



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

**HB0744**

Introduced 2/7/2007, by Rep. John A. Fritchey

#### SYNOPSIS AS INTRODUCED:

205 ILCS 5/35.2	from Ch. 17, par. 345
205 ILCS 610/2	from Ch. 17, par. 1002
205 ILCS 705/5	
205 ILCS 705/10	

Amends the Illinois Banking Act. Provides that a state bank and its subsidiaries in compliance with Regulation W promulgated by the Board of Governors of the Federal Reserve shall be deemed to be in compliance with certain provisions of the Act concerning limitations on investments in and loans to affiliates. Amends the Banking Emergencies Act. Provides that, whenever the Commissioner becomes aware that an emergency exists, or is impending, he or she may, by proclamation, authorize any bank organized under the laws of another state, or of the United States, to open and operate offices in this State and to remain open until the Commissioner declares, by further proclamation, that the emergency or impending emergency has ended. Amends the Financial Institutions Electronic Documents and Digital Signature Act. For purposes of the Act, defines "financial institution" to include subsidiaries and affiliates of banks, savings and loan associations, savings banks, and credit unions. If a financial institution is required by law to provide or make available certain information in writing to consumers, provides that the use of an electronic record to provide or make available that information satisfies the writing requirement if the consumer consents and if certain notices are provided. Provides that oral communication or recording of oral communication does not qualify as an electronic record. Contains other provisions concerning the rights of consumers, the effect of failure to obtain electronic consent or confirmation of consent, the effect of withdrawal of consent, and prior consent. Effective immediately.

LRB095 04298 MJR 24339 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Banking Act is amended by changing  
5 Section 35.2 as follows:

6 (205 ILCS 5/35.2) (from Ch. 17, par. 345)

7 Sec. 35.2. Limitations on investments in and loans to  
8 affiliates.

9 (a) Restrictions on transactions with affiliates.

10 (1) A state bank and its subsidiaries may engage in a  
11 covered transaction with an affiliate, as expressly  
12 provided in this Section 35.2, only if:

13 (A) in the case of any one affiliate, the aggregate  
14 amount of covered transactions of the state bank and  
15 its subsidiaries will not exceed 10% of the unimpaired  
16 capital and unimpaired surplus of the state bank; and

17 (B) in the case of all affiliates, the aggregate  
18 amount of covered transactions of the state bank and  
19 its subsidiaries will not exceed 20% of the unimpaired  
20 capital and unimpaired surplus of the state bank.

21 (2) For the purpose of this Section, any transactions  
22 by a state bank with any person shall be deemed to be a  
23 transaction with an affiliate to the extent that the

1 proceeds of the transaction are used for the benefit of, or  
2 transferred to, that affiliate.

3 (3) A state bank and its subsidiaries may not purchase  
4 a low-quality asset from an affiliate unless the bank or  
5 such subsidiary, pursuant to an independent credit  
6 evaluation, committed itself to purchase such asset prior  
7 to the time such asset was acquired by the affiliate.

8 (4) Any covered transactions and any transactions  
9 exempt under subsection (d) between a state bank and an  
10 affiliate shall be on terms and conditions that are  
11 consistent with safe and sound banking practices.

12 (b) Definitions. For the purpose of this Section, the  
13 following rules and definitions apply:

14 (1) "Affiliate" with respect to a state bank means

15 (A) any company that controls the state bank and  
16 any other company that is controlled by the company  
17 that controls the state bank;

18 (B) a bank subsidiary of the state bank;

19 (C) any company

20 (i) controlled directly or indirectly, by a  
21 trust or otherwise, by or for the benefit of  
22 shareholders who beneficially or otherwise  
23 control, directly or indirectly, by trust or  
24 otherwise, the state bank or any company that  
25 controls the state bank; or

26 (ii) a majority of the directors or trustees of

1           which constitute a majority of the persons holding  
2           any such office with the state bank or any company  
3           that controls the state bank;

4           (D) (i) any company, including a real estate  
5           investment trust, that is sponsored and advised on  
6           a contractual basis by the state bank or any  
7           subsidiary or affiliate of the state bank; or

8           (ii) any investment company with respect to  
9           which a state bank or any affiliate thereof is an  
10          investment advisor. An investment advisor is  
11          defined as "any person (other than a bona fide  
12          officer, director, trustee, member of an advisory  
13          board, or employee of such company, as such) who  
14          pursuant to contract with such company regularly  
15          furnishes advice to such company, with respect to  
16          the desirability or investing in, purchasing, or  
17          selling securities or other property shall be  
18          purchased or sold by such company, and any other  
19          who pursuant to contract with a person as described  
20          above regularly performs substantially all of the  
21          duties undertaken by such person described above;  
22          but does not include a person whose advice is  
23          furnished solely through uniform publications to  
24          subscribers thereto or a person who furnishes only  
25          statistical and other factual information, advice  
26          regarding economic factors and trends, or advice

1 as to occasional transactions in specific  
2 securities, but without generally furnishing  
3 advice or making recommendations regarding the  
4 purchase or sale of securities, or a company  
5 furnishing such services at cost to one or more  
6 investment companies, insurance companies or other  
7 financial institutions, or any person the  
8 character and amount of whose compensation for  
9 such services must be approved by a court.

10 (E) any company the Commissioner determines as  
11 having a relationship with the state bank or any  
12 subsidiary or affiliate of the state bank, such that  
13 covered transactions by the state bank or its  
14 subsidiary with the company may be affected by the  
15 relationship to the detriment of the state bank or its  
16 subsidiary.

17 (2) None of the following are considered to be an  
18 affiliate:

19 (A) any company, other than a bank, that is a  
20 subsidiary of a state bank, unless a determination is  
21 made under subparagraph (E) of paragraph (1) not to  
22 exclude such subsidiary company from the definition of  
23 affiliate;

24 (B) any company engaged solely in holding the  
25 premises of the state bank;

26 (C) any company engaged solely in conducting a safe

1 deposit business;

2 (D) any company engaged solely in holding  
3 obligations of the United States or its agencies or  
4 obligations fully guaranteed by the United States or  
5 its agencies as to principal and interest; and

6 (E) any company where control results from the  
7 exercise of rights arising out of a bona fide debt  
8 previously contracted, but only for the period of time  
9 specifically authorized under applicable State and  
10 federal law or regulations or, in the absence of such  
11 law or regulation, for a period of 2 years from the  
12 date of the exercise of such rights or the effective  
13 date of this Act, whichever date is later, subject,  
14 upon application, to authorization by the Commissioner  
15 for good cause shown of extensions of time for not more  
16 than one year at a time, with such extensions not to  
17 exceed an aggregate of 3 years.

18 (3) (A) A company or shareholder has control over  
19 another company if

20 (i) such company or shareholder, directly or  
21 indirectly, or acting through one or more other  
22 persons, owns, controls, or has power to vote 25%  
23 or more of any class of voting securities of the  
24 other company;

25 (ii) such company or shareholder controls in  
26 any manner the election of a majority of the

1 directors or trustees of the other company; or

2 (iii) the Commissioner determines, after  
3 notice and opportunity for hearing, that such  
4 company or shareholder, directly or indirectly,  
5 exercises a controlling influence over the  
6 management or policies of the other company.

7 (B) Notwithstanding any other provisions of this  
8 Section, no company shall be deemed to own or control  
9 another company by virtue of its ownership or control  
10 of shares in a fiduciary capacity, except as provided  
11 in subparagraph (C) of paragraph (1) or because of its  
12 ownership or control of such shares in a business  
13 trust.

14 (4) "Subsidiary" with respect to a specified company  
15 means a company that is controlled by such specified  
16 company.

17 (5) "Bank" means any bank now or hereafter organized  
18 under the laws of any State or territory of the United  
19 States including the District of Columbia, any national  
20 bank, and any trust company.

21 (6) "Company" means a corporation, partnership,  
22 business trust, association, or similar organization and,  
23 unless specifically excluded, includes a "state bank" and a  
24 "bank".

25 (7) "Covered transaction" means, with respect to an  
26 affiliate of a state bank,

1 (A) a loan or extension of credit to the affiliate;

2 (B) a purchase of or an investment in securities  
3 issued by the affiliate;

4 (C) a purchase of assets, including assets subject  
5 to an agreement to repurchase, from the affiliate,  
6 except such purchases of real and personal property as  
7 may be specifically exempted by the Commissioner;

8 (D) the acceptance of securities issued by the  
9 affiliate as collateral security for a loan or  
10 extension of credit to any person or company; or

11 (E) the issuance of a guarantee, acceptance, or  
12 letter of credit, including an endorsement or standby  
13 letter of credit, on behalf of an affiliate.

14 (8) "Aggregate amount of covered transactions" means  
15 the amount of covered transactions about to be engaged in  
16 added to the current amount of all outstanding covered  
17 transactions.

18 (9) "Securities" means stocks, bonds, debentures,  
19 notes or other similar obligations.

20 (10) "Low-quality asset" means an asset that falls into  
21 any one or more of the following categories:

22 (A) an asset classified as "substandard",  
23 "doubtful", or "loss" or treated as "other loans  
24 especially mentioned" in the most recent report of  
25 examination of an affiliate;

26 (B) an asset in a nonaccrual status;



1 (C) an asset on which principal or interest  
2 payments are more than 30 days past due; or

3 (D) an asset whose terms have been renegotiated or  
4 compromised due to the deteriorating financial  
5 condition of the obligor.

6 (c) Collateral for certain transactions with affiliates.

7 (1) Each loan or extension of credit to, or guarantee,  
8 acceptance or letter of credit issued on behalf of, an  
9 affiliate by a state bank or its subsidiary shall be  
10 secured at the time of the transaction by collateral having  
11 a market value equal to

12 (A) 100% of the amount of such loan or extension of  
13 credit, guarantee, acceptance, or letter of credit, if  
14 the collateral is composed of

15 (i) obligations of the United States or its  
16 agencies;

17 (ii) obligations fully guaranteed by the  
18 United States or its agencies as to principal and  
19 interest;

20 (iii) notes, drafts, bills of exchange or  
21 bankers' acceptances that are eligible for  
22 rediscount or purchase by a Federal Reserve Bank;  
23 or

24 (iv) a segregated, earmarked deposit account  
25 with the state bank;

26 (B) 110% of the amount of such loan or extension of

1 credit, guarantee, acceptance or letter of credit if  
2 the collateral is composed of obligations of any state  
3 or political subdivision of any State;

4 (C) 120% of the amount of such loan or extension of  
5 credit, guarantee, acceptance, or letter of credit if  
6 the collateral is composed of other debt instruments,  
7 including receivables; and

8 (D) 130% of the amount of such loan or extension of  
9 credit, guarantee, acceptance or letter of credit if  
10 the collateral is composed of stock, leases, or other  
11 real or personal property.

12 (2) Any such collateral that is subsequently retired or  
13 amortized shall be replaced by additional eligible  
14 collateral where needed to keep the percentage of the  
15 collateral value relative to the amount of the outstanding  
16 loan or extension of credit, guarantee, acceptance, or  
17 letter of credit equal to the minimum percentage required  
18 at the inception of the transaction.

19 (3) A low-quality asset shall not be acceptable as  
20 collateral for a loan or extension of credit to, or  
21 guarantee, acceptance, or letter of credit issued on behalf  
22 of, an affiliate.

23 (4) The securities issued by an affiliate of the state  
24 bank shall not be acceptable as collateral for a loan or  
25 extension of credit to, or guarantee, acceptance or letter  
26 of credit issued on behalf of, that affiliate or any other

1           affiliate of the state bank.

2           (5) The collateral requirements of this paragraph do  
3           not apply to an acceptance that is already fully secured  
4           either by attached documents or by other property having an  
5           ascertainable market value that is involved in the  
6           transaction.

7           (d) Exemptions. The provisions of this Section, except  
8           paragraph (4) of subsection (a), shall not be applicable to the  
9           following as to which there shall be no limitation:

10           (1) any transaction, subject to the prohibition  
11           contained in paragraph (3) of subsection (a), with a bank

12                   (A) which controls 80% or more of the voting shares  
13           of the state bank;

14                   (B) in which the state bank controls 80% or more of  
15           the voting shares; or

16                   (C) in which 80% or more of the voting shares are  
17           controlled by the company that controls 80% or more of  
18           the voting shares of the state bank;

19           (2) making deposits in an affiliated bank or affiliated  
20           foreign bank in the ordinary course of correspondent  
21           business, subject to any restrictions that the  
22           Commissioner may prescribe;

23           (3) giving immediate credit to an affiliate for  
24           uncollected items received in the ordinary course of  
25           business;

26           (4) making a loan or extension of credit to, or issuing

1 a guarantee, acceptance, or letter of credit on behalf of,  
2 an affiliate that is fully secured by

3 (A) obligations of the United States or its  
4 agencies;

5 (B) obligations fully guaranteed by the United  
6 States or its agencies as to principal and interest; or

7 (C) a segregated, earmarked deposit account with  
8 the state bank;

9 (5) purchasing securities issued by any company of the  
10 kinds described as follows:

11 Shares of any company engaged or to be engaged solely  
12 in one or more of the following activities: holding or  
13 operating properties used wholly or substantially by any  
14 banking subsidiary of such bank holding company in the  
15 operations of such banking subsidiary or acquired for such  
16 future use; or conducting a safe deposit business; or  
17 furnishing services to or performing services for such bank  
18 holding company or its banking subsidiaries; or  
19 liquidating assets acquired from such bank holding company  
20 or its banking subsidiaries or acquired from any other  
21 source prior to May 9, 1956, or the date on which such  
22 company became a bank holding company, whichever is later;

23 (6) purchasing assets having a readily identifiable  
24 and publicly available market quotation and purchased at  
25 the market quotation or, subject to the prohibition  
26 contained in paragraph (3) of subsection (a), purchasing

1 loans on a nonrecourse basis from affiliated banks; and

2 (7) purchasing from an affiliate a loan or extension of  
3 credit that was originated by the state bank and sold to  
4 the affiliate subject to a repurchase agreement or with  
5 recourse.

6 (e) Notwithstanding the provisions of this Section, a state  
7 bank and its subsidiaries in compliance with the provisions of  
8 Regulation W [12 C.F.R. Part 223] promulgated by the Board of  
9 Governors of the Federal Reserve, as amended from time to time,  
10 shall be deemed to be in compliance with this Section.

11 This Section shall apply to any transaction entered into  
12 after January 1, 1984, except for transactions which are the  
13 subject of a binding written contract or commitment entered  
14 into on or before July 28, 1982, and except that any renewal of  
15 a participation in a loan outstanding on July 28, 1982, to a  
16 company that becomes an affiliate as a result of the enactment  
17 of this Act, or any participation in a loan to such an  
18 affiliate emanating from the renewal of a binding written  
19 contract or commitment outstanding on July 28, 1982, shall not  
20 be subject to the collateral requirements of this Act.

21 (Source: P.A. 88-546; 89-364, eff. 8-18-95.)

22 Section 10. The Banking Emergencies Act is amended by  
23 changing Section 2 as follows:

24 (205 ILCS 610/2) (from Ch. 17, par. 1002)

1           Sec. 2. Power of Commissioner.

2           (a) Whenever the Commissioner is notified by any officer of  
3 a bank or by any other means becomes aware that an emergency  
4 exists, or is impending, he may, by proclamation, authorize all  
5 banks in the State of Illinois to close any or all of their  
6 offices, or if only a bank or banks, or offices thereof, in a  
7 particular area or areas of the State of Illinois are affected  
8 by the emergency or impending emergency, the Commissioner may  
9 authorize only the affected bank, banks, or offices thereof, to  
10 close. The office or offices so closed may remain closed until  
11 the Commissioner declares, by further proclamation, that the  
12 emergency or impending emergency has ended. The Commissioner  
13 during an emergency or while an impending emergency exists,  
14 which affects, or may affect, a particular bank or banks, or a  
15 particular office or offices thereof, but not banks located in  
16 the area generally of the said county or municipality, may  
17 authorize the particular bank or banks, or office or offices so  
18 affected, to close. The office or offices so closed shall  
19 remain closed until the Commissioner is notified by a bank  
20 officer of the closed bank that the emergency has ended. The  
21 Commissioner shall notify, at such time, the officers of the  
22 bank that one or more offices, heretofore closed because of the  
23 emergency, should reopen and, in either event, for such further  
24 time thereafter as may reasonably be required to reopen.

25           (b) Whenever the Commissioner becomes aware that an  
26 emergency exists, or is impending, he or she may, by

1 proclamation, authorize any bank organized under the laws of  
2 another state, or of the United States, to open and operate  
3 offices in this State, notwithstanding any other laws of this  
4 State to the contrary. Any office or offices opened in  
5 accordance with this subsection may remain open until the  
6 Commissioner declares, by further proclamation, that the  
7 emergency or impending emergency has ended. The Department of  
8 Financial and Professional Regulation shall adopt rules to  
9 implement this subsection (b).

10 (Source: P.A. 92-483, eff. 8-23-01.)

11 Section 15. The Financial Institutions Electronic  
12 Documents and Digital Signature Act is amended by changing  
13 Sections 5 and 10 as follows:

14 (205 ILCS 705/5)

15 Sec. 5. Definitions. As used in this Act:

16 "Digital signature" means an encrypted electronic  
17 identifier, created by computer, intended by the party using it  
18 to have the same force and effect as the use of a manual  
19 signature.

20 "Financial institution" means a bank, a savings and loan  
21 association, a savings bank, or a credit union or any  
22 subsidiary or affiliate of a bank, savings and loan  
23 association, savings bank, or credit union.

24 "Substitute check" means a paper reproduction of an

1 original check, as defined in the Check Clearing for the 21st  
2 Century Act (12 U.S.C. 5001, et seq.), as amended from time to  
3 time, and the rules promulgated thereunder.

4 (Source: P.A. 94-458, eff. 8-4-05.)

5 (205 ILCS 705/10)

6 Sec. 10. Electronic documents; digital signatures;  
7 electronic notices.

8 (a) Electronic documents. If in the regular course of  
9 business, a financial institution possesses, records, or  
10 generates any document, representation, image, substitute  
11 check, reproduction, or combination thereof, of any agreement,  
12 transaction, act, occurrence, or event by any electronic or  
13 computer-generated process that accurately reproduces,  
14 comprises, or records the agreement, transaction, act,  
15 occurrence, or event, the recording, comprising, or  
16 reproduction shall have the same force and effect under the  
17 laws of this State as one comprised, recorded, or created on  
18 paper or other tangible form by writing, typing, printing, or  
19 similar means.

20 (b) Digital signatures. In any communication,  
21 acknowledgement, agreement, or contract between a financial  
22 institution and its customer, in which a signature is required  
23 or used, any party to the communication, acknowledgement,  
24 agreement, or contract may affix a signature by use of a  
25 digital signature, and the digital signature, when lawfully



1 used by the person whose signature it purports to be, shall  
2 have the same force and effect as the use of a manual signature  
3 if it is unique to the person using it, is capable of  
4 verification, is under the sole control of the person using it,  
5 and is linked to data in such a manner that if the data are  
6 changed, the digital signature is invalidated. Nothing in this  
7 Section shall require any financial institution or customer to  
8 use or permit the use of a digital signature.

9 (c) Electronic notices.

10 (1) Consent to electronic records. If a statute,  
11 regulation, or other rule of law requires that information  
12 relating to a transaction or transactions in or affecting  
13 intrastate commerce in this State be provided or made  
14 available by a financial institution to a consumer in  
15 writing, the use of an electronic record to provide or make  
16 available that information satisfies the requirement that  
17 the information be in writing if:

18 (A) the consumer has affirmatively consented to  
19 the use of an electronic record to provide or make  
20 available that information and has not withdrawn  
21 consent;

22 (B) the consumer, prior to consenting, is provided  
23 with a clear and conspicuous statement:

24 (i) informing the consumer of:

25 (I) any right or option of the consumer to  
26 have the record provided or made available on

1 paper or in nonelectronic form, and

2 (II) the right of the consumer to withdraw  
3 the consent to have the record provided or made  
4 available in an electronic form and of any  
5 conditions, consequences (which may include  
6 termination of the parties' relationship), or  
7 fees in the event of a withdrawal of consent;

8 (ii) informing the consumer of whether the  
9 consent applies:

10 (I) only to the particular transaction  
11 that gave rise to the obligation to provide the  
12 record, or

13 (II) to identified categories of records  
14 that may be provided or made available during  
15 the course of the parties' relationship;

16 (iii) describing the procedures the consumer  
17 must use to withdraw consent, as provided in clause  
18 (i), and to update information needed to contact  
19 the consumer electronically; and

20 (iv) informing the consumer:

21 (I) how, after the consent, the consumer  
22 may, upon request, obtain a paper copy of an  
23 electronic record, and

24 (II) whether any fee will be charged for a  
25 paper copy;

26 (C) the consumer:

1           (i) prior to consenting, is provided with a  
2           statement of the hardware and software  
3           requirements for access to and retention of the  
4           electronic records; and

5           (ii) consents electronically, or confirms his  
6           or her consent electronically, in a manner that  
7           reasonably demonstrates that the consumer can  
8           access information in the electronic form that  
9           will be used to provide the information that is the  
10           subject of the consent; and

11           (D) after the consent of a consumer in accordance  
12           with subparagraph (A), if a change in the hardware or  
13           software requirements needed to access or retain  
14           electronic records creates a material risk that the  
15           consumer will not be able to access or retain a  
16           subsequent electronic record that was the subject of  
17           the consent, the person providing the electronic  
18           record:

19           (i) provides the consumer with a statement of:

20           (I) the revised hardware and software  
21           requirements for access to and retention of the  
22           electronic records, and

23           (II) the right to withdraw consent without  
24           the imposition of any fees for the withdrawal  
25           and without the imposition of any condition or  
26           consequence that was not disclosed under

1                   subparagraph (B) (i); and

2                   (ii) again complies with subparagraph (C).

3           (2) Other rights.

4                   (A) Preservation of consumer protections. Nothing  
5                   in this subsection (c) affects the content or timing of  
6                   any disclosure or other record required to be provided  
7                   or made available to any consumer under any statute,  
8                   regulation, or other rule of law.

9                   (B) Verification or acknowledgment. If a law that  
10                   was enacted prior to this amendatory Act of the 95th  
11                   General Assembly expressly requires a record to be  
12                   provided or made available by a specified method that  
13                   requires verification or acknowledgment of receipt,  
14                   the record may be provided or made available  
15                   electronically only if the method used provides the  
16                   required verification or acknowledgment of receipt.

17                   (3) Effect of failure to obtain electronic consent or  
18                   confirmation of consent. The legal effectiveness,  
19                   validity, or enforceability of any contract executed by a  
20                   consumer shall not be denied solely because of the failure  
21                   to obtain electronic consent or confirmation of consent by  
22                   that consumer in accordance with paragraph (1) (C) (ii).

23                   (4) Prospective effect. Withdrawal of consent by a  
24                   consumer shall not affect the legal effectiveness,  
25                   validity, or enforceability of electronic records provided  
26                   or made available to that consumer in accordance with

1 paragraph (1) prior to implementation of the consumer's  
2 withdrawal of consent. A consumer's withdrawal of consent  
3 shall be effective within a reasonable period of time after  
4 receipt of the withdrawal by the provider of the record.  
5 Failure to comply with paragraph (1)(D) may, at the  
6 election of the consumer, be treated as a withdrawal of  
7 consent for purposes of this paragraph.

8 (5) Prior consent. This subsection does not apply to  
9 any records that are provided or made available to a  
10 consumer who has consented prior to the effective date of  
11 this amendatory Act of the 95th General Assembly to receive  
12 the records in electronic form as permitted by any statute,  
13 regulation, or other rule of law.

14 (6) Oral communications. An oral communication or a  
15 recording of an oral communication shall not qualify as an  
16 electronic record for purposes of this subsection (c),  
17 except as otherwise provided under applicable law.

18 (Source: P.A. 94-458, eff. 8-4-05.)

19 Section 99. Effective date. This Act takes effect upon  
20 becoming law.