

Union Calendar No. 92

110TH CONGRESS
1ST SESSION

H. R. 698

[Report No. 110–155]

To amend the Federal Deposit Insurance Act to establish industrial bank holding company regulation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2007

Mr. GILLMOR (for himself, Mr. FRANK of Massachusetts, Mrs. MALONEY of New York, Mr. SCHIFF, Mrs. JONES of Ohio, Mr. DOYLE, Mr. GUTIERREZ, Ms. WATSON, Mr. SMITH of New Jersey, Mrs. MUSGRAVE, Mr. GEORGE MILLER of California, Mr. GOODE, Mr. ALEXANDER, Mr. FARR, Mr. GRIJALVA, Mr. HOLDEN, Mr. FORTENBERRY, Mr. LAHOOD, Mr. SALAZAR, Mr. MCGOVERN, Mr. AL GREEN of Texas, Mr. PRICE of North Carolina, Mr. PETERSON of Minnesota, Ms. FALLIN, Ms. CASTOR, Mr. UDALL of Colorado, Mr. CHANDLER, Mr. LAMBORN, Ms. CARSON, Mr. HODES, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Financial Services

MAY 16, 2007

Additional sponsors: Mr. LINCOLN DAVIS of Tennessee, Mr. ELLISON, Mr. CAPUANO, Mr. WELCH of Vermont, Mr. BOREN, Ms. LORETTA SANCHEZ of California, Mr. BOSWELL, Mr. BISHOP of Georgia, Mr. DEAL of Georgia, Mr. JORDAN, Ms. DEGETTE, Mr. WILSON of Ohio, Mr. ETHERIDGE, Mr. OBERSTAR, Mr. PATRICK MURPHY of Pennsylvania, Ms. MCCOLLUM of Minnesota, Mr. REHBERG, Mr. GILCHREST, Mr. WOLF, Mr. WHITFIELD, Mr. RYAN of Ohio, Mr. COBLE, Ms. BALDWIN, Ms. FOXX, Mr. TIERNEY, Mr. WICKER, Mr. YARMUTH, Mr. CARNAHAN, Ms. SUTTON, Mr. DOGETT, Mr. GOHMERT, Mr. ROGERS of Alabama, Mr. PERLMUTTER, Mr. SESTAK, Ms. BERKLEY, Ms. HERSETH SANDLIN, Mr. LUCAS, Mr. BRALEY of Iowa, Mr. SPACE, Mr. GORDON, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. HOLT, Mr. WEXLER, Mr. CARNEY, Mr. PASCRELL, Mr. CARDOZA, Mr. MICHAUD, Mr. BOUCHER, Ms. MATSUI, Mr. ROTHMAN, Mr. SMITH of Nebraska, Mr. MILLER of North Carolina, Mr. NEAL of Massachusetts, Mr. TERRY, Mr. LYNCH, Mr. SHERMAN, Mr. DELAHUNT, Mr. MURTHA, Ms. WASSERMAN SCHULTZ, Mr. POMEROY,

Mrs. BOYDA of Kansas, Mrs. MYRICK, Mr. BARRETT of South Carolina, Ms. WOOLSEY, Mr. TURNER, Mr. MARSHALL, Ms. MOORE of Wisconsin, Mr. JOHNSON of Illinois, Mr. DEFazio, Mr. WALZ of Minnesota, Mr. LOEBSACK, Mr. MILLER of Florida, Mr. KAGEN, Ms. HOOLEY, Mr. ROSS, Mr. JINDAL, Ms. NORTON, Mr. THORNBERRY, Mrs. MCCARTHY of New York, Mr. LEWIS of Georgia, Ms. HARMAN, Mr. RAHALL, Mr. MCNERNEY, Mr. FILNER, Mr. PEARCE, Mr. ABERCROMBIE, Mr. ADERHOLT, Mr. BLUMENAUER, Mr. MORAN of Kansas, Mr. BARTLETT of Maryland, Mr. HAYES, Mr. GERLACH, Ms. GIFFORDS, Mr. EDWARDS, Ms. SCHWARTZ, Mr. MANZULLO, Mr. BURGESS, Mr. LATHAM, Mrs. WILSON of New Mexico, Mr. BAIRD, Mr. LATOURETTE, Mr. PLATTS, Mr. RENZI, Mr. HARE, Mr. BARROW, Mr. BLUNT, Mr. SIRES, Mrs. CAPPS, Mr. ALTMIRE, Mr. MORAN of Virginia, Ms. VELÁZQUEZ, Mr. HOEKSTRA, Mr. WAMP, Ms. ESHOO, and Mr. WYNN

MAY 16, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 29, 2007]

A BILL

To amend the Federal Deposit Insurance Act to establish industrial bank holding company regulation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Industrial Bank Hold-*
 5 *ing Company Act of 2007”.*

6 **SEC. 2. INDUSTRIAL BANK HOLDING COMPANY REGULA-**
 7 **TION.**

8 *(a) DEFINITIONS.—*

(1) *INDUSTRIAL BANK*.—Section 3(a) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)) is amended by adding at the end the following new paragraph:

“(4) *INDUSTRIAL BANK*.—The term ‘industrial bank’ means any insured State bank that is an industrial bank, industrial loan company, or other institution that is excluded, pursuant to section 2(c)(2)(H) of the Bank Holding Company Act of 1956, from the definition of the term ‘bank’ for purposes of such Act.”.

(2) *INDUSTRIAL BANK HOLDING COMPANY*.—Section 3(w) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)) is amended by adding at the end the following new paragraphs:

“(8) *INDUSTRIAL BANK HOLDING COMPANY*.—The term ‘industrial bank holding company’ means any company that—

“(A) controls (as determined by the Corporation pursuant to section 2(a) of the Bank Holding Company Act of 1956), directly or indirectly, any industrial bank; and

“(B) is not—

“(i) 1 or more of the following: a bank holding company, a savings and loan hold-

ing company, a company that is subject to the Bank Holding Company Act of 1956 pursuant to section 8(a) of the International Banking Act of 1978, or a holding company regulated by the Securities and Exchange Commission pursuant to section 240.15c3-1(a)(7) of title 17 of the Code of Federal Regulations (as in effect on January 29, 2007); or

“(ii) controlled by a company described in clause (i).

“(9) CAPITAL TERMS RELATING TO INDUSTRIAL BANK HOLDING COMPANIES.—

“(A) ADEQUATELY CAPITALIZED.—With respect to an industrial bank holding company, the term ‘adequately capitalized’ means a level of capitalization which meets or exceeds all applicable Federal regulatory capital standards.

“(B) WELL CAPITALIZED.—With respect to an industrial bank holding company, the term ‘well capitalized’ means a level of capitalization which meets or exceeds the required capital levels for well capitalized industrial bank holding companies established by the Corporation.”.

1 (3) *TECHNICAL AND CONFORMING AMENDMENTS*
 2 *TO OTHER DEFINITIONS.*—

3 (A) *APPROPRIATE FEDERAL BANKING AGEN-*
 4 *CY.*—Section 3(q)(3) of the *Federal Deposit In-*
 5 *surance Act (12 U.S.C. 1813(q)(3))* is amend-
 6 *ed*—

7 (i) by striking “or a foreign” and in-
 8 serting “, any foreign”; and

9 (ii) by inserting “, and any industrial
 10 bank holding company and any subsidiary
 11 of an industrial bank holding company
 12 (other than a bank)” after “insured
 13 branch”.

14 (B) *DEPOSITORY INSTITUTION HOLDING*
 15 *COMPANY.*—Section 3(w)(1) of the *Federal De-*
 16 *posit Insurance Act (12 U.S.C. 1813(w)(1))* is
 17 *amended*—

18 (i) by striking “or a savings” and in-
 19 serting “, any savings”; and

20 (ii) by inserting “, and any industrial
 21 bank holding company” before the period at
 22 the end.

23 (b) *INDUSTRIAL BANK HOLDING COMPANY REGISTRA-*
 24 *TION AND OWNERSHIP.*—The *Federal Deposit Insurance*

1 *Act (12 U.S.C. 1811 et seq.) is amended by adding at the*
 2 *end the following new section:*

3 **“SEC. 51. INDUSTRIAL BANK HOLDING COMPANY REGULA-**
 4 **TION.**

5 *“(a) ACQUISITION OF INDUSTRIAL BANK SHARES OR*
 6 *ASSETS.—Section 3 of the Bank Holding Company Act of*
 7 *1956 (other than section 3(c)(3)(B) of that Act) shall apply*
 8 *to any company that is or would become an industrial bank*
 9 *holding company in the same manner as such section ap-*
 10 *plies to a company that is or would become a bank holding*
 11 *company, except that for purposes of applying this sub-*
 12 *section—*

13 *“(1) any reference to a ‘bank holding company’*
 14 *in such section 3 shall be deemed to be a reference to*
 15 *an ‘industrial bank holding company’;*

16 *“(2) any reference to a ‘bank’ in such section*
 17 *shall be deemed to be a reference to an ‘industrial*
 18 *bank’;*

19 *“(3) any reference to the ‘Board’ in such section*
 20 *shall be deemed to be a reference to the Corporation;*

21 *“(4) any reference to the ‘Bank Holding Com-*
 22 *pany Act Amendments of 1970’ in such section shall*
 23 *be deemed to be a reference to the ‘Industrial Bank*
 24 *Holding Company Act of 2007’;*

1 “(5) any reference to a ‘home State’ in such sec-
2 tion 3 shall be deemed to be a reference to—

3 “(A) with respect to an industrial bank
4 holding company, the State in which the total
5 deposits of all banking subsidiaries of such com-
6 pany were the largest on the later of—

7 “(i) January 28, 2007; or

8 “(ii) the date on which the company
9 becomes an industrial bank holding com-
10 pany under this section; and

11 “(B) with respect to an industrial bank, the
12 home State of the bank as determined under sec-
13 tion 44(g);

14 “(6) any reference to a ‘host State’ in such sec-
15 tion 3 shall be deemed to be a reference to—

16 “(A) with respect to an industrial bank
17 holding company, a State, other than the home
18 State of the company, in which the company
19 controls, or seeks to control, an industrial bank
20 subsidiary; and

21 “(B) with respect to an industrial bank, the
22 host State of the bank as determined under sec-
23 tion 44(g);

24 “(7) any reference to an ‘out-of-State bank hold-
25 ing company’ in such section 3 shall be deemed to be

1 *a reference to, with respect to any State, an indus-*
 2 *trial bank holding company whose home State is an-*
 3 *other State; and*

4 *“(8) any reference to an ‘out-of-State bank’ in*
 5 *such section 3 shall be deemed to be a reference to,*
 6 *with respect to any State, an industrial bank whose*
 7 *home State is another State.*

8 *“(b) APPLICATION PROCESS.—An application filed*
 9 *under subsection (a) to acquire control of an industrial*
 10 *bank shall be treated as an application for a deposit facility*
 11 *for purposes of this Act and any other Federal law.*

12 *“(c) REGISTRATION.—*

13 *“(1) IN GENERAL.—Each industrial bank hold-*
 14 *ing company shall register with the Corporation on*
 15 *forms prescribed by the Corporation before the end of*
 16 *the 180-day period beginning on the later of—*

17 *“(A) the date the company becomes an in-*
 18 *dustrial bank holding company; or*

19 *“(B) the date of the enactment of the Indus-*
 20 *trial Bank Holding Company Act of 2007.*

21 *“(2) INFORMATION TO BE INCLUDED.—Each reg-*
 22 *istration submitted under paragraph (1) shall include*
 23 *such information, under oath, with respect to the fi-*
 24 *nancial condition, ownership, operations, manage-*
 25 *ment, and intercompany relationships of the indus-*

1 *trial bank holding company and subsidiaries of such*
 2 *holding company, and other factors (including infor-*
 3 *mation described in subsection (d)(1)(C)), as the Cor-*
 4 *poration may determine to be appropriate to carry*
 5 *out the purposes of this section.*

6 “(3) *EXTENSION OF TIME FOR SUBMITTING COM-*
 7 *plete information.*—Upon application by an in-
 8 *dustrial bank holding company and subject to such*
 9 *requirements, factors, and evidence as the Corporation*
 10 *may require, the Corporation may extend the period*
 11 *described in paragraph (1) within which such com-*
 12 *pany shall register and file the requisite information.*

13 “(d) *REPORTS AND EXAMINATIONS.*—

14 “(1) *REPORTS.*—

15 “(A) *REPORTS REQUIRED.*—Each indus-
 16 *trial bank holding company and each subsidiary*
 17 *of an industrial bank holding company, other*
 18 *than an industrial bank, shall file with the Cor-*
 19 *poration such reports as may be required by the*
 20 *Corporation.*

21 “(B) *FORM AND MANNER.*—Reports filed
 22 *under subparagraph (A) shall be made under*
 23 *oath and shall be in such form and for such peri-*
 24 *ods, as the Corporation may prescribe.*

1 “(C) *INFORMATION.*—*Each report filed*
2 *under subparagraph (A) shall contain such in-*
3 *formation as the Corporation may require con-*
4 *cerning—*

5 “(i) *the operations of the industrial*
6 *bank holding company and the holding*
7 *company’s subsidiaries;*

8 “(ii) *the financial condition of the in-*
9 *dustrial bank holding company and such*
10 *subsidiaries, together with information on*
11 *systems maintained within the holding com-*
12 *pany or within any such subsidiary for*
13 *monitoring and controlling financial and*
14 *operating risks, and transactions with in-*
15 *sured depository institution subsidiaries of*
16 *the holding company;*

17 “(iii) *compliance by the industrial*
18 *bank holding company and the holding*
19 *company’s subsidiaries with all applicable*
20 *Federal and State law; and*

21 “(iv) *such other information as the*
22 *Corporation may require.*

23 “(D) *ACCEPTANCE OF EXISTING RE-*
24 *PORTS.*—*For purposes of this paragraph, the*
25 *Corporation may accept reports that an indus-*

1 *trial bank holding company or any subsidiary of*
2 *such company has provided or has been required*
3 *to provide to any other Federal or State super-*
4 *visor or to any appropriate self-regulatory orga-*
5 *nization.*

6 “(2) *EXAMINATIONS.*—

7 “(A) *IN GENERAL.*—*Each industrial bank*
8 *holding company and each subsidiary of each*
9 *such holding company (other than an industrial*
10 *bank) shall be subject to such examinations by*
11 *the Corporation as the Corporation may pre-*
12 *scribe for purposes of this section.*

13 “(B) *FURNISHING REPORTS TO OTHER*
14 *AGENCIES.*—*Examination and other reports*
15 *made or received under this section may be fur-*
16 *nished by the Corporation to any other appro-*
17 *priate Federal agency or any appropriate State*
18 *bank supervisor or other State financial super-*
19 *visory agency.*

20 “(C) *USE OF REPORTS FROM OTHER AGEN-*
21 *CIES.*—*The Corporation may use, for the pur-*
22 *poses of this subsection, reports of examination*
23 *made by any other appropriate Federal agency,*
24 *any appropriate State bank supervisor, or any*
25 *other State financial supervisory authority with*

1 *respect to any industrial bank holding company*
2 *or subsidiary of any such holding company, to*
3 *the extent the Corporation may determine such*
4 *use to be feasible for such purposes.*

5 “(3) *CAPITAL.*—

6 “(A) *IN GENERAL.*— *The Corporation may*
7 *not, by regulation, guideline, order, or otherwise,*
8 *prescribe or impose any capital or capital ade-*
9 *quacy rules, guidelines, standards, or require-*
10 *ments on any functionally regulated affiliate (as*
11 *defined in section 45) of any depository institu-*
12 *tion that is controlled by an industrial bank*
13 *holding company that—*

14 “(i) *is not a depository institution;*

15 *and*

16 “(ii) *is—*

17 “(I) *in compliance with the appli-*
18 *cable capital requirements of the ap-*
19 *propriate Federal supervisory agency*
20 *of the affiliate (including the Securities*
21 *and Exchange Commission or State in-*
22 *surance authority);*

23 “(II) *properly registered as an in-*
24 *vestment adviser under the Investment*

1 *Advisers Act of 1940, or with any*
 2 *State; or*

3 “(III) *is licensed as an insurance*
 4 *agent with the appropriate State in-*
 5 *surance authority.*

6 “(B) *RULE OF CONSTRUCTION.*—Subpara-
 7 *graph (A) shall not be construed as preventing*
 8 *the Corporation from imposing capital or cap-*
 9 *ital adequacy rules, guidelines, standards, or re-*
 10 *quirements with respect to—*

11 “(i) *activities of a registered invest-*
 12 *ment adviser other than with respect to in-*
 13 *vestment advisory activities or activities in-*
 14 *cidental to investment advisory activities;*
 15 *or*

16 “(ii) *activities of a licensed insurance*
 17 *agent other than insurance agency activities*
 18 *or activities incidental to insurance agency*
 19 *activities.*

20 “(e) *ACCESS TO INFORMATION.*—

21 “(1) *INFORMATION PROVIDED BY CORPORA-*
 22 *TION.*—*Any confidential supervisory information, in-*
 23 *cluding examination or other reports, pertaining to*
 24 *an industrial bank furnished by the Corporation to*
 25 *any other Federal agency or any appropriate State*

1 *supervisory agency shall remain confidential unless*
2 *the Corporation, in writing, otherwise consents.*

3 “(2) *DEFERENCE TO DEPOSITORY INSTITUTION*
4 *EXAMINATIONS.—Any appropriate Federal super-*
5 *visory agency of a holding company of an industrial*
6 *bank shall, to the fullest extent possible, forego any ex-*
7 *amination of any depository institution subsidiary of*
8 *the holding company and use the reports of examina-*
9 *tions of the institution made by the appropriate Fed-*
10 *eral banking agency and the appropriate State bank*
11 *supervisor in lieu of a direct examination.*

12 “(3) *INFORMATION TO BE PROVIDED TO COR-*
13 *PORATION.—*

14 “(A) *REQUEST TO AGENCY.—Upon request*
15 *by the Corporation, an appropriate Federal su-*
16 *pervisory agency may provide to the Corporation*
17 *information regarding the condition of an indus-*
18 *trial bank, any holding company that controls*
19 *such industrial bank, or any other affiliate of*
20 *any such holding company that is necessary to*
21 *assess risk to the industrial bank.*

22 “(B) *AVAILABILITY FROM HOLDING COM-*
23 *PANY DIRECTLY.—Notwithstanding section 45,*
24 *section 115 of the Gramm-Leach-Bliley Act, or*
25 *any other provision of law (including any regu-*

1 *lation), if the information requested under sub-*
2 *paragraph (A) is not provided to the Corpora-*
3 *tion, and the information is necessary to assess*
4 *risk to the industrial bank, the Corporation may*
5 *require the holding company or affiliate referred*
6 *to in such subparagraph with respect to such*
7 *bank to provide such information to the Corpora-*
8 *tion.*

9 *“(4) EXAMINATIONS BY CORPORATION.—*

10 *“(A) IN GENERAL.—Subject to subpara-*
11 *graph (B) and notwithstanding section 45, sec-*
12 *tion 115 of the Gramm-Leach-Bliley Act, or any*
13 *other provision of law (including any regula-*
14 *tion), no law shall be construed as preventing the*
15 *Corporation from examining an affiliate of an*
16 *industrial bank pursuant to paragraph (2), (3),*
17 *or (4) of section 10(b), as may be necessary to*
18 *disclose fully the relationship between the indus-*
19 *trial bank and the affiliate, and the effect of such*
20 *relationship on the industrial bank, if the Cor-*
21 *poration finds such examination necessary to de-*
22 *termine the condition of an industrial bank.*

23 *“(B) FUNCTIONALLY REGULATED AFFILI-*
24 *ATES.— Before the Corporation may examine*
25 *any affiliate of an industrial bank that is—*

1 “(i) a broker, a dealer, an investment
2 company, or an investment advisor, or

3 “(ii) an entity that is subject to con-
4 solidated supervision by the Securities and
5 Exchange Commission, other than a deposi-
6 tory institution,

7 the Corporation shall request the Commission to
8 provide the information that the Corporation is
9 seeking to obtain through examination and may
10 proceed with the examination only if the re-
11 quested information is not provided by the Com-
12 mission in a timely manner.

13 “(f) *LIMITATION ON CONTROL.*—

14 “(1) *IN GENERAL.*—Except as provided in para-
15 graph (3) or (4), no industrial bank may be con-
16 trolled, directly or indirectly, by a commercial firm.

17 “(2) *COMMERCIAL FIRM DEFINED.*—For purposes
18 of this section, the term ‘commercial firm’ means any
19 entity at least 15 percent of the annual gross revenues
20 of which on a consolidated basis, including all affili-
21 ates of the entity, were derived from engaging, on an
22 on-going basis, in activities that are not financial in
23 nature or incidental to a financial activity during at
24 least 3 of the prior 4 calendar quarters, as determined

1 *by the Corporation in accordance with regulations*
 2 *which the Corporation shall prescribe.*

3 “(3) *PRE-2003 EXCLUSIONS.*—

4 “(A) *GRANDFATHERED INSTITUTIONS.*—
 5 *Paragraph (1) shall not apply with respect to*
 6 *any industrial bank—*

7 “(i) *which became an insured deposi-*
 8 *tory institution before October 1, 2003, or*
 9 *pursuant to an application for deposit in-*
 10 *surance which was approved by the Cor-*
 11 *poration before such date; and*

12 “(ii) *with respect to which there is no*
 13 *change in control, directly or indirectly, of*
 14 *the bank after September 30, 2003, that re-*
 15 *quires a registration under this section or*
 16 *an application under section 7(j) or 18(c),*
 17 *section 3 of the Bank Holding Company Act*
 18 *of 1956, or section 10 of the Home Owners’*
 19 *Loan Act, except a direct or indirect change*
 20 *of control in which—*

21 “(I) *immediately prior to such*
 22 *change in control neither the ultimate*
 23 *acquiring holding company nor the ul-*
 24 *timate acquired holding company is a*
 25 *commercial firm;*

1 “(II) immediately after such
2 change of control the resulting ultimate
3 holding company is not a commercial
4 firm; and

5 “(III) the resulting ultimate hold-
6 ing company is subject to consolidated
7 supervision by the Office of Thrift Su-
8 pervision or a holding company regu-
9 lated by the Securities and Exchange
10 Commission pursuant to section
11 240.15c3–1(a)(7) of title 17 of the Code
12 of Federal Regulations (as in effect on
13 January 29, 2007).

14 “(B) CORPORATE REORGANIZATIONS PER-
15 MITTED.—The acquisition of direct or indirect
16 control of the industrial bank referred to in sub-
17 paragraph (A)(ii) shall not be treated as a
18 ‘change in control’ for purposes of such subpara-
19 graph if—

20 “(i) the company acquiring control is
21 itself directly or indirectly controlled by a
22 company that was an affiliate of such bank
23 on the date referred to in such subpara-
24 graph, and remains an affiliate at all times
25 after such date; and

1 “(ii) *the transaction through which the*
 2 *company acquired control of the industrial*
 3 *bank constituted solely a corporate reorga-*
 4 *nization of a company that controlled the*
 5 *industrial bank on the date referred to in*
 6 *such subparagraph.*

7 “(4) *PRE-2007 EXCLUSIONS.—*

8 “(A) *GRANDFATHERED COMMERCIAL*
 9 *FIRMS.—Paragraph (1) shall not apply to any*
 10 *commercial firm—*

11 “(i) *which became a holding company*
 12 *of an industrial bank by virtue of acquiring*
 13 *control of an industrial bank on or after*
 14 *October 1, 2003, and before January 29,*
 15 *2007;*

16 “(ii) *which does not acquire control of*
 17 *any other depository institution after Janu-*
 18 *ary 28, 2007;*

19 “(iii) *with respect to which there is no*
 20 *change in control, directly or indirectly, of*
 21 *any depository institution subsidiary after*
 22 *January 28, 2007, that requires a registra-*
 23 *tion under this section or an application*
 24 *under section 7(j) or 18(c), section 3 of the*
 25 *Bank Holding Company Act of 1956, or*

1 *section 10 of the Home Owners' Loan Act;*
2 *and*

3 “(iv) *each industrial bank subsidiary*
4 *of which remains in compliance with the*
5 *limitations contained in subparagraph (B).*

6 “(B) *ACTIVITY AND BRANCHING LIMITA-*
7 *TIONS.—An industrial bank subsidiary of a com-*
8 *mercial firm described in clauses (i), (ii) and*
9 *(iii) of subparagraph (A) is in compliance with*
10 *the requirements of this subparagraph for pur-*
11 *poses of subparagraph (A)(iv) so long as the in-*
12 *dustrial bank—*

13 “(i) *engages only in activities in which*
14 *the industrial bank was engaged on Janu-*
15 *ary 28, 2007; and*

16 “(ii) *does not acquire, establish, or op-*
17 *erate any branch, deposit production office,*
18 *loan production office, automated teller ma-*
19 *chine, or remote service unit in any State*
20 *other than the home State of the bank or*
21 *any host State in which such bank operated*
22 *branches on January 28, 2007.*

23 “(C) *CORPORATE REORGANIZATIONS PER-*
24 *MITTED.—The acquisition of direct or indirect*
25 *control of a depository institution subsidiary re-*

ferred to in subparagraph (A)(iii) shall not be treated as a ‘change in control’ for purposes of such subparagraph if—

“(i) the company acquiring control is itself directly or indirectly controlled by a company that was an affiliate of such subsidiary on the date referred to in such subparagraph, and remains an affiliate at all times after such date; and

“(ii) the transaction through which the company acquired control of the depository institution constituted solely a corporate reorganization of a company that controlled the depository institution on the date referred to in such subparagraph.

“(g) *PROCEDURES AND TIMING FOR TERMINATION OF ACTIVITIES OR DIVESTITURE.*—

“(1) *TRANSITION PROVISION.*—

“(A) *IN GENERAL.*—Any company that fails to comply with the provisions of subsection (f) shall divest its ownership or control of each industrial bank subsidiary of the company not later than the end of the 2-year period beginning on the first date that the company ceased to comply with subsection (f).

1 “(B) *EXTENSION OF TIME PERIOD.*—

2 “(i) *IN GENERAL.*—Upon application
3 by a holding company that controls an in-
4 dustrial bank, the appropriate Federal su-
5 pervisory agency of such holding company
6 may extend the 2-year period referred to in
7 subparagraph (A) with respect to such com-
8 pany for not more than 1 year if, in such
9 agency’s judgment, such an extension would
10 not be detrimental to the public interest.

11 “(ii) *FACTORS.*—In making any deci-
12 sion to grant an extension under clause (i)
13 to a holding company of an industrial
14 bank, the appropriate Federal supervisory
15 agent of such holding company shall con-
16 sider whether—

17 “(I) the company has made a
18 good faith effort to divest such inter-
19 ests; and

20 “(II) such extension is necessary
21 to avert substantial loss to the com-
22 pany.

23 “(2) *CONDITIONS BEFORE DIVESTITURE.*—Dur-
24 ing the 2-year period referred to in paragraph (1)(A)
25 with respect to any company and any extension of

1 *such period, the appropriate Federal supervisory*
2 *agency may impose any conditions or restrictions on*
3 *the company or any subsidiary of the company (other*
4 *than a bank), including restricting or prohibiting*
5 *transactions between the company or subsidiary and*
6 *any depository institution subsidiary of the company,*
7 *as are appropriate under the circumstances.*

8 *“(3) TERMINATION OF ACTIVITIES OR DIVESTI-*
9 *TURE OF NONBANK SUBSIDIARIES CONSTITUTING SE-*
10 *RIOUS RISK.—*

11 *“(A) IN GENERAL.—Notwithstanding any*
12 *other provision of this section, the appropriate*
13 *Federal supervisory agency may, whenever such*
14 *agency has reasonable cause to believe that the*
15 *continuation by a holding company of an indus-*
16 *trial bank of any activity or of ownership or*
17 *control of any nonbank subsidiary of such hold-*
18 *ing company, other than a nonbank subsidiary*
19 *of a depository institution, constitutes a serious*
20 *risk to the financial safety, soundness, or sta-*
21 *bility of a depository institution subsidiary of*
22 *the holding company and is inconsistent with*
23 *sound banking principles or with the purposes of*
24 *this section, at the election of the holding com-*
25 *pany—*

1 “(i) order such holding company or
2 any such nonbank subsidiary, after due no-
3 tice and opportunity for hearing, and after
4 considering the views of the appropriate
5 Federal banking agency and, if applicable,
6 appropriate State bank supervisor, to ter-
7 minate such activities or to terminate
8 (within 120 days or such longer period as
9 the appropriate Federal supervisory agency
10 may direct in unusual circumstances) the
11 ownership or control by such holding com-
12 pany or nonbank subsidiary of any such de-
13 pository institution subsidiary either by
14 sale or by distribution of the shares of the
15 depository institution subsidiary, in accord-
16 ance with subparagraph (B), to the share-
17 holders of the holding company of the indus-
18 trial bank; or

19 “(ii) order the holding company of the
20 industrial bank, after due notice and oppor-
21 tunity for hearing, and after consultation
22 with the appropriate State bank supervisor
23 for the industrial bank, to terminate (with-
24 in 120 days or such longer period as the ap-
25 propriate Federal supervisory agency may

1 *direct) the ownership or control of any such*
2 *industrial bank by such company.*

3 “(B) *PRO RATA DISTRIBUTION.*—*Any dis-*
4 *tribution to shareholders referred to in clause (i)*
5 *shall be pro rata with respect to all of the share-*
6 *holders of the distributing company, and such*
7 *company shall not make any charge to any*
8 *shareholder in connection with such distribution.*

9 “(4) *FOREIGN BANK OWNERSHIP.*—*After Janu-*
10 *ary 28, 2007, no foreign bank may acquire, directly*
11 *or indirectly, control of an industrial bank unless the*
12 *Board of Governors of the Federal Reserve System has*
13 *determined, by order, in connection with the change*
14 *in control or acquisition of the industrial bank and*
15 *after consultation with the Corporation, that the for-*
16 *ign bank is subject to comprehensive supervision or*
17 *regulation on a consolidated basis by the appropriate*
18 *authorities in the bank’s home country in accordance*
19 *with the standard in section 3(c)(3)(B) of the Bank*
20 *Holding Company Act of 1956.*

21 “(5) *HOLDING COMPANY RESPONSIBILITY.*—

22 “(A) *SOURCE OF STRENGTH.*—*Notwith-*
23 *standing section 45, a holding company of an*
24 *industrial bank—*

1 “(i) shall serve as a source of financial
2 and managerial strength to the subsidiary
3 banks of such holding company; and

4 “(ii) shall not conduct the operations
5 of the holding company in an unsafe or un-
6 sound manner.

7 “(B) IMPLEMENTATION.—The appropriate
8 Federal supervisory agency of the holding com-
9 pany of an industrial bank shall implement the
10 requirements under subparagraph (A).

11 “(h) ADMINISTRATIVE PROVISIONS.—

12 “(1) AGENT FOR SERVICE OF PROCESS.—The
13 Corporation may require any industrial bank holding
14 company, or persons connected with such holding
15 company if it is not a corporation, to execute and file
16 a prescribed form of irrevocable appointment of agent
17 for service of process.

18 “(2) RELEASE FROM REGISTRATION.—The Cor-
19 poration may at any time, upon the Corporation’s
20 own motion or upon application, release a registered
21 industrial bank holding company from any registra-
22 tion previously made by such company, if the Cor-
23 poration determines that such company no longer
24 controls any industrial bank.

1 “(i) *DEFINITIONS.*—For purposes of this section, the
2 following definitions shall apply:

3 “(1) *APPROPRIATE FEDERAL SUPERVISORY*
4 *AGENCY.*—The term ‘appropriate Federal supervisory
5 agency’ means, with respect to a company that con-
6 trols an industrial bank—

7 “(A) the Corporation, in the case of a com-
8 pany that is an industrial bank holding com-
9 pany;

10 “(B) the Board of Governors of the Federal
11 Reserve System, in the case of a company that
12 is a bank holding company or that is subject to
13 the Bank Holding Company Act of 1956 pursu-
14 ant to section 8(a) of the International Banking
15 Act of 1978;

16 “(C) the Office of Thrift Supervision, in the
17 case of a company that is a savings and loan
18 holding company; and

19 “(D) the Securities and Exchange Commis-
20 sion, in the case of a company that is regulated
21 by the Commission pursuant to section
22 240.15c3–1(a)(7) of title 17 of the Code of Fed-
23 eral Regulations (as in effect on January 29,
24 2007).

1 “(2) *RULE OF CONSTRUCTION.*—Under the defi-
 2 nition of the term ‘appropriate Federal supervisory
 3 agency’ in paragraph (1), more than 1 agency may
 4 be an appropriate Federal supervisory agency with
 5 respect to any given company that controls an indus-
 6 trial bank.”.

7 (c) *ENFORCEMENT.*—

8 (1) Section 8(b) of the Federal Deposit Insurance
 9 Act (12 U.S.C. 1818(b)) is amended by adding at the
 10 end the following new paragraph:

11 “(11) *INDUSTRIAL BANK HOLDING COMPANIES.*—
 12 This subsection and subsections (c) through (s) and
 13 subsection (u) of this section shall apply to any in-
 14 dustrial bank holding company, and to any sub-
 15 sidiary (other than a bank) of an industrial bank
 16 holding company in the same manner as such sub-
 17 sections apply to State nonmember insured banks.”.

18 (2) Section 8(h)(2) of the Federal Deposit Insur-
 19 ance Act (12 U.S.C. 1818(h)(2)) is amended by strik-
 20 ing “(2) Any party to” and inserting “(2) Any party
 21 aggrieved by an order of any appropriate Federal su-
 22 pervisory agency under section 51 or any party to”.

23 (3) Section 8(i) of the Federal Deposit Insurance
 24 Act (12 U.S.C. 1818(i)) is amended by striking “or

1 39” each place such term appears and inserting “, 39,
2 or 51”.

3 (d) PROMPT CORRECTIVE ACTION.—Section
4 38(f)(2)(H) of the Federal Deposit Insurance Act (12 U.S.C.
5 1831o(f)(2)(H)) is amended by—

6 (1) by striking “BANK HOLDING COMPANY.—Pro-
7 hibiting any bank” and inserting “HOLDING COM-
8 PANY.—

9 “(i) BANK HOLDING COMPANY.—Pro-
10 hibiting any bank”; and

11 (2) by adding at the end the following new
12 clause:

13 “(ii) INDUSTRIAL BANK HOLDING COM-
14 PANY.—Prohibiting any industrial bank
15 holding company having control of the in-
16 sured depository institution from making
17 any capital distribution without the prior
18 approval of the Corporation.”.

19 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

20 (1) Section 10(e)(2) of the Federal Deposit In-
21 surance Act (12 U.S.C. 1820(e)(2)) is amended by in-
22 serting “or section 51” after “subsection (b)(4)”.

23 (2) Section 1101(6) of the Right to Financial
24 Privacy Act of 1978 (12 U.S.C. 3401(6)) is amend-
25 ed—

1 (A) in subparagraph (B), by striking “and”
2 after the semicolon;

3 (B) in subparagraph (C), by inserting
4 “and” after the semicolon; and

5 (C) by inserting after paragraph (C) the
6 following new paragraph:

7 “(D) any industrial bank holding company
8 (as defined in section 3(w)(8) of the Federal De-
9 posit Insurance Act);”.

10 (3) Section 115 of the Gramm-Leach-Bliley Act
11 (12 U.S.C. 1820a) is amended—

12 (A) in subsection (a), by striking “or” after
13 “bank holding company” and inserting “, indus-
14 trial bank holding company, or”;

15 (B) in subsection (d)—

16 (i) by redesignating paragraphs (5),
17 (6), and (7) as paragraphs (6), (7), and (8),
18 respectively; and

19 (ii) by inserting after paragraph (4)
20 the following new paragraph:

21 “(5) INDUSTRIAL BANK HOLDING COMPANY.—
22 The term ‘industrial bank holding company’ has the
23 same meaning as in section 3(w)(8) of the Federal
24 Deposit Insurance Act.”.

1 (4) *Section 304(g)(1) of the Home Mortgage Dis-*
2 *closure Act of 1975 (12 U.S.C. 2803(g)(1)) is amend-*
3 *ed by inserting “, industrial bank holding company,”*
4 *after “bank holding company”.*

5 **SEC. 3. REGULATIONS.**

6 *The Corporation shall prescribe such regulations as the*
7 *Corporation determines to be appropriate to carry out the*
8 *amendments made by this Act.*

Union Calendar No. 92

110TH CONGRESS
1ST Session

H. R. 698

[Report No. 110-155]

A BILL

To amend the Federal Deposit Insurance Act to establish industrial bank holding company regulation, and for other purposes.

May 16, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed