer a branch

plain ↗

1 bank to a bank located in another state only if the division has determined under s.
2 221.0904 (3) (b) that the state's laws are reciprocal regarding establishing branches.

3 SECTION 2. 221.0302 (4) of the statutes is amended to read:

4 221.0302 (4) OUT-OF-STATE BRANCHES. A bank may establish a branch bank in
5 another state with the approval of the division and the appropriate bank regulator
6 in the ~~in accordance with the requirements of the state where the branch is to be~~
7 ~~established.~~ *states*

8 SECTION 3. 221.0901 (2) (jm) of the statutes is created to read:

9 221.0901 (2) (jm) "Home state" means, with respect to an out-of-state bank,
10 the state in which the bank is chartered and, with respect to an out-of-state bank
11 holding company, the state in which the total deposits of all banking subsidiaries of
12 the company are the largest.

****NOTE: Regarding determining the home state of an out-of-state bank holding company it is possible for different states to have the largest deposits at different times, correct? This possibility doesn't cause any problems for the draft, does it?

13 SECTION 4. 221.0901 (2) (Lm) of the statutes is created to read:

14 221.0901 (2) (Lm) "Out-of-state bank" means a bank that is not an in-state
15 bank.

16 SECTION 5. 221.0901 (2) (mm) of the statutes is created to read:

17 221.0901 (2) (mm) "Out-of-state banking organization" means an
18 out-of-state bank or out-of-state bank holding company.

19 SECTION 6. 221.0901 (8) (a) of the statutes is amended to read:

20 221.0901 (8) (a) Except as provided in pars. (b) and, (c), and (d), the division
21 may not approve an application under sub. (3) (a), other than an application by an
22 in-state bank holding company or in-state bank, unless the in-state bank to be
23 acquired, or all in-state bank subsidiaries of the in-state bank holding company to

1 be acquired, have as of the proposed date of acquisition been in existence and in
2 continuous operation for at least 5 years.

3 SECTION 7. 221.0901 (8) (d) and (e) of the statutes are created to read:

4 221.0901 (8) (d) Paragraph (a) does not apply to the merger or acquisition by
5 an out-of-state banking organization of all or substantially all of the assets of an
6 in-state bank, or of an in-state bank holding company that owns one or more
7 in-state banks, if all of the following apply:

8 1. The laws of the home state of the out-of-state banking organization allow
9 an in-state bank or in-state bank holding company to acquire an out-of-state
10 banking organization in the home state.

11 2. The division determines under par. (e) that the laws of the home state of the
12 out-of-state banking organization are reciprocal with respect to mergers and
13 acquisitions.

14 (e) 1. The division shall periodically publish a list of states that the division has
15 found have laws that are reciprocal for purposes of par. (d) 2. ~~and a list of states that~~
16 ~~the division has found have laws that are not reciprocal.~~ An out-of-state banking
17 organization with a home state for which the division has made no such
18 determination may request, on a form prescribed by the division, that the division
19 make a determination regarding the home state.

****NOTE: The instructions require only one list, i.e., the list of states that are reciprocal. However, I require 2 lists: 1) states that are determined to be reciprocal; and 2) states that are determined not to be reciprocal. Is that okay?

****NOTE: What if the division determines that a state's laws are reciprocal and includes the state on the reciprocal list, and the state subsequently amends its laws so that they are no longer reciprocal? How should the draft address that situation? Should the draft require the division to periodically recheck the lists?

****NOTE: Should the above specify whether a hearing can be requested before the division makes a determination? Also, I'm assuming that a determination that is requested by an out-of-state banking organization can be appealed under s. 227.52. Is that okay?

1 2. The division shall make determinations under subd. 1. in writing. The
2 division may not determine that the laws of a state are reciprocal under subd. 1.
3 unless the division finds that the laws of that state allow an in-state bank or in-state
4 bank holding company to merge with or acquire an out-of-state banking
5 organization under terms and conditions that are substantially similar to the terms
6 and conditions under this section. In making such a finding, the division shall
7 consider, at a minimum, whether the laws of that state discriminate in any way
8 against an in-state bank or in-state bank holding company and whether the laws
9 of that state impose regulatory burdens that are substantially more restrictive than
10 the requirements under this section that apply to an out-of-state banking
11 organization seeking to merge or acquire an in-state bank or in-state bank holding
12 company.

13 **SECTION 8.** 221.0904 of the statutes is created to read:

14 **221.0904 Out-of-state banks establishing branches. (1) DEFINITIONS.** In
15 this section:

16 (a) "Home state" has the meaning given in s. 221.0903 (1) (b).

17 (b) "Out-of-state bank" has the meaning given in s. 221.0903 (1) (d).

18 (c) "State bank" has the meaning given in s. 221.0903 (1) (e).

19 **(2) IN GENERAL.** No out-of-state bank may establish a branch in this state
20 unless all of the following apply:

~~****NOTE: I'm assuming that out-of-state banks are not subject to the branching requirements in s. 221.0302. The reason is that a "bank" for purposes of s. 221.0302 is a bank chartered in this state. See the definition of "bank" at s. 220.01 (1). Are my assumptions correct? (I raise these questions because the instructions use the term "branch," rather than "in-state branch" as defined in s. 221.0903 (1) (c), which states that an "in-state branch" is a branch established by a bank under s. 221.0302.)~~

21 (a) The laws of the home state of the out-of-state bank allow the out-of-state
22 bank to establish a branch in this state.

1 (b) The division determines under sub. (3) (b) that the laws of the home state
2 of the out-of-state bank are reciprocal with respect to a state bank establishing a
3 branch in that state.

4 (c) The out-of-state bank complies with the notice requirements under sub. (4).

5 (3) RECIPROCALITY. (a) The division shall periodically publish a list of states that
6 the division has found have laws that are reciprocal for purposes of sub. (2) (b) and
7 a list of states that the division has found have laws that are not reciprocal. An
8 out-of-state bank with a home state for which the division has made no such
9 determination may request, on a form prescribed by the division, that the division
10 make a determination regarding the home state.

****NOTE: As noted above, what if the division determines that a state's laws are reciprocal, and the state subsequently amends its laws so that they are no longer reciprocal? How should the draft address that situation? Also, in such a situation, what should happen to an out-of-state bank that has established a branch in this state if the division discovers that the home state has subsequently amended its laws so that they are not reciprocal? You don't want to revoke the bank's authority to operate the branch, correct?

11 (b) The division shall make determinations under par. (a) in writing. The
12 division may not determine that the laws of a state are reciprocal under par. (a)
13 unless the division finds that the laws of that state allow a state bank to establish
14 a branch in the state under terms and conditions that are substantially similar to the
15 terms and conditions under this section. In making such a finding, the division shall
16 consider, at a minimum, whether the laws of that state discriminate in any way
17 against a state bank and whether the laws of that state impose regulatory burdens
18 that are substantially more restrictive than the requirements under this section that
19 apply to an out-of-state bank seeking to establish a branch in this state.

****NOTE: As noted above, do you want to specify whether a hearing can be requested before the division makes a determination? Also, I'm assuming that a determination that is requested by an out-of-state bank can be appealed under s. 227.52. Is that okay?

1 (4) NOTICE. (a) Except as provided in par. (b), an out-of-state bank may not
2 establish a branch in this state without providing prior notice to the division. The
3 division shall promulgate rules specifying the requirements and procedures for
4 making such notice. The rules shall allow an out-of-state bank to provide notice by
5 submitting to the division a copy of any notice or application regarding the proposed
6 branch that the out-of-state bank submits to the regulatory authority of its home
7 state or the appropriate federal regulatory authority.

8 (b) If an out-of-state bank establishes a branch in this state pursuant to this
9 section, the out-of-state bank is not required to provide notice for any subsequent
10 branches established in this state.

11 (5) ADDITIONAL BRANCHING AUTHORITY. An out-of-state bank that establishes
12 a branch in this state pursuant to this section may establish additional branches in
13 this state to the same extent as a state bank.

~~****NOTE: As noted above, what if the division determines that a state's law has
been amended so that it no longer is reciprocal with Wisconsin law? Should the
out-of-state bank be allowed to establish subsequent branches in this state?~~

14 **SECTION 9.** 227.01 (13) (zw) of the statutes is created to read:

15 227.01 (13) (zw) Determines whether a state law is reciprocal under s.
16 221.0901 (8) (e) 2. or 221.0904 (3) (b).

~~****NOTE: The above excludes the reciprocity determinations from the definition of
"rule" for purposes of ch. 227. As a result, the division is not required to use the
rule-making process for making such determinations. Is that okay?~~

17 (END)

1

INSERT 1A:

Under current law, an out-of-state bank may operate a branch in this state only if the out-of-state bank has acquired a Wisconsin bank. (A Wisconsin bank is a bank chartered under the laws of Wisconsin. An out-of-state bank is a bank chartered under the laws of another state or a bank chartered under federal law that has its principal place of business in another state.) An out-of-state bank may acquire a Wisconsin bank by merging or consolidating with a Wisconsin bank or holding company or acquiring the shares or assets of a Wisconsin bank or holding company. With certain exceptions, such acquisitions are subject to the prior approval of the Division of Banking (division) in the Department of Financial Institutions.

This bill allows an out-of-state bank to establish a branch in this state without acquiring a Wisconsin bank, but only if all of the following conditions are satisfied: 1) the laws of the home state of the out-of-state bank allow the out-of-state bank to establish a branch in this state; 2) the division determines that the laws of the home state are reciprocal to Wisconsin law with respect to establishing branches; and 3) the out-of-state bank gives prior notice to the division as specified in rules promulgated by the division.

X Regarding the second condition, the bill prohibits the division from determining that a home state's laws are reciprocal unless the division finds that the home state's laws allow a Wisconsin bank to establish a branch in that state under terms and conditions that are substantially similar to Wisconsin law. In making this determination, the division must consider, at a minimum, whether the laws of the home state discriminate against Wisconsin banks or impose regulatory burdens that are substantially more restrictive than Wisconsin law. The bill requires the division to periodically publish a list of states that the division determines are reciprocal. If the division has not determined whether the laws of an out-of-state bank's home state are reciprocal, the bill allows the out-of-state bank to request that the division make such a determination.

If an out-of-state bank establishes a branch in this state as provided under the bill, the bill allows the out-of-state bank to establish additional branches in this state to the same extent as current law allows a Wisconsin bank to establish branches. Also, the out-of-state bank is not required to provide notice to the division before establishing any additional branches.

The bill also changes the requirements under current law that apply to an out-of-state bank's acquisition of a Wisconsin bank. Under current law, with certain exceptions, an out-of-state bank may acquire a Wisconsin bank only if the Wisconsin bank has been in existence and in continuous operation for at least five years.

X The bill creates a new exception to this requirement. Under the bill, an out-of-state bank may acquire a Wisconsin bank that has been in existence and in continuous operation for less than five years if all of the following conditions are satisfied: 1) the laws of the home state of the out-of-state bank allow a Wisconsin bank to acquire a bank in the home state; and 2) the division determines that the laws of the home state are reciprocal to Wisconsin law with respect to mergers and

acquisitions. The bill also allows a holding company of an out-of-state bank to acquire a Wisconsin bank or holding company of a Wisconsin bank under the same conditions.

X X Regarding the ^{second} 2nd condition, the bill prohibits the division from determining that a home state's laws are reciprocal unless the division finds that the home state's laws allow a Wisconsin bank to merge or acquire a bank in that state under terms and conditions that are substantially similar to Wisconsin law. (Under the bill, the home state of a holding company of an out-of-state bank is the state in which the total deposits of all banking subsidiaries of the holding company are the largest.) In making the determination regarding reciprocity, the division must consider, at a minimum, whether the laws of the home state discriminate against Wisconsin banks or impose regulatory burdens that are substantially more restrictive than Wisconsin law. The bill requires the division to periodically publish a list of states that the division determines are reciprocal. If the division has not determined whether the laws of an out-of-state bank's home state are reciprocal, the bill allows the out-of-state bank to request that the division make such a determination.

The bill also does the following:

1. The bill allows the division to make the determinations described above regarding reciprocity without promulgating rules.
2. The bill allows a Wisconsin bank to transfer an existing branch to a bank located in another state only if the division has determined, as described above, that the other state's laws are reciprocal with respect to establishing branches.

Kunkel, Mark

From: Risch, Jay
Sent: Wednesday, November 09, 2005 4:33 PM
To: Kunkel, Mark
Cc: Hale, Janine
Subject: FW: Draft review: LRB 05-2939/P1 Topic: Branches of out-of-state banks
Attachments: mw_1031895_1.DOC

Mark,

Would you make this one final change to the draft? Thanks -

Jay

*But see Nov 14
EMAIL MEMO*

From: Daryll Lund [mailto:daryll@communitybankers.org]
Sent: Tuesday, November 08, 2005 10:57 AM
To: Risch, Jay
Subject: RE: Draft review: LRB 05-2939/P1 Topic: Branches of out-of-state banks

Hi Jay,

We are suggesting one change to the definition of a "bank" to exclude industrial loan company or industrial bank. These charters are receiving a lot of scrutiny in Congress right now because of an application Wal-Mart filed this summer. Because of that fact we would like to clarify the language in our bill.

Daryll J. Lund
President & CEO
Community Bankers of Wisconsin
608-833-4229
daryll@communitybankers.org

SECTION 2(a). 221.0901(2)(b) is amended to read:

221.0901(2)(b) "Bank" has the meaning set forth in 12 USC 1841(c), provided that
"bank" shall not include any industrial loan company or industrial bank established under the
laws of any state.

MW1031895_1.DOC

Kunkel, Mark

From: Risch, Jay
Sent: Monday, November 14, 2005 9:44 AM
To: Kunkel, Mark
Subject: FW: Branch Banking Modernization Act
Attachments: GKScanDoc.pdf

Hi Mark,

Turns out we have another change. Thanks -

Jay

From: Daryll Lund [mailto:daryll@communitybankers.org]
Sent: Friday, November 11, 2005 5:15 PM
To: Risch, Jay
Subject: FW: Branch Banking Modernization Act

Jay,

As you can see from the attached memo we need to make some corrections on the most recent information I sent you . Please forward this memo to LRB describing these changes. Let me know if you have any questions. Thanks.

Daryll J. Lund
President & CEO
Community Bankers of Wisconsin
608-833-4229
daryll@communitybankers.org

From: James Sheriff [mailto:Jsheriff@gklaw.com]
Sent: Friday, November 11, 2005 4:23 PM
To: Daryll Lund
Subject: Branch Banking Modernization Act

Please see attachment.

James A. Sheriff
Godfrey & Kahn, S.C.
780 N. Water Street
Milwaukee, WI 53202
(414) 273-3500 (Main Phone)
(414) 287-9390 (Direct Phone)
(414) 273-5198 (FAX)
jsheriff@gklaw.com

Pursuant to Circular 230 promulgated by the Internal Revenue Service, if this email, or any attachment hereto, contains advice concerning any federal tax issue or submission, please be advised that it was not intended or written to be used, and that it cannot be used, for the purpose of avoiding federal tax penalties unless otherwise expressly indicated.

MEMORANDUM

TO: Daryll Lund
FROM: Jim Sheriff
DATE: November 11, 2005
RE: Branch Banking Modernization Act

It appears I erred in the definitional section that I recently proposed be amended for the ILC fix in the Branch Banking Modernization Act. As we discussed, the legislation should include the definition for "bank" in §221.0903, which addresses "in-state branches maintained by out-of-state banks." I previously proposed a definitional change to §221.0901(2)(a), but that was an incorrect placement since §221.0901 only addresses acquisitions of Wisconsin banks by out-of-state banks, not branching into Wisconsin by out-of-state banks.

I recommend that my recently proposed change to the "bank" definition at §221.0901(2)(a) be dropped. Following our talk today, we did more research of the Riegle-Neal Act, and our conclusion is that Congress in 1994 gave permission for insured "banks" (this will likely include WalMart's ILC presuming the FDIC grants deposit insurance) to merge on an interstate basis with other banks, regardless of any state law to the contrary. Thus, if our bill tries to prevent out-of-state ILCs from acquiring a Wisconsin bank, I believe it almost certainly would be considered preempted by contrary federal law. Therefore, I think we should drop the proposed change to §221.0901(2)(b), and limit our restrictions to the branching area.

We should, however, ask LRB to add two new sections to the legislation to amend the definitions in §221.0903 and §221.0904, as follows:

1. Section 8. 221.0903 of the statutes is amended by creating a new subsection as follows:

221.0903(1)(am) "Bank" has the meaning set forth in 12 USC 1841(c), provided that "bank" shall not include any industrial loan company or industrial bank established under the laws of any state.

2. Section 9. Proposed LRB draft language to create §221.0904(1) is amended by adding a new subsection (d), as follows:

221.0904(1) Definitions. In this section:

.....

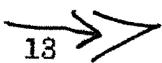
(d) "Bank" has the meaning given in s. 221.0903(1)(am).

this term is not used in 221.0904 "out-of-state banks" & "state bank" are.

BILL

1 2. The division shall make determinations under subd. 1. in writing. The
 2 division may not determine that the laws of a state are reciprocal under subd. 1.
 3 unless the division finds that the laws of that state allow an in-state bank or in-state
 4 bank holding company to merge with or acquire an out-of-state banking
 5 organization under terms and conditions that are substantially similar to the terms
 6 and conditions under this section. In making such a finding, the division shall
 7 consider, at a minimum, whether the laws of that state discriminate in any way
 8 against an in-state bank or in-state bank holding company and whether the laws
 9 of that state impose regulatory burdens that are substantially more restrictive than
 10 the requirements under this section that apply to an out-of-state banking
 11 organization seeking to merge or acquire an in-state bank or in-state bank holding
 12 company.

ADD INSORT A



13 SECTION ⁹ 221.0904 of the statutes is created to read: ✓

14 221.0904 Out-of-state banks establishing branches. (1) DEFINITIONS. In
 15 this section:

16 (a) "Home state" has the meaning given in s. 221.0903 (1) (b).

17 (b) "Out-of-state bank" has the meaning given in s. 221.0903 (1) (d).

18 (c) "State bank" has the meaning given in s. 221.0903 (1) (e).

19 (d) "Bank" has the meaning given in s. 221.0903(1)(am). ✓

20 (2) IN GENERAL. No out-of-state bank may establish a branch in this state
 unless all of the following apply:

21 (a) The laws of the home state of the out-of-state bank allow the out-of-state
 22 bank to establish a branch in this state.

23 (b) The division determines under sub. (3) (b) that the laws of the home state
 24 of the out-of-state bank are reciprocal with respect to a state bank establishing a
 25 branch in that state.

Insert A

Section 8. 221.0903 of the statutes is amended by creating a new subsection as follows:

221.0903(1)(am) "Bank" has the meaning set forth in 12 USC 1841(c), provided that "bank" shall not include any industrial loan company or industrial bank established under the laws of any state.

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