



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1861

Introduced 2/20/2015, by Sen. John M. Sullivan

SYNOPSIS AS INTRODUCED:

205 ILCS 5/5	from Ch. 17, par. 311
205 ILCS 5/14	from Ch. 17, par. 321
205 ILCS 5/14.1	from Ch. 17, par. 321.1

Amends the Illinois Banking Act. Provides that, for the purpose of declaring dividends pursuant specified provisions, upon prior written approval of the Secretary of Financial and Professional Regulation, and without undergoing a quasi-reorganization, a State bank may restate its capital accounts to remove a deficit in its undivided profit account by eliminating such deficit into its surplus account so that the undivided profit account is restated to zero. Provides that nothing in provisions concerning general corporate powers shall be construed to require the filing of a notice or application for approval with the United States Office of the Comptroller of the Currency or a bank supervisor of another state as a condition to the right of a State bank to exercise any of the powers conferred in this State. Provides that the Secretary shall adopt rules under specified provisions. Effective immediately.

LRB099 11039 MGM 31419 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 Banking Act is amended by changing
5 Sections 5, 14, and 14.1 as follows:

6 (205 ILCS 5/5) (from Ch. 17, par. 311)

7 Sec. 5. General corporate powers. A bank organized under
8 this Act or subject hereto shall be a body corporate and
9 politic and shall, without specific mention thereof in the
10 charter, have all the powers conferred by this Act and the
11 following additional general corporate powers:

12 (1) To sue and be sued, complain, and defend in its
13 corporate name.

14 (2) To have a corporate seal, which may be altered at
15 pleasure, and to use the same by causing it or a facsimile
16 thereof to be impressed or affixed or in any manner
17 reproduced, provided that the affixing of a corporate seal
18 to an instrument shall not give the instrument additional
19 force or effect, or change the construction thereof, and
20 the use of a corporate seal is not mandatory.

21 (3) To make, alter, amend, and repeal bylaws, not
22 inconsistent with its charter or with law, for the
23 administration of the affairs of the bank. If this Act does

1 not provide specific guidance in matters of corporate
2 governance, the provisions of the Business Corporation Act
3 of 1983 may be used if so provided in the bylaws, and if
4 the bank is a limited liability company, the provisions of
5 the Limited Liability Company Act shall be used.

6 (4) To elect or appoint and remove officers and agents
7 of the bank and define their duties and fix their
8 compensation.

9 (5) To adopt and operate reasonable bonus plans,
10 profit-sharing plans, stock-bonus plans, stock-option
11 plans, pension plans and similar incentive plans for its
12 directors, officers and employees.

13 (5.1) To manage, operate and administer a fund for the
14 investment of funds by a public agency or agencies,
15 including any unit of local government or school district,
16 or any person. The fund for a public agency shall invest in
17 the same type of investments and be subject to the same
18 limitations provided for the investment of public funds.
19 The fund for public agencies shall maintain a separate
20 ledger showing the amount of investment for each public
21 agency in the fund. "Public funds" and "public agency" as
22 used in this Section shall have the meanings ascribed to
23 them in Section 1 of the Public Funds Investment Act.

24 (6) To make reasonable donations for the public welfare
25 or for charitable, scientific, religious or educational
26 purposes.

1 (7) To borrow or incur an obligation; and to pledge its
2 assets:

3 (a) to secure its borrowings, its lease of personal
4 or real property or its other nondeposit obligations;

5 (b) to enable it to act as agent for the sale of
6 obligations of the United States;

7 (c) to secure deposits of public money of the
8 United States, whenever required by the laws of the
9 United States, including without being limited to,
10 revenues and funds the deposit of which is subject to
11 the control or regulation of the United States or any
12 of its officers, agents, or employees and Postal
13 Savings funds;

14 (d) to secure deposits of public money of any state
15 or of any political corporation or subdivision thereof
16 including, without being limited to, revenues and
17 funds the deposit of which is subject to the control or
18 regulation of any state or of any political corporation
19 or subdivisions thereof or of any of their officers,
20 agents, or employees;

21 (e) to secure deposits of money whenever required
22 by the National Bankruptcy Act;

23 (f) (blank); and

24 (g) to secure trust funds commingled with the
25 bank's funds, whether deposited by the bank or an
26 affiliate of the bank, pursuant to Section 2-8 of the

1 Corporate Fiduciary Act.

2 (8) To own, possess, and carry as assets all or part of
3 the real estate necessary in or with which to do its
4 banking business, either directly or indirectly through
5 the ownership of all or part of the capital stock, shares
6 or interests in any corporation, association, trust
7 engaged in holding any part or parts or all of the bank
8 premises, engaged in such business and in conducting a safe
9 deposit business in the premises or part of them, or
10 engaged in any activity that the bank is permitted to
11 conduct in a subsidiary pursuant to paragraph (12) of this
12 Section 5.

13 (9) To own, possess, and carry as assets other real
14 estate to which it may obtain title in the collection of
15 its debts or that was formerly used as a part of the bank
16 premises, but title to any real estate except as herein
17 permitted shall not be retained by the bank, either
18 directly or by or through a subsidiary, as permitted by
19 subsection (12) of this Section for a total period of more
20 than 10 years after acquiring title, either directly or
21 indirectly.

22 (10) To do any act, including the acquisition of stock,
23 necessary to obtain insurance of its deposits, or part
24 thereof, and any act necessary to obtain a guaranty, in
25 whole or in part, of any of its loans or investments by the
26 United States or any agency thereof, and any act necessary

1 to sell or otherwise dispose of any of its loans or
2 investments to the United States or any agency thereof, and
3 to acquire and hold membership in the Federal Reserve
4 System.

5 (11) Notwithstanding any other provisions of this Act
6 or any other law, to do any act and to own, possess, and
7 carry as assets property of the character, including stock,
8 that is at the time authorized or permitted to national
9 banks by an Act of Congress, but subject always to the same
10 limitations and restrictions as are applicable to national
11 banks by the pertinent federal law and subject to
12 applicable provisions of the Financial Institutions
13 Insurance Sales Law.

14 (12) To own, possess, and carry as assets stock of one
15 or more corporations that is, or are, engaged in one or
16 more of the following businesses:

17 (a) holding title to and administering assets
18 acquired as a result of the collection or liquidating
19 of loans, investments, or discounts; or

20 (b) holding title to and administering personal
21 property acquired by the bank, directly or indirectly
22 through a subsidiary, for the purpose of leasing to
23 others, provided the lease or leases and the investment
24 of the bank, directly or through a subsidiary, in that
25 personal property otherwise comply with Section 35.1
26 of this Act; or

1 (c) carrying on or administering any of the
2 activities excepting the receipt of deposits or the
3 payment of checks or other orders for the payment of
4 money in which a bank may engage in carrying on its
5 general banking business; provided, however, that
6 nothing contained in this paragraph (c) shall be deemed
7 to permit a bank organized under this Act or subject
8 hereto to do, either directly or indirectly through any
9 subsidiary, any act, including the making of any loan
10 or investment, or to own, possess, or carry as assets
11 any property that if done by or owned, possessed, or
12 carried by the State bank would be in violation of or
13 prohibited by any provision of this Act.

14 The provisions of this subsection (12) shall not apply
15 to and shall not be deemed to limit the powers of a State
16 bank with respect to the ownership, possession, and
17 carrying of stock that a State bank is permitted to own,
18 possess, or carry under this Act.

19 Any bank intending to establish a subsidiary under this
20 subsection (12) shall give written notice to the
21 Commissioner 60 days prior to the subsidiary's commencing
22 of business or, as the case may be, prior to acquiring
23 stock in a corporation that has already commenced business.
24 After receiving the notice, the Commissioner may waive or
25 reduce the balance of the 60 day notice period. The
26 Commissioner may specify the form of the notice, may

1 designate the types of subsidiaries not subject to this
2 notice requirement, and may promulgate rules and
3 regulations to administer this subsection (12).

4 (13) To accept for payment at a future date not
5 exceeding one year from the date of acceptance, drafts
6 drawn upon it by its customers; and to issue, advise, or
7 confirm letters of credit authorizing the holders thereof
8 to draw drafts upon it or its correspondents.

9 (14) To own and lease personal property acquired by the
10 bank at the request of a prospective lessee and upon the
11 agreement of that person to lease the personal property
12 provided that the lease, the agreement with respect
13 thereto, and the amount of the investment of the bank in
14 the property comply with Section 35.1 of this Act.

15 (15) (a) To establish and maintain, in addition to the
16 main banking premises, branches offering any banking
17 services permitted at the main banking premises of a State
18 bank.

19 (b) To establish and maintain, after May 31, 1997,
20 branches in another state that may conduct any activity in
21 that state that is authorized or permitted for any bank
22 that has a banking charter issued by that state, subject to
23 the same limitations and restrictions that are applicable
24 to banks chartered by that state.

25 (16) (Blank).

26 (17) To establish and maintain terminals, as

1 authorized by the Electronic Fund Transfer Act.

2 (18) To establish and maintain temporary service
3 booths at any International Fair held in this State which
4 is approved by the United States Department of Commerce,
5 for the duration of the international fair for the sole
6 purpose of providing a convenient place for foreign trade
7 customers at the fair to exchange their home countries'
8 currency into United States currency or the converse. This
9 power shall not be construed as establishing a new place or
10 change of location for the bank providing the service
11 booth.

12 (19) To indemnify its officers, directors, employees,
13 and agents, as authorized for corporations under Section
14 8.75 of the Business Corporation Act of 1983.

15 (20) To own, possess, and carry as assets stock of, or
16 be or become a member of, any corporation, mutual company,
17 association, trust, or other entity formed exclusively for
18 the purpose of providing directors' and officers'
19 liability and bankers' blanket bond insurance or
20 reinsurance to and for the benefit of the stockholders,
21 members, or beneficiaries, or their assets or businesses,
22 or their officers, directors, employees, or agents, and not
23 to or for the benefit of any other person or entity or the
24 public generally.

25 (21) To make debt or equity investments in corporations
26 or projects, whether for profit or not for profit, designed

1 to promote the development of the community and its
2 welfare, provided that the aggregate investment in all of
3 these corporations and in all of these projects does not
4 exceed 10% of the unimpaired capital and unimpaired surplus
5 of the bank and provided that this limitation shall not
6 apply to creditworthy loans by the bank to those
7 corporations or projects. Upon written application to the
8 Commissioner, a bank may make an investment that would,
9 when aggregated with all other such investments, exceed 10%
10 of the unimpaired capital and unimpaired surplus of the
11 bank. The Commissioner may approve the investment if he is
12 of the opinion and finds that the proposed investment will
13 not have a material adverse effect on the safety and
14 soundness of the bank.

15 (22) To own, possess, and carry as assets the stock of
16 a corporation engaged in the ownership or operation of a
17 travel agency or to operate a travel agency as a part of
18 its business.

19 (23) With respect to affiliate facilities:

20 (a) to conduct at affiliate facilities for and on
21 behalf of another commonly owned bank, if so authorized
22 by the other bank, all transactions that the other bank
23 is authorized or permitted to perform; and

24 (b) to authorize a commonly owned bank to conduct
25 for and on behalf of it any of the transactions it is
26 authorized or permitted to perform at one or more

1 affiliate facilities.

2 Any bank intending to conduct or to authorize a
3 commonly owned bank to conduct at an affiliate facility any
4 of the transactions specified in this paragraph (23) shall
5 give written notice to the Commissioner at least 30 days
6 before any such transaction is conducted at the affiliate
7 facility.

8 (24) To act as the agent for any fire, life, or other
9 insurance company authorized by the State of Illinois, by
10 soliciting and selling insurance and collecting premiums
11 on policies issued by such company; and to receive for
12 services so rendered such fees or commissions as may be
13 agreed upon between the bank and the insurance company for
14 which it may act as agent; provided, however, that no such
15 bank shall in any case assume or guarantee the payment of
16 any premium on insurance policies issued through its agency
17 by its principal; and provided further, that the bank shall
18 not guarantee the truth of any statement made by an assured
19 in filing his application for insurance.

20 (25) Notwithstanding any other provisions of this Act
21 or any other law, to offer any product or service that is
22 at the time authorized or permitted to any insured savings
23 association or out-of-state bank by applicable law,
24 provided that powers conferred only by this subsection
25 (25):

26 (a) shall always be subject to the same limitations

1 and restrictions that are applicable to the insured
2 savings association or out-of-state bank for the
3 product or service by such applicable law;

4 (b) shall be subject to applicable provisions of
5 the Financial Institutions Insurance Sales Law;

6 (c) shall not include the right to own or conduct a
7 real estate brokerage business for which a license
8 would be required under the laws of this State; and

9 (d) shall not be construed to include the
10 establishment or maintenance of a branch, nor shall
11 they be construed to limit the establishment or
12 maintenance of a branch pursuant to subsection (11).

13 Not less than 30 days before engaging in any activity
14 under the authority of this subsection, a bank shall
15 provide written notice to the Commissioner of its intent to
16 engage in the activity. The notice shall indicate the
17 specific federal or state law, rule, regulation, or
18 interpretation the bank intends to use as authority to
19 engage in the activity.

20 (26) Nothing in this Section shall be construed to
21 require the filing of a notice or application for approval
22 with the United States Office of the Comptroller of the
23 Currency or a bank supervisor of another state as a
24 condition to the right of a State bank to exercise any of
25 the powers conferred by this Section in this State.

26 (Source: P.A. 98-44, eff. 6-28-13.)

1 (205 ILCS 5/14) (from Ch. 17, par. 321)

2 Sec. 14. Stock. Unless otherwise provided for in this Act
3 provisions of general application to stock of a state bank
4 shall be as follows:

5 (1) All banks shall have their capital divided into shares
6 of a par value of not less than \$1 each and not more than \$100
7 each, however, the par value of shares of a bank effecting a
8 reverse stock split pursuant to item (8) of subsection (a) of
9 Section 17 may temporarily exceed this limit provided it
10 conforms to the limits immediately after the reverse stock
11 split is completed. No issue of capital stock or preferred
12 stock shall be valid until not less than the par value of all
13 such stock so issued shall be paid in and notice thereof by the
14 president, a vice-president or cashier of the bank has been
15 transmitted to the Commissioner. In the case of an increase in
16 capital stock by the declaration of a stock dividend, the
17 capitalization of retained earnings effected by such stock
18 dividend shall constitute the payment for such shares required
19 by the preceding sentence, provided that the surplus of said
20 bank after such stock dividend shall be at least equal to fifty
21 per cent of the capital as increased. The charter shall not
22 limit or deny the voting power of the shares of any class of
23 stock except as provided in Section 15(3) of this Act.

24 (2) Pursuant to action taken in accordance with the
25 requirements of Section 17, a bank may issue preferred stock of

1 one or more classes as shall be approved by the Commissioner as
2 hereinafter provided, and make such amendment to its charter as
3 may be necessary for this purpose; but in the case of any newly
4 organized bank which has not yet issued capital stock the
5 requirements of Section 17 shall not apply.

6 (3) Without limiting the authority herein contained a bank,
7 when so provided in its charter and when approved by the
8 Commissioner, may issue shares of preferred stock:

9 (a) Subject to the right of the bank to redeem any of
10 such shares at not exceeding the price fixed by the charter
11 for the redemption thereof;

12 (b) Subject to the provisions of subsection (8) of this
13 Section 14 entitling the holders thereof to cumulative or
14 noncumulative dividends;

15 (c) Having preference over any other class or classes
16 of shares as to the payment of dividends;

17 (d) Having preference as to the assets of the bank over
18 any other class or classes of shares upon the voluntary or
19 involuntary liquidation of the bank;

20 (e) Convertible into shares of any other class of
21 stock, provided that preferred shares shall not be
22 converted into shares of a different par value unless that
23 part of the capital of the bank represented by such
24 preferred shares is at the time of the conversion equal to
25 the aggregate par value of the shares into which the
26 preferred shares are to be converted.

1 (4) If any part of the capital of a bank consists of
2 preferred stock, the determination of whether or not the
3 capital of such bank is impaired and the amount of such
4 impairment shall be based upon the par value of its stock even
5 though the amount which the holders of such preferred stock
6 shall be entitled to receive in the event of retirement or
7 liquidation shall be in excess of the par value of such
8 preferred stock.

9 (5) Pursuant to action taken in accordance with the
10 requirements of Section 17 of this Act, a state bank may
11 provide for a specified number of authorized but unissued
12 shares of capital stock for one or more of the following
13 purposes:

14 (a) Reserved for issuance under stock option plan or
15 plans to directors, officers or employees;

16 (b) Reserved for issuance upon conversion of
17 convertible preferred stock issued pursuant to and in
18 compliance with the provisions of subsections (2) and (3)
19 of this Section 14.

20 (c) Reserved for issuance upon conversion of
21 convertible debentures or other convertible evidences of
22 indebtedness issued by a state bank, provided always that
23 the terms of such conversion have been approved by the
24 Commissioner;

25 (d) Reserved for issuance by the declaration of a stock
26 dividend. If and when any shares of capital stock are

1 proposed to be authorized and reserved for any of the
2 purposes set forth in subparagraphs (a), (b) or (c) above,
3 the notice of the meeting, whether special or annual, of
4 stockholders at which such proposition is to be considered
5 shall be accompanied by a statement setting forth or
6 summarizing the terms upon which the shares of capital
7 stock so reserved are to be issued, and the extent to which
8 any preemptive rights of stockholders are inapplicable to
9 the issuance of the shares so reserved or to the
10 convertible preferred stock or convertible debentures or
11 other convertible evidences of indebtedness, and the
12 approving vote of the holders of at least two-thirds of the
13 outstanding shares of stock entitled to vote at such
14 meeting of the terms of such issuance shall be requisite
15 for the adoption of any amendment providing for the
16 reservation of authorized but unissued shares for any of
17 said purposes. Nothing in this subsection (5) contained
18 shall be deemed to authorize the issuance of any capital
19 stock for a consideration less than the par value thereof.

20 (6) Upon written application to the Commissioner 60 days
21 prior to the proposed purchase and receipt of the written
22 approval of the Commissioner, a state bank may purchase and
23 hold as treasury stock such amounts of the total number of
24 issued and outstanding shares of its capital and preferred
25 stock outstanding as the Commissioner determines is consistent
26 with safety and soundness of the bank. The Commissioner may

1 specify the manner of accounting for the treasury stock and the
2 form of notice prior to ultimate disposition of the shares.
3 Except as authorized in this subsection, it shall not be lawful
4 for a state bank to purchase or hold any additional such shares
5 or securities described in subsection (2) of Section 37 unless
6 necessary to prevent loss upon a debt previously contracted in
7 good faith, in which event such shares or securities so
8 purchased or acquired shall, within 6 months from the time of
9 purchase or acquisition, be sold or disposed of at public or
10 private sale. Any state bank which intends to purchase and hold
11 treasury stock as authorized in this subsection (6) shall file
12 a written application with the Commissioner 60 days prior to
13 any such proposed purchase. The application shall state the
14 number of shares to be purchased, the consideration for the
15 shares, the name and address of the person from whom the shares
16 are to be purchased, if known, and the total percentage of its
17 issued and outstanding shares to be held by the bank after the
18 purchase. The total consideration paid by a state bank for
19 treasury stock shall reduce capital and surplus of the bank for
20 purposes of Sections of this Act relating to lending and
21 investment limits which require computation of capital and
22 surplus. After considering and approving an application to
23 purchase and hold treasury stock under this subsection, the
24 Commissioner may waive or reduce the balance of the 60 day
25 application period. The Commissioner may specify the form of
26 the application for approval to acquire treasury stock and

1 promulgate rules and regulations for the administration of this
2 subsection (6). A state bank may acquire or resell its own
3 shares as treasury stock pursuant to this subsection (6)
4 without a change in its charter pursuant to Section 17. Such
5 stock may be held for any purpose permitted in subsection (5)
6 of this Section 14 or may be resold upon such reasonable terms
7 as the board of directors may determine provided notice is
8 given to the Commissioner prior to the resale of such stock.

9 (7) During the time that a state bank shall continue its
10 banking business, it shall not withdraw or permit to be
11 withdrawn, either in the form of dividends or otherwise, any
12 portion of its capital, but nothing in this subsection shall
13 prevent a reduction or change of the capital stock or the
14 preferred stock under the provisions of Sections 17 through 30
15 of this Act, a purchase of treasury stock under the provisions
16 of subsection (6) of this Section 14 or a redemption of
17 preferred stock pursuant to charter provisions therefor.

18 (8) (a) Subject to the provisions of this Act, the board of
19 directors of a state bank from time to time may declare a
20 dividend of so much of the net profits of such bank as it
21 shall judge expedient, subject to item (b) of this Section
22 and applicable federal law, but each bank before the
23 declaration of a dividend shall carry at least one-tenth of
24 its net profits since the date of the declaration of the
25 last preceding dividend, or since the issuance of its
26 charter in the case of its first dividend, to its surplus

1 until the same shall be equal to its capital.

2 (b) No dividends shall be paid by a state bank while it
3 continues its banking business to an amount greater than
4 its net profits then on hand, deducting first therefrom its
5 losses and bad debts. All debts due to a state bank on
6 which interest is past due and unpaid for a period of 6
7 months or more, unless the same are well secured and in the
8 process of collection, shall be considered bad debts.

9 (c) For the purpose of declaring dividends pursuant to
10 paragraph (b) of this Section, upon prior written approval
11 of the Secretary, and without undergoing a
12 quasi-reorganization pursuant to Section 14.1, a State
13 bank may restate its capital accounts to remove a deficit
14 in its undivided profit account by eliminating such deficit
15 into its surplus account so that the undivided profit
16 account is restated to zero. The Secretary shall adopt
17 rules to implement this paragraph (c) and Section 14.1.

18 (9) A State bank may, but shall not be obliged to, issue a
19 certificate for a fractional share, and, by action of its board
20 of directors, may in lieu thereof, pay cash equal to the value
21 of the fractional share. A certificate for a fractional share
22 shall entitle the holder to exercise fractional voting rights,
23 to receive dividends, and to participate in any of the assets
24 of the bank in the event of liquidation.

25 (Source: P.A. 92-483, eff. 8-23-01; 92-651, eff. 7-11-02.)

1 (205 ILCS 5/14.1) (from Ch. 17, par. 321.1)

2 Sec. 14.1. Quasi-Reorganization of Capital Upon a Change in
3 Control. For the purposes of declaring dividends pursuant to
4 Section 14(8)(b) of this Act, subject to rules adopted by the
5 Secretary under paragraph (c) of subsection (8) of Section 14,
6 if a State bank:

7 (1) incurs a change in ownership of more than 50% of its
8 voting stock; and

9 (2) has a deficit in its net profits then on hand at the
10 time of such change in ownership; and

11 (3) receives the prior written approval of the Secretary
12 ~~Commissioner~~; such bank may restate its asset and liability
13 accounts to fair value for the purpose of reorganizing the
14 capital accounts of the bank so that net profits then on hand
15 are restated to zero; provided that in no event may total
16 capital be increased as a result of a capital reorganization
17 made pursuant to this Section.

18 (Source: P.A. 87-841.)

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