

2007 DRAFTING REQUEST

Bill

Received: 11/07/2007

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Jim Sullivan (608) 266-2512

By/Representing: Matt Swentkofske

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Fin. Inst. - banking inst.

Extra Copies: MDK

Submit via email: YES

Requester's email: Sen.Sullivan@legis.wisconsin.gov

Carbon copy (CC:) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

The location of bank branches in proximity to affiliates

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>
/?				_____			State
/P1	agary 11/13/2007	jdyer 11/19/2007	pgreensl 11/19/2007	_____	lparisi 11/19/2007		State
/1	agary 12/19/2007	jdyer 12/19/2007	rschluet 12/19/2007	_____	sbasford 12/19/2007	mbarman 12/21/2007	

FE Sent For:

→ At Intro.

<END>

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/?	agary	11/16 jld	11/9 P8	11/9 P8 LKH			State

FE Sent For:

<END>

Gary, Aaron

From: Swentkofske, Matthew
Sent: Wednesday, November 07, 2007 9:04 AM
To: Gary, Aaron
Subject: Bill to be drafted

Attachments: ILC Bill.pdf



ILC Bill.pdf (145 KB)

Aaron,

Here is some language for a bill Jim wants drafted.

Thanks.

Matt Swentkofske
Office of Senator Jim Sullivan
5th Senate District
matthew.swentkofske@legis.wisconsin.gov
608-266-2512

Revised Wis. Stats. § 221.0302:

§221.0302 Branch banks and other facilities.

- (1) DEFINITIONS. In this section:
 - (a) "Affiliate" means any company that directly or indirectly controls, or is under common control with another company.
 - (b) "Bank holding company" and "financial holding company" have the meanings ascribed to those terms in the federal Bank Holding Company Act of 1956 (12 U.S.C. § 1841).
 - (c) "Commercial activities" means activities in which a bank holding company, a financial holding company, a national bank, a state bank, or a state bank certified as a universal bank under Ch. 222, may not engage under federal or state law.
 - (d) "State bank" has the meaning given in s. 221.0903(1)(e).
- (2) ESTABLISHMENT. [No Changes]
- (3) CONVERSION. [No Changes]
- (4) TRANSFER. [No Changes]
- (5) OUT-OF-STATE BRANCHES. [No Changes]
- (6) ACTIVITIES NOT CONSIDERED BRANCH BANKING. [No Changes]
- (7) APPLICATION. [No Changes]
- (8) STANDARDS FOR APPROVAL.
 - (a) GENERAL. Except as provided in par. (b), the division shall approve the establishment of a branch bank under sub. (2) or the conversion of a bank to a branch bank under sub. (3) if the financial and managerial resources and future prospects of the bank establishing a branch bank, or the surviving bank of a merger or consolidation, are satisfactory to the division.
 - (b) LOCATION RESTRICTIONS; CERTIFICATION OF COMPLIANCE. The division shall not approve the establishment of a branch bank under sub. (2), the conversion of a bank to a branch bank under sub. (3) or the transfer of a branch bank under sub. (4) if the establishment, conversion or transfer of such branch bank would violate the provisions of sub. (9). Every state bank shall certify to the division that the location of a branch bank complies with the provisions in sub. (9).

- (9) LOCATION RESTRICTIONS FOR BRANCH BANKS. Except as provided in sub. (12)(b), no state bank may directly or indirectly establish or maintain or cause to be established or maintained in this state a branch bank that is located within a one and one-half (1-1/2) mile radius from premises or property owned, leased, or otherwise controlled, directly or indirectly, by an affiliate that engages in commercial activities, as defined in sub. (1)(c). It is the intent of this section that no state bank be permitted to circumvent the prohibition stated in this section by first establishing a branch bank and then subsequently locating an office of an affiliate engaged in commercial activities within a one and one-half (1-1/2) mile radius of the location of the branch bank.
- (10) APPLICABILITY OF LAWS AND RULES GOVERNING BANKS. [No Changes]
- (11) CLOSURE OF BRANCH BANKS. [No Changes]
- (12) EXEMPTIONS.
- (a) GRANDFATHERED BRANCH BANKS. [No Changes]
- (b) EXEMPTION FROM LOCATION RESTRICTIONS. The provisions of sub. (8)(b) and sub. (9) shall not apply to any branch of any state bank, provided that such branch was approved by the division on or before [EFFECTIVE DATE OF LEGISLATION].

November 6, 2007

mw1364606_7

Revised Wis. Stats. § 221.0904:

§221.0904 Out-of-state banks establishing branches.

- (1) DEFINITIONS. In this section:
 - (a) "Affiliate" has the meaning given in s. 221.0302(1)(a).
 - (b) "Commercial activities" has the meaning given in s. 221.0302(1)(c).
 - (c) "Home state" has the meaning given in s. 221.0903(1)(b).
 - (d) "Out-of-state bank" means any bank, as that term is defined in the Federal Deposit Insurance Act (12 U.S.C. § 1813), with a home state other than this state.
 - (e) "State bank" has the meaning given in s. 221.0903(1)(e).
- (2) IN GENERAL. [No Changes]
- (3) RECIPROCITY. [No Changes]
- (4) NOTICE. [No Changes]
- (5) LOCATION RESTRICTIONS FOR OFFICES OF OUT-OF-STATE BANKS.
 - (a) GENERAL. Except as provided in sub. (6), no out-of-state bank may directly or indirectly establish or maintain or cause to be established or maintained in this state a branch bank that is located within a one and one-half (1-1/2) mile radius from premises or property owned, leased, or otherwise controlled, directly or indirectly, by an affiliate that engages in commercial activities, as defined in sub. (1)(b). It is the intent of this section that no out-of-state bank be permitted to circumvent the prohibition stated in this section by first establishing a branch and then subsequently locating an office of an affiliate engaged in commercial activities within a one and one-half (1-1/2) mile radius of the branch location.
 - (b) LOCATION RESTRICTIONS; CERTIFICATION OF COMPLIANCE. Every out-of-state bank shall certify to the division that the location of a branch bank complies with the provisions in par. (a).
- (6) EXEMPTION FROM LOCATION RESTRICTIONS. The provisions of sub. (5)(a) and (b) shall not apply to any branch of any out-of-state bank, provided that such branch was approved by the division on or before [EFFECTIVE DATE OF LEGISLATION].
- (7) ADDITIONAL BRANCHING AUTHORITY. [No Changes]

September 18, 2007

Soon

in 11/13

jed

J-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓
x-ref ✓

Gen

1

AN ACT ...; relating to: the location of bank branches. ✓

Analysis by the Legislative Reference Bureau

✓ Under current law, state banks may, upon application and approval of the Division of Banking (division) in the Department of Financial Institutions and subject to certain limitations, establish and maintain branch banks. Branch banks are subject to all laws and rules applicable to banks generally. In addition, out-of-state ✓ banks may establish branches in this state, subject to certain limitations.

* This bill prohibits state banks and out-of-state ✓ banks from directly or indirectly establishing or maintaining in this state branches that are located within a ✓ 1.5-mile radius of premises or property owned, leased, or otherwise controlled, directly or indirectly, by a bank affiliate that engages in commercial activities. ✓ The bill defines "affiliate" as any company that directly or indirectly controls, or is under common control with, another company. The bill defines "commercial activities" as those activities in which a bank holding company, financial holding company, national bank, state bank, or state universal bank are not authorized to directly engage under federal or state law. Each bank must certify to the division ✓ compliance with this prohibition. These provisions do not apply to branches approved by the division ✓ before the effective date of the bill. ✓

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:

SECTION 1

1 **SECTION 1.** 221.0302 (1) of the statutes is renumbered 221.0302 (1m).

2 **SECTION 2.** 221.0302 (1g) of the statutes is created to read:

3 221.0302 (1g) DEFINITIONS. In this section:

4 (a) "Affiliate" means any company that directly or indirectly controls, or is
5 under common control with, another company.

6 (b) "Bank holding company" has the meaning given in 12 USC 1841 (a).

7 (c) "Commercial activities" means those activities in which a bank holding
8 company, financial holding company, national bank, state bank, as defined in s.
9 221.0903 (1) (e), or state bank certified under ch. 222 as a universal bank are not
10 authorized to directly engage under federal or state law.

11 (d) "Company" has the meaning given in s. 221.0901 (2) (f).

12 (e) "Financial holding company" has the meaning given in 12 USC 1841 (p).

13 **SECTION 3.** 221.0302 (7) of the statutes is renumbered 221.0302 (7) (a) and
14 amended to read:

15 221.0302 (7) (a) ^{MOVE} ~~The General.~~ Except as provided in par. (b), the division shall
16 approve the establishment of a branch bank under sub. (1) (1m) or the conversion of
17 a bank to a branch bank under sub. (2) if the financial and managerial resources and
18 future prospects of the bank establishing a branch bank, or the surviving bank of a
19 merger or consolidation, are satisfactory to the division.

History: 1995 a. 336; 1997 a. 146; 2005 a. 217.

20 **SECTION 4.** 221.0302 (7) (b) of the statutes is created to read:

21 221.0302 (7) (b) *Location restrictions; certification of compliance.* The division
22 may not approve the establishment of a branch bank under sub. (1m), the conversion
23 of a bank to a branch bank under sub. (2), or the transfer of a branch bank under sub.

1 (3) if the establishment, conversion, or transfer would violate sub. (8m). Each bank
2 shall certify to the division that the location of a branch bank complies with sub. (8m).

3 SECTION 5. 221.0302 (8m) of the statutes is created to read:

4 221.0302 (8m) LOCATION RESTRICTIONS FOR BRANCH BANKS. Except as provided
5 in sub. (10) (b), no bank may directly or indirectly establish or maintain in this state
6 a branch bank that is located within a 1.5-mile radius of premises or property owned,
7 leased, or otherwise controlled, directly or indirectly, by an affiliate of the bank that
8 engages in commercial activities. No bank may circumvent the prohibition in this
9 subsection by first establishing a branch bank and then locating, or attempting to
10 influence or facilitate the location of, an office of the bank's affiliate engaged in
11 commercial activities within a 1.5-mile radius of the location of the branch bank.

12 SECTION 6. 221.0302 (10) (title) of the statutes is repealed and recreated to
13 read:

14 221.0302 (10) (title) EXEMPTIONS.

15 History: 1995 a. 336; 1997 a. 146; 2005 a. 217.

16 SECTION 7. 221.0302 (10) of the statutes is renumbered 221.0302 (10) (a) and
17 amended to read:

18 221.0302 (10) (a) ~~Grandfathered branch banks~~ Every branch bank, branch
19 office, or bank station existing on August 1, 1989, is considered to be a branch bank
approved by the division under this paragraph. *no scoring*

20 History: 1995 a. 336; 1997 a. 146; 2005 a. 217.

21 SECTION 8. 221.0302 (10) (b) of the statutes is created to read:

22 221.0302 (10) (b) *Exemption from location restrictions.* Subsections (7) (b) and
23 (8m) do not apply to any bank branch approved by the division on or before the
effective date of this paragraph [revisor inserts date].

24 SECTION 9. 221.0904 (1) (a) of the statutes is renumbered 221.0904 (a) (am). *number*

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3426/P1dn

ARG: ^...

date

Jld

ATTN: Matt Swentkofske

Please review the attached draft carefully to ensure that it is consistent with your intent.

For the most part the attached draft tracks the proposed language provided to me. I have made some adjustments to better fit the statutory sections into which these provisions are being inserted and to conform with drafting protocol. The attached draft generally incorporates the definitions provided to me, but I am uncertain why certain definitions were proposed. For example, I would have been inclined to use the definition of "affiliate" in s. 221.0901 (2) (a), which is derived from 12 USC 1841 (k). It is also not clear to me why the current definition of "out-of-state bank" in s. 221.0904 (1) (b) needs to be changed. Is it the exclusion of industrial loan companies in 12 USC 1841 (c) (2) (H)? Although the definitions of "bank" in 12 USC 1841 (c) and 12 USC 1813 (a) (1) differ, it is not apparent to me why the definition in 12 USC 1813 (a) (1) is so preferable that this change should be made, which will impact not only the provisions inserted by this bill but the untreated provisions of s. 221.0904 as well.

The proposed language provided to me includes a definition of "state bank" to be inserted into s. 221.0302. I believe that defining and using this terms in s. 221.0302, without more, would create a statutory ambiguity. As I read s. 221.0302, it appears to me that "bank" in s. 221.0302 means a state bank. If this is true, to add a definition of "state bank" and use both the term "state bank" and "bank" within the statutory section creates confusion and ambiguity and is contrary to our drafting protocol. For this reason, I have used the term "bank" in s. 221.0302 to mean a state bank and have not included the definition of "state bank" in created s. 221.0302 (1g). If you want the term "state bank" included in s. 221.0302, I will need to either change the other references to "bank" within this statutory section or define the term "bank" for this statutory section.

I have eliminated the "cause to be established or maintained" language in created s. 221.0302 (8m) because I believe this language largely overlaps with the language "indirectly establish or maintain" that is already included in the provision. In this same provision, I have also added, regarding circumventing the provisions of the subsection, language to address the likelihood that the bank may influence but may not have ultimate decision-making authority over the location of the affiliate's office.

I have added the word "directly" to the definition of "commercial activities," as it would seem that, if the bank is prohibited from indirectly engaging in such activities, it could not engage in them through an affiliate.

The combination of provisions in this bill imposing the prohibition and defining "affiliate" and "commercial activities" make the bill difficult to understand. In drafting this bill, I struggled to understand the impact of these two definitions on the prohibitions in the bill and how, or whether, operating subsidiaries interrelate with other affiliates. The bill provides virtually no enlightenment on what the "commercial activities" really are. I highly recommend that the bill be reviewed by DFI. You might consider whether DFI should be required to identify these "commercial activities" by rule or whether more standard or specific language could be used in lieu of the definition of "commercial activities." See, for example, Wis. Adm. Code DFI-Bkg 3.04 and 4.05 (1).

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

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Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
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LRB-3426/P1dn
ARG:jld:pg

November 19, 2007

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Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

Gary, Aaron

From: Swentkofske, Matthew
Sent: Wednesday, December 19, 2007 1:15 PM
To: Gary, Aaron
Subject: RE: One change to LRB 3426

Yep...everything else was good.

From: Gary, Aaron
Sent: Wednesday, December 19, 2007 1:05 PM
To: Swentkofske, Matthew
Subject: RE: One change to LRB 3426

Sure, do you then want this as an introducible "/1" draft? Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Swentkofske, Matthew
Sent: Wednesday, December 19, 2007 1:00 PM
To: Gary, Aaron
Subject: One change to LRB 3426

Aaron,

Can you eliminate the word directly on page 2, section 2 line 10....and also in the analysis in the paragraph 2.

Matt Swentkofske
Office of Senator Jim Sullivan
5th Senate District
matthew.swentkofske@legis.wisconsin.gov
608-266-2512



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3426/Pr 1

ARG:jld:pg

MR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Regen

1 AN ACT *to renumber* 221.0302 (1) and 221.0904 (1) (a); *to renumber and*
2 *amend* 221.0302 (7) and 221.0302 (10); *to amend* 221.0904 (1) (b); *to repeal*
3 *and recreate* 221.0302 (10) (title); and *to create* 221.0302 (1g), 221.0302 (7)
4 (b), 221.0302 (8m), 221.0302 (10) (b), 221.0904 (1) (ac) and (ag) and 221.0904
5 (4m) of the statutes; **relating to:** the location of bank branches.

Analysis by the Legislative Reference Bureau

Under current law, state banks may, upon application and approval of the Division of Banking (division) in the Department of Financial Institutions and subject to certain limitations, establish and maintain branch banks. Branch banks are subject to all laws and rules applicable to banks generally. In addition, out-of-state banks may establish branches in this state, subject to certain limitations.

This bill prohibits state banks and out-of-state banks from directly or indirectly establishing or maintaining in this state branches that are located within a 1.5-mile radius of premises or property owned, leased, or otherwise controlled, directly or indirectly, by a bank affiliate that engages in commercial activities. The bill defines "affiliate" as any company that directly or indirectly controls, or is under common control with, another company. The bill defines "commercial activities" as those activities in which a bank holding company, financial holding company, national bank, state bank, or state universal bank are not authorized to ~~directly~~ engage under federal or state law. Each bank must certify to the division compliance

with this prohibition. These provisions do not apply to branches approved by the division before the effective date of the bill.

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:

1 **SECTION 1.** 221.0302 (1) of the statutes is renumbered 221.0302 (1m).

2 **SECTION 2.** 221.0302 (1g) of the statutes is created to read:

3 221.0302 (1g) DEFINITIONS. In this section:

4 (a) "Affiliate" means any company that directly or indirectly controls, or is
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6 (b) "Bank holding company" has the meaning given in 12 USC 1841 (a).

7 (c) "Commercial activities" means those activities in which a bank holding
8 company, financial holding company, national bank, state bank, as defined in s.
9 221.0903 (1) (e), or state bank certified under ch. 222 as a universal bank are not
10 authorized to ~~directly~~ engage under federal or state law.

11 (d) "Company" has the meaning given in s. 221.0901 (2) (f).

12 (e) "Financial holding company" has the meaning given in 12 USC 1841 (p).

13 **SECTION 3.** 221.0302 (7) of the statutes is renumbered 221.0302 (7) (a) and
14 amended to read:

15 221.0302 (7) (a) General. ~~The~~ ^{plain} ~~Except as provided in par. (b), the~~ division shall
16 approve the establishment of a branch bank under sub. (1) (1m) or the conversion of
17 a bank to a branch bank under sub. (2) if the financial and managerial resources and
18 future prospects of the bank establishing a branch bank, or the surviving bank of a
19 merger or consolidation, are satisfactory to the division.

20 **SECTION 4.** 221.0302 (7) (b) of the statutes is created to read:

1 221.0302 (7) (b) *Location restrictions; certification of compliance.* The division
2 may not approve the establishment of a branch bank under sub. (1m), the conversion
3 of a bank to a branch bank under sub. (2), or the transfer of a branch bank under sub.
4 (3) if the establishment, conversion, or transfer would violate sub. (8m). Each bank
5 shall certify to the division that the location of a branch bank complies with sub. (8m).

6 **SECTION 5.** 221.0302 (8m) of the statutes is created to read:

7 221.0302 (8m) LOCATION RESTRICTIONS FOR BRANCH BANKS. Except as provided
8 in sub. (10) (b), no bank may directly or indirectly establish or maintain in this state
9 a branch bank that is located within a 1.5-mile radius of premises or property owned,
10 leased, or otherwise controlled, directly or indirectly, by an affiliate of the bank that
11 engages in commercial activities. No bank may circumvent the prohibition in this
12 subsection by first establishing a branch bank and then locating, or attempting to
13 influence or facilitate the location of, an office of the bank's affiliate engaged in
14 commercial activities within a 1.5-mile radius of the location of the branch bank.

15 **SECTION 6.** 221.0302 (10) (title) of the statutes is repealed and recreated to
16 read:

17 221.0302 (10) (title) EXEMPTIONS.

18 **SECTION 7.** 221.0302 (10) of the statutes is renumbered 221.0302 (10) (a) and
19 amended to read:

20 221.0302 (10) (a) *Grandfathered branch banks.* Every branch bank, branch
21 office, or bank station existing on August 1, 1989, is considered to be a branch bank
22 approved by the division under this paragraph.

23 **SECTION 8.** 221.0302 (10) (b) of the statutes is created to read:

1 221.0302 (10) (b) *Exemption from location restrictions*. Subsections (7) (b) and
2 (8m) do not apply to any bank branch approved by the division on or before the
3 effective date of this paragraph [revisor inserts date].

4 **SECTION 9.** 221.0904 (1) (a) of the statutes is renumbered 221.0904 (1) (am).

5 **SECTION 10.** 221.0904 (1) (ac) and (ag) of the statutes are created to read:

6 221.0904 (1) (ac) "Affiliate" has the meaning given in s. 221.0302 (1g) (a).

7 (ag) "Commercial activities" has the meaning given in s. 221.0302 (1g) (c).

8 **SECTION 11.** 221.0904 (1) (b) of the statutes is amended to read:

9 221.0904 (1) (b) "Out-of-state bank" ~~has the meaning given in s. 221.0903 (1)~~
10 (d) means any bank, as defined in 12 USC 1813 (a) (1), with a home state other than
11 this state.

12 **SECTION 12.** 221.0904 (4m) of the statutes is created to read:

13 221.0904 (4m) LOCATION RESTRICTIONS FOR BRANCHES OF OUT-OF-STATE BANKS. (a)
14 *General.* Except as provided in par. (c), no out-of-state bank may directly or
15 indirectly establish or maintain in this state a branch that is located within a
16 1.5-mile radius of premises or property owned, leased, or otherwise controlled,
17 directly or indirectly, by an affiliate of the out-of-state bank that engages in
18 commercial activities. No out-of-state bank may circumvent the prohibition in this
19 paragraph by first establishing a branch and then locating, or attempting to
20 influence or facilitate the location of, an office of the out-of-state bank's affiliate
21 engaged in commercial activities within a 1.5-mile radius of the branch location.

22 (b) *Certification of compliance.* Each out-of-state bank that establishes or
23 maintains a branch in this state shall certify to the division that the location of any
24 such branch complies with par. (a).

Barman, Mike

From: Swentkofske, Matthew
Sent: Friday, December 21, 2007 12:20 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-3426/1 Topic: The location of bank branches in proximity to affiliates

Please Jacket LRB 07-3426/1 for the SENATE.