

SB2396



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2396

Introduced 1/18/2006, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

205 ILCS 5/35.2

from Ch. 17, par. 345

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. Effective immediately.

LRB094 17315 MKM 52610 b

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
24 proceeds of the transaction are used for the benefit of, or
25 transferred to, that affiliate.

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

31 (4) Any covered transactions and any transactions
32 exempt under subsection (d) between a state bank and an

1 affiliate shall be on terms and conditions that are
2 consistent with safe and sound banking practices.

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

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

6 (A) any company that controls the state bank and
7 any other company that is controlled by the company
8 that controls the state bank;

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

10 (C) any company

11 (i) controlled directly or indirectly, by a
12 trust or otherwise, by or for the benefit of
13 shareholders who beneficially or otherwise
14 control, directly or indirectly, by trust or
15 otherwise, the state bank or any company that
16 controls the state bank; or

17 (ii) a majority of the directors or trustees of
18 which constitute a majority of the persons holding
19 any such office with the state bank or any company
20 that controls the state bank;

21 (D) (i) any company, including a real estate
22 investment trust, that is sponsored and advised on
23 a contractual basis by the state bank or any
24 subsidiary or affiliate of the state bank; or

25 (ii) any investment company with respect to
26 which a state bank or any affiliate thereof is an
27 investment advisor. An investment advisor is
28 defined as "any person (other than a bona fide
29 officer, director, trustee, member of an advisory
30 board, or employee of such company, as such) who
31 pursuant to contract with such company regularly
32 furnishes advice to such company, with respect to
33 the desirability or investing in, purchasing, or
34 selling securities or other property shall be
35 purchased or sold by such company, and any other
36 who pursuant to contract with a person as described

1 above regularly performs substantially all of the
2 duties undertaken by such person described above;
3 but does not include a person whose advice is
4 furnished solely through uniform publications to
5 subscribers thereto or a person who furnishes only
6 statistical and other factual information, advice
7 regarding economic factors and trends, or advice
8 as to occasional transactions in specific
9 securities, but without generally furnishing
10 advice or making recommendations regarding the
11 purchase or sale of securities, or a company
12 furnishing such services at cost to one or more
13 investment companies, insurance companies or other
14 financial institutions, or any person the
15 character and amount of whose compensation for
16 such services must be approved by a court.

17 (E) any company the Commissioner determines as
18 having a relationship with the state bank or any
19 subsidiary or affiliate of the state bank, such that
20 covered transactions by the state bank or its
21 subsidiary with the company may be affected by the
22 relationship to the detriment of the state bank or its
23 subsidiary.

24 (2) None of the following are considered to be an
25 affiliate:

26 (A) any company, other than a bank, that is a
27 subsidiary of a state bank, unless a determination is
28 made under subparagraph (E) of paragraph (1) not to
29 exclude such subsidiary company from the definition of
30 affiliate;

31 (B) any company engaged solely in holding the
32 premises of the state bank;

33 (C) any company engaged solely in conducting a safe
34 deposit business;

35 (D) any company engaged solely in holding
36 obligations of the United States or its agencies or

1 obligations fully guaranteed by the United States or
2 its agencies as to principal and interest; and

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

15 (3) (A) A company or shareholder has control over
16 another company if

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

22 (ii) such company or shareholder controls in
23 any manner the election of a majority of the
24 directors or trustees of the other company; or

25 (iii) the Commissioner determines, after
26 notice and opportunity for hearing, that such
27 company or shareholder, directly or indirectly,
28 exercises a controlling influence over the
29 management or policies of the other company.

30 (B) Notwithstanding any other provisions of this
31 Section, no company shall be deemed to own or control
32 another company by virtue of its ownership or control
33 of shares in a fiduciary capacity, except as provided
34 in subparagraph (C) of paragraph (1) or because of its
35 ownership or control of such shares in a business
36 trust.

1 (4) "Subsidiary" with respect to a specified company
2 means a company that is controlled by such specified
3 company.

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

8 (6) "Company" means a corporation, partnership,
9 business trust, association, or similar organization and,
10 unless specifically excluded, includes a "state bank" and a
11 "bank".

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

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

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

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

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

24 (E) the issuance of a guarantee, acceptance, or
25 letter of credit, including an endorsement or standby
26 letter of credit, on behalf of an affiliate.

27 (8) "Aggregate amount of covered transactions" means
28 the amount of covered transactions about to be engaged in
29 added to the current amount of all outstanding covered
30 transactions.

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

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

35 (A) an asset classified as "substandard",
36 "doubtful", or "loss" or treated as "other loans

1 especially mentioned" in the most recent report of
2 examination of an affiliate;

3 (B) an asset in a nonaccrual status;

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

6 (D) an asset whose terms have been renegotiated or
7 compromised due to the deteriorating financial
8 condition of the obligor.

9 (c) Collateral for certain transactions with affiliates.

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

15 (A) 100% of the amount of such loan or extension of
16 credit, guarantee, acceptance, or letter of credit, if
17 the collateral is composed of

18 (i) obligations of the United States or its
19 agencies;

20 (ii) obligations fully guaranteed by the
21 United States or its agencies as to principal and
22 interest;

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

27 (iv) a segregated, earmarked deposit account
28 with the state bank;

29 (B) 110% of the amount of such loan or extension of
30 credit, guarantee, acceptance or letter of credit if
31 the collateral is composed of obligations of any state
32 or political subdivision of any State;

33 (C) 120% of the amount of such loan or extension of
34 credit, guarantee, acceptance, or letter of credit if
35 the collateral is composed of other debt instruments,
36 including receivables; and

1 (D) 130% of the amount of such loan or extension of
2 credit, guarantee, acceptance or letter of credit if
3 the collateral is composed of stock, leases, or other
4 real or personal property.

5 (2) Any such collateral that is subsequently retired or
6 amortized shall be replaced by additional eligible
7 collateral where needed to keep the percentage of the
8 collateral value relative to the amount of the outstanding
9 loan or extension of credit, guarantee, acceptance, or
10 letter of credit equal to the minimum percentage required
11 at the inception of the transaction.

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

16 (4) The securities issued by an affiliate of the state
17 bank shall not be acceptable as collateral for a loan or
18 extension of credit to, or guarantee, acceptance or letter
19 of credit issued on behalf of, that affiliate or any other
20 affiliate of the state bank.

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

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

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

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

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

35 (C) in which 80% or more of the voting shares are
36 controlled by the company that controls 80% or more of

1 the voting shares of the state bank;

2 (2) making deposits in an affiliated bank or affiliated
3 foreign bank in the ordinary course of correspondent
4 business, subject to any restrictions that the
5 Commissioner may prescribe;

6 (3) giving immediate credit to an affiliate for
7 uncollected items received in the ordinary course of
8 business;

9 (4) making a loan or extension of credit to, or issuing
10 a guarantee, acceptance, or letter of credit on behalf of,
11 an affiliate that is fully secured by

12 (A) obligations of the United States or its
13 agencies;

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

16 (C) a segregated, earmarked deposit account with
17 the state bank;

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

20 Shares of any company engaged or to be engaged solely
21 in one or more of the following activities: holding or
22 operating properties used wholly or substantially by any
23 banking subsidiary of such bank holding company in the
24 operations of such banking subsidiary or acquired for such
25 future use; or conducting a safe deposit business; or
26 furnishing services to or performing services for such bank
27 holding company or its banking subsidiaries; or
28 liquidating assets acquired from such bank holding company
29 or its banking subsidiaries or acquired from any other
30 source prior to May 9, 1956, or the date on which such
31 company became a bank holding company, whichever is later;

32 (6) purchasing assets having a readily identifiable
33 and publicly available market quotation and purchased at
34 the market quotation or, subject to the prohibition
35 contained in paragraph (3) of subsection (a), purchasing
36 loans on a nonrecourse basis from affiliated banks; and

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

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

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

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

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