AN ACT concerning regulation.

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

Article 1. General Provisions

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

Section 1-5. Definitions.

(a) As used in this Act:

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

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

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

"Confidential supervisory information" means information or documents obtained by employees, agents, or representatives of the Department in the course of any examination, investigation, audit, visit, registration, certification, review, licensing, or any other regulatory or supervisory activity pursuant to this Act, and any record prepared or obtained by the Department to the extent that the record summarizes or contains information derived from any report, document, or record described in this Act.

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

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

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

"Covered exchange" means a covered person that exchanges or holds itself out as being able to exchange a digital asset for a resident as part of a business or on behalf of a customer who has entered into an agreement with a business for the provision of such services.

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

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

"Digital asset" means a digital representation of value that is used as a medium of exchange, unit of account, or store of value, and that is not fiat currency, whether or not denominated in fiat currency. "Digital asset" does not include any of the following:

(1) A digital representation of value that a merchant grants as part of an affinity or rewards program and that primarily relates to such affinity or rewards program.

(2) A digital representation of value that is issued by or on behalf of a game publisher and that is used primarily within online games or gaming platforms.

(3) Other digital representations of value that have substantial value, utility, or significance beyond the asset's mere existence as a digital asset, including digital equivalents of tangible and intangible goods such as: (A) works of art, musical compositions, literary works, and similar intellectual property; (B) collectibles and merchandise; and (C) licenses, tickets, and similar rights to attend events or participate in activities.

(4) A digital representation of value that is not marketed, used, promoted, offered, or sold for investment or speculation, except that this exclusion shall not apply to any digital representation of value that (A) is meme-based with no intrinsic value or utility or (B) is marketed, used, promoted, offered, or sold in a manner that intends to establish a reasonable expectation or belief among the general public that the instrument will retain a nominal value that is so stable as to render the

nominal value effectively fixed. The Department may adopt rules to clarify the scope and applicability of this subsection.

(5) A digital representation of value that is used as part of prepaid cards.

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

(1) Exchanging, transferring, or storing a digital asset as part of a business or on behalf of a customer who has entered into an agreement with a business for the provision of such services.

(2) Engaging in digital asset administration.

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

"Digital asset business activity" does not include (1) peer-to-peer exchanges or transfers of digital assets, (2) decentralized exchanges facilitating peer-to-peer exchanges or transfers solely through use of a computer program or a transaction protocol that is intended to automatically execute, control, or document events and actions, (3) the development, publication, constitution, administration, maintenance, and dissemination of software in and of itself, (4) the issuance of a non-fungible token in and of itself, and (5) validating a digital asset transaction, operating a node, or engaging in similar activity to participate in facilitating, operating, or securing a blockchain system.

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

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

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

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

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

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

"Fiat currency" means a medium of exchange or unit of value issued by the United States or a foreign government and that is designated as legal tender in its country of issuance.

"Insolvent" means any of the following:

(1) Having generally ceased to pay debts in the

ordinary course of business other than as a result of a bona fide dispute.

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

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

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

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

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

(1) is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, or is usable at multiple, unaffiliated merchants or service providers;

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

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

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

(5) is honored upon presentation;

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

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

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

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

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

"Registrant" means a person registered under this Act.

"Resident" means any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Whenever the terms "include", "including" or terms of similar import appear in this Act, unless the context requires otherwise, such terms shall not be construed to imply the exclusion of any person, class, or thing not specifically included.

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

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

Section 1-10. Applicability.

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

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

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

(B) the Commodity Exchange Act, 7 U.S.C. 1 et seq., governs the activity, the activity is in connection with trading of a contract of sale of a commodity for future delivery, an option on such a contract or a swap, and the activity is regulated by the U.S. Commodity Futures Trading Commission.

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

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

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

(2) A federally insured depository institution.

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

(4) A merchant using digital assets solely for the purchase or sale of goods or services, excluding the sale of purchase of digital assets, in the ordinary course of its business.

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

(6) A person who (A) contributes connectivity software or computing power or otherwise participates in the process of securing a network, (B) records digital asset transactions to the network or protocol governing transfer of the digital representation of value, or (C) develops, publishes, constitutes, administers, maintains, or otherwise distributes software relating to the network, so long as the person does not control transactions of digital assets on the network.

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

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

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

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

Section 1-15. General powers and duties.

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

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

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

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

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

(3) to keep records of all registrations or other

authorizations under this Act;

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

(5) to prescribe the forms of and receive:

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

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

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

(7) to issue orders against any person:

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

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

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

(8) to address any inquiries to any covered person, or the directors, officers, or employees of the covered person, or the affiliates or service providers of the covered person, in relation to the covered person's activities and conditions or any other matter connected with its affairs, and it shall be the duty of any person so addressed to promptly reply in writing to those inquiries; the Secretary may also require reports from any covered person at any time the Secretary chooses;

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

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

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

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

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

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

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

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

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

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

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

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

(21) to perform any other lawful acts necessary or

desirable to carry out the purposes and provisions of this Act and other laws applicable to digital asset business activity.

(d) The Department may share any information obtained pursuant to this Act or any other law applicable to digital asset business activity with law enforcement officials or other regulatory agencies.

Section 1-20. Funds.

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

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

(1) investigation of registrants and registration applicant fees;

(2) examination fees;

(3) contingent fees; and

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

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

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

(2) Each covered person shall pay to the Department its pro rata share of the cost for administration of this Act that exceeds other fees listed in this Act, as estimated by the Department, for the current year and any deficit actually incurred in the administration of the Act in prior years. The total annual assessment for all registrants shall initially be divided into a transaction-based assessment and a custody-based assessment, each equal to approximately half the cost for administration of this Act. Each registrant's pro rata

share of the transaction-based assessment shall be the percentage that the total volume of digital asset transactions conducted on behalf of residents by the registrant bears to the total volume of digital asset transactions by all registrants in Illinois. Each registrant's pro rata share of the custody-based assessment shall be the percentage that the total United States dollar value of digital assets held in custody or controlled by the registrant for residents bears to the total United States dollar value held in custody or controlled by all registrants in Illinois for residents.

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

Article 5. Customer Protections

Section 5-5. Customer disclosures.

(a) When engaging in digital asset business activity with a resident, a covered person shall provide to a resident the customer disclosures required by subsection (b) and any additional disclosures the Department by rule determines to be necessary and appropriate for the protection of residents. The Department may determine by rule the time and form required for disclosures. A disclosure required by this Section shall be made separately from any other information provided by the covered person and in a clear and conspicuous manner in a record the resident may keep.

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

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

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

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

(i) Up to the full United States dollar equivalent of digital assets placed under the custody or control of, or purchased from, the covered person as of the date of the placement or purchase, including the maximum amount provided by insurance under the Federal Deposit Insurance Corporation or National Credit Union Administration or otherwise available from the Securities Investor Protection Corporation.

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

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

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

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

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

(4) A description of all of the following:

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

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

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

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

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

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

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

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

(8) The resident's right to at least 14 days' prior notice of a change in the covered person's fee schedule, other terms and conditions that have a material impact on digital asset business activity with the resident, or the policies applicable to the resident's account.

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

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

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

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

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

(1) The name and contact information of the covered person, including the toll-free telephone number required under Section 5-20.

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

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

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

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

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

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

(2) segregate such digital assets from the other

assets of the covered person; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) any rules as may be as may be necessary and

appropriate for the protection of residents or necessary to effectuate the purposes of this Section.

Section 5-15. Covered exchanges.

(a)(1) Except as provided for under paragraph (2) of this subsection, a covered exchange, before listing or offering a digital asset that the covered exchange can exchange on behalf of a resident, shall certify on a form provided by the Department that the covered exchange has done the following:

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

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

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

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

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

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

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

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

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

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

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

(ii) The size and type of transaction.

(iii) The number of markets checked.

(iv) Accessibility of appropriate pricing.

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

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

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

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

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

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

(b) A covered person shall implement reasonable policies and procedures for accepting, processing, investigating, and responding to requests for assistance in a timely and effective manner. Such policies and procedures shall include all of the following:

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

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

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

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

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

Article 10. Compliance

Section 10-5. General requirements.

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

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

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

Section 10-10. Required policies and procedures.

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

(1) A cybersecurity program.

(2) A business continuity program.

(3) A disaster recovery program.

(4) An anti-fraud program.

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

(6) An operational security program.

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

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

(8) A conflict of interest program.

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

(10) Any other compliance program, policy, or

procedure the Department establishes by rule as necessary for the protection of residents or for the safety and soundness of the registrant's business or to effectuate the purposes of this Act.

(b) A policy required by subsection (a) shall be maintained in a record and designed to be adequate for a registrant's contemplated digital asset business activity with or on behalf of residents, considering the circumstances of all participants and the safe operation of the activity. Any policy and implementing procedure shall be compatible with other policies and the procedures implementing them and not conflict with policies or procedures applicable to the registrant under other State law.

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

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

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

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

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

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

(2) Procedures, in accordance with federal law or guidance published by federal agencies responsible for enforcing federal law, pertaining to money laundering and financing of terrorist activity.

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

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

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

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

(B) Implementing and maintaining a written policy or policies, approved at least annually by an executive officer or the registrant's board of directors, or an appropriate committee thereof, or equivalent governing body, setting forth the registrant's policies and procedures for the protection of its information systems and nonpublic information stored on those information systems.

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

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

(A) penetration testing and vulnerability assessment;

(B) audit trails;

(C) access privileges;

(D) application security;

(E) risk assessment;

(F) cybersecurity personnel and intelligence;

(G) affiliates and service providers;

(H) authentication;

(I) data retention;

(J) training and monitoring;

(K) encryption;

(L) incident response;

(M) notice of cybersecurity events; and

(N) any other requirement necessary and appropriate for the protection of residents or for the safety and soundness of the registrant or to effectuate the purposes of this subsection.

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

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

Article 15. Registration

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

Section 15-10. Application.

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

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

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

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

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

(C) A description of the current and former business of the applicant and any affiliate of the applicant for the 5 years before the application is submitted, or, if the business has operated for less than 5 years, for the time the business has operated, including its products and services, associated internet website addresses and social media pages, principal place of business, projected user base, and specific marketing targets.

(D) A list of all of the following:

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

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

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

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

(i) The applicant.

(ii) Any executive officer of the applicant.

(iii) Any responsible individual of the applicant.

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

(v) Any affiliate of the applicant.

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

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

(i) The applicant.

(ii) An executive officer of the applicant.

(iii) A responsible individual of the applicant.

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

(v) An affiliate of the applicant.

(H) The name and United States Postal Service address of any bank or credit union in which the applicant and any affiliates plan to deposit funds obtained by digital asset business activity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) On receipt of a completed application, the Department may investigate the business premises of an applicant or an affiliate of the applicant or require the submission of any other documents or information the Department deems relevant to the application.

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

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

(2) The Secretary may impose conditions on a registration if the Secretary determines that those conditions are necessary or appropriate. These conditions shall be imposed in writing and shall continue in effect for the period prescribed by the Secretary.

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

(1) The date the Department issues the registration.

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

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

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

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

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

(A) upon issuance of an unconditional registration;

(B) upon denial of a registration;

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

Section 15-15. Renewal.

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

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

(1) Either a copy of the registrant's most recent reviewed annual financial statement, if the gross revenue generated by the registrant's digital asset business activity in this State was not more than $2,000,000 for the fiscal year ending before the anniversary date of issuance of its registration under this Act, or a copy of the registrant's most recent audited annual financial statement, if the registrant's digital asset business activity in this State amounted to more than $2,000,000, for the fiscal year ending before the anniversary date.

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

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

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

(3) A description of any of the following:

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

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

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

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

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

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

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

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

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

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

(8) Evidence that the registrant is in compliance with Section 20-5.

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

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

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

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

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

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

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

Article 20. Supervision

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

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

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

(2) Security deposited under this Section shall be for the benefit of a claim against the registrant on account

of the registrant's digital asset business activity with or on behalf of a resident.

(3) Security deposited under this Section shall cover claims for the period the Department specifies by rule and for an additional period the Department specifies after the registrant ceases to engage in digital asset business activity with or on behalf of a resident.

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

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

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

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

(2) The composition of the registrant's total liabilities, including the size and repayment timing of each type of liability.

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

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

(5) The liquidity position of the registrant.

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

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

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

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

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

(d) The Department may require a registrant to increase the capital or liquidity required under this Section. A registrant shall submit evidence satisfactory to the

Department that it has additional capital or liquidity required pursuant to this subsection not later than 15 days after the registrant receives notice in a record of the required increase.

Section 20-10. Examination.

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

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

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

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

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

Section 20-15. Books and records.

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

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

(A) The identity of the resident.

(B) The form of the transaction.

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

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

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

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

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

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

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

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

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

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

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

(c) If a registrant maintains records outside this State that pertain to transactions with or on behalf of a resident, the registrant shall make the records available to the Department not later than 3 days after request, or, on a determination of good cause by the Department, in its sole discretion, at a later time.

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

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

Section 20-25. Material business changes.

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

(1) A material change in information in the

application for a registration under this Act or the most recent renewal report of the registrant under this Act.

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

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

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

Section 20-30. Change in control.

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

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

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

(2) A person has control over a registrant if the person's voting power in the registrant constitutes or

will constitute at least 25% of the total voting power of the registrant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 20-35. Mergers.

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

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

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

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

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

(c) The Department, in accordance with Section 15-10, shall approve, conditionally approve, or deny an application for approval of a merger or consolidation of a registrant. The Department, in a record, shall send notice of its decision to the registrant and the person that would be the surviving entity. If the Department denies the application, the registrant shall abandon the merger or consolidation or cease digital asset business activity with or on behalf of residents.

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

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

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

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

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

(f) If a merger or consolidation of a registrant and another person requires approval of another regulatory agency, and the action of the other agency conflicts with that of the Department, the Department shall confer with the other agency. If the proposed merger or consolidation cannot be completed because the conflict cannot be resolved, the registrant shall abandon the merger or consolidation or cease digital asset business activity with or on behalf of residents.

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

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

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

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

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

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

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

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

(2) For the purposes of investigating violations or complaints arising under this Act or for the purposes of examination, the Secretary may review, investigate, or examine any covered person, affiliate, service provider, individual, or person subject to this Act as often as necessary in order to carry out the purposes of this Act. The Secretary may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the transactions or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the Secretary deems relevant to the inquiry.

(3) Each covered person, affiliate, service provider, individual, or person subject to this Act shall make available to the Secretary upon request the books and records relating to the operations of the registrant, affiliate, individual, or person subject to this Act. The Secretary shall have access to those books and records and interview the officers, principals, employees, independent contractors, agents, and customers of the covered person, affiliate, service provider, individual, or person subject

to this Act concerning their business.

(4) Each covered person, affiliate, service provider, individual, or person subject to this Act shall make or compile reports or prepare other information as directed by the Secretary in order to carry out the purposes of this Section, including, but not limited to:

(A) accounting compilations;

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

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

(5) In making any examination or investigation authorized by this Act, the Secretary may control access to any documents and records of the covered person or person under examination or investigation. The Secretary may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no person shall remove or attempt to remove any of the documents or records, except pursuant to a court order or with the consent of the Secretary. Unless the Secretary has reasonable grounds to believe the documents or records of the covered person or person under examination or investigation have been or are at risk of being altered or destroyed for purposes of concealing a

violation of this Act, the covered person or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(6) In order to carry out the purposes of this Section, the Secretary may:

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

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

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

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

(E) accept audit reports made by an independent certified public accountant for the covered person, affiliate, service provider, individual, or person subject to this Act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the Secretary.

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

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

Section 20-50. Enforcement actions.

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

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

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

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

(4) Requesting the court to issue temporary, preliminary, or permanent injunctive relief against a person doing digital asset business activity with or on behalf of a resident.

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

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

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

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

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

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

Section 20-55. Violations.

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

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

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

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

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

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

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

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

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

(5) The covered person or person is convicted of a crime related to its digital asset business activity with or on behalf of a resident or involving fraud or felonious activity that, as determined by the Department, makes the covered person or person unsuitable to engage in digital asset business activity.

(6) Any of the following occurs:

(A) The covered person or person becomes insolvent.

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

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

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

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

(b) If the Secretary finds, as the result of examination, investigation, or review of reports submitted by a registrant, that the business and affairs of a registrant are not being conducted in accordance with this Act, the Secretary may notify the registrant of the correction necessary. If a registrant fails to correct such violations, the Secretary may issue an order requiring immediate correction and compliance with this Act and may specify a reasonable date for performance.

Section 20-60. Hearings.

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

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

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

(2)(A) The Department may take an enforcement action, other than the imposition of a civil penalty under Section 20-70, after notice and without a prior hearing if the circumstances require action before a hearing can be held.

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

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

Section 20-65. Hearing rules.

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

(1) appointment of a hearing officer;

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

(3) provision for apportioning costs among parties to

the appeal.

(b) All final administrative decisions of the Department under this Act, all amendments and modifications of final administrative decisions, and any rules adopted by the Department pursuant to this Act shall be subject to judicial review pursuant to the provisions of the Administrative Review Law.

Section 20-70. Civil penalties.

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

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

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

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

Section 20-75. Subpoena power.

(a) The Secretary shall have the power to issue and to serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of all books, accounts, records, and other documents and materials relevant to an examination or investigation. The Secretary, or his or her duly authorized representative, shall have power to administer oaths and affirmations to any person.

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

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

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

Section 20-80. Civil actions.

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

(1) If a person violates any provision of this Act, a rule or final order, or condition imposed in writing by the Department, the Department through the Attorney General or the State's Attorney of the county in which any such violation occurs may bring an action in the circuit court to enjoin the acts or practices or to enforce compliance with this Act or any rule or order adopted pursuant to this Act. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or any other ancillary relief may be granted as appropriate. A receiver, monitor, conservator, or other designated fiduciary or officer of the court appointed by the circuit court pursuant to this Section may, with the approval of the court, exercise any or all of the powers of the defendant's officers, directors, partners, trustees, or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may

be maintained by any party against the Secretary, a receiver, monitor, conservator, or other designated fiduciary or officer of the court, by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the circuit court.

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

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

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

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

Article 30. Additional Procedural Provisions

Section 30-5. Confidential supervisory information.

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

(b) All records of communications or summaries of communications between employees, agents, or representatives of the Department and employees, agents, or representatives of other governmental agencies, a provider of any multistate licensing system, or associations or organizations representing federal, state, or local law enforcement or regulatory agencies or providers of any multistate licensing system, pursuant to any regulatory or supervision activity under this Act (1) shall not be subject to disclosure under the Freedom of Information Act, and (2) to the extent the records contain confidential supervisory information, shall only be subject to disclosure pursuant to subpoena or court order as provided in subsection (e).

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

(d) The sharing of any confidential supervisory information under this Act with governmental agencies, providers of any multistate licensing system, or associations or organizations consisting of employees, agents, or representatives of such federal, state, or local law enforcement or regulatory agencies, shall not result in the loss of privilege arising under federal or state law, or the loss of confidentiality protections provided by federal law or state law, and are only subject to disclosure pursuant to subpoena or court order as provided in subsection (e).

(e) Confidential supervisory information may not be disclosed to anyone other than the regulated person, law enforcement officials or other regulatory agencies that have an appropriate regulatory interest as determined by the Secretary, or to a party presenting a lawful subpoena, order, or other judicial or administrative process to the Secretary. The Secretary may immediately appeal to the court of jurisdiction the disclosure of such confidential supervisory information and seek a stay of the subpoena pending the outcome of the appeal. Reports required of regulated persons by the Secretary under this Act and results of examinations performed by the Secretary under this Act shall be the property of only the Secretary but may be shared with the regulated person. Access under this Act to the books and records of each regulated person shall be limited to the Secretary and his agents as provided in this Act and to the regulated person and its authorized agents and designees. No other person shall have access to the books and records of a regulated person under this Act. Any person upon whom a demand for production of confidential supervisory information is made, whether by subpoena, order, or other judicial or administrative process, must withhold production of the confidential supervisory information and must notify the Secretary of the demand, at which time the Secretary is authorized to intervene for the purpose of enforcing the limitations of this Section or seeking the withdrawal or termination of the attempt to compel production of the confidential supervisory information. The Secretary may impose any conditions and limitations on the disclosure of confidential supervisory information that are necessary to protect the confidentiality of such information. Except as authorized by the Secretary, no person obtaining access to confidential supervisory information may make a copy of the confidential supervisory information. The Secretary may condition a decision to disclose confidential supervisory information on entry of a protective order by the court or administrative tribunal presiding in the particular case or on a written agreement of confidentiality. In a case in which a protective order or agreement has already been entered between parties other than the Secretary, the Secretary may nevertheless condition approval for release of confidential supervisory information upon the inclusion of additional or amended provisions in the protective order. The Secretary may authorize a party who obtained the records for use in one case to provide them to another party in another case, subject to any conditions that the Secretary may impose on either or both parties. The requester shall promptly notify other parties to a case of the release of confidential supervisory information obtained and, upon entry of a protective order, shall provide copies of confidential supervisory information to the other parties.

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

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

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

Section 30-10. Additional rulemaking authority.

(a) In addition to such powers and rulemaking authority as may be prescribed elsewhere in this Act or other financial laws administered by the Department, the Department is hereby authorized and empowered to adopt rules consistent with the purposes of this Act, including, but not limited to:

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

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

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

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

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

(6) rules in connection with the adoption of reciprocity agreements between the Department and the appropriate licensing agency of another state to register a covered person on an expedited basis.

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

Article 35. Miscellaneous Provisions

Section 35-5. No evasion.

(a) It shall be unlawful to engage in any device, subterfuge, or pretense to willfully evade or attempt to evade the requirements of this Act or any rule or order issued by the Department hereunder.

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

Section 35-10. Construction; severability.

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

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

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

Section 35-15. Transition period.

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

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

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

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

Article 90. Amendatory provisions

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

(5 ILCS 140/7.5)

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

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

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

(c) Applications, related documents, and medical records received by the Experimental Organ Transplantation Procedures Board and any and all documents or other records prepared by the Experimental Organ Transplantation Procedures Board or its staff relating to applications it has received.

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

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

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

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

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

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

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

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

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

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

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

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

(p) Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the Department of Transportation under Sections 2705-300 and 2705-616 of the Department of Transportation Law of the Civil Administrative Code of Illinois, the Regional Transportation Authority under Section 2.11 of the Regional Transportation Authority Act, or the St. Clair County Transit District under the Bi-State Transit Safety Act (repealed).

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

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

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

(t) (Blank).

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

(v) Names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owners Identification Card Act or applied for or received a concealed carry license under the Firearm Concealed Carry Act, unless otherwise authorized by the Firearm Concealed Carry Act; and databases under the Firearm Concealed Carry Act, records of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act, and law enforcement agency objections under the Firearm Concealed Carry Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(kk) Information prohibited from disclosure under the Seizure and Forfeiture Reporting Act.

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

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

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

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

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

(qq) Information and records held by the Department of

Public Health and its authorized representatives collected under the Reproductive Health Act.

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

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

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

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

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

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

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

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

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

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

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

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

(ddd) Information prohibited from being disclosed under Section 35 of the Address Confidentiality for Victims of Domestic Violence, Sexual Assault, Human Trafficking, or Stalking Act.

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

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

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

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

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

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

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

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

(mmm) Information prohibited from being disclosed under subsection (e) of Section 1-129 of the Illinois Power Agency Act.

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

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

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

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

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

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

(ttt) Audio recordings made under Section 30 of the

Illinois State Police Act, except to the extent authorized under that Section.

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

(Source: P.A. 102-36, eff. 6-25-21; 102-237, eff. 1-1-22; 102-292, eff. 1-1-22; 102-520, eff. 8-20-21; 102-559, eff. 8-20-21; 102-813, eff. 5-13-22; 102-946, eff. 7-1-22; 102-1042, eff. 6-3-22; 102-1116, eff. 1-10-23; 103-8, eff. 6-7-23; 103-34, eff. 6-9-23; 103-142, eff. 1-1-24; 103-372, eff. 1-1-24; 103-472, eff. 8-1-24; 103-508, eff. 8-4-23; 103-580, eff. 12-8-23; 103-592, eff. 6-7-24; 103-605, eff. 7-1-24; 103-636, eff. 7-1-24; 103-724, eff. 1-1-25; 103-786, eff. 8-7-24; 103-859, eff. 8-9-24; 103-991, eff. 8-9-24; 103-1049, eff. 8-9-24; 103-1081, eff. 3-21-25.)

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

(30 ILCS 105/5.1030 new)

Sec. 5.1030. The Consumer Protection Fund.

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

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

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

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

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

"Affiliate facility" of a bank means a main banking premises or branch of another commonly owned bank. The main banking premises or any branch of a bank may be an "affiliate facility" with respect to one or more other commonly owned banks.

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

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

A "banking house", "branch", "branch bank", or "branch office" shall mean any place of business of a bank at which deposits are received, checks paid, or loans made, but shall not include any place at which only records thereof are made, posted, or kept. A place of business at which deposits are received, checks paid, or loans made shall not be deemed to be a branch, branch bank, or branch office if the place of business is adjacent to and connected with the main banking premises, or if it is separated from the main banking premises by not more than an alley; provided always that (i) if the place of business is separated by an alley from the main banking premises there is a connection between the two by public or private way or by subterranean or overhead passage, and (ii) if the place of business is in a building not wholly occupied by the bank, the place of business shall not be within any office or room in which any other business or service of any kind or nature other than the business of the bank is conducted or carried on. A place of business at which deposits are received, checks paid, or loans made shall not be deemed to be a branch, branch bank, or branch office (i) of any bank if the place is a terminal established and maintained in accordance with paragraph (17) of Section 5 of this Act, or (ii) of a commonly owned bank by virtue of transactions conducted at that place on behalf of the other commonly owned bank under paragraph (23) of Section 5 of this Act if the place is an affiliate facility with respect to the other bank.

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

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

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

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

"Cash flow reserve account" means the account within the books and records of the Commissioner of Banks and Real Estate used to record funds designated to maintain a reasonable Bank and Trust Company Fund operating balance to meet agency obligations on a timely basis.

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

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

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

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

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

"Consolidating bank" means a party to a consolidation.

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

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

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

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

"Court" means a court of competent jurisdiction.

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

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

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

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

"Financial institution" means a bank, savings bank, savings and loan association, credit union, or any licensee under the Consumer Installment Loan Act or the Sales Finance

Agency Act and, for purposes of Section 48.3, any proprietary network, funds transfer corporation, or other entity providing electronic funds transfer services, or any corporate fiduciary, its subsidiaries, affiliates, parent company, or contractual service provider that is examined by the Commissioner. For purposes of Section 5c and subsection (b) of Section 13 of this Act, "financial institution" includes any proprietary network, funds transfer corporation, or other entity providing electronic funds transfer services, and any corporate fiduciary.

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

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

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

"In danger of default" means a State or national bank, a federally chartered insured savings association, or an Illinois state chartered insured savings association with respect to which the Commissioner or the appropriate federal banking agency has advised the Federal Deposit Insurance

Corporation that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Merger" includes consolidation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>"Special purpose trust company" means a special purpose trust company under Article IIA of the Corporate Fiduciary Act.</u>

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

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

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

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

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

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

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

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

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

date of the charter, merger, consolidation, or conversion.
(Source: P.A. 95-924, eff. 8-26-08; 95-1047, eff. 4-6-09; 96-1000, eff. 7-2-10; 96-1163, eff. 1-1-11; revised 8-6-24.)

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

Sec. 30. Conversion; merger with trust company or special purpose trust company. Upon approval by the Commissioner a trust company having power so to do under the law under which it is organized may convert into a state bank or may merge into a state bank as prescribed by this Act; except that the action by a trust company shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the law under which it is organized which law shall also govern the rights of its dissenting stockholders. The rights of dissenting stockholders of a state bank shall be governed by Section 29 of this Act. The conversion or merger procedure shall be:

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

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

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

(c) Provisions governing the manner of converting the shares of the merging bank and of the merging trust company into shares of the resulting bank;

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

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

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

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

majority of each board.

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

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

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

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

(4) To be effective, if approved by the Commissioner, a merger of a bank and a trust company where there is to be a resulting bank must be approved by the affirmative vote of the holders of at least two-thirds of the outstanding shares of stock of the merging bank entitled to vote at a meeting called to consider such action, unless holders of preferred stock are entitled to vote as a class in respect thereof, in which event the proposed merger shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the

outstanding shares of each class of shares entitled to vote as a class in respect thereof and of the total outstanding shares entitled to vote at such meeting and must be approved by the stockholders of the merging trust company as provided by the Act under which it is organized. The prescribed vote by the merging bank and the merging trust company shall constitute the adoption of the charter and by-laws of the continuing bank, including the amendments in the merger agreement, as the charter and by-laws of the resulting bank. Written or printed notice of the meeting of the stockholders of the merging bank shall be given to each stockholder of record entitled to vote at such meeting at least thirty days before such meeting and in the manner provided in this Act for the giving of notice of meetings of stockholders. The notice shall state that dissenting stockholders of the merging trust company will be entitled to payment of the value of those shares which are voted against approval of the merger, if a proper demand is made on the resulting bank and the requirements of the Act under which the merging trust company is organized are satisfied.

(5) Unless a later date is specified in the merger agreement, the merger shall become effective upon the filing with the Commissioner of the executed merger agreement, together with copies of the resolutions of the stockholders of the merging bank and the merging trust company approving it, certified by the president or a vice-president or, the cashier

and also by the secretary or other officer charged with keeping the records. The charter of the merging trust company shall thereupon automatically terminate. The Commissioner shall thereupon issue to the continuing bank a certificate of merger which shall specify the name of the merging trust company, the name of the continuing bank and the amendments to the charter of the continuing bank provided for by the merger agreement. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places including the office of the Secretary of State, and said certificate shall be recorded.

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

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

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

(c) A statement that the plan of conversion is subject to approval by the Commissioner and that, whether approved or disapproved, the converting trust company will pay the Commissioner's expenses of examination; and

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

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

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

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

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

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

(8) Unless a later date is specified in the plan of conversion, the conversion shall become effective upon the Commissioner's approval, and the charter proposed in the plan of conversion shall constitute the charter of the resulting bank. The Commissioner shall issue a certificate of conversion which shall specify the name of the converting trust company, the name of the resulting bank and the charter provided for by said plan of conversion. Such certificate shall be conclusive evidence of the conversion and of the correctness of all proceedings therefor in all courts and places including the office of the Secretary of State, and such certificate shall be recorded.

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

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

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

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

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

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

(a) any bank, savings and loan association, savings bank, or other corporation<u>, limited liability company, or other entity</u> now or hereafter organized under the laws of any state or territory of the United States of America, including the District of Columbia, other than the State of Illinois;

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

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

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

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

Sec. 2-1. (a) Any corporation which has been or shall be incorporated under the general corporation laws of this State and any limited liability company established under the Limited Liability Company Act for the purpose of accepting and executing trusts, and any state bank, state savings and loan association, state savings bank, or other special corporation now or hereafter authorized by law to accept or execute trusts, may be appointed to act as a fiduciary in any capacity a natural person or corporation may act, and shall include, but not be limited to, acting as assignee or trustee by deed, and executor, guardian or trustee by will, custodian under the Illinois Uniform Transfers to Minors Act and such appointment shall be of like force as in case of appointment of a natural person and shall be designated a corporate fiduciary.

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

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

(205 ILCS 620/Art. IIA heading new)

ARTICLE IIA. SPECIAL PURPOSE TRUST COMPANY

AUTHORITY AND ORGANIZATION

(205 ILCS 620/2A-1 new)

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

(205 ILCS 620/2A-2 new)

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

(205 ILCS 620/2A-3 new)

Sec. 2A-3. Certificate of authority.

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

(b) No natural person or natural persons, firm, partnership, or corporation not having been authorized under this Act shall transact in the activity of a special purpose trust company. A person who violates this Section is guilty of a Class A misdemeanor and the Attorney General or State's Attorney of the county in which the violation occurs may restrain the violation by a complaint for injunctive relief.

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

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

(205 ILCS 620/2A-4 new)

Sec. 2A-4. Rulemaking and organization.

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

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

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

Sec. 4-1. Foreign corporate fiduciary; certificate of authority. After July 13, 1953, no foreign corporation, including banks, savings banks, and savings and loan associations, now or hereafter organized under the laws of any other state or territory, and no national banking association having its principal place of business in any other state or territory or federal savings and loan association or federal savings bank having its principal place of business in any other state or territory, may procure a certificate of authority under Article II of this Act and any certificate of authority heretofore issued hereunder to any such foreign corporation or to any such national banking association shall become null and void on July 13, 1953, except that any such foreign corporation or any such national banking association actually acting as trustee, executor, administrator, administrator to collect, guardian, or in any other ~~like~~ fiduciary capacity in this State on July 13, 1953, may continue to act as such fiduciary in that particular trust or estate until such time as it has completed its duties thereunder. Such foreign corporation and such national banking association shall be subject to the provisions in this Article IV, regardless of whether its certificate of authority was obtained before July 13, 1953. The right and eligibility of any foreign corporation, any national banking association having its principal place of business in any other state or territory or any federal savings and loan association or federal savings bank having its principal place of business in any other state or territory hereafter to act as trustee, executor, administrator, administrator to collect, guardian, or in any other ~~like~~ fiduciary capacity in this State shall be governed solely by the provisions of this Act. Provided, however, that the Commissioner shall not be required to conduct an annual examination of such foreign corporation pursuant to Section 5-2 of this Act, but may examine such foreign corporation as the Commissioner deems appropriate. "Principal place of business" of any bank, federal savings and loan association or savings bank, for purposes of this Article IV, means the principal office as designated on the charter by its principal regulator.

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

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

Sec. 4-2. Foreign corporation; eligibility. Any foreign corporation may act in this State as trustee, executor, administrator, administrator to collect, guardian, or in any other like fiduciary capacity, whether the appointment is by will, deed, court order or otherwise, without complying with any laws of this State relating to the qualification of corporations organized under the laws of this State to conduct a trust business or laws relating to the qualification of foreign corporations, provided only (1) such foreign corporation is authorized by the laws of the state of its organization or domicile to act as a fiduciary in that state, and (2) a corporation organized under the laws of this State, a national banking association having its principal place of business in this State, and a federal savings and loan association or federal savings bank having its principal place of business in this State and authorized to act as a fiduciary in this State, may, in such other state, act in a similar fiduciary capacity or capacities, as the case may be, upon conditions and qualifications which the Commissioner finds are not unduly restrictive when compared to those imposed by the laws of Illinois. Any foreign corporation eligible to act in a fiduciary capacity in this State pursuant to the provisions of this Act, shall be deemed qualified to accept and execute trusts in this State within the meaning of this Act and the Probate Act of 1975, approved August 7, 1975, as amended. No foreign corporation shall be permitted to act as trustee, executor, administrator, administrator to collect, guardian or in any other ~~like~~ fiduciary capacity in this State except as provided in Article IV of this Act; however, any foreign corporation actually acting in any such fiduciary capacity in this State on July 13, 1953, although not eligible to so act pursuant to the provisions of this Article IV, may continue to act as fiduciary in that particular trust or estate until such time as it has completed its duties thereunder.

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

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

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

(a) Prior to the time any foreign corporation acts in this State as testamentary trustee, trustee appointed by any court, trustee under any written agreement, declaration or instrument of trust, executor, administrator, administrator to collect, guardian or in any other ~~like~~ fiduciary capacity, such foreign corporation shall apply to the Commissioner of Banks and Real Estate for a certificate of authority with reference to the fiduciary capacity or capacities in which such foreign corporation proposes to act in this State, and the Commissioner of Banks and Real Estate shall issue a certificate of authority to such corporation concerning only the fiduciary capacity or such of the fiduciary capacities to which the application pertains and with respect to which he has been furnished satisfactory evidence that such foreign corporation meets the requirements of Section 4-2 of this Act. The certificate of authority shall set forth the fiduciary capacity or capacities, as the case may be, for which the certificate is issued, and shall recite and certify that such foreign corporation is eligible to act in this State in such fiduciary capacity or capacities, as the case may be, pursuant to the provisions of this Act. The certificate of authority shall remain in full force and effect until such time as such foreign corporation ceases to be eligible so to act under the provisions of this Act.

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

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

(d) Any foreign corporation acting in Illinois under a certificate of authority or a certificate of reciprocity shall report changes in its name or address to the Commissioner and shall notify the Commissioner when it is no longer serving as a corporate fiduciary in Illinois.

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

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

(205 ILCS 620/4A-15)

Sec. 4A-15. Representative offices.

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

(b) A foreign corporation invested with trust powers or authority to act as a fiduciary pursuant to the laws of its home state but not conducting fiduciary activities must apply for and procure a license under the Foreign Bank Representative Office Act before establishing an office in this State for the purpose of marketing, soliciting, or transacting any service or product, unless such office is otherwise established as permitted by and in accordance with this Act, the Illinois Banking Act, the Savings Bank Act, the Foreign Banking Office Act, or any Act specified by rules adopted under this Act.

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

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

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

(a) To promulgate, in accordance with the Illinois Administrative Procedure Act, reasonable rules for the purpose of administering the provisions of this Act, for the purpose of protecting consumers of this State as may be necessary and appropriate, and for the purpose of incorporating by reference rules promulgated by the Federal Deposit Insurance

Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or their successors that pertain to corporate fiduciaries, including, but not limited to, standards for the operation and conduct of the affairs of corporate fiduciaries;

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

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

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

(e) To conduct hearings;

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

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

(h) To address any inquiries to any corporate fiduciary, or the officers thereof, in relation to its doings and conditions, or any other matter connected with its affairs, and it shall be the duty of any corporate fiduciary or person so addressed, to promptly reply in writing to such inquiries. The Commissioner may also require reports from any corporate fiduciary at any time he may deem desirable.

(Source: P.A. 96-1365, eff. 7-28-10.)

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

(815 ILCS 505/2HHHH new)

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

Article 99. Non-acceleration and Effective Date

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

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