AN ACT concerning regulation.

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

Section 5. The Illinois Banking Act is amended by changing Section 35.2 as follows:

(205 ILCS 5/35.2) (from Ch. 17, par. 345)

Sec. 35.2. Limitations on investments in and loans to affiliates.

(a) Restrictions on transactions with affiliates.

(1) A state bank and its subsidiaries may engage in a covered transaction with an affiliate, as expressly provided in this Section 35.2, only if:

(A) in the case of any one affiliate, the aggregate amount of covered transactions of the state bank and its subsidiaries will not exceed 10% of the unimpaired capital and unimpaired surplus of the state bank; and

(B) in the case of all affiliates, the aggregate amount of covered transactions of the state bank and its subsidiaries will not exceed 20% of the unimpaired capital and unimpaired surplus of the state bank.

(2) For the purpose of this Section, any transactions by a state bank with any person shall be deemed to be a transaction with an affiliate to the extent that the

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

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

(4) Any covered transactions and any transactions exempt under subsection (d) between a state bank and an affiliate shall be on terms and conditions that are consistent with safe and sound banking practices.

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

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

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

(B) a bank subsidiary of the state bank;

(C) any company

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

(ii) a majority of the directors or trustees of

which constitute a majority of the persons holding any such office with the state bank or any company that controls the state bank;

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

(ii) any investment company with respect to which a state bank or any affiliate thereof is an investment advisor. An investment advisor is defined as "any person (other than a bona fide officer, director, trustee, member of an advisory board, or employee of such company, as such) who pursuant to contract with such company regularly furnishes advice to such company, with respect to the desirability or investing in, purchasing, or selling securities or other property shall be purchased or sold by such company, and any other who pursuant to contract with a person as described above regularly performs substantially all of the duties undertaken by such person described above; but does not include a person whose advice is furnished solely through uniform publications to subscribers thereto or a person who furnishes only statistical and other factual information, advice regarding economic factors and trends, or advice

as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities, or a company furnishing such services at cost to one or more investment companies, insurance companies or other financial institutions, or any person the character and amount of whose compensation for such services must be approved by a court.

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

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

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

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

(C) any company engaged solely in conducting a safe

deposit business;

(D) any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and

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

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

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

(ii) such company or shareholder controls in any manner the election of a majority of the

directors or trustees of the other company; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) an asset classified as "substandard", "doubtful", or "loss" or treated as "other loans especially mentioned" in the most recent report of examination of an affiliate;

(B) an asset in a nonaccrual status;

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

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

(c) Collateral for certain transactions with affiliates.

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

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

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

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

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

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

(B) 110% of the amount of such loan or extension of

credit, guarantee, acceptance or letter of credit if the collateral is composed of obligations of any state or political subdivision of any State;

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

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

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

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

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

affiliate of the state bank.

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

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

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

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

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

(C) in which 80% or more of the voting shares are controlled by the company that controls 80% or more of the voting shares of the state bank;

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

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

(4) making a loan or extension of credit to, or issuing

a guarantee, acceptance, or letter of credit on behalf of, an affiliate that is fully secured by

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

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

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

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

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

(6) purchasing assets having a readily identifiable and publicly available market quotation and purchased at the market quotation or, subject to the prohibition contained in paragraph (3) of subsection (a), purchasing

loans on a nonrecourse basis from affiliated banks; and

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

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

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

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

Section 10. The Banking Emergencies Act is amended by changing Section 2 as follows:

(205 ILCS 610/2) (from Ch. 17, par. 1002)

Sec. 2. Power of Commissioner.

(a) Whenever the Commissioner is notified by any officer of a bank or by any other means becomes aware that an emergency exists, or is impending, he may, by proclamation, authorize all banks in the State of Illinois to close any or all of their offices, or if only a bank or banks, or offices thereof, in a particular area or areas of the State of Illinois are affected by the emergency or impending emergency, the Commissioner may authorize only the affected bank, banks, or offices thereof, to close. The office or offices so closed may remain closed until the Commissioner declares, by further proclamation, that the emergency or impending emergency has ended. The Commissioner during an emergency or while an impending emergency exists, which affects, or may affect, a particular bank or banks, or a particular office or offices thereof, but not banks located in the area generally of the said county or municipality, may authorize the particular bank or banks, or office or offices so affected, to close. The office or offices so closed shall remain closed until the Commissioner is notified by a bank officer of the closed bank that the emergency has ended. The Commissioner shall notify, at such time, the officers of the bank that one or more offices, heretofore closed because of the emergency, should reopen and, in either event, for such further time thereafter as may reasonably be required to reopen.

(b) Whenever the Commissioner becomes aware that an emergency exists, or is impending, he or she may, by

proclamation, authorize any bank organized under the laws of another state, or of the United States, to open and operate offices in this State, notwithstanding any other laws of this State to the contrary. Any office or offices opened in accordance with this subsection may remain open until the Commissioner declares, by further proclamation, that the emergency or impending emergency has ended. The Department of Financial and Professional Regulation shall adopt rules to implement this subsection (b).

(Source: P.A. 92-483, eff. 8-23-01.)

Section 15. The Financial Institutions Electronic Documents and Digital Signature Act is amended by changing Sections 5 and 10 as follows:

(205 ILCS 705/5)

Sec. 5. Definitions. As used in this Act:

"Digital signature" means an encrypted electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.

"Financial institution" means a bank, a savings and loan association, a savings bank, or a credit union or any subsidiary or affiliate of a bank, savings and loan association, savings bank, or credit union.

"Substitute check" means a paper reproduction of an

original check, as defined in the Check Clearing for the 21st Century Act (12 U.S.C. 5001, et seq.), as amended from time to time, and the rules promulgated thereunder.

(Source: P.A. 94-458, eff. 8-4-05.)

(205 ILCS 705/10)

Sec. 10. Electronic documents; digital signatures; electronic notices.

(a) Electronic documents. If in the regular course of business, a financial institution possesses, records, or generates any document, representation, image, substitute check, reproduction, or combination thereof, of any agreement, transaction, act, occurrence, or event by any electronic or computer-generated process that accurately reproduces, comprises, or records the agreement, transaction, act, occurrence, or event, the recording, comprising, or reproduction shall have the same force and effect under the laws of this State as one comprised, recorded, or created on paper or other tangible form by writing, typing, printing, or similar means.

(b) Digital signatures. In any communication, acknowledgement, agreement, or contract between a financial institution and its customer, in which a signature is required or used, any party to the communication, acknowledgement, agreement, or contract may affix a signature by use of a digital signature, and the digital signature, when lawfully

used by the person whose signature it purports to be, shall have the same force and effect as the use of a manual signature if it is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to data in such a manner that if the data are changed, the digital signature is invalidated. Nothing in this Section shall require any financial institution or customer to use or permit the use of a digital signature.

(c) Electronic notices.

(1) Consent to electronic records. If a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting intrastate commerce in this State be provided or made available by a financial institution to a consumer in writing, the use of an electronic record to provide or make available that information satisfies the requirement that the information be in writing if:

(A) the consumer has affirmatively consented to the use of an electronic record to provide or make available that information and has not withdrawn consent;

(B) the consumer, prior to consenting, is provided with a clear and conspicuous statement:

(i) informing the consumer of:

(I) any right or option of the consumer to have the record provided or made available on

paper or in nonelectronic form, and

(II) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences (which may include termination of the parties' relationship), or fees in the event of a withdrawal of consent;

(ii) informing the consumer of whether the consent applies:

(I) only to the particular transaction that gave rise to the obligation to provide the record, or

(II) to identified categories of records that may be provided or made available during the course of the parties' relationship;

(iii) describing the procedures the consumer must use to withdraw consent, as provided in clause (i), and to update information needed to contact the consumer electronically; and

(iv) informing the consumer:

(I) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and

(II) whether any fee will be charged for a paper copy;

(C) the consumer:

(i) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(ii) consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent; and

(D) after the consent of a consumer in accordance with subparagraph (A), if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record:

(i) provides the consumer with a statement of:

(I) the revised hardware and software requirements for access to and retention of the electronic records, and

(II) the right to withdraw consent without the imposition of any fees for the withdrawal and without the imposition of any condition or consequence that was not disclosed under

subparagraph (B)(i); and

(ii) again complies with subparagraph (C).

(2) Other rights.

(A) Preservation of consumer protections. Nothing in this subsection (c) affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law.

(B) Verification or acknowledgment. If a law that was enacted prior to this amendatory Act of the 95th General Assembly expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides the required verification or acknowledgment of receipt.

(3) Effect of failure to obtain electronic consent or confirmation of consent. The legal effectiveness, validity, or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with paragraph (1)(C)(ii).

(4) Prospective effect. Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity, or enforceability of electronic records provided or made available to that consumer in accordance with

paragraph (1) prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with paragraph (1)(D) may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this paragraph.

(5) Prior consent. This subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this amendatory Act of the 95th General Assembly to receive the records in electronic form as permitted by any statute, regulation, or other rule of law.

(6) Oral communications. An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection (c), except as otherwise provided under applicable law.

(Source: P.A. 94-458, eff. 8-4-05.)

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