

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2300

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2300

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2300**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 23, 2007**

Recorder Job Number: **1636**

Committee Clerk Signature



Minutes:

Donald Forsberg – Executive VP of Independent Community Banks of ND – In Favor

TESTIMONY # 1 Goes over testimony [ends 11:08m]

S Klein: with the national banks, what sort of authority would they have?

D Forsberg: Regulation would come from the state, there is not National charter

S Klein: Can you give an example of commercial property.

D Forsberg: Wal-mart is a good example. This bill does not impact those. They want to offer full financial services and products.

S Klein: Then Wal-Mart can't build a property on their lot?

D Forsberg: Yes. This bill would require that t they need to acquire a separate piece of property at least 1 mile away from their commercial activities.

S Heitkamp: Why are banks being treated differently than Wal-Mart of the world would?

D Forsberg: this bill [13:47m explains]

If want to buy products, want financing, they need to get unbiased 3rd party if finances meet requirements independent of making a sale.

S Heitkamp: This is a Consumer protection bill?

D Forsberg: There is some consumer protection in our view.

S Heitkamp: How do other companies do that?

D Forsberg: I'm not sure on each and every store. Some large organizations have industry-owned companies and use them as a source of funding for financing.

Rick Clayburg – ND Bankers Association – In Favor

Presented the argument that there is a joint venture to address the issue. Concern, if the state of Utah. If state of Utah grants an industrial charter and that company seeks FDIC insurance and also seeks federal branching powers, under reciprocal agreements; i.e. if Wal-Mart were to get the insurance, and were granted branching powers, because of the agreements, ND and National banks compete every day with all sorts of competition. If they could take deposits, they would become one of the largest deposit-taking organizations overnight. They are taking deposits out of our communities.

[examples 19:20m] If Wal-Mart says, "if you buy this, you can take a loan out, and you can get 20% off your home furnishings for the next month." Creates an unlevel playing field.

If Wal-Mart would go bankrupt, it would shake up the national economy. In an industrial bank setting, they cannot put a bank in house, it must be one mile away. It gives the customer time to think and cool down.

S Heitkamp: I believe to let capitalism work. This flies in the face of that. If the consumer wants to one stop, shop. Bill fences the building, I'm not sure that's a good thing.

R Clayburg: I'm a free market person, but also think there is a distinction here. I think there is a distinction here because we're talking about an issue that Congress has addressed and there is a clear distinction between commerce and finance. Breach occurred to keep commerce and banking from melding.

Greg Tschider – Mid America CU Association – In Favor

Consumer can have "truth in lending". We require lenders to tell people what their effective interest rate is going to be. [25:44m example] When you get a loan, Banks and Credit Unions must give the fact. If Wal-mart gives you a discount on goods or services, you don't know what your actual rate is.

Robert Entringer – NDDFI In Favor

TESTIMONY # 2 Goes over testimony

S Hacker: Can you explain what the bill does? Aren't the banks finding innovative locations, expanding, are we building a fence that will stop business?

R Entringer: tough question. Wal-mart currently takes Credit Cards

Tim Karsky – NDDFI In Favor

Presented Amendment – changing the definition would be more effective, less costly and broaden the scope.

Q?

S Hacker: There was an unintended consequence that was going to occur because of what the bill does?

T Karsky: Correct

S Hacker: Have you foreseen any other situations?

MOTION TO PASS AMMENDMENT

Motion by S Andrist

Second by Heitkamp

6-0 DPAA

MOTION TO PASS AS AMMENDED

Motion by S Andrist

Second by Behm

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Senate Industry, Business and Labor Committee
Bill/Resolution No. **SB 2300**
Hearing Date: **January 23, 2007**

6-0 DO PASS AS AMMENDED

Carrier S Klein

Date: 1-23-07

Roll Call Vote: 2300

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2300

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number Prop. Amendment

Action Taken _____

Motion Made By Andrist Seconded By Behm

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Arthur	✓	
Senator Hacker, Nick VC	✓		Senator Heitkamp, Joel	✓	
Senator Andrist, John	✓		Senator Potter, Tracy	✓	
Senator Wanzek, Terry	✓				

Total Yes 6 No 0

Absent _____

Floor Assignment ~~Andrist~~

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2300: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2300 was placed on the Sixth order on the calendar.

Page 1, line 10, overstrike "bank" and insert immediately thereafter "depository institution"

Page 1, line 10, overstrike "1813(h)" and insert immediately thereafter "1813(c)(2)"

Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2300

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2300

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4865

Committee Clerk Signature



Minutes:

Chairman Keiser opened the hearing on SB 2300.

Sen. Klein: From the independent community banker. They came to me with a discussion and problem. What we hope to do with this bill is address a threat that we hold. Discussed the separation between the sale of products and services and from banking. Currently banks are prohibited by federal law from owning commercial business. I think the chairman made a point earlier. This could be the WalMart and Home Depot bill. There are a lot of commercial interests that are now pushing now for more of a banking interest. So the hope here is to help some main street businesses and our state banks and credit unions from this charter known as the industrial loan companies. One of the examples that was used in the senate that I like to use you can have a large lumber wholesaler who focuses on customers and contractors that do business with them. They offer loan discounts to those products that are purchased at the facility, which once again would be legal for banks to be, because of the current law. This bill does not prevent industrial loan companies from setting up branches, but it does limit where they can locate. The idea here is they can't locate on their commercial property or within one mile of that property. So the idea is that that consumer would have to drive over to the main

bank to get the discounted loan. By that time they would have thought this thing through and maybe changed their mind.

Rep. Ruby: is this going to conflict somewhat when banks have insurance companies within their properties?

Donald Forsberg: Independent Community Banks of ND: (see written testimony)

Rep. Dosch: So in other words as long as they are at least a mile away so they can set up a branch bank, if you will, as long as it is not within that mile radius of a store.

Don Forsberg: That is correct. The reason we went with the one mile and a half or two miles, but in ND because we happen to know that WalMart is one of those that is interested in a charter. Even though they are on record saying we are not interested in retail banking they only bank to use it for back office processing we also know they are in retail banking in Mexico and are looking at it in Canada.

Rep. Thorpe: Why the emergency clause?

Don Forsberg: The reason for the emergency clause, we understand trying to get a bill through congress takes years. Just in case FDIC is up against one more limit. They already gave us a 6 month limit. We said we would give congress another year, but then we are going to take a position. Rather than waiting, at the time we put this bill in, we weren't sure what FDIC was going to do. We knew congress had signed the letter saying FDIC we want time to act on this issue. This is a national issue; however, we weren't sure that the FDIC was going to extend the mortem. When the bill was put in place we were up against that January 26 deadline so we wanted something in place as quickly as possible and that was the reason for the emergency clause in the first place. Now we are in the position whether you pass it with or without the emergency clause we know that FDIC has already said we are giving it a year. So that part of it we can live with or without.

Rep. Thorpe: I guess I am not real familiar with savings and loan. Could they do a savings and loan or something in place of a bank?

Donald Forsberg: No, they can't own a savings institution either.

Rep. Ruby: Why is it so important to be in the premises of one mile?

Donald Forsberg: The reason for the mile is to get the separation. The big box stores put everything under one roof for convenience purposes. This bill is modeled after the state of Maryland that did not have the one mile separation. They buy a piece of property and put this big store on it. This is so they have to have the mile, then just like the banks; they don't put them next to each other. Then they are on equal footing as a regular institution.

Rep. Ruby: the one in Bismarck sells gas. They are separate from the building, but they are within the same section of land. Why is this so much different than that? This only makes it less convenient.

Donald Forsberg: that is why this bill is written like this, to make it less convenient for them, because that is all that we can do. We can not stop them from doing business; we can't stop them from locating here; we can't stop them from doing business on the internet for various reasons so all we can do is slow them down and say there has to be this separation. In the 30s they decided to have separation of banks and safe guards were put into place so that the credit and sales part of commerce was separated. That is why banks are so heavily regulated. That is why we can have both federal and state regulators if you are a state chartered institution or if you are a national chartered institution. Congress has to address this issue. A big concern for us is if this pulls deposits out of ND in particular, your communities where the deposits come from the fund the loans that your businesses use. These funds from WalMart and other box stores do not stay in North Dakota. They are pulled out of state.

Rep. Kasper: It seems to me in listening to you and reading your testimony that the argument here placing for the passage of this bill is sort of opposite to the banking institutions place to pass Grandmas Volly. Under Grandmas Volly the bankers said lets tear down the barriers between insurance and securities and banking so we can house them together. Here this bill is saying lets place barrier so the banks can not be together with another business.

Donald Forsberg: There are certain similarities to the argument as you pointed out. The huge difference is the type of businesses that are involved. It was deemed by congress that insurance in particular and securities are so fundamentally related to banking that crossing those barriers at one time was deemed to be one of the same. Many cases the argument was we otherwise will not be able to have, take the same institutions, take Gelva, there is one institution in town and one owned by a bank and staffed by the bank employees so the argument in that case is we understand their situation and therefore we are going to recognize that those businesses are so fundamentally related that we are going to allow those things to take place with the crossing of ownership. However, we are still going to say that sales of clothing, gas, recreational equipment have no direct connection to banking. We are going to maintain that barrier in place between ownership of commercial enterprises and banking. So, the very argument we are making today was addressed and they were up held. The difference was the industrial loan companies themselves were not part of the argument. Because the biggest one was about \$60,000,000.

Chairman Kasper: I would suggest that they only similarity they have it had to deal with money. Other than that they are totally different. If the bank did not have that insurance agency involvement, do you think there might be an insurance agent or two that would be there to service those insurances as an independent insurance person?

Donald Forsberg: No there would not be. The insurance agent that was involved had his business for sale for a long time and sold it. At the time the bank did not have an insurance agency as far as I know.

Rep. Kesier: You make a great argument, but for many retail operations in Bismarck and other communities, there is a bank in the store. They are owned by banks and have a physical location inside a store and they are making loans. It is already occurring? The difference is separate ownership and regulations.

Donald Forsberg: That is correct. I feel it is also another point. As far as ATM's are concerned, they can be owned by a third party, since they are not considered a bank per day... So it may not be a bank owned ATM. These banks in WalMart are separate entity and they bring in a lot of money for WalMart.

Rick Clayburg, ND Bankers Association: We are here in support of SB 2300. Our legislative committee specifically asked the bankers association to draft legislation similar legislation and found the sponsors. Most specifically that separation between commerce and banking is one that it is true; it is tried; it is not a failed experiment. Congress would look very closely at it and as Don explained the high LC's slipped under that radar screen and now what congress is doing is trying to close that loop hole. Until that is done, because of the State of Utah and a number of other states, if Utah grants WalMart a industrial loan company status and FDIC grants insurance for them and grants interstate banking rights for WalMart. WalMart because of the reciprocal agreements that many states have, will be able to bank in the 23 additional states. Now WalMart can come into a community, just like putting instant cash machines, then their stores can be one of the largest single depositories in our country. Can you imagine going into WalMart bank at the WalMart store and they say, by the way you take this loan out today for so much money for your home mortgage and we are going to give you

30% off everything for the next year in our store. The problem is are they using the retail to be the loss leader or are they using the banking side of it. The fact that you don't have a federal regulator that can over see that holding company aspect of it, WalMart can become so ingrained between their financial and their banking that the two aspects working together.

Could you imagine if somebody like Sears & Roebuck has this type of situation and they were activity involved in banking and commerce and were to file bankruptcy, Walmart, if something were to happen to them nationally and they were to file bankruptcy, it would put high pressure on our FDIC. This is an attempt to corrupt our economy in ND. Due to the fact that when Walmart comes in and they can be a bank they have the ability to come in and pull deposits out of our communities and it is those deposits that are used by our local banks to fund other businesses. Lets say Walmart is successful and they become a bank, if they drive business out and they be come the most attractive lending facility, what happens when that local hardware store comes in and they want to borrow money? WalMart says sure, but we would like to see your books. Does it make any sense for the person who you are going to be competition against has an opportunity to see your business plan and is going to decide if we are going to loan money to you. This is not an issue of consumer rights; it is trying to protect the strongest banking economy that has been built in the world because of that separation of banking economists. This is why the ND Bankers Association strongly endorses this bill.

Rep. Kasper: don't you think that consumers would not be able to get loans because the money is out of state. Don't you think if that would occur the consumers would be smart enough to take their money out of that WalMart bank and put it back into their local bank where they could get the loans because soon or later consumers do catch on to what they can and can't do at banks?

Rick Clayburg: Look at rural American and the decline in our economy. I have heard stories back when I was on the campaign tour statewide. They could put large amount of money into jumbo CD's and consumers might not notice.

Rep. Kasper: What would happen if these consumers would deposit in loan bank in WalMart and get a 30% discount here and there? How does that hurt the consumer if they are able to buy products for fewer prices.

Rick Clayburgh: Where the actual harm will come is where is that lost leader? The fact that WalMart would not be regulated as a holding company. How do we know what their lost leader is? Are they utilizing their banking product and selling that below costs? Are they taking other items when loss leaders have taken other competition out of business? Where that tie is so close between banking and commerce, the fact that the consumer is getting a better deal on their home furnishings or whatever, is not the concern. The concern is what if WalMart fails?

Rep. Kasper: Could not the ND federal financial regulatory institutions put in place regulations to help alleviate your concern about WalMart failing with the banking operation?

Rick Clayburgh: No, they could not. If WalMart is granted and industrial loan status that would be governed by the state of Utah as their home charter state.

Rep. Zaiser: I understand the national about a lost leader. Why is it important to know where the lost leader is?

Rick Clayburgh: The breaking down of that wall that is the real issue. The separation between banking and commerce. As I said in the beginning, it is not a failed experimental it is something that has created one of the strongest financial economies in the world. Banks are so heavily regulated and commercial firms are not.

Rep. Steve Zaiser: It is not another argument, not that I am for WalMart and destroying little small communities, but to me the fact that they don't point out what a lost leader is vs. where they are making money. To me I still don't understand why that should difference?

Rick Clayburgh: The lost leader issue is just one of the minor aspects in this. The most significant aspect is the lose of deposits that are utilized in the community to support the community.

Rep. Steve Zaiser: It is not happening now. Aren't they affecting the local banks already? I am not able to distinguish why this big box store have a holding company would really destroy the integrity of the local bank? I can understand why the local banks would oppose it.

Rep. Thorpe: I just want to remind you some years back when I first got into the selling game that is one of the first things I learned was when you made the sale you quite selling.

Rep. Nottestad: One of the big things you emphasized is that it takes money out of the community. What is the difference Mr. Clayburgh between money going out of the community by a bank in Kmart vs. money going out of the community by a Gate City moving into Park River for example? That money goes out of the community.

Rick Clayburg: I am not fully following your issue because I state that from the stand point that because of community reinvestment act banks have a certain responsibility for maintaining a certain level of deposits within the community. They also must also reinvest back within their community. Those types of regulations do not apply in an ILC situation. I recall these comments back in the 93 session when we looked at grant and interstate banking. The same discussions came up. If you look at history, those banks, whether they are large multi state banks or community banks assets have been maintained within communities for the needs of that community.

Rep. Ruby: City Bank with all their credit cards. Their fees and interest are all going out of state as well so it is very similar in that way. What would happen to the economy if that institution went bankrupt?

Rick Clayburg: That stand point that is one of the reasons our federal and state regulators regulate and look as closely as they do at banks to make sure the bank is being operated in a way that is protecting its safety and soundness.

Rep. Kasper: Zap, ND is near my home town of Beulah and I believe Union State Bank of Hazen has a branch in Zap. Let's just say they do and there is hardly any loan demand for businesses in Zap. Yet there is 400-500 people that live in the area. If there is no loan demand or very little? Where do those dollars go?

Rick Clayburg: They will remain in the community. They would be within the holding bank, but the cash would be invested by the bank to earn money? Banks do that to make their money work.

Rep. Amerman: Say we don't pass this and in the mean time ILC uses the Utah connection and comes into ND and sets up one here. Then the Feds pass legislation that they can't do this? Will they have to stop then?

Rick Clayburg: I don't know that. I don't know if there would be a grandfather provision.

Don Forsberg: They did grandfather in existing businesses. I would think that is what is going to happen here. Target does own Industrial Loan Company. They did it quietly years ago and they have not used it to expand into banking. They are using it specifically in credit card processing etc.

Rep. Steve Zaiser: We know we are talking about keeping those big box stores out of ND.

Do they have any opportunity to go after us that we are targeting them in terms of trying to do unfair business practices?

Don Forsberg: The answer is no. FDIC and OCC and Federal Reserve have all looked at the Maryland law and have given their blessing on that so now we have got the federal regulators saying we understand this law and there is no discrimination for institutions so we should be OK.

Rep. Keiser: You mentioned ILC's don't meet the needs of the community reinvestment act, is that correct?

Rick Clayburg: I am not completely certain of the community reinvestment act of itself so I don't know of that particular regulation.

Rep. Keiser: I have that in my notes that they do not fall into that regulation.

Donald Forsberg: It is not up to the FDIC extended it for a year. If it is such a loop hole and such a bad thing why don't they just close it.

Rick Clayburg: It is not up to the FDIC. It is congressional action to close it. They have the ability to deny the application and they can say because it was not intended by congress. We would hope they would do that. We are saying this is a loop hole and congress needs to close it. We can't rely on the FDIC in the situation.

Rep. Kasper: The consumers of ND would be protected by the FDIC.

Don Forsberg: That was my statement. If a company like that would fail the pressures of that that would be put on FDIC because they would be insured by them.

Rep. Steve Zaiser: You talk about one senator holding this up, why would one senator hold this up?

Don Forsberg: The senator is from the state of Utah. There is a law that limits the number and amount of deposits that can be held by any one institution in this country. Congress deemed it important enough to put a cap on how big banks can get. The reason for that is it is deemed to be too much aggregation for the entire deposits and banking within one institution

and it only has about six banks total. Here we have thousands and that is important because each and every one of those banks survival depends on communities that they are located in. City Bank is involved in South Dakota.

Opposition: None

Hearing closed.

Chairman Keiser: reopened the hearing on SB 2300.

Do Pass Motion made by Rep. Amerman Seconded By Rep. Thorpe

Discussion:

Rep. Donald Dietrich: I am a little confused. The industrial loan companies that offer discounted loans that is consumer orientated. Last session we had a bill which was WalMart one with the gasoline bill; we wanted to protect oil companies and distributors in the state and we were told two years ago the sky was going to fall because our locals were going to go out of business. Local banks can house insurance companies, real estate property holdings or organizations in their bank that will manage real estate property and they competitive with independent insurance carriers and local realtors and I wonder how they would feel about it if we regulated their local banks where they would have to have their insurance office one mile away from their holdings or their real estate commercial departments one mile away. I can support the bill.

Rep. Dosh: I believe the scope of this bill deals with location. With the pending federal regulation that is coming down in this case I think perhaps it is wise to try and slow these guys down a little bit. The key in all this is the regulation aspect. The holding companies aren't regulated. When they start talking about intermingling of commercial vs. the banking end of it that is a concern. They can go out and offer zero percent on a TV from Sam's Club. The bank can operate at a lose because they going to make it up on the retail end of it or they can lose

discount on the retail end of it, but they are going to charge that 18% interest on that loan that consumers don't look at. Although this only talks about location I think it is wise to pass this bill and give the Feds time to look at this.

Rep. Ruby: I understand the concerns. I have a problem with requiring them to move a mile away, but they can still do it. The convenience is for the consumer so the less convenient the make it for the consumer, the more likely that they may not use their service.

Rep. Steve Zaiser: right now they can do that lost leader anyway. Charge so much and give away free tires. In Nevada the master plan for WalMart is to have every square mile they plan to put a WalMart. So they are doing these smaller stores every mile.

Rep. Kasper: In the 2001 session when we had a big battle on financial privacy after the law was passed, which the privacy issue is now settled in ND. I fought for years to keep insurance securities and banks separate because of the fact of what is occurring now in the market place in ND. I read the newspapers in Fargo and look at who is being hired and you read bank A is hiring this person for their insurance; this person for the real estate; this person for the securities and on down the list. In 2001 Grandma's Volly Act was the beginning of the end of small business and competition in the insurance competition in the insurance and financial services industries in small towns for sure and now we are seeing it in the large towns. The banks argued to allow those barriers to be broken down so they could offer these consumers and competition. What happens is there is no competition because when small business goes out of business you only have one place to go and that it the bank. Now this bill is exactly the opposite saying we don't want to allow the big box stores to compete where they have everything under one roof. We want to take that financial services and make it go a mile away from where the products being sold and the consumers are being served so this is exactly the opposite of how the banks argued to break down the barriers of the Grandma Volly act.

Rep. Clark: It is my understanding of this bill that it won't keep WalMart from opening a bank. It will only allow them to open the bank a mile away from their store and if they do that all the bad things that we heard about from the podium will happen the only difference is the store is going to be a mile away from where they do business. Is that the proper understanding of this bill?

Vote: 10 Yes 4 No Absent 0 Carrier: Rep. Dosch

Hearing closed.

Date: 3-12-07
 Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2300

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Amerman Seconded By Rep. Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser		X
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 10 No 4

Absent 0

Floor Assignment Rep. Dosch

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 12, 2007 1:16 p.m.

Module No: HR-46-4965
Carrier: Dosch
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2300, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2300 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2300

TESTIMONY OF DONALD FORSBERG, EVP
INDEPENDENT COMMUNITY BANKS OF NORTH DAKOTA
PRESENTED TO THE SENATE INDUSTRY, BUSINESS AND
LABOR COMMITTEE

JANUARY 23, 2007

Same given to House

Good morning Chairman Klein and members of the Industry, Business and Labor Committee. My name is Donald Forsberg and I am the Executive Vice President of Independent Community Banks of North Dakota. Independent Community Banks of North Dakota is a banking association which exclusively represents community banks throughout the state of North Dakota.

I am here today to testify in favor of Senate Bill 2300 which was introduced at our request. Please bear with me as I explain the issue this bill is intended to address and the purpose for this bill. This bill is intended to partially address a threat to a long held principle of doing business in the United States which is maintaining the separation between commerce (sales of products and services) and banking (credit and deposit services). Congress has on multiple occasions reaffirmed its position that commerce and banking should remain separate most recently being in 1999 with the passage of the Gramm-Leach-Bliley Act.

Congress will again be addressing this issue in 2007 when it considers legislation to permanently close the industrial loan company loophole recently discovered by the "Big Box" stores. However, due to the uncertainties of waiting for Congress, at least 15 states have already passed, or are in the process of considering, legislation to slow or stop the mixing of commerce and banking.

As additional background for this bill allow me to define what an Industrial Loan Company (ILC) is. Industrial Loan Companies are limited powers banks, chartered in 6 states, that are insured by the Federal Deposit Insurance Corporation (FDIC) just as banks are. Because Industrial Loan Companies are not included in the scope of the Bank Holding Company Act as all other bank holding companies are they are not subject to the bank holding company regulations or the supervision of the Federal Reserve. This means

#1
2300

they face less restriction on their operations and less regulator scrutiny than banks and their bank holding companies.

Then Chairman of the Federal Reserve, Alan Greenspan wrote a 12 page letter to Congress in 2005 opposing the "loophole" which allows industrial loan companies to be owned by commercial businesses. In his letter he stated "These changes are undermining the prudential framework that Congress has carefully crafted and developed for the corporate owners of other full service banks. Importantly, these changes also threaten to remove Congress' ability to determine the direction of our nation's financial system with regard to the mixing of banking and commerce and the appropriate framework of prudential supervision. I urge Congress to review the ILC exemption and the potential that it will further undermine the policies Congress has established to govern the banking system generally and create an uneven playing field among organizations that own a bank."

One of our concerns with industrial loan companies is that they are owned by out-of-state commercial firms who likely would draw monies out of state to fund their corporate needs and this means less deposit base would be available for local institutions to fund their local communities lending needs.

As stated earlier in my testimony, another concern is that ownership of industrial loan companies has caught the attention of "Big Box" stores such as Wal Mart and Home Depot. Both of these organizations have applications in process to charter industrial loan companies. While Wal Mart has stated, they "only want to use the charter for back room processing of debit and credit cards" and that "they are not interested in retail banking", they are in fact today in the retail banking business in Mexico and are pursuing retail banking in Canada. On the other hand, Home Depot has openly stated in its application for an industrial loan company charter that they will offer retail credit with a focus on customers of contractors that do business with them. Imagine the impact on locally owned businesses like lumberyards, building material suppliers, hardware stores, appliance stores etc. in your local communities.

This raises a number of questions which Congress needs to address including:

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- Will customers be able to compare and get competitive pricing for the product and pricing for the financing as they do today or will the “true” cost of the product vs. financing become more difficult to determine?
- If community banks are driven out of business will the “Big Box” competitors provide business financing for small businesses with which they compete if the community bank is out of business?
- Is the consumer likely to receive the same access to credit and pricing whether or not they do business with the commercial parent?
- What would have happened if some of the more spectacular failures of large companies such as Enron or Worldcom had owned an Industrial Loan Company?

The answer to these and many more questions on this issue is critical not only to community banks but also to their customers and the small businesses in their communities.

You may wonder why this bill doesn't ask for a strict prohibition to prevent industrial loan companies from doing business in this state. The answer is that North Dakota is one of more than 20 states that offer reciprocity in their banking laws to other states that have similar regulatory provisions. A number of North Dakota banks have taken advantage of the reciprocity to establish banks in other states. The Federal Deposit Insurance Corporation, Office of the Comptroller of Currency and the Board of Governors of the Federal Reserve have issued a joint letter responding to a request from the legal counsel for the Conference of State Bank Supervisors on the effect of state laws on ILCs by stating that any state statutes related to banks cannot discriminate and must apply equally to all banking institutions including permitting all out-of-state banks to establish de novo branches in that state. The letter cites the Riegle Neal Interstate Branching and Efficiency Act of 1994 as the source for their opinion. This means we cannot prohibit one type of bank from branching here since to do so would be in violation of this federal statute.

This leads to the language in the bill before you. The language in bill 2300 does apply equally to all classes of banks. The bill language does not prohibit any financial institutions now or in the future from locating on a commercial business property so long as they are not affiliated with the commercial business on whose property they are

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located. The bill does not apply to any activities of a bank authorized under federal banking regulations. The bill is also, at best, a stop gap measure and the real solution to this issue is Congressional action.

In summary, while we cannot prevent Industrial Loan Companies from setting up branches in our state we are asking for your DO PASS support on this bill to at least create a buffer zone which will force the commercial parent to consider the added costs of establishing a branch in our communities in the state. We also believe the passage of this bill will be a strong signal to Congress that permanent solution is being asked for by states. I thank you for your time and I am available for any questions you may have.

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1-23-2007

TESTIMONY FOR SENATE BILL NO. 2300

Senate Industry, Business and Labor Committee

Testimony of Robert J. Entringer, Assistant Commissioner, Department of Financial Institutions in support of Senate Bill No. 2300

Chairman Klein and members of the Senate Industry, Business and Labor Committee, my name is Bob Entringer, Assistant Commissioner for the North Dakota Department of Financial Institutions. I am here today to offer an amendment to Senate Bill No. 2300.

Mr. Chairman and members of the Committee, the purpose of the amendment is to broaden the definition of "Bank" as that term is used in Chapter 6-08.4. Late last week I was contacted by an attorney whose client is a North Dakota state-chartered bank; the bank holding company, which owns the North Dakota bank, currently is negotiating to purchase a federal savings association in Minnesota. If the transaction goes forward the North Dakota bank would like to merge the federal savings association into the North Dakota bank and operate an interstate branch. Presently the definition of bank as used in the chapter means any national or State bank, and any Federal branch and insured branch; any *former* savings association that has converted from a savings association charter; and is a Savings Association Insurance Fund member. As presently defined, a current savings association

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is not included. In order to accomplish the transaction as desired would presently be very costly to the North Dakota bank as it would require conversion of the federal savings association to a national or State bank and then proceed with the merger. Changing the definition would be more effective, less costly and broaden the scope of acquisition possibilities for North Dakota banks.

Mr. Chairman and members of the Committee, I would urge adoption of this amendment and would be happy to answer any questions that you may have.

Thank you.

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2300

Page 1, line 10, overstrike the second "bank" and insert immediately thereafter "depository institution"

Page 1, line 10, overstrike "(h)" and insert immediately thereafter "(c) (2)"

Renumber accordingly

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