

AN ACT concerning regulation.

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

Section 5. The Illinois Credit Union Act is amended by changing Sections 8, 22, 30, 46, 51, and 70 as follows:

(205 ILCS 305/8) (from Ch. 17, par. 4409)

Sec. 8. Director's powers and duties. Credit unions are regulated by the Department. The Director, in executing the powers and discharging the duties vested by law in the Department has the following powers and duties:

(1) To exercise the rights, powers and duties set forth in this Act or any related Act.

(2) To prescribe rules and regulations for the administration of this Act. The provisions of the Illinois Administrative Procedure Act are hereby expressly adopted and incorporated herein as though a part of this Act, and shall apply to all administrative rules and procedures of the Department under this Act.

(3) To direct and supervise all the administrative and technical activities of the Department including the employment of a Credit Union Supervisor who shall have knowledge in the theory and practice of, or experience in, the operations or supervision of financial institutions,

preferably credit unions, and such other persons as are necessary to carry out his functions. The Director shall ensure that all examiners appointed or assigned to examine the affairs of State-chartered credit unions possess the necessary training and continuing education to effectively execute their jobs.

(4) To issue cease and desist orders when in the opinion of the Director, a credit union is engaged or has engaged, or the Director has reasonable cause to believe the credit union is about to engage, in an unsafe or unsound practice, or is violating or has violated or the Director has reasonable cause to believe is about to violate a law, rule or regulation or any condition imposed in writing by the Department.

(5) To suspend from office and to prohibit from further participation in any manner in the conduct of the affairs of his credit union any director, officer or committee member who has committed any violation of a law, rule, regulation or of a cease and desist order or who has engaged or participated in any unsafe or unsound practice in connection with the credit union or who has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director, officer or committee member, when the Director has determined that such action or actions have resulted or will result in substantial financial loss or other damage that seriously

prejudices the interests of the members.

(6) Except for the fees established in this Act, to prescribe, by rule and regulation, fees and penalties for preparing, approving, and filing reports and other documents; furnishing transcripts; holding hearings; investigating applications for permission to organize, merge, or convert; failure to maintain accurate books and records to enable the Department to conduct an examination; and taking supervisory actions.

(7) To destroy, in his discretion, any or all books and records of any credit union in his possession or under his control after the expiration of three years from the date of cancellation of the charter of such credit unions.

(8) To make investigations and to conduct research and studies and to publish some of the problems of persons in obtaining credit at reasonable rates of interest and of the methods and benefits of cooperative saving and lending for such persons.

(9) To authorize, foster or establish experimental, developmental, demonstration or pilot projects by public or private organizations including credit unions which:

(a) promote more effective operation of credit unions so as to provide members an opportunity to use and control their own money to improve their economic and social conditions; or

(b) are in the best interests of credit unions,

their members and the people of the State of Illinois.

(10) To cooperate in studies, training or other administrative activities with, but not limited to, the NCUA, other state credit union regulatory agencies and industry trade associations in order to promote more effective and efficient supervision of Illinois chartered credit unions.

(Source: P.A. 91-357, eff. 7-29-99; 92-608, eff. 7-1-02.)

(205 ILCS 305/22) (from Ch. 17, par. 4423)

Sec. 22. Vacancies.

(a) The Board of Directors shall, by appointment from among the credit union members, fill any vacancies occurring on the Board for the remainder of the Director's unexpired term or until a successor is elected and qualified following completion of the term filled by the Board. The Board shall, by appointment from among the credit union members, fill vacancies in the Membership Committee, Credit Committee, or credit manager if no Credit Committee has been appointed, and Supervisory Committees.

(b) An office may be declared vacant by the Board when a Director or a Committee member dies, resigns from the Board or Committee, is removed from the Board or Committee, is no longer a member of the credit union, is the owner of less than one share of the credit union, or fails to attend three consecutive regular meetings of the Board without good cause.

(Source: P.A. 91-929, eff. 12-15-00.)

(205 ILCS 305/30) (from Ch. 17, par. 4431)

Sec. 30. Duties of directors.

(a) It shall be the duty of the directors to:

(1) Review actions on applications for membership. A record of the Membership Committee's approval or denial of membership or management's approval or denial of membership if no Membership Committee has been appointed shall be available to the Board of Directors for inspection. A person denied membership by the Membership Committee or credit union management may appeal the denial to the Board;

(2) Provide adequate fidelity bond coverage for officers, employees, directors and committee members, and for losses caused by persons outside of the credit union, subject to rules and regulations promulgated by the Director;

(3) Determine from time to time the interest rates, not in excess of that allowed under this Act, which shall be charged on loans to members and to authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on such classes of loans and under such conditions as the Board prescribes. The Directors may establish different interest rates to be charged on different classes of loans;

(4) Within any limitations set forth in the credit union's bylaws, fix the maximum amount which may be loaned with and without security to a member;

(5) Declare dividends on various classes of shares in the manner and form as provided in the bylaws;

(6) Limit the number of shares which may be owned by a member; such limitations to apply alike to all members;

(7) Have charge of the investment of funds, except that the Board of Directors may designate an Investment Committee or any qualified individual or entity to have charge of making investments under policies established by the Board of Directors;

(8) Authorize the employment of or contracting with such persons or organizations as may be necessary to carry on the operations of the credit union, provided that prior approval is received from the Department before delegating substantially all managerial duties and responsibilities to a credit union organization, and fix the compensation, if any, of the officers and provide for compensation for other employees within policies established by the Board of Directors;

(9) Authorize the conveyance of property;

(10) Borrow or lend money consistent with the provisions of this Act;

(11) Designate a depository or depositories for the funds of the credit union and supervise the investment of

funds;

(12) Suspend or remove, or both, any or all officers or any or all members of the Membership, Credit, or other committees whenever, in the judgment of the Board of Directors, the best interests of the credit union will be served thereby; provided that members of the Supervisory Committee may not be suspended or removed except for failure to perform their duties; and provided that removal of any officer shall be without prejudice to the contract rights, if any, of the person so removed;

(13) Appoint any special committees deemed necessary; and

(14) Perform such other duties as the members may direct, and perform or authorize any action not inconsistent with this Act and not specifically reserved by the bylaws to the members.

(b) The Board of Directors may delegate to the chief management official, according to guidelines established by the Board that may include the authority to further delegate one or more duties, all of the following duties:

(1) determining the interest rates on loans;

(2) determining the dividend rates on share accounts;

and

(3) hiring employees other than the chief management official and fixing their compensation.

(Source: P.A. 92-608, eff. 7-1-02; 93-916, eff. 8-12-04.)

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

Sec. 46. Loans and interest rate.

(1) A credit union may make loans to its members for such purpose and upon such security and terms, including rates of interest, as the Credit Committee, credit manager, or loan officer approves. Notwithstanding the provisions of any other law in connection with extensions of credit, a credit union may elect to contract for and receive interest and fees and other charges for extensions of credit subject only to the provisions of this Act and rules promulgated under this Act, except that extensions of credit secured by residential real estate shall be subject to the laws applicable thereto. The rates of interest to be charged on loans to members shall be set by the Board of Directors of each individual credit union in accordance with Section 30 of this Act and such rates may be less than, but may not exceed, the maximum rate set forth in this Section. A borrower may repay his loan prior to maturity, in whole or in part, without penalty. The credit contract may provide for the payment by the member and receipt by the credit union of all costs and disbursements, including reasonable attorney's fees and collection agency charges, incurred by the credit union to collect or enforce the debt in the event of a delinquency by the member, or in the event of a breach of any obligation of the member under the credit contract. A contingency or hourly arrangement established under an

agreement entered into by a credit union with an attorney or collection agency to collect a loan of a member in default shall be presumed prima facie reasonable.

(2) Credit unions may make loans based upon the security of any interest or equity in real estate, subject to rules and regulations promulgated by the Director. In any contract or loan which is secured by a mortgage, deed of trust, or conveyance in the nature of a mortgage, on residential real estate, the interest which is computed, calculated, charged, or collected pursuant to such contract or loan, or pursuant to any regulation or rule promulgated pursuant to this Act, may not be computed, calculated, charged or collected for any period of time occurring after the date on which the total indebtedness, with the exception of late payment penalties, is paid in full.

For purposes of this subsection (2) of this Section 46, a prepayment shall mean the payment of the total indebtedness, with the exception of late payment penalties if incurred or charged, on any date before the date specified in the contract or loan agreement on which the total indebtedness shall be paid in full, or before the date on which all payments, if timely made, shall have been made. In the event of a prepayment of the indebtedness which is made on a date after the date on which interest on the indebtedness was last computed, calculated, charged, or collected but before the next date on which interest on the indebtedness was to be calculated, computed, charged, or collected, the lender may calculate, charge and

collect interest on the indebtedness for the period which elapsed between the date on which the prepayment is made and the date on which interest on the indebtedness was last computed, calculated, charged or collected at a rate equal to $1/360$ of the annual rate for each day which so elapsed, which rate shall be applied to the indebtedness outstanding as of the date of prepayment. The lender shall refund to the borrower any interest charged or collected which exceeds that which the lender may charge or collect pursuant to the preceding sentence. The provisions of this amendatory Act of 1985 shall apply only to contracts or loans entered into on or after the effective date of this amendatory Act.

(3) Notwithstanding any other provision of this Act, a credit union authorized under this Act to make loans secured by an interest or equity in real estate may engage in making "reverse mortgage" loans to persons for the purpose of making home improvements or repairs, paying insurance premiums or paying real estate taxes on the homestead properties of such persons. If made, such loans shall be made on such terms and conditions as the credit union shall determine and as shall be consistent with the provisions of this Section and such rules and regulations as the Director shall promulgate hereunder. For purposes of this Section, a "reverse mortgage" loan shall be a loan extended on the basis of existing equity in homestead property and secured by a mortgage on such property. Such loans shall be repaid upon the sale of the property or upon the death

of the owner or, if the property is in joint tenancy, upon the death of the last surviving joint tenant who had such an interest in the property at the time the loan was initiated, provided, however, that the credit union and its member may by mutual agreement, establish other repayment terms. A credit union, in making a "reverse mortgage" loan, may add deferred interest to principal or otherwise provide for the charging of interest or premiums on such deferred interest. "Homestead" property, for purposes of this Section, means the domicile and contiguous real estate owned and occupied by the mortgagor. The Director shall promulgate rules and regulations under this Section; provided that such rules and regulations need not be promulgated jointly with any other administrative agency of this State.

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

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

Any mortgage or deed of trust given to secure a revolving credit loan may, and when so expressed therein shall, secure not only the existing indebtedness but also such future advances, whether such advances are obligatory or to be made at

the option of the lender, or otherwise, as are made within twenty years from the date thereof, to the same extent as if such future advances were made on the date of the execution of such mortgage or deed of trust, although there may be no advance made at the time of execution of such mortgage or other instrument, and although there may be no indebtedness outstanding at the time any advance is made. The lien of such mortgage or deed of trust, as to third persons without actual notice thereof, shall be valid as to all such indebtedness and future advances from the time said mortgage or deed of trust is filed for record in the office of the Recorder of Deeds or the Registrar of Titles of the county where the real property described therein is located. The total amount of indebtedness that may be so secured may increase or decrease from time to time, but the total unpaid balance so secured at any one time shall not exceed a maximum principal amount which must be specified in such mortgage or deed of trust, plus interest thereon, and any disbursements made for the payment of taxes, special assessments, or insurance on said real property, with interest on such disbursements.

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

(5) Compliance with federal or Illinois preemptive laws or regulations governing loans made by a credit union chartered

under this Act shall constitute compliance with this Act.

(Source: P.A. 93-640, eff. 12-31-03.)

(205 ILCS 305/51) (from Ch. 17, par. 4452)

Sec. 51. Other Loan Programs.

(1) Subject to such rules and regulations as the Director may promulgate, a credit union may participate in loans to credit union members jointly with other credit unions, corporations, or financial institutions. An originating credit union may originate loans only to its own members. A participating credit union that is not the originating lender may participate in loans made to its own members or to members of another participating credit union. "Originating lender" means the participating credit union with which the member contracts. A master participation agreement must be properly executed, and the agreement must include provisions for identifying, either through documents incorporated by reference or directly in the agreement, the participation loan or loans prior to their sale.

(2) Any credit union with assets of \$500,000 or more may loan to its members under the State Scholarships Law or other scholarship programs which are subject to a federal or state law providing 100% repayment guarantee.

(3) A credit union may purchase the conditional sales contracts, notes and similar instruments which evidence an indebtedness of its members. In the management of its assets,

liabilities, and liquidity, a credit union may purchase the conditional sales contracts, notes, and other similar instruments that evidence the consumer indebtedness of the members of another credit union. "Consumer indebtedness" means indebtedness incurred for personal, family, or household purposes.

(4) With approval of the Board of Directors, a credit union may make loans, either on its own or jointly with other credit unions, corporations or financial institutions, to credit union organizations; provided, that the aggregate amount of all such loans outstanding shall not at any time exceed the greater of 3% of the paid-in and unimpaired capital and surplus of the credit union or the amount authorized for federal credit unions.

(Source: P.A. 92-293, eff. 8-9-01; 93-640, eff. 12-31-03.)

(205 ILCS 305/70) (from Ch. 17, par. 4471)

Sec. 70. Use of name, sentence.

(a) No individual, firm, association, or body politic and corporate, including, without limitation, any corporation, limited liability company, general partnership, limited partnership, or joint venture that is not an authorized user may use any name or title which contains the words "credit union" or any abbreviation thereof, and such use is a Class A Misdemeanor. For purposes of this Section, "authorized user" means a corporation organized under this Act, the credit union

act of another state, or the Federal Credit Union Act, any association of such a corporation, and subsidiaries and affiliates of such an association.

(b) If the Director of the Division of Financial Institutions of the Department of Financial and Professional Regulation finds that an individual or entity that is not an authorized user has transacted or intends to transact business in this State in a manner that has a substantial likelihood of misleading the public by: (i) implying that the business is a credit union or (ii) using or intending to use the words "credit union", or any abbreviation thereof, in connection with its business, then the Director of the Division of Financial Institutions may direct the individual or entity to cease and desist from transacting its business or using the words "credit union", or any abbreviation thereof. If the individual or entity persists in transacting its business or using the words "credit union", or any abbreviation thereof, then the Director of the Division of Financial Institutions may impose a civil penalty of up to \$10,000 for each violation. Each day that the individual or entity continues transacting business or using the words "credit union", or any abbreviation thereof, in connection with its business shall constitute a separate violation of these provisions.

(c) Except as otherwise expressly permitted by law or with the written consent of the credit union, no person or group of persons other than an authorized user may use the name of or a

name similar to the name of an existing credit union when marketing or soliciting business from members or prospective members if the name or similar name is used in a manner that would cause a reasonable person to believe that the marketing material or solicitation originated from or is endorsed by the existing credit union or that the existing credit union is in any other way responsible for the marketing material or solicitation. The following remedies shall apply:

(1) Any person who violates subsection (c) of this Section commits a business offense and shall be fined in an amount not to exceed \$5,000.

(2) In addition to any other available remedies, any existing credit union may report an alleged violation of any provision of this Section to the Director of the Division of Financial Institutions. If the Director finds that any person or group of persons is in violation of any provision of this Section, then the Director may direct that person or group of persons to cease and desist from that violation. If the Director issues a cease and desist order against any person or group of persons for violation of subsection (c), then the order must require that person or group of persons to cease and desist from using the offending marketing material or solicitation in Illinois.

(3) If a person or group of persons against whom the Director issued the cease and desist order persists in the violation, then the Director may impose a civil penalty of

up to \$10,000 for each violation. Each day that a person or group of persons is in violation of this Section constitutes a separate violation of this Section and each instance in which marketing material or a solicitation is sent in violation of this subsection (c) constitutes a separate violation of this Section.

(d) The Director of the Division of Financial Institutions may adopt rules to administer the provisions of this Section.

(Source: P.A. 94-150, eff. 7-8-05.)

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