The following is a summary of significant banking related legislation enacted by the Illinois General Assembly and subsequently approved by Governor Blagojevich as of September 15, 2006. Complete copies of the legislation are available from the Illinois General Assembly website at www.ilga.gov. This summary is provided for your general reference. For specific guidance concerning the applicability or effect of legislation on your institution, you should seek the advice of your legal counsel.

**CREDIT REPORT FREEZE**

P.A. 94-0799 (S.B. 2310) makes several important changes to the Consumer Fraud and Deceptive Practices Act, [815 ILCS 505/1] related to a consumer’s ability to place a freeze on consumer reporting information and credit reports. The prior statutory ability to freeze a credit report originally enacted in 2005, was conditioned upon the consumer providing evidence that their personal information had been unlawfully used by another person. Section 2MM of the Consumer Fraud and Deceptive Practices Act, has now been amended to allow a consumer to make a written request that a freeze be placed on their credit report for any reason.

The written request must be accompanied by proper identification. In addition, credit reporting agencies are no longer prohibited from advising third parties that a freeze is in effect with respect to a consumer’s credit report. Lastly, the new amendment to Section 2MM of the Consumer Fraud and Deceptive Practices Act allows a consumer reporting agency to charge a fee to the consumer for the credit report freeze.

Once a written request has been received by a consumer reporting agency, along with proper identification and any applicable fee, the consumer reporting agency must place the freeze into effect within ten business days and send the consumer a unique personal identification
number or password that will allow the consumer the ability to authorize the release of the credit report to a specific party or for a specific period of time. Again, the Consumer reporting agency is allowed to assess a fee for the release of the credit report.

The fees that are now allowed with respect to placing or removing a credit report freeze are generally capped at $10.00 per request. There is a prohibition against charging a fee for any consumer aged 65 or over and to any victim of identity theft, provided that the consumer reporting agency has been provided a copy of a valid police report of complaint filed by the consumer about unlawful use of personal information.

These new consumer report protections become effective on January 1, 2007.

**CLARIFICATION OF THE APPLICATION OF THE CHECK PRINTER AND CHECK NUMBER ACT**

P.A. 94-0780 (H.B. 4736) clarifies that all provisions of the Check Printer and Check Number Act, [205 ILCS 690/1] applies to any financial institution operating in the State of Illinois, including a national bank or federal thrift organized under the laws of the United States and operating in the State of Illinois. Specifically the amendment to Section 5 of the Check Printers and Check Numbers Act, redefines the term “financial institution” to include any federally chartered commercial bank, savings bank, savings and loan association or credit union organized under the laws of the United States and operation in the state of Illinois. The effect of this amendment will level the field between state and nationally chartered financial institutions with respect to the sale and distribution of checks. Now all check printers who fill orders for any financial institution operating in Illinois must verify account holder information before delivery of the check order.

The new expansive protections took effect on May 19, 2006.

**CREDIT PROTECTIONS GRANTED TO MILITARY PERSONNEL ON ACTIVE DUTY-NEW PENALTY PROVISIONS**

Once again the Illinois General Assembly has strengthened the credit protections granted to individuals who are on active military duty. New provisions contained in P.A. 94-0802 (H.B. 4703) amends several Illinois laws governing consumer transactions including Section 4.05 of the Illinois Interest Act, [815 ILCS 205/1] and imposes specific penalties upon creditors that violate the statutory limits on interest and finance charges that may be charged to active duty military personnel. The new penalty provisions allow the Illinois Attorney General to impose civil penalties of $1000 and provides for enforcement and administrative adjudication.

These new penalty provisions became effective on May 26, 2006.
NEW PROTECTIONS PROVIDED TO CONSUMERS AGAINST MORTGAGE RESCUE FRAUD

P.A. 94-0822 establishes the new Mortgage Rescue Fraud Act and makes any violation of this new act a violation of the Illinois Consumer Fraud and Deceptive Practices Act. The overall intent of the new Mortgage Rescue Fraud Act is to provide protections to residential home owners of distressed properties when they engage professional assistance to stop or postpone a foreclosure sale or the loss of a home due to non-payment of taxes.

The new statute requires that specific notice be provided to the distressed property owner regarding exactly what services will be provided by the distressed property consultant and the exact amount of compensation that will be paid for these services. There is a specific prohibition against payment of compensation until all of the contractual services have been provided. In addition there is an absolute prohibition against any required assignment of a lien, mortgage or deed in favor of the distressed property consultant.

Significantly, the new statute grants the distressed property owner the right to cancel any mortgage rescue contract with a distressed property consultant at any time up until the time that the consultant has performed all of the services designated in the consultant contract. The rights granted to a distressed property owner under the new statute cannot be waived by any party.

In addition, the new protections granted under the Mortgage Rescue Fraud Act extend to any distressed property conveyance contract. These conveyance contracts are defined as a contract by the distressed property owner to convey the residential property to a third party who in turn allows the owner of the distressed property to occupy the property and the third party acquirer promises to re-convey the property back to the original owner at a later time or grants an option to the original owner to re-purchase the property at a later time. In addition, the new statute grants the distressed property owner the right to cancel a conveyance contract for a minimum of five days from the date the contract was signed and in certain instances up until the last day that the distressed property owner would have a right to redeem the property under the Illinois Mortgage Foreclosure Act.

The new Act specifically states that any violation of the Mortgage Rescue Fraud Act also constitutes an unlawful practice under the Illinois Consumer Fraud and Deceptive Practices Act. This provides consumer with civil remedies for any violation by a distressed property consultant. In addition, the new Act establishes that criminal sanctions for any intentional violation and provides that the offense will be a class 2 felony.

The provisions of the Mortgage Rescue Fraud Act will become effective on January 1, 2007.
PROHIBITION AGAINST THE UNAUTHORIZED USE OF SAVINGS AND LOAN ASSOCIATION AND SAVINGS BANK NAMES


These new statutory provisions prohibit, unless otherwise expressly permitted by law or absent written consent, the use of an Illinois state-chartered Savings and Loan Association or Illinois state-chartered Savings Bank name or similar name by any person or group of persons when marketing or soliciting business, if the use would cause a reasonable person to believe that the solicitation originated or was endorsed by the Illinois state-chartered Savings and Loan Association or Illinois state-chartered Savings Bank. These new statutory provisions also grant power to the Secretary of the Illinois Department of Financial and Professional Regulation to issue Orders of Cease and Desist and to impose a civil monetary penalty in an amount of up to $10,000 for any continued unauthorized use of Illinois state-chartered Savings and Loan Association or Illinois state-chartered Savings Bank names after the issuance of the Secretary’s Order to Cease and Desist.


AMENDMENT TO SECTION 48.1 OF THE ILLINOIS BANKING ACT REGARDING THE RELEASE OF BANK CUSTOMER INFORMATION

P.A. 94-851 (S.B. 2763) clarifies the power of the Office of the Inspector General of the Illinois Department of Human Services to issue subpoenas for financial records. In addition, P.A. 94-851 amends Section 48.1 of the Illinois Banking Act to authorize the release of customer information to law enforcement authorities; the Illinois Department on Aging and its regional administrative and provider agencies; the office of the Inspector General of the Illinois Department of Human Services; and public guardians provided that there has been a valid a subpoena issued for that information or if the financial institution has a suspicion that an elderly or disabled customer has been or may become a victim of financial exploitation.

Further dissemination or release of records obtained by the Inspector General, law enforcement authorities, the Illinois Department on Aging or public guardians may only be made after the consent of the customer, the consent of the customer’s guardian or in response to a valid court order, grand jury subpoena, or a subpoena from law enforcement authorities.
Similar amendments have been made to the Savings and Loan Act of 1985, the Savings Bank Act, and the Illinois Credit Union Act.

These new provisions became effective on June 13, 2006.

**PAYMENT OF TAXES FROM A MORTGAGE ESCROW ACCOUNT - NOTICE REQUIREMENT**

A clarification to the notice requirement previously contained in the Mortgage Escrow Account Act, [765 ILCS 910/1] has been enacted under P.A. 94-0883 (H.B. 4519). Generally, provisions contained in the Mortgage Escrow Account Act require a mortgage lender to provide notice to a borrower within 45 business days when any property tax is paid from an escrow account.

A recent amendment to Section 15 of the Mortgage Escrow Account Act now provides that a mortgage lender may satisfy the notice requirements if they simply make an annual disclosure to the borrower of a means to access tax payment information by telephone, facsimile, e-mail, internet access or by other means of communication.

These new notification of tax payment provisions will become effective on January 1, 2007.

**NEW LIMITATIONS ON THE USE OF THE ILLINOIS IDENTIFICATION CARD AND ILLINOIS DRIVERS LICENSE FOR COMMERCIAL TRANSACTIONS**

P.A. 94-0892 (S.B. 2283) is intended to provide additional protections to Illinois residents against identity theft or unauthorized use of personal information. A new Section 14D has been added to the Illinois Identification Card Act, [15 ILCS 335/1] that includes prohibitions on the sale or use of information obtained from an Illinois drivers license or Illinois Identification card in the course of a commercial transaction for any other unrelated transaction. The new protections give the person whose information is improperly used to initiate a civil action against the person or entity that improperly released or used the information for actual damages, but not less than damages in an amount of $250.00 and attorney fees and court costs.

These new identity protections will become effective on January 1, 2007.

**NEW DATA BREACH NOTIFICATION REQUIREMENTS**

A recent amendment to the Personal Information Protection Act, [815 ILCS 530/1] has been enacted pursuant to P.A. 94-947 (H.B. 4449) that is intended to clarify when and the manner in which a data collector must notify Illinois residents whenever there has been a breach of security related to personal information that is maintained by the data collector.
The new provisions contained under Section 10(b-5) of the Personal Information Protection Act specifically allow a data collector to delay notification to the affected Illinois residents if the notification will interfere with a criminal investigation and the data collector has received a written request from an appropriate law enforcement agency requesting a delay in notification. The new amendment specifies that the data collector is required to make the required notification as soon as notification will no longer interfere with the criminal investigation.

A second amendment is contained in the new Section 12 of the Personal Information Protection Act that now requires a state agency that maintains personal information related to Illinois residents to notify affected persons whenever there is a breach in a State of Illinois maintained data base. Generally, this new notice requirement placed upon State of Illinois Agencies tracks the notice requirements previously imposed upon non-governmental data collectors. Notification must be made in the most expedient time possible following discovery of a security breach. Notification may be made by written notice, electronic notice, or substitute notice if the breach affects more than 500,000 persons or the cost of providing notice will exceed $250,000. Substitute notice may be made by e-mail; conspicuous posting to a State of Illinois web site or by notification to a major state-wide media.

In addition, if the breach to a State of Illinois agency data base affects more than 1000 Illinois residents, the State agency must notify consumer reporting agencies that maintain or compile files on a nationwide basis of the timing, distribution and content of the breach notice sent to Illinois residents. These new security breach provisions also require the Illinois State agencies that have suffered a security breach to notify the Illinois General Assembly within five business days of the discovery of the security breach and to advise the Illinois General Assembly of the corrective measure undertaken to prevent a future security breach.

The new personal information data base security provisions became effective on June 27, 2006.

**FACILITATING IDENTITY THEFT-IMPROPER DISPOSAL OF PERSONAL INFORMATION - CRIMINAL VIOLATION**

P.A. 94-0969 (H.B. 4438) amends the Illinois Criminal Code of 1961 and establishes criminal sanctions upon any person who, in the course of their official duties has access to the personal information of another person in the procession of the State of Illinois and who with the intent of committing identity theft improperly disposes of the personal information in a disposal container accessible by the general public. Proper disposal requires that the personal information either be shredded, if in written form, or otherwise wiped from a computer disk or destroyed if in recorded format so that the personal information is either unintelligible or destroyed.

The offense of facilitating identity theft will be punishable as a class A misdemeanor or as a class 4 felony for a second or subsequent offense.
In addition, a conviction for facilitating identity theft subjects the guilty person to civil action for damages by the person or persons damaged by the improper disposal of the personal information.

These new criminal sanctions become effective on January 1, 2007.

**ID THEFT CRIMINAL PENALTIES**

P.A. 94-1008 (S.B. 2554) is a continuation of the Illinois General Assembly's efforts to combat identity theft. This new statutory amendment to the Illinois Criminal Code of 1961 expands the definition of "identity theft" to include knowingly using another person's identity information to portray the user as the actual owner of the identity information to gain access to additional personal information. Similarly a new criminal offense is created whenever a person uses another's identity information to gain access to any record, any communication directed to the real owner of the information, or any transaction initiated by the real owner of the identity information. Criminal sanctions that may be imposed range from sentencing for a class 3 felony up to sentencing as a class 2 felony offense for repeated or multiple identity thefts. In addition, victims of identity theft may seek civil damages against the offender either for actual damages or no less than $2000 for each violation.

These new identity theft protections became effective on July 5, 2006.

**PREDATORY LOAN DATA BASE PILOT PROGRAM**

P.A. 94-1029 (S.B. 0304) amends and clarifies the Residential Property Disclosure Act with respect to the implementation of the Predatory Loan Data Base program. This amendment specifies that the Illinois Department of Financial and Professional Regulation, (the "IDFPR") shall declare the inception date for the new data base program. The Secretary of IDFPR determined that September 1, 2006 was the effective date for the predatory lending pilot program.

Under the terms of P.A. 94-1029 and last years P.A. 94-280, the Predatory Lending Database, established under Article 3 of the Residential Real Property Disclosure Act, all mortgage brokers and loan originators licensed under the Residential Mortgage License Act of 1987 are now to enter loan application information into the Predatory Lending Database if the mortgage loan is secured by residential real estate and is located in the ten designated zip codes of Cook County. The ten designated zip codes are the following:

60620; 60621; 60623; 60628; 60629; 60632; 60636; 60638; 60643; and 60652
Significantly, although real estate loans originated by state-chartered financial institutions are generally exempt from the credit counseling requirements established under Article 3 of the Residential Real Property Disclosure Act, these financial institutions must still obtain a Certificate of Exemption from the Predatory Lending Database website to be filed as a cover sheet with the Cook County Recorder of Deeds. The IDFPR, through the database, will issue a Certificate of Exemption to an exempt entity for any loan that is not originated by a mortgage broker or loan originator subject to regulation under the Residential Mortgage License Act of 1987.

Additional information related to the implementation of the Predatory Loan Database may be obtained from the IDFPR Predatory Loan Data Base website at www.hb4050info.com.

The pilot program required under P.A. 94-280 and P.A. 94-1029 became effective on September 1, 2006.