

2007 DRAFTING REQUEST

Bill

Received: 12/19/2007

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Roger Roth (608) 266-7500

By/Representing: Jason Culotta

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: Rep.Roth@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>
/?	agary 12/19/2007	jdyer 12/19/2007		_____			State
/1			pgreensl 12/19/2007	_____	mbarman 12/19/2007	cduerst 01/08/2008	

FE Sent For: "/1" @ intro. 1-11-08

<END>

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/?	agary	12/19 jld	12/19 PJ	12/19 PJ			

FE Sent For:

<END>

Kunkel, Mark

From: Culotta, Jason
Sent: Tuesday, October 30, 2007 1:49 PM
To: Kunkel, Mark
Subject: ILC draft information

Attachments: 20071030133123497.pdf



2007103013312349

7.pdf (230 KB)...

Mark,

Per my phone message, attached is some information regarding a legislative draft Rep. Roth would like to have put together that would restrict the operation of banks owned by industrial loan companies in Wisconsin.

Please review the attached information and feel free to check in with me afterwards.

Sincerely,

Jason Culotta
Legislative assistant
Office of Representative Roger Roth



To: Wisconsin Legislators
From: Daryll Lund, Community Bankers of Wisconsin
Mike Semmann, Wisconsin Bankers Association
Date: October 15, 2007
Re: Seeking your support to amend Wisconsin's Bank Branching Laws

On behalf of the Community Bankers of Wisconsin representing 220 community banks and the Wisconsin Bankers Association representing over 300 financial institutions we are seeking your support for legislation that will amend Wisconsin's bank branching laws.

Background

This legislation is intended to preserve a competitive level playing field among financial institutions by amending Wisconsin's banking law to prohibit any bank (including "industrial loan banks") from establishing a banking office in this state if it would be located within a 1½ mile radius of property owned, leased, or controlled by an affiliate that engages in "commercial activities." "Commercial activities" are defined in the new law as activities that traditional banks and financial holding companies are prohibited from engaging in under federal law.

Summary of Proposal

- Any state bank or out-of-state bank (including an "industrial loan company") that is opening a branch office in Wisconsin would be prohibited from locating a branch within a 1-1/2 mile radius of property that is owned, leased or controlled by an affiliate that engages in "commercial activities."
- "Commercial activities" are defined as activities that traditional banks and holding companies are prohibited from engaging in under federal law (e.g. manufacturing; retail).
- For example, under this legislation, Wal-Mart Bank, while it could open a branch in Wisconsin, the branch could not be located within a 1-1/2 mile radius of a Wal-Mart store, because that store is owned or leased by a Wal-Mart affiliate that engages in "commercial activities." Similarly, a state bank would not be permitted to locate any branch within a 1-1/2 mile radius of an affiliate that engages in "commercial activities."
- It is unlikely that many Wisconsin banks would be affected by this new locational restriction since very few would even have an affiliate that is engaged in "commercial activities" prohibited for banks and holding companies. Even if there is any Wisconsin bank that would be affected by this new locational restriction, the legislation grandfathers any existing branches opened or approved before the effective date of the new law.
- Other states, including Maryland and Illinois, have recently enacted similar laws that impose branch location restrictions on all state banks and out-of-state banks, in an attempt to limit the unfair competitive advantages that industrial loan companies have compared with commercial banks and savings associations.
- Federal and state banking regulators have recently emphasized that any interstate branching legislation passed by a state must apply equally to all banks. This is a statutory requirement under the federal Riegle-Neal Interstate Branching Act.
- Federal banking regulators have permitted states to impose branch location restrictions in their interstate branching laws, so long as such restrictions are applied equally to all state banks and out-of-state banks, including industrial loan companies.

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 or national bank may not engage under federal 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) or the conversion of a bank to a branch bank under sub. (3) if the establishment of such branch 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 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.
- (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].

September 18, 2007

mw1364606_4

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

Gary, Aaron

From: Kunkel, Mark
Sent: Monday, December 10, 2007 3:52 PM
To: Gary, Aaron
Subject: FW: Bank Branching
Attachments: ILC Bill 07-3426P1.pdf

LRB-3426/P1 was attached to e-mail sent by Jason # HDK

Aaron:

Rep. Roth wants a companion bill to the p-draft referenced below that you did for Sen. Sullivan.

Note, however, that the constituent raised an issue about the draft, and I'm not sure whether you've addressed the issue yet. Can you give me an update?

I told Roth's aide that he could have a companion fairly soon.

-- Mark

From: Culotta, Jason
Sent: Monday, December 10, 2007 3:31 PM
To: Kunkel, Mark
Subject: FW: Bank Branching

Mark,
Please review this when you get a chance... I didn't realize a Senate office was also having this drafted. Looks like Aaron Gary has a draft already prepared.
Talk to you in a bit,
--Jason

From: Daryll Lund [mailto:daryll@communitybankers.org]
Sent: Monday, December 10, 2007 2:51 PM
To: Culotta, Jason
Subject: Bank Branching

Jason,

Did you ever get a bill draft back from LRB? Attached is what I received from Sen. Sullivan's office. We had one question with the drafter over incorporating the word "directly" in Section 2. (c). Once this issue is addressed the bill is ready for introduction.

I look forward to your reply.

Daryll

*Daryll J. Lund, CAE
President & CEO
Community Bankers of Wisconsin
455 County Road M, Suite 101
Madison, WI 53719
608-833-4229
daryll@communitybankers.org*

12/10/2007

Gary, Aaron

From: Culotta, Jason
Sent: Wednesday, December 19, 2007 11:57 AM
To: Gary, Aaron
Subject: RE: Bank Branching

Aaron,
Just got off the phone with the Community Bankers. They would like to change the draft to exclude the word "directly" in Section 2(c).
Could you get that prepared?
Feel free to attach a drafter's note, if need be.
Thanks,
--Jason

From: Gary, Aaron
Sent: Wednesday, December 19, 2007 11:51 AM
To: Culotta, Jason
Subject: RE: Bank Branching

Thanks Jason. When you have more info. and final details on the draft, let me know and I'll get it out to you quickly. Aaron

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

From: Culotta, Jason
Sent: Wednesday, December 19, 2007 11:10 AM
To: Gary, Aaron
Subject: RE: Bank Branching

Aaron,
Thank you for responding to me so promptly. I wasn't sure if someone from the Community Bankers or Senator Sullivan's office had been in contact with either or you on this issue.
I had passed your earlier correspondence on to the Community Bankers and will follow up with them today to see where they are at with proposals to change the draft.
Thanks, and I'll be in touch.
--Jason

From: Gary, Aaron
Sent: Wednesday, December 19, 2007 10:12 AM
To: Culotta, Jason
Cc: Kunkel, Mark
Subject: RE: Bank Branching

12/19/2007

Hi Jason,

Mark Kunkel advised that you called this morning regarding the status of this draft. I didn't hear back from you after I sent the e-mail below - I've been waiting to hear whether any change is needed to LRB-3426/P1 (given my e-mail response below) before completing a draft for your office.

Let me know. Thanks. Aaron

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

From: Gary, Aaron
Sent: Monday, December 10, 2007 4:55 PM
To: Culotta, Jason
Cc: Kunkel, Mark
Subject: RE: Bank Branching

Hi Jason,

Regarding the question at the bottom, I'll try to briefly reconstruct my thought process in adding "directly".

As the draft provides, the affiliate of the bank engages in commercial activities. (See, e.g., p. 3, lines 10-11 of LRB-3426/P1). At p. 2, line 10 of the draft, defining "commercial activities," I considered whether "authorized to engage" was intended to mean directly engage or both directly and indirectly engage. If the bank were prohibited from *indirectly* engaging in such activities, then the bank could not engage in such activities via the affiliate - so I think the first sentence of this e-mail paragraph would not make sense. I believe the draft as a whole makes sense only if the definition of "commercial activities" does not include activities which the bank may indirectly engage (that is, thru an affiliate). That is why I have inserted "directly", by implication leaving out "indirectly."

Aaron

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

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I look forward to your reply.

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President & CEO
Community Bankers of Wisconsin
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Madison, WI 53719
608-833-4229
daryll@communitybankers.org*

wanted
by 12/21
in 12/19

3682/1
LRB-3426/P1
ARG jld
pg

RM NR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Two changes p. 2 & analysis

D-Note

Reger

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
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~~^e 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 Δ} ~~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).

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

300/ldn
LRB-3426/PTdn
ARG:jld:pg

November 19, 2007 } new date

↑
stays

to remove the word "directly"

Culotta

ATTN: [redacted] 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

The draft makes

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.

Attorney Kunkel

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.~~

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

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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Duerst, Christina

From: Culotta, Jason
Sent: Tuesday, January 08, 2008 9:10 AM
To: LRB.Legal
Subject: Draft Review: LRB 07-3682/1 Topic: The location of bank branches in proximity to affiliates

Please Jacket LRB 07-3682/1 for the ASSEMBLY.