



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

**HB4461**

by Rep. Thomas Holbrook

#### SYNOPSIS AS INTRODUCED:

205 ILCS 305/34	from Ch. 17, par. 4435
205 ILCS 305/42.1 new	
205 ILCS 305/46	from Ch. 17, par. 4447
205 ILCS 305/46.3 new	

Amends the Illinois Credit Union Act. Provides that under specified circumstances, a credit union may determine its historical loss rate using a defined period of time of less than 5 years in determining the appropriate balance in the allowance for loan losses account. Allows a credit union to sell to persons within its field of membership negotiable checks, to sell checks and money orders and to receive international and domestic electronic fund transfers for such persons for a fee. Allows credit unions to make first mortgage real estate loans for more than the estimated market value or appraised value of the real estate securing the loans where secured in full or in part by the insurance or guarantee of the federal government, a state government, or any political subdivision of either. Adds provisions concerning credit contracts. Effective immediately.

LRB095 16260 MJR 42280 b

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 Credit Union Act is amended by  
5 changing Section 34 and adding Sections 42.1, 46 and 46.3 as  
6 follows:

7 (205 ILCS 305/34) (from Ch. 17, par. 4435)

8 Sec. 34. Duties of Supervisory Committee.

9 (1) The Supervisory Committee shall make or cause to be  
10 made an annual internal audit of the books and affairs of the  
11 credit union to determine that the credit union's accounting  
12 records and reports are prepared promptly and accurately  
13 reflect operations and results, that internal controls are  
14 established and effectively maintained to safeguard the assets  
15 of the credit union, and that the policies, procedures and  
16 practices established by the Board of Directors and management  
17 of the credit union are being properly administered. The  
18 Supervisory Committee shall submit a report of that audit to  
19 the Board of Directors and a summary of that report to the  
20 members at the next annual meeting of the credit union. It  
21 shall make or cause to be made such supplementary audits as it  
22 deems necessary or as are required by the Director or by the  
23 Board of Directors, and submit reports of these supplementary

1 audits to the Director or Board of Directors as applicable. If  
2 the Supervisory Committee has not engaged a public accountant  
3 registered by the Department of Professional Regulation to make  
4 the internal audit, the Supervisory Committee or other  
5 officials of the credit union shall not indicate or in any  
6 manner imply that such audit has been performed by a public  
7 accountant or that the audit represents the independent opinion  
8 of a public accountant. The Committee must retain its tapes and  
9 working papers of each internal audit for inspection by the  
10 Department. The report of this audit must be made on a form  
11 approved by the Director. A copy of the report must be promptly  
12 mailed to the Director.

13 (2) The Supervisory Committee shall make or cause to be  
14 made at least once each year a reasonable percentage  
15 verification of members' share and loan accounts, consistent  
16 with rules promulgated by the Director.

17 (3) The Supervisory Committee of a credit union with assets  
18 of \$5,000,000 or more shall engage a public accountant  
19 registered by the Department of Professional Regulation to  
20 perform an annual external independent audit of the credit  
21 union's financial statements in accordance with generally  
22 accepted auditing standards. The Supervisory Committee of a  
23 credit union with assets of \$3,000,000 or more, but less than  
24 \$5,000,000, shall engage a public accountant registered by the  
25 Department of Professional Regulation to perform an external  
26 independent audit of the credit union's financial statements in

1 accordance with generally accepted auditing standards at least  
2 once every 3 years. A copy of an external independent audit  
3 shall be mailed to the Director upon completion. If the annual  
4 internal audit of such a credit union is conducted by a public  
5 accountant registered by the Department of Professional  
6 Regulation and the annual internal audit is done in conjunction  
7 with the credit union's annual external audit, the requirements  
8 of subsection (1) of this Section shall be deemed met.

9 (4) In determining the appropriate balance in the allowance  
10 for loan losses account, a credit union may determine its  
11 historical loss rate using a defined period of time of less  
12 than 5 years, provided:

13 (A) the methodology used to determine the defined  
14 period of time is formally documented in the credit union's  
15 policies and procedures and is appropriate to the credit  
16 union's size, business strategy, and loan portfolio  
17 characteristics and the economic environment of the areas  
18 and employers served by the credit union;

19 (B) supporting documentation is maintained for the  
20 technique used to develop the credit union loss rates,  
21 including the period of time used to accumulate historical  
22 loss data and the factors considered in establishing the  
23 time frames; and

24 (C) the external auditor conducting the credit union's  
25 financial statement audit has analyzed the methodology  
26 employed by the credit union and concludes that the

1 financial statements, including the allowance for loan  
2 losses, are fairly stated in all material respects in  
3 accordance with U.S. Generally Accepted Accounting  
4 Principles, as promulgated by the Financial Accounting  
5 Standards Board.

6 The Department shall adopt rules consistent with the  
7 provisions of this subsection (4).

8 (5) A majority of the members of the Supervisory Committee  
9 shall constitute a quorum.

10 (Source: P.A. 86-238.)

11 (205 ILCS 305/42.1 new)

12 Sec. 42.1. Marketing of services. For purposes of  
13 promoting its services to persons eligible for membership, a  
14 credit union may sell to persons within its field of membership  
15 negotiable checks, including travelers checks, money orders,  
16 and similar money transfer instruments (including  
17 international and domestic electronic fund transfers) and may  
18 cash checks and money orders, and may receive international and  
19 domestic electronic fund transfers for such persons for a fee.

20 (205 ILCS 305/46) (from Ch. 17, par. 4447)

21 Sec. 46. Loans and interest rate.

22 (1) A credit union may make loans to its members for such  
23 purpose and upon such security and terms, including rates of  
24 interest, as the Credit Committee, credit manager, or loan

1 officer approves. Notwithstanding the provisions of any other  
2 law in connection with extensions of credit, a credit union may  
3 elect to contract for and receive interest and fees and other  
4 charges for extensions of credit subject only to the provisions  
5 of this Act and rules promulgated under this Act, except that  
6 extensions of credit secured by residential real estate shall  
7 be subject to the laws applicable thereto. The rates of  
8 interest to be charged on loans to members shall be set by the  
9 Board of Directors of each individual credit union in  
10 accordance with Section 30 of this Act and such rates may be  
11 less than, but may not exceed, the maximum rate set forth in  
12 this Section. A borrower may repay his loan prior to maturity,  
13 in whole or in part, without penalty. The credit contract may  
14 provide for the payment by the member and receipt by the credit  
15 union of all costs and disbursements, including reasonable  
16 attorney's fees and collection agency charges, incurred by the  
17 credit union to collect or enforce the debt in the event of a  
18 delinquency by the member, or in the event of a breach of any  
19 obligation of the member under the credit contract. A  
20 contingency or hourly arrangement established under an  
21 agreement entered into by a credit union with an attorney or  
22 collection agency to collect a loan of a member in default  
23 shall be presumed prima facie reasonable.

24 (2) Credit unions may make loans based upon the security of  
25 any interest or equity in real estate, subject to rules and  
26 regulations promulgated by the Director. In any contract or

1 loan which is secured by a mortgage, deed of trust, or  
2 conveyance in the nature of a mortgage, on residential real  
3 estate, the interest which is computed, calculated, charged, or  
4 collected pursuant to such contract or loan, or pursuant to any  
5 regulation or rule promulgated pursuant to this Act, may not be  
6 computed, calculated, charged or collected for any period of  
7 time occurring after the date on which the total indebtedness,  
8 with the exception of late payment penalties, is paid in full.

9 For purposes of this subsection (2) of this Section 46, a  
10 prepayment shall mean the payment of the total indebtedness,  
11 with the exception of late payment penalties if incurred or  
12 charged, on any date before the date specified in the contract  
13 or loan agreement on which the total indebtedness shall be paid  
14 in full, or before the date on which all payments, if timely  
15 made, shall have been made. In the event of a prepayment of the  
16 indebtedness which is made on a date after the date on which  
17 interest on the indebtedness was last computed, calculated,  
18 charged, or collected but before the next date on which  
19 interest on the indebtedness was to be calculated, computed,  
20 charged, or collected, the lender may calculate, charge and  
21 collect interest on the indebtedness for the period which  
22 elapsed between the date on which the prepayment is made and  
23 the date on which interest on the indebtedness was last  
24 computed, calculated, charged or collected at a rate equal to  
25 1/360 of the annual rate for each day which so elapsed, which  
26 rate shall be applied to the indebtedness outstanding as of the

1 date of prepayment. The lender shall refund to the borrower any  
2 interest charged or collected which exceeds that which the  
3 lender may charge or collect pursuant to the preceding  
4 sentence. The provisions of this amendatory Act of 1985 shall  
5 apply only to contracts or loans entered into on or after the  
6 effective date of this amendatory Act.

7 (3) Notwithstanding any other provision of this Act, a  
8 credit union authorized under this Act to make loans secured by  
9 an interest or equity in real estate may engage in making  
10 "reverse mortgage" loans to persons for the purpose of making  
11 home improvements or repairs, paying insurance premiums or  
12 paying real estate taxes on the homestead properties of such  
13 persons. If made, such loans shall be made on such terms and  
14 conditions as the credit union shall determine and as shall be  
15 consistent with the provisions of this Section and such rules  
16 and regulations as the Director shall promulgate hereunder. For  
17 purposes of this Section, a "reverse mortgage" loan shall be a  
18 loan extended on the basis of existing equity in homestead  
19 property and secured by a mortgage on such property. Such loans  
20 shall be repaid upon the sale of the property or upon the death  
21 of the owner or, if the property is in joint tenancy, upon the  
22 death of the last surviving joint tenant who had such an  
23 interest in the property at the time the loan was initiated,  
24 provided, however, that the credit union and its member may by  
25 mutual agreement, establish other repayment terms. A credit  
26 union, in making a "reverse mortgage" loan, may add deferred



1 interest to principal or otherwise provide for the charging of  
2 interest or premiums on such deferred interest. "Homestead"  
3 property, for purposes of this Section, means the domicile and  
4 contiguous real estate owned and occupied by the mortgagor. The  
5 Director shall promulgate rules and regulations under this  
6 Section; provided that such rules and regulations need not be  
7 promulgated jointly with any other administrative agency of  
8 this State.

9 (4) Notwithstanding any other provisions of this Act, a  
10 credit union authorized under this Act to make loans secured by  
11 an interest or equity in real property may engage in making  
12 revolving credit loans secured by mortgages or deeds of trust  
13 on such real property or by security assignments of beneficial  
14 interests in land trusts.

15 For purposes of this Section, "revolving credit" has the  
16 meaning defined in Section 4.1 of the Interest Act.

17 Any mortgage or deed of trust given to secure a revolving  
18 credit loan may, and when so expressed therein shall, secure  
19 not only the existing indebtedness but also such future  
20 advances, whether such advances are obligatory or to be made at  
21 the option of the lender, or otherwise, as are made within  
22 twenty years from the date thereof, to the same extent as if  
23 such future advances were made on the date of the execution of  
24 such mortgage or deed of trust, although there may be no  
25 advance made at the time of execution of such mortgage or other  
26 instrument, and although there may be no indebtedness

1 outstanding at the time any advance is made. The lien of such  
2 mortgage or deed of trust, as to third persons without actual  
3 notice thereof, shall be valid as to all such indebtedness and  
4 future advances from the time said mortgage or deed of trust is  
5 filed for record in the office of the Recorder of Deeds or the  
6 Registrar of Titles of the county where the real property  
7 described therein is located. The total amount of indebtedness  
8 that may be so secured may increase or decrease from time to  
9 time, but the total unpaid balance so secured at any one time  
10 shall not exceed a maximum principal amount which must be  
11 specified in such mortgage or deed of trust, plus interest  
12 thereon, and any disbursements made for the payment of taxes,  
13 special assessments, or insurance on said real property, with  
14 interest on such disbursements.

15 Any such mortgage or deed of trust shall be valid and have  
16 priority over all subsequent liens and encumbrances, including  
17 statutory liens, except taxes and assessments levied on said  
18 real property.

19 (5) Compliance with federal or Illinois preemptive laws or  
20 regulations governing loans made by a credit union chartered  
21 under this Act shall constitute compliance with this Act.

22 (6) Credit unions may make first mortgage real estate loans  
23 for more than the estimated market value or appraised value of  
24 the real estate securing the loans where secured in full or in  
25 part by the insurance or guarantee of the federal government, a  
26 state government, or any political subdivision of either. The

1 maximum loan-to-value ratio or loan-to-purchase price ratio  
2 and terms and conditions for such loans shall be as specified  
3 in the law, regulations, or program under which the insurance  
4 or guarantee is provided.

5 (Source: P.A. 95-98, eff. 8-13-07.)

6 (205 ILCS 305/46.3 new)

7 Sec. 46.3. Credit contracts.

8 (1) A borrower may not maintain an action on or in any way  
9 related to a credit contract, unless the credit contract is in  
10 writing, expresses an agreement or commitment to lend money or  
11 extend credit or delay or forbear repayment of money, sets  
12 forth the relevant terms and conditions, and is signed by the  
13 credit union and the borrower.

14 (2) No credit union shall be liable to a person not in  
15 privity of contract with the credit union for civil damages  
16 arising out of a credit contract, or any conditions precedent  
17 thereto, except for acts or conduct by the credit union that  
18 constitute fraud against the person.

19 (3) The following actions do not give rise to a claim,  
20 counter-claim, or defense by a borrower that a new credit  
21 contract is created, unless the contract satisfies the  
22 requirements of paragraph (1):

23 (a) the rendering of financial advice by a credit union  
24 to a borrower;

25 (b) the consultation by a credit union with a borrower;

1       or

2           (c) the agreement by a credit union to modify or amend  
3       an existing credit contract or to otherwise take certain  
4       actions, such as entering into a new credit contract,  
5       forbearing from exercising remedies in connection with an  
6       existing credit contract, or rescheduling or extending  
7       installments due under an existing credit contract.

8       (4) For the purpose of this Section 46.3, the following  
9       terms have the meanings given them:

10           "Credit contract" means an agreement or commitment by a  
11       credit union to lend money or extend credit or delay or  
12       forbear repayment of money, not in connection with the  
13       issuance of credit cards.

14           "Borrower" means a person who obtains credit or seeks a  
15       credit contract or claims the existence of a credit  
16       contract with a credit union or who owes money to a credit  
17       union.

18           "Person" means an individual, corporation,  
19       partnership, joint venture, trust estate, unincorporated  
20       association, or other entity.

21       Section 99. Effective date. This Act takes effect upon  
22       becoming law.