



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4898

by Rep. Michael K. Smith

SYNOPSIS AS INTRODUCED:

See Index

Amends the Office of Banks and Real Estate Act to change the powers of the Secretary of Financial and Professional Regulation to issue certain authorizations. Amends the Illinois Bank Examiners' Education Foundation Act to provide that the Foundation shall be governed by a Board of Trustees that consists of the members of the Board of Banks and Trust Companies. Amends the Illinois Banking Act. Deletes the definition of "State Banking Board". Changes provisions concerning the issuance of bank charters. Makes changes concerning notification of meetings of the board of directors. Provides that the Secretary (i) may prescribe the requirements to file applications electronically and (ii) may impose civil penalties in an amount not to exceed that amount a federal regulatory agency is authorized to charge under federal law (rather than \$10,000) for violations of the Act. Creates a new Board of Banks and Trust Companies and specifies the appointment and terms of its members. Repeals provisions concerning the current Board of Banks and Trust Companies. Amends the Pawnbroker Regulation Act to make changes to the powers and duties of the Secretary. Amends the Corporate Fiduciary Act. Removes a provision requiring the Secretary to record certain information in the Office of the Secretary of State. Makes changes in provisions concerning certificates of authority. Makes changes in provisions concerning the orders issued by the Secretary. Makes changes in provisions concerning the statement of condition by a corporate fiduciary. Amends the Foreign Bank Representative Office Act to make a change to the definition of "foreign bank". Repeals the Financial Institution Activity Reporting Act. Changes some references in various Acts from (1) the Commissioner of Banks and Real Estate to the Secretary of Financial and Professional Regulation and (2) the State Banking Board to the Board of Banks and Trust Companies. Makes other changes. Effective January 1, 2009.

LRB095 18640 MJR 44727 b

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 5. The Office of Banks and Real Estate Act is
5 amended by changing Sections 5 and 6 as follows:

6 (20 ILCS 3205/5) (from Ch. 17, par. 455)

7 Sec. 5. Powers. In addition to all the other powers and
8 duties provided by law, the Secretary ~~Commissioner~~ shall have
9 the following powers:

10 (a) To exercise the rights, powers and duties formerly
11 vested by law in the Director of Financial Institutions under
12 the Illinois Banking Act.

13 (b) To exercise the rights, powers and duties formerly
14 vested by law in the Department of Financial Institutions under
15 "An act to provide for and regulate the administration of
16 trusts by trust companies", approved June 15, 1887, as amended.

17 (c) To exercise the rights, powers and duties formerly
18 vested by law in the Director of Financial Institutions under
19 "An act authorizing foreign corporations, including banks and
20 national banking associations domiciled in other states, to act
21 in a fiduciary capacity in this state upon certain conditions
22 herein set forth", approved July 13, 1953, as amended.

23 (d) Whenever the Secretary ~~Commissioner~~ is authorized or

1 required by law to consider or to make findings regarding the
2 character of incorporators, directors, management personnel,
3 or other relevant individuals under the Illinois Banking Act,
4 the Corporate Fiduciary Act, the Pawnbroker Regulation Act, or
5 at other times as the Secretary ~~Commissioner~~ deems necessary
6 for the purpose of carrying out the Secretary's ~~Commissioner's~~
7 statutory powers and responsibilities, the Secretary
8 ~~Commissioner~~ shall consider criminal history record
9 information, including nonconviction information, pursuant to
10 the Criminal Identification Act. The Secretary ~~Commissioner~~
11 shall, in the form and manner required by the Department of
12 State Police and the Federal Bureau of Investigation, cause to
13 be conducted a criminal history record investigation to obtain
14 information currently contained in the files of the Department
15 of State Police or the Federal Bureau of Investigation,
16 provided that the Secretary ~~Commissioner~~ need not cause
17 additional criminal history record investigations to be
18 conducted on individuals for whom the Secretary ~~Commissioner~~, a
19 federal bank regulatory agency, or any other government agency
20 has caused such investigations to have been conducted
21 previously unless such additional investigations are otherwise
22 required by law or unless the Secretary ~~Commissioner~~ deems such
23 additional investigations to be necessary for the purposes of
24 carrying out the Secretary's ~~Commissioner's~~ statutory powers
25 and responsibilities. The Department of State Police shall
26 provide, on the Secretary's ~~Commissioner's~~ request,

1 information concerning criminal charges and their disposition
2 currently on file with respect to a relevant individual.
3 Information obtained as a result of an investigation under this
4 Section shall be used in determining eligibility to be an
5 incorporator, director, management personnel, or other
6 relevant individual in relation to a financial institution or
7 other entity supervised by the Secretary ~~Commissioner~~. Upon
8 request and payment of fees in conformance with the
9 requirements of Section 2605-400 of the Department of State
10 Police Law (20 ILCS 2605/2605-400), the Department of State
11 Police is authorized to furnish, pursuant to positive
12 identification, such information contained in State files as is
13 necessary to fulfill the request.

14 (e) When issuing charters, permits, licenses, or other
15 authorizations, the Secretary ~~Commissioner~~ may impose such
16 terms and conditions on the issuance as he deems necessary or
17 appropriate. Failure to abide by those terms and conditions may
18 result in the revocation of the issuance, the imposition of
19 corrective orders, or the imposition of civil money penalties.

20 (f) If the Secretary ~~Commissioner~~ has reasonable cause to
21 believe that any entity that has not submitted an application
22 for authorization or licensure is conducting any activity that
23 would otherwise require authorization or licensure by the
24 Secretary ~~Commissioner~~, the Secretary ~~Commissioner~~ shall have
25 the power to subpoena witnesses, to compel their attendance,
26 ~~and~~ to require the production of any relevant books, papers,

1 accounts, and documents, and to conduct an examination of the
2 entity in order to determine whether the entity is subject to
3 authorization or licensure by the Secretary or the Department
4 of Financial and Professional Regulation ~~Commissioner or the~~
5 ~~Office of Banks and Real Estate.~~

6 (g) The Secretary ~~Commissioner~~ may, through the Attorney
7 General, request the circuit court of any county to issue an
8 injunction to restrain any person from violating the provisions
9 of any Act administered by the Secretary ~~Commissioner~~.

10 (h) Whenever the Secretary ~~Commissioner~~ is authorized to
11 take any action or required by law to consider or make
12 findings, the Secretary ~~Commissioner~~ may delegate or appoint,
13 in writing, an officer or employee of the Department of
14 Financial and Professional Regulation ~~Office of Banks and Real~~
15 ~~Estate~~ to take that action or make that finding.

16 (i) To prescribe the form, filing, and processing
17 requirements for applications submitted to the Department
18 including, but not limited to, the requirement to file
19 applications electronically.

20 (Source: P.A. 91-239, eff. 1-1-00; 92-483, eff. 8-23-01.)

21 (20 ILCS 3205/6) (from Ch. 17, par. 456)

22 Sec. 6. Duties. The Secretary ~~Commissioner~~ shall direct and
23 supervise all the administrative and technical activities of
24 the Office and shall:

25 (a) Apply and carry out this Act and the law and all rules

1 adopted in pursuance thereof.

2 (b) Appoint, subject to the provisions of the Personnel
3 Code, such employees, experts, and special assistants as may be
4 necessary to carry out effectively the provisions of this Act
5 and, if the rate of compensation is not otherwise fixed by law,
6 fix their compensation; but neither the Secretary ~~Commissioner~~
7 nor any deputy ~~commissioner~~ shall be subject to the Personnel
8 Code.

9 (c) (Blank). ~~Serve as Chairman of the State Banking Board~~
10 ~~of Illinois.~~

11 (d) Serve as Chairman of the Board of Trustees of the
12 Illinois Bank Examiners' Education Foundation.

13 (e) Issue guidelines in the form of rules or regulations
14 which will prohibit discrimination by any State chartered bank
15 against any individual, corporation, partnership, association
16 or other entity because it appears in a so-called blacklist
17 issued by any domestic or foreign corporate or governmental
18 entity.

19 (f) Make an annual report to the Governor regarding the
20 work of the Office as the Secretary ~~Commissioner~~ may consider
21 desirable or as the Governor may request.

22 (g) Perform such other acts as may be requested by the
23 State Banking Board of Illinois pursuant to its lawful powers
24 and perform any other lawful act that the Secretary
25 ~~Commissioner~~ considers to be necessary or desirable to carry
26 out the purposes and provisions of this Act.

1 (h) Adopt, in accordance with the Illinois Administrative
2 Procedure Act, reasonable rules that the Secretary
3 ~~Commissioner~~ deems necessary for the proper administration and
4 enforcement of any Act the administration of which is vested in
5 the Secretary ~~Commissioner~~ or the Department of Financial and
6 Professional Regulation ~~Office of Banks and Real Estate~~.

7 (i) Work in cooperation with the Director of Aging to
8 encourage all financial institutions regulated by the
9 Department ~~Office~~ to participate fully in the Department on
10 Aging's financial exploitation of the elderly intervention
11 program.

12 (Source: P.A. 92-483, eff. 8-23-01; 93-786, eff. 7-21-04.)

13 Section 10. The Illinois Bank Examiners' Education
14 Foundation Act is amended by changing Section 5 as follows:

15 (20 ILCS 3210/5) (from Ch. 17, par. 405)

16 Sec. 5. The Foundation shall be governed by a Board of
17 Trustees. The Board shall consist of the members of the Board
18 of Banks and Trust Companies ~~following trustees: the~~
19 ~~Commissioner, who shall be its chairman; one Class A member and~~
20 ~~three Class B members from the State Banking Board of Illinois,~~
21 ~~appointed by the Governor.~~

22 The terms of the trustees of the Foundation ~~who are members~~
23 ~~of the State Banking Board of Illinois~~ are to be coextensive
24 with their terms on the Board of Banks and Trust Companies

1 ~~State Banking Board of Illinois.~~ An appointment to fill a
2 vacancy shall be for the unexpired term of the trustee whose
3 term is being filled. Trustees shall receive no compensation
4 for service on the Board, but shall be reimbursed for all
5 reasonable and necessary expenditures incurred in the
6 performance of their official duties.

7 (Source: P.A. 84-1127.)

8 Section 15. The Illinois Banking Act is amended by changing
9 Sections 2, 13, 16, 48, and 82 and by adding Sections 78.5 and
10 79.5 as follows:

11 (205 ILCS 5/2) (from Ch. 17, par. 302)

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

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

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

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

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

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

7 A "banking house", "branch", "branch bank" or "branch
8 office" shall mean any place of business of a bank at which
9 deposits are received, checks paid, or loans made, but shall
10 not include any place at which only records thereof are made,
11 posted, or kept. A place of business at which deposits are
12 received, checks paid, or loans made shall not be deemed to be
13 a branch, branch bank, or branch office if the place of
14 business is adjacent to and connected with the main banking
15 premises, or if it is separated from the main banking premises
16 by not more than an alley; provided always that (i) if the
17 place of business is separated by an alley from the main
18 banking premises there is a connection between the two by
19 public or private way or by subterranean or overhead passage,
20 and (ii) if the place of business is in a building not wholly
21 occupied by the bank, the place of business shall not be within
22 any office or room in which any other business or service of
23 any kind or nature other than the business of the bank is
24 conducted or carried on. A place of business at which deposits
25 are received, checks paid, or loans made shall not be deemed to
26 be a branch, branch bank, or branch office (i) of any bank if

1 the place is a terminal established and maintained in
2 accordance with paragraph (17) of Section 5 of this Act, or
3 (ii) of a commonly owned bank by virtue of transactions
4 conducted at that place on behalf of the other commonly owned
5 bank under paragraph (23) of Section 5 of this Act if the place
6 is an affiliate facility with respect to the other bank.

7 "Board" means the Board of Banks and Trust Companies.

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

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

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

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

23 "Cash flow reserve account" means the account within the
24 books and records of the Secretary of Financial and
25 Professional Regulation ~~Commissioner of Banks and Real Estate~~
26 used to record funds designated to maintain a reasonable Bank

1 and Trust Company Fund operating balance to meet agency
2 obligations on a timely basis.

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

5 "Commissioner" means the Commissioner of Banks and Real
6 Estate or a person authorized by the Commissioner, the Office
7 of Banks and Real Estate Act, or this Act to act in the
8 Commissioner's stead.

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

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

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

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

24 "Consolidation" takes place when 2 or more banks, or a
25 trust company and a bank, are extinguished and by the same
26 process a new bank is created, taking over the assets and

1 assuming the liabilities of the banks or trust company passing
2 out of existence.

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

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

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

10 "Court" means a court of competent jurisdiction.

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

20 "Director of the Division" means the Director of the
21 Division of Banks of the Department of Financial and
22 Professional Regulation.

23 "Eligible depository institution" means an insured savings
24 association that is in default, an insured savings association
25 that is in danger of default, a State or national bank that is
26 in default or a State or national bank that is in danger of

1 default, as those terms are defined in this Section, or a new
2 bank as that term defined in Section 11(m) of the Federal
3 Deposit Insurance Act or a bridge bank as that term is defined
4 in Section 11(n) of the Federal Deposit Insurance Act or a new
5 federal savings association authorized under Section
6 11(d) (2) (f) of the Federal Deposit Insurance Act.

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

11 "Financial institution" means a bank, savings and loan
12 association, credit union, or any licensee under the Consumer
13 Installment Loan Act or the Sales Finance Agency Act and, for
14 purposes of Section 48.3, any proprietary network, funds
15 transfer corporation, or other entity providing electronic
16 funds transfer services, or any corporate fiduciary, its
17 subsidiaries, affiliates, parent company, or contractual
18 service provider that is examined by the Secretary
19 ~~Commissioner~~.

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

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

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

5 "In danger of default" means a State or national bank, a
6 federally chartered insured savings association or an Illinois
7 state chartered insured savings association with respect to
8 which the Secretary ~~Commissioner~~ or the appropriate federal
9 banking agency has advised the Federal Deposit Insurance
10 Corporation that:

11 (1) in the opinion of the Secretary ~~Commissioner~~ or the
12 appropriate federal banking agency,

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

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

22 (2) in the opinion of the Secretary ~~Commissioner~~ or the
23 appropriate federal banking agency,

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

1 capital; and

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

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

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

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

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

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

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

25 "Maker or obligor" means for purposes of Section 33 the
26 issuer of a security, the promisor in a debenture or other debt

1 security, or the mortgagor or grantor of a trust deed or
2 similar conveyance of a security interest in real or personal
3 property.

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

7 "Merger" includes consolidation.

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

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

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

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

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

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

24 "Parent bank holding company" means a corporation that is a
25 bank holding company as that term is defined in the Illinois
26 Bank Holding Company Act of 1957 and owns 100% of the issued

1 and outstanding shares of a mid-tier bank holding company.

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

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

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

26 "Published" means, unless the context requires otherwise,

1 the publishing of the notice or instrument referred to in some
2 newspaper of general circulation in the community in which the
3 bank is located at least once each week for 3 successive weeks.
4 Publishing shall be accomplished by, and at the expense of, the
5 bank required to publish. Where publishing is required, the
6 bank shall submit to the Secretary ~~Commissioner~~ that evidence
7 of the publication as the Secretary ~~Commissioner~~ shall deem
8 appropriate.

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

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

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

26 "Secretary" means the Secretary of Financial and

1 Professional Regulation or a person authorized by the
2 Secretary, the Office of Banks and Real Estate Act, or this Act
3 to act in the Secretary's stead.

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

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

9 "State bank" means any banking corporation that has a
10 banking charter issued by the Secretary ~~Commissioner~~ under this
11 Act.

12 ~~"State Banking Board" means the State Banking Board of~~
13 ~~Illinois.~~

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

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

25 "Tier 1 Capital" and "Tier 2 Capital" have the meanings
26 assigned to those terms in regulations promulgated for the

1 appropriate federal banking agency of a state bank, as those
2 regulations are now or hereafter amended.

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

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

8 "Unimpaired capital and unimpaired surplus", for the
9 purposes of paragraph (21) of Section 5 and Sections 32, 33,
10 34, 35.1, 35.2, and 47 of this Act means the sum of the state
11 bank's Tier 1 Capital and Tier 2 Capital plus such other
12 shareholder equity as may be included by regulation of the
13 Secretary ~~Commissioner~~. Unimpaired capital and unimpaired
14 surplus shall be calculated on the basis of the date of the
15 last quarterly call report filed with the Secretary
16 ~~Commissioner~~ preceding the date of the transaction for which
17 the calculation is made, provided that: (i) when a material
18 event occurs after the date of the last quarterly call report
19 filed with the Secretary ~~Commissioner~~ that reduces or increases
20 the bank's unimpaired capital and unimpaired surplus by 10% or
21 more, then the unimpaired capital and unimpaired surplus shall
22 be calculated from the date of the material event for a
23 transaction conducted after the date of the material event; and
24 (ii) if the Secretary ~~Commissioner~~ determines for safety and
25 soundness reasons that a state bank should calculate unimpaired
26 capital and unimpaired surplus more frequently than provided by

1 this paragraph, the Secretary ~~Commissioner~~ may by written
2 notice direct the bank to calculate unimpaired capital and
3 unimpaired surplus at a more frequent interval. In the case of
4 a state bank newly chartered under Section 13 or a state bank
5 resulting from a merger, consolidation, or conversion under
6 Sections 21 through 26 for which no preceding quarterly call
7 report has been filed with the Secretary ~~Commissioner~~,
8 unimpaired capital and unimpaired surplus shall be calculated
9 for the first calendar quarter on the basis of the effective
10 date of the charter, merger, consolidation, or conversion.
11 (Source: P.A. 92-483, eff. 8-23-01; 93-561, eff. 1-1-04.)

12 (205 ILCS 5/13) (from Ch. 17, par. 320)

13 Sec. 13. Issuance of charter.

14 (a) When the directors have organized as provided in
15 Section 12 of this Act, and the capital stock and the preferred
16 stock, if any, together with a surplus of not less than 50% of
17 the capital, has been all fully paid in and a record of the
18 same filed with the Secretary ~~Commissioner~~, the Secretary
19 ~~Commissioner~~ or some competent person of the Secretary's
20 ~~Commissioner's~~ appointment shall make a thorough examination
21 into the affairs of the proposed bank, and if satisfied (i)
22 that all the requirements of this Act have been complied with,
23 (ii) that no intervening circumstance has occurred to change
24 the Secretary's ~~Commissioner's~~ findings made pursuant to
25 Section 10 of this Act, and (iii) that the prior involvement by

1 any stockholder who will own a sufficient amount of stock to
2 have control, as defined in Section 18 of this Act, of the
3 proposed bank with any other financial institution, whether as
4 stockholder, director, officer, or customer, was conducted in a
5 safe and sound manner, upon payment into the Secretary's
6 ~~Commissioner's~~ office of the reasonable expenses of the
7 examination, as determined by the Secretary ~~Commissioner~~, the
8 Secretary ~~Commissioner~~ shall issue a charter authorizing the
9 bank to commence business as authorized in this Act. All
10 charters issued by the Secretary ~~Commissioner~~ or any
11 predecessor agency which chartered State banks, including any
12 charter outstanding as of September 1, 1989, shall be
13 perpetual. For the 2 years after the Secretary ~~Commissioner~~ has
14 issued a charter to a bank, the bank shall request and obtain
15 from the Secretary ~~Commissioner~~ prior written approval before
16 it may change senior management personnel or directors.

17 The original charter, duly certified by the Secretary
18 ~~Commissioner~~, or a certified copy shall be evidence in all
19 courts and places of the existence and authority of the bank to
20 do business. Upon the issuance of the charter by the Secretary
21 ~~Commissioner~~, the bank shall be deemed fully organized and may
22 proceed to do business. The Secretary ~~Commissioner~~ may, in the
23 Secretary's ~~Commissioner's~~ discretion, withhold the issuing of
24 the charter when the Secretary ~~Commissioner~~ has reason to
25 believe that the bank is organized for any purpose other than
26 that contemplated by this Act. The Secretary ~~Commissioner~~ shall

1 revoke the charter and order liquidation in the event that the
2 bank does not commence a general banking business within one
3 year from the date of the issuance of the charter, unless a
4 request has been submitted, in writing, to the Secretary
5 ~~Commissioner~~ for an extension and the request has been
6 approved. After commencing a general banking business, a bank
7 may change its name by filing written notice with the Secretary
8 ~~Commissioner~~ at least 30 days prior to the effective date of
9 such change. A bank chartered under this Act may change its
10 main banking premises by filing written application with the
11 Secretary ~~Commissioner~~, on forms prescribed by the Secretary
12 ~~Commissioner~~, provided (i) the change shall not be a removal to
13 a new location without complying with the capital requirements
14 of Section 7 and of subsection (1) of Section 10 of this Act;
15 (ii) the Secretary ~~Commissioner~~ approves the relocation or
16 change; and (iii) the bank complies with any applicable federal
17 law or regulation. The application shall be deemed to be
18 approved if the Secretary ~~Commissioner~~ has not acted on the
19 application within 30 days after receipt of the application,
20 unless within the 30-day time frame the Secretary ~~Commissioner~~
21 informs the bank that an extension of time is necessary prior
22 to the Secretary's ~~Commissioner's~~ action on the application.

23 (b) (1) The Secretary ~~Commissioner~~ may also issue a charter
24 to a bank that is owned exclusively by other depository
25 institutions or depository institution holding companies
26 and is organized to engage exclusively in providing

1 services to or for other depository institutions, their
2 holding companies, and the officers, directors, and
3 employees of such institutions and companies, and in
4 providing correspondent banking services at the request of
5 other depository institutions or their holding companies
6 (also referred to as a "bankers' bank").

7 (2) A bank chartered pursuant to paragraph (1) shall,
8 except as otherwise specifically determined or limited by
9 the Secretary ~~Commissioner~~ in an order or pursuant to a
10 rule, be vested with the same rights and privileges and
11 subject to the same duties, restrictions, penalties, and
12 liabilities now or hereafter imposed under this Act.

13 (c) A bank chartered under this Act shall ~~after November 1,~~
14 ~~1985, and an out-of-state bank that merges with a State bank~~
15 ~~and establishes or maintains a branch in this State after May~~
16 ~~31, 1997, shall obtain from and, at all times while it accepts~~
17 or retains deposits, maintain with the Federal Deposit
18 Insurance Corporation, or such other instrumentality of or
19 corporation chartered by the United States, deposit insurance
20 as authorized under federal law.

21 (d) (i) A bank that has a banking charter issued by the
22 Secretary ~~Commissioner~~ under this Act may, pursuant to a
23 written purchase and assumption agreement, transfer
24 substantially all of its assets to another State bank or
25 national bank in consideration, in whole or in part, for
26 the transferee banks' assumption of any part or all of its

1 liabilities. Such a transfer shall in no way be deemed to
2 impair the charter of the transferor bank or cause the
3 transferor bank to forfeit any of its rights, powers,
4 interests, franchises, or privileges as a State bank, nor
5 shall any voluntary reduction in the transferor bank's
6 activities resulting from the transfer have any such
7 effect; provided, however, that a State bank that transfers
8 substantially all of its assets pursuant to this subsection
9 (d) and following the transfer does not accept deposits and
10 make loans, shall not have any rights, powers, interests,
11 franchises, or privileges under subsection (15) of Section
12 5 of this Act until the bank has resumed accepting deposits
13 and making loans.

14 (ii) The fact that a State bank does not resume
15 accepting deposits and making loans for a period of 24
16 months commencing on September 11, 1989 or on a date of the
17 transfer of substantially all of a State bank's assets,
18 whichever is later, or such longer period as the Secretary
19 ~~Commissioner~~ may allow in writing, may be the basis for a
20 finding by the Secretary ~~Commissioner~~ under Section 51 of
21 this Act that the bank is unable to continue operations.

22 (iii) The authority provided by subdivision (i) of this
23 subsection (d) shall terminate on May 31, 1997, and no bank
24 that has transferred substantially all of its assets
25 pursuant to this subsection (d) shall continue in existence
26 after May 31, 1997.

1 (Source: P.A. 91-322, eff. 1-1-00; 92-483, eff. 8-23-01.)

2 (205 ILCS 5/16) (from Ch. 17, par. 323)

3 Sec. 16. Directors. The business and affairs of a State
4 bank shall be managed by its board of directors that shall
5 exercise its powers as follows:

6 (1) Directors shall be elected as provided in this Act. Any
7 omission to elect a director or directors shall not impair any
8 of the rights and privileges of the bank or of any person in
9 any way interested. The existing directors shall hold office
10 until their successors are elected and qualify.

11 (2) (a) Notwithstanding the provisions of any charter
12 heretofore or hereafter issued, the number of directors,
13 not fewer than 5 nor more than 25, may be fixed from time
14 to time by the stockholders at any meeting of the
15 stockholders called for the purpose of electing directors
16 or changing the number thereof by the affirmative vote of
17 at least two-thirds of the outstanding stock entitled to
18 vote at the meeting, and the number so fixed shall be the
19 board regardless of vacancies until the number of directors
20 is thereafter changed by similar action.

21 (b) Notwithstanding the minimum number of directors
22 specified in paragraph (a) of this subsection, a State bank
23 that has been in existence for 10 years or more and has
24 less than \$20,000,000 in assets, as of the December 31
25 immediately preceding the annual meeting of shareholders

1 at which directors are elected, may, subject to the
2 approval of the Secretary ~~Commissioner~~, have a minimum of 3
3 directors; provided that if a State bank has fewer than 5
4 directors, at least one director shall not be an officer or
5 employee of the bank. The Secretary ~~Commissioner~~ shall
6 annually review the appropriateness of the grant of
7 authority to have a reduced minimum number of directors
8 pursuant to this paragraph (b).

9 (3) Except as otherwise provided in this paragraph (3),
10 directors shall hold office until the next annual meeting of
11 the stockholders succeeding their election or until their
12 successors are elected and qualify. If the board of directors
13 consists of 6 or more members, in lieu of electing the
14 membership of the whole board of directors annually, the
15 charter or by-laws of a State bank may provide that the
16 directors shall be divided into either 2 or 3 classes, each
17 class to be as nearly equal in number as is possible. The term
18 of office of directors of the first class shall expire at the
19 first annual meeting of the stockholders after their election,
20 that of the second class shall expire at the second annual
21 meeting after their election, and that of the third class, if
22 any, shall expire at the third annual meeting after their
23 election. At each annual meeting after classification, the
24 number of directors equal to the number of the class whose
25 terms expire at the time of the meeting shall be elected to
26 hold office until the second succeeding annual meeting, if

1 there be 2 classes, or until the third succeeding annual
2 meeting, if there be 3 classes. Vacancies may be filled by
3 stockholders at a special meeting called for the purpose.

4 If authorized by the bank's by-laws or an amendment
5 thereto, the directors of a State bank may properly fill a
6 vacancy or vacancies arising between shareholders' meetings,
7 but at no time may the number of directors selected to fill a
8 vacancy in this manner during any interim period between
9 shareholders' meetings exceed 33 1/3% of the total membership
10 of the board of directors.

11 (4) The board of directors shall hold regular meetings at
12 least once each month, provided that, upon prior written
13 approval by the Secretary ~~Commissioner~~, the board of directors
14 may hold regular meetings less frequently than once each month
15 but at least once each calendar quarter. A special meeting of
16 the board of directors may be held as provided by the by-laws.
17 A special meeting of the board of directors may also be held
18 upon call by the Secretary ~~Commissioner~~ or a bank examiner
19 appointed under the provisions of this Act upon not less than
20 12 hours notice of the meeting by personal service of the
21 notice, ~~or~~ by mailing the notice to each of the directors at
22 his residence as shown by the books of the bank, or by any
23 other method of delivery, provided such method provides proof
24 of service and receipt. A majority of the board of directors
25 shall constitute a quorum for the transaction of business
26 unless a greater number is required by the charter or the

1 by-laws. The act of the majority of the directors present at a
2 meeting at which a quorum is present shall be the act of the
3 board of directors unless the act of a greater number is
4 required by the charter or by the by-laws.

5 (5) A member of the board of directors shall be elected
6 president. The board of directors may appoint other officers,
7 as the by-laws may provide, and fix their salaries to carry on
8 the business of the bank. The board of directors may make and
9 amend by-laws (not inconsistent with this Act) for the
10 government of the bank and may, by the affirmative vote of a
11 majority of the board of directors, establish reasonable
12 compensation of all directors for services to the corporation
13 as directors, officers, or otherwise. An officer, whether
14 elected or appointed by the board of directors or appointed
15 pursuant to the by-laws, may be removed by the board of
16 directors at any time.

17 (6) The board of directors shall cause suitable books and
18 records of all the bank's transactions to be kept.

19 (7) (a) In discharging the duties of their respective
20 positions, the board of directors, committees of the board,
21 and individual directors may, in considering the best long
22 term and short term interests of the bank, consider the
23 effects of any action (including, without limitation,
24 action that may involve or relate to a merger or potential
25 merger or to a change or potential change in control of the
26 bank) upon employees, depositors, suppliers, and customers

1 of the corporation or its subsidiaries, communities in
2 which the main banking premises, branches, offices, or
3 other establishments of the bank or its subsidiaries are
4 located, and all pertinent factors.

5 (b) In discharging the duties of their respective
6 positions, the board of directors, committees of the board,
7 and individual directors shall be entitled to rely on
8 advice, information, opinions, reports or statements,
9 including financial statements and financial data,
10 prepared or presented by: (i) one or more officers or
11 employees of the bank whom the director believes to be
12 reliable and competent in the matter presented; (ii) one or
13 more counsels, accountants, or other consultants as to
14 matters that the director believes to be within that
15 person's professional or expert competence; or (iii) a
16 committee of the board upon which the director does not
17 serve, as to matters within that committee's designated
18 authority; provided that the director's reliance under
19 this paragraph (b) is placed in good faith, after
20 reasonable inquiry if the need for such inquiry is apparent
21 under the circumstances and without knowledge that would
22 cause such reliance to be unreasonable.

23 (Source: P.A. 91-452, eff. 1-1-00; 92-476, eff. 8-23-01.)

24 (205 ILCS 5/48) (from Ch. 17, par. 359)

25 Sec. 48. Secretary's ~~Commissioner's~~ powers; duties. The

1 Secretary ~~Commissioner~~ shall have the powers and authority, and
2 is charged with the duties and responsibilities designated in
3 this Act, and a State bank shall not be subject to any other
4 visitorial power other than as authorized by this Act, except
5 those vested in the courts, or upon prior consultation with the
6 Secretary ~~Commissioner~~, a foreign bank regulator with an
7 appropriate supervisory interest in the parent or affiliate of
8 a state bank. In the performance of the Secretary's
9 ~~Commissioner's~~ duties:

10 (1) The Secretary ~~Commissioner~~ shall call for statements
11 from all State banks as provided in Section 47 at least one
12 time during each calendar quarter.

13 (2) (a) The Secretary ~~Commissioner~~, as often as the
14 Secretary ~~Commissioner~~ shall deem necessary or proper, and no
15 less frequently than 18 months following the preceding
16 examination, shall appoint a suitable person or persons to make
17 an examination of the affairs of every State bank, except that
18 for every eligible State bank, as defined by regulation, the
19 Secretary ~~Commissioner~~ in lieu of the examination may accept on
20 an alternating basis the examination made by the eligible State
21 bank's appropriate federal banking agency pursuant to Section
22 111 of the Federal Deposit Insurance Corporation Improvement
23 Act of 1991, provided the appropriate federal banking agency
24 has made such an examination. A person so appointed shall not
25 be a stockholder or officer or employee of any bank which that
26 person may be directed to examine, and shall have powers to

1 make a thorough examination into all the affairs of the bank
2 and in so doing to examine any of the officers or agents or
3 employees thereof on oath and shall make a full and detailed
4 report of the condition of the bank to the Secretary
5 ~~Commissioner~~. In making the examination the examiners shall
6 include an examination of the affairs of all the affiliates of
7 the bank, as defined in subsection (b) of Section 35.2 of this
8 Act, or subsidiaries of the bank as shall be necessary to
9 disclose fully the conditions of the subsidiaries or
10 affiliates, the relations between the bank and the subsidiaries
11 or affiliates and the effect of those relations upon the
12 affairs of the bank, and in connection therewith shall have
13 power to examine any of the officers, directors, agents, or
14 employees of the subsidiaries or affiliates on oath. After May
15 31, 1997, the Secretary ~~Commissioner~~ may enter into cooperative
16 agreements with state regulatory authorities of other states to
17 provide for examination of State bank branches in those states,
18 and the Secretary ~~Commissioner~~ may accept reports of
19 examinations of State bank branches from those state regulatory
20 authorities. These cooperative agreements may set forth the
21 manner in which the other state regulatory authorities may be
22 compensated for examinations prepared for and submitted to the
23 Secretary ~~Commissioner~~.

24 (b) After May 31, 1997, the Secretary ~~Commissioner~~ is
25 authorized to examine, as often as the Secretary ~~Commissioner~~
26 shall deem necessary or proper, branches of out-of-state banks.

1 The Secretary ~~Commissioner~~ may establish and may assess fees to
2 be paid to the Secretary ~~Commissioner~~ for examinations under
3 this subsection (b). The fees shall be borne by the
4 out-of-state bank, unless the fees are borne by the state
5 regulatory authority that chartered the out-of-state bank, as
6 determined by a cooperative agreement between the Secretary
7 ~~Commissioner~~ and the state regulatory authority that chartered
8 the out-of-state bank.

9 (2.5) Whenever any State bank, any subsidiary or affiliate
10 of a State bank, or after May 31, 1997, any branch of an
11 out-of-state bank causes to be performed, by contract or
12 otherwise, any bank services for itself, whether on or off its
13 premises:

14 (a) that performance shall be subject to examination by
15 the Secretary ~~Commissioner~~ to the same extent as if
16 services were being performed by the bank or, after May 31,
17 1997, branch of the out-of-state bank itself on its own
18 premises; and

19 (b) the bank or, after May 31, 1997, branch of the
20 out-of-state bank shall notify the Secretary ~~Commissioner~~
21 of the existence of a service relationship. The
22 notification shall be submitted with the first statement of
23 condition (as required by Section 47 of this Act) due after
24 the making of the service contract or the performance of
25 the service, whichever occurs first. The Secretary
26 ~~Commissioner~~ shall be notified of each subsequent contract

1 in the same manner.

2 For purposes of this subsection (2.5), the term "bank
3 services" means services such as sorting and posting of checks
4 and deposits, computation and posting of interest and other
5 credits and charges, preparation and mailing of checks,
6 statements, notices, and similar items, or any other clerical,
7 bookkeeping, accounting, statistical, or similar functions
8 performed for a State bank, including but not limited to
9 electronic data processing related to those bank services.

10 (3) The expense of administering this Act, including the
11 expense of the examinations of State banks as provided in this
12 Act, shall to the extent of the amounts resulting from the fees
13 provided for in paragraphs (a), (a-2), and (b) of this
14 subsection (3) be assessed against and borne by the State
15 banks:

16 (a) Each bank shall pay to the Secretary ~~Commissioner~~ a
17 Call Report Fee which shall be paid in quarterly
18 installments equal to one-fourth of the sum of the annual
19 fixed fee of \$800, plus a variable fee based on the assets
20 shown on the quarterly statement of condition delivered to
21 the Secretary ~~Commissioner~~ in accordance with Section 47
22 for the preceding quarter according to the following
23 schedule: 16¢ per \$1,000 of the first \$5,000,000 of total
24 assets, 15¢ per \$1,000 of the next \$20,000,000 of total
25 assets, 13¢ per \$1,000 of the next \$75,000,000 of total
26 assets, 9¢ per \$1,000 of the next \$400,000,000 of total

1 assets, 7¢ per \$1,000 of the next \$500,000,000 of total
2 assets, and 5¢ per \$1,000 of all assets in excess of
3 \$1,000,000,000, of the State bank. The Call Report Fee
4 shall be calculated by the Secretary ~~Commissioner~~ and
5 billed to the banks for remittance at the time of the
6 quarterly statements of condition provided for in Section
7 47. The Secretary ~~Commissioner~~ may require payment of the
8 fees provided in this Section by an electronic transfer of
9 funds or an automatic debit of an account of each of the
10 State banks. In case more than one examination of any bank
11 is deemed by the Secretary ~~Commissioner~~ to be necessary in
12 any examination frequency cycle specified in subsection
13 2(a) of this Section, and is performed at his direction,
14 the Secretary ~~Commissioner~~ may assess a reasonable
15 additional fee to recover the cost of the additional
16 examination; provided, however, that an examination
17 conducted at the request of the State Treasurer pursuant to
18 the Uniform Disposition of Unclaimed Property Act shall not
19 be deemed to be an additional examination under this
20 Section. In lieu of the method and amounts set forth in
21 this paragraph (a) for the calculation of the Call Report
22 Fee, the Secretary ~~Commissioner~~ may specify by rule that
23 the Call Report Fees provided by this Section may be
24 assessed semiannually or some other period and may provide
25 in the rule the formula to be used for calculating and
26 assessing the periodic Call Report Fees to be paid by State

1 banks.

2 (a-1) If in the opinion of the Secretary ~~Commissioner~~
3 an emergency exists or appears likely, the Secretary
4 ~~Commissioner~~ may assign an examiner or examiners to monitor
5 the affairs of a State bank with whatever frequency he
6 deems appropriate, including but not limited to a daily
7 basis. The reasonable and necessary expenses of the
8 Secretary ~~Commissioner~~ during the period of the monitoring
9 shall be borne by the subject bank. The Secretary
10 ~~Commissioner~~ shall furnish the State bank a statement of
11 time and expenses if requested to do so within 30 days of
12 the conclusion of the monitoring period.

13 (a-2) On and after January 1, 1990, the reasonable and
14 necessary expenses of the Secretary ~~Commissioner~~ during
15 examination of the performance of electronic data
16 processing services under subsection (2.5) shall be borne
17 by the banks for which the services are provided. An
18 amount, based upon a fee structure prescribed by the
19 Secretary ~~Commissioner~~, shall be paid by the banks or,
20 after May 31, 1997, branches of out-of-state banks
21 receiving the electronic data processing services along
22 with the Call Report Fee assessed under paragraph (a) of
23 this subsection (3).

24 (a-3) After May 31, 1997, the reasonable and necessary
25 expenses of the Secretary ~~Commissioner~~ during examination
26 of the performance of electronic data processing services

1 under subsection (2.5) at or on behalf of branches of
2 out-of-state banks shall be borne by the out-of-state
3 banks, unless those expenses are borne by the state
4 regulatory authorities that chartered the out-of-state
5 banks, as determined by cooperative agreements between the
6 Secretary ~~Commissioner~~ and the state regulatory
7 authorities that chartered the out-of-state banks.

8 (b) "Fiscal year" for purposes of this Section 48 is
9 defined as a period beginning July 1 of any year and ending
10 June 30 of the next year. The Secretary ~~Commissioner~~ shall
11 receive for each fiscal year, commencing with the fiscal
12 year ending June 30, 1987, a contingent fee equal to the
13 lesser of the aggregate of the fees paid by all State banks
14 under paragraph (a) of subsection (3) for that year, or the
15 amount, if any, whereby the aggregate of the administration
16 expenses, as defined in paragraph (c), for that fiscal year
17 exceeds the sum of the aggregate of the fees payable by all
18 State banks for that year under paragraph (a) of subsection
19 (3), plus any amounts transferred into the Bank and Trust
20 Company Fund from the State Pensions Fund for that year,
21 plus all other amounts collected by the Secretary
22 ~~Commissioner~~ for that year under any other provision of
23 this Act, plus the aggregate of all fees collected for that
24 year by the Secretary ~~Commissioner~~ under the Corporate
25 Fiduciary Act, excluding the receivership fees provided
26 for in Section 5-10 of the Corporate Fiduciary Act, and the

1 Foreign Banking Office Act. The aggregate amount of the
2 contingent fee thus arrived at for any fiscal year shall be
3 apportioned amongst, assessed upon, and paid by the State
4 banks and foreign banking corporations, respectively, in
5 the same proportion that the fee of each under paragraph
6 (a) of subsection (3), respectively, for that year bears to
7 the aggregate for that year of the fees collected under
8 paragraph (a) of subsection (3). The aggregate amount of
9 the contingent fee, and the portion thereof to be assessed
10 upon each State bank and foreign banking corporation,
11 respectively, shall be determined by the Secretary
12 ~~Commissioner~~ and shall be paid by each, respectively,
13 within 120 days of the close of the period for which the
14 contingent fee is computed and is payable, and the
15 Secretary ~~Commissioner~~ shall give 20 days advance notice of
16 the amount of the contingent fee payable by the State bank
17 and of the date fixed by the Secretary ~~Commissioner~~ for
18 payment of the fee.

19 (c) The "administration expenses" for any fiscal year
20 shall mean the ordinary and contingent expenses for that
21 year incident to making the examinations provided for by,
22 and for otherwise administering, this Act, the Corporate
23 Fiduciary Act, excluding the expenses paid from the
24 Corporate Fiduciary Receivership account in the Bank and
25 Trust Company Fund, the Foreign Banking Office Act, the
26 Electronic Fund Transfer Act, and the Illinois Bank

1 Examiners' Education Foundation Act, including all
2 salaries and other compensation paid for personal services
3 rendered for the State by officers or employees of the
4 State, including the Secretary and his or her deputies
5 ~~Commissioner and the Deputy Commissioners~~, all
6 expenditures for telephone and telegraph charges, postage
7 and postal charges, office stationery, supplies and
8 services, and office furniture and equipment, including
9 typewriters and copying and duplicating machines and
10 filing equipment, surety bond premiums, and travel
11 expenses of those officers and employees, employees,
12 expenditures or charges for the acquisition, enlargement
13 or improvement of, or for the use of, any office space,
14 building, or structure, or expenditures for the
15 maintenance thereof or for furnishing heat, light, or power
16 with respect thereto, all to the extent that those
17 expenditures are directly incidental to such examinations
18 or administration. The Secretary ~~Commissioner~~ shall not be
19 required by paragraphs (c) or (d-1) of this subsection (3)
20 to maintain in any fiscal year's budget appropriated
21 reserves for accrued vacation and accrued sick leave that
22 is required to be paid to employees of the Secretary
23 ~~Commissioner~~ upon termination of their service with the
24 Secretary ~~Commissioner~~ in an amount that is more than is
25 reasonably anticipated to be necessary for any anticipated
26 turnover in employees, whether due to normal attrition or

1 due to layoffs, terminations, or resignations.

2 (d) The aggregate of all fees collected by the
3 Secretary ~~Commissioner~~ under this Act, the Corporate
4 Fiduciary Act, or the Foreign Banking Office Act on and
5 after July 1, 1979, shall be paid promptly after receipt of
6 the same, accompanied by a detailed statement thereof, into
7 the State treasury and shall be set apart in a special fund
8 to be known as the "Bank and Trust Company Fund", except as
9 provided in paragraph (c) of subsection (11) of this
10 Section. All earnings received from investments of funds in
11 the Bank and Trust Company Fund shall be deposited in the
12 Bank and Trust Company Fund and may be used for the same
13 purposes as fees deposited in that Fund. The amount from
14 time to time deposited into the Bank and Trust Company Fund
15 shall be used to offset the ordinary administrative
16 expenses of the Secretary of Financial and Professional
17 Regulation ~~Commissioner of Banks and Real Estate~~ as defined
18 in this Section. Nothing in this amendatory Act of 1979
19 shall prevent continuing the practice of paying expenses
20 involving salaries, retirement, social security, and
21 State-paid insurance premiums of State officers by
22 appropriations from the General Revenue Fund. However, the
23 General Revenue Fund shall be reimbursed for those payments
24 made on and after July 1, 1979, by an annual transfer of
25 funds from the Bank and Trust Company Fund. Moneys in the
26 Bank and Trust Company Fund may be transferred to the

1 Professions Indirect Cost Fund, as authorized under
2 Section 2105-300 of the Department of Professional
3 Regulation Law of the Civil Administrative Code of
4 Illinois.

5 (d-1) Adequate funds shall be available in the Bank and
6 Trust Company Fund to permit the timely payment of
7 administration expenses. In each fiscal year the total
8 administration expenses shall be deducted from the total
9 fees collected by the Secretary ~~Commissioner~~ and the
10 remainder transferred into the Cash Flow Reserve Account,
11 unless the balance of the Cash Flow Reserve Account prior
12 to the transfer equals or exceeds one-fourth of the total
13 initial appropriations from the Bank and Trust Company Fund
14 for the subsequent year, in which case the remainder shall
15 be credited to State banks and foreign banking corporations
16 and applied against their fees for the subsequent year. The
17 amount credited to each State bank and foreign banking
18 corporation shall be in the same proportion as the Call
19 Report Fees paid by each for the year bear to the total
20 Call Report Fees collected for the year. If, after a
21 transfer to the Cash Flow Reserve Account is made or if no
22 remainder is available for transfer, the balance of the
23 Cash Flow Reserve Account is less than one-fourth of the
24 total initial appropriations for the subsequent year and
25 the amount transferred is less than 5% of the total Call
26 Report Fees for the year, additional amounts needed to make

1 the transfer equal to 5% of the total Call Report Fees for
2 the year shall be apportioned amongst, assessed upon, and
3 paid by the State banks and foreign banking corporations in
4 the same proportion that the Call Report Fees of each,
5 respectively, for the year bear to the total Call Report
6 Fees collected for the year. The additional amounts
7 assessed shall be transferred into the Cash Flow Reserve
8 Account. For purposes of this paragraph (d-1), the
9 calculation of the fees collected by the Secretary
10 ~~Commissioner~~ shall exclude the receivership fees provided
11 for in Section 5-10 of the Corporate Fiduciary Act.

12 (e) The Secretary ~~Commissioner~~ may upon request
13 certify to any public record in his keeping and shall have
14 authority to levy a reasonable charge for issuing
15 certifications of any public record in his keeping.

16 (f) In addition to fees authorized elsewhere in this
17 Act, the Secretary ~~Commissioner~~ may, in connection with a
18 review, approval, or provision of a service, levy a
19 reasonable charge to recover the cost of the review,
20 approval, or service.

21 (4) Nothing contained in this Act shall be construed to
22 limit the obligation relative to examinations and reports of
23 any State bank, deposits in which are to any extent insured by
24 the United States or any agency thereof, nor to limit in any
25 way the powers of the Secretary ~~Commissioner~~ with reference to
26 examinations and reports of that bank.

1 (5) The nature and condition of the assets in or investment
2 of any bonus, pension, or profit sharing plan for officers or
3 employees of every State bank or, after May 31, 1997, branch of
4 an out-of-state bank shall be deemed to be included in the
5 affairs of that State bank or branch of an out-of-state bank
6 subject to examination by the Secretary ~~Commissioner~~ under the
7 provisions of subsection (2) of this Section, and if the
8 Secretary ~~Commissioner~~ shall find from an examination that the
9 condition of or operation of the investments or assets of the
10 plan is unlawful, fraudulent, or unsafe, or that any trustee
11 has abused his trust, the Secretary ~~Commissioner~~ shall, if the
12 situation so found by the Secretary ~~Commissioner~~ shall not be
13 corrected to his satisfaction within 60 days after the
14 Secretary ~~Commissioner~~ has given notice to the board of
15 directors of the State bank or out-of-state bank of his
16 findings, report the facts to the Attorney General who shall
17 thereupon institute proceedings against the State bank or
18 out-of-state bank, the board of directors thereof, or the
19 trustees under such plan as the nature of the case may require.

20 (6) The Secretary ~~Commissioner~~ shall have the power:

21 (a) To promulgate reasonable rules for the purpose of
22 administering the provisions of this Act.

23 (a-5) To impose conditions on any approval issued by
24 the Secretary ~~Commissioner~~ if he determines that the
25 conditions are necessary or appropriate. These conditions
26 shall be imposed in writing and shall continue in effect

1 for the period prescribed by the Secretary ~~Commissioner~~.

2 (b) To issue orders against any person, if the
3 Secretary ~~Commissioner~~ has reasonable cause to believe
4 that an unsafe or unsound banking practice has occurred, is
5 occurring, or is about to occur, if any person has
6 violated, is violating, or is about to violate any law,
7 rule, or written agreement with the Secretary
8 ~~Commissioner~~, or for the purpose of administering the
9 provisions of this Act and any rule promulgated in
10 accordance with this Act.

11 (b-1) To enter into agreements with a bank establishing
12 a program to correct the condition of the bank or its
13 practices.

14 (c) To appoint hearing officers to execute any of the
15 powers granted to the Secretary ~~Commissioner~~ under this
16 Section for the purpose of administering this Act and any
17 rule promulgated in accordance with this Act and otherwise
18 to authorize, in writing, an officer or employee of the
19 Department of Financial and Professional Regulation ~~Office~~
20 ~~of Banks and Real Estate~~ to exercise his powers under this
21 Act.

22 (d) To subpoena witnesses, to compel their attendance,
23 to administer an oath, to examine any person under oath,
24 and to require the production of any relevant books,
25 papers, accounts, and documents in the course of and
26 pursuant to any investigation being conducted, or any

1 action being taken, by the Secretary ~~Commissioner~~ in
2 respect of any matter relating to the duties imposed upon,
3 or the powers vested in, the Secretary ~~Commissioner~~ under
4 the provisions of this Act or any rule promulgated in
5 accordance with this Act.

6 (e) To conduct hearings.

7 (7) Whenever, in the opinion of the Secretary ~~Commissioner~~,
8 any director, officer, employee, or agent of a State bank or
9 any subsidiary or bank holding company of the bank or, after
10 May 31, 1997, of any branch of an out-of-state bank or any
11 subsidiary or bank holding company of the bank shall have
12 violated any law, rule, or order relating to that bank or any
13 subsidiary or bank holding company of the bank, shall have
14 obstructed or impeded any examination or investigation by the
15 Secretary ~~Commissioner~~, shall have engaged in an unsafe or
16 unsound practice in conducting the business of that bank or any
17 subsidiary or bank holding company of the bank, or shall have
18 violated any law or engaged or participated in any unsafe or
19 unsound practice in connection with any financial institution
20 or other business entity such that the character and fitness of
21 the director, officer, employee, or agent does not assure
22 reasonable promise of safe and sound operation of the State
23 bank, the Secretary ~~Commissioner~~ may issue an order of removal.
24 If, in the opinion of the Secretary ~~Commissioner~~, any former
25 director, officer, employee, or agent of a State bank or any
26 subsidiary or bank holding company of the bank, prior to the

1 termination of his or her service with that bank or any
2 subsidiary or bank holding company of the bank, violated any
3 law, rule, or order relating to that State bank or any
4 subsidiary or bank holding company of the bank, obstructed or
5 impeded any examination or investigation by the Secretary
6 ~~Commissioner~~, engaged in an unsafe or unsound practice in
7 conducting the business of that bank or any subsidiary or bank
8 holding company of the bank, or violated any law or engaged or
9 participated in any unsafe or unsound practice in connection
10 with any financial institution or other business entity such
11 that the character and fitness of the director, officer,
12 employee, or agent would not have assured reasonable promise of
13 safe and sound operation of the State bank, the Secretary
14 ~~Commissioner~~ may issue an order prohibiting that person from
15 further service with a bank or any subsidiary or bank holding
16 company of the bank as a director, officer, employee, or agent.
17 An order issued pursuant to this subsection shall be served
18 upon the director, officer, employee, or agent. A copy of the
19 order shall be sent to each director of the bank affected by
20 personal service, certified mail return receipt requested, or
21 any other method that provides proof of service and receipt
22 ~~registered mail~~. The person affected by the action may request
23 a hearing before the Board of Banks and Trust Companies ~~State~~
24 ~~Banking Board~~ within 10 days after receipt of the order. The
25 hearing shall be held by the Board within 30 days after the
26 request has been received by the Board. The Board shall make a

1 determination approving, modifying, or disapproving the order
2 of the Secretary ~~Commissioner~~ as its final administrative
3 decision. If a hearing is held by the Board, the Board shall
4 make its determination within 60 days from the conclusion of
5 the hearing. Any person affected by a decision of the Board
6 under this subsection (7) of Section 48 of this Act may have
7 the decision reviewed only under and in accordance with the
8 Administrative Review Law and the rules adopted pursuant
9 thereto. A copy of the order shall also be served upon the bank
10 of which he is a director, officer, employee, or agent,
11 whereupon he shall cease to be a director, officer, employee,
12 or agent of that bank. The Secretary ~~Commissioner~~ may institute
13 a civil action against the director, officer, or agent of the
14 State bank or, after May 31, 1997, of the branch of the
15 out-of-state bank against whom any order provided for by this
16 subsection (7) of this Section 48 has been issued, and against
17 the State bank or, after May 31, 1997, out-of-state bank, to
18 enforce compliance with or to enjoin any violation of the terms
19 of the order. Any person who has been the subject of an order
20 of removal or an order of prohibition issued by the Secretary
21 ~~Commissioner~~ under this subsection or Section 5-6 of the
22 Corporate Fiduciary Act may not thereafter serve as director,
23 officer, employee, or agent of any State bank or of any branch
24 of any out-of-state bank, or of any corporate fiduciary, as
25 defined in Section 1-5.05 of the Corporate Fiduciary Act, or of
26 any other entity that is subject to licensure or regulation by

1 the Secretary ~~Commissioner~~ or the Department of Financial and
2 Professional Regulation ~~Office of Banks and Real Estate~~ unless
3 the Secretary ~~Commissioner~~ has granted prior approval in
4 writing.

5 For purposes of this paragraph (7), "bank holding company"
6 has the meaning prescribed in Section 2 of the Illinois Bank
7 Holding Company Act of 1957.

8 (8) The Secretary ~~Commissioner~~ may impose civil penalties
9 in an amount not to exceed the amount a federal regulatory
10 agency is authorized to charge under federal law ~~of up to~~
11 ~~\$10,000~~ against any person for each violation of any provision
12 of this Act, any rule promulgated in accordance with this Act,
13 any order of the Director of the Division or Secretary
14 ~~Commissioner~~, or any other action which in the Director's or
15 Secretary's ~~Commissioner's~~ discretion is an unsafe or unsound
16 banking practice.

17 (9) The Secretary ~~Commissioner~~ may impose civil penalties
18 of up to \$100 against any person for the first failure to
19 comply with reporting requirements set forth in the report of
20 examination of the bank and up to \$200 for the second and
21 subsequent failures to comply with those reporting
22 requirements.

23 (10) All final administrative decisions of the Secretary
24 ~~Commissioner~~ hereunder shall be subject to judicial review
25 pursuant to the provisions of the Administrative Review Law.
26 For matters involving administrative review, venue shall be in

1 either Sangamon County or Cook County.

2 (11) The endowment fund for the Illinois Bank Examiners'
3 Education Foundation shall be administered as follows:

4 (a) (Blank).

5 (b) The Foundation is empowered to receive voluntary
6 contributions, gifts, grants, bequests, and donations on
7 behalf of the Illinois Bank Examiners' Education
8 Foundation from national banks and other persons for the
9 purpose of funding the endowment of the Illinois Bank
10 Examiners' Education Foundation.

11 (c) The aggregate of all special educational fees
12 collected by the Secretary ~~Commissioner~~ and property
13 received by the Secretary ~~Commissioner~~ on behalf of the
14 Illinois Bank Examiners' Education Foundation under this
15 subsection (11) on or after June 30, 1986, shall be either
16 (i) promptly paid after receipt of the same, accompanied by
17 a detailed statement thereof, into the State Treasury and
18 shall be set apart in a special fund to be known as "The
19 Illinois Bank Examiners' Education Fund" to be invested by
20 either the Treasurer of the State of Illinois in the Public
21 Treasurers' Investment Pool or in any other investment he
22 is authorized to make or by the Illinois State Board of
23 Investment as the board of trustees of the Illinois Bank
24 Examiners' Education Foundation may direct or (ii)
25 deposited into an account maintained in a commercial bank
26 or corporate fiduciary in the name of the Illinois Bank

1 Examiners' Education Foundation pursuant to the order and
2 direction of the Board of Trustees of the Illinois Bank
3 Examiners' Education Foundation.

4 (12) (Blank).

5 (Source: P.A. 94-91, eff. 7-1-05.)

6 (205 ILCS 5/78.5 new)

7 Sec. 78.5. Board of Banks and Trust Companies; creation,
8 members, appointment.

9 (a) There is created the Board of Banks and Trust
10 Companies, which shall consist of the Director, who shall be
11 its chairperson, and 6 additional members divided into 2
12 classes designated Class A members and Class B members, to be
13 appointed by the Governor by and with the advice and consent of
14 the Senate, as follows:

15 (1) Class A shall consist of 2 persons, neither of whom
16 is an officer or director of or owner, whether directly or
17 indirectly, of more than 5% of the outstanding capital
18 stock of any bank.

19 (2) Class B shall consist of 4 persons, each of whom at
20 the time of the appointment is an officer, director, or
21 employee of a State bank or trust company and has at least
22 10 years of banking experience.

23 (b) The Board of Banks and Trust Companies formerly created
24 by Section 78 of this Act is abolished on January 1, 2009, and
25 the terms of all members of that Board then serving are

1 terminated on that date.

2 (c) For purposes of the Successor Agency Act, the Board of
3 Banks and Trust Companies created under this Section shall be
4 the successor agency of the State Banking Board of Illinois and
5 the Board of Banks and Trust Companies Created under Section 78
6 of this Act.

7 (205 ILCS 5/79.5 new)

8 Sec. 79.5. Board, terms of office. The terms of office of
9 the Class A and Class B members of the Board of Banks and Trust
10 Companies shall begin on January 1, 2009.

11 (a) The persons first appointed as the Class A members of
12 the Board of Banks and Trust Companies shall have the following
13 terms as designated by the Governor: (i) one person for a term
14 of 2 years and (ii) one person for a term of 4 years.
15 Thereafter, the term of office of each of the Class A members
16 shall be 4 years, except that an appointment to fill a vacancy
17 shall be for the unexpired term of the member whose term is
18 being filled.

19 (b) The persons first appointed as Class B members of the
20 Board of Banks and Trust Companies shall have the following
21 terms as designated by the Governor: (i) one member for a term
22 of one year, (ii) one member for a term of 2 years, (iii) one
23 member for a term of 3 years, and (iv) one member for a term of
24 4 years. Thereafter, the term of office of each Class B member
25 shall be 4 years, except that an appointment to fill a vacancy

1 shall be for the unexpired term of the member whose term is
2 being filled.

3 (c) No Class A or Class B member of the Board of Banks and
4 Trust Companies shall serve more than 2 full 4-year terms of
5 office.

6 (d) Each member of the Board of Banks and Trust Companies
7 shall continue serving until his or her successor is appointed.

8 (205 ILCS 5/82) (from Ch. 17, par. 394)

9 Sec. 82. Secretary Commissioner, board; civil liability.
10 Neither the Secretary Commissioner, any deputy ~~commissioner~~,
11 any member of the Board of Banks and Trust Companies, ~~any~~
12 ~~member of the State Banking Board of Illinois~~, nor any
13 examiner, assistant examiner or other employee of the
14 Secretary's Commissioner's office shall be subject to any civil
15 liability or penalty, whether for damages or otherwise, on
16 account of or for any action taken or omitted to be taken in
17 their respective official capacities, except when such acts or
18 omissions to act are corrupt or malicious or unless such action
19 is taken or omitted to be taken not in good faith and without
20 reasonable grounds.

21 (Source: P.A. 85-204.)

22 (205 ILCS 5/78 rep.)

23 (205 ILCS 5/79 rep.)

24 Section 20. The Illinois Banking Act is amended by

1 repealing Sections 78 and 79.

2 Section 25. The Illinois Bank Holding Company Act of 1957
3 is amended by changing Sections 2 and 3.074 as follows:

4 (205 ILCS 10/2) (from Ch. 17, par. 2502)

5 Sec. 2. Unless the context requires otherwise:

6 (a) "Bank" means any national banking association or any
7 bank, banking association or savings bank, whether organized
8 under the laws of Illinois, another state, the United States,
9 the District of Columbia, any territory of the United States,
10 Puerto Rico, Guam, American Samoa or the Virgin Islands, which
11 (1) accepts deposits that the depositor has a legal right to
12 withdraw on demand by check or other negotiable order and (2)
13 engages in the business of making commercial loans. "Bank" does
14 not include any organization operating under Sections 25 or 25
15 (a) of the Federal Reserve Act, or any organization which does
16 not do business within the United States except as an incident
17 to its activities outside the United States or any foreign
18 bank.

19 (b) "Bank holding company" means any company that controls
20 or has control over any bank or over any company that is or
21 becomes a bank holding company by virtue of this Act.

22 (c) "Banking office" means the principal office of a bank,
23 any branch of a bank, or any other office at which a bank
24 accepts deposits, provided, however, that "banking office"

1 shall not mean:

2 (1) unmanned automatic teller machines, point of sale
3 terminals or other similar unmanned electronic banking
4 facilities at which deposits may be accepted; or

5 (2) offices located outside the United States.

6 (d) "Cause to be chartered", with respect to a specified
7 bank, means the acquisition of control of such bank prior to
8 the time it commences to engage in the banking business.

9 (e) "Commissioner" means the Commissioner of Banks and Real
10 Estate or a person authorized by the Commissioner, the Office
11 of Banks and Real Estate Act, or this Act to act in the
12 Commissioner's stead.

13 (f) "Community" means the contiguous area served by the
14 banking offices of a bank, but need not be limited or expanded
15 to conform to the geographic boundaries of units of local
16 government.

17 (g) "Company" means any corporation, business trust,
18 voting trust, association, partnership, joint venture, similar
19 organization or any other trust unless by its terms it must
20 terminate within 25 years or not later than 21 years and 10
21 months after the death of individuals living on the effective
22 date of the trust, but shall not include (1) an individual or
23 (2) any corporation the majority of the shares of which are
24 owned by the United States or by any state or any corporation
25 or community chest fund, organized and operated exclusively for
26 religious, charitable, scientific, literary or educational

1 purposes, no part of the net earnings of which inure to the
2 benefit of any private shareholder or individual and no
3 substantial part of the activities of which is carrying on
4 propaganda or otherwise attempting to influence legislation.

5 (h) A company "controls or has control over" a bank or
6 company if (1) it directly or indirectly owns or controls or
7 has the power to vote, 25% or more of the voting shares of any
8 class of voting securities of such bank or company or (2) it
9 controls in any manner the election of a majority of the
10 directors or trustees of such bank or company or (3) a trustee
11 holds for the benefit of its shareholders, members or
12 employees, 25% or more of the voting shares of such bank or
13 company or (4) it directly or indirectly exercises a
14 controlling influence over the management or policies of such
15 bank or company that is a bank holding company and the Board of
16 Governors of the Federal Reserve System has so determined under
17 the federal Bank Holding Company Act. In determining whether
18 any company controls or has control over a bank or company: (i)
19 shares owned or controlled by any subsidiary of a company shall
20 be deemed to be indirectly owned or controlled by such company;
21 (ii) shares held or controlled, directly or indirectly, by a
22 trustee or trustees for the benefit of a company, the
23 shareholders or members of a company or the employees (whether
24 exclusively or not) of a company, shall be deemed to be
25 controlled by such company; and (iii) shares transferred,
26 directly or indirectly, by any bank holding company (or by any

1 company which, but for such transfer, would be a bank holding
2 company) to any transferee that is indebted to the transferor
3 or that has one or more officers, directors, trustees or
4 beneficiaries in common with or subject to control by the
5 transferor, shall be deemed to be indirectly owned or
6 controlled by the transferor unless the Board of Governors of
7 the Federal Reserve System has determined, under the federal
8 Bank Holding Company Act, that the transferor is not in fact
9 capable of controlling the transferee. Notwithstanding the
10 foregoing, no company shall be deemed to have control of or
11 over a bank or bank holding company (A) by virtue of its
12 ownership or control of shares in a fiduciary capacity arising
13 in the ordinary course of its business; (B) by virtue of its
14 ownership or control of shares acquired by it in connection
15 with its underwriting of securities which are held only for
16 such period of time as will permit the sale thereof upon a
17 reasonable basis; (C) by virtue of its holding any shares as
18 collateral taken in the ordinary course of securing a debt or
19 other obligation; (D) by virtue of its ownership or control of
20 shares acquired in the ordinary course of collecting a debt or
21 other obligation previously contracted in good faith, until 5
22 years after the date acquired; or (E) by virtue of its voting
23 rights with respect to shares of any bank or bank holding
24 company acquired in the course of a proxy solicitation in the
25 case of a company formed and operated for the sole purpose of
26 participating in a proxy solicitation.

1 (i) "Federal Bank Holding Company Act" means the
2 federal Bank Holding Company Act of 1956, as now or
3 hereafter amended.

4 (j) "Foreign bank" means any company organized under the
5 laws of a foreign country which engages in the business of
6 banking or any subsidiary or affiliate of any such company,
7 organized under such laws. "Foreign bank" includes, without
8 limitation, foreign merchant banks and other foreign
9 institutions that engage in banking activities usual in
10 connection with the business of banking in the countries where
11 such foreign institutions are organized or operating.

12 (k) "Home state" means the home state of a foreign bank as
13 determined pursuant to the federal International Banking Act of
14 1978.

15 (l) "Illinois bank" means a bank:

16 (1) that is organized under the laws of this State or
17 of the United States; and

18 (2) whose main banking premises is located in Illinois.

19 (m) "Illinois bank holding company" means a bank holding
20 company:

21 (1) whose principal place of business is Illinois; and

22 (2) that is not directly or indirectly controlled by
23 another bank holding company whose principal place of
24 business is a state other than Illinois or by a foreign
25 bank whose Home State is a state other than Illinois.

26 An out of state bank holding company that acquires control

1 of one or more Illinois banks or Illinois bank holding
2 companies pursuant to Sections 3.061 or 3.071 shall not be
3 deemed an Illinois bank holding company.

4 (n) "Main banking premises" means the location that is
5 designated in a bank's charter as its main office and that is
6 within the state in which the total deposits held by all of the
7 banking offices of such bank are the largest, as shown in the
8 most recent reports of condition or similar reports filed by
9 such bank with state or federal regulatory authorities.

10 (o) "Out of state bank" means a bank:

11 (1) that is not an Illinois bank; and

12 (2) whose main banking premises is located in a state
13 other than Illinois.

14 (p) "Out of state bank holding company" means a bank
15 holding company:

16 (1) that is not an Illinois bank holding company;

17 (2) whose principal place of business is a state other
18 than Illinois the laws of which expressly authorize the
19 acquisition by an Illinois bank holding company of a bank
20 or bank holding company in that state under qualifications
21 and conditions which are not unduly restrictive, as
22 determined by the Secretary ~~Commissioner~~, when compared to
23 those imposed by the laws of Illinois.

24 (q) "Principal place of business" means, with respect to a
25 bank holding company, the state in which the total deposits
26 held by all of the banking offices of all of the bank

1 subsidiaries of such bank holding company are the largest, as
2 shown in the most recent reports of condition or similar
3 reports filed by the bank holding company's bank subsidiaries
4 with state or federal regulatory authorities.

5 (q-5) "Secretary" means the Secretary of Financial and
6 Professional Regulation or a person authorized by the
7 Secretary, the Office of Banks and Real Estate Act, or this Act
8 to act in the Secretary's stead.

9 (r) "State" or "states" when used in this Act means any
10 State of the United States, the District of Columbia, any
11 territory of the United States, Puerto Rico, Guam, American
12 Samoa or the Virgin Islands.

13 (s) "Subsidiary", with respect to a specified bank holding
14 company, means any bank or company controlled by such bank
15 holding company.

16 (Source: P.A. 89-508, eff. 7-3-96.)

17 (205 ILCS 10/3.074) (from Ch. 17, par. 2510.04)

18 Sec. 3.074. Powers; administrative review.

19 (a) The Secretary ~~Commissioner~~ shall have the power and
20 authority:

21 (1) to promulgate reasonable procedural rules for the
22 purposes of administering the provisions of this Act. The
23 Secretary ~~Commissioner~~ shall specify the form of any
24 application, report or document that is required to be
25 filed with the Secretary ~~Commissioner~~ pursuant to this Act;

1 (2) to issue orders for the purpose of administering
2 the provisions of this Act and any rule promulgated in
3 accordance with this Act;

4 (3) to appoint hearing officers to execute any of the
5 powers granted to the Secretary ~~Commissioner~~ under this
6 Section for the purpose of administering this Act or any
7 rule promulgated in accordance with this Act; and

8 (4) to subpoena witnesses, to compel their attendance,
9 to administer an oath, to examine any person under oath and
10 to require the production of any relevant books, papers,
11 accounts and documents in the course of and pursuant to any
12 investigation or hearing being conducted or any action
13 being taken by the Secretary ~~Commissioner~~ in respect to any
14 matter relating to the duties imposed upon or the powers
15 vested in the Secretary ~~Commissioner~~ under the provisions
16 of this Act or any rule promulgated in accordance with this
17 Act.

18 (b) Whenever, in the opinion of the Secretary ~~Commissioner~~,
19 any director, officer, employee, or agent of any bank holding
20 company or subsidiary or affiliate of that company shall have
21 violated any law, rule, or order relating to that bank holding
22 company or subsidiary or affiliate of that company, shall have
23 obstructed or impeded any examination or investigation by the
24 Secretary ~~Commissioner~~, shall have engaged in an unsafe or
25 unsound practice in conducting the business of that bank
26 holding company or subsidiary or affiliate of that company, or

1 shall have violated any law or engaged or participated in any
2 unsafe or unsound practice in connection with any financial
3 institution or other business entity such that the character
4 and fitness of the director, officer, employee, or agent does
5 not assure reasonable promise of safe and sound operation of
6 the bank holding company, the Secretary ~~Commissioner~~ may issue
7 an order of removal. If, in the opinion of the Secretary
8 ~~Commissioner~~, any former director, officer, employee, or agent
9 of a bank holding company or subsidiary or affiliate of that
10 company, prior to the termination of his or her service with
11 that holding company or subsidiary or affiliate of that
12 company, violated any law, rule, or order relating to that bank
13 holding company or subsidiary or affiliate of that company,
14 obstructed or impeded any examination or investigation by the
15 Secretary ~~Commissioner~~, engaged in an unsafe or unsound
16 practice in conducting the business of that bank holding
17 company or subsidiary or affiliate of that company, or violated
18 any law or engaged or participated in any unsafe or unsound
19 practice in connection with any financial institution or other
20 business entity such that the character and fitness of the
21 director, officer, employee, or agent would not have assured
22 reasonable promise of safe and sound operation of the bank
23 holding company, the Secretary ~~Commissioner~~ may issue an order
24 prohibiting that person from further service with a bank
25 holding company or subsidiary or affiliate of that company as a
26 director, officer, employee, or agent.

1 An order issued pursuant to this subsection shall be served
2 upon the director, officer, employee, or agent. A copy of the
3 order shall be sent to each director of the bank holding
4 company affected by registered mail. The person affected by the
5 action may request a hearing before the Board of Banks and
6 Trust Companies ~~State Banking Board~~ within 10 days after
7 receipt of the order. The hearing shall be held by the Board of
8 Banks and Trust Companies ~~State Banking Board~~ within 30 days
9 after the request has been received by the Board of Banks and
10 Trust Companies ~~State Banking Board~~. The Board of Banks and
11 Trust Companies ~~State Banking Board~~ shall make a determination
12 approving, modifying, or disapproving the order of the
13 Secretary ~~Commissioner~~ as its final administrative decision.
14 If a hearing is held by the Board of Banks and Trust Companies
15 ~~State Banking Board~~, the Board of Banks and Trust Companies
16 ~~State Banking Board~~ shall make its determination within 60 days
17 from the conclusion of the hearing. Any person affected by a
18 decision of the Board of Banks and Trust Companies ~~State~~
19 ~~Banking Board~~ under this subsection may have the decision
20 reviewed only under and in accordance with the Administrative
21 Review Law and the rules adopted pursuant thereto. A copy of
22 the order shall also be served upon the bank holding company of
23 which he is a director, officer, employee, or agent, whereupon
24 he shall cease to be a director, officer, employee, or agent of
25 that bank holding company.

26 The Secretary ~~Commissioner~~ may institute a civil action

1 against the director, officer, employee, or agent of the bank
2 holding company, against whom any order provided for by this
3 subsection has been issued, to enforce compliance with or to
4 enjoin any violation of the terms of the order.

5 Any person who has been the subject of an order of removal
6 or an order of prohibition issued by the Secretary ~~Commissioner~~
7 under this subsection, subdivision (7) of Section 48 of the
8 Illinois Banking Act, or Section 5-6 of the Corporate Fiduciary
9 Act may not thereafter serve as director, officer, employee, or
10 agent of any holding company, State bank, or branch of any
11 out-of-state bank, of any corporate fiduciary, as defined in
12 Section 1-5.05 of the Corporate Fiduciary Act, or of any other
13 entity that is subject to licensure or regulation by the
14 Secretary ~~Commissioner~~ or the Department of Financial and
15 Professional Regulation ~~Office of Banks and Real Estate~~ unless
16 the Secretary ~~Commissioner~~ has granted prior approval in
17 writing.

18 (c) All final administrative decisions of the Secretary
19 ~~Commissioner~~ under this Act shall be subject to judicial review
20 pursuant to provisions of the Administrative Review Law. For
21 matters involving administrative review, venue shall be in
22 either Sangamon County or Cook County.

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

24 Section 30. The Pawnbroker Regulation Act is amended by
25 changing Section 0.05 as follows:

1 (205 ILCS 510/0.05)

2 Sec. 0.05. Administration of Act.

3 (a) This Act shall be administered by the Secretary
4 ~~Commissioner of Banks and Real Estate~~ who shall have all of the
5 following powers and duties in administering this Act:

6 (1) To promulgate reasonable rules for the purpose of
7 administering the provisions of this Act.

8 (2) To issue orders for the purpose of administering
9 the provisions of this Act and any rule promulgated in
10 accordance with this Act.

11 (3) To appoint hearing officers and to hire employees
12 or to contract with appropriate persons to execute any of
13 the powers granted to the Secretary ~~Commissioner~~ under this
14 Section for the purpose of administering this Act and any
15 rule promulgated in accordance with this Act.

16 (4) To subpoena witnesses, to compel their attendance,
17 to administer an oath, to examine any person under oath,
18 and to require the production of any relevant books,
19 papers, accounts, and documents in the course of and
20 pursuant to any investigation being conducted, or any
21 action being taken, by the Secretary ~~Commissioner~~ in
22 respect of any matter relating to the duties imposed upon,
23 or the powers vested in, the Secretary ~~Commissioner~~ under
24 the provisions of this Act or any rule promulgated in
25 accordance with this Act.

1 (5) To conduct hearings.

2 (6) To impose civil penalties graduated up to \$1,000
3 against any person for each violation of any provision of
4 this Act, any rule promulgated in accordance with this Act,
5 or any order of the Secretary ~~Commissioner~~ based upon the
6 seriousness of the violation.

7 (6.5) To initiate, through the Attorney General,
8 injunction proceedings whenever it appears to the
9 Secretary ~~Commissioner~~ that any person, whether licensed
10 under this Act or not, is engaged or about to engage in an
11 act or practice that constitutes or will constitute a
12 violation of this Act or any rule prescribed under the
13 authority of this Act. The Secretary ~~Commissioner~~ may, in
14 his or her discretion, through the Attorney General, apply
15 for an injunction, and upon a proper showing, any circuit
16 court may enter a permanent or preliminary injunction or a
17 temporary restraining order without bond to enforce this
18 Act in addition to the penalties and other remedies
19 provided for in this Act.

20 (7) To issue a cease and desist order and, for
21 violations of this Act, any order issued by the Secretary
22 ~~Commissioner~~ pursuant to this Act, any rule promulgated in
23 accordance with this Act, or any other applicable law in
24 connection with the operation of a pawnshop, to suspend a
25 license issued under this Act for up to 30 days.

26 (8) To determine compliance with applicable law and

1 rules related to the operation of pawnshops and to verify
2 the accuracy of reports filed with the Secretary
3 ~~Commissioner~~, the Secretary Commissioner, not more than
4 one time every 2 years, may, but is not required to,
5 conduct a routine examination of a pawnshop, and in
6 addition, the Secretary Commissioner may examine the
7 affairs of any pawnshop at any time if the Secretary
8 ~~Commissioner~~ has reasonable cause to believe that unlawful
9 or fraudulent activity is occurring, or has occurred,
10 therein.

11 (9) In response to a complaint, to address any
12 inquiries to any pawnshop in relation to its affairs, and
13 it shall be the duty of the pawnshop to promptly reply in
14 writing to such inquiries. The Secretary Commissioner may
15 also require reports or information from any pawnshop at
16 any time the Secretary Commissioner may deem desirable.

17 (10) To revoke a license issued under this Act if the
18 Secretary Commissioner determines that (a) a licensee has
19 been convicted of a felony in connection with the
20 operations of a pawnshop; (b) a licensee knowingly,
21 recklessly, or continuously violated this Act, a rule
22 promulgated in accordance with this Act, or any order of
23 the Secretary Commissioner; (c) a fact or condition exists
24 that, if it had existed or had been known at the time of
25 the original application, would have justified license
26 refusal; ~~or~~ (d) the licensee knowingly submits materially

1 false or misleading documents with the intent to deceive
2 the Secretary ~~Commissioner~~ or any other party; or (e) the
3 licensee is unable or ceases to continue to operate the
4 pawnshop.

5 (10.2) To remove or prohibit the employment of any
6 officer, director, or employee who engages or who has
7 engaged in unsafe, unsound, or unlawful activities.

8 (10.7) To prohibit the hiring of employees who have
9 been convicted of a felony or of any criminal offense
10 relating to dishonesty or breach of trust in connection
11 with the operation of a pawnshop.

12 (11) Following license revocation, to take possession
13 and control of a pawnshop for the purpose of examination,
14 reorganization, or liquidation through receivership and to
15 appoint a receiver, which may be the Secretary
16 ~~Commissioner~~, a pawnshop, or another suitable person.

17 (b) After consultation with local law enforcement
18 officers, the Attorney General, and the industry, the Secretary
19 ~~Commissioner~~ may by rule require that pawnbrokers operate video
20 camera surveillance systems to record photographic
21 representations of customers and retain the tapes produced for
22 up to 30 days.

23 (c) Pursuant to rule, the Secretary ~~Commissioner~~ shall
24 issue licenses on an annual or multi-year basis for operating a
25 pawnshop. Any person currently operating or who has operated a
26 pawnshop in this State during the 2 years preceding the

1 effective date of this amendatory Act of 1997 shall be issued a
2 license upon payment of the fee required under this Act. New
3 applicants shall meet standards for a license as established by
4 the Secretary ~~Commissioner~~. Except with the prior written
5 consent of the Secretary ~~Commissioner~~, no individual, either a
6 new applicant or a person currently operating a pawnshop, may
7 be issued a license to operate a pawnshop if the individual has
8 been convicted of a felony or of any criminal offense relating
9 to dishonesty or breach of trust in connection with the
10 operations of a pawnshop. The Secretary ~~Commissioner~~ shall
11 establish license fees. The fees shall not exceed the amount
12 reasonably required for administration of this Act. It shall be
13 unlawful to operate a pawnshop without a license issued by the
14 Secretary ~~Commissioner~~.

15 (d) In addition to license fees, the Secretary ~~Commissioner~~
16 may, by rule, establish fees in connection with a review,
17 approval, or provision of a service, and levy a reasonable
18 charge to recover the cost of the review, approval, or service
19 (such as a change in control, change in location, or renewal of
20 a license). The Secretary ~~Commissioner~~ may also levy a
21 reasonable charge to recover the cost of an examination if the
22 Secretary ~~Commissioner~~ determines that unlawful or fraudulent
23 activity has occurred. The Secretary ~~Commissioner~~ may require
24 payment of the fees and charges provided in this Act by
25 certified check, money order, an electronic transfer of funds,
26 or an automatic debit of an account.

1 (e) The Pawnbroker Regulation Fund is established as a
2 special fund in the State treasury. Moneys collected under this
3 Act shall be deposited into the Fund and used for the
4 administration of this Act. In the event that General Revenue
5 Funds are appropriated to the Office of the Secretary of
6 Financial and Professional Regulation ~~Commissioner of Banks~~
7 ~~and Real Estate~~ for the initial implementation of this Act, the
8 Governor may direct the repayment from the Pawnbroker
9 Regulation Fund to the General Revenue Fund of such advance in
10 an amount not to exceed \$30,000. The Governor may direct this
11 interfund transfer at such time as he deems appropriate by
12 giving appropriate written notice. Moneys in the Pawnbroker
13 Regulation Fund may be transferred to the Professions Indirect
14 Cost Fund, as authorized under Section 2105-300 of the
15 Department of Professional Regulation Law of the Civil
16 Administrative Code of Illinois.

17 (f) The Secretary ~~Commissioner~~ may, by rule, require all
18 pawnshops to provide for the expenses that would arise from the
19 administration of the receivership of a pawnshop under this Act
20 through the assessment of fees, the requirement to pledge
21 surety bonds, or such other methods as determined by the
22 Secretary ~~Commissioner~~.

23 (g) All final administrative decisions of the Secretary
24 ~~Commissioner~~ under this Act shall be subject to judicial review
25 pursuant to the provisions of the Administrative Review Law.
26 For matters involving administrative review, venue shall be in

1 either Sangamon County or Cook County.

2 (Source: P.A. 94-91, eff. 7-1-05.)

3 Section 40. The Corporate Fiduciary Act is amended by
4 changing Sections 1-5.15, 2-7, 4-5, 5-1, 5-3, 5-5, 5-6, 5-8,
5 and 5-9 as follows:

6 (205 ILCS 620/1-5.15 new)

7 Sec. 1-5.15. Secretary of Financial and Professional
8 Regulation. "Secretary" means the Secretary of Financial and
9 Professional Regulation or a person authorized by the
10 Secretary, the Office of Banks and Real Estate Act, or this Act
11 to act in the Secretary's stead.

12 (205 ILCS 620/2-7) (from Ch. 17, par. 1552-7)

13 Sec. 2-7. A corporate fiduciary so incorporated or
14 authorized after January 1, 1988, shall have minimum capital as
15 determined by the Secretary ~~Commissioner~~ as necessary for safe
16 and sound operation of a corporate fiduciary. ~~The Commissioner~~
17 ~~shall record such organization capital requirements in the~~
18 ~~Office of the Secretary of State.~~ During the time that a
19 corporate fiduciary shall continue in its fiduciary business,
20 it shall not withdraw, or permit to be withdrawn, either in the
21 form of dividends or otherwise, any portion of its capital
22 except as approved by the Secretary ~~Commissioner~~. The Secretary
23 ~~Commissioner~~ may, after a corporate fiduciary has been

1 incorporated or authorized require additional capital if the
2 Secretary ~~Commissioner~~ finds the condition and operations of
3 the corporate fiduciary or its proposed scope of operations
4 require such additional capital to achieve or maintain a safe
5 and sound condition.

6 (Source: P.A. 90-301, eff. 8-1-97.)

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

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

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

1 of Section 4-2 of this Act. The certificate of authority shall
2 set forth the fiduciary capacity or capacities, as the case may
3 be, for which the certificate is issued, and shall recite and
4 certify that such foreign corporation is eligible to act in
5 this State in such fiduciary capacity or capacities, as the
6 case may be, pursuant to the provisions of this Act. The
7 certificate of authority shall remain in full force and effect
8 until such time as such foreign corporation violates any order
9 of the Director of the Division or Secretary arising under this
10 Act, any provision of this Act, or any rule promulgated in
11 accordance with this Act or ceases to be eligible so to act
12 under the provisions of this Act.

13 (b) Each foreign corporation making application for a
14 certificate of authority shall pay reasonable fees to the
15 Secretary of Financial and Professional Regulation
16 ~~Commissioner of Banks and Real Estate~~ as determined by the
17 Secretary ~~Commissioner~~ for the services of his office.

18 (c) Any foreign corporation holding a certificate of
19 reciprocity which recites and certifies that such foreign
20 corporation is eligible to act in this State in any such
21 fiduciary capacity pursuant to the provisions of Article IV of
22 this Act or any predecessor Act upon the same subject, issued
23 prior to the effective date of this amendatory Act of 1987 may
24 act in this State under such certificate of reciprocity in any
25 such fiduciary capacity without applying for a new certificate
26 of authority. Such certificate of reciprocity shall remain in

1 full force and effect until such time as such foreign
2 corporation ceases to be eligible so to act under the
3 provisions of Article IV of this Act.

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

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

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

14 (205 ILCS 620/5-1) (from Ch. 17, par. 1555-1)

15 Sec. 5-1. Secretary's ~~Commissioner's~~ powers. The Secretary
16 of Financial and Professional Regulation ~~Commissioner of Banks~~
17 ~~and Real Estate~~ shall have the following powers and authority
18 and is charged with the duties and responsibilities designated
19 in this Act:

20 (a) To promulgate, in accordance with the Illinois
21 Administrative Procedure Act, reasonable rules for the purpose
22 of administering the provisions of this Act and for the purpose
23 of incorporating by reference rules promulgated by the Federal
24 Deposit Insurance Corporation, the Board of Governors of the
25 Federal Reserve System, the Office of the Comptroller of the

1 Currency, the Office of Thrift Supervision, or their successors
2 that pertain to corporate fiduciaries, including, but not
3 limited to, standards for the operation and conduct of the
4 affairs of corporate fiduciaries;

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

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

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

22 (e) To conduct hearings;

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

25 (g) To impose civil penalties in an amount not to exceed
26 the amount a federal regulatory agency is authorized to charge

1 under federal law ~~of up to \$10,000~~ against any person or
2 corporate fiduciary for each violation of any provision of this
3 Act, any rule promulgated in accordance with this Act, any
4 order of the Secretary ~~Commissioner~~ or any other action which,
5 in the Secretary's ~~Commissioner's~~ discretion, is a detriment or
6 impediment to accepting or executing trusts; and

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

14 (Source: P.A. 89-364, eff. 8-18-95; 89-508, eff. 7-3-96.)

15 (205 ILCS 620/5-3) (from Ch. 17, par. 1555-3)

16 Sec. 5-3. Violations; orders.

17 (a) Whenever it appears to the Secretary ~~Commissioner~~ from
18 any examination, statement of condition or report, that any
19 corporate fiduciary has committed any violation of law, has
20 made or published a false statement of condition or is
21 conducting its business in an unsafe, unsound or unauthorized
22 manner, he may ~~shall~~, by an order under his signature, direct
23 the discontinuance of such illegal and unsafe, unsound or
24 unauthorized practices and that the corporate fiduciary
25 strictly conform with the requirements of the law, and with

1 safety and security in its transactions.

2 (b) If a corporate fiduciary refuses or neglects to make a
3 required statement of condition or any report required under
4 this Act, or to comply with an order as above stated, or if it
5 appears to the Secretary ~~Commissioner~~ that it is unsafe or
6 inexpedient for the corporate fiduciary to continue to transact
7 business, or that extraordinary withdrawals of money are
8 jeopardizing the interests of remaining depositors, or that any
9 corporate fiduciary or officer of a corporate fiduciary has
10 abused his trust or is guilty of misconduct in his official
11 position, injurious to the corporate fiduciary, or that it has
12 suffered a serious loss, he shall enter an order appropriate to
13 the circumstances, which may include the appointment of a
14 receiver as hereinafter provided, the taking of possession of
15 the corporate fiduciary, or the removal of a director, officer,
16 employee, or agent of the corporate fiduciary, or he may,
17 represented by the Attorney General, seek an injunction or
18 other appropriate order from the court.

19 (c) No dividends shall be paid by a corporate fiduciary
20 while it continues its business as a corporate fiduciary to an
21 amount greater than its net profits then on hand, deducting
22 first therefrom its losses and bad debts.

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

24 (205 ILCS 620/5-5) (from Ch. 17, par. 1555-5)

25 Sec. 5-5. A special meeting of the board of directors may

1 be held upon call by the Secretary ~~Commissioner~~ or an examiner
2 appointed under the provisions of this Act, upon not less than
3 12 hours notice of such meeting by personal service of such
4 notice, ~~or~~ by mailing said notice to each of the directors at
5 his residence as shown by the books of the corporate fiduciary,
6 or by any other method of delivery, provided such method
7 provides proof of service and receipt.

8 (Source: P.A. 85-858.)

9 (205 ILCS 620/5-6) (from Ch. 17, par. 1555-6)

10 Sec. 5-6. Removal orders. Whenever, in the opinion of the
11 Secretary ~~Commissioner~~, any director, officer, employee, or
12 agent of a corporate fiduciary or subsidiary or corporate
13 parent of the corporate fiduciary shall have violated any law,
14 rule, or order relating to the corporate fiduciary or
15 subsidiary or corporate parent of the corporate fiduciary,
16 shall have engaged in an unsafe or unsound practice in
17 conducting the business of the corporate fiduciary or
18 subsidiary or corporate parent of the corporate fiduciary, or
19 shall have violated any law or engaged or participated in any
20 unsafe or unsound practice in connection with any financial
21 institution or other business entity such that the character
22 and fitness of the director, officer, employee, or agent does
23 not assure reasonable promise of safe and sound operation of
24 the corporate fiduciary or subsidiary or corporate parent of
25 the corporate fiduciary, the Secretary ~~Commissioner~~ may issue

1 an order of removal. If in the opinion of the Secretary
2 ~~Commissioner~~, any former director, officer, employee, or agent
3 of a corporate fiduciary or subsidiary or corporate parent of
4 the corporate fiduciary, prior to the termination of his or her
5 service with the corporate fiduciary or subsidiary or corporate
6 parent of the corporate fiduciary, violated any law, rule, or
7 order relating to the corporate fiduciary or subsidiary or
8 corporate parent of the corporate fiduciary or engaged in an
9 unsafe or unsound practice in conducting the business of the
10 corporate fiduciary or subsidiary or corporate parent of the
11 corporate fiduciary or violated any law or engaged or
12 participated in any unsafe or unsound practice in connection
13 with any financial institution or other business entity such
14 that the character and fitness of the director, officer,
15 employee, or agent would not have assured reasonable promise of
16 safe and sound operation of the corporate fiduciary or
17 subsidiary or corporate parent of the corporate fiduciary, the
18 Secretary ~~Commissioner~~ may issue an order prohibiting that
19 person from further service with a corporate fiduciary or
20 subsidiary or corporate parent of the corporate fiduciary as a
21 director, officer, employee, or agent. An order issued pursuant
22 to this Section shall be served upon the director, officer,
23 employee, or agent. A copy of the order shall be sent to each
24 director of the corporate fiduciary affected by personal
25 service, certified mail return receipt requested, or any other
26 method that provides proof of service and receipt. The person

1 affected by the action may request a hearing before the Board
2 of Banks and Trust Companies ~~State Banking Board of Illinois~~,
3 hereafter "the Board", within 10 days after receipt of the
4 order of removal or prohibition. The hearing shall be held by
5 the Board according to the same procedures used pursuant to
6 Section 48 of the Illinois Banking Act, and the hearing shall
7 be held within 30 days after the request has been received by
8 the Board. After concluding the hearing, the Board shall make a
9 determination approving, modifying, or disapproving the order
10 of the Secretary Commissioner as its final administrative
11 decision. A copy of the order shall be served upon the
12 corporate fiduciary of which the person is a director, officer,
13 employee, or agent, whereupon the person shall cease to be a
14 director, officer, employee, or agent of the corporate
15 fiduciary. Any person who has been removed or prohibited by an
16 order of the Secretary Commissioner under this Section or
17 subsection (7) of Section 48 of the Illinois Banking Act may
18 not thereafter serve as director, officer, employee, or agent
19 of any State bank or corporate fiduciary, or of any other
20 entity that is subject to licensure or regulation by the
21 Secretary Commissioner or the Department of Financial and
22 Professional Regulation ~~Office of Banks and Real Estate~~ unless
23 the Secretary Commissioner has granted prior approval in
24 writing. The Secretary Commissioner may institute a civil
25 action against the director, officer, employee, or agent
26 subject to an order issued under this Section and against the

1 corporate fiduciary to enforce compliance with or to enjoin any
2 violation of the terms of the order.

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

4 (205 ILCS 620/5-8) (from Ch. 17, par. 1555-8)

5 Sec. 5-8. All final administrative decisions of the
6 Secretary Commissioner, or of the Board of Banks and Trust
7 Companies State Banking Board of Illinois where this Act
8 provides a hearing before such Board to review a decision of
9 the Secretary Commissioner, shall be subject to review pursuant
10 to the provisions of the Administrative Review Law, as now or
11 hereafter amended, and the rules adopted pursuant thereto. For
12 matters involving administrative review, venue shall be in
13 either Sangamon County or Cook County.

14 (Source: P.A. 86-754.)

15 (205 ILCS 620/5-9) (from Ch. 17, par. 1555-9)

16 Sec. 5-9. Statement of condition.

17 (a) Each corporate fiduciary shall file with the Secretary
18 Commissioner, when requested, a statement under oath, of the
19 condition of such corporate fiduciary as of the date requested.
20 The statement of condition shall be in such form and contain
21 such statements, returns and information, as to the affairs,
22 business conditions, and resources of the corporate fiduciary
23 or of its trust department, as the case may be, as the said
24 Secretary Commissioner may, from time to time prescribe or

1 require.

2 (b) Such statement of condition shall be verified by the
3 affidavit of the president, vice president or principal
4 accounting officer of said corporate fiduciary, who shall also
5 state in such affidavit that he has examined the books and
6 accounts of said corporate fiduciary or of its trust
7 department, as the case may be for the purpose of making said
8 report or statement, and that the information contained in the
9 statement or report is accurate to the best of his knowledge
10 and belief. If the statement is submitted in electronic form,
11 the Secretary Commissioner may, in the call for the report,
12 specify the manner in which the appropriate officer of the
13 corporate fiduciary shall verify the statement of condition.

14 (c) (Blank). ~~The corporate fiduciary shall cause a proper~~
15 ~~abstract of the statements of assets and liabilities reported~~
16 ~~under sub section (a) of this Section to be published once in a~~
17 ~~newspaper of general circulation, circulated in the city, town~~
18 ~~or village where the corporate fiduciary is located. Such~~
19 ~~publication shall be paid for by said corporate fiduciary which~~
20 ~~shall cause to be provided to the Commissioner a certificate of~~
21 ~~publication from the publishing newspaper in such form as the~~
22 ~~Commissioner shall require. When the corporate fiduciary is a~~
23 ~~State bank, qualified under this Act, the statements published~~
24 ~~in compliance with the Illinois Banking Act may be accepted by~~
25 ~~the Commissioner in compliance with the publication~~
26 ~~requirements of this Section although an annual statement of~~

1 ~~condition may still be required.~~

2 (d) Any corporate fiduciary which fails to file an accurate
3 statement of condition on or before the date it is due, to
4 publish the report if required to be published, or which fails
5 to provide evidence of such publication may be fined \$100 for
6 each day of noncompliance.

7 (e) Any corporate fiduciary which is the victim of a
8 robbery or experiences a shortage of funds in excess of
9 \$10,000, an apparent misapplication of the corporate
10 fiduciary's funds by an officer, employee, director, or agent,
11 a charge-off of assets of the corporate fiduciary, or any
12 adverse legal action in an amount in excess of 10% of total
13 capital and surplus of the corporate fiduciary, including but
14 not limited to, the entry of an adverse money judgment against
15 the corporate fiduciary shall report that information in
16 writing to the Secretary Commissioner within 7 days. Compliance
17 with the time frames prescribed by the United States Department
18 of Treasury's Financial Crimes Enforcement Network shall be
19 deemed compliance with this Section. Neither the corporate
20 fiduciary, its directors, officers, employees or agents, in the
21 preparation or filing of the reports required by this
22 subsection, shall be subject to any liability for libel,
23 slander or other charges resulting from information supplied in
24 such reports, except when the supplying of such information is
25 done in a corrupt or malicious manner or otherwise not in good
26 faith.

1 (Source: P.A. 89-364, eff. 8-18-95.)

2 Section 45. The Foreign Bank Representative Office Act is
3 amended by changing Section 2 as follows:

4 (205 ILCS 650/2) (from Ch. 17, par. 2852)

5 Sec. 2. Definitions. As used in this Act, unless the
6 context requires otherwise:

7 (a) "Commissioner" means the Commissioner of Banks and Real
8 Estate or a person authorized by the Commissioner, the Office
9 of Banks and Real Estate Act, or this Act to act in the
10 Commissioner's stead.

11 (b) "Foreign bank" means ~~(1) a bank or trust company which~~
12 ~~is organized under the laws of any state or territory of the~~
13 ~~United States, including the District of Columbia, other than~~
14 ~~the State of Illinois; (2) a national bank having its principal~~
15 ~~place of business in any state or territory of the United~~
16 ~~States, including the District of Columbia, other than the~~
17 ~~State of Illinois; or (3) a bank or trust company organized and~~
18 operating under the laws of a country other than the United
19 States of America.

20 (c) "Representative office" means an office in the State of
21 Illinois at which a foreign bank engages in representational
22 functions but does not conduct a commercial banking business.

23 (d) "Secretary" means the Secretary of Financial and
24 Professional Regulation or a person authorized by the

1 Secretary, the Office of Banks and Real Estate Act, or this Act
2 to act in the Secretary's stead.

3 (Source: P.A. 89-364, eff. 8-18-95; 89-508, eff. 7-3-96.)

4 (205 ILCS 680/Act rep.)

5 Section 50. The Financial Institution Activity Reporting
6 Act is repealed.

7 Section 99. Effective date. This Act takes effect January
8 1, 2009.

1		INDEX
2		Statutes amended in order of appearance
3	20 ILCS 3205/5	from Ch. 17, par. 455
4	20 ILCS 3205/6	from Ch. 17, par. 456
5	20 ILCS 3210/5	from Ch. 17, par. 405
6	205 ILCS 5/2	from Ch. 17, par. 302
7	205 ILCS 5/13	from Ch. 17, par. 320
8	205 ILCS 5/16	from Ch. 17, par. 323
9	205 ILCS 5/48	from Ch. 17, par. 359
10	205 ILCS 5/78.5 new	
11	205 ILCS 5/79.5 new	
12	205 ILCS 5/82	from Ch. 17, par. 394
13	205 ILCS 5/78 rep.	
14	205 ILCS 5/79 rep.	
15	205 ILCS 10/2	from Ch. 17, par. 2502
16	205 ILCS 10/3.074	from Ch. 17, par. 2510.04
17	205 ILCS 510/0.05	
18	205 ILCS 620/1-5.15 new	
19	205 ILCS 620/2-7	from Ch. 17, par. 1552-7
20	205 ILCS 620/4-5	from Ch. 17, par. 1554-5
21	205 ILCS 620/5-1	from Ch. 17, par. 1555-1
22	205 ILCS 620/5-3	from Ch. 17, par. 1555-3
23	205 ILCS 620/5-5	from Ch. 17, par. 1555-5
24	205 ILCS 620/5-6	from Ch. 17, par. 1555-6
25	205 ILCS 620/5-8	from Ch. 17, par. 1555-8

- 1 205 ILCS 620/5-9 from Ch. 17, par. 1555-9
- 2 205 ILCS 650/2 from Ch. 17, par. 2852
- 3 205 ILCS 680/Act rep.