

1 AN ACT concerning regulation.

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

4 Article 1. General Provisions

5 Section 1-1. Short title. This Act may be cited as the
6 Digital Assets and Consumer Protection Act.

7 Section 1-5. Definitions.

8 (a) As used in this Act:

9 "Affiliate" means any person that controls, is controlled
10 by, or is under common control with another person. For
11 purposes of this definition, "control" means the possession,
12 direct or indirect, of the power to direct or cause the
13 direction of the management and policies of a person.

14 "Applicant" means a person that applies for registration
15 under this Act.

16 "Bank" means a bank, savings banks, savings and loan
17 association, savings association, or industrial loan company
18 chartered under the laws of this State or any other state or
19 under the laws of the United States.

20 "Confidential supervisory information" means information
21 or documents obtained by employees, agents, or representatives
22 of the Department in the course of any examination,

1 investigation, audit, visit, registration, certification,
2 review, licensing, or any other regulatory or supervisory
3 activity pursuant to this Act, and any record prepared or
4 obtained by the Department to the extent that the record
5 summarizes or contains information derived from any report,
6 document, or record described in this Act.

7 "Conflict of interest" means an interest that might
8 incline a covered person or an individual who is an associated
9 person of a covered person to make a recommendation that is not
10 disinterested.

11 "Corporate fiduciary" shall mean a corporate fiduciary as
12 defined by Section 1-5.05 of the Corporate Fiduciary Act.

13 "Covered person" means a registrant or person required to
14 register pursuant to this Act.

15 "Covered exchange" means a covered person that exchanges
16 or holds itself out as being able to exchange a digital asset
17 for a resident.

18 "Credit union" means a credit union chartered under the
19 laws of this State or any other state or under the laws of the
20 United States.

21 "Department" means the Department of Financial and
22 Professional Regulation.

23 "Digital asset" means a digital representation of value
24 that is used as a medium of exchange, unit of account, or store
25 of value, and that is not fiat currency, whether or not
26 denominated in fiat currency. "Digital asset" does not include

1 any of the following:

2 (1) A digital representation of value which a merchant
3 grants, as part of an affinity or rewards program, and
4 that cannot be taken from or exchanged with the merchant
5 for fiat currency or a digital asset.

6 (2) A digital representation of value that is issued
7 by or on behalf of a game publisher, used solely within a
8 gaming platform, has no market or application outside of
9 such gaming platform, and cannot be converted into, or
10 redeemed for, fiat currency or digital assets.

11 (3) A digital representation of value that is used as
12 part of prepaid cards.

13 "Digital asset administration" means controlling,
14 administering, or issuing a digital asset. "Digital asset
15 administration" does not include the issuance of a
16 non-fungible token in and of itself.

17 "Digital asset business activity" means any of the
18 following:

19 (1) Exchanging, transferring, or storing a digital
20 asset.

21 (2) Engaging in digital asset administration.

22 (3) Any other business activity involving digital
23 assets designated by rule by the Department as may be
24 necessary and appropriate for the protection of residents.

25 "Digital asset business activity" does not include (1)
26 peer-to-peer exchanges or transfers of digital assets, (2)

1 decentralized exchanges facilitating peer-to-peer exchanges or
2 transfers solely through use of a computer program or a
3 transaction protocol that is intended to automatically
4 execute, control, or document events and actions, and (3) the
5 development and dissemination of software in and of itself.

6 "Exchange", when used as a verb, means to exchange, buy,
7 sell, trade, or convert, on behalf of a resident, either of the
8 following:

9 (1) A digital asset for fiat currency or one or more
10 forms of digital assets.

11 (2) Fiat currency for one or more forms of digital
12 assets.

13 "Exchange" does not include buying, selling, or trading
14 digital assets for a person's own account in a principal
15 capacity.

16 "Executive officer" includes, without limitation, an
17 individual who is a director, officer, manager, managing
18 member, partner, or trustee, or other functionally equivalent
19 responsible individual, of a person.

20 "Federally insured depository institution" shall mean an
21 insured depository institution as defined by Section 3(c)(2)
22 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(2), as
23 amended, or an insured credit union as defined by Section
24 101(7) of the Federal Credit Union Act, 12 U.S.C. 1752(7), as
25 amended.

26 "Fiat currency" means a medium of exchange or unit of

1 value issued by the United States or a foreign government and
2 that is designated as legal tender in its country of issuance.

3 "Insolvent" means any of the following:

4 (1) Having generally ceased to pay debts in the
5 ordinary course of business other than as a result of a
6 bona fide dispute.

7 (2) Being unable to pay debts as they become due.

8 (3) Being insolvent within the meaning of federal
9 bankruptcy law.

10 "Non-fungible token" means any unique digital identifier
11 on any blockchain or digital asset network used to certify
12 authenticity and ownership rights that is not readily
13 exchangeable or replaceable with a mutually interchangeable
14 digital asset of the same value. The Department may modify
15 this definition by rule.

16 "Person" includes, without limitation, any individual,
17 corporation, business trust, estate, trust, partnership,
18 proprietorship, syndicate, limited liability company,
19 association, joint venture, government, governmental
20 subsection, agency or instrumentality, public corporation or
21 joint stock company, or any other organization or legal or
22 commercial entity.

23 "Prepaid card" means an electronic payment device that,
24 subject to any rules adopted by the Department:

25 (1) is usable at a single merchant or an affiliated
26 group of merchants that share the same name, mark, or

1 logo, or is usable at multiple, unaffiliated merchants or
2 service providers;

3 (2) is issued in and for a specified amount of fiat
4 currency;

5 (3) can be reloaded in and for only fiat currency, if
6 at all;

7 (4) is issued or reloaded on a prepaid basis for the
8 future purchase or delivery of goods or services;

9 (5) is honored upon presentation;

10 (6) can be redeemed in and for only fiat currency, if
11 at all;

12 (7) is governed by the Uniform Money Transmission
13 Modernization Act; and

14 (8) complies with any other condition designated by
15 rule by the Department as may be necessary and appropriate
16 for the protection of residents.

17 "Qualified custodian" means a bank, credit union, or trust
18 company, subject to any rules adopted by the Department.

19 "Record" means information that is inscribed on a tangible
20 medium or that is stored in an electronic or other medium and
21 is retrievable in perceivable form.

22 "Registrant" means a person registered under this Act.

23 "Resident" means any of the following:

24 (1) A person who is domiciled in this State.

25 (2) A person who is physically located in this State
26 for more than 183 days of the previous 365 days.

1 (3) A person who has a place of business in this State.

2 (4) A legal representative of a person that is
3 domiciled in this State.

4 "Request for assistance" means all inquiries, complaints,
5 account disputes, and requests for documentation a covered
6 person receives from residents.

7 "Responsible individual" means an individual who has
8 direct control over, or significant management, policy, or
9 decision-making authority with respect to, a person's digital
10 asset business activity in this State.

11 "Secretary" means the Secretary of Financial and
12 Professional Regulation and any authorized representative of
13 the Secretary.

14 "Service provider" means any person that provides a
15 material service to a covered person in connection with the
16 offering or provision by that covered person of a digital
17 asset business activity in this State, including a person that
18 either:

19 (1) Participates in designing, operating, or
20 maintaining the digital asset business activity.

21 (2) Processes transactions relating to the digital
22 asset business activity, other than unknowingly or
23 incidentally transmitting or processing financial data in
24 a manner that the data is undifferentiated from other
25 types of data of the same form as the person transmits or
26 processes.

1 "State" means a state of the United States, the District
2 of Columbia, Puerto Rico, the United States Virgin Islands, or
3 any territory or insular possession subject to the
4 jurisdiction of the United States.

5 "Store," "storage", and "storing", except in the phrase
6 "store of value," means to store, hold, or maintain custody or
7 control of a digital asset on behalf of a resident by a person
8 other than the resident.

9 "Transfer" means to transfer or transmit a digital asset
10 on behalf of a resident, including by doing any of the
11 following:

12 (1) Crediting the digital asset to the account or
13 storage of another person.

14 (2) Moving the digital asset from one account or
15 storage of a resident to another account or storage of the
16 same resident.

17 (3) Relinquishing custody or control of a digital
18 asset to another person.

19 "United States dollar equivalent of digital assets" means
20 the equivalent value of a particular digital asset in United
21 States dollars shown on a covered exchange regulated in the
22 United States for a particular date or period specified in
23 this Act, subject to any rules adopted by the Department.

24 (b) Whenever the terms "include", "including" or terms of
25 similar import appear in this Act, unless the context requires
26 otherwise, such terms shall not be construed to imply the

1 exclusion of any person, class, or thing not specifically
2 included.

3 (c) A reference in this Act to any other law or statute of
4 this State, or of any other jurisdiction, means such law or
5 statute as amended to the effective date of this Act, and
6 unless the context otherwise requires, as amended thereafter.

7 (d) Any reference to this Act shall include any rules
8 adopted in accordance with this Act.

9 Section 1-10. Applicability.

10 (a) This Act governs the digital asset business activity
11 of a person doing business in this State or, wherever located,
12 who engages in or holds itself out as engaging in the activity
13 with or on behalf of a resident, to the extent not preempted by
14 federal law and except as otherwise provided in subsections
15 (b), (c), (d), or (e).

16 (b)(1) This Act does not apply to the exchange, transfer,
17 or storage of a digital asset or to digital asset
18 administration to the extent that:

19 (A) the Securities Exchange Act of 1934, 15 U.S.C.
20 78a et seq., or the Illinois Securities Law of 1953
21 govern the activity as a security transaction and the
22 activity is regulated by the U.S. Securities and
23 Exchange Commission or the Illinois Secretary of
24 State; or

25 (B) the Commodity Exchange Act, 7 U.S.C. 1 et

1 seq., governs the activity, the activity is in
2 connection with trading of a contract of sale of a
3 commodity for future delivery, an option on such a
4 contract or a swap, and the activity is regulated by
5 the U.S. Commodity Futures Trading Commission.

6 (2) This subsection shall be construed in a manner
7 consistent with affording the greatest protection to
8 residents and the Department's authority under subsection
9 (a) of Section 1-15 to exercise nonexclusive oversight and
10 enforcement under any federal law applicable to digital
11 asset business activity. This subsection shall not be
12 construed to exempt an activity solely because a financial
13 regulatory agency has anti-fraud and anti-manipulation
14 enforcement authority over the activity.

15 (c) This Act does not apply to the following persons:

16 (1) The United States, a State, political subdivision
17 of a State, agency, or instrumentality of federal, State,
18 or local government, or a foreign government or a
19 subdivision, department, agency, or instrumentality of a
20 foreign government.

21 (2) A federally insured depository institution.

22 (3) A corporate fiduciary acting as a fiduciary or
23 otherwise engaging in fiduciary activities.

24 (4) A merchant using digital assets solely for the
25 purchase or sale of goods or services, excluding the sale
26 of purchase of digital assets, in the ordinary course of

1 its business.

2 (5) A person using digital assets solely for the
3 purchase or sale of goods or services for his or her own
4 personal, family, or household purposes.

5 (6) A credit union with member share accounts insured
6 by an insurer approved by the credit union's primary
7 financial regulatory agency. An out-of-state credit union
8 may not conduct any activity in this State that is not
9 authorized for a credit union chartered under the laws of
10 this State.

11 Nothing in this Act grants persons described in this
12 subsection (c) authority to engage in any activity not
13 otherwise granted under existing law.

14 (d) The Department may by rule or order clarify whether an
15 activity is governed under this Act or another Act that
16 governs money transmission. This subsection (d) shall not be
17 applied in a manner inconsistent with the protection of
18 residents.

19 (e) Notwithstanding any other provision of this Act, the
20 Department, by rule or order, may conditionally or
21 unconditionally exempt any person, digital asset, or
22 transaction, or any class or classes of persons, digital
23 assets, or transactions, from any provision of this Act or of
24 any rule thereunder, to the extent that the exemption is
25 necessary or appropriate, in the public interest, and
26 consistent with the protection of residents.

1 Section 1-15. General powers and duties.

2 (a) The Department shall regulate digital asset business
3 activity in this State, unless it is exempt pursuant to
4 Section 1-10. To the extent permissible under federal law, the
5 Department shall exercise nonexclusive oversight and
6 enforcement under any federal law applicable to digital asset
7 business activity.

8 (b) The functions, powers, and duties conferred upon the
9 Department by this Act are cumulative to any other functions,
10 powers, and duties conferred upon the Department by other laws
11 applicable to digital asset business activity.

12 (c) The Department shall have the following functions,
13 powers, and duties in carrying out its responsibilities under
14 this Act and any other law applicable to digital asset
15 business activity in this State:

16 (1) to issue or refuse to issue any registration or
17 other authorization under this Act;

18 (2) to revoke or suspend for cause any registration or
19 other authorization under this Act;

20 (3) to keep records of all registrations or other
21 authorizations under this Act;

22 (4) to receive, consider, investigate, and act upon
23 complaints made by any person relating to any digital
24 asset business activity in this State;

25 (5) to prescribe the forms of and receive:

1 (A) applications for registrations or other
2 authorizations under this Act; and

3 (B) all reports and all books and records required
4 to be made under this Act;

5 (6) to subpoena documents and witnesses and compel
6 their attendance and production, to administer oaths, and
7 to require the production of any books, papers, or other
8 materials relevant to any inquiry authorized by this Act
9 or other law applicable to digital asset business activity
10 in this State;

11 (7) to issue orders against any person:

12 (A) if the Secretary has reasonable cause to
13 believe that an unsafe, unsound, or unlawful practice
14 has occurred, is occurring, or is about to occur;

15 (B) if any person has violated, is violating, or
16 is about to violate any law, rule, or written
17 agreement with the Secretary; or

18 (C) for the purpose of administering the
19 provisions of this Act or other law applicable to
20 digital asset business activity and any rule adopted
21 in accordance with this Act or other law applicable to
22 digital asset business activity;

23 (8) to address any inquiries to any covered person, or
24 the directors, officers, or employees of the covered
25 person, or the affiliates or service providers of the
26 covered person, in relation to the covered person's

1 activities and conditions or any other matter connected
2 with its affairs, and it shall be the duty of any person so
3 addressed to promptly reply in writing to those inquiries;
4 the Secretary may also require reports from any covered
5 person at any time the Secretary chooses;

6 (9) to examine the books and records of every covered
7 person, affiliate, or service provider;

8 (10) to enforce the provisions of this Act and any
9 state or federal law applicable to digital asset business
10 activity;

11 (11) to levy fees, fines, and civil penalties, charges
12 for services, and assessments to defray operating
13 expenses, including direct and indirect costs, of
14 administering this Act and other laws applicable to
15 digital asset business activity;

16 (12) to appoint examiners, supervisors, experts, and
17 special assistants as needed to effectively and
18 efficiently administer this Act and other laws applicable
19 to digital asset business activity;

20 (13) to conduct hearings for the purpose of carrying
21 out the purposes of this Act;

22 (14) to exercise visitorial power over a covered
23 person, affiliate, or service provider;

24 (15) to enter into cooperative agreements with federal
25 and state regulatory authorities and to accept reports of
26 examinations from federal and state regulatory

1 authorities;

2 (16) to assign on an emergency basis an examiner or
3 examiners to monitor the affairs of a covered person,
4 affiliate, or service provider with whatever frequency the
5 Secretary determines appropriate and to charge the covered
6 person for reasonable and necessary expenses of the
7 Secretary if in the opinion of the Secretary an emergency
8 exists or appears likely to occur;

9 (17) to impose civil penalties against a covered
10 person, affiliate, or service provider for failing to
11 respond to a regulatory request or reporting requirement;
12 and

13 (18) to conduct investigations, market surveillance,
14 and research, studies, and analyses of matters affecting
15 the interests of users of digital assets;

16 (19) to take such actions as the Secretary deems
17 necessary to educate and protect users of digital assets;

18 (20) to develop and implement initiatives and programs
19 to promote responsible innovation in digital asset
20 business activity; and

21 (21) to perform any other lawful acts necessary or
22 desirable to carry out the purposes and provisions of this
23 Act and other laws applicable to digital asset business
24 activity.

25 (d) The Department may share any information obtained
26 pursuant to this Act or any other law applicable to digital

1 asset business activity with law enforcement officials or
2 other regulatory agencies.

3 Section 1-20. Funds.

4 (a) All moneys collected or received by the Department
5 under this Act shall be deposited into the Consumer Protection
6 Fund, which is hereby created as a special fund in the State
7 treasury. The amounts deposited into the Consumer Protection
8 Fund shall be used for the ordinary and contingent expenses of
9 the Department in administering this Act and other financial
10 laws; nothing in this Act shall prevent the continuation of
11 the practice of paying expenses involving salaries,
12 retirement, social security, and State-paid insurance of State
13 officers and employees by appropriation from the General
14 Revenue Fund or any other fund. Moneys deposited into the
15 Consumer Protection Fund may be transferred to the Professions
16 Indirect Cost Fund or any other Department fund.

17 (b) The expenses of administering this Act, including
18 investigations and examinations provided for in this Act,
19 shall be borne by and assessed against persons regulated by
20 this Act. The Department may establish fees by rule, including
21 in the following categories:

22 (1) investigation of registrants and registration
23 applicant fees;

24 (2) examination fees;

25 (3) contingent fees; and

1 (4) such other categories as may be required to
2 administer this Act.

3 (c) The Department shall charge and collect fees from
4 covered persons, which shall be nonrefundable unless otherwise
5 indicated, for the expenses of administering this Act as
6 follows:

7 (1) Each covered person shall pay \$150 for each hour
8 or part of an hour for each examiner or staff assigned to
9 the supervision of the covered person plus actual travel
10 costs for any examination of digital asset business
11 activity pursuant to the Act.

12 (2) Each covered person shall pay to the Department
13 its pro rata share of the cost for administration of this
14 Act that exceeds other fees listed in this Act, as
15 estimated by the Department, for the current year and any
16 deficit actually incurred in the administration of the Act
17 in prior years. The total annual assessment for all
18 registrants shall initially be divided into a
19 transaction-based assessment and a custody-based
20 assessment, each equal to approximately half the cost for
21 administration of this Act. Each registrant's pro rata
22 share of the transaction-based assessment shall be the
23 percentage that the total volume of digital asset
24 transactions conducted on behalf of residents by the
25 registrant bears to the total volume of digital asset
26 transactions by all registrants in Illinois. Each

1 registrant's pro rata share of the custody-based
2 assessment shall be the percentage that the total United
3 States dollar value of digital assets held in custody or
4 controlled by the registrant for residents bears to the
5 total United States dollar value held in custody or
6 controlled by all registrants in Illinois for residents.

7 (3) Beginning one year after the effective date of
8 this Act, the Department may, by rule, amend the fees set
9 forth in this subsection in accordance with this Act. The
10 Department is authorized to consider setting fees for
11 digital asset business activity based on the value of
12 digital assets transacted by covered persons, volume of
13 digital assets transacted by covered persons, the value of
14 digital assets held in custody by covered person, and the
15 volume of digital assets held in custody by covered
16 persons.

17 Article 5. Customer Protections

18 Section 5-5. Customer disclosures.

19 (a) When engaging in digital asset business activity with
20 a resident, a covered person shall provide to a resident the
21 customer disclosures required by subsection (b) and any
22 additional disclosures the Department by rule determines to be
23 necessary and appropriate for the protection of residents. The
24 Department may determine by rule the time and form required

1 for disclosures. A disclosure required by this Section shall
2 be made separately from any other information provided by the
3 covered person and in a clear and conspicuous manner in a
4 record the resident may keep.

5 (b) Before engaging in digital asset business activity
6 with a resident, a covered person shall disclose, to the
7 extent applicable to the digital asset business activity the
8 covered person will undertake with the resident, subject to
9 any rule or order issued by the Department, all of the
10 following:

11 (1) A schedule of fees and charges the covered person
12 may assess, the manner by which fees and charges will be
13 calculated if they are not set in advance and disclosed,
14 and the timing of the fees and charges.

15 (2) Whether the product or service provided by the
16 covered person is covered by either of the following:

17 (A) A form of insurance or other guarantee against
18 loss by an agency of the United States as follows:

19 (i) Up to the full United States dollar
20 equivalent of digital assets placed under the
21 custody or control of, or purchased from, the
22 covered person as of the date of the placement or
23 purchase, including the maximum amount provided by
24 insurance under the Federal Deposit Insurance
25 Corporation or National Credit Union
26 Administration or otherwise available from the

1 Securities Investor Protection Corporation.

2 (ii) If not provided at the full United States
3 dollar equivalent of the digital assets placed
4 under the custody or control of or purchased from
5 the covered person, the maximum amount of coverage
6 for each resident expressed in the United States
7 dollar equivalent of the digital asset.

8 (iii) If not applicable to the product or
9 service provided by the covered person, a clear
10 and conspicuous statement that the product is not
11 insured, as applicable, by the Federal Deposit
12 Insurance Corporation, National Credit Union
13 Administration, or the Securities Investor
14 Protection Corporation.

15 (B)(i) Private insurance against loss or theft,
16 including cybertheft or theft by other means.

17 (ii) A covered person shall disclose the terms
18 of the insurance policy to the resident in a
19 manner that allows the resident to understand the
20 specific insured risks that may result in partial
21 coverage of the resident's assets.

22 (3) The irrevocability of a transfer or exchange and
23 any exception to irrevocability.

24 (4) A description of all of the following:

25 (A) The covered person's liability for an
26 unauthorized, mistaken, or accidental transfer or

1 exchange.

2 (B) The resident's responsibility to provide
3 notice to the covered person of an unauthorized,
4 mistaken, or accidental transfer or exchange.

5 (C) The basis for any recovery by the resident
6 from the covered person in case of an unauthorized,
7 mistaken, or accidental transfer or exchange.

8 (D) General error resolution rights applicable to
9 an unauthorized, mistaken, or accidental transfer or
10 exchange.

11 (E) The method for the resident to update the
12 resident's contact information with the covered
13 person.

14 (5) That the date or time when the transfer or
15 exchange is made and the resident's account is debited may
16 differ from the date or time when the resident initiates
17 the instruction to make the transfer or exchange.

18 (6) Whether the resident has a right to stop a
19 preauthorized payment or revoke authorization for a
20 transfer and the procedure to initiate a stop-payment
21 order or revoke authorization for a subsequent transfer.

22 (7) The resident's right to receive a receipt, trade
23 ticket, or other evidence of the transfer or exchange.

24 (8) The resident's right to at least 14 days' prior
25 notice of a change in the covered person's fee schedule,
26 other terms and conditions that have a material impact on

1 digital asset business activity with the resident, or the
2 policies applicable to the resident's account.

3 (9) That no digital asset is currently recognized as
4 legal tender by the State of Illinois or the United
5 States.

6 (10) (A) A list of instances in the past 12 months when
7 the covered person's service was unavailable to customers
8 seeking to engage in digital asset business activity due
9 to a service outage on the part of the covered person and
10 the causes of each identified service outage.

11 (B) As part of the disclosure required by this
12 paragraph, the covered person may list any steps the
13 covered person has taken to resolve underlying causes
14 for those outages.

15 (11) A disclosure, provided separately from the
16 disclosures provided pursuant to paragraphs (1) to (10) of
17 this subsection and written prominently in bold type, that
18 the State of Illinois has not approved or endorsed any
19 digital assets or determined if this customer disclosure
20 is truthful or complete.

21 (c) Except as otherwise provided in subsection (d), at the
22 conclusion of a digital asset transaction with, or on behalf
23 of, a resident, a covered person shall provide the resident a
24 confirmation in a record which contains all of the following:

25 (1) The name and contact information of the covered
26 person, including the toll-free telephone number required

1 under Section 5-20.

2 (2) The type, value, date, precise time, and amount of
3 the transaction.

4 (3) The fee charged for the transaction, including any
5 charge for conversion of a digital asset to fiat currency
6 or other digital asset, as well as any indirect charges.

7 (d) If a covered person discloses that it will provide a
8 daily confirmation in the initial disclosure under subsection
9 (c), the covered person may elect to provide a single, daily
10 confirmation for all transactions with or on behalf of a
11 resident on that day instead of a per transaction
12 confirmation.

13 Section 5-10. Custody and protection of customer assets.

14 (a) A covered person that stores, holds, or maintains
15 custody or control of a digital asset for one or more persons
16 shall:

17 (1) at all times maintain an amount of each type of
18 digital asset sufficient to satisfy the aggregate
19 entitlements of the persons to the type of digital asset;

20 (2) segregate such digital assets from the other
21 assets of the covered person; and

22 (3) not sell, transfer, assign, lend, hypothecate,
23 pledge, or otherwise use or encumber such digital assets,
24 except for the sale, transfer, or assignment of such
25 digital assets at the direction of such other persons.

1 (b) If a covered person violates subsection (a), then the
2 property interests of the persons in the digital asset are pro
3 rata property interests in the type of digital asset to which
4 the persons are entitled without regard to the time the
5 persons became entitled to the digital asset or the covered
6 person obtained control of the digital asset.

7 (c) A digital asset subject to this Section is:

8 (1) held for the persons entitled to the digital asset
9 under subsection (a);

10 (2) not the property of the covered person; and

11 (3) not subject to the claims of creditors of the
12 covered person.

13 (d) Digital assets subject to this Section, even if
14 commingled with other assets of the covered person, are held
15 in trust for the benefit of the persons entitled to the digital
16 assets under subsection (a), in the event of insolvency, the
17 filing of a petition by or against the covered person under the
18 United States Bankruptcy Code (11 U.S.C. 101 et seq.) for
19 bankruptcy or reorganization, the filing of a petition by or
20 against the covered person for receivership, the commencement
21 of any other judicial or administrative proceeding for its
22 dissolution or reorganization, or an action by a creditor
23 against the covered person who is not a beneficiary of this
24 statutory trust. No digital asset impressed with a trust
25 pursuant to this subsection shall be subject to attachment,
26 levy of execution, or sequestration by order of any court,

1 except for a beneficiary of this statutory trust.

2 (e) The Department may adopt rules applicable to covered
3 persons related to additional protections of customer assets,
4 including, but not limited to:

5 (1) rules requiring that digital assets and funds
6 controlled by the covered person on behalf of residents be
7 held in accounts segregated from the covered person's own
8 digital assets and funds;

9 (2) rules related to qualified custodians that may
10 hold such segregated accounts;

11 (3) rules related to titling of such segregated
12 accounts;

13 (4) rules related to audit requirements for customer
14 assets;

15 (5) rules requiring compliance with specific
16 provisions of the Uniform Commercial Code applicable to
17 digital assets;

18 (6) rules restricting selling, transferring,
19 assigning, lending, hypothecating, pledging, or otherwise
20 using or encumbering customer assets; and

21 (7) any rules as may be as may be necessary and
22 appropriate for the protection of residents or necessary
23 to effectuate the purposes of this Section.

24 Section 5-15. Covered exchanges.

25 (a)(1) Except as provided for under paragraph (2) of this

1 subsection, a covered exchange, before listing or offering a
2 digital asset that the covered exchange can exchange on behalf
3 of a resident, shall certify on a form provided by the
4 Department that the covered exchange has done the following:

5 (A) Identified the risk that the digital asset would
6 be deemed a security by federal or state regulators.

7 (B) Provided, in writing, full and fair disclosure of
8 all material facts relating to conflicts of interest that
9 are associated with the covered exchange and the digital
10 asset.

11 (C) Conducted a comprehensive risk assessment designed
12 to ensure consumers are adequately protected from
13 cybersecurity risk, risk of malfeasance, including theft,
14 risks related to code or protocol defects, market-related
15 risks, including price manipulation and fraud, and any
16 other material risks.

17 (D) Established policies and procedures to reevaluate
18 the appropriateness of the continued listing or offering
19 of the digital asset, including an evaluation of whether
20 material changes have occurred.

21 (E) Established policies and procedures to cease
22 listing or offering the digital asset, including
23 notification to affected consumers and counterparties.

24 (F) Any other requirement designated by rule by the
25 Department as may be necessary and appropriate for the
26 protection of residents.

1 (2) Certification by a covered exchange shall not be
2 required for any digital asset approved for listing on or
3 before the effective date of this Act by the New York
4 Department of Financial Services pursuant to Part 200 of Title
5 23 of the New York Code of Rules and Regulations, if the
6 covered exchange provides notification to the Department on a
7 form provided by the Department.

8 (3) After a finding that a covered exchange has listed or
9 offered a digital asset without appropriate certification or
10 after a finding that misrepresentations were made in the
11 certification process, the Department may require the covered
12 exchange to cease listing or offering the digital asset and
13 may take an enforcement action under Section 20-50 of this
14 Act.

15 (b) (1) A covered exchange shall make every effort to
16 execute a resident's request to exchange a digital asset that
17 the covered exchange receives fully and promptly.

18 (2) (A) A covered exchange shall use reasonable diligence
19 to ensure that the outcome to the resident is as favorable as
20 possible under prevailing market conditions. Compliance with
21 this paragraph shall be determined by factors, including, but
22 not limited to, all of the following:

23 (i) The character of the market for the digital asset,
24 including price and volatility.

25 (ii) The size and type of transaction.

26 (iii) The number of markets checked.

1 (iv) Accessibility of appropriate pricing.

2 (v) Any other factor designated by rule by the
3 Department as may be necessary and appropriate for the
4 protection of residents.

5 (B) At least once every 6 months, a covered exchange shall
6 review aggregated trading records of residents against
7 benchmarks to determine execution quality, investigate the
8 causes of any variance, and promptly take action to remedy
9 issues identified in that review.

10 (3) In a transaction for or with a resident, the covered
11 exchange shall not interject a third party between the covered
12 exchange and the best market for the digital asset in a manner
13 inconsistent with this subsection.

14 (4) If a covered exchange cannot execute directly with a
15 market and employs other means in order to ensure an execution
16 advantageous to the resident, the burden of showing the
17 acceptable circumstances for doing so is on the covered
18 exchange.

19 Section 5-20. Customer service; requests for assistance.

20 (a) A covered person shall prominently display on its
21 internet website a toll-free telephone number through which a
22 resident can contact the covered person for requests for
23 assistance and receive live customer assistance, subject to
24 any rules adopted by the Department.

25 (b) A covered person shall implement reasonable policies

1 and procedures for accepting, processing, investigating, and
2 responding to requests for assistance in a timely and
3 effective manner. Such policies and procedures shall include
4 all of the following:

5 (1) A procedure for resolving disputes between the
6 covered person and a resident.

7 (2) A procedure for a resident to report an
8 unauthorized, mistaken, or accidental digital asset
9 business activity transaction.

10 (3) A procedure for a resident to file a complaint
11 with the covered person and for the resolution of the
12 complaint in a fair and timely manner with notice to the
13 resident as soon as reasonably practical of the resolution
14 and the reasons for the resolution.

15 (4) Any other procedure designated by rule by the
16 Department as may be necessary and appropriate for the
17 protection of residents.

18 Section 5-25. Collection of compensation. Unless exempt
19 from registration under this Act, no person engaged in or
20 offering to engage in any act or service for which a
21 registration under this Act is required may bring or maintain
22 any action in any court to collect compensation for the
23 performance of the registrable services without alleging and
24 proving that he or she was the holder of a valid registration
25 under this Act at all times during the performance of those

1 services.

2 Article 10. Compliance

3 Section 10-5. General requirements.

4 (a) Each registrant is required to comply with the
5 provisions of this Act, any lawful order, rule, or regulation
6 made or issued under the provisions of this Act, and all
7 applicable federal and State laws, rules, and regulations.

8 (b) Each registrant shall designate a qualified individual
9 or individuals responsible for coordinating and monitoring
10 compliance with subsection (a).

11 (c) Each registrant shall maintain, implement, update, and
12 enforce written compliance policies and procedures, in
13 accordance with Section 10-10 and subject to any rules adopted
14 by the Department, which policies and procedures must be
15 reviewed and approved by the registrant's board of directors
16 or an equivalent governing body of the registrant.

17 Section 10-10. Required policies and procedures.

18 (a) An applicant, before submitting an application, shall
19 create and a registrant, during registration, shall maintain,
20 implement, update, and enforce, written compliance policies
21 and procedures for all of the following:

22 (1) A cybersecurity program.

23 (2) A business continuity program.

1 (3) A disaster recovery program.

2 (4) An anti-fraud program.

3 (5) An anti-money laundering and countering the
4 financing of terrorism program.

5 (6) An operational security program.

6 (7) (A) A program designed to ensure compliance with
7 this Act and other laws of this State or federal laws that
8 are relevant to the digital asset business activity
9 contemplated by the registrant with or on behalf of
10 residents and to assist the registrant in achieving the
11 purposes of other State laws and federal laws if violation
12 of those laws has a remedy under this Act.

13 (B) At a minimum, the program described by this
14 paragraph shall specify the policies and procedures that
15 the registrant undertakes to minimize the risk that the
16 registrant facilitates the exchange of unregistered
17 securities.

18 (8) A conflict of interest program.

19 (9) A request for assistance program to comply with
20 Section 5-20.

21 (10) Any other compliance program, policy, or
22 procedure the Department establishes by rule as necessary
23 for the protection of residents or for the safety and
24 soundness of the registrant's business or to effectuate
25 the purposes of this Act.

26 (b) A policy required by subsection (a) shall be

1 maintained in a record and designed to be adequate for a
2 registrant's contemplated digital asset business activity with
3 or on behalf of residents, considering the circumstances of
4 all participants and the safe operation of the activity. Any
5 policy and implementing procedure shall be compatible with
6 other policies and the procedures implementing them and not
7 conflict with policies or procedures applicable to the
8 registrant under other State law.

9 (c) A registrant's anti-fraud program shall include, at a
10 minimum, all of the following:

11 (1) Identification and assessment of the material
12 risks of its digital asset business activity related to
13 fraud, which shall include any form of market manipulation
14 and insider trading by the registrant, its employees, its
15 associated persons, or its customers.

16 (2) Protection against any material risk related to
17 fraud identified by the Department or the registrant.

18 (3) Periodic evaluation and revision of the anti-fraud
19 program, policies, and procedures.

20 (d) A registrant's anti-money laundering and countering
21 the financing of terrorism program shall include, at a
22 minimum, all of the following:

23 (1) Identification and assessment of the material
24 risks of its digital asset business activity related to
25 money laundering and financing of terrorist activity.

26 (2) Procedures, in accordance with federal law or

1 guidance published by federal agencies responsible for
2 enforcing federal law, pertaining to money laundering and
3 financing of terrorist activity.

4 (3) Filing reports under the Bank Secrecy Act, 31
5 U.S.C. 5311 et seq., or Chapter X of Title 31 of the Code
6 of Federal Regulations and other federal or State law
7 pertaining to the prevention or detection of money
8 laundering or financing of terrorist activity.

9 (e) A registrant's operational security program shall
10 include, at a minimum, reasonable and appropriate
11 administrative, physical, and technical safeguards to protect
12 the confidentiality, integrity, and availability of any
13 nonpublic information or digital asset it receives, maintains,
14 or transmits.

15 (f) (1) A registrant's cybersecurity program shall include,
16 at a minimum, all of the following:

17 (A) Maintaining, updating, and enforcing policies and
18 procedures designed to protect the confidentiality,
19 integrity, and availability of the registrant's
20 information systems and nonpublic information stored on
21 those information systems.

22 (B) Implementing and maintaining a written policy or
23 policies, approved at least annually by an executive
24 officer or the registrant's board of directors, or an
25 appropriate committee thereof, or equivalent governing
26 body, setting forth the registrant's policies and

1 procedures for the protection of its information systems
2 and nonpublic information stored on those information
3 systems.

4 (C) Designating a qualified individual responsible for
5 overseeing and implementing the registrant's cybersecurity
6 program and enforcing its cybersecurity policy. The
7 individual must have adequate authority to ensure
8 cybersecurity risks are appropriately managed, including
9 the ability to direct sufficient resources to implement
10 and maintain a cybersecurity program. The individual may
11 be employed by the registrant, one of its affiliates, or a
12 service provider.

13 (2) To assist in carrying out this subsection, the
14 Department may adopt rules to define terms used in this
15 subsection and to establish specific requirements for the
16 required cybersecurity program, including, but not limited to,
17 rules related to:

- 18 (A) penetration testing and vulnerability assessment;
- 19 (B) audit trails;
- 20 (C) access privileges;
- 21 (D) application security;
- 22 (E) risk assessment;
- 23 (F) cybersecurity personnel and intelligence;
- 24 (G) affiliates and service providers;
- 25 (H) authentication;
- 26 (I) data retention;

1 (J) training and monitoring;
2 (K) encryption;
3 (L) incident response;
4 (M) notice of cybersecurity events; and
5 (N) any other requirement necessary and appropriate
6 for the protection of residents or for the safety and
7 soundness of the registrant or to effectuate the purposes
8 of this subsection.

9 (g) The Department may require a registrant to file with
10 the Department a copy of any report it makes to a federal or
11 state authority.

12 (h) After the policies and procedures required under this
13 Article are created and approved by the registrant, the
14 registrant shall engage a qualified individual or individuals
15 with adequate authority and experience to monitor and
16 implement each policy and procedure, publicize it as
17 appropriate, recommend changes as necessary, and enforce it.

18 Article 15. Registration

19 Section 15-5. Registration required. A person shall not
20 engage in digital asset business activity, or hold itself out
21 as being able to engage in digital asset business activity,
22 with or on behalf of a resident unless the person is registered
23 in this State by the Department under this Article, or the
24 person is exempt from registration pursuant to Section 1-10.

1 Section 15-10. Application.

2 (a) An application for a registration under this Act shall
3 meet all of the following requirements:

4 (1) The application shall be in a form and medium
5 prescribed by the Department. The Department may require
6 the filing of the application through a multistate
7 licensing system.

8 (2) The application shall provide all of the following
9 information relevant to the applicant's proposed digital
10 asset business activity:

11 (A) The legal name of the applicant, any current
12 or proposed business United States Postal Service
13 address of the applicant, and any fictitious or trade
14 name the applicant uses or plans to use in conducting
15 the applicant's digital asset business activity with
16 or on behalf of a resident.

17 (B) The legal name, any former or fictitious name,
18 and the residential and business United States Postal
19 Service address of any executive officer and
20 responsible individual of the applicant and any person
21 that has control of the applicant.

22 (C) A description of the current and former
23 business of the applicant and any affiliate of the
24 applicant for the 5 years before the application is
25 submitted, or, if the business has operated for less

1 than 5 years, for the time the business has operated,
2 including its products and services, associated
3 internet website addresses and social media pages,
4 principal place of business, projected user base, and
5 specific marketing targets.

6 (D) A list of all of the following:

7 (i) Any digital asset, money service, or money
8 transmitter registration the applicant and any
9 affiliates hold in another state or from an agency
10 of the United States.

11 (ii) The date the registrations described in
12 subdivision (i) expire.

13 (iii) Any revocation, suspension, or other
14 disciplinary action taken against the applicant
15 and any affiliates in any state or by an agency of
16 the United States and any applications rejected by
17 any state or agency of the United States.

18 (E) A list of any criminal conviction, deferred
19 prosecution agreement, and pending criminal proceeding
20 in any jurisdiction against all of the following:

21 (i) The applicant.

22 (ii) Any executive officer of the applicant.

23 (iii) Any responsible individual of the
24 applicant.

25 (iv) Any person that has control over the
26 applicant.

1 (v) Any affiliate of the applicant.

2 (F) A list of any litigation, arbitration, or
3 administrative proceeding in any jurisdiction in which
4 the applicant or an executive officer, responsible
5 individual, or affiliate of the applicant has been a
6 party for the 10 years before the application is
7 submitted determined to be material in accordance with
8 generally accepted accounting principles and, to the
9 extent the applicant or such other person would be
10 required to disclose the litigation, arbitration, or
11 administrative proceeding in the applicant's or such
12 other person's audited financial statements, reports
13 to equity owners, and similar statements or reports.

14 (G) A list of any bankruptcy or receivership
15 proceeding in any jurisdiction for the 10 years before
16 the application is submitted in which any of the
17 following was a debtor:

18 (i) The applicant.

19 (ii) An executive officer of the applicant.

20 (iii) A responsible individual of the
21 applicant.

22 (iv) A person that has control over the
23 applicant.

24 (v) An affiliate of the applicant.

25 (H) The name and United States Postal Service
26 address of any bank or credit union in which the

1 applicant and any affiliates plan to deposit funds
2 obtained by digital asset business activity.

3 (I) The source of funds and credit to be used by
4 the applicant and any affiliate to conduct digital
5 asset business activity with or on behalf of a
6 resident.

7 (J) A current financial statement and other
8 documentation satisfactory to the Department
9 demonstrating that the applicant has the capital and
10 liquidity required by Section 20-5.

11 (K) The United States Postal Service address and
12 email address to which communications from the
13 Department can be sent.

14 (L) The name, United States Postal Service
15 address, and email address of the registered agent of
16 the applicant in this State.

17 (M) A copy of the certificate, or a detailed
18 summary acceptable to the Department, of coverage for
19 any liability, casualty, business interruption, or
20 cybersecurity insurance policy maintained by the
21 applicant for itself, an executive officer, a
22 responsible individual, an affiliate, or the
23 applicant's users.

24 (N) If applicable, the date on which and the state
25 in which the applicant is formed and a copy of a
26 current certificate of good standing issued by that

1 state.

2 (O) If a person has control of the applicant and
3 the person's equity interests are publicly traded in
4 the United States, a copy of the audited financial
5 statement of the person for the most recent fiscal
6 year or most recent report of the person filed under
7 Section 13 of the Securities Exchange Act of 1934, 15
8 U.S.C. 78m.

9 (P) If a person has control of the applicant and
10 the person's equity interests are publicly traded
11 outside the United States, a copy of the audited
12 financial statement of the person for the most recent
13 fiscal year of the person or a copy of the most recent
14 documentation similar to that required in subparagraph
15 (O) filed with the foreign regulator in the domicile
16 of the person.

17 (Q) If the applicant is a partnership or a
18 member-managed limited liability company, the names
19 and United States Postal Service addresses of any
20 general partner or member.

21 (R) If the applicant is required to register with
22 the Financial Crimes Enforcement Network of the United
23 States Department of the Treasury as a money service
24 business, evidence of the registration.

25 (S) A set of fingerprints for each executive
26 officer and responsible individual of the applicant.

1 (T) If available, for any executive officer and
2 responsible individual of the applicant, for the 10
3 years before the application is submitted, employment
4 history and history of any investigation of the
5 individual or legal proceeding to which the individual
6 was a party.

7 (U) The plans through which the applicant will
8 meet its obligations under Article 10.

9 (V) Any other information the Department requires
10 by rule.

11 (3) The application shall be accompanied by a
12 nonrefundable fee of \$5,000 or the amount determined by
13 the Department to cover the costs of application review,
14 whichever is greater.

15 (b)(1) On receipt of a completed application, the
16 Department shall investigate all of the following:

17 (A) The financial condition and responsibility of the
18 applicant and any affiliate of the applicant.

19 (B) The relevant financial and business experience,
20 character, and general fitness of the applicant and any
21 affiliate of the applicant.

22 (C) The competence, experience, character, and general
23 fitness of each executive officer and director, each
24 responsible individual, and any person that has control of
25 the applicant.

26 (2) On receipt of a completed application, the Department

1 may investigate the business premises of an applicant or an
2 affiliate of the applicant or require the submission of any
3 other documents or information the Department deems relevant
4 to the application.

5 (3) The investigation required by this subsection must
6 allow the Secretary to issue positive findings stating that
7 the financial condition, financial responsibility, competence,
8 experience, character, and general fitness of the applicant,
9 each executive officer and director, each responsible
10 individual, any person that has control of the applicant, and
11 any affiliate of the applicant are such as to command the
12 confidence of the community and to warrant belief that the
13 business will be operated honestly, fairly, and efficiently
14 within the purpose of this Act; if the Secretary does not so
15 find, he or she shall not issue the registration, and he or she
16 shall notify the applicant of the denial.

17 (c)(1) After completing the investigation required by
18 subsection (b), the Department shall send the applicant notice
19 of its decision to approve, conditionally approve, or deny the
20 application. If the Department does not receive notice from
21 the applicant that the applicant accepts conditions specified
22 by the Department within 31 days following the Department's
23 notice of the conditions, the application shall be deemed
24 withdrawn.

25 (2) The Secretary may impose conditions on a registration
26 if the Secretary determines that those conditions are

1 necessary or appropriate. These conditions shall be imposed in
2 writing and shall continue in effect for the period prescribed
3 by the Secretary.

4 (d) A registration issued pursuant to this Act shall take
5 effect on the later of the following:

6 (1) The date the Department issues the registration.

7 (2) The date the registration provides the security
8 required by Section 20-5.

9 (e) In addition to the fee required by paragraph (3) of
10 subsection (a), an applicant shall pay the costs of the
11 Department's investigation under subsection (b).

12 (f) A registration issued pursuant to this Act shall
13 remain in full force and effect until it expires without
14 renewal, is surrendered by the registration, or revoked or
15 suspended as hereinafter provided.

16 (g) (1) The Department may issue a conditional registration
17 to an applicant who holds or maintains a registration to
18 conduct virtual currency business activity in the State of New
19 York pursuant to Part 200 of Title 23 of the New York Code of
20 Rules and Regulations, or a charter as a New York State limited
21 purpose trust company with approval to conduct virtual
22 currency business under the New York Banking Law, if the
23 registration or approval was issued no later than the
24 effective date of this Act and the applicant pays all
25 appropriate fees and complies with the requirements of this
26 Act.

1 (2) A conditional registration issued pursuant to this
2 subsection shall expire at the earliest of the following:

3 (A) upon issuance of an unconditional registration;

4 (B) upon denial of a registration;

5 (C) upon revocation of a registration issued pursuant
6 to Part 200 of Title 23 of the New York Code of Rules and
7 Regulations or disapproval or revocation of a charter as a
8 New York State limited purpose trust company with approval
9 to conduct virtual currency business under the New York
10 Banking Law.

11 Section 15-15. Renewal.

12 (a) Registrations shall be subject to renewal every year
13 using a common renewal period as established by the Department
14 by rule. A registrant may apply for renewal of the
15 registration by submitting a renewal application under
16 subsection (b) and paying all applicable fees due to the
17 Department.

18 (b) The renewal application required by subsection (a)
19 shall be submitted in a form and medium prescribed by the
20 Department. The application shall contain all of the
21 following:

22 (1) Either a copy of the registrant's most recent
23 reviewed annual financial statement, if the gross revenue
24 generated by the registrant's digital asset business
25 activity in this State was not more than \$2,000,000 for

1 the fiscal year ending before the anniversary date of
2 issuance of its registration under this Act, or a copy of
3 the registrant's most recent audited annual financial
4 statement, if the registrant's digital asset business
5 activity in this State amounted to more than \$2,000,000,
6 for the fiscal year ending before the anniversary date.

7 (2) If a person other than an individual has control
8 of the registrant, a copy of either of the following:

9 (A) The person's most recent reviewed annual
10 financial statement, if the person's gross revenue was
11 not more than \$2,000,000 in the previous fiscal year
12 measured as of the anniversary date of issuance of its
13 registration under this Act.

14 (B) The person's most recent audited consolidated
15 annual financial statement, if the person's gross
16 revenue was more than \$2,000,000 in the previous
17 fiscal year measured as of the anniversary date of
18 issuance of its registration under this Act.

19 (3) A description of any of the following:

20 (A) Any material change in the financial condition
21 of the registrant and any affiliate of the registrant.

22 (B) Any material litigation related to the
23 registrant's digital asset business activity and
24 involving the registrant or an executive officer,
25 responsible individual, or affiliate of the
26 registrant.

1 (C) Any federal, state, or foreign investigation
2 involving the registrant or an executive officer,
3 responsible individual, or affiliate of the
4 registrant.

5 (D) (i) Any data security breach or cybersecurity
6 event involving the registrant.

7 (ii) A description of a data security breach
8 pursuant to this subparagraph does not constitute
9 disclosure or notification of a security breach
10 for purposes of any other law.

11 (4) Information or records required by Section 20-25
12 that the registrant has not reported to the Department.

13 (5) The number of digital asset business activity
14 transactions with or on behalf of residents for the period
15 since the later of the date the registration was issued or
16 the date the last renewal application was submitted.

17 (6) (A) The amount of United States dollar equivalent
18 of digital assets in the custody or control of the
19 registrant at the end of the last month that ends not later
20 than 30 days before the date of the renewal application.

21 (B) The total number of residents for whom the
22 registrant had custody or control of United States
23 dollar equivalent of digital assets on that date.

24 (7) Evidence that the registrant is in compliance with
25 Section 5-10.

26 (8) Evidence that the registrant is in compliance with

1 Section 20-5.

2 (9) A list of all locations where the registrant
3 engages in digital asset business activity.

4 (10) Any other information the Department requires by
5 rule.

6 (c) If a registrant does not timely comply with this
7 Section, the Department may take enforcement actions provided
8 under Section 20-50. Notice or hearing is not required for a
9 suspension or revocation of a registration under this Act for
10 failure to pay a renewal fee, file a renewal application, or
11 otherwise comply with this Section.

12 (d) Suspension or revocation of a registration under this
13 Section does not invalidate a transfer or exchange of digital
14 assets for or on behalf of a resident made during the
15 suspension or revocation and does not insulate the registrant
16 from liability under this Act.

17 (e) For good cause, the Department, in its sole
18 discretion, may extend a period under this Section.

19 (f) A registrant that does not comply with this Section
20 shall cease digital asset business activities with or on
21 behalf of a resident. A registrant ceasing an activity or
22 activities regulated by this Act and desiring to no longer be
23 registered shall so inform the Department in writing and, at
24 the same time, convey any registration issued and all other
25 symbols or indicia of registration. The registrant shall
26 include a plan for the withdrawal from regulated business,

1 including a timetable for the disposition of the business, and
2 comply with the surrender guidelines or requirements of the
3 Department.

4 Section 15-20. Nontransferable registration. A
5 registration under this Act is not transferable or assignable.

6 Article 20. Supervision

7 Section 20-5. Surety bond; capital and liquidity
8 requirements.

9 (a) (1) (A) A registrant shall maintain a surety bond or
10 trust account in United States dollars in a form and amount as
11 determined by the Department for the protection of residents
12 that engage in digital asset business activity with the
13 registrant.

14 (B) If a registrant maintains a trust account
15 pursuant to this Section, that trust account shall be
16 maintained with a qualified custodian.

17 (2) Security deposited under this Section shall be for
18 the benefit of a claim against the registrant on account
19 of the registrant's digital asset business activity with
20 or on behalf of a resident.

21 (3) Security deposited under this Section shall cover
22 claims for the period the Department specifies by rule and
23 for an additional period the Department specifies after

1 the registrant ceases to engage in digital asset business
2 activity with or on behalf of a resident.

3 (4) The Department may require the registrant to
4 increase the amount of security deposited under this
5 Section, and the registrant shall deposit the additional
6 security not later than 15 days after the registrant
7 receives notice in a record of the required increase.

8 (5) The Department may permit a registrant to
9 substitute or deposit an alternate form of security
10 satisfactory to the Department if the registrant at all
11 times complies with this Section.

12 (b) In addition to the security required under subsection
13 (a), a registrant shall maintain at all times capital and
14 liquidity, each in an amount and form as the Department
15 determines is sufficient to ensure the financial integrity of
16 the registrant and its ongoing operations based on an
17 assessment of the specific risks applicable to the registrant.
18 In determining the minimum amount of capital and liquidity
19 that shall be maintained by a registrant, the Department may
20 consider factors, including, but not limited to, all of the
21 following:

22 (1) The composition of the registrant's total assets,
23 including the position, size, quality, liquidity, risk
24 exposure, and price volatility of each type of asset.

25 (2) The composition of the registrant's total
26 liabilities, including the size and repayment timing of

1 each type of liability.

2 (3) The actual and expected volume of the registrant's
3 digital asset business activity.

4 (4) The amount of leverage employed by the registrant.

5 (5) The liquidity position of the registrant.

6 (6) The financial protection that the registrant
7 provides pursuant to subsection (a).

8 (7) The types of entities to be serviced by the
9 registrant.

10 (8) The types of products or services to be offered by
11 the registrant.

12 (9) Arrangements adopted by the registrant for the
13 protection of its customers in the event of the
14 registrant's insolvency.

15 (c) A registrant shall hold liquidity required to be
16 maintained in accordance with this Section in the form of cash
17 or high-quality liquid assets, as defined by the Department
18 and in proportions determined by the Department.

19 (d) The Department may require a registrant to increase
20 the capital or liquidity required under this Section. A
21 registrant shall submit evidence satisfactory to the
22 Department that it has additional capital or liquidity
23 required pursuant to this subsection not later than 15 days
24 after the registrant receives notice in a record of the
25 required increase.

1 Section 20-10. Examination.

2 (a) (1) (A) The Department may, at any time and from time to
3 time, examine the business and any office, within or outside
4 this State, of any covered person, or any agent of a covered
5 person, in order to ascertain (i) the financial condition of
6 the covered person, (ii) the safety and soundness of the
7 conduct of its business, (iii) the policies of its management,
8 (iv) whether the business is being conducted in a lawful
9 manner, (v) whether all digital asset business activity is
10 properly accounted for, and (vi) such other matters as the
11 Department may determine, including, but not limited to, any
12 activities of the covered person outside the State if in the
13 Department's judgment such activities may affect the covered
14 person's digital asset business activity.

15 (B) The directors, officers, and employees of a
16 covered person, or agent of a covered person, being
17 examined by the Department shall exhibit to the
18 Department, on request, any or all of the covered
19 person's accounts, books, correspondence, memoranda,
20 papers, and other records and shall otherwise
21 facilitate the examination so far as it may be in their
22 power to do so.

23 (C) The covered person shall permit and assist the
24 Department to examine an affiliate or service provider
25 of the covered person when, in the Department's
26 judgment, it is necessary or advisable to do so.

1 (2) The Department may examine a covered person, its
2 affiliate, or service provider pursuant to this paragraph
3 without prior notice to the covered person, affiliate, or
4 service provider.

5 (b) A covered person shall pay the necessary costs of an
6 examination under this Section.

7 Section 20-15. Books and records.

8 (a) A registrant shall maintain, for all digital asset
9 business activity with or on behalf of a resident for 5 years
10 after the date of the activity, a record of all of the
11 following:

12 (1) Any transaction of the registrant with or on
13 behalf of the resident or for the registrant's account in
14 this State, including all of the following:

15 (A) The identity of the resident.

16 (B) The form of the transaction.

17 (C) The amount, date, and payment instructions
18 given by the resident.

19 (D) The account number, name, and physical address
20 of:

21 (i) the parties to the transaction that are
22 customers or account holders of the registrant;
23 and

24 (ii) to the extent practicable, any other
25 parties to the transaction.

1 (2) The aggregate number of transactions and aggregate
2 value of transactions by the registrant with, or on behalf
3 of, the resident and for the registrant's account in this
4 State expressed in United States dollar equivalent of
5 digital assets for the previous 12 calendar months.

6 (3) Any transaction in which the registrant exchanged
7 one form of digital asset for fiat currency or another
8 form of digital asset with or on behalf of the resident.

9 (4) A general ledger maintained at least monthly that
10 lists all assets, liabilities, capital, income, and
11 expenses of the registrant.

12 (5) Any report of condition or other reports to the
13 Department, at such times and in such form, as the
14 Department may request.

15 (6) Bank statements and bank reconciliation records
16 for the registrant and the name, account number, and
17 United States Postal Service address of any bank or credit
18 union the registrant uses in the conduct of its digital
19 asset business activity with or on behalf of the resident.

20 (7) A report of any dispute with a resident.

21 (b) A registrant shall maintain records required by
22 subsection (a) in a form that enables the Department to
23 determine whether the registrant is in compliance with this
24 Act, any court order, and the laws of this State.

25 (c) If a registrant maintains records outside this State
26 that pertain to transactions with or on behalf of a resident,

1 the registrant shall make the records available to the
2 Department not later than 3 days after request, or, on a
3 determination of good cause by the Department, in its sole
4 discretion, at a later time.

5 (d) All records maintained by a registrant, any affiliate,
6 or any service provider are subject to inspection by the
7 Department.

8 Section 20-20. Regulatory cooperation. The Department may
9 cooperate, coordinate, jointly examine, consult, and share
10 records and other information with the appropriate regulatory
11 agency of another state, a self-regulatory organization,
12 federal or state regulator of banking or non-depository
13 institutions, or a regulator of a jurisdiction outside the
14 United States, concerning the affairs and conduct of a covered
15 person, affiliate, or service provider in this State.

16 Section 20-25. Material business changes.

17 (a) A registrant shall file with the Department a report
18 of the following, as may be applicable:

19 (1) A material change in information in the
20 application for a registration under this Act or the most
21 recent renewal report of the registrant under this Act.

22 (2) A material change in the registrant's business for
23 the conduct of its digital asset business activity with or
24 on behalf of a resident.

1 (3) A change of an affiliate, executive officer,
2 responsible individual, or person in control of the
3 registrant.

4 (b) A report required by this Section shall be filed not
5 later than 15 days after the change described in subsection
6 (a).

7 Section 20-30. Change in control.

8 (a) As used in this Section, "proposed person to be in
9 control" means the person that would control a registrant
10 after a proposed transaction that would result in a change in
11 control of the registrant.

12 (b) The following rules apply in determining whether a
13 person has control over a registrant:

14 (1) There is a rebuttable presumption of control if a
15 person directly or indirectly owns, controls, holds with
16 the power to vote, or holds proxies representing 10% or
17 more of the then outstanding voting securities issued by
18 the registrant.

19 (2) A person has control over a registrant if the
20 person's voting power in the registrant constitutes or
21 will constitute at least 25% of the total voting power of
22 the registrant.

23 (3) There is a rebuttable presumption of control if
24 the person's voting power in another person constitutes or
25 will constitute at least 10% of the total voting power of

1 the other person and the other person's voting power in
2 the registrant constitutes at least 10% of the total
3 voting power of the registrant.

4 (4) There is no presumption of control solely because
5 an individual is an executive officer of the registrant.

6 (c) Before a proposed change in control of a registrant,
7 the proposed person to be in control shall submit to the
8 Department in a record all of the following:

9 (1) An application in a form and medium prescribed by
10 the Department.

11 (2) The information and records that Section 15-10
12 would require if the proposed person to be in control
13 already had control of the registrant.

14 (d) The Department shall not approve an application unless
15 the Secretary finds all of the following:

16 (1) The proposed person to be in control and all
17 executive officers of the proposed person to be in
18 control, if any, are of good character and sound financial
19 standing.

20 (2) The proposed person to be in control is competent
21 to engage in digital asset business activity.

22 (3) It is reasonable to believe that, if the person
23 acquires control of the registrant, the proposed person to
24 be in control and the registrant will comply with all
25 applicable provisions of this Act and any rules or order
26 issued under this Act.

1 (4) Any plans by the proposed person to be in control
2 to change the business, corporate structure, or management
3 of the registrant are not detrimental to the safety and
4 soundness of the registrant.

5 (e) The Department, in accordance with Section 15-10,
6 shall approve, approve with conditions, or deny an application
7 for a change in control of a registrant. The Department, in a
8 record, shall send notice of its decision to the registrant
9 and the person that would be in control if the Department had
10 approved the change in control. If the Department denies the
11 application, the registrant shall abandon the proposed change
12 in control or cease digital asset business activity with or on
13 behalf of residents.

14 (f) If the Department applies a condition to approval of a
15 change in control of a registrant, and the Department does not
16 receive notice of the applicant's acceptance of the condition
17 specified by the Department not later than 31 days after the
18 Department sends notice of the condition, the application is
19 deemed denied. If the application is deemed denied, the
20 registrant shall abandon the proposed change in control or
21 cease digital asset business activity with or on behalf of
22 residents.

23 (g) The Department may revoke or modify a determination
24 under subsection (d), after notice and opportunity to be
25 heard, if, in its judgment, revocation or modification is
26 consistent with this Act.

1 (h) If a change in control of a registrant requires
2 approval of another regulatory agency, and the action of the
3 other agency conflicts with that of the Department, the
4 Department shall confer with the other agency. If the proposed
5 change in control cannot be completed because the conflict
6 cannot be resolved, the registrant shall abandon the change in
7 control or cease digital asset business activity with or on
8 behalf of residents.

9 Section 20-35. Mergers.

10 (a) Before a proposed merger or consolidation of a
11 registrant with another person, the registrant shall submit
12 all of the following, as applicable, to the Department:

13 (1) An application in a form and medium prescribed by
14 the Department.

15 (2) The plan of merger or consolidation in accordance
16 with subsection (e).

17 (3) In the case of a registrant, the information
18 required by Section 15-10 concerning the person that would
19 be the surviving entity in the proposed merger or
20 consolidation.

21 (b) If a proposed merger or consolidation would change the
22 control of a registrant, the registrant shall comply with
23 Section 20-30 and this Section.

24 (c) The Department, in accordance with Section 15-10,
25 shall approve, conditionally approve, or deny an application

1 for approval of a merger or consolidation of a registrant. The
2 Department, in a record, shall send notice of its decision to
3 the registrant and the person that would be the surviving
4 entity. If the Department denies the application, the
5 registrant shall abandon the merger or consolidation or cease
6 digital asset business activity with or on behalf of
7 residents.

8 (d) The Department may revoke or modify a determination
9 under paragraph (c), after notice and opportunity to be heard,
10 if, in its judgment, revocation or modification is consistent
11 with this Act.

12 (e) A plan of merger or consolidation of a registrant with
13 another person shall do all of the following:

14 (1) Describe the effect of the proposed transaction on
15 the registrant's conduct of digital asset business
16 activity with or on behalf of residents.

17 (2) Identify each person to be merged or consolidated
18 and the person that would be the surviving entity.

19 (3) Describe the terms and conditions of the merger or
20 consolidation and the mode of carrying it into effect.

21 (f) If a merger or consolidation of a registrant and
22 another person requires approval of another regulatory agency,
23 and the action of the other agency conflicts with that of the
24 Department, the Department shall confer with the other agency.
25 If the proposed merger or consolidation cannot be completed
26 because the conflict cannot be resolved, the registrant shall

1 abandon the merger or consolidation or cease digital asset
2 business activity with or on behalf of residents.

3 (g) The Department may condition approval of an
4 application under subsection (a). If the Department does not
5 receive notice from the parties that the parties accept the
6 Department's condition not later than 31 days after the
7 Department sends notice in a record of the condition, the
8 application is deemed denied. If the application is deemed
9 denied, the registrant shall abandon the merger or
10 consolidation or cease digital asset business activity with,
11 or on behalf of, residents.

12 (h) If a registrant acquires substantially all of the
13 assets of a person, whether or not the person's registration
14 was approved by the Department, the transaction is subject to
15 this Section.

16 Section 20-40. Investigation of complaints. The Secretary
17 shall be authorized at all times to maintain staff and
18 facilities adequate to receive, record, and investigate
19 complaints and inquiries made by any person concerning this
20 Act and any covered persons, affiliates, and service providers
21 under this Act. Each such person shall open their books,
22 records, documents, and offices wherever situated to the
23 Secretary or his or her appointees as needed to facilitate
24 such investigations.

1 Section 20-45. Additional investigation and examination
2 authority. In addition to any authority allowed under this Act
3 or other applicable law, the Secretary shall have the
4 authority to conduct investigations and examinations as
5 follows:

6 (1) For purposes of initial registration, renewal,
7 suspension, conditioning, revocation or termination, or
8 general or specific inquiry or investigation to determine
9 compliance with this Act, the Secretary shall have the
10 authority to access, receive, and use any books, accounts,
11 records, files, documents, information, or evidence,
12 including, but not limited to, the following:

13 (A) criminal, civil, and administrative history
14 information, including nonconviction data as specified
15 in the Criminal Code of 2012;

16 (B) personal history and experience information,
17 including independent credit reports obtained from a
18 consumer reporting agency described in Section 603(p)
19 of the federal Fair Credit Reporting Act; and

20 (C) any other documents, information, or evidence
21 the Secretary deems relevant to the inquiry or
22 investigation, regardless of the location, possession,
23 control, or custody of the documents, information, or
24 evidence.

25 (2) For the purposes of investigating violations or
26 complaints arising under this Act or for the purposes of

1 examination, the Secretary may review, investigate, or
2 examine any covered person, affiliate, service provider,
3 individual, or person subject to this Act as often as
4 necessary in order to carry out the purposes of this Act.
5 The Secretary may direct, subpoena, or order the
6 attendance of and examine under oath all persons whose
7 testimony may be required about the transactions or the
8 business or subject matter of any such examination or
9 investigation, and may direct, subpoena, or order the
10 person to produce books, accounts, records, files, and any
11 other documents the Secretary deems relevant to the
12 inquiry.

13 (3) Each covered person, affiliate, service provider,
14 individual, or person subject to this Act shall make
15 available to the Secretary upon request the books and
16 records relating to the operations of the registrant,
17 affiliate, individual, or person subject to this Act. The
18 Secretary shall have access to those books and records and
19 interview the officers, principals, employees, independent
20 contractors, agents, and customers of the covered person,
21 affiliate, service provider, individual, or person subject
22 to this Act concerning their business.

23 (4) Each covered person, affiliate, service provider,
24 individual, or person subject to this Act shall make or
25 compile reports or prepare other information as directed
26 by the Secretary in order to carry out the purposes of this

1 Section, including, but not limited to:

2 (A) accounting compilations;

3 (B) information lists and data concerning
4 transactions in a format prescribed by the Secretary;
5 or

6 (C) other information deemed necessary to carry
7 out the purposes of this Section.

8 (5) In making any examination or investigation
9 authorized by this Act, the Secretary may control access
10 to any documents and records of the covered person or
11 person under examination or investigation. The Secretary
12 may take possession of the documents and records or place
13 a person in exclusive charge of the documents and records
14 in the place where they are usually kept. During the
15 period of control, no person shall remove or attempt to
16 remove any of the documents or records, except pursuant to
17 a court order or with the consent of the Secretary. Unless
18 the Secretary has reasonable grounds to believe the
19 documents or records of the covered person or person under
20 examination or investigation have been or are at risk of
21 being altered or destroyed for purposes of concealing a
22 violation of this Act, the covered person or owner of the
23 documents and records shall have access to the documents
24 or records as necessary to conduct its ordinary business
25 affairs.

26 (6) In order to carry out the purposes of this

1 Section, the Secretary may:

2 (A) retain attorneys, accountants, or other
3 professionals and specialists as examiners, auditors,
4 or investigators to conduct or assist in the conduct
5 of examinations or investigations;

6 (B) enter into agreements or relationships with
7 other government officials, regulatory associations,
8 or self-regulatory organizations in order to improve
9 efficiencies and reduce regulatory burden by sharing
10 resources, standardized or uniform methods or
11 procedures, and documents, records, information, or
12 evidence obtained under this Section;

13 (C) use, hire, contract, or employ public or
14 privately available analytical systems, methods, or
15 software to examine or investigate the covered person,
16 affiliate, service provider, individual, or person
17 subject to this Act;

18 (D) accept and rely on examination or
19 investigation reports made by other government
20 officials, within or outside this State; or

21 (E) accept audit reports made by an independent
22 certified public accountant for the covered person,
23 affiliate, service provider, individual, or person
24 subject to this Act in the course of that part of the
25 examination covering the same general subject matter
26 as the audit and may incorporate the audit report in

1 the report of the examination, report of
2 investigation, or other writing of the Secretary.

3 (7) The authority of this Section shall remain in
4 effect, whether such a covered person, affiliate, service
5 provider, individual, or person subject to this Act acts
6 or claims to act under any licensing or registration law
7 of this State or claims to act without the authority.

8 (8) No covered person, affiliate, service provider,
9 individual, or person subject to investigation or
10 examination under this Section may knowingly withhold,
11 abstract, remove, mutilate, destroy, or secrete any books,
12 records, computer records, or other information.

13 Section 20-50. Enforcement actions.

14 (a) As used in this Article, "enforcement action" means an
15 action including, but not limited to, all of the following:

16 (1) Suspending or revoking a registration under this
17 Act.

18 (2) Ordering a person to cease and desist from doing
19 digital asset business activity with or on behalf of a
20 resident.

21 (3) Requesting the court to appoint a receiver for the
22 assets of a person doing digital asset business activity
23 with or on behalf of a resident.

24 (4) Requesting the court to issue temporary,
25 preliminary, or permanent injunctive relief against a

1 person doing digital asset business activity with or on
2 behalf of a resident.

3 (5) Assessing a civil penalty under Section 20-70.

4 (6) Recovering on the security under Section 20-5 and
5 initiating a plan to distribute the proceeds for the
6 benefit of a resident injured by a violation of this Act,
7 or law of this State other than this Act that applies to
8 digital asset business activity with or on behalf of a
9 resident.

10 (7) Imposing necessary or appropriate conditions on
11 the conduct of digital asset business activity with or on
12 behalf of a resident.

13 (8) Seeking restitution on behalf of a resident if the
14 Department shows economic injury due to a violation of
15 this Act.

16 (b) The Department may enter into a consent order with a
17 person regarding an enforcement action.

18 (c) This Section does not provide a private right of
19 action to a resident, provided this Section does not preclude
20 an action by a resident to enforce rights under Article 5 or
21 subsection (a) of Section 20-5.

22 Section 20-55. Violations.

23 (a) The Department may take an enforcement action against
24 a covered person or any person otherwise subject to this Act in
25 any of the following instances:

1 (1) The covered person or person violates this Act, a
2 rule adopted or order issued under this Act, or a State or
3 federal law or regulation that applies to digital asset
4 business activity of the violator with or on behalf of a
5 resident.

6 (2) The covered person or person does not cooperate
7 with an examination or investigation by the Department,
8 fails to pay a fee, or fails to submit a report or
9 documentation.

10 (3) The covered person or person, in the conduct of
11 its digital asset business activity with or on behalf of a
12 resident, has engaged, is engaging, or is about to engage
13 in any of the following:

14 (A) An unsafe, unsound, or unlawful act or
15 practice.

16 (B) An unfair, deceptive, or abusive act or
17 practice.

18 (C) Fraud, misrepresentation, deceit, or
19 negligence.

20 (D) Misappropriation of fiat currency, a digital
21 asset, or other value.

22 (4) An agency of the United States or another state
23 takes an action against the covered person or person that
24 would constitute an enforcement action if the Department
25 had taken the action.

26 (5) The covered person or person is convicted of a

1 crime related to its digital asset business activity with
2 or on behalf of a resident or involving fraud or felonious
3 activity that, as determined by the Department, makes the
4 covered person or person unsuitable to engage in digital
5 asset business activity.

6 (6) Any of the following occurs:

7 (A) The covered person or person becomes
8 insolvent.

9 (B) The covered person or person makes a general
10 assignment for the benefit of its creditors.

11 (C) The covered person or person becomes the
12 debtor, alleged debtor, respondent, or person in a
13 similar capacity in a case or other proceeding under
14 any bankruptcy, reorganization, arrangement,
15 readjustment, insolvency, receivership, dissolution,
16 liquidation, or similar law, and does not obtain from
17 the court, within a reasonable time, confirmation of a
18 plan or dismissal of the case or proceeding.

19 (D) The covered person or person applies for, or
20 permits the appointment of, a receiver, trustee, or
21 other agent of a court for itself or for a substantial
22 part of its assets.

23 (7) The covered person or person makes a
24 misrepresentation to the Department.

25 (b) If the Secretary finds, as the result of examination,
26 investigation, or review of reports submitted by a registrant,

1 that the business and affairs of a registrant are not being
2 conducted in accordance with this Act, the Secretary may
3 notify the registrant of the correction necessary. If a
4 registrant fails to correct such violations, the Secretary may
5 issue an order requiring immediate correction and compliance
6 with this Act and may specify a reasonable date for
7 performance.

8 Section 20-60. Hearings.

9 (a) Except as provided in subsection (b), the Department
10 may take an enforcement action only after notice and
11 opportunity for a hearing as appropriate in the circumstances.
12 All hearings provided for in this Act shall be conducted in
13 accordance with Title 38, Part 100 of the Illinois
14 Administrative Code, and the Secretary shall have all the
15 powers granted therein.

16 (b) (1) (A) The Department may take an enforcement action,
17 other than the imposition of a civil penalty under Section
18 20-70, without notice if the circumstances require action
19 before notice can be given.

20 (B) A person subject to an enforcement action
21 pursuant to this subsection shall have the right to an
22 expedited post-action hearing by the Department unless
23 the person has waived the hearing.

24 (2) (A) The Department may take an enforcement action,
25 other than the imposition of a civil penalty under Section

1 20-70, after notice and without a prior hearing if the
2 circumstances require action before a hearing can be held.

3 (B) A person subject to an enforcement action
4 pursuant to this subsection shall have the right to an
5 expedited post-action hearing by the Department unless
6 the person has waived the hearing.

7 (3) The Department may take an enforcement action
8 after notice and without a hearing if the person subject
9 to the enforcement action does not timely request a
10 hearing.

11 Section 20-65. Hearing rules.

12 (a) The Department may, in accordance with the Illinois
13 Administrative Procedure Act, adopt rules to provide for
14 review within the Department of the Secretary's decisions
15 affecting the rights of persons or entities under this Act.
16 The review shall provide for, at a minimum:

17 (1) appointment of a hearing officer;

18 (2) appropriate procedural rules, specific deadlines
19 for filings, and standards of evidence and of proof; and

20 (3) provision for apportioning costs among parties to
21 the appeal.

22 (b) All final administrative decisions of the Department
23 under this Act, all amendments and modifications of final
24 administrative decisions, and any rules adopted by the
25 Department pursuant to this Act shall be subject to judicial

1 review pursuant to the provisions of the Administrative Review
2 Law.

3 Section 20-70. Civil penalties.

4 (a) If a person other than a registrant has engaged, is
5 engaging, or is about to engage in digital asset business
6 activity with or on behalf of a resident in violation of this
7 Act, the Department may assess a civil penalty against the
8 person in an amount not to exceed \$100,000 for each day the
9 person is in violation of this Act.

10 (b) If a person violates a provision of this Act, the
11 Department may assess a civil penalty in an amount not to
12 exceed \$25,000 for each day of violation or for each act or
13 omission in violation, except that a fine may be imposed not to
14 exceed \$75,000 for each day of violation or for each act or
15 omission in violation related to fraud, misrepresentation,
16 deceit, or negligence.

17 (c) A civil penalty under this Section continues to accrue
18 until the date the violation ceases.

19 (d) A civil penalty under this Section is cumulative to
20 any civil penalties enforceable by the Department under any
21 other law.

22 Section 20-75. Subpoena power.

23 (a) The Secretary shall have the power to issue and to
24 serve subpoenas and subpoenas duces tecum to compel the

1 attendance of witnesses and the production of all books,
2 accounts, records, and other documents and materials relevant
3 to an examination or investigation. The Secretary, or his or
4 her duly authorized representative, shall have power to
5 administer oaths and affirmations to any person.

6 (b) In the event of noncompliance with a subpoena or
7 subpoena duces tecum issued or caused to be issued by the
8 Secretary, the Secretary may, through the Attorney General or
9 the State's Attorney of the county in which the person
10 subpoenaed resides or has its principal place of business,
11 petition the circuit court of the county for an order
12 requiring the subpoenaed person to appear and testify and to
13 produce such books, accounts, records, and other documents as
14 are specified in the subpoena duces tecum. The court may grant
15 injunctive relief restraining the person from advertising,
16 promoting, soliciting, entering into, offering to enter into,
17 continuing, or completing any digital asset business activity.
18 The court may grant other relief, including, but not limited
19 to, the restraint, by injunction or appointment of a receiver,
20 of any transfer, pledge, assignment, or other disposition of
21 the person's assets or any concealment, alteration,
22 destruction, or other disposition of books, accounts, records,
23 or other documents and materials as the court deems
24 appropriate, until the person has fully complied with the
25 subpoena or subpoena duces tecum and the Secretary has
26 completed an investigation or examination.

1 (c) If it appears to the Secretary that the compliance
2 with a subpoena or subpoena duces tecum issued or caused to be
3 issued by the Secretary pursuant to this Section is essential
4 to an investigation or examination, the Secretary, in addition
5 to the other remedies provided for in this Act, may, through
6 the Attorney General or the State's Attorney of the county in
7 which the subpoenaed person resides or has its principal place
8 of business, apply for relief to the circuit court of the
9 county. The court shall thereupon direct the issuance of an
10 order against the subpoenaed person requiring sufficient bond
11 conditioned on compliance with the subpoena or subpoena duces
12 tecum. The court shall cause to be endorsed on the order a
13 suitable amount of bond or payment pursuant to which the
14 person named in the order shall be freed, having a due regard
15 to the nature of the case.

16 (d) In addition, the Secretary may, through the Attorney
17 General or the State's Attorney of the applicable county, seek
18 a writ of attachment or an equivalent order from the circuit
19 court having jurisdiction over the person who has refused to
20 obey a subpoena, who has refused to give testimony, or who has
21 refused to produce the matters described in the subpoena duces
22 tecum.

23 Section 20-80. Civil actions.

24 (a) The Department may bring a civil action in accordance
25 with the following:

1 (1) If a person violates any provision of this Act, a
2 rule or final order, or condition imposed in writing by
3 the Department, the Department through the Attorney
4 General or the State's Attorney of the county in which any
5 such violation occurs may bring an action in the circuit
6 court to enjoin the acts or practices or to enforce
7 compliance with this Act or any rule or order adopted
8 pursuant to this Act. Upon a proper showing, a permanent
9 or preliminary injunction, restraining order, or writ of
10 mandate shall be granted and a receiver, monitor,
11 conservator, or other designated fiduciary or officer of
12 the court may be appointed for the defendant or the
13 defendant's assets, or any other ancillary relief may be
14 granted as appropriate. A receiver, monitor, conservator,
15 or other designated fiduciary or officer of the court
16 appointed by the circuit court pursuant to this Section
17 may, with the approval of the court, exercise any or all of
18 the powers of the defendant's officers, directors,
19 partners, trustees, or persons who exercise similar powers
20 and perform similar duties, including the filing of a
21 petition for bankruptcy. No action at law or in equity may
22 be maintained by any party against the Secretary, a
23 receiver, monitor, conservator, or other designated
24 fiduciary or officer of the court, by reason of their
25 exercising these powers or performing these duties
26 pursuant to the order of, or with the approval of, the

1 circuit court.

2 (2) The Secretary may include in any action relief
3 authorized by Section 20-50. The circuit court shall have
4 jurisdiction to award additional relief.

5 (3) In any action brought by the Department, the
6 Department may recover its costs and attorney's fees in
7 connection with prosecuting the action if the Department
8 is the prevailing party in the action.

9 (b) The Attorney General may enforce a violation of
10 Article 5 as an unlawful practice under the Consumer Fraud and
11 Deceptive Business Practices Act.

12 (c) A claim of violation of Article 5 may be asserted in a
13 civil action. Additionally, a prevailing resident may be
14 awarded reasonable attorney's fees and court costs.

15 Article 30. Additional Procedural Provisions

16 Section 30-5. Confidential supervisory information.

17 (a) Confidential supervisory information shall, unless
18 made a matter of public record, not be subject to disclosure
19 under the Freedom of Information Act, and shall only be
20 subject to disclosure pursuant to subpoena or court order as
21 provided in subsection (e).

22 (b) All records of communications or summaries of
23 communications between employees, agents, or representatives
24 of the Department and employees, agents, or representatives of

1 other governmental agencies, a provider of any multistate
2 licensing system, or associations or organizations
3 representing federal, state, or local law enforcement or
4 regulatory agencies or providers of any multistate licensing
5 system, pursuant to any regulatory or supervision activity
6 under this Act (1) shall not be subject to disclosure under the
7 Freedom of Information Act, and (2) to the extent the records
8 contain confidential supervisory information, shall only be
9 subject to disclosure pursuant to subpoena or court order as
10 provided in subsection (e).

11 (c) All confidential supervisory information received from
12 other governmental agencies, a multistate licensing system
13 provider, or associations or organizations consisting of
14 employees, agents, or representatives of such agencies or
15 providers, shall not be subject to disclosure under the
16 Freedom of Information Act, and only subject to disclosure
17 pursuant to subpoena or court order as provided in subsection
18 (e).

19 (d) The sharing of any confidential supervisory
20 information under this Act with governmental agencies,
21 providers of any multistate licensing system, or associations
22 or organizations consisting of employees, agents, or
23 representatives of such federal, state, or local law
24 enforcement or regulatory agencies, shall not result in the
25 loss of privilege arising under federal or state law, or the
26 loss of confidentiality protections provided by federal law or

1 state law, and are only subject to disclosure pursuant to
2 subpoena or court order as provided in subsection (e).

3 (e) Confidential supervisory information may not be
4 disclosed to anyone other than the regulated person, law
5 enforcement officials or other regulatory agencies that have
6 an appropriate regulatory interest as determined by the
7 Secretary, or to a party presenting a lawful subpoena, order,
8 or other judicial or administrative process to the Secretary.
9 The Secretary may immediately appeal to the court of
10 jurisdiction the disclosure of such confidential supervisory
11 information and seek a stay of the subpoena pending the
12 outcome of the appeal. Reports required of regulated persons
13 by the Secretary under this Act and results of examinations
14 performed by the Secretary under this Act shall be the
15 property of only the Secretary but may be shared with the
16 regulated person. Access under this Act to the books and
17 records of each regulated person shall be limited to the
18 Secretary and his agents as provided in this Act and to the
19 regulated person and its authorized agents and designees. No
20 other person shall have access to the books and records of a
21 regulated person under this Act. Any person upon whom a demand
22 for production of confidential supervisory information is
23 made, whether by subpoena, order, or other judicial or
24 administrative process, must withhold production of the
25 confidential supervisory information and must notify the
26 Secretary of the demand, at which time the Secretary is

1 authorized to intervene for the purpose of enforcing the
2 limitations of this Section or seeking the withdrawal or
3 termination of the attempt to compel production of the
4 confidential supervisory information. The Secretary may impose
5 any conditions and limitations on the disclosure of
6 confidential supervisory information that are necessary to
7 protect the confidentiality of such information. Except as
8 authorized by the Secretary, no person obtaining access to
9 confidential supervisory information may make a copy of the
10 confidential supervisory information. The Secretary may
11 condition a decision to disclose confidential supervisory
12 information on entry of a protective order by the court or
13 administrative tribunal presiding in the particular case or on
14 a written agreement of confidentiality. In a case in which a
15 protective order or agreement has already been entered between
16 parties other than the Secretary, the Secretary may
17 nevertheless condition approval for release of confidential
18 supervisory information upon the inclusion of additional or
19 amended provisions in the protective order. The Secretary may
20 authorize a party who obtained the records for use in one case
21 to provide them to another party in another case, subject to
22 any conditions that the Secretary may impose on either or both
23 parties. The requester shall promptly notify other parties to
24 a case of the release of confidential supervisory information
25 obtained and, upon entry of a protective order, shall provide
26 copies of confidential supervisory information to the other

1 parties.

2 (f) The Secretary is authorized to enter agreements or
3 sharing arrangements with other governmental agencies,
4 providers of any multistate licensing system, or associations
5 or organizations representing governmental agencies or
6 providers of any multistate licensing system. Notwithstanding
7 the foregoing, the provisions of this Section shall apply
8 regardless of the existence of any such agreement or sharing
9 arrangement.

10 (g) This Section in no way limits any right, privilege, or
11 authority that the Department has pursuant to any other
12 applicable law. This Section does not in any way limit any
13 privilege arising under federal or state law or other
14 exemption from disclosure pursuant to the Freedom of
15 Information Act.

16 (h) Notwithstanding the foregoing, whenever the Secretary
17 determines, in his or her sole discretion, that it is in the
18 public's interest, he or she may publicly disclose information
19 or documents obtained under this Act, unless otherwise
20 prohibited by law.

21 Section 30-10. Additional rulemaking authority.

22 (a) In addition to such powers and rulemaking authority as
23 may be prescribed elsewhere in this Act or other financial
24 laws administered by the Department, the Department is hereby
25 authorized and empowered to adopt rules consistent with the

1 purposes of this Act, including, but not limited to:

2 (1) rules in connection with the activities of covered
3 persons, affiliates, and service providers as may be
4 necessary and appropriate for the protection of residents;

5 (2) rules to define the terms used in this Act and as
6 may be necessary and appropriate to interpret and
7 implement the provisions of this Act;

8 (3) rules as may be necessary for the administration
9 and enforcement of this Act;

10 (4) rules to set and collect fees necessary to
11 administer and enforce this Act;

12 (5) rules in connection with the activities of covered
13 persons, affiliates, and service providers as may be
14 necessary and appropriate for the safety and soundness of
15 such covered persons and affiliates and the stability of
16 the financial system in this State.

17 (b) The Secretary is hereby authorized and empowered to
18 make specific rulings, demands, and findings that he or she
19 deems necessary for the proper conduct of the registrants and
20 affiliates thereof.

21 Article 35. Miscellaneous Provisions

22 Section 35-5. No evasion.

23 (a) It shall be unlawful to engage in any device,
24 subterfuge, or pretense to willfully evade or attempt to evade

1 the requirements of this Act or any rule or order issued by the
2 Department hereunder.

3 (b) Any financial product, service, or transaction that is
4 willfully structured to evade or attempt to evade the
5 definitions of digital asset or digital asset business
6 activity is a digital asset or digital asset business
7 activity, respectively, for purposes of this Act.

8 Section 35-10. Construction; severability.

9 (a) The provisions of this Act shall be liberally
10 construed to effectuate its purposes.

11 (b) The provisions of this Act are severable under Section
12 1.31 of the Statute on Statutes.

13 (c) To the extent that any provision of this Act is
14 preempted by federal law, the provision shall not apply and
15 shall not be enforced solely as to the extent of the preemption
16 and not as to other circumstances, persons, or applications.

17 Section 35-15. Transition period.

18 (a) A covered person engaging in digital asset business
19 activity without a registration under this Act shall not be
20 considered in violation of Section 15-5 or 5-25 until July 1,
21 2027.

22 (b) A covered person engaging in digital asset business
23 activity shall not be considered in violation of Sections 5-5,
24 5-10, and 5-20 until January 1, 2027.

1 (c) A covered exchange shall not be considered in
2 violation of Section 5-15 until January 1, 2027.

3 (d) Notwithstanding the foregoing, the Department may
4 adopt rules pursuant to this Act upon this Act becoming law
5 with such rules not to take effect earlier than January 1,
6 2026.".

7 Article 90. Amendatory provisions

8 Section 90-5. The Freedom of Information Act is amended by
9 changing Section 7.5 as follows:

10 (5 ILCS 140/7.5)

11 Sec. 7.5. Statutory exemptions. To the extent provided for
12 by the statutes referenced below, the following shall be
13 exempt from inspection and copying:

14 (a) All information determined to be confidential
15 under Section 4002 of the Technology Advancement and
16 Development Act.

17 (b) Library circulation and order records identifying
18 library users with specific materials under the Library
19 Records Confidentiality Act.

20 (c) Applications, related documents, and medical
21 records received by the Experimental Organ Transplantation
22 Procedures Board and any and all documents or other
23 records prepared by the Experimental Organ Transplantation

1 Procedures Board or its staff relating to applications it
2 has received.

3 (d) Information and records held by the Department of
4 Public Health and its authorized representatives relating
5 to known or suspected cases of sexually transmitted
6 infection or any information the disclosure of which is
7 restricted under the Illinois Sexually Transmitted
8 Infection Control Act.

9 (e) Information the disclosure of which is exempted
10 under Section 30 of the Radon Industry Licensing Act.

11 (f) Firm performance evaluations under Section 55 of
12 the Architectural, Engineering, and Land Surveying
13 Qualifications Based Selection Act.

14 (g) Information the disclosure of which is restricted
15 and exempted under Section 50 of the Illinois Prepaid
16 Tuition Act.

17 (h) Information the disclosure of which is exempted
18 under the State Officials and Employees Ethics Act, and
19 records of any lawfully created State or local inspector
20 general's office that would be exempt if created or
21 obtained by an Executive Inspector General's office under
22 that Act.

23 (i) Information contained in a local emergency energy
24 plan submitted to a municipality in accordance with a
25 local emergency energy plan ordinance that is adopted
26 under Section 11-21.5-5 of the Illinois Municipal Code.

1 (j) Information and data concerning the distribution
2 of surcharge moneys collected and remitted by carriers
3 under the Emergency Telephone System Act.

4 (k) Law enforcement officer identification information
5 or driver identification information compiled by a law
6 enforcement agency or the Department of Transportation
7 under Section 11-212 of the Illinois Vehicle Code.

8 (l) Records and information provided to a residential
9 health care facility resident sexual assault and death
10 review team or the Executive Council under the Abuse
11 Prevention Review Team Act.

12 (m) Information provided to the predatory lending
13 database created pursuant to Article 3 of the Residential
14 Real Property Disclosure Act, except to the extent
15 authorized under that Article.

16 (n) Defense budgets and petitions for certification of
17 compensation and expenses for court appointed trial
18 counsel as provided under Sections 10 and 15 of the
19 Capital Crimes Litigation Act (repealed). This subsection
20 (n) shall apply until the conclusion of the trial of the
21 case, even if the prosecution chooses not to pursue the
22 death penalty prior to trial or sentencing.

23 (o) Information that is prohibited from being
24 disclosed under Section 4 of the Illinois Health and
25 Hazardous Substances Registry Act.

26 (p) Security portions of system safety program plans,

1 investigation reports, surveys, schedules, lists, data, or
2 information compiled, collected, or prepared by or for the
3 Department of Transportation under Sections 2705-300 and
4 2705-616 of the Department of Transportation Law of the
5 Civil Administrative Code of Illinois, the Regional
6 Transportation Authority under Section 2.11 of the
7 Regional Transportation Authority Act, or the St. Clair
8 County Transit District under the Bi-State Transit Safety
9 Act (repealed).

10 (q) Information prohibited from being disclosed by the
11 Personnel Record Review Act.

12 (r) Information prohibited from being disclosed by the
13 Illinois School Student Records Act.

14 (s) Information the disclosure of which is restricted
15 under Section 5-108 of the Public Utilities Act.

16 (t) (Blank).

17 (u) Records and information provided to an independent
18 team of experts under the Developmental Disability and
19 Mental Health Safety Act (also known as Brian's Law).

20 (v) Names and information of people who have applied
21 for or received Firearm Owner's Identification Cards under
22 the Firearm Owners Identification Card Act or applied for
23 or received a concealed carry license under the Firearm
24 Concealed Carry Act, unless otherwise authorized by the
25 Firearm Concealed Carry Act; and databases under the
26 Firearm Concealed Carry Act, records of the Concealed

1 Carry Licensing Review Board under the Firearm Concealed
2 Carry Act, and law enforcement agency objections under the
3 Firearm Concealed Carry Act.

4 (v-5) Records of the Firearm Owner's Identification
5 Card Review Board that are exempted from disclosure under
6 Section 10 of the Firearm Owners Identification Card Act.

7 (w) Personally identifiable information which is
8 exempted from disclosure under subsection (g) of Section
9 19.1 of the Toll Highway Act.

10 (x) Information which is exempted from disclosure
11 under Section 5-1014.3 of the Counties Code or Section
12 8-11-21 of the Illinois Municipal Code.

13 (y) Confidential information under the Adult
14 Protective Services Act and its predecessor enabling
15 statute, the Elder Abuse and Neglect Act, including
16 information about the identity and administrative finding
17 against any caregiver of a verified and substantiated
18 decision of abuse, neglect, or financial exploitation of
19 an eligible adult maintained in the Registry established
20 under Section 7.5 of the Adult Protective Services Act.

21 (z) Records and information provided to a fatality
22 review team or the Illinois Fatality Review Team Advisory
23 Council under Section 15 of the Adult Protective Services
24 Act.

25 (aa) Information which is exempted from disclosure
26 under Section 2.37 of the Wildlife Code.

1 (bb) Information which is or was prohibited from
2 disclosure by the Juvenile Court Act of 1987.

3 (cc) Recordings made under the Law Enforcement
4 Officer-Worn Body Camera Act, except to the extent
5 authorized under that Act.

6 (dd) Information that is prohibited from being
7 disclosed under Section 45 of the Condominium and Common
8 Interest Community Ombudsperson Act.

9 (ee) Information that is exempted from disclosure
10 under Section 30.1 of the Pharmacy Practice Act.

11 (ff) Information that is exempted from disclosure
12 under the Revised Uniform Unclaimed Property Act.

13 (gg) Information that is prohibited from being
14 disclosed under Section 7-603.5 of the Illinois Vehicle
15 Code.

16 (hh) Records that are exempt from disclosure under
17 Section 1A-16.7 of the Election Code.

18 (ii) Information which is exempted from disclosure
19 under Section 2505-800 of the Department of Revenue Law of
20 the Civil Administrative Code of Illinois.

21 (jj) Information and reports that are required to be
22 submitted to the Department of Labor by registering day
23 and temporary labor service agencies but are exempt from
24 disclosure under subsection (a-1) of Section 45 of the Day
25 and Temporary Labor Services Act.

26 (kk) Information prohibited from disclosure under the

1 Seizure and Forfeiture Reporting Act.

2 (ll) Information the disclosure of which is restricted
3 and exempted under Section 5-30.8 of the Illinois Public
4 Aid Code.

5 (mm) Records that are exempt from disclosure under
6 Section 4.2 of the Crime Victims Compensation Act.

7 (nn) Information that is exempt from disclosure under
8 Section 70 of the Higher Education Student Assistance Act.

9 (oo) Communications, notes, records, and reports
10 arising out of a peer support counseling session
11 prohibited from disclosure under the First Responders
12 Suicide Prevention Act.

13 (pp) Names and all identifying information relating to
14 an employee of an emergency services provider or law
15 enforcement agency under the First Responders Suicide
16 Prevention Act.

17 (qq) Information and records held by the Department of
18 Public Health and its authorized representatives collected
19 under the Reproductive Health Act.

20 (rr) Information that is exempt from disclosure under
21 the Cannabis Regulation and Tax Act.

22 (ss) Data reported by an employer to the Department of
23 Human Rights pursuant to Section 2-108 of the Illinois
24 Human Rights Act.

25 (tt) Recordings made under the Children's Advocacy
26 Center Act, except to the extent authorized under that

1 Act.

2 (uu) Information that is exempt from disclosure under
3 Section 50 of the Sexual Assault Evidence Submission Act.

4 (vv) Information that is exempt from disclosure under
5 subsections (f) and (j) of Section 5-36 of the Illinois
6 Public Aid Code.

7 (ww) Information that is exempt from disclosure under
8 Section 16.8 of the State Treasurer Act.

9 (xx) Information that is exempt from disclosure or
10 information that shall not be made public under the
11 Illinois Insurance Code.

12 (yy) Information prohibited from being disclosed under
13 the Illinois Educational Labor Relations Act.

14 (zz) Information prohibited from being disclosed under
15 the Illinois Public Labor Relations Act.

16 (aaa) Information prohibited from being disclosed
17 under Section 1-167 of the Illinois Pension Code.

18 (bbb) Information that is prohibited from disclosure
19 by the Illinois Police Training Act and the Illinois State
20 Police Act.

21 (ccc) Records exempt from disclosure under Section
22 2605-304 of the Illinois State Police Law of the Civil
23 Administrative Code of Illinois.

24 (ddd) Information prohibited from being disclosed
25 under Section 35 of the Address Confidentiality for
26 Victims of Domestic Violence, Sexual Assault, Human

1 Trafficking, or Stalking Act.

2 (eee) Information prohibited from being disclosed
3 under subsection (b) of Section 75 of the Domestic
4 Violence Fatality Review Act.

5 (fff) Images from cameras under the Expressway Camera
6 Act. This subsection (fff) is inoperative on and after
7 July 1, 2025.

8 (ggg) Information prohibited from disclosure under
9 paragraph (3) of subsection (a) of Section 14 of the Nurse
10 Agency Licensing Act.

11 (hhh) Information submitted to the Illinois State
12 Police in an affidavit or application for an assault
13 weapon endorsement, assault weapon attachment endorsement,
14 .50 caliber rifle endorsement, or .50 caliber cartridge
15 endorsement under the Firearm Owners Identification Card
16 Act.

17 (iii) Data exempt from disclosure under Section 50 of
18 the School Safety Drill Act.

19 (jjj) Information exempt from disclosure under Section
20 30 of the Insurance Data Security Law.

21 (kkk) Confidential business information prohibited
22 from disclosure under Section 45 of the Paint Stewardship
23 Act.

24 (lll) Data exempt from disclosure under Section
25 2-3.196 of the School Code.

26 (mmm) Information prohibited from being disclosed

1 under subsection (e) of Section 1-129 of the Illinois
2 Power Agency Act.

3 (nnn) Materials received by the Department of Commerce
4 and Economic Opportunity that are confidential under the
5 Music and Musicians Tax Credit and Jobs Act.

6 (ooo) Data or information provided pursuant to Section
7 20 of the Statewide Recycling Needs and Assessment Act.

8 (ppp) Information that is exempt from disclosure under
9 Section 28-11 of the Lawful Health Care Activity Act.

10 (qqq) Information that is exempt from disclosure under
11 Section 7-101 of the Illinois Human Rights Act.

12 (rrr) Information prohibited from being disclosed
13 under Section 4-2 of the Uniform Money Transmission
14 Modernization Act.

15 (sss) Information exempt from disclosure under Section
16 40 of the Student-Athlete Endorsement Rights Act.

17 (ttt) Audio recordings made under Section 30 of the
18 Illinois State Police Act, except to the extent authorized
19 under that Section.

20 (uuu) Information prohibited from being disclosed
21 under Section 30-5 of the Digital Assets Regulation Act.

22 (Source: P.A. 102-36, eff. 6-25-21; 102-237, eff. 1-1-22;
23 102-292, eff. 1-1-22; 102-520, eff. 8-20-21; 102-559, eff.
24 8-20-21; 102-813, eff. 5-13-22; 102-946, eff. 7-1-22;
25 102-1042, eff. 6-3-22; 102-1116, eff. 1-10-23; 103-8, eff.
26 6-7-23; 103-34, eff. 6-9-23; 103-142, eff. 1-1-24; 103-372,

1 eff. 1-1-24; 103-472, eff. 8-1-24; 103-508, eff. 8-4-23;
2 103-580, eff. 12-8-23; 103-592, eff. 6-7-24; 103-605, eff.
3 7-1-24; 103-636, eff. 7-1-24; 103-724, eff. 1-1-25; 103-786,
4 eff. 8-7-24; 103-859, eff. 8-9-24; 103-991, eff. 8-9-24;
5 103-1049, eff. 8-9-24; 103-1081, eff. 3-21-25.)

6 Section 90-10. The State Finance Act is amended by adding
7 Section 5.1030 as follows:

8 (30 ILCS 105/5.1030 new)

9 Sec. 5.1030. The Consumer Protection Fund.

10 Section 90-15. The Illinois Banking Act is amended by
11 changing Sections 2 and 30 as follows:

12 (205 ILCS 5/2) (from Ch. 17, par. 302)

13 Sec. 2. General definitions. In this Act, unless the
14 context otherwise requires, the following words and phrases
15 shall have the following meanings:

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

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

21 "Affiliate facility" of a bank means a main banking
22 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
11 established or maintained in Illinois by an out-of-state bank
12 as a result of a merger between an Illinois bank and the
13 out-of-state bank that occurs on or after May 31, 1997, or any
14 branch established by the out-of-state bank following the
15 merger.

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

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

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

26 "Cash flow reserve account" means the account within the

1 books and records of the Commissioner of Banks and Real Estate
2 used to record funds designated to maintain a reasonable Bank
3 and Trust Company Fund operating balance to meet agency
4 obligations on a timely basis.

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

7 "Commissioner" means the Commissioner of Banks and Real
8 Estate, except that beginning on April 6, 2009 (the effective
9 date of Public Act 95-1047), all references in this Act to the
10 Commissioner of Banks and Real Estate are deemed, in
11 appropriate contexts, to be references to the Secretary of
12 Financial and Professional Regulation.

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

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

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

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

2 "Consolidation" takes place when 2 or more banks, or a
3 trust company and a bank, are extinguished and by the same
4 process a new bank is created, taking over the assets and
5 assuming the liabilities of the banks or trust company passing
6 out of existence.

7 "Continuing bank" means a merging bank, the charter of
8 which becomes the charter of the resulting bank.

9 "Converting bank" means a State bank converting to become
10 a national bank, or a national bank converting to become a
11 State bank.

12 "Converting trust company" means a trust company
13 converting to become a State bank.

14 "Court" means a court of competent jurisdiction.

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

24 "Director of Banking" means the Director of the Division
25 of Banking of the Department of Financial and Professional
26 Regulation.

1 "Eligible depository institution" means an insured savings
2 association that is in default, an insured savings association
3 that is in danger of default, a State or national bank that is
4 in default or a State or national bank that is in danger of
5 default, as those terms are defined in this Section, or a new
6 bank as that term is defined in Section 11(m) of the Federal
7 Deposit Insurance Act or a bridge bank as that term is defined
8 in Section 11(n) of the Federal Deposit Insurance Act or a new
9 federal savings association authorized under Section
10 11(d) (2) (f) of the Federal Deposit Insurance Act.

11 "Fiduciary" means trustee, agent, executor, administrator,
12 committee, guardian for a minor or for a person under legal
13 disability, receiver, trustee in bankruptcy, assignee for
14 creditors, or any holder of similar position of trust.

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

1 corporate fiduciary.

2 "Foundation" means the Illinois Bank Examiners' Education
3 Foundation.

4 "General obligation" means a bond, note, debenture,
5 security, or other instrument evidencing an obligation of the
6 government entity that is the issuer that is supported by the
7 full available resources of the issuer, the principal and
8 interest of which is payable in whole or in part by taxation.

9 "Guarantee" means an undertaking or promise to answer for
10 payment of another's debt or performance of another's duty,
11 liability, or obligation whether "payment guaranteed" or
12 "collection guaranteed".

13 "In danger of default" means a State or national bank, a
14 federally chartered insured savings association, or an
15 Illinois state chartered insured savings association with
16 respect to which the Commissioner or the appropriate federal
17 banking agency has advised the Federal Deposit Insurance
18 Corporation that:

19 (1) in the opinion of the Commissioner or the
20 appropriate federal banking agency,

21 (A) the State or national bank or insured savings
22 association is not likely to be able to meet the
23 demands of the State or national bank's or savings
24 association's obligations in the normal course of
25 business; and

26 (B) there is no reasonable prospect that the State

1 or national bank or insured savings association will
2 be able to meet those demands or pay those obligations
3 without federal assistance; or

4 (2) in the opinion of the Commissioner or the
5 appropriate federal banking agency,

6 (A) the State or national bank or insured savings
7 association has incurred or is likely to incur losses
8 that will deplete all or substantially all of its
9 capital; and

10 (B) there is no reasonable prospect that the
11 capital of the State or national bank or insured
12 savings association will be replenished without
13 federal assistance.

14 "In default" means, with respect to a State or national
15 bank or an insured savings association, any adjudication or
16 other official determination by any court of competent
17 jurisdiction, the Commissioner, the appropriate federal
18 banking agency, or other public authority pursuant to which a
19 conservator, receiver, or other legal custodian is appointed
20 for a State or national bank or an insured savings
21 association.

22 "Insured savings association" means any federal savings
23 association chartered under Section 5 of the federal Home
24 Owners' Loan Act and any State savings association chartered
25 under the Illinois Savings and Loan Act of 1985 or a
26 predecessor Illinois statute, the deposits of which are

1 insured by the Federal Deposit Insurance Corporation. The term
2 also includes a savings bank organized or operating under the
3 Savings Bank Act.

4 "Insured savings association in recovery" means an insured
5 savings association that is not an eligible depository
6 institution and that does not meet the minimum capital
7 requirements applicable with respect to the insured savings
8 association.

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

1 whom the equipment or property is or is to be leased or
2 conditionally sold.

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

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

8 "Maker or obligor" means for purposes of Section 33 the
9 issuer of a security, the promisor in a debenture or other debt
10 security, or the mortgagor or grantor of a trust deed or
11 similar conveyance of a security interest in real or personal
12 property.

13 "Merged bank" means a merging bank that is not the
14 continuing, resulting, or surviving bank in a consolidation or
15 merger.

16 "Merger" includes consolidation.

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

18 "Merging trust company" means a trust company party to a
19 merger with a State bank.

20 "Mid-tier bank holding company" means a corporation that
21 (a) owns 100% of the issued and outstanding shares of each
22 class of stock of a State bank, (b) has no other subsidiaries,
23 and (c) 100% of the issued and outstanding shares of the
24 corporation are owned by a parent bank holding company.

25 "Municipality" means any municipality, political
26 subdivision, school district, taxing district, or agency.

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

4 "Out-of-state bank" means a bank chartered under the laws
5 of a state other than Illinois, a territory of the United
6 States, or the District of Columbia.

7 "Parent bank holding company" means a corporation that is
8 a bank holding company as that term is defined in the Illinois
9 Bank Holding Company Act of 1957 and owns 100% of the issued
10 and outstanding shares of a mid-tier bank holding company.

11 "Person" means an individual, corporation, limited
12 liability company, partnership, joint venture, trust, estate,
13 or unincorporated association.

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

26 "Public funds" or "public money" means current operating

1 funds, special funds, interest and sinking funds, and funds of
2 any kind or character belonging to, in the custody of, or
3 subject to the control or regulation of the United States or a
4 public agency. "Public funds" or "public money" shall include
5 funds held by any of the officers, agents, or employees of the
6 United States or of a public agency in the course of their
7 official duties and, with respect to public money of the
8 United States, shall include Postal Savings funds.

9 "Published" means, unless the context requires otherwise,
10 the publishing of the notice or instrument referred to in some
11 newspaper of general circulation in the community in which the
12 bank is located at least once each week for 3 successive weeks.
13 Publishing shall be accomplished by, and at the expense of,
14 the bank required to publish. Where publishing is required,
15 the bank shall submit to the Commissioner that evidence of the
16 publication as the Commissioner shall deem appropriate.

17 "Qualified financial contract" means any security
18 contract, commodity contract, forward contract, including spot
19 and forward foreign exchange contracts, repurchase agreement,
20 swap agreement, and any similar agreement, any option to enter
21 into any such agreement, including any combination of the
22 foregoing, and any master agreement for such agreements. A
23 master agreement, together with all supplements thereto, shall
24 be treated as one qualified financial contract. The contract,
25 option, agreement, or combination of contracts, options, or
26 agreements shall be reflected upon the books, accounts, or

1 records of the bank, or a party to the contract shall provide
2 documentary evidence of such agreement.

3 "Recorded" means the filing or recording of the notice or
4 instrument referred to in the office of the Recorder of the
5 county wherein the bank is located.

6 "Resulting bank" means the bank resulting from a merger or
7 conversion.

8 "Secretary" means the Secretary of Financial and
9 Professional Regulation, or a person authorized by the
10 Secretary or by this Act to act in the Secretary's stead.

11 "Securities" means stocks, bonds, debentures, notes, or
12 other similar obligations.

13 "Special purpose trust company" means a special purpose
14 trust company under Article IIA of the Corporate Fiduciary
15 Act.

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

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

21 "State Banking Board" means the State Banking Board of
22 Illinois.

23 "Subsidiary" with respect to a specified company means a
24 company that is controlled by the specified company. For
25 purposes of paragraphs (8) and (12) of Section 5 of this Act,
26 "control" means the exercise of operational or managerial

1 control of a corporation by the bank, either alone or together
2 with other affiliates of the bank.

3 "Surplus" means the aggregate of (i) amounts paid in
4 excess of the par value of capital stock and preferred stock;
5 (ii) amounts contributed other than for capital stock and
6 preferred stock and allocated to the surplus account; and
7 (iii) amounts transferred from undivided profits.

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

12 "Trust company" means a limited liability company or
13 corporation incorporated in this State for the purpose of
14 accepting and executing trusts.

15 "Undivided profits" means undistributed earnings less
16 discretionary transfers to surplus.

17 "Unimpaired capital and unimpaired surplus", for the
18 purposes of paragraph (21) of Section 5 and Sections 32, 33,
19 34, 35.1, 35.2, and 47 of this Act means the sum of the state
20 bank's Tier 1 Capital and Tier 2 Capital plus such other
21 shareholder equity as may be included by regulation of the
22 Commissioner. Unimpaired capital and unimpaired surplus shall
23 be calculated on the basis of the date of the last quarterly
24 call report filed with the Commissioner preceding the date of
25 the transaction for which the calculation is made, provided
26 that: (i) when a material event occurs after the date of the

1 last quarterly call report filed with the Commissioner that
2 reduces or increases the bank's unimpaired capital and
3 unimpaired surplus by 10% or more, then the unimpaired capital
4 and unimpaired surplus shall be calculated from the date of
5 the material event for a transaction conducted after the date
6 of the material event; and (ii) if the Commissioner determines
7 for safety and soundness reasons that a state bank should
8 calculate unimpaired capital and unimpaired surplus more
9 frequently than provided by this paragraph, the Commissioner
10 may by written notice direct the bank to calculate unimpaired
11 capital and unimpaired surplus at a more frequent interval. In
12 the case of a state bank newly chartered under Section 13 or a
13 state bank resulting from a merger, consolidation, or
14 conversion under Sections 21 through 26 for which no preceding
15 quarterly call report has been filed with the Commissioner,
16 unimpaired capital and unimpaired surplus shall be calculated
17 for the first calendar quarter on the basis of the effective
18 date of the charter, merger, consolidation, or conversion.

19 (Source: P.A. 95-924, eff. 8-26-08; 95-1047, eff. 4-6-09;
20 96-1000, eff. 7-2-10; 96-1163, eff. 1-1-11; revised 8-6-24.)

21 (205 ILCS 5/30) (from Ch. 17, par. 337)

22 Sec. 30. Conversion; merger with trust company or special
23 purpose trust company. Upon approval by the Commissioner a
24 trust company having power so to do under the law under which
25 it is organized may convert into a state bank or may merge into

1 a state bank as prescribed by this Act; except that the action
2 by a trust company shall be taken in the manner prescribed by
3 and shall be subject to limitations and requirements imposed
4 by the law under which it is organized which law shall also
5 govern the rights of its dissenting stockholders. The rights
6 of dissenting stockholders of a state bank shall be governed
7 by Section 29 of this Act. The conversion or merger procedure
8 shall be:

9 (1) In the case of a merger, the board of directors of both
10 the merging trust company and the merging bank by a majority of
11 the entire board in each case shall approve a merger agreement
12 which shall contain:

13 (a) The name and location of the merging bank and of
14 the merging trust company and a list of the stockholders
15 of each as of the date of the merger agreement;

16 (b) With respect to the resulting bank (i) its name
17 and place of business; (ii) the amount of capital, surplus
18 and reserve for operating expenses; (iii) the classes and
19 the number of shares of stock and the par value of each
20 share; (iv) the charter which is to be the charter of the
21 resulting bank, together with the amendments to the
22 continuing charter and to the continuing by-laws; and (v)
23 a detailed financial statement showing the assets and
24 liabilities after the proposed merger;

25 (c) Provisions governing the manner of converting the
26 shares of the merging bank and of the merging trust

1 company into shares of the resulting bank;

2 (d) A statement that the merger agreement is subject
3 to approval by the Commissioner and by the stockholders of
4 the merging bank and the merging trust company, and that
5 whether approved or disapproved, the parties thereto will
6 pay the Commissioner's expenses of examination;

7 (e) Provisions governing the manner of disposing of
8 the shares of the resulting bank not taken by the
9 dissenting stockholders of the merging trust company; and

10 (f) Such other provisions as the Commissioner may
11 reasonably require to enable him to discharge his duties
12 with respect to the merger.

13 (2) After approval by the board of directors of the
14 merging bank and of the merging trust company, the merger
15 agreement shall be submitted to the Commissioner for approval
16 together with the certified copies of the authorizing
17 resolution of each board of directors showing approval by a
18 majority of each board.

19 (3) After receipt by the Commissioner of the papers
20 specified in subsection (2), he shall approve or disapprove
21 the merger agreement. The Commissioner shall not approve the
22 agreement unless he shall be of the opinion and finds:

23 (a) That the resulting bank meets the requirements of
24 this Act for the formation of a new bank at the proposed
25 place of business of the resulting bank;

26 (b) That the same matters exist in respect of the

1 resulting bank which would have been required under
2 Section 10 of this Act for the organization of a new bank;
3 and

4 (c) That the merger agreement is fair to all persons
5 affected. If the Commissioner disapproves the merger
6 agreement, he shall state his objections in writing and
7 give an opportunity to the merging bank and the merging
8 trust company to obviate such objections.

9 (4) To be effective, if approved by the Commissioner, a
10 merger of a bank and a trust company where there is to be a
11 resulting bank must be approved by the affirmative vote of the
12 holders of at least two-thirds of the outstanding shares of
13 stock of the merging bank entitled to vote at a meeting called
14 to consider such action, unless holders of preferred stock are
15 entitled to vote as a class in respect thereof, in which event
16 the proposed merger shall be adopted upon receiving the
17 affirmative vote of the holders of at least two-thirds of the
18 outstanding shares of each class of shares entitled to vote as
19 a class in respect thereof and of the total outstanding shares
20 entitled to vote at such meeting and must be approved by the
21 stockholders of the merging trust company as provided by the
22 Act under which it is organized. The prescribed vote by the
23 merging bank and the merging trust company shall constitute
24 the adoption of the charter and by-laws of the continuing
25 bank, including the amendments in the merger agreement, as the
26 charter and by-laws of the resulting bank. Written or printed

1 notice of the meeting of the stockholders of the merging bank
2 shall be given to each stockholder of record entitled to vote
3 at such meeting at least thirty days before such meeting and in
4 the manner provided in this Act for the giving of notice of
5 meetings of stockholders. The notice shall state that
6 dissenting stockholders of the merging trust company will be
7 entitled to payment of the value of those shares which are
8 voted against approval of the merger, if a proper demand is
9 made on the resulting bank and the requirements of the Act
10 under which the merging trust company is organized are
11 satisfied.

12 (5) Unless a later date is specified in the merger
13 agreement, the merger shall become effective upon the filing
14 with the Commissioner of the executed merger agreement,
15 together with copies of the resolutions of the stockholders of
16 the merging bank and the merging trust company approving it,
17 certified by the president or a vice-president or, the cashier
18 and also by the secretary or other officer charged with
19 keeping the records. The charter of the merging trust company
20 shall thereupon automatically terminate. The Commissioner
21 shall thereupon issue to the continuing bank a certificate of
22 merger which shall specify the name of the merging trust
23 company, the name of the continuing bank and the amendments to
24 the charter of the continuing bank provided for by the merger
25 agreement. Such certificate shall be conclusive evidence of
26 the merger and of the correctness of all proceedings therefor

1 in all courts and places including the office of the Secretary
2 of State, and said certificate shall be recorded.

3 (6) In the case of a conversion, a trust company shall
4 apply for a charter by filing with the Commissioner:

5 (a) A certificate signed by its president, or a
6 vice-president, and by a majority of the entire board of
7 directors setting forth the corporate action taken in
8 compliance with the provisions of the Act under which it
9 is organized governing the conversion of a trust company
10 to a bank or governing the merger of a trust company into
11 another corporation;

12 (b) The plan of conversion and the proposed charter
13 approved by the stockholders for the operation of the
14 trust company as a bank. The plan of conversion shall
15 contain (i) the name and location proposed for the
16 converting trust company; (ii) a list of its stockholders
17 as of the date of the stockholders' approval of the plan of
18 conversion; (iii) the amount of its capital, surplus and
19 reserve for operating expenses; (iv) the classes and the
20 number of shares of stock and the par value of each share;
21 (v) the charter which is to be the charter of the resulting
22 bank; and (vi) a detailed financial statement showing the
23 assets and liabilities of the converting trust company;

24 (c) A statement that the plan of conversion is subject
25 to approval by the Commissioner and that, whether approved
26 or disapproved, the converting trust company will pay the

1 Commissioner's expenses of examination; and

2 (d) Such other instruments as the Commissioner may
3 reasonably require to enable him to discharge his duties
4 with respect to the conversion.

5 (7) After receipt by the Commissioner of the papers
6 specified in subsection (6), he shall approve or disapprove
7 the plan of conversion. The Commissioner shall not approve the
8 plan of conversion unless he shall be of the opinion and finds:

9 (a) That the resulting bank meets the requirements of
10 this Act for the formation of a new bank at the proposed
11 place of business of the resulting bank;

12 (b) That the same matters exist in respect of the
13 resulting bank which would have been required under
14 Section 10 of this Act for the organization of a new bank;
15 and

16 (c) That the plan of conversion is fair to all persons
17 affected.

18 If the commissioner disapproves the plan of conversion, he
19 shall state his objections in writing and give an opportunity
20 to the converting trust company to obviate such objections.

21 (8) Unless a later date is specified in the plan of
22 conversion, the conversion shall become effective upon the
23 Commissioner's approval, and the charter proposed in the plan
24 of conversion shall constitute the charter of the resulting
25 bank. The Commissioner shall issue a certificate of conversion
26 which shall specify the name of the converting trust company,

1 the name of the resulting bank and the charter provided for by
2 said plan of conversion. Such certificate shall be conclusive
3 evidence of the conversion and of the correctness of all
4 proceedings therefor in all courts and places including the
5 office of the Secretary of State, and such certificate shall
6 be recorded.

7 (8.5) A special purpose trust company under Article IIA of
8 the Corporate Fiduciary Act may merge with a State bank or
9 convert to a State bank as if the special purpose trust company
10 were a trust company under Article II of the Corporate
11 Fiduciary Act, subject to rules adopted by the Department.

12 (9) In the case of either a merger or a conversion under
13 this Section 30, the resulting bank shall be considered the
14 same business and corporate entity as each merging bank and
15 merging trust company or as the converting trust company with
16 all the property, rights, powers, duties and obligations of
17 each as specified in Section 28 of this Act.

18 (Source: P.A. 91-357, eff. 7-29-99.)

19 Section 90-20. The Corporate Fiduciary Act is amended by
20 changing Sections 1-5.08, 2-1, 4-1, 4-2, 4-5, 4A-15, and 5-1
21 and by adding Article IIA as follows:

22 (205 ILCS 620/1-5.08) (from Ch. 17, par. 1551-5.08)

23 Sec. 1-5.08. "Foreign corporation" means:

24 (a) any bank, savings and loan association, savings bank,

1 or other corporation, limited liability company, or other
2 entity now or hereafter organized under the laws of any state
3 or territory of the United States of America, including the
4 District of Columbia, other than the State of Illinois;

5 (b) any national banking association having its principal
6 place of business in any state or territory of the United
7 States of America, including the District of Columbia, other
8 than the State of Illinois; and

9 (c) any federal savings and loan association or federal
10 savings bank having its principal place of business in any
11 state or territory of the United States of America, including
12 the District of Columbia, other than the State of Illinois.

13 (Source: P.A. 91-97, eff. 7-9-99.)

14 (205 ILCS 620/2-1) (from Ch. 17, par. 1552-1)

15 Sec. 2-1. (a) Any corporation which has been or shall be
16 incorporated under the general corporation laws of this State
17 and any limited liability company established under the
18 Limited Liability Company Act for the purpose of accepting and
19 executing trusts, and any state bank, state savings and loan
20 association, state savings bank, or other special corporation
21 now or hereafter authorized by law to accept or execute
22 trusts, may be appointed to act as a fiduciary in any capacity
23 a natural person or corporation may act, and shall include,
24 but not be limited to, acting as assignee or trustee by deed,
25 and executor, guardian or trustee by will, custodian under the

1 Illinois Uniform Transfers to Minors Act and such appointment
2 shall be of like force as in case of appointment of a natural
3 person and shall be designated a corporate fiduciary.

4 (b) No corporate fiduciary shall dissolve or cease its
5 corporate existence without prior notice to and approval by
6 the Commissioner and compliance with the requirements of
7 Section 7-1 of this Act.

8 (Source: P.A. 100-863, eff. 8-14-18.)

9 (205 ILCS 620/Art. IIA heading new)

10 ARTICLE IIA. SPECIAL PURPOSE TRUST COMPANY

11 AUTHORITY AND ORGANIZATION

12 (205 ILCS 620/2A-1 new)

13 Sec. 2A-1. Purpose. The General Assembly finds that
14 corporate fiduciaries perform a vital service in the custody,
15 safekeeping, and management of physical assets, traditional
16 electronic assets, and emerging digital assets for customers;
17 that it is in the public interest that trust companies may be
18 organized for the special purpose of providing fiduciary
19 custodial services and related services to customers; that the
20 operation of special purpose trust companies is impressed with
21 a public interest such that it should be supervised as an
22 activity under this Act; and that such special purpose trust
23 companies should obtain their authority, conduct their
24 operations, and be supervised as corporate fiduciaries as

1 provided in this Act.

2 (205 ILCS 620/2A-2 new)

3 Sec. 2A-2. Special purpose trust company. Any corporation
4 that has been or shall be incorporated under the general
5 corporation laws of this State and any limited liability
6 company established under the Limited Liability Company Act
7 for the special purpose of providing fiduciary custodial
8 services or providing other like or related services as
9 specified by rule, consistent with this Article, may be
10 appointed to act as a fiduciary with respect to such services
11 and shall be designated a special purpose trust company.

12 (205 ILCS 620/2A-3 new)

13 Sec. 2A-3. Certificate of authority.

14 (a) It shall be lawful for any person to engage in the
15 activity of a special purpose trust company after the
16 effective date of this amendatory Act of the 104th General
17 Assembly upon filing an application for and procuring from the
18 Secretary a certificate of authority stating that the person
19 has complied with the requirements of this Act and is
20 qualified to engage in the activity of a special purpose trust
21 company.

22 (b) No natural person or natural persons, firm,
23 partnership, or corporation not having been authorized under
24 this Act shall transact in the activity of a special purpose

1 trust company. A person who violates this Section is guilty of
2 a Class A misdemeanor and the Attorney General or State's
3 Attorney of the county in which the violation occurs may
4 restrain the violation by a complaint for injunctive relief.

5 (c) Any entity that holds a certificate of authority under
6 Article II of this Act may engage in the activity of a special
7 purpose trust company without applying for or receiving a
8 certificate of authority under this Article IIA.

9 (d) Nothing in this Section shall limit the authority of a
10 depository institution to provide nonfiduciary custodial
11 services consistent with its charter in accordance with
12 applicable law and subject to any limitations and restrictions
13 imposed by its chartering authority.

14 (205 ILCS 620/2A-4 new)

15 Sec. 2A-4. Rulemaking and organization.

16 (a) The Department shall adopt rules for the
17 administration of this Article, including, but not limited to:
18 rules for defining statutory terms; applying for a certificate
19 of authority; review, investigation, and approval of
20 application for certificate of authority; capital
21 requirements; office location and name; collateralizing
22 fiduciary assets; and general corporate powers. The authority
23 of this subsection (a) is in addition to, and in no way limits,
24 the authority of the Secretary under subsection (a) of Section
25 5-1.

1 (b) Articles III, V, VI, VII, VIII, and IX of this Act
2 shall apply to a special purpose trust company under this
3 Article as if the special purpose trust company were a trust
4 company authorized under Article II of this Act, subject to
5 any rules adopted by the Department.

6 (205 ILCS 620/4-1) (from Ch. 17, par. 1554-1)

7 Sec. 4-1. Foreign corporate fiduciary; certificate of
8 authority. After July 13, 1953, no foreign corporation,
9 including banks, savings banks, and savings and loan
10 associations, now or hereafter organized under the laws of any
11 other state or territory, and no national banking association
12 having its principal place of business in any other state or
13 territory or federal savings and loan association or federal
14 savings bank having its principal place of business in any
15 other state or territory, may procure a certificate of
16 authority under Article II of this Act and any certificate of
17 authority heretofore issued hereunder to any such foreign
18 corporation or to any such national banking association shall
19 become null and void on July 13, 1953, except that any such
20 foreign corporation or any such national banking association
21 actually acting as trustee, executor, administrator,
22 administrator to collect, guardian, or in any other ~~like~~
23 fiduciary capacity in this State on July 13, 1953, may
24 continue to act as such fiduciary in that particular trust or
25 estate until such time as it has completed its duties

1 thereunder. Such foreign corporation and such national banking
2 association shall be subject to the provisions in this Article
3 IV, regardless of whether its certificate of authority was
4 obtained before July 13, 1953. The right and eligibility of
5 any foreign corporation, any national banking association
6 having its principal place of business in any other state or
7 territory or any federal savings and loan association or
8 federal savings bank having its principal place of business in
9 any other state or territory hereafter to act as trustee,
10 executor, administrator, administrator to collect, guardian,
11 or in any other ~~like~~ fiduciary capacity in this State shall be
12 governed solely by the provisions of this Act. Provided,
13 however, that the Commissioner shall not be required to
14 conduct an annual examination of such foreign corporation
15 pursuant to Section 5-2 of this Act, but may examine such
16 foreign corporation as the Commissioner deems appropriate.
17 "Principal place of business" of any bank, federal savings and
18 loan association or savings bank, for purposes of this Article
19 IV, means the principal office as designated on the charter by
20 its principal regulator.

21 (Source: P.A. 91-97, eff. 7-9-99.)

22 (205 ILCS 620/4-2) (from Ch. 17, par. 1554-2)

23 Sec. 4-2. Foreign corporation; eligibility. Any foreign
24 corporation may act in this State as trustee, executor,
25 administrator, administrator to collect, guardian, or in any

1 other like fiduciary capacity, whether the appointment is by
2 will, deed, court order or otherwise, without complying with
3 any laws of this State relating to the qualification of
4 corporations organized under the laws of this State to conduct
5 a trust business or laws relating to the qualification of
6 foreign corporations, provided only (1) such foreign
7 corporation is authorized by the laws of the state of its
8 organization or domicile to act as a fiduciary in that state,
9 and (2) a corporation organized under the laws of this State, a
10 national banking association having its principal place of
11 business in this State, and a federal savings and loan
12 association or federal savings bank having its principal place
13 of business in this State and authorized to act as a fiduciary
14 in this State, may, in such other state, act in a similar
15 fiduciary capacity or capacities, as the case may be, upon
16 conditions and qualifications which the Commissioner finds are
17 not unduly restrictive when compared to those imposed by the
18 laws of Illinois. Any foreign corporation eligible to act in a
19 fiduciary capacity in this State pursuant to the provisions of
20 this Act, shall be deemed qualified to accept and execute
21 trusts in this State within the meaning of this Act and the
22 Probate Act of 1975, approved August 7, 1975, as amended. No
23 foreign corporation shall be permitted to act as trustee,
24 executor, administrator, administrator to collect, guardian or
25 in any other ~~like~~ fiduciary capacity in this State except as
26 provided in Article IV of this Act; however, any foreign

1 corporation actually acting in any such fiduciary capacity in
2 this State on July 13, 1953, although not eligible to so act
3 pursuant to the provisions of this Article IV, may continue to
4 act as fiduciary in that particular trust or estate until such
5 time as it has completed its duties thereunder.

6 (Source: P.A. 92-685, eff. 7-16-02.)

7 (205 ILCS 620/4-5) (from Ch. 17, par. 1554-5)

8 Sec. 4-5. Certificate of authority; fees; certificate of
9 reciprocity.

10 (a) Prior to the time any foreign corporation acts in this
11 State as testamentary trustee, trustee appointed by any court,
12 trustee under any written agreement, declaration or instrument
13 of trust, executor, administrator, administrator to collect,
14 guardian or in any other ~~like~~ fiduciary capacity, such foreign
15 corporation shall apply to the Commissioner of Banks and Real
16 Estate for a certificate of authority with reference to the
17 fiduciary capacity or capacities in which such foreign
18 corporation proposes to act in this State, and the
19 Commissioner of Banks and Real Estate shall issue a
20 certificate of authority to such corporation concerning only
21 the fiduciary capacity or such of the fiduciary capacities to
22 which the application pertains and with respect to which he
23 has been furnished satisfactory evidence that such foreign
24 corporation meets the requirements of Section 4-2 of this Act.
25 The certificate of authority shall set forth the fiduciary

1 capacity or capacities, as the case may be, for which the
2 certificate is issued, and shall recite and certify that such
3 foreign corporation is eligible to act in this State in such
4 fiduciary capacity or capacities, as the case may be, pursuant
5 to the provisions of this Act. The certificate of authority
6 shall remain in full force and effect until such time as such
7 foreign corporation ceases to be eligible so to act under the
8 provisions of this Act.

9 (b) Each foreign corporation making application for a
10 certificate of authority shall pay reasonable fees to the
11 Commissioner of Banks and Real Estate as determined by the
12 Commissioner for the services of his office.

13 (c) Any foreign corporation holding a certificate of
14 reciprocity which recites and certifies that such foreign
15 corporation is eligible to act in this State in any such
16 fiduciary capacity pursuant to the provisions of Article IV of
17 this Act or any predecessor Act upon the same subject, issued
18 prior to the effective date of this amendatory Act of 1987 may
19 act in this State under such certificate of reciprocity in any
20 such fiduciary capacity without applying for a new certificate
21 of authority. Such certificate of reciprocity shall remain in
22 full force and effect until such time as such foreign
23 corporation ceases to be eligible so to act under the
24 provisions of Article IV of this Act.

25 (d) Any foreign corporation acting in Illinois under a
26 certificate of authority or a certificate of reciprocity shall

1 report changes in its name or address to the Commissioner and
2 shall notify the Commissioner when it is no longer serving as a
3 corporate fiduciary in Illinois.

4 (e) The provisions of this Section shall not apply to a
5 foreign corporation establishing or acquiring and maintaining
6 a place of business in this State to conduct business as a
7 fiduciary in accordance with Article IVA of this Act.

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

9 (205 ILCS 620/4A-15)

10 Sec. 4A-15. Representative offices.

11 (a) A foreign corporation conducting fiduciary activities
12 outside this State, but not conducting fiduciary activities in
13 this State may establish a representative office under the
14 Foreign Bank Representative Office Act. At these offices, the
15 foreign corporation may market and solicit fiduciary services
16 and provide back office and administrative support to the
17 foreign corporation's fiduciary activities, but it may not
18 engage in fiduciary activities.

19 (b) A foreign corporation invested with trust powers or
20 authority to act as a fiduciary pursuant to the laws of its
21 home state but not conducting fiduciary activities must apply
22 for and procure a license under the Foreign Bank
23 Representative Office Act before establishing an office in
24 this State for the purpose of marketing, soliciting, or
25 transacting any service or product, unless such office is

1 otherwise established as permitted by and in accordance with
2 this Act, the Illinois Banking Act, the Savings Bank Act, the
3 Foreign Banking Office Act, or any Act specified by rules
4 adopted under this Act.

5 (Source: P.A. 92-483, eff. 8-23-01; 92-811, eff. 8-21-02.)

6 (205 ILCS 620/5-1) (from Ch. 17, par. 1555-1)

7 Sec. 5-1. Commissioner's powers. The Commissioner of Banks
8 and Real Estate shall have the following powers and authority
9 and is charged with the duties and responsibilities designated
10 in this Act:

11 (a) To promulgate, in accordance with the Illinois
12 Administrative Procedure Act, reasonable rules for the purpose
13 of administering the provisions of this Act, for the purpose
14 of protecting consumers of this State as may be necessary and
15 appropriate, and for the purpose of incorporating by reference
16 rules promulgated by the Federal Deposit Insurance
17 Corporation, the Board of Governors of the Federal Reserve
18 System, the Office of the Comptroller of the Currency, the
19 Office of Thrift Supervision, or their successors that pertain
20 to corporate fiduciaries, including, but not limited to,
21 standards for the operation and conduct of the affairs of
22 corporate fiduciaries;

23 (b) To issue orders for the purpose of administering the
24 provisions of this Act and any rule promulgated in accordance
25 with this Act;

1 (c) To appoint hearing officers to conduct hearings held
2 pursuant to any of the powers granted to the Commissioner
3 under this Section for the purpose of administering this Act
4 and any rule promulgated in accordance with this Act;

5 (d) To subpoena witnesses, to compel their attendance, to
6 administer an oath, to examine any person under oath and to
7 require the production of any relevant books, papers, accounts
8 and documents in the course of and pursuant to any
9 investigation being conducted, or any action being taken, by
10 the Commissioner in respect of any matter relating to the
11 duties imposed upon, or the powers vested in, the Commissioner
12 under the provisions of this Act, or any rule or regulation
13 promulgated in accordance with this Act;

14 (e) To conduct hearings;

15 (f) To promulgate the form and content of any applications
16 required under this Act;

17 (g) To impose civil penalties of up to \$100,000 against
18 any person or corporate fiduciary for each violation of any
19 provision of this Act, any rule promulgated in accordance with
20 this Act, any order of the Commissioner or any other action
21 which, in the Commissioner's discretion, is a detriment or
22 impediment to accepting or executing trusts; and

23 (h) To address any inquiries to any corporate fiduciary,
24 or the officers thereof, in relation to its doings and
25 conditions, or any other matter connected with its affairs,
26 and it shall be the duty of any corporate fiduciary or person

1 so addressed, to promptly reply in writing to such inquiries.
2 The Commissioner may also require reports from any corporate
3 fiduciary at any time he may deem desirable.
4 (Source: P.A. 96-1365, eff. 7-28-10.)

5 Section 90-25. The Consumer Fraud and Deceptive Business
6 Practices Act is amended by adding Section 2HHHH as follows:

7 (815 ILCS 505/2HHHH new)

8 Sec. 2HHHH. Violations of the Digital Assets and Consumer
9 Protection Act. Any person who violates Article 5 of the
10 Digital Assets and Consumer Protection Act commits an unlawful
11 practice within the meaning of this Act.

12 Article 99. Non-acceleration and Effective Date

13 Section 99-95. No acceleration or delay. Where this Act
14 makes changes in a statute that is represented in this Act by
15 text that is not yet or no longer in effect (for example, a
16 Section represented by multiple versions), the use of that
17 text does not accelerate or delay the taking effect of (i) the
18 changes made by this Act or (ii) provisions derived from any
19 other Public Act.

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