



Adopted in House Comm. on May 27, 2008

09500SB2338ham001

LRB095 16921 MJR 50598 a

1 AMENDMENT TO SENATE BILL 2338

2 AMENDMENT NO. _____. Amend Senate Bill 2338 on page 1, by
3 replacing lines 4 and 5 with the following:

4 "Section 5. The Illinois Banking Act is amended by changing
5 Sections 2, 5c, 13, and 15 as follows:

6 (205 ILCS 5/2) (from Ch. 17, par. 302)

7 Sec. 2. General definitions. In this Act, unless the
8 context otherwise requires, the following words and phrases
9 shall have the following meanings:

10 "Accommodation party" shall have the meaning ascribed to
11 that term in Section 3-419 of the Uniform Commercial Code.

12 "Action" in the sense of a judicial proceeding includes
13 recoupments, counterclaims, set-off, and any other proceeding
14 in which rights are determined.

15 "Affiliate facility" of a bank means a main banking
16 premises or branch of another commonly owned bank. The main

1 banking premises or any branch of a bank may be an "affiliate
2 facility" with respect to one or more other commonly owned
3 banks.

4 "Appropriate federal banking agency" means the Federal
5 Deposit Insurance Corporation, the Federal Reserve Bank of
6 Chicago, or the Federal Reserve Bank of St. Louis, as
7 determined by federal law.

8 "Bank" means any person doing a banking business whether
9 subject to the laws of this or any other jurisdiction.

10 A "banking house", "branch", "branch bank" or "branch
11 office" shall mean any place of business of a bank at which
12 deposits are received, checks paid, or loans made, but shall
13 not include any place at which only records thereof are made,
14 posted, or kept. A place of business at which deposits are
15 received, checks paid, or loans made shall not be deemed to be
16 a branch, branch bank, or branch office if the place of
17 business is adjacent to and connected with the main banking
18 premises, or if it is separated from the main banking premises
19 by not more than an alley; provided always that (i) if the
20 place of business is separated by an alley from the main
21 banking premises there is a connection between the two by
22 public or private way or by subterranean or overhead passage,
23 and (ii) if the place of business is in a building not wholly
24 occupied by the bank, the place of business shall not be within
25 any office or room in which any other business or service of
26 any kind or nature other than the business of the bank is

1 conducted or carried on. A place of business at which deposits
2 are received, checks paid, or loans made shall not be deemed to
3 be a branch, branch bank, or branch office (i) of any bank if
4 the place is a terminal established and maintained in
5 accordance with paragraph (17) of Section 5 of this Act, or
6 (ii) of a commonly owned bank by virtue of transactions
7 conducted at that place on behalf of the other commonly owned
8 bank under paragraph (23) of Section 5 of this Act if the place
9 is an affiliate facility with respect to the other bank.

10 "Branch of an out-of-state bank" means a branch established
11 or maintained in Illinois by an out-of-state bank as a result
12 of a merger between an Illinois bank and the out-of-state bank
13 that occurs on or after May 31, 1997, or any branch established
14 by the out-of-state bank following the merger.

15 "Bylaws" means the bylaws of a bank that are adopted by the
16 bank's board of directors or shareholders for the regulation
17 and management of the bank's affairs. If the bank operates as a
18 limited liability company, however, "bylaws" means the
19 operating agreement of the bank.

20 "Call report fee" means the fee to be paid to the
21 Commissioner by each State bank pursuant to paragraph (a) of
22 subsection (3) of Section 48 of this Act.

23 "Capital" includes the aggregate of outstanding capital
24 stock and preferred stock.

25 "Cash flow reserve account" means the account within the
26 books and records of the Commissioner of Banks and Real Estate

1 used to record funds designated to maintain a reasonable Bank
2 and Trust Company Fund operating balance to meet agency
3 obligations on a timely basis.

4 "Charter" includes the original charter and all amendments
5 thereto and articles of merger or consolidation.

6 "Commissioner" means the Commissioner of Banks and Real
7 Estate or a person authorized by the Commissioner, the Office
8 of Banks and Real Estate Act, or this Act to act in the
9 Commissioner's stead.

10 "Commonly owned banks" means 2 or more banks that each
11 qualify as a bank subsidiary of the same bank holding company
12 pursuant to Section 18 of the Federal Deposit Insurance Act;
13 "commonly owned bank" refers to one of a group of commonly
14 owned banks but only with respect to one or more of the other
15 banks in the same group.

16 "Community" means a city, village, or incorporated town and
17 also includes the area served by the banking offices of a bank,
18 but need not be limited or expanded to conform to the
19 geographic boundaries of units of local government.

20 "Company" means a corporation, limited liability company,
21 partnership, business trust, association, or similar
22 organization and, unless specifically excluded, includes a
23 "State bank" and a "bank".

24 "Consolidating bank" means a party to a consolidation.

25 "Consolidation" takes place when 2 or more banks, or a
26 trust company and a bank, are extinguished and by the same

1 process a new bank is created, taking over the assets and
2 assuming the liabilities of the banks or trust company passing
3 out of existence.

4 "Continuing bank" means a merging bank, the charter of
5 which becomes the charter of the resulting bank.

6 "Converting bank" means a State bank converting to become a
7 national bank, or a national bank converting to become a State
8 bank.

9 "Converting trust company" means a trust company
10 converting to become a State bank.

11 "Court" means a court of competent jurisdiction.

12 "Director" means a member of the board of directors of a
13 bank. In the case of a manager-managed limited liability
14 company, however, "director" means a manager of the bank and,
15 in the case of a member-managed limited liability company,
16 "director" means a member of the bank. The term "director" does
17 not include an advisory director, honorary director, director
18 emeritus, or similar person, unless the person is otherwise
19 performing functions similar to those of a member of the board
20 of directors.

21 "Eligible depository institution" means an insured savings
22 association that is in default, an insured savings association
23 that is in danger of default, a State or national bank that is
24 in default or a State or national bank that is in danger of
25 default, as those terms are defined in this Section, or a new
26 bank as that term defined in Section 11(m) of the Federal

1 Deposit Insurance Act or a bridge bank as that term is defined
2 in Section 11(n) of the Federal Deposit Insurance Act or a new
3 federal savings association authorized under Section
4 11(d) (2) (f) of the Federal Deposit Insurance Act.

5 "Fiduciary" means trustee, agent, executor, administrator,
6 committee, guardian for a minor or for a person under legal
7 disability, receiver, trustee in bankruptcy, assignee for
8 creditors, or any holder of similar position of trust.

9 "Financial institution" means a bank, savings bank,
10 savings and loan association, credit union, or any licensee
11 under the Consumer Installment Loan Act or the Sales Finance
12 Agency Act and, for purposes of Section 48.3, any proprietary
13 network, funds transfer corporation, or other entity providing
14 electronic funds transfer services, or any corporate
15 fiduciary, its subsidiaries, affiliates, parent company, or
16 contractual service provider that is examined by the
17 Commissioner. For purposes of Section 5c and subsection (b) of
18 Section 13 of this Act, "financial institution" includes any
19 proprietary network, funds transfer corporation, or other
20 entity providing electronic funds transfer services, and any
21 corporate fiduciary.

22 "Foundation" means the Illinois Bank Examiners' Education
23 Foundation.

24 "General obligation" means a bond, note, debenture,
25 security, or other instrument evidencing an obligation of the
26 government entity that is the issuer that is supported by the

1 full available resources of the issuer, the principal and
2 interest of which is payable in whole or in part by taxation.

3 "Guarantee" means an undertaking or promise to answer for
4 payment of another's debt or performance of another's duty,
5 liability, or obligation whether "payment guaranteed" or
6 "collection guaranteed".

7 "In danger of default" means a State or national bank, a
8 federally chartered insured savings association or an Illinois
9 state chartered insured savings association with respect to
10 which the Commissioner or the appropriate federal banking
11 agency has advised the Federal Deposit Insurance Corporation
12 that:

13 (1) in the opinion of the Commissioner or the
14 appropriate federal banking agency,

15 (A) the State or national bank or insured savings
16 association is not likely to be able to meet the
17 demands of the State or national bank's or savings
18 association's obligations in the normal course of
19 business; and

20 (B) there is no reasonable prospect that the State
21 or national bank or insured savings association will be
22 able to meet those demands or pay those obligations
23 without federal assistance; or

24 (2) in the opinion of the Commissioner or the
25 appropriate federal banking agency,

26 (A) the State or national bank or insured savings

1 association has incurred or is likely to incur losses
2 that will deplete all or substantially all of its
3 capital; and

4 (B) there is no reasonable prospect that the
5 capital of the State or national bank or insured
6 savings association will be replenished without
7 federal assistance.

8 "In default" means, with respect to a State or national
9 bank or an insured savings association, any adjudication or
10 other official determination by any court of competent
11 jurisdiction, the Commissioner, the appropriate federal
12 banking agency, or other public authority pursuant to which a
13 conservator, receiver, or other legal custodian is appointed
14 for a State or national bank or an insured savings association.

15 "Insured savings association" means any federal savings
16 association chartered under Section 5 of the federal Home
17 Owners' Loan Act and any State savings association chartered
18 under the Illinois Savings and Loan Act of 1985 or a
19 predecessor Illinois statute, the deposits of which are insured
20 by the Federal Deposit Insurance Corporation. The term also
21 includes a savings bank organized or operating under the
22 Savings Bank Act.

23 "Insured savings association in recovery" means an insured
24 savings association that is not an eligible depository
25 institution and that does not meet the minimum capital
26 requirements applicable with respect to the insured savings

1 association.

2 "Issuer" means for purposes of Section 33 every person who
3 shall have issued or proposed to issue any security; except
4 that (1) with respect to certificates of deposit, voting trust
5 certificates, collateral-trust certificates, and certificates
6 of interest or shares in an unincorporated investment trust not
7 having a board of directors (or persons performing similar
8 functions), "issuer" means the person or persons performing the
9 acts and assuming the duties of depositor or manager pursuant
10 to the provisions of the trust, agreement, or instrument under
11 which the securities are issued; (2) with respect to trusts
12 other than those specified in clause (1) above, where the
13 trustee is a corporation authorized to accept and execute
14 trusts, "issuer" means the entrusters, depositors, or creators
15 of the trust and any manager or committee charged with the
16 general direction of the affairs of the trust pursuant to the
17 provisions of the agreement or instrument creating the trust;
18 and (3) with respect to equipment trust certificates or like
19 securities, "issuer" means the person to whom the equipment or
20 property is or is to be leased or conditionally sold.

21 "Letter of credit" and "customer" shall have the meanings
22 ascribed to those terms in Section 5-102 of the Uniform
23 Commercial Code.

24 "Main banking premises" means the location that is
25 designated in a bank's charter as its main office.

26 "Maker or obligor" means for purposes of Section 33 the

1 issuer of a security, the promisor in a debenture or other debt
2 security, or the mortgagor or grantor of a trust deed or
3 similar conveyance of a security interest in real or personal
4 property.

5 "Merged bank" means a merging bank that is not the
6 continuing, resulting, or surviving bank in a consolidation or
7 merger.

8 "Merger" includes consolidation.

9 "Merging bank" means a party to a bank merger.

10 "Merging trust company" means a trust company party to a
11 merger with a State bank.

12 "Mid-tier bank holding company" means a corporation that
13 (a) owns 100% of the issued and outstanding shares of each
14 class of stock of a State bank, (b) has no other subsidiaries,
15 and (c) 100% of the issued and outstanding shares of the
16 corporation are owned by a parent bank holding company.

17 "Municipality" means any municipality, political
18 subdivision, school district, taxing district, or agency.

19 "National bank" means a national banking association
20 located in this State and after May 31, 1997, means a national
21 banking association without regard to its location.

22 "Out-of-state bank" means a bank chartered under the laws
23 of a state other than Illinois, a territory of the United
24 States, or the District of Columbia.

25 "Parent bank holding company" means a corporation that is a
26 bank holding company as that term is defined in the Illinois

1 Bank Holding Company Act of 1957 and owns 100% of the issued
2 and outstanding shares of a mid-tier bank holding company.

3 "Person" means an individual, corporation, limited
4 liability company, partnership, joint venture, trust, estate,
5 or unincorporated association.

6 "Public agency" means the State of Illinois, the various
7 counties, townships, cities, towns, villages, school
8 districts, educational service regions, special road
9 districts, public water supply districts, fire protection
10 districts, drainage districts, levee districts, sewer
11 districts, housing authorities, the Illinois Bank Examiners'
12 Education Foundation, the Chicago Park District, and all other
13 political corporations or subdivisions of the State of
14 Illinois, whether now or hereafter created, whether herein
15 specifically mentioned or not, and shall also include any other
16 state or any political corporation or subdivision of another
17 state.

18 "Public funds" or "public money" means current operating
19 funds, special funds, interest and sinking funds, and funds of
20 any kind or character belonging to, in the custody of, or
21 subject to the control or regulation of the United States or a
22 public agency. "Public funds" or "public money" shall include
23 funds held by any of the officers, agents, or employees of the
24 United States or of a public agency in the course of their
25 official duties and, with respect to public money of the United
26 States, shall include Postal Savings funds.

1 "Published" means, unless the context requires otherwise,
2 the publishing of the notice or instrument referred to in some
3 newspaper of general circulation in the community in which the
4 bank is located at least once each week for 3 successive weeks.
5 Publishing shall be accomplished by, and at the expense of, the
6 bank required to publish. Where publishing is required, the
7 bank shall submit to the Commissioner that evidence of the
8 publication as the Commissioner shall deem appropriate.

9 "Qualified financial contract" means any security
10 contract, commodity contract, forward contract, including spot
11 and forward foreign exchange contracts, repurchase agreement,
12 swap agreement, and any similar agreement, any option to enter
13 into any such agreement, including any combination of the
14 foregoing, and any master agreement for such agreements. A
15 master agreement, together with all supplements thereto, shall
16 be treated as one qualified financial contract. The contract,
17 option, agreement, or combination of contracts, options, or
18 agreements shall be reflected upon the books, accounts, or
19 records of the bank, or a party to the contract shall provide
20 documentary evidence of such agreement.

21 "Recorded" means the filing or recording of the notice or
22 instrument referred to in the office of the Recorder of the
23 county wherein the bank is located.

24 "Resulting bank" means the bank resulting from a merger or
25 conversion.

26 "Securities" means stocks, bonds, debentures, notes, or

1 other similar obligations.

2 "Stand-by letter of credit" means a letter of credit under
3 which drafts are payable upon the condition the customer has
4 defaulted in performance of a duty, liability, or obligation.

5 "State bank" means any banking corporation that has a
6 banking charter issued by the Commissioner under this Act.

7 "State Banking Board" means the State Banking Board of
8 Illinois.

9 "Subsidiary" with respect to a specified company means a
10 company that is controlled by the specified company. For
11 purposes of paragraphs (8) and (12) of Section 5 of this Act,
12 "control" means the exercise of operational or managerial
13 control of a corporation by the bank, either alone or together
14 with other affiliates of the bank.

15 "Surplus" means the aggregate of (i) amounts paid in excess
16 of the par value of capital stock and preferred stock; (ii)
17 amounts contributed other than for capital stock and preferred
18 stock and allocated to the surplus account; and (iii) amounts
19 transferred from undivided profits.

20 "Tier 1 Capital" and "Tier 2 Capital" have the meanings
21 assigned to those terms in regulations promulgated for the
22 appropriate federal banking agency of a state bank, as those
23 regulations are now or hereafter amended.

24 "Trust company" means a limited liability company or
25 corporation incorporated in this State for the purpose of
26 accepting and executing trusts.

1 "Undivided profits" means undistributed earnings less
2 discretionary transfers to surplus.

3 "Unimpaired capital and unimpaired surplus", for the
4 purposes of paragraph (21) of Section 5 and Sections 32, 33,
5 34, 35.1, 35.2, and 47 of this Act means the sum of the state
6 bank's Tier 1 Capital and Tier 2 Capital plus such other
7 shareholder equity as may be included by regulation of the
8 Commissioner. Unimpaired capital and unimpaired surplus shall
9 be calculated on the basis of the date of the last quarterly
10 call report filed with the Commissioner preceding the date of
11 the transaction for which the calculation is made, provided
12 that: (i) when a material event occurs after the date of the
13 last quarterly call report filed with the Commissioner that
14 reduces or increases the bank's unimpaired capital and
15 unimpaired surplus by 10% or more, then the unimpaired capital
16 and unimpaired surplus shall be calculated from the date of the
17 material event for a transaction conducted after the date of
18 the material event; and (ii) if the Commissioner determines for
19 safety and soundness reasons that a state bank should calculate
20 unimpaired capital and unimpaired surplus more frequently than
21 provided by this paragraph, the Commissioner may by written
22 notice direct the bank to calculate unimpaired capital and
23 unimpaired surplus at a more frequent interval. In the case of
24 a state bank newly chartered under Section 13 or a state bank
25 resulting from a merger, consolidation, or conversion under
26 Sections 21 through 26 for which no preceding quarterly call

1 report has been filed with the Commissioner, unimpaired capital
2 and unimpaired surplus shall be calculated for the first
3 calendar quarter on the basis of the effective date of the
4 charter, merger, consolidation, or conversion.

5 (Source: P.A. 92-483, eff. 8-23-01; 93-561, eff. 1-1-04.)

6 (205 ILCS 5/5c) (from Ch. 17, par. 312.2)

7 Sec. 5c. Ownership of a bankers' bank. ~~A With the approval~~
8 ~~of the Commissioner, a~~ bank may acquire shares of stock of a
9 bank or holding company which owns or controls such bank if the
10 stock of such bank or company is owned exclusively (except to
11 the extent directors' qualifying shares are required by law) by
12 depository institutions or depository institution holding
13 companies and such bank or company and all subsidiaries thereof
14 are engaged exclusively in providing services to or for other
15 financial depository institutions, their holding companies,
16 and the officers, directors, and employees of such institutions
17 and companies, and in providing ~~correspondent banking~~ services
18 at the request of other financial depository institutions or
19 their holding companies (also referred to as a "bankers'
20 bank"). The bank may also provide products and services to its
21 officers, directors, and employees. In no event shall the total
22 amount of such stock held by a bank in such bank or holding
23 company exceed 10 percent of its capital and surplus (including
24 undivided profits) and in no event shall a bank acquire more
25 than 5 percent of any class of voting securities of such bank

1 or company.

2 (Source: P.A. 89-603, eff. 8-2-96.)

3 (205 ILCS 5/13) (from Ch. 17, par. 320)

4 Sec. 13. Issuance of charter.

5 (a) When the directors have organized as provided in
6 Section 12 of this Act, and the capital stock and the preferred
7 stock, if any, together with a surplus of not less than 50% of
8 the capital, has been all fully paid in and a record of the
9 same filed with the Commissioner, the Commissioner or some
10 competent person of the Commissioner's appointment shall make a
11 thorough examination into the affairs of the proposed bank, and
12 if satisfied (i) that all the requirements of this Act have
13 been complied with, (ii) that no intervening circumstance has
14 occurred to change the Commissioner's findings made pursuant to
15 Section 10 of this Act, and (iii) that the prior involvement by
16 any stockholder who will own a sufficient amount of stock to
17 have control, as defined in Section 18 of this Act, of the
18 proposed bank with any other financial institution, whether as
19 stockholder, director, officer, or customer, was conducted in a
20 safe and sound manner, upon payment into the Commissioner's
21 office of the reasonable expenses of the examination, as
22 determined by the Commissioner, the Commissioner shall issue a
23 charter authorizing the bank to commence business as authorized
24 in this Act. All charters issued by the Commissioner or any
25 predecessor agency which chartered State banks, including any

1 charter outstanding as of September 1, 1989, shall be
2 perpetual. For the 2 years after the Commissioner has issued a
3 charter to a bank, the bank shall request and obtain from the
4 Commissioner prior written approval before it may change senior
5 management personnel or directors.

6 The original charter, duly certified by the Commissioner,
7 or a certified copy shall be evidence in all courts and places
8 of the existence and authority of the bank to do business. Upon
9 the issuance of the charter by the Commissioner, the bank shall
10 be deemed fully organized and may proceed to do business. The
11 Commissioner may, in the Commissioner's discretion, withhold
12 the issuing of the charter when the Commissioner has reason to
13 believe that the bank is organized for any purpose other than
14 that contemplated by this Act. The Commissioner shall revoke
15 the charter and order liquidation in the event that the bank
16 does not commence a general banking business within one year
17 from the date of the issuance of the charter, unless a request
18 has been submitted, in writing, to the Commissioner for an
19 extension and the request has been approved. After commencing a
20 general banking business, a bank may change its name by filing
21 written notice with the Commissioner at least 30 days prior to
22 the effective date of such change. A bank chartered under this
23 Act may change its main banking premises by filing written
24 application with the Commissioner, on forms prescribed by the
25 Commissioner, provided (i) the change shall not be a removal to
26 a new location without complying with the capital requirements

1 of Section 7 and of subsection (1) of Section 10 of this Act;
2 (ii) the Commissioner approves the relocation or change; and
3 (iii) the bank complies with any applicable federal law or
4 regulation. The application shall be deemed to be approved if
5 the Commissioner has not acted on the application within 30
6 days after receipt of the application, unless within the 30-day
7 time frame the Commissioner informs the bank that an extension
8 of time is necessary prior to the Commissioner's action on the
9 application.

10 (b) (1) The Commissioner may also issue a charter to a bank
11 that is owned exclusively by other depository institutions
12 or depository institution holding companies and is
13 organized to engage exclusively in providing services to or
14 for other financial ~~depository~~ institutions, their holding
15 companies, and the officers, directors, and employees of
16 such institutions and companies, and in providing
17 ~~correspondent banking~~ services at the request of other
18 financial ~~depository~~ institutions or their holding
19 companies (also referred to as a "bankers' bank"). The bank
20 may also provide products and services to its officers,
21 directors, and employees.

22 (2) A bank chartered pursuant to paragraph (1) shall,
23 except as otherwise specifically determined or limited by
24 the Commissioner in an order or pursuant to a rule, be
25 vested with the same rights and privileges and subject to
26 the same duties, restrictions, penalties, and liabilities

1 now or hereafter imposed under this Act.

2 (c) A bank chartered under this Act after November 1, 1985,
3 and an out-of-state bank that merges with a State bank and
4 establishes or maintains a branch in this State after May 31,
5 1997, shall obtain from and, at all times while it accepts or
6 retains deposits, maintain with the Federal Deposit Insurance
7 Corporation, or such other instrumentality of or corporation
8 chartered by the United States, deposit insurance as authorized
9 under federal law.

10 (d) (i) A bank that has a banking charter issued by the
11 Commissioner under this Act may, pursuant to a written
12 purchase and assumption agreement, transfer substantially
13 all of its assets to another State bank or national bank in
14 consideration, in whole or in part, for the transferee
15 banks' assumption of any part or all of its liabilities.
16 Such a transfer shall in no way be deemed to impair the
17 charter of the transferor bank or cause the transferor bank
18 to forfeit any of its rights, powers, interests,
19 franchises, or privileges as a State bank, nor shall any
20 voluntary reduction in the transferor bank's activities
21 resulting from the transfer have any such effect; provided,
22 however, that a State bank that transfers substantially all
23 of its assets pursuant to this subsection (d) and following
24 the transfer does not accept deposits and make loans, shall
25 not have any rights, powers, interests, franchises, or
26 privileges under subsection (15) of Section 5 of this Act

1 until the bank has resumed accepting deposits and making
2 loans.

3 (ii) The fact that a State bank does not resume
4 accepting deposits and making loans for a period of 24
5 months commencing on September 11, 1989 or on a date of the
6 transfer of substantially all of a State bank's assets,
7 whichever is later, or such longer period as the
8 Commissioner may allow in writing, may be the basis for a
9 finding by the Commissioner under Section 51 of this Act
10 that the bank is unable to continue operations.

11 (iii) The authority provided by subdivision (i) of this
12 subsection (d) shall terminate on May 31, 1997, and no bank
13 that has transferred substantially all of its assets
14 pursuant to this subsection (d) shall continue in existence
15 after May 31, 1997.

16 (Source: P.A. 91-322, eff. 1-1-00; 92-483, eff. 8-23-01.)".