

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3682/1dn

ARG:jld:pg

December 19, 2007

ATTN: Jason Culotta

Please review the attached draft carefully to ensure that it is consistent with your intent. This draft is identical to LRB-3426/P1, with the one requested change to remove the word "directly".

For the most part the attached draft tracks the proposed language previously provided to Attorney Kunkel. The draft makes 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 Attorney Kunkel, 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).

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.

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